TITLE 8
CRIMINAL PROCEDURE

SOURCE: Enacted by P.L. 13-186 (Sept. 2, 1976) as the Criminal Procedure Code of Guam. Codified in Title 8 Guam Code Annotated by P.L. 15-104:7 (Mar. 5, 1980) and amended as indicated herein.

2007 COMMENT: Prior to being placed in the Guam Code Annotated, criminal procedure statutes were published in 1977 in a hard-bound publication entitled "Criminal Procedure and P.L. 13-187" by the Compiler of Laws. The 1977 publication contained an introduction statement that explained the general intent of Criminal Procedure Code as it existed at the time. The 1977 introduction is included here in its entirety:

[1977] INTRODUCTION

The two laws contained in this Volume are, together with the Criminal and Correctional Code, a product of the Guam Law Revision Commission, which was established by P.L. 12-93. Public Law 13-187 is a law which amends the general laws of Guam to conform with the terminology and sentencing structure of the Criminal and Correctional Code and the Criminal Procedure Code. Most particularly, P.L. 13-187 brings the myriad of separate sentences found throughout the laws of Guam in no set pattern into conformity with the criminal classifications and sentences established by the new Codes.

The Criminal Procedure Code (P.L. 13-186) supersedes Part II of the Penal Code of Guam and existing, court-adopted, Rules of Criminal Procedure. The Law Revision Commission, having observed the interaction (and confusion) between Part II of the Penal Code and the Rules of Criminal Procedure, decided that all major criminal rules should be in statutory form. Thus, these Rules are intended to wholly supersede existing Rules of Criminal Procedure. It is for this reason that no "Rules of Criminal Procedure" adopted by the Court have been attached to this Volume. Those rules which the Court may adopt have not yet been adopted.

Even a cursory examination will reveal that the Criminal Procedure Code, as adopted, makes significant changes. Yet this Code is not designed to cause a revolution in Criminal Procedure, only rapid evolution. Special attention should be directed towards the areas of pre-trial release, grand jury proceedings, preliminary examinations, depositions and discovery. The purpose and effect of these changes is explained in the Notes following the pertinent sections. Most of the significant changes in substance are based upon comparable provisions in the more recent federal rules or legislation and on standards proposed by the American Bar Association Project on (Minimum) Standards for Criminal Justice.

The original comments and cross-references to sources of this and the other Codes in the series were prepared by the Executive Director of the Law Revision Commission before passage of the Codes. I have added, deleted and modified these comments and notes where necessary to reflect the law as actually passed by the Legislature. It was the expressed desire of the Commission that such comments accompany the publication of these Codes.

The various penal sections of law occurring throughout the laws of Guam were enacted separately from each other and from the Penal Code. Thus, each act has tended to set its own penalties without reference to a general system of sentences. Public Law 13-187 amends these penalty sections, among others, to provide each crime with a penalty which conforms to the standard classification found in the Criminal and Correctional Code, namely felonies, felonies by degree, misdemeanor, petty misdemeanor and violation. Individual sentences have been eliminated. The Table of Contents for P.L. 13-187 reflects the section amended, the subject matter of the section and the new penalty or other amendment, or repeal.

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Compiler

[1977] NOTE TO ANNOTATIONS

In contrast to the Criminal and Correctional Code, this Code does not contain "Sources", "Cross-references" and "Comments." Unlike the Criminal & Correctional Code, the Criminal Procedure Code takes from sources which are already enacted as law or promulgated as court rules, either local court rules or the Federal Rules of Criminal Procedure. Thus, no new discussion of intent is needed in most cases. That is already available from the standard sources.

Therefore, following each Section of this Code will be a "Note" which will include any necessary commentary and the appropriate citation to the source and any cross-references. No comment or cross-referencing has been added to P.L. 13-187, as this part of the three laws is self-explanatory, amending the remainder of the Government Codes, Civil and Civil Procedure Codes to conform with the substantive revisions of the Criminal & Correctional Code and the Criminal Procedure Code.

ABBREVIATIONS USED

(1) Guam Penal Code is cited as "Guam PC § _____," or "G.P.C. § _____."

(2) Government Code of Guam is cited as "Govt. Code § _____."

(3) Civil Code of Guam is cited as "Civ. Code § _____."

(4) 1970 Code of Criminal Procedure cited as "Code Crim. Proc. § _____."

(5) 1970 Code of Civil Procedure cited as "Code Civ. Proc. § _____."

(6) Criminal and Correctional Code of 1977 cited as "Crim. & Corr. Code § _____."

(7) Criminal Procedure Code of 1977 cited as "Crim. Proc. Code § _____," or "CPC § _____."

(8) American Law Institute, Model Penal Code (Proposed Official Draft 1962) cited as "M.P.C. § _____."

(9) California Joint Legislative Committee for Revision of the Penal Code, Penal Code Revision Project (Tentative Drafts ## 1, 2, & 3 dated Sept. 1967, June 1968 & July 1969) cited as "Cal. § _____ (T.D. (1, 2, or 3), 196_)."

(10) California Joint Legislative Committee for Revision of the Penal Code, Penal Code Revision Project (Staff Draft entitled "The Criminal Code," 1971) cited as "Cal. § _____ (1971)."

(11) Massachusetts Criminal Law Revision Commission, Criminal Code of Mass. (Proposed 1972), cited as "Mass. ch. § _____."

(12) New Jersey Criminal Law Revision Commission, New Jersey Penal Code (Final Report, 1971) (two volumes) cited as "1 or 2 N.J. § _____."

CHAPTER 45
FIRST APPEARANCE: PRELIMINARY EXAMINATION

§ 45.10. Duty to Delivery Arrestee to Judge, or to Peace Officer.

(a) An officer making an arrest under a warrant or any person making an arrest without a warrant shall take the arrested person without unnecessary delay before a judge of the Superior Court.

(b) Notwithstanding Subsection (a), a private person who has arrested another for the commission of an offense, may deliver him to a peace officer who shall take the person arrested before the judge.

(c) The person arrested shall in all cases be taken before the judge within forty-eight (48) hours after the arrest, except that when the forty-eight (48) hour period expires, it is the burden of the government to demonstrate that a bona fide emergency or an extraordinary circumstance existed.

SOURCE: Subsection (c) amended by P.L. 29-075:1 (May 9, 2008).

NOTE: Section 45.10 is based on the first sentence of former Rule 5 and portions of former §§ 825 and 847 - 849. *See also* former §§ 821-824. It should be noted that although Subsection (c) sets a maximum time period, the basic test in all cases requires no unnecessary delay. *See* generally B. Witkin, California Criminal Procedure Proceedings Before Trial §§ 114,117 (1963, Supp. 1973). It should also be noted that this Section does not apply where the arrested person is released pursuant to either §§ 20.60 or 25.10.

§ 45.20. Complaint to be Filed; When.

(a) Where a person is arrested without a warrant, at or before the time he is brought before the court pursuant to § 45.10, the prosecuting attorney shall file a complaint which satisfies the requirements of § 15.10 and affidavits showing probable cause to believe that an offense has been committed and that the defendant has committed it.

(b) At or before the time of the defendant's first appearance pursuant to § 45.30, if no determination has previously been made by the court or grand jury that there is probable cause to believe that an offense has been committed and that the defendant has committed it, the court shall make such determination in the manner provided by §§ 15.20 and 15.30. The defendant shall have no right to be present at any hearing leading to such determination. If from the evidence it appears that there is no probable cause to believe that an offense has been committed or that the defendant committed it, the court shall dismiss the complaint and discharge the defendant. Such discharge shall not preclude the government from instituting a subsequent prosecution for the same offense.

NOTE: Subsection (a) of § 45.20 is substantively the same as the second sentence of former Rule 5(a). *See also* Rule 5 of the Federal Rules of Criminal Procedure. Compare former § 849. Subsection (b) is added to satisfy the requirement of a judicial determination of probable cause set forth in *Gerstein v. Pugh*, 420 U.S. 103 (1975). The subsection makes clear that the defendant has no right of confrontation or cross-examination at this stage of the proceeding. For all practical purposes the procedure is the same as that for determining whether a warrant or summons should issue but occurs after arrest rather than before. This procedure does not, however, obviate the need for an indictment or preliminary examination in felony cases.

§ 45.30. First Appearance; Statement by Court; Public Defender Allowed.

(a) At the time the defendant is brought before the court pursuant to § 45.10 or appears pursuant to a summons issued pursuant to Chapter 15 (commencing with § 15.10) or a notice to appear pursuant to § 25.20, the court shall inform the defendant;

(1) of the complaint against him and of any affidavits filed therewith.

(2) of his right to retain counsel.

(3) of his right to request the assignment of counsel if he is unable to obtain counsel.

(4) of the general circumstances under which he may secure his pretrial release.

(5) of his right to prosecution by indictment, where such right is available.

(6) of his right to a preliminary examination, where such right is available.

(7) that he is not required to make a statement and that any statement made by him may be used against him.

(b) If the defendant appears without counsel, the court shall ask him if he desires the assistance of counsel. If he desires counsel, the court shall inquire of him whether he is financially able to employ counsel and, if so, whether he desires to employ counsel of his choice or to have counsel assigned to him through the Public Defender Service Corporation. If he desires assignment of counsel, the court shall make such assignment. The court shall assign counsel at public expense if the defendant desires counsel and is financially unable to employ counsel.

(c) The defendant shall not be called upon to plead, shall be allowed reasonable time and opportunity to obtain and consult with counsel, and shall be released in the manner and subject to the conditions provided by Chapter 40 (commencing with § 40.10).

SOURCE: Subsection (b) amended by P.L. 38-048:3 (Aug. 18, 2025) effective October 1, 2025 pursuant to P.L. 38-048:6.

NOTE: Section 45.30 is based on the first Paragraph of Rule 5(c) of the Federal Rules of Criminal Procedure (as revised in 1972) and portions of former Rules 5 and 44 and former §§ 858-860. *See also* former § 987. *See* generally 8 Moore, Federal Practice § 5.03 (2d ed. 1974).

§ 45.40. Procedure When Public Defender Cannot Serve.

In any criminal or juvenile proceeding in which a person is entitled to be represented by counsel at public expense and because of a conflict of interest the attorneys from the Public Defender Divisions, the attorneys from the Alternate Public Defender Division, and the attorneys from the Private Attorney Panel have properly refused to represent the person, the Board of Trustees of the Public Defender Service Corporation shall appoint private counsel for the person who shall receive reasonable compensation and necessary expenses to be paid by the Public Defender Service Corporation subject to appropriation.

SOURCE: Amended by P.L. 38-048:4 (Aug. 18, 2025) effective October 1, 2025 pursuant to P.L. 38-048:6.

NOTE: Section 45.40 supersedes a portion of former § 859.

§ 45.45. Waiver of Indictment; of Preliminary Examination.

In any case where the defendant has the right to prosecution by indictment, he may waive such right at any time after he has been advised of his rights pursuant to § 45.30. If the defendant has also waived his right to a preliminary examination, upon waiver of prosecution by indictment, the court shall hold the defendant to answer, and shall order the prosecuting attorney to file, within fifteen days after entry of the order, an information in the court charging the defendant with the offense charged by the complaint.

NOTE: Section 45.45 provides the procedure for waiver by the defendant of prosecution by indictment contemplated by § 1.15. Compare former § 682(b); former Rule 7(b). It should be noted that the defendant may waive both prosecution by indictment pursuant to this Section and a preliminary examination pursuant to § 45.50(f), in which case, the court will order an information to be filed. If the defendant waives only his right to an indictment, then he is not deprived of his right to a preliminary examination, unless the prosecuting attorney opts to obtain an indictment. *See* §§ 1.15; 45.50(d). For dismissal for failure to file an information within the time prescribed, *see* § 80.60.

§ 45.50. Preliminary Examination: Date; Purpose; None Required When Indictment Precedes.

(a) Except as otherwise provided by this Section and § 45.45, in every case where a preliminary examination is required by §§ 1.15 and 1.17, such examination shall be held within the time set by the court pursuant to Subsection (b) to determine whether there is probable cause to believe that an offense has been committed and that the defendant has committed it.

(b) The date for the preliminary examination shall be fixed by the court at the first appearance of the defendant. Such examination shall be held within a reasonable time following the first appearance, but in any event not later than:

(1) the tenth day following the date of the first appearance of the defendant before such court if the defendant is held in custody without any provision for release, or is held in custody for failure to meet the conditions of release imposed, or is released from custody only during specified hours of the day; or

(2) the twentieth day following the date of the first appearance if the defendant is released from custody under any condition other than a condition described in Subsection (b)(1).

(c) Notwithstanding Subsection (b), with the consent of the defendant, the date fixed by the court for the preliminary examination may be a date later than that prescribed by Subsection (b), or may be continued one or more times to a date subsequent to the date initially fixed therefor. In the absence of such consent the date fixed for the preliminary examination may be a date later than that prescribed by Subsection (b), or may be continued to a date subsequent to the date initially fixed therefor, only upon the order of the court after a finding the extraordinary circumstances exist, and that the delay of the preliminary examination is indispensable to the interest of justice.

(d) Except as provided by Subsections (e) and (f), a defendant who has not been accorded the preliminary examination required by Subsection (a) within the period of time fixed by the court in compliance with Subsections (b) and (c), shall be discharged from custody or from the requirement of bail or any other condition of release, without prejudice, however, to the institution of further criminal proceedings against him upon the charge upon which he was arrested.

(e) No preliminary examination in compliance with Subsection (a) shall be required to be accorded a defendant, nor shall such defendant be discharged from custody or from the requirement of bail or any other condition or release pursuant to Subsection (d), if at any time prior to the first appearance of such person before the court or subsequent to the first appearance but prior to the date fixed for the preliminary examination pursuant to Subsections (b) and (c) an indictment is returned against him.

(f) The defendant may waive the preliminary examination at any time after he has been advised of his rights pursuant to § 45.30 and upon such waiver the court shall hold the defendant to answer, and shall order the prosecuting attorney to file, within fifteen days after entry of the order, an information in the court charging the defendant with the offense charged by the complaint.

2025 NOTE: Reference to "Paragraph (1)" modified to "Subsection (b)(1)" pursuant to the authority of 1 GCA § 1606.

NOTE: Section 45.50 is based on 18 U.S.C.A. § 3060 (1974). *See also* the second paragraph of Rule 5(c) of the Federal Rules of Criminal Procedure (as revised in 1972) and portions of former Rule 5 and former §§ 860, 861 and 872. *See* generally 8 Moore, Federal Practice § 5.03 (2d ed. 1974). It should be noted, however, that under the procedures

provided by this Code, in felony cases only the return of an indictment, not the filing of an information, obviates the need for a preliminary examination. *See* B. Witkin, California Criminal Procedure Proceedings Before Trial § 132 (1963, Supp. 1973). An indictment may, of course, be returned before the defendant even makes his first appearance in which case, no right to a preliminary examination exists and one will never be scheduled. *See* Subsection (e).

Subsection (f) is based on Subdivision (D) of former § 860. *See also* former § 872. It should be noted, however, that where a preliminary examination is waived, there is no provision in this section or elsewhere for holding an examination despite the waiver. For dismissal for failure to file within the time prescribed, *see* § 80.60.

§ 45.60. Preliminary Examination: Procedure.

At the preliminary examination, the court shall take evidence in the same manner as at trial. Witnesses shall be examined in the presence of the defendant. The defendant may cross-examine witnesses against him and may introduce evidence in his own behalf. Objections to the admissibility of evidence may be taken on any grounds that would be available at trial.

While a witness is under examination, the court may exclude all witnesses who have not been examined. The court may also cause the witnesses to be kept separate, and to be prevented from conversing with each other until they are all examined.

The court shall, upon the request of the defendant, exclude from the examination every person except the court clerk, the court reporter, the court bailiff, a witness while he is testifying, the prosecuting attorney, the investigating officer, the defendant and his counsel, the officer, if any, having the defendant in custody and the officer having custody of a prisoner while the prisoner is testifying. Nothing in this Subsection shall affect the right to exclude witnesses as provided in Subsection (b).

Notwithstanding Subsection (c), when the witness who is testifying is a person less than 18 years old, the witness shall be entitled to have an adult of the same sex in the courtroom.

NOTE: Section 45.60 is based on former §§ 865-868. *See also* former Rule 5(c). It should be noted that the last sentence of Subsection (a) marks a significant departure from federal procedure. Under Subsection (a) objections may be taken to evidence on the grounds that it is hearsay or that it was acquired by unlawful means. The new provision is consistent with the California law, *see People v. Davidson*, 227 C.A. 2d 331, 38 Cal. Rptr. 660 (1964), but in direct contrast to Rule 5.1 of the Federal Rules of Criminal Procedure.

Subsections (b) and (c) are based on former §§ 867 and 868 respectively. Their California counterparts are discussed in B. Witkin, California Criminal Procedure Proceedings Before Trial §§ 140-143 (1963, Supp. 1973).

§ 45.70. Preliminary Examination to be Recorded; Accessibility.

The preliminary examination shall be either recorded by suitable sound recording equipment or taken down by a court reporter.

The court, upon timely application and such terms and conditions as it may require, shall give the attorney for the defendant and the prosecuting attorney an opportunity to examine any recording of the preliminary examination for their information in connection with any further hearing or their preparation for trial and shall order a transcript make of all or part of such proceedings. Such transcript shall be furnished without cost to the party requesting it.

NOTE: Section 45.70 is based on 18 U.S.C.A. § 3060(f) and Rule 5.1(c) of the Federal Rules of Criminal Procedure. Compare former §§ 860, 869-870 makes clear that a complete record of the preliminary examination must always be made and, where needed in subsequent proceedings must be furnished to both the prosecution and the defense. Section 45.70 does not require a transcript in every case because in some cases no probable cause will be found and the complaint will be dismissed and the defendant discharged. *See* § 45.80. However, even in such cases, a recording will have been made and if a new charge is made in subsequent proceedings, the parties may still need and are authorized to obtain the record or a transcript of the prior proceeding.

§ 45.80. Procedure Where Probable Cause Shown; Not Shown.

(a) If from the evidence taken at the preliminary examination, it appears that there is probable cause to believe that an offense has been committed and that the defendant has committed it, the court shall hold the defendant to answer and shall order the prosecuting attorney to file, within fifteen days after entry of the order, an information in the court charging the defendant with the offense shown.

(b) If from the evidence it appears that there is no probable cause to believe that an offense has been committed or that the defendant committed it, the court shall dismiss the complaint and discharge the defendant. Such discharge shall not preclude the government from instituting a subsequent prosecution for the same offense.

NOTE: Section 45.80 is based on portions of former Rule 5(c) and former §§ 809, 860 and 871-872. *See also* Fed. R. Crim. P. 5.1(a), (b). *See* generally B. Witkin, California Criminal Procedure Proceedings Before Trial §§ 144-146 (1963, Supp. 1973). The court's order will state the offense (offenses) which may be charged in the information. These will be all the offenses for which probable cause has been shown. As to the form of the information, *see* § 55.10. For dismissal for failure to file within the time prescribed, *see* § 80.60. If probable cause has not been shown, the complaint must be dismissed and the defendant discharged; however, Subsection (b) makes clear that such dismissal does not prejudice a new filing on the basis of new evidence.
