

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.

CHARLES H. TROUTMAN

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 60
ARRAIGNMENT: PLEAS

- § 60.10. When, How Arraignment Conducted.
- § 60.20. Identity of Defendant.
- § 60.30. Time to Answer Allowed Defendant.
- § 60.40. Pleas Which May be Entered.
- § 60.50. Advice to Defendant Upon Plea of Guilty or “Nolo.”
- § 60.60. Voluntariness to be Determined.
- § 60.70. Factual Basis of Plea Required.
- § 60.75. Degree of Offense to be Determined Upon Plea.
- § 60.80. Plea Bargaining Regulated.
- § 60.90. Verbatim Record Required.

§ 60.10. When, How Arraignment Conducted.

(a) The defendant shall be arraigned promptly after the indictment or information is filed or after the complaint is filed where prosecution by complaint is required by § 1.15.

(b) Arraignment shall be conducted in open court and shall consist of reading the indictment, information or complaint to the defendant or stating to him the substance of the charge and calling on him to plead thereto. The defendant shall be given a copy of the indictment, information or complaint before he is called upon to plead.

NOTE: Subsection (a) of § 60.10 continues the substance of former § 976. *See also* Cal. Pen. Code § 976. *See generally* B. Witkin, California Criminal Procedure Proceedings Before Trial § 219 (1963 Supp. 1973).

Subsection (b) is substantively the same as former § 988 and former Rule 10. *See also* Fed. R. Crim. P. 10; Cal. Pen Code § 988. *See generally* 8 Moore, Federal Practice ¶¶10.01-10.03 (1974); B. Witkin, *supra* § 222.

Section 60.10 does not provide a specific time for arraignment but rather requires a “prompt” arraignment and relies on the general rule against unreasonable delay and a right to a speedy trial. *See* § 1.11. It might be noted, however, that § 45.30 does not permit the defendant to be required to plead at his first appearance. A reasonable period for consultation with counsel should be provided in every case.

Former § 977 provided that the defendant must be present upon the arraignment. *See* § 1.13 (same). The same rule is also implicit in the first sentence of Subsection (b). Former § 978 authorized the court to direct any officer having custody of the defendant to bring the defendant before the court to be arraigned. This Section is not continued. Under the release procedures provided by Chapter 40, the occasions when a defendant will be in custody should be reduced and the court has the inherent power to make such an order in any event. Former §§ 979-982 provided for arrest of the defendant where he failed to appear for arraignment. These sections are superseded by §§ 40.70-40.75. Former §§ 985 and 986 provided for reexamination of the amount of bail after arraignment for a felony. Reconsideration of release conditions is now dealt with in § 40.75.

§ 60.20. Identity of Defendant.

When the defendant is arraigned, he shall be informed that if the name by which he is prosecuted is not his true name, he shall declare his true name, or be proceeded against by the name in the indictment, information or complaint. If he gives no other name, the court may proceed accordingly; but if he alleges that another name is his true name, the court shall direct an entry thereof in the minutes of the arraignment, and the subsequent proceedings may be had against him by that name, referring also to the name by which he was first charged therein.

NOTE: Section 60.20 is substantively the same as former § 989. *See also* Cal. Pen. Code § 989. *See generally* B. Witkin, California Criminal Procedure Proceedings Before Trial § 222(2) (1963).

§ 60.30. Time to Answer Allowed Defendant.

If, on the arraignment, the defendant requires it, he shall be allowed a reasonable time to answer.

NOTE: Section 60.30 is substantively the same as former § 990. Compare Cal. Pen. Code § 990. *See* generally B. Witkin, California Criminal Procedure Proceedings Before Trial § 222(4) (1963). Emphasis should be on a reasonable time. *See* ABA, Project on Minimum Standards for Criminal Justice Pleas of Guilty § 1.3(a) (Approved draft 1968). The defendant has the right to appear with counsel and a reasonable delay after the first appearance and before arraignment for the purpose of obtaining counsel should always be provided under § 45.30. *See* ABA, *supra* § 1.3(a). However, even though counsel has already been obtained further time may also be necessary to make an informed plea and this Section so provides. *See id.*, at 24-25. *See also* 9 GCA § 7.22 (delayed plea where reports on mental condition to be obtained).

§ 60.40. Pleas Which May be Entered.

(a) The following pleas may be entered by a defendant:

- (1) Not guilty.
- (2) Not guilty by reason of mental illness, disease or defect.
- (3) Guilty.
- (4) Nolo contendere.

If a defendant refuses to plead or if the court refuses to accept a plea of guilty, or if a defendant corporation fails to appear, the court shall enter a plea of not guilty.

(b) A defendant may plead nolo contendere only with the consent of the court. Such a plea shall be accepted by the court only after due consideration of the views of the parties and the interest of the public in the effective administration of justice.

NOTE: Section 60.40 continues a portion of the first and third sentences of former § 995 and former Rule 11 but adds the plea of not guilty by reason of mental illness, disease or defect. A defendant may enter pleas of both not guilty and not guilty by reason of mental illness, disease, or defect. However, § 7.22 of the Criminal and Correctional Code provides that a defendant must enter the latter plea if he wishes to raise that defense. Moreover, it might be noted that if he enters only the latter plea, without also pleading not guilty, he admits by implication the commission of the offenses charged.

The second sentence of Subsection (b) a statement contained in proposed Subdivision (b) of Rule 11 of the Federal Rules of Criminal Procedure. *See also* ABA, Project on Minimum Standards for Criminal Justice Pleas of Guilty § 1.1(b) (Approved draft 1968). *See* discussion *id.*, at 16-18. *See* generally 8 Moore, Federal Practice ¶11.07 (1974).

§ 60.50. Advice to Defendant Upon Plea of Guilty or “Nolo.”

The court shall not accept a plea of guilty or nolo contendere without first, by addressing the defendant personally in open court, informing him of and determining that he understands the following:

- (a) the nature of the charge to which the plea is offered;
- (b) that the defendant has the right to plead not guilty, or to persist in that plea if it has already been made;
- (c) that if he pleads guilty or nolo contendere there will not be a further trial of any kind, so that by pleading guilty or nolo contendere he waives the right to a trial; and
- (d) the maximum possible penalty provided by law for the offense to which the plea is offered including that possible from the imposition of an extended term pursuant to §§ 80.38 and 80.40 of the Criminal and Correctional Code.

NOTE: Sections 60.50 and 60.60 supersede the second sentence of former § 995 and former Rule 11. Section 60.50 is based on proposed Rule 11(c) of the Federal Rules of Criminal Procedure and ABA, Project on Minimum Standards for Criminal Justice Pleas of Guilty § 1.4 (Approved draft 1968). *See* discussion *id.*, at 25-29. *See* generally 8 Moore, Federal Practice ¶¶11.01-11.03 (1974).

No attempt is made here to state what consideration, if any, should be given to a guilty plea in making sentencing determinations.

§ 60.60. Voluntariness to be Determined.

The court shall not accept a plea of guilty or nolo contendere without first, by addressing the defendant personally in open court, determining that the plea is voluntary and not the result of force or threats or of promises apart from a plea agreement. The court shall also inquire as to whether the defendant's willingness to plead guilty or nolo contendere results from prior discussions between the attorney for the government and the defendant or his attorney.

COURT DECISIONS: D.C. Guam App. Div., *People v. Gentapanan*, D.C. Cr. 84-00074A (1986). Where the Superior Court followed the provisions of this section (§ 60.60) and the preceding two sections with respect to accepting appellant's plea of nolo contendere, the appellate court will refuse to overturn a later decision of the Superior Court denying appellant's request to retract his plea. The argument that appellant's lawyer failed to inform him of his waiver of a right to appeal is not jurisdictional and, therefore, not appealable.

NOTE: Section 60.60, together with § 60.50, supersede the second sentence of former § 995 and former Rule 11. The section is based on proposed Rule 11(d) of the Federal Rules of Criminal Procedure. *See also* ABA, Project on Minimum Standards for Criminal Justice Pleas of Guilty § 1.5 (Approved draft 1968). *See* generally 8 Moore, Federal Practice ¶11.03 (1974). Where a plea of guilty or nolo contendere does result from a plea agreement, *see* § 60.80 (plea agreement procedure).

§ 60.70. Factual Basis of Plea Required.

The court shall not enter a judgment upon a plea of guilty unless it is satisfied that there is a factual basis for the plea.

NOTE: Section 60.70 is identical to the last sentence of former § 995 and former Rule 11. *See also* § 1.6 set forth in ABA, Project on Minimum Standards for Criminal Justice Pleas of Guilty (Approved draft 1968). *See* discussion *id.*, at 30-34. *See* generally 8 Moore, Federal Practice ¶11.03[4](1974).

§ 60.75. Degree of Offense to be Determined Upon Plea.

(a) Upon a plea of guilty to a crime divided into degrees, the court shall, before passing sentence, determine the degree. Upon the failure of the court to so determine, the degree of the crime of which the defendant is guilty shall be deemed to be of the lesser degree.

(b) Notwithstanding Subsection (a), upon a plea of guilty to a crime divided into degrees, such plea may specify the degree thereof and in such event, the defendant cannot be punished for a higher degree of the crime than the degree specified.

NOTE: Section 60.75 continues the substance of former § 1192 and adds a provision comparable to California Penal Code § 1192.1. The section should, however, have limited applicability under the procedures provided by this Code and the classifications provided by the new Criminal and Correctional Code. This is, rarely, if ever, will the charge of the prosecuting attorney not be specific, *see* § 55.10, and the penalty therefore precise.

§ 60.80. Plea Bargaining Regulated.

(a) The attorney for the government and the attorney for the defendant or the defendant when acting pro se may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty or nolo contendere to a charged offense or to a lesser or related offense, the attorney for the government will move for dismissal of other charges, or will recommend or not oppose the imposition of a particular sentence, or will do both. The court shall not participate in any such discussions.

(b) If a plea agreement has been reached by the parties which contemplates entry of a plea of guilty or nolo contendere in the expectation that a specified sentence will be imposed or that other charges before the court will be dismissed, the court shall require the disclosure of the agreement in open court at the time the plea is offered. Thereupon the court may accept or reject the agreement, or may defer its decision as to acceptance or rejection until there has been an opportunity to consider the presentence report. No plea agreement shall be accepted by the court unless the agreement includes a certification by a victim advocate of the Office of the Attorney General's Crime Victim's Response Unit assigned to the case, affirming one of the following:

- (1) the victim has been notified of the terms of the plea agreement and has indicated agreement;
or
- (2) the victim has been notified of the terms of the plea agreement and has indicated disagreement;
or
- (3) reasonable and documented attempts were made to notify the victim of the terms of the plea agreement, but the victim did not respond; or
- (4) reasonable and documented attempts were made to notify the victim of the terms of the plea agreement, but the victim could not be located.

Such certification shall be attached to the plea agreement submitted to the court, and the court shall not accept any plea agreement lacking such certification.

(c) If the court accepts the plea agreement, the court shall inform the defendant that it will embody in the judgment and sentence the disposition provided for in the plea agreement or another disposition more favorable to the defendant than that provided for in the plea agreement.

(d) If the court rejects the plea agreement, the court shall inform the parties of this fact, advise the defendant personally in open court that the court is not bound by the plea agreement, afford the defendant the opportunity to then withdraw his plea, and advise the defendant that if he persists in his guilty plea or plea of nolo contendere the disposition of the case may be less favorable to the defendant than that contemplated by the plea agreement.

(e) Except for good cause shown, notification to the court of the existence of a plea agreement shall be given at the arraignment or at such other time, prior to trial, as may be fixed by the court.

(f) Evidence of a plea of guilty, later withdrawn, or a plea of nolo contendere, or of an offer to plead guilty or nolo contendere to the crime charged or any other crime, or of statements made in connection with any of the foregoing pleas or offers, is not admissible in any civil or criminal proceeding against the person who made the plea or offer.

SOURCE: Subsection (b) amended by P.L. 38-051:1 (Aug. 18, 2025).

NOTE: Section 60.80 is new. It is based on proposed Rule 11(e) of the Federal Rules of Criminal Procedure and Standards 1.5, 2.2, 3.3 and 3.4 set forth in ABA, Project on Minimum Standards for Criminal Justice Pleas of Guilty (Approved draft 1968). *See* generally 8 Moore, Federal Practice ¶11.05 (1974).

§ 60.90. Verbatim Record Required.

A verbatim record of the proceedings at which the defendant enters a plea shall be made and, if there is a plea of guilty or nolo contendere, the record shall include, without limitation, the court's advice to the defendant, the inquiry into the voluntariness of the plea including any plea agreement, and the inquiry into the accuracy of a guilty plea.

**8 GCA CRIMINAL PROCEDURE
CH. 60 ARRAIGNMENT: PLEAS**

NOTE: Section 60.90 is new. It is based on proposed Rule 11(g) of the Federal Rules of Criminal Procedure and Standard 1.7 set forth in ABA, Project on Minimum Standards for Criminal Justice Pleas of Guilty (Approved draft 1968). *See* discussion *id.*, at 34-36.
