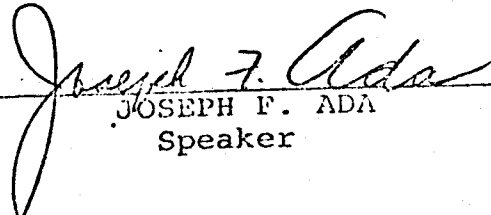



THIRTEENTH GUAM LEGISLATURE  
1976 (SECOND) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

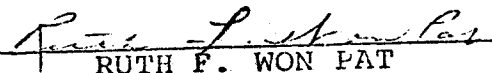
This is to certify that Bill No. 662, "An Act to establish a Criminal Procedure Code thereby consolidating and revising the law relating to the procedure in criminal actions", was on the 16th day of June, 1976, duly and regularly passed.

  
\_\_\_\_\_  
JOSEPH F. ADA  
Speaker

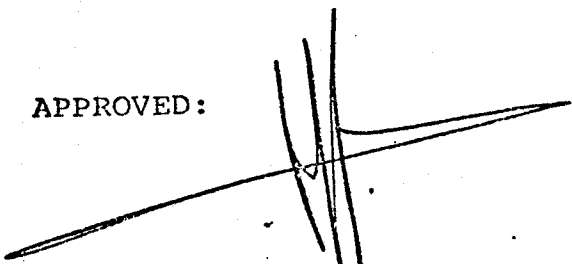
ATTESTED:

  
\_\_\_\_\_  
CONCEPCION CRUZ BARRETT  
Legislative Secretary

-----  
This Act was received by the Governor this 25th day of  
August, 1976, at 10:53 o'clock at a.M.

  
\_\_\_\_\_  
RUTH F. WON PAT  
Assistant Staff Officer  
Governor's Office

APPROVED:

  
\_\_\_\_\_  
RICARDO J. BORDALLO  
Governor of Guam

DATED: September 2, 1976  
4:01 PM

Public Law 13-186

Bill No. 662

Introduced by

C. C. Barro  
G. R. Salas  
R. F. Taitano

AN ACT TO ESTABLISH A CRIMINAL PROCEDURE  
CODE THEREBY CONSOLIDATING AND REVISING  
THE LAW RELATING TO THE PROCEDURE IN  
CRIMINAL ACTIONS.

BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

Section 1. The Criminal Procedure Code is enacted to

read;

"THE CRIMINAL PROCEDURE CODE OF GUAM

CHAPTER 1. GENERAL PROVISIONS

1.01. This code shall be known as the Criminal  
Procedure Code.

1.05. If any provision of this code or the  
application thereof to any person or circumstance is  
held invalid, such invalidity shall not affect any  
other provision or application of this code which can  
be given effect without the invalid provision or  
application, and to this end the provisions of this  
code are severable.

1.07. (a) The provisions of this code govern  
the practice and procedure in every criminal pro-  
ceeding prosecuted in the name of the Territory.  
They are intended to provide for the just determination  
of every criminal proceeding and shall be construed  
to secure simplicity in procedure, fairness in  
administration and the elimination of unjustifiable  
expense and delay.

(b) The Judicial Council may provide by rule  
for the practice and procedure in criminal proceedings  
only to the extent such rules are not inconsistent  
with the provisions of this code. Subject to this  
limitation, the Judicial Council may prescribe  
rules in the manner provided by

1 Section 66 of the Code of Civil Procedure.

2 (c) If no procedure is provided by this code or by rule,  
3 the court may proceed in any lawful manner not inconsistent  
4 with its own rules or with any applicable statute.

5 (d) Nothing in this code shall be construed in any way  
6 to amend, repeal, or affect the provisions of Chapter 1  
7 (commencing with Section 250) of Title V of Part I of the  
8 Code of Civil Procedure, or limit the jurisdiction of the  
9 Juvenile Court in the administration and enforcement of that  
10 chapter.

11 1.09. (a) Notwithstanding the provisions of Section 1.07,  
12 the Judicial Council may, in its discretion, adopt such rules  
13 governing the procedure in the Traffic Court, a division of  
14 the Superior Court, as it shall deem necessary to secure  
15 simplicity and uniformity in procedure, fairness in  
16 administration, and the elimination of unjustifiable expense  
17 and delay.

18 (b) Such rules may be inconsistent or conflict with the  
19 procedures provided in this code. However, the defendant in  
20 any proceeding before the Traffic Court shall have the right  
21 to appeal to the Superior Court and obtain a trial de novo in  
22 any case.

23 (c) Nothing in this section or any rule promulgated  
24 pursuant thereto, shall preclude the Attorney General from  
25 prosecuting any offense in the Superior Court prior to the  
26 entry of a plea of guilty or commencement of trial.

27 1.11. In any criminal action, the defendant is entitled:

28 (a) To a speedy and public trial.

29 (b) To defend in person and with counsel. Every  
30 defendant accused of a crime who is financially unable to  
31 employ counsel shall be entitled to have counsel assigned at  
32 public expense to represent him at every stage of the  
33 proceedings from his initial appearance before the court  
34 through appeal, unless he waives such appointment.

1 (c) To be informed of the nature and cause of the  
2 accusation against him.

3 (d) To be exempt from being called to testify and from  
4 testifying against himself.

5 (e) To be allowed to testify in his own behalf; if he  
6 fails to testify, such failure shall not be construed as  
7 evidence against him; but if he does so testify, he may be  
8 cross-examined in the same manner as other witnesses.

9 (f) To have compulsory process issued for obtaining  
10 witnesses in his behalf.

11 (g) To produce witnesses on his behalf and to be  
12 confronted with the witnesses against him, in the presence of  
13 the court, except that:

14 (1) Hearsay evidence may be admitted to the extent  
15 that it is otherwise admissible in a criminal action under  
16 the law of this territory.

17 (2) The deposition of a witness taken in the action may  
18 be read to the extent that it is otherwise admissible under  
19 Section 70.70.

20 (h) To appeal.

21 1.13. (a) The defendant shall be present at the  
22 arraignment, at the time of the plea, at every stage of the  
23 trial including the impanelling of the jury and return of the  
24 verdict, and at the imposition of sentence, except as otherwise  
25 provided by this section.

26 (b) The further progress of the trial to and including  
27 the return of the verdict shall not be prevented and the  
28 defendant shall be considered to have waived his right to be  
29 present whenever he, initially present

30 (1) voluntarily absents himself after the trial has  
31 commenced (whether or not he has been informed by the court  
32 of his obligation to remain during the trial), or

33 (2) engages in conduct which is such as to justify his  
34 being excluded from the courtroom.

1 (c) A defendant need not be present in the following  
2 situations:

3 (1) A corporation may appear by counsel for all purposes.

4 (2) In a prosecution for an offense not a felony, the  
5 court, with the written consent of the defendant, may permit  
6 arraignment, plea, trial, and imposition of sentence in the  
7 defendant's absence.

8 (3) At a conference or argument upon a question of law.

9 (4) At a reduction of sentence under Section 120.46.

10 1.15. Any felony together with any related misdemeanor  
11 shall be prosecuted by indictment, or, if indictment is waived,  
12 it may be prosecuted by indictment or by information. Any  
13 other offense shall be prosecuted by complaint.

14 1.17. Unless a preliminary examination is waived by the  
15 defendant, an information may not be filed until there has  
16 been a preliminary examination of the case against the  
17 defendant and an order issued holding him to answer under  
18 Section 45.80. The proceeding for a preliminary examination  
19 shall be commenced by a written complaint as provided by  
20 Sections 15.10 and 45.20.

21 1.19. No person may be convicted of an offense except by  
22 verdict of a jury, accepted and recorded by the court, by a  
23 finding of the court in a case where a jury has been waived  
24 or is not required or by a plea of guilty or nolo contendere.

25 1.21. (a) In any investigation or proceeding for any  
26 offense, if a person refuses to answer a question or produce  
27 evidence of any other kind on the ground that he may be  
28 incriminated thereby, the prosecuting attorney may, in writing,  
29 request the superior court to order that person to answer the  
30 question or produce the evidence. The court shall set a time  
31 for hearing and order the person to appear before the court  
32 and show cause, if any, why the question should not be answered  
33 or the evidence produced, and the court shall order the question  
34 answered or the evidence produced unless it finds that to do

1 so would be clearly contrary to the public interest, or could  
2 subject the witness to a criminal prosecution in another  
3 jurisdiction.

4 (b) After complying, and if, but for this section, the  
5 person would have been privileged to withhold the answer given  
6 or the evidence produced by him, that person shall not be  
7 prosecuted or subjected to penalty or forfeiture for or on  
8 account of any fact or act concerning which, in accordance  
9 with the order, he was required to answer or produce evidence  
10 and no such testimony or evidence can be received against him  
11 in any criminal proceeding other than one for perjury or  
12 contempt.

13 (c) Notwithstanding subsection (b), the person may be  
14 prosecuted or subjected to penalty or forfeiture for any  
15 perjury, false swearing or contempt committed in answering,  
16 or failing to answer, or in producing, or failing to produce,  
17 evidence in accordance with the order.

18 1.23. The taking of photographs in the courtroom during  
19 the progress of judicial proceedings or radio broadcasting  
20 of judicial proceedings from the courtroom shall not be  
21 permitted by the court.

22 1.25. (a) In computing any period of time the day  
23 of the act or event from which the designated period of time  
24 begins to run shall not be included. The last day of the period  
25 so computed shall be included, unless it is a Saturday, a  
26 Sunday, or a legal holiday, in which event the period runs until  
27 the end of the next day which is not a Saturday, a Sunday, or a  
28 legal holiday. When a period of time prescribed or allowed is  
29 less than seven days, intermediate Saturdays, Sundays, and  
30 legal holidays, shall be excluded in the computation.

31 (b) When an act is required or allowed to be done at or  
32 within a specified time, the court for cause may at any time in  
33 its discretion (1) with or without motion or notice, order  
34 the period enlarged if request therefor is made before the

1 expiration of the period originally prescribed or as extended by  
2 a previous order or (2) upon motion made after the expiration  
3 of the specified period permit the act to be done if the failure  
4 to act was the result of excusable neglect; but the court may  
5 not extend the time for taking any action pursuant to Chapter 100  
6 (commencing with Section 100.10) or Sections 110.30, 115.10,  
7 and 120.46, except to the extent and under the conditions  
8 stated in them.

9 (c) A written motion, other than one which may be heard  
10 ex parte, and notice of the hearing thereof shall be served not  
11 later than five days before the time specified for the hearing  
12 unless a different period is fixed by statute or order of the  
13 court. For cause shown such an order may be made on ex parte  
14 application. When a motion is supported by affidavit, the  
15 affidavit shall be served with the motion; and opposing  
16 affidavits may be served not less than one day before the hearing  
17 unless the court permits them to be served at a later time.

18 (d) Whenever a party has the right or is required to do an  
19 act within a prescribed period after the service of a notice or  
20 other paper upon him and the notice or other paper is served  
21 upon him by mail, three days shall be added to the prescribed  
22 period.

23 1.27. An application to the court for an order shall be  
24 by motion. A motion other than one made during a trial or  
25 hearing shall be in writing unless the court permits it to be  
26 made orally. It shall state the grounds upon which it is made  
27 and shall set forth the relief or order sought. It may be  
28 supported by affidavit.

29 1.29. (a) Written motions other than those which  
30 are heard ex parte, written notices, designations of record on  
31 appeal and similar papers shall be served upon each of the  
32 parties.

33 (b) Whenever under this code or by an order of the court  
34 service is required or permitted to be made upon a party

1 represented by an attorney, the service shall be made upon the  
2 attorney unless service upon the party himself is ordered by  
3 the court. Service upon the attorney or upon a party shall be  
4 made in the manner provided in civil actions.

5 (c) Immediately upon the entry of an order made on a  
6 written motion subsequent to arraignment the clerk shall mail  
7 to each party a notice thereof and shall make a note in the  
8 docket of the mailing. Lack of notice of the entry by the  
9 clerk does not affect the time to appeal or relieve or  
10 authorize the court to relieve a party for failure to appeal  
11 within the time allowed, except as permitted by Section 130.40.

12 (d) Papers required to be served shall be filed with the  
13 court. Papers shall be filed in the manner provided in civil  
14 actions.

15 1.31. The court shall be deemed always open for the  
16 purpose of filing any proper paper, of issuing and returning  
17 process and of making motions and orders. The clerk's office  
18 with the clerk or a deputy in attendance shall be open during  
19 business hours on all days except Saturday, Sundays and legal  
20 holidays.

## 21 CHAPTER 5. CONSTRUCTION; DEFINITIONS

### 22 Article 1. Construction

23 5.10. Unless the provision or context otherwise requires,  
24 these preliminary provisions and rules of construction shall  
25 govern the construction of this code.

26 5.13. Chapter, article, and section headings do not in any  
27 manner affect the scope, meaning, or ~~intent~~ of the provisions  
28 of this code.

29 5.15. When any reference is made to any portion of this  
30 code or to any other statute, the reference shall apply to all  
31 amendments and additions made after the enactment of this code.

32 5.17. The present tense includes the past and future tenses;  
34 and the future, the present.



1 5.19. The masculine gender includes the feminine and neuter.

2 5.21. The singular number includes the plural; the plural, the singular.

3 5.23. "Shall" is mandatory and "may" is permissive.

4 Article 2. Definitions

5 5.40. Unless otherwise expressly stated:

6 (a) "Chapter" means a chapter of this code.

7 (b) "Article" means an article of the chapter in which that term occurs.

8 (c) "Section" means a section of this code.

9 (d) "Subsection" means a subsection of the section in which that term occurs.

10 (e) "Paragraph" means a paragraph of the subsection in which that  
11 term occurs.

12 5.45. The proceedings by which a party charged with an offense is  
13 accused and brought to trial and punishment is known as a "criminal action."

14 5.50. As used in this code, "offense," "crime," "felony", "misdemeanor,"  
15 "petty misdemeanor," and "violation" have the meanings provided by Section 1.18  
16 of the Criminal and Correctional Code.

17 5.55. As used in this code, "peace officer" includes:

18 (a) All municipal commissioners.

19 (b) All assistant municipal commissioners.

20 (c) All members of the police force.

21 (d) All officers of the Department of Corrections.

22 (e) The Attorney General and those persons employed by the  
23 Attorney General's Office whom he specially designates.

24 (f) Customs and Quarantine Officers of the Department of Commerce.

25 (g) Conservation Officers of the Department of Agriculture.

26 (h) Compliance Officers of the Department of Revenue  
27 and Taxation.

28 5.60. As used in this code, "prosecuting attorney" means any attorney,  
29 by whatever title designated, having by law the right or duty to prosecute  
30 any offense in behalf of the Territory.

31 5.65. As used in this code, "Territory" means the Territory of Guam.

32 **CHAPTER 10. TIME OF COMMENCING CRIMINAL ACTIONS**

33 10.10. A prosecution for murder may be commenced at any time.

1 10.20. A prosecution for any felony other than murder  
2 shall be commenced within three years after it is committed.

3 10.30. A prosecution for any offense which is not a  
4 felony shall be commenced within one year after it is  
5 committed.

6 10.40. Notwithstanding Sections 10.20 and 10.30, a  
7 prosecution may be commenced against a public officer or  
8 employee or any person acting in complicity with such public  
9 officer or employee for any offense based upon misconduct in  
10 office by such public officer or employee at any time while  
11 such public officer or employee continues in public office or  
12 employment or within three years thereafter.

13 10.50. The periods of limitation provided by this  
14 chapter do not run during any time when a criminal action  
15 against the defendant for the same conduct is pending in this  
16 Territory, even if the accusatory pleading is later set aside,  
17 the action is later dismissed, or the conviction is later  
18 reversed upon appeal or set aside as a result of a post-  
19 conviction proceeding.

20 10.60. An offense is committed either when every element  
21 occurs, or, if a legislative purpose to prohibit a continuing  
22 course of conduct plainly appears, at the time when the  
23 course of conduct or the defendant's complicity therein is  
24 terminated. Time starts to run on the day after the offense  
25 is committed.

26 10.70. A prosecution is commenced when either an  
27 indictment is presented in open court and there received and  
28 filed or a complaint is filed.

29 CHAPTER 15. COMPLAINT; WARRANT AND SUMMONS;

30 ISSUANCE, EXECUTION AND RETURN

31 15.10. The complaint is a written statement of the  
32 essential facts constituting the offense charged. It shall be  
33 signed by the prosecuting attorney and filed with a judge of  
34 the Superior Court. In any case required by Section 1.15 to

1 be prosecuted by complaint, the complaint shall be subject to  
2 the same rules of pleading as an indictment or information.

3 15.20. (a) If it appears from the complaint and the  
4 affidavits filed therewith that there is probable cause to  
5 believe that an offense has been committed and that the  
6 defendant has committed it, the judge shall issue a summons  
7 for the appearance of the defendant.

8 (b) Notwithstanding subsection (a), a warrant shall issue  
9 where:

10 (1) A valid reason is shown for the issuance of an  
11 arrest warrant in lieu of a summons; or

12 (2) A summons having previously issued, the defendant  
13 failed to appear in response thereto, or some other valid  
14 reason is shown for the issuance of an arrest warrant.

15 (c) More than one warrant or summons may issue on the  
16 same complaint or for the same defendant.

17 15.30. Before ruling on a request for a summons or warrant  
18 to be issued on a complaint, the judge may require any witnesses  
19 the prosecuting attorney may produce, to appear personally and  
20 be examined under oath. The judge shall promptly make or  
21 cause to be made a record or summary of such proceeding. The  
22 finding of probable cause required by Section 15.20 may be  
23 based in whole or in part upon hearsay evidence.

24 15.40. (a) After the return of an indictment and upon  
25 the application of the prosecuting attorney, the clerk shall  
26 issue a summons for the appearance of any defendant named  
27 in the indictment.

28 (b) Notwithstanding subsection (a), the court shall  
29 issue a warrant where:

30 (1) A valid reason is shown for the issuance of an arrest  
31 warrant in lieu of a summons; or

32 (2) A summons having previously issued, the defendant  
33 failed to appear in response thereto, or some other valid reason  
34 is shown for the issuance of an arrest warrant.

1 (c) More than one warrant or summons may issue on the same  
2 indictment or for the same defendant.

3 15.59. The warrant shall be signed by the judge and shall  
4 contain the name of the defendant or, if his name is unknown,  
5 any name or description by which he can be identified with  
6 reasonable certainty and shall describe the offense charged in  
7 the complaint or indictment. The warrant shall command that  
8 the defendant be arrested and brought before the court. The  
9 court may, however, set conditions upon which the defendant  
10 may be released pending his first appearance and endorse such  
11 on the warrant. The officer in charge of the detention  
12 facility where the defendant is held in custody is authorized  
13 to accept and approve any bond or deposit required by a warrant  
14 and shall promptly after acceptance file or deposit the same  
15 with the clerk of the court from which the warrant issued and  
16 release the defendant subject to the conditions set forth in  
17 the warrant.

18 15.60. The summons shall be in the same form as the  
19 warrant except that it shall summon the defendant to appear  
20 before the court at a stated time and place and shall be  
21 signed by the clerk when it is issued pursuant to Section 15.40.

22 15.70. (a) A warrant may be executed or a summons may  
23 be served at any place within the Territory.

24 (b) A warrant shall be executed by the arrest of the  
25 defendant by a peace officer.

26 (c) The summons may be served by any person authorized  
27 to serve a summons in a civil action. The summons shall be  
28 served by delivering a copy to the defendant personally, or  
29 by leaving it at his dwelling house or usual place of abode  
30 with some person of suitable age and discretion then residing  
31 therein and by mailing it to the defendant's last known address.

32 (d) A summons to a corporation shall be served by  
33 delivering a copy to an officer or to a managing or general  
34 agent or to any other agent authorized by appointment or by

1 law to receive service of process and where the agent is one  
2 authorized by statute to receive service and the statute so  
3 requires, by also mailing a copy to the corporation's last  
4 known address.

5 15.30. (a) The officer executing a warrant shall make  
6 a return thereof to the court before whom the defendant is  
7 brought pursuant to Section 45.10. At the request of the  
8 prosecuting attorney any unexecuted warrant shall be returned  
9 to the judge by whom it was issued and shall be cancelled by him.

10 (b) On or before the return day the person to whom a  
11 summons was delivered for service shall make a return thereof  
12 to the court before whom the summons is returnable.

13 (c) At the request of the prosecuting attorney made at  
14 any time while the complaint or indictment is pending, a  
15 warrant returned unexecuted and not cancelled or a summons  
16 returned unserved or a duplicate thereof may be delivered by  
17 the judge or clerk to the peace officer or other authorized  
18 person for execution or service.

19 CHAPTER 20. ARREST

20 20.10. An arrest is made by an actual restraint of the  
21 person, or by submission to the custody of the person making  
22 the arrest. The person arrested may be subjected to such  
23 restraint as is reasonable for his arrest and detention.

24 20.15. (a) A peace officer may make an arrest in  
25 obedience to a warrant, or may, without a warrant, arrest a  
26 person:

27 (1) Whenever the officer has reasonable cause to believe  
28 that the person to be arrested has committed an offense in the  
29 officer's presence;

30 (2) When the person arrested has committed a felony,  
31 although not in the officer's presence;

32 (3) Whenever the officer has reasonable cause to believe  
33 that the person to be arrested has committed a felony or  
34 misdemeanor whether or not a felony or misdemeanor has in fact  
35 been committed.

1 (4) Who has escaped from any jail or prison or the lawful  
2 custody of a peace officer.

3 (b) There shall be no civil liability on the part of, and  
4 no cause of action shall arise against, a peace officer for  
5 false arrest or false imprisonment for an arrest which is lawful  
6 under subsection (a).

7 20.20. A private person may arrest another;

8 (a) For an offense committed or attempted in his presence.

9 (b) When the person arrested has committed a felony,  
10 although not in his presence.

11 (c) When a felony has been in fact committed, and he has  
12 reasonable cause for believing the person arrested to have  
13 committed it.

14 20.25. Any person making an arrest may orally summon as  
15 many persons as he deems necessary to aid him therein.

16 20.30. Whenever an arrest is authorized by the provisions  
17 of this code, it may be made on any day and at any time of  
18 the day or night.

19 20.35. (a) The person making an arrest shall inform the  
20 person to be arrested of the intention to arrest him, the  
21 offense for which he is being arrested, and the authority  
22 permitting the person to make the arrest.

23 (b) Subsection (a) shall not apply when the person making  
24 the arrest has reasonable cause to believe that the person to  
25 be arrested is engaged in the commission of an offense, or the  
26 immediate flight therefrom, until the arrest has been completed.

27 20.40. An arrest by a peace officer pursuant to a warrant  
28 is lawful whether or not the officer has the warrant in his  
29 possession at the time of the arrest. However, upon request  
30 of the person arrested, the warrant shall be shown to him as  
31 soon as practicable.

32 20.45. Any peace officer who has reasonable cause to  
33 believe that a person to be arrested has committed an offense  
34 may use reasonable force to effect the arrest, to prevent

1 escape or to overcome resistance.

2 A peace officer who makes or attempts to make an arrest  
3 need not retreat or desist from his efforts by reason of  
4 the resistance or the threatened resistance of the person being  
5 arrested; nor shall such officer be deemed an aggressor or lose  
6 his right of self-defense by the use of reasonable force to  
7 effect the arrest or to prevent escape or to overcome  
8 resistance.

9 20.50. (a) To make an arrest, whether with or without a  
10 warrant, a peace officer may break open the door or window of  
11 any house in which the person to be arrested is, or in which  
12 the officer has reasonable cause for believing him to be, if,  
13 after giving notice of his authority and purpose, he is refused  
14 admittance.

15 (b) A peace officer who has witnessed the commission of  
16 an offense may pursue the offender into any ship, plane, building,  
17 or grounds.

18 20.55. Any person making an arrest may take from the  
19 person arrested any weapon which he may have about his person,  
20 and shall deliver it to the Director of Public Safety.

21 20.60. (a) Notwithstanding Section 45.10, any peace  
22 officer may instead of taking any person arrested without a  
23 warrant before a judge, release him from custody:

24 (1) When the officer is satisfied that there are  
25 insufficient grounds for requesting a criminal complaint  
26 against the person arrested.

27 (2) When the person was arrested for intoxication only,  
28 and no further proceedings are desirable.

29 (3) When the person was arrested only for being under  
30 the influence of a narcotic drug, or restricted dangerous drug  
31 and such person is delivered to a facility or hospital for  
32 treatment and no further proceedings are desirable.

33 (4) Pursuant to Chapter 25 (commencing with Section 25.10).

34 (b) Any record of arrest of a person released pursuant

1 to paragraphs (1) and (2) of subsection (a) shall include a  
2 record of release. Thereafter, such arrest shall not be  
3 deemed an arrest, but a detention only.

4 20.65. (a) After arrest, any attorney at law entitled  
5 to practice in the courts of record in this Territory, may,  
6 with the consent of the person arrested and at the request of  
7 the person arrested or any relative or friend of such person,  
8 visit the person arrested.

9 (b) Any person, immediately after he is arrested or  
10 otherwise detained has the right to make, in the presence of  
11 a public officer or employee, at least one completed telephone  
12 call to his attorney, employer or a relative.

13 (c) Any officer having charge of an arrested person, who  
14 refuses to allow an attorney to visit the person arrested  
15 pursuant to subsection (a) or deprives a person arrested of  
16 his right under subsection (b), shall forfeit and pay to the  
17 person arrested the sum of five hundred dollars (\$500).

18 ..CHAPTER 25. CITATIONS

19 25.10. (a) In any case where a person is not arrested  
20 upon a warrant and such person does not demand to be taken  
21 before a judge, the arresting officer or any other officer  
22 into whose custody the person is placed instead of taking  
23 such person before a judge as required by Section 45.10, may  
24 release him pursuant to the procedure provided by this  
25 chapter.

26 (b) In making a determination whether to release any  
27 person pursuant to this chapter an officer may consider any  
28 factors relevant to whether the person's release would be  
29 likely to create a risk of immediate harm to himself or  
30 others or to result in a failure of the person to appear when  
31 required.

32 25.20. (a) If an officer determines that the person  
33 arrested should be released, the officer shall prepare in  
34 duplicate a written notice to appear in court, containing



1 the name and address of the person, the offense charged,  
2 and the time and place when and where the person shall  
3 appear in court. Unless waived by the person the time  
4 specified in the notice to appear shall be at least five  
5 days after the arrest. The place specified in the notice  
6 shall be the court of the judge before whom the person would  
7 be taken if the requirement of Section 45.10 were satisfied.

8 (b) The arrested person, in order to secure his release,  
9 shall give his written promise to appear in court by signing  
10 the duplicate notice. The officer shall retain one copy and  
11 give one copy of the notice to such person. Thereupon, the  
12 officer shall forthwith release the person from custody.

13 25.30. The officer shall forthwith deliver the copy of  
14 the notice to appear to the prosecuting attorney charged with  
15 the duty to prosecute the offense charged. At or before the  
16 time at which the person promised to appear, if the prosecuting  
17 attorney determines that the offense should be prosecuted, he  
18 shall file the notice to appear and a complaint and affidavits  
19 which satisfy the requirements of Section 45.20 in the court  
20 in which the person has promised to appear. If the prosecuting  
21 attorney determines that the offense should not be prosecuted,  
22 he shall make a reasonable effort to notify the person arrested  
23 that his appearance will not be required.

24 25.40. When a person signs a written promise to appear  
25 as provided in this chapter and fails to appear as promised, a  
26 warrant for his arrest may be issued by the court in which he  
27 promised to appear at any time after such failure.

28 25.50. Any person who wilfully violates his written  
29 promise to appear in court is:

30 (a) guilty of a felony, if he was released in connection  
31 with a charge of felony.

32 (b) guilty of a misdemeanor, if he was released in  
33 connection with a charge of any offense not a felony.

1 CHAPTER 30. "STOP AND FRISK" ACT

2 30.10. Whenever a peace officer encounters any person  
3 under circumstances which reasonably indicate that such  
4 person has committed, is committing, or is about to commit a  
5 criminal offense, the peace officer may detain such person.

6 30.20. Detention pursuant to Section 30.10 shall be  
7 for the purpose of ascertaining the identity of the person  
8 detained and the circumstances surrounding his presence  
9 abroad which led the officer to believe that he had committed,  
10 was committing, or was about to commit a criminal offense,  
11 but such person shall not be compelled to answer any inquiry  
12 of the peace officer.

13 30.30. No person shall be detained under the provisions  
14 of Section 30.10 longer than is reasonably necessary to effect  
15 the purposes of that section, and in no event longer than  
16 fifteen minutes. Such detention shall not extend beyond the  
17 place where it was first effected or the immediate vicinity  
18 thereof.

19 30.40. If at any time after the onset of the detention  
20 authorized by Section 30.10, probable cause for arrest of  
21 the person shall appear, the person shall be arrested. If  
22 after an inquiry into the circumstances which prompted the  
23 detention, no probable cause for the arrest of the person  
24 shall appear, he shall be released.

25 30.50. Whenever a peace officer authorized to detain  
26 any person under the provisions of Section 30.10 reasonably  
27 believes that a person whom he has detained, or is about to  
28 detain, is armed with a dangerous weapon and therefore offers  
29 a threat to the safety of the officer or another, the peace  
30 officer may search such person to the extent necessary to  
31 disclose, and for the purpose of disclosing, the presence of  
32 such weapon. If such a search discloses a weapon or any  
33 evidence of a criminal offense, it may be seized.

34 30.60. Nothing seized by a peace officer in the search  
35 authorized by Section 30.50 shall be admissible against any

1 person in any court of this Territory unless both the  
2 detention and the search which disclosed its existence was  
3 authorized by, and conducted in compliance with, the provisions  
4 of this chapter.

#### 5 CHAPTER 35. SEARCH WARRANTS

6 35.10. (a) A search warrant is a written order issued by  
7 a judge of the Superior Court directing a peace officer to  
8 conduct a search for the purpose of seizing property and holding  
9 any property seized pending further order of the court.

10 (b) As used in this chapter, the term "property" includes  
11 documents, books, papers and any other tangible object.

12 35.15. A warrant may be issued to search for and seize  
13 any (a) property that constitutes evidence of the commission of  
14 an offense, (b) contraband, the fruits of crime, or things  
15 otherwise criminally possessed, or (c) property designed or  
16 intended for use or which is or has been used as the means of  
17 committing an offense.

18 35.20. (a) A warrant shall issue only on an affidavit  
19 sworn to before the judge and establishing grounds for issuing  
20 the warrant. The finding of probable cause may be based upon  
21 hearsay evidence in whole or in part. Before ruling on a  
22 request for a warrant the judge may require the affiant to  
23 appear personally and may examine under oath the affiant and  
24 any witness he may produce. Such proceeding shall be taken  
25 down by a court reporter or recording equipment and made part  
26 of the affidavit.

27 (b) If the judge is satisfied that grounds for the  
28 application exist, or that there is probable cause to believe  
29 that they exist, he shall issue a warrant identifying the  
30 property and naming or describing the person or place to be  
31 searched. The warrant shall be directed to a peace officer  
32 authorized to enforce or assist in enforcing any law and  
33 shall command the officer to search, within a specified period  
34 of time not to exceed 10 days, the person or place named for

1 the property specified, and shall designate the judge to whom  
2 the warrant shall be returned.

3 (c) The warrant shall be executed in the daytime, unless  
4 the court, by appropriate provision in the warrant and for  
5 reasonable cause shown, authorizes its execution at times other  
6 than daytime. The term "daytime" means the hours from 6:00  
7 a.m. to 10:00 p.m.

8 35.25. A search warrant may be executed by any peace  
9 officer specifically named in the warrant or by any peace  
10 officer assisting him provided that one of the officers  
11 specifically named in the warrant is present at the location.

12 35.30. To execute a search warrant a peace officer may  
13 break open the door or window of any house if, after giving  
14 notice of his authority and purpose, he is refused admittance.

15 35.35. The officer taking property under the warrant  
16 shall give to the person from whom or from whose premises the  
17 property was taken a copy of the warrant and a receipt for the  
18 property taken or shall leave the copy and receipt at the place  
19 from which the property was taken. The return shall be made  
20 promptly and shall be accompanied by a written inventory of  
21 any property taken. The inventory shall be made in the presence  
22 of the applicant for the warrant and the person from whose  
23 possession or premises the property was taken, if they are  
24 present, or in the presence of at least ~~one~~ credible person  
25 other than the applicant for the warrant or the person from  
26 whose possession or premises the property was taken, and shall  
27 be verified by the officer. The judge shall upon request  
28 deliver a copy of the inventory to the person from whom or  
29 from whose premises the property was taken and to the applicant  
30 for the warrant.

31 35.40. All property seized pursuant to a search warrant  
32 shall be retained by the officer in his custody, subject to  
33 the order of the court to which he is required to make his  
34 return or of any other court in which the offense in respect  
35 to which the property taken is triable.

1 35.45. (a) A person aggrieved by an unlawful search  
2 and seizure may move the court for the return of the property  
3 on the ground that he is entitled to lawful possession of the  
4 property which was illegally seized. The judge shall receive  
5 evidence on any issue of fact necessary to the decision of  
6 the motion. If the motion is granted the property shall be  
7 restored and it shall not be admissible in evidence at any  
8 hearing or trial. A motion for return of property may also  
9 be treated as a motion to suppress under Section 65.15.

10 (b) Nothing in subsection (a) shall limit the right of  
11 a defendant to make a motion to suppress evidence in the court  
12 of trial as provided in Chapter 65 (commencing with Section  
13 65.10).

14 35.50. The judge who has issued a search warrant shall  
15 attach to the warrant a copy of the return, inventory and all  
16 other papers in connection therewith and shall file them with  
17 the clerk of the court.

#### 18 CHAPTER 40. RELEASE

19 40.10. At his first appearance before a judge of the  
20 Superior Court, every person charged with an offense shall be  
21 ordered released pending trial in the manner and subject to  
22 the conditions provided by Sections 40.15 and 40.20.

23 40.15. (a) As used in this section, "release on his own  
24 recognizance" means release of the person charged without bail  
25 and upon his written agreement to appear in court at all  
26 required times and places.

27 (b) The judge shall order the person charged to be  
28 released on his own recognizance, unless the judge determines,  
29 in his discretion, on the basis of available information that  
30 such a release will not reasonably assure the appearance of  
31 the person as required.

32 (c) In determining whether there is a substantial risk  
33 of nonappearance, the judge shall consider the following  
34 factors concerning the person:

35 (1) the length of his residence on Guam;

1 (2) his employment status and history and his financial  
2 condition;

3 (3) his family ties and relationships;

4 (4) his reputation, character and mental condition;

5 (5) his prior criminal record, if any, including any  
6 record of prior release on recognizance or on bail;

7 (6) the identity of responsible members of the community  
8 who will vouch for his reliability;

9 (7) the nature of the offense charged, the apparent  
10 possibility of conviction and the likely sentence insofar  
11 as these factors are relevant to the risk of nonappearance; and

12 (8) any other factors which bear on the risk of willful  
13 failure to appear.

14 40.20. Where the judge determines that release of the  
15 person charged on his own recognizance will not reasonably  
16 assure his appearance as required, the judge shall impose the  
17 least onerous of the following conditions which is reasonably  
18 likely to assure the person's appearance as required or, if no  
19 single condition gives that assurance, the least onerous  
20 combination of the following conditions:

21 (a) placement of the person in the custody of a  
22 designated person or organization agreeing to supervise him  
23 and to assist him in appearing in court;

24 (b) placement of restrictions on the activities, movements,  
25 associations and residence of the person;

26 (c) execution of a bond in an amount specified by the  
27 judge; such bond in the discretion of the judge to be either  
28 unsecured or secured in whole or in part by the deposit of  
29 cash or other property or by the obligation of qualified  
30 sureties;

31 (d) release of the person during working hours but with  
32 the condition that he return to custody at specified times; or

33 (e) any other condition reasonably necessary to assure  
34 appearance as required.

1        40.25. (a) Where a bond secured by a surety is required  
2 pursuant to this chapter, the judge may require the person  
3 seeking to be the surety to show by affidavit that he is worth  
4 the amount of the bond and is otherwise responsible. In the  
5 affidavit the person may be required to describe the property  
6 by which he proposes to justify and the encumbrances thereon,  
7 and to list all his other assets and liabilities. The judge  
8 may further examine the person under oath and may call and  
9 examine witnesses to determine whether the person is qualified.

10        (b) Nothing in this section precludes the judge from  
11 allowing two or more sureties to justify severally in amounts  
12 less than that expressed in the bond, if the whole  
13 justification equals the amount required.

14        40.30. Where a person is released pursuant to this  
15 chapter on an appearance bond secured by a surety, and it is  
16 thereafter shown, on noticed motion, that the surety is no  
17 longer worth the required amount or has become otherwise  
18 insufficient, the court may order the furnishing of such  
19 additional security as may be required to satisfy the condition  
20 imposed and may order the person detained until such security  
21 is furnished.

22        40.35. A person released pursuant to this chapter on the  
23 condition that an appearance bond secured by a qualified  
24 surety be furnished, may, at any time before declaration of  
25 forfeiture, deposit with the clerk of the court a sum equal  
26 to the amount of the bond, and upon the deposit being made the  
27 surety on such bond is exonerated.

28        40.40. Any deposit required or authorized as a condition  
29 of release may be made by the person released or by any other  
30 person. A receipt shall be issued in the name of the  
31 depositor. If the money remains on deposit at the time of a  
32 judgment for the payment of a fine, the clerk shall, under the  
33 direction of the court, if the defendant be the depositor,  
34 apply the money in satisfaction thereof, and after satisfying

1 the fine, shall refund the surplus, if any, to the defendant.  
2 If the person to whom the receipt for the deposit was issued  
3 was not the defendant, the deposit shall be returned to him at  
4 any time after the court has ordered such return and upon the  
5 depositor's submission of his receipt.

6 40.45. Any person released pursuant to this chapter on a  
7 deposit by a third person or an appearance bond secured by a  
8 surety, may be arrested by the depositor, surety, or his  
9 agent, and delivered to the custody of the Director of Public  
10 Safety. The depositor or surety shall at the same time  
11 deliver a copy of his deposit receipt or bond to the Director  
12 who shall acknowledge such delivery by a certificate in  
13 writing. The Director shall take custody of the person  
14 arrested and forthwith file the copy of the deposit receipt or  
15 bond and his certificate in the court in which the action is  
16 pending and bring the person arrested before the court. The  
17 court shall order the depositor or surety exonerated and shall,  
18 after notice to the prosecuting attorney, either release the  
19 person on such new conditions as are reasonably necessary to  
20 assure the person's appearance as required or detain the  
21 person until he has furnished the necessary security.

22 40.50. (a) A person for whom conditions of release  
23 are imposed pursuant to this chapter and who after twenty-four  
24 hours from the time of the release hearing continues to be  
25 detained as a result of his inability to meet the conditions  
26 of release, shall, upon application, be entitled to have the  
27 conditions reviewed by the judge who imposed them. Unless  
28 the conditions of release are amended and the person is  
29 thereupon released, the judge shall set forth in writing the  
30 reasons for requiring the conditions imposed.

31 (b) A person who is ordered released pursuant to this  
32 chapter on the condition that he return to custody after  
33 specified hours shall, upon application, be entitled to a  
34 review by the judge who imposed the condition. Unless the



1 requirement is removed and the person is thereupon released on  
2 another condition, the judge shall set forth in writing the  
3 reasons for continuing the requirement.

4 (c) Notwithstanding the provisions of subsection (a) and  
5 (b), if the judge who imposed conditions of release is not  
6 available, any other judge may review such conditions.

7 40.55. (a) Whenever a person is released pursuant to  
8 this chapter, the judge authorizing such release shall issue  
9 an order which contains a statement of the conditions imposed,  
10 if any, informs the person of the penalties applicable to  
11 violations of the conditions of his release, and advises the  
12 person that a warrant for his arrest will be issued  
13 immediately upon any such violation.

14 (b) The person charged shall execute an agreement that he  
15 will appear as required and an acknowledgment that he under-  
16 stands the conditions of his release and the penalties and  
17 forfeitures applicable in the event that he violates any  
18 condition or fails to appear as required. A copy of the order  
19 shall be given to the person before he is released.

20 40.60. (a) At the first appearance or at any time there-  
21 after, upon the application of the prosecuting attorney and a  
22 showing that there exists a danger that the person charged will  
23 commit an offense or will seek to intimidate witnesses, or will  
24 otherwise unlawfully interfere with the orderly administration  
25 of justice, the judge may issue an order which:

26 (1) prohibits the person charged from approaching or  
27 communicating with particular persons or classes of persons,  
28 except that the order shall not be deemed to prohibit any  
29 lawful and ethical activity of the person's counsel;

30 (2) prohibits the person charged from going to certain  
31 described geographical areas or premises;

32 (3) prohibits the person charged from possessing any  
33 dangerous weapon, or engaging in certain described activities  
34 or indulging in intoxicating liquors or in certain drugs;

1 (4) requires the person charged to report regularly to  
2 and remain under the supervision of an officer of the court.

3 (b) The person charged shall execute an acknowledgment of  
4 the order and be given a copy of the order at that time.

5 40.65. (a) Upon the ex parte application of the  
6 prosecuting attorney and a showing that the person charged  
7 has willfully violated the conditions of his release, any  
8 judge may issue a warrant directing that the person be  
9 arrested and taken forthwith before the court in which the  
10 action is pending.

11 (b) Where it would be impracticable to secure a warrant  
12 pursuant to subsection (a), any peace officer having  
13 reasonable grounds to believe that a person released pursuant  
14 to this chapter has violated the conditions of his release may  
15 arrest the person and take him forthwith before the court in  
16 which the action is pending.

17 40.70. Upon the failure of a person released pursuant  
18 to this chapter to appear as required, the court in which the  
19 action is pending may issue a warrant directing that the  
20 person be arrested and taken before it forthwith.

21 40.75. (a) When a person is brought before the court  
22 pursuant to Sections 40.65 or 40.70, or, when after a  
23 noticed hearing, the court finds that a person released  
24 pursuant to this chapter has willfully violated the conditions  
25 imposed on his release or that a change in circumstances or  
26 new evidence shows a need for the imposition of different or  
27 additional conditions upon the person's release, the court may  
28 order the imposition of such conditions as are reasonably  
29 necessary to assure the person's appearance as required (and  
30 his compliance with any conditions imposed pursuant to this  
31 chapter).

32 (b) Notwithstanding subsection (a), where the court  
33 finds that the person has willfully violated the conditions  
34 imposed on his release or that an indictment or information

1 has been filed charging the person with the commission of an  
2 offense while released in the pending action, the court may  
3 revoke the person's release.

4 40.80. (a) In any case in which a person is detained  
5 or released on a condition requiring him to return to custody  
6 after specified hours, after review of his application pursuant  
7 to Section 40.50, or in which a person's release is revoked  
8 pursuant to Section 40.75, an appeal may be taken.

9 (b) Any order appealed pursuant to subsection (a) shall  
10 be affirmed if it is supported by the proceedings below.  
11 If the order is not so supported, the court may remand the  
12 case for a further hearing, or may, with or without additional  
13 evidence, order the person released pursuant to either  
14 Section 40.15 or Section 40.20.

15 (c) Any appeal pursuant to this section shall be  
16 determined promptly.

17 40.85. (a) A person who has been convicted of an offense  
18 and is either awaiting sentence or has filed an appeal, shall  
19 be released pursuant to Sections 40.15 or 40.20 pending the  
20 imposition of sentence or the final determination of the  
21 appeal, by the court having jurisdiction of the case, unless  
22 the court has reason to believe that no one or more conditions  
23 of release will reasonably assure that the person will not  
24 flee or pose a danger to any other person or the community. If  
25 such a risk of flight or danger is believed to exist, or  
26 if it appears that an appeal is frivolous or taken for delay,  
27 the person may be ordered detained.

28 (b) The provisions of Section 40.80 shall not apply to  
29 persons described in this section. However, other rights  
30 to judicial review of conditions of release or orders of  
31 detention shall not be affected.

32 40.90. (a) Any person released pursuant to this chapter  
33 who willfully fails to appear before any court or judge as  
34 required is:

1 (1) guilty of a felony, if he was released in connection  
2 with a charge of felony, or while awaiting sentence or  
3 pending appeal of any offense.

4 (2) guilty of a misdemeanor, if he was released in  
5 connection with a charge of any offense not a felony.

6 (b) If any person released pursuant to this chapter  
7 fails to appear, without sufficient excuse, before any court  
8 or judge as required, such fact shall be noted by the court  
9 in which the person was to appear in its minutes and any  
10 security which was given or pledged for his release shall  
11 immediately be declared forfeited.

12 40.95. (a) Upon the declaration of a forfeiture  
13 pursuant to Section 40.90, the clerk of the court shall  
14 mail notice of the forfeiture to any surety or depositor,  
15 other than the person required to appear. The clerk shall  
16 execute an affidavit of mailing and place it in the court's  
17 file in the case.

18 (b) The surety or depositor may, not later than thirty  
19 days after the mailing of the notice of forfeiture, apply  
20 by noticed motion to have the forfeiture set aside. After  
21 hearing, the court may set aside the forfeiture, upon such  
22 conditions as it may impose, if it appears that justice does  
23 not require enforcement of the forfeiture.

24 (c) If after thirty days from the mailing of the notice  
25 of forfeiture, the forfeiture has not ~~been~~ set aside and no  
26 motion to set aside is pending, the court shall on motion of  
27 the prosecuting attorney enter a judgment of default and  
28 execution may issue thereon. Payments ~~made~~ in satisfaction of  
29 a judgment entered pursuant to this section shall be deposited  
30 in the general fund of the Territory. By entering into a  
31 bond a surety submits to the jurisdiction of the court and  
32 irrevocably appoints the clerk of the court as his agent  
33 upon whom any papers affecting his liability may be served.  
34 His liability may be enforced on motion without the necessity

1 of an independent action. The motion and such notice of the  
2 motion as the court prescribes may be served on the clerk of  
3 the court, who shall forthwith mail a copy to the surety to  
4 his last known address.

5 (d) Where money deposited with the clerk is declared  
6 forfeited pursuant to Section 40.90, the clerk with whom  
7 it is deposited shall, upon entry of a judgment of default  
8 pursuant to this section, pay the money deposited into the  
9 general fund of the Territory.

10 (e) At any time after entry of judgment pursuant to  
11 subsection (c), the court may remit it in whole or in part  
12 upon application by the judgment debtor on noticed motion and  
13 a showing that justice does not require enforcement of the  
14 judgment.

15 CHAPTER 45. FIRST APPEARANCE; PRELIMINARY EXAMINATION

16 45.10. (a) An officer making an arrest under a warrant  
17 or any person making an arrest without a warrant shall take  
18 the arrested person without unnecessary delay before a judge  
19 of the Superior Court.

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

24 (c) The person arrested shall in all cases be taken  
25 before the judge within twenty-four hours after the arrest,  
26 except that when the 24-hour period expires on a day when the  
27 Superior Court is not in session, the time shall be extended  
28 to include the duration of the next regular court session on  
29 the judicial day immediately following.

30 45.20. (a) Where a person is arrested without a warrant,  
31 at or before the time he is brought before the court pursuant  
32 to Section 45.10, the prosecuting attorney shall file a  
33 complaint which satisfies the requirements of Section 15.10  
34 and affidavits showing probable cause to believe that an

1 offense has been committed and that the defendant has  
2 committed it.

3 (b) At or before the time of the defendant's first  
4 appearance pursuant to Section 45.30, if no determination has  
5 previously been made by the court or grand jury that there is  
6 probable cause to believe that an offense has been committed  
7 and that the defendant has committed it, the court shall make  
8 such determination in the manner provided by Sections 15.20  
9 and 15.30. The defendant shall have no right to be present  
10 at any hearing leading to such determination. If from the  
11 evidence it appears that there is no probable cause to believe  
12 that an offense has been committed or that the defendant  
13 committed it, the court shall dismiss the complaint and dis-  
14 charge the defendant. Such discharge shall not preclude the  
15 government from instituting a subsequent prosecution for the  
16 same offense.

17 45.30. (a) At the time the defendant is brought before  
18 the court pursuant to Section 45.10 or appears pursuant to  
19 a summons issued pursuant to Chapter 15 (commencing with  
20 Section 15.10) or a notice to appear pursuant to Section 25.20,  
21 the court shall inform the defendant:

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

24 (2) of his right to retain counsel.

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

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

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

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

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

1 examination shall be held within the time set by the court  
2 pursuant to subsection (b) to determine whether there is  
3 probable cause to believe that an offense has been committed  
4 and that the defendant has committed it.

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

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

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

18 (c) Notwithstanding subsection (b), with the consent of  
19 the defendant, the date fixed by the court for the preliminary  
20 examination may be a date later than that prescribed by  
21 subsection (b), or may be continued one or more times to a  
22 date subsequent to the date initially fixed therefor. In  
23 the absence of such consent the date fixed for the preliminary  
24 examination may be a date later than that prescribed by  
25 subsection (b), or may be continued to a date subsequent to  
26 the date initially fixed therefor, only upon the order of the  
27 court after a finding that extraordinary circumstances exist,  
28 and that the delay of the preliminary examination is  
29 indispensable to the interests of justice.

30 (d) Except as provided by subsections (c) and (f),  
31 a defendant who has not been accorded the preliminary  
32 examination required by subsection (a) within the period of  
33 time fixed by the court in compliance with subsections (b)  
34 and (c), shall be discharged from custody or from the

1 requirement of bail or any other condition of release, without  
2 prejudice, however, to the institution of further criminal  
3 proceedings against him upon the charge upon which he was  
4 arrested.

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

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

21 45.60. (a) At the preliminary examination, the court  
22 shall take evidence in the same manner as at trial. Witnesses  
23 shall be examined in the presence of the defendant. The  
24 defendant may cross-examine witnesses against him and may  
25 introduce evidence in his own behalf. Objections to the  
26 admissibility of evidence may be taken on any grounds that  
27 would be available at trial.

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

33 (c) The court shall, upon the request of the defendant,  
34 exclude from the examination every person except the court



1 clerk, the court reporter, the court bailiff, a witness while  
2 he is testifying, the prosecuting attorney, the investigating  
3 officer, the defendant and his counsel, the officer, if any,  
4 having the defendant in custody and the officer having custody  
5 of a prisoner while the prisoner is testifying. Nothing in  
6 this subsection shall affect the right to exclude witnesses as  
7 provided in subsection (b).

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

12 45.70. (a) The preliminary examination shall be either  
13 recorded by suitable sound recording equipment or taken down  
14 by a court reporter.

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

23 45.80. (a) If from the evidence taken at the preliminary  
24 examination, it appears that there is probable cause to believe  
25 that an offense has been committed and that the defendant has  
26 committed it, the court shall hold the defendant to answer and  
27 shall order the prosecuting attorney to file, within fifteen  
28 days after entry of the order, an information in the court  
29 charging the defendant with the offense shown.

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

1

2 50.10. (a) A grand jury is a body of the required number  
3 of persons summoned by the court and sworn to inquire into  
4 felonies and any related misdemeanors triable by the court.

5 (b) The chief judge of the superior court shall order one  
6 or more grand juries to be summoned at such times as the public  
7 interest requires. A grand jury shall consist of not less than  
8 sixteen nor more than twenty-three members and the court shall  
9 direct the clerk of the court to summon a sufficient number of  
10 legally qualified persons to meet this requirement.

11 50.14. (a) The attorney for the government or a  
12 defendant who has appeared pursuant to Section 45.30 may  
13 challenge the array of jurors on the ground that the grand  
14 jury was not selected, drawn or summoned in accordance with  
15 law, and may challenge an individual juror on the ground that  
16 the juror is not legally qualified. Challenges shall be made  
17 before the administration of the oath to the jurors and shall  
18 be cried by the court.

19 (b) A motion to dismiss the indictment may be based  
20 on objections to the array or on the lack of legal  
21 qualification of an individual juror, if not previously  
22 determined upon challenge. It shall be made in the manner  
23 prescribed in Section 630.7 of the Code of Civil Procedure  
24 and shall be granted under the conditions prescribed in that  
25 section. An indictment shall not be dismissed on the ground  
26 that one or more members of the grand jury were not legally  
27 qualified if it appears from the record kept pursuant to  
28 Section 50.22 that 12 or more jurors, after deducting the  
29 number not legally qualified, concurred in finding the  
30 indictment.

31 50.18. (a) When the grand jury is impaneled and sworn,  
32 it shall be charged by the court. In doing so, the court shall  
33 give the grand jurors such information as the court deems proper,  
34 in addition to instructing them as to their duties under this  
35 chapter.

1 (b) The grand jury may, at any time, request the advice of  
2 the court, but, unless such advice is requested, the judge of  
3 the court shall not be present during the sessions of the grand  
4 jury.

5 50.22. (a) The court shall appoint one of the jurors  
6 to be foreman and another to be deputy foreman. The foreman  
7 shall have power to administer oaths and affirmations and  
8 shall sign all indictments.

9 (b) The foreman, or another juror designated by him,  
10 shall keep a record of the number of jurors concurring in  
11 the finding of every indictment and shall file the record  
12 with the clerk of the court. Such record shall not be made  
13 public except on order of the court.

14 (c) During the absence of the foreman, the deputy  
15 foreman shall act as foreman.

16 50.26. The prosecuting attorney, the witness under  
17 examination (who may be accompanied by his attorney for the sole  
18 purpose of consultation), interpreters when needed and, for  
19 the purpose of taking the evidence, a stenographer or operator  
20 of a recording device may be present while the grand jury is  
21 in session, but no person other than the jurors may be present  
22 while the grand jury is deliberating or voting.

23 50.30. Before considering a charge against any person,  
24 the prosecuting attorney shall state to those present the matter  
25 to be considered and the person to be charged with an offense  
26 in connection therewith. He shall request any member of the  
27 grand jury who has a state of mind in reference to the case  
28 or to any party which will prevent him from acting impartially  
29 and without prejudice to the substantial rights of the party  
30 to retire. Any violation of this section by the prosecuting  
31 attorney or any member of the grand jury is punishable by the  
32 court as a contempt.

33 50.34. (a) Except as otherwise provided by Section 50.22,  
34 no juror may disclose any statement made or action taken by  
35 any member of the grand jury during its deliberations or voting

1 on any matter before it.

2 (b) Except as otherwise provided by Section 50.38 and  
3 this section, no juror, attorney, interpreter, stenographer,  
4 operator of a transcribing device, or any typist who transcribes  
5 recorded testimony may disclose any statement made or action  
6 taken before the grand jury during any portion of the proceeding  
7 not covered by subsection (a).

8 (c) Notwithstanding subsection (b), upon application  
9 and such notice as the court shall require, and upon a showing  
10 of good cause therefor, the court may, in its discretion, order  
11 disclosure of such matters by such persons as the public  
12 interest requires. Proceedings under this subsection may be  
13 held in camera.

14 50.38. (a) If an indictment is returned against a  
15 defendant, the reporter shall transcribe the grand jury  
16 proceedings and shall certify and deliver to the clerk of  
17 the court the original transcript and a copy thereof for the  
18 prosecuting attorney and each defendant. The reporter shall  
19 complete such certification and delivery within ten days  
20 after the indictment is returned unless the court for good  
21 cause makes an order extending time. The clerk shall file  
22 the original transcript and immediately deliver a copy to  
23 the prosecuting attorney and to each defendant or his  
24 attorney. However, no copy shall be delivered to a defendant  
25 prior to his first appearance pursuant to Section 45.30.  
26 If the copy of the testimony is not served as provided in  
27 this section the court shall on motion of the defendant  
28 continue the trial to such time as may be necessary to secure  
29 to the defendant receipt of a copy of such testimony ten days  
30 before such trial.

31 (b) The transcript shall not be open to the public until  
32 ten days after the delivery to the defendant or his attorney.  
33 Thereafter the transcript shall be open to the public unless  
34 the court orders otherwise on its own motion or on motion of

1 a party pending a determination as to whether all or part of  
2 the transcript should be sealed. If the court determines that  
3 there is a reasonable likelihood that making all or any part  
4 of the transcript public may prevent a fair and impartial trial,  
5 that part of the transcript shall be sealed until the defendant's  
6 trial has been completed.

7 50.42. The grand jury shall receive only evidence which  
8 would be admissible over objection at the trial of a criminal  
9 action but the fact that evidence which would have been  
10 excluded at trial was received by the grand jury does not render  
11 the indictment void where sufficient competent evidence to  
12 support the indictment was received by the grand jury.

13 50.46. The grand jury shall receive only evidence presented  
14 to it by the prosecuting attorney but the prosecuting attorney  
15 shall submit any evidence in his possession which would tend  
16 to negate guilt and the grand jury shall weigh all the  
17 evidence submitted.

18 50.50. In any proceeding before a grand jury when a person  
19 refuses to answer a question or produce evidence of any kind on  
20 the ground that he may be incriminated thereby, proceedings  
21 may be had under Section 1.21.

22 50.54. (a) An indictment is an accusation in writing,  
23 presented by the grand jury to a competent court, charging a  
24 person with a felony or a felony and a related misdemeanor.

25 (b) The grand jury shall find an indictment when from  
26 the evidence presented, there is reasonable cause to believe  
27 that an indictable offense has been committed and that the  
28 defendant committed it.

29 50.58. An indictment may be found only upon the  
30 concurrence of twelve or more jurors. The indictment shall  
31 be returned by the grand jury to a judge in open court. If  
32 the defendant has been arrested and twelve jurors do not  
33 concur in finding an indictment, the foreman shall so report  
34 to the court in writing forthwith.

1 50.62. (a) A grand jury shall serve until discharged  
2 by the court but no grand jury may serve more than eighteen  
3 months.

4 (b) At any time for cause shown the court may excuse  
5 a juror either temporarily or permanently, and in the latter  
6 event the court may impanel another person in place of the  
7 juror excused.

8 CHAPTER 55. RULES OF PLEADING

9 55.10. (a) The indictment or the information shall  
10 be a plain, concise and definite written statement of the  
11 essential facts constituting the offense charged and shall  
12 be signed by the prosecuting attorney. It need not contain  
13 a formal commencement, a formal conclusion or any other matter  
14 not necessary to such statement. Allegations made in one count  
15 may be incorporated by reference in another count. It may be  
16 alleged in a single count that the means by which the  
17 defendant committed the offense are unknown or that he  
18 committed it by one or more specified means.

19 (b) The indictment or information shall state for each  
20 count the official or customary citation of the statute,  
21 rule, regulation or other provision of law which the defendant  
22 is alleged therein to have violated. Error in the citation  
23 or its omission shall not be ground for dismissal of the  
24 indictment or information or for reversal of a conviction if  
25 the error or omission did not mislead the defendant to his  
26 prejudice.

27 (c) When an offense charged may result in a criminal  
28 forfeiture, the indictment or information shall allege the  
29 extent of the interest or property subject to forfeiture.

30 55.15. The court on motion of the defendant may strike  
31 any surplusage from the indictment or information.

32 55.20. The court may permit an indictment or information  
33 to be amended upon the application of the prosecuting attorney  
34 at any time before verdict or finding if no additional

1 different offense is charged and if substantial rights of  
2 the defendant are not prejudiced.

3 55.25. If the information or indictment in any criminal  
4 action has heretofore been lost or destroyed, or shall  
5 hereafter be lost or destroyed, the court shall upon the  
6 application of the prosecuting attorney or of the defendant,  
7 order a copy of such pleading to be filed and substituted  
8 for the original, and when filed and substituted, as provided  
9 in this section, the copy shall have the same force and  
10 effect as if it were the original pleading.

11 55.30. Whether or not an indictment or information complies  
12 with Section 55.10, if it fails to specify the particulars of  
13 the offense sufficiently to enable the defendant to prepare  
14 his defense, the court may, on motion of the defendant, require  
15 the prosecuting attorney to furnish the defendant with a  
16 clarification of the pleading containing such particulars as  
17 may be necessary for the preparation of the defense.

18 55.35. (a) Two or more offenses may be charged in the  
19 same indictment or information in a separate count for each  
20 offense if the offenses charged are of the same or similar  
21 character or are based on the same act or transaction or on  
22 two or more acts or transactions connected together or  
23 constituting parts of a common scheme or plan.

24 (b) Two or more defendants may be charged in the same  
25 indictment or information if they are alleged to have  
26 participated in the same act or transaction or in the same  
27 series of acts or transactions constituting an offense or  
28 offenses. Such defendants may be charged in one or more  
29 counts together or separately and all of the defendants need  
30 not be charged on each count.

31 55.40. (a) A prior conviction may be alleged when the  
32 existence of such conviction changes the punishment which  
33 can be imposed upon the defendant. Such conviction may be  
34 alleged by charging: "That the defendant, before the

1 commission of the offense charged was convicted of the crime  
2 of [name of offense and statutory reference], a [felony,  
3 misdemeanor or petty misdemeanor] in the [name of court] on  
4 or about [date of conviction]."

5 (b) When, prior to trial, it is discovered that an indict-  
6 ment or information does not allege all of the prior convictions  
7 permitted pursuant to subsection (a), the prosecuting attorney,  
8 upon application to and order of the court, may amend the  
9 pleading to include such charge. The defendant shall promptly  
10 be rearraigned on such indictment or information as amended  
11 and be required to plead thereto.

12 CHAPTER 60. ARRAIGNMENT; PLEAS

13 60.10. (a). The defendant shall be arraigned promptly  
14 after the indictment or information is filed or after the  
15 complaint is filed where prosecution by complaint is required  
16 by Section 1.15.

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

23 60.20. When the defendant is arraigned, he shall be  
24 informed that if the name by which he is prosecuted is not his  
25 true name, he shall declare his true name, or be proceeded  
26 against by the name in the indictment, information or complaint.  
27 If he gives no other name, the court may proceed accordingly;  
28 but if he alleges that another name is his true name, the court  
29 shall direct an entry thereof in the minutes of the arraignment,  
30 and the subsequent proceedings may be had against him by that  
31 name, referring also to the name by which he was first charged  
32 therein.

33 60.30. If, on the arraignment, the defendant requires it,  
34 he shall be allowed a reasonable time to answer.



1 60.40. (a) The following pleas may be entered by a  
2 defendant:

3 (1) Not guilty.

4 (2) Not guilty by reason of mental illness, disease or  
5 defect.

6 (3) Guilty.

7 (4) Nolo contendere.

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

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

16 60.50. The court shall not accept a plea of guilty or nolo  
17 contendere without first, by addressing the defendant personally  
18 in open court, informing him of and determining that he  
19 understands the following:

20 (a) the nature of the charge to which the plea is offered;

21 (b) that the defendant has the right to plead not guilty,  
22 or to persist in that plea if it has already been made;

23 (c) that if he pleads guilty or nolo contendere there will  
24 not be a further trial of any kind, so that by pleading guilty  
25 or nolo contendere he waives the right to a trial; and

26 (d) the maximum possible penalty provided by law for the  
27 offense to which the plea is offered including that possible  
28 from the imposition of an extended term pursuant to Sections  
29 80.38 and 80.40 of the Criminal and Correctional Code.

30 60.60. The court shall not accept a plea of guilty or  
31 nolo contendere without first, by addressing the defendant  
32 personally in open court, determining that the plea is voluntary  
33 and not the result of force or threats or of promises apart  
34 from a plea agreement. The court shall also inquire as to

1 whether the defendant's willingness to plead guilty or nolo  
2 contendere results from prior discussions between the attorney  
3 for the government and the defendant or his attorney.

4 60.70. The court shall not enter a judgment upon a plea  
5 of guilty unless it is satisfied that there is a factual basis  
6 for the plea.

7 60.75. (a) Upon a plea of guilty to a crime divided  
8 into degrees, the court shall, before passing sentence,  
9 determine the degree. Upon the failure of the court to so  
10 determine, the degree of the crime of which the defendant is  
11 guilty shall be deemed to be of the lesser degree.

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

17 60.80. (a) The attorney for the government and the  
18 attorney for the defendant or the defendant when acting pro se  
19 may engage in discussions with a view toward reaching an  
20 agreement that, upon the entering of a plea of guilty or nolo  
21 contendere to a charged offense or to a lesser or related  
22 offense, the attorney for the government will move for  
23 dismissal of other charges, or will recommend or not oppose  
24 the imposition of a particular sentence, or will do both. The  
25 court shall not participate in any such discussions.

26 (b) If a plea agreement has been reached by the parties  
27 which contemplates entry of a plea of guilty or nolo contendere  
28 in the expectation that a specified sentence will be imposed  
29 or that other charges before the court will be dismissed, the  
30 court shall require the disclosure of the agreement in open  
31 court at the time the plea is offered. Thereupon the court may  
32 accept or reject the agreement, or may defer its decision as  
33 to acceptance or rejection until there has been an opportunity  
34 to consider the presentence report.

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

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

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

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

24 60.90. A verbatim record of the proceedings at which  
25 the defendant enters a plea shall be made and, if there is a  
26 plea of guilty or nolo contendere, the record shall include,  
27 without limitation, the court's advice to the defendant, the  
28 inquiry into the voluntariness of the plea including any plea  
29 agreement, and the inquiry into the accuracy of a guilty plea.

30 CHAPTER 65. PLEADINGS AND MOTIONS

31 65.10. Pleadings in criminal proceedings shall be the  
32 indictment, information or complaint, and the pleas of not  
33 guilty, not guilty by reason of mental illness, disease or  
34 defect, guilty and nolo contendere. All other pleas and

1 demurrers and motions to quash are abolished, and defenses and  
2 objections raised before trial which heretofore could have been  
3 raised by one or more of them shall be raised only by motion  
4 to dismiss or to grant appropriate relief, as provided in this  
5 code.

6 65.15. Any defense, objection or request which is  
7 capable of determination without the trial of the general issue  
8 may be raised before trial by motion. Motions may be written  
9 or oral at the discretion of the judge. The following shall  
10 be raised prior to trial:

11 (a) Defenses and objections based on defects in the  
12 institution of the prosecution;

13 (b) Defenses and objections based on defects in the  
14 indictment, information or complaint (other than that it fails  
15 to show jurisdiction in the court or to charge an offense which  
16 objections shall be noticed by the court at any time during  
17 the pendency of the proceedings);

18 (c) Motions to suppress evidence;

19 (d) Requests for discovery pursuant to Chapter 70  
20 (commencing with Section 70.10); or

21 (e) Requests for a severance of charges or defendants  
22 pursuant to Section 65.35.

23 65.17. (a) Prior to trial, a party may apply for review  
24 of an adverse ruling made pursuant to subsections (a) through  
25 (c) of Section 65.15 by means of a petition for writ of  
26 mandate or prohibition unless the court, prior to the time  
27 review is sought, has dismissed the criminal action.

28 (b) A defendant may seek review of any ruling by the  
29 trial court pursuant to subsection (c) of Section 65.15 on  
30 appeal from conviction whether or not he has previously sought  
31 or obtained review of such ruling and notwithstanding the fact  
32 that the judgment of conviction is based upon a plea of  
33 guilty or nolo contendere.

1       65.20. The court may, at the time of the arraignment or  
2 as soon thereafter as practicable, set a time for the  
3 making of pretrial motions or requests and, if required, a  
4 later date of hearing.

5       65.25. (a) At the arraignment or as soon thereafter as  
6 is practicable the government may give notice to the  
7 defendant of its intention to use specified evidence at trial  
8 in order to afford the defendant an opportunity to raise  
9 objections to such evidence prior to trial under Section 65.15.

10       (b) At the arraignment or as soon thereafter as is  
11 practicable the defendant may, in order to be afforded an  
12 opportunity to move to suppress evidence under Section 65.15  
13 request notice of the government's intention to use (in its  
14 evidence in chief at trial) any evidence which the defendant  
15 may be entitled to discover under Chapter 70 (commencing with  
16 Section 70.10).

17       65.30. (a) The court may order two or more indictments or  
18 informations or both to be tried together if the offenses, and  
19 the defendants if there is more than one, could have been  
20 joined in a single indictment or information. The procedure  
21 shall be the same as if the prosecution were under such  
22 single indictment or information.

23       (b) Except as otherwise provided by Section 65.35, a  
24 defendant shall not be subject to separate trials for multiple  
25 offenses based on the same conduct or arising from the same  
26 criminal episode, if such offenses are known to the  
27 prosecuting attorney at the time of the commencement of the  
28 first trial.

29       65.35 If it appears that a defendant or the government  
30 is prejudiced by a joinder of offenses or of defendants in an  
31 indictment or information or by such joinder for trial together,  
32 the court may order an election or separate trials of counts,  
33 grant a severance of defendants or provide whatever other  
34 relief justice requires.

1       65.40. A motion made before trial shall be determined  
2 before trial unless the court orders that it be deferred for  
3 determination at the trial of the general issue or until after  
4 verdict. An issue of fact shall be tried by a jury  
5 if a jury trial is required and not waived. Otherwise issues  
6 of fact shall be determined by the court without a jury on  
7 affidavits or in such other manner as the court shall direct.

8       65.45. Failure by a party to raise defenses or objections  
9 or to make requests which must be made prior to trial, at the  
10 time set by the court pursuant to Section 65.15, or prior  
11 to any extension thereof made by the court, shall constitute  
12 a waiver thereof, but the court for cause shown may grant  
13 relief from the waiver.

14       65.50. A verbatim record shall be made of all proceedings  
15 at the hearing, including such findings of fact and conclusions  
16 of law as are made orally.

17       65.55. If the court grants a motion based on a defect in  
18 the institution of the prosecution or in the indictment,  
19 information or complaint, it may also order that the defendant  
20 be held in custody or that prior conditions for his release  
21 be continued for a specified time pending the filing of a new  
22 indictment, information or complaint. Nothing in this section  
23 shall be deemed to affect the provisions of any act of the  
24 Legislature relating to periods of limitations.

25               CHAPTER 70. DISCOVERY AND DEPOSITIONS

26                       Article 1. Discovery

27       70.10. (a) Except as otherwise provided by Sections  
28 70.20 and 70.30, at any time after the first appearance  
29 upon noticed motion by the defendant, the court shall order  
30 the prosecuting attorney to disclose to the defendant's  
31 attorney or permit the defendant's attorney to inspect and  
32 copy the following material and information within his  
33 possession or control, the existence of which is known, or  
34 by the exercise of due diligence may become known to the  
35 prosecuting attorney:

1 (1) the name and address of any person whom the  
2 prosecuting attorney intends to call as a witness at the trial,  
3 together with his relevant written or recorded statement;

4 (2) any written or recorded statement and the substance  
5 of any oral statement made by the defendant or made by a  
6 co-defendant if the trial is to be a joint one;

7 (3) any report or statement of an expert, made in  
8 connection with the case, including results of physical or  
9 mental examinations and of scientific tests, experiments or  
10 comparisons;

11 (4) any book, paper, document, photograph or tangible  
12 object, which the prosecuting attorney intends to use in the  
13 trial or which was obtained from or belonged to the defendant;

14 (5) any record of prior criminal convictions of persons  
15 whom the prosecuting attorney intends to call as witnesses  
16 at the trial;

17 (6) whether there has been an electronic surveillance  
18 of conversations to which the defendant was a party or of his  
19 premises;

20 (7) any material or information which tends to negate  
21 the guilt of the defendant as to the offense charged or would  
22 tend to reduce his punishment therefore.

23 (b) The prosecuting attorney's obligations under this  
24 section extend to any material information in the possession  
25 or control of members of his staff and any other persons  
26 who have participated in the investigation or evaluation of  
27 the case and who either regularly report or with reference to  
28 this case have reported to his office.

29 70.15. (a) Except as otherwise provided by this section  
30 and Sections 70.20 and 70.30, upon noticed motion by the  
31 defendant and a showing of materiality to the preparation of  
32 his defense and that the request is reasonable, the court in  
33 its discretion may order the prosecuting attorney to disclose  
34 to the defendant's attorney any relevant material and  
35 information not covered by Section 70.10.

1 (b) The court may deny the disclosure authorized by  
2 this section if it finds that there is substantial risk to  
3 any person of physical harm, intimidation, bribery,  
4 economic reprisals or unnecessary annoyance or embarrassment,  
5 resulting from such disclosure, which outweighs any usefulness  
6 of the disclosure to the defense.

7 70.20. Notwithstanding Sections 70.10 and 70.15, the  
8 prosecuting attorney shall not be required to disclose;

9 (a) legal research or records, correspondence, reports  
10 or memoranda to the extent that they contain the opinions,  
11 theories or conclusions of the prosecuting attorney or  
12 members of his legal staff; and

13 (b) an informant's identity where his identity is  
14 a prosecution secret and a failure to disclose will not  
15 infringe the constitutional rights of the defendant. However,  
16 the identity of an informant may not be kept secret where the  
17 prosecuting attorney intends to call such person as a witness  
18 at the trial.

19 70.25. Upon noticed motion by the prosecuting attorney,  
20 the court may order:

21 (a) the defendant to appear at a reasonable time and  
22 place and under such conditions as the court may provide to:

23 (1) appear in a line-up;

24 (2) speak for identification by witnesses to an offense;

25 (3) be finger-printed;

26 (4) pose for photographs not involving reenactment of a  
27 scene;

28 (5) try on articles of clothing;

29 (6) provide specimens of his handwriting;

30 (7) permit the taking of samples of his blood, hair

31 and other materials of his body which involve no unreasonable  
32 intrusion thereof; and

33 (8) submit to a reasonable physical or medical inspection  
34 of his body.



1 (b) the defendant's attorney to disclose to the  
2 prosecuting attorney or permit the prosecuting attorney to  
3 inspect and copy any report or statement of an expert, made  
4 in connection with the case, including results of physical or  
5 mental examinations and of scientific tests, experiments or  
6 comparisons which the defense attorney intends to use in the  
7 trial.

8 (c) The defendant's attorney to state the nature of  
9 any defense which he intends to use at trial and the name  
10 and address of any person whom the defendant's attorney  
11 intends to call as a witness in support thereof.

12 70.30. (a) Where an order requiring disclosure under  
13 this chapter is issued, the order shall state and the court  
14 shall determine the time, place and manner of making the  
15 disclosure required. The court may impose such terms and  
16 conditions as the court determines are just, provided that all  
17 material and information to which a party is entitled shall  
18 be disclosed in time to permit his beneficial use thereof.

19 (b) Where a document or other tangible object contains  
20 material, part of which is subject to disclosure pursuant to  
21 this chapter and part of which is not subject to disclosure,  
22 only the part subject to disclosure need be disclosed but the  
23 entire document or other tangible object shall be sealed and  
24 preserved in the records of the court, to be made available  
25 to the appellate court in the event of an appeal.

26 70.35. (a) Upon request of any person, the court may  
27 permit any showing of cause for denial or regulation of  
28 disclosures, or portion of such showing to be made in camera.

29 (b) A record shall be made of any proceedings held  
30 in camera and where the court enters an order granting  
31 relief following such proceeding, the entire record shall  
32 be sealed and preserved in the records of the court, to be  
33 made available to the appellate court in the event of an appeal.

1 70.40. If, prior to or during trial, a party or his  
2 attorney discovers additional material or information  
3 previously requested or ordered, which is subject to disclosure  
4 under this chapter, he shall promptly notify the other party  
5 or his attorney or the court of the existence of the additional  
6 material or information.

7 70.45. If at any time during the course of the  
8 proceedings, it is brought to the attention of the court that  
9 a party has failed to comply with an order issued pursuant to  
10 this chapter, the court may order such party to comply with  
11 the prior order, grant a continuance, or issue such other  
12 order as it deems just under the circumstances.

13 Article 2. Depositions

14 70.50. Whenever due to special circumstances of the  
15 case it is in the interest of justice that any person be  
16 ordered to appear at a specified time and place to be  
17 examined under oath, the court may, upon noticed motion  
18 of any party, order such person to appear so that his  
19 testimony may be taken by deposition and further order that  
20 any designated book, paper, document, record, recording,  
21 or other material not privileged, be produced at the same  
22 time and place.

23 70.55. (a) Any officer having custody of a defendant  
24 shall be notified of the time and place set for the  
25 examination and shall, unless the defendant waives in writing  
26 the right to be present, produce him at the examination and  
27 keep him in the presence of the witness during the examination.

28 (b) A defendant not in custody shall have the right  
29 to be present at the examination, but his failure, absent  
30 good cause shown, to appear after notice and tender of  
31 expenses in accordance with Section 70.60 shall constitute  
32 a waiver of that right and of any objection to the taking  
33 and use of the deposition based upon that right.

1       70.60. Whenever a deposition is taken at the instance  
2 of the government, or whenever a deposition is taken at the  
3 instance of a defendant who is unable to bear the expense  
4 of the taking of the deposition, the court may direct that  
5 the expenses of travel and subsistence of the defendant and  
6 his attorney for attendance at the examination be tendered  
7 or paid by the government prior to the taking of the deposition.

8       70.65. (a) Subject to such additional conditions as  
9 the court may provide, a deposition shall be taken and  
10 filed in the manner provided in civil actions. However, in  
11 no event may a deposition be taken of a party defendant without  
12 his consent, and the scope and manner of examination and  
13 cross-examination shall be such as would be allowed in the  
14 trial itself.

15       (b) The government shall make available to the defendant  
16 or his counsel for examination and use at the taking of the  
17 deposition any statement of the witness being deposed which is  
18 in the possession of the government and which the defendant  
19 is entitled to obtain pursuant to Article 1 (commencing with  
20 Section 70.10).

21       70.70. At the trial or upon any hearing, a part or  
22 all of a deposition, so far as otherwise admissible under the  
23 rules of evidence, may be used as substantive evidence if  
24 the witness is unavailable, as defined in Section 70.75,  
25 or the witness gives testimony at the trial or hearing  
26 inconsistent with his deposition. Any deposition may also  
27 be used by any party for the purpose of contradicting or  
28 impeaching the testimony of the deponent as a witness. If  
29 only a part of a deposition is offered in evidence by a  
30 party, an adverse party may require him to offer all of it  
31 which is relevant to the part offered and my party may offer  
32 other parts.

33       70.75. (a) "Unavailable as a witness" includes situations  
34 in which the deponent:

1 (1) persists in refusing to testify concerning the  
2 subject matter of his deposition despite an order of the  
3 judge to do so;

4 (2) testifies to a lack of memory of the subject matter  
5 of his deposition;

6 (3) is unable to be present or to testify at the hearing  
7 because of death or then existing physical or mental illness  
8 or infirmity; or

9 (4) is absent from the hearing and the proponent of his  
10 deposition has been unable to procure his attendance by  
11 process or other reasonable means.

12 (b) A deponent is not unavailable as a witness if his  
13 exemption, refusal, claim or lack of memory, inability, or  
14 absence is due to the procurement or wrongdoing of the  
15 proponent of his deposition for the purpose of preventing the  
16 witness from attending or testifying.

17 70.80. Objections to deposition testimony or evidence  
18 or parts thereof and the grounds for the objection shall be  
19 stated at the time of the taking of the deposition.

20 CHAPTER 75. SUBPOENA; WITNESSES

21 Article 1. Subpoena

22 75.10. (a) A subpoena shall be issued by the clerk under  
23 the seal of the court. It shall state the name of the court  
24 and the title, if any, of the proceedings, and shall command  
25 each person to whom it is directed to attend and give testimony  
26 at the time and place specified therein.

27 (b) The clerk shall issue a subpoena, signed and sealed  
28 but otherwise in blank to any party requesting it, who shall  
29 fill in the blanks before it is served.

30 75.15. The court shall order at any time that a subpoena  
31 be issued for service on a named witness upon the ex parte  
32 application of a defendant and a satisfactory showing that  
33 the defendant is financially unable to pay the fees of the  
34 witness and that the presence of the witness is necessary to

1 an adequate defense. If the court orders the subpoena to be  
2 issued the costs incurred by the process and the fees of the  
3 witness so subpoenaed shall be paid in the same manner in  
4 which similar costs and fees are paid in case of a witness  
5 subpoenaed in behalf of the government.

6 75.20. A subpoena may also command the person to whom  
7 it is directed to produce the books, papers, documents or  
8 other objects designated therein. The court on motion made  
9 promptly may quash or modify the subpoena if compliance  
10 would be unreasonable or oppressive. The court may direct  
11 that books, papers, documents or objects designated in the  
12 subpoena be produced before the court at a time prior to the  
13 trial or prior to the time when they are to be offered in  
14 evidence and may upon their production permit the books,  
15 papers, documents or objects or portions thereof to be  
16 inspected by the parties and their attorneys.

17 75.25. A subpoena may be served by the marshal, by  
18 his deputy or by any other person who is not a party and who  
19 is not less than 18 years of age. Service of a subpoena  
20 shall be made by delivering a copy thereof to the person named  
21 and by tendering to him the fee for one (1) day's attendance  
22 and the mileage allowed by law.

23 75.30. A subpoena requiring the attendance of a witness  
24 at a hearing or trial may be served at **any** place within the  
25 Territory of Guam.

26 75.35. Failure by any person without adequate excuse to  
27 obey a subpoena served upon him may be deemed a contempt of  
28 the court from which the subpoena was issued.

29 75.40. (a) If it appears by affidavit that the testimony  
30 of a person is material in any criminal proceeding and if it  
31 is shown that it may become impracticable to secure his  
32 presence by subpoena, the court may order him to be taken into  
33 custody and thereafter released in the manner and subject to the  
34 conditions provided by Sections 40.15 and 40.20. Such person

1 shall be entitled to review of the release decision in the  
2 manner provided by Sections 40.50 and 40.80.

3 (b) No material witness shall be detained because of his  
4 inability to comply with any condition of release, if  
5 his testimony can be adequately secured by deposition, and  
6 further detention is not necessary to prevent a failure of  
7 justice. Release may be delayed for a reasonable period of  
8 time until the deposition of the witness can be taken.

9 Article 2. Witnesses

10 75.50. Except as otherwise provided in this code, the  
11 rules for determining the competency of witnesses in civil  
12 actions are applicable also to criminal actions and  
13 proceedings.

14 75.55. Neither husband nor wife is a competent witness  
15 for or against the other in a criminal action or proceeding  
16 to which one or both are parties; except with the consent of  
17 both, or in case of criminal actions or proceedings for a  
18 crime committed by one against the person or property of the  
19 other, or in cases of criminal actions or proceedings charging  
20 an offense under Article 1 (commencing with Section 28.10) of  
21 Chapter 28, Section 31.10, or Section 31.45 of the Criminal  
22 and Correctional Code.

23 75.60. A defendant in a criminal action or proceeding  
24 cannot be compelled to be a witness against himself but if  
25 he offers himself as a witness he may be cross-examined by  
26 the prosecuting attorney and the attorney for any co-defendant  
27 as to all matters about which he was ~~examined~~ examined in chief. His  
28 neglect or refusal to be a witness cannot in any manner  
29 prejudice him nor be used against him on the trial or  
30 proceeding by the prosecuting attorney.

31 75.70. (a) When two or more defendants are included in  
32 the same indictment, information or complaint, the court may,  
33 at any time before the defendants have gone into their  
34 defense, on the application of the prosecuting attorney, direct

1 any defendant to be discharged, that he may be a witness for the  
2 prosecution.

3 (b) The discharge provided for by subsection (a) is a bar  
4 to another prosecution of the defendant discharged for the same  
5 offense.

6 CHAPTER 80. PRETRIAL CONFERENCE;

7 CALENDAR FOR TRIAL; DISMISSAL; COMPROMISE

8 Article 1. Pretrial

9 80.10. At any time after the filing of the indictment,  
10 information or complaint, the court upon motion of any party  
11 or upon its own motion may order one or more conferences to  
12 consider such matters as will promote a fair and expeditious  
13 trial. At the conclusion of a conference the court shall  
14 prepare and file a memorandum of the matters agreed upon. No  
15 admissions made by the defendant or his attorney at the  
16 conference shall be used against the defendant unless the  
17 admissions are reduced to writing and signed by the defendant  
18 and his attorney. This rule shall not be invoked in the case  
19 of a defendant who is not represented by counsel.

20 Article 2. Calendar for Trial

21 80.20. The clerk shall keep a calendar of all criminal  
22 actions pending in the court, enumerating them according to  
23 the date of filing of the indictment or information in felony  
24 cases or the complaint in non-felony cases, specifying opposite  
25 the title of each action whether or not it is for a felony  
26 and whether or not the defendant is in custody.

27 80.30. The issues on the calendar shall be disposed of  
28 in the following order, unless for good cause the court shall  
29 direct an action to be tried out of its order:

30 (a) Prosecutions for felony, when the defendant is in  
31 custody.

32 (b) Prosecutions for non-felony offenses, when the  
33 defendant is in custody.

1 (c) Prosecutions for felony, when the defendant is not  
2 in custody.

3 (d) Prosecutions for non-felony offenses, when the defendant  
4 is not in custody.

5 80.40. The defendant is entitled to at least five days  
6 after entering his plea to prepare for trial but he may waive  
7 any part of such time.

8 80.50. (a) The welfare of the people of the Territory of  
9 Guam requires that all proceedings in criminal cases shall  
10 be set for trial and heard and determined at the earliest  
11 possible time, and it shall be the duty of all courts and  
12 judicial officers and of all prosecuting attorneys to expedite  
13 such proceedings to the greatest degree that is consistent  
14 with the ends of justice.

15 (b) In accordance with the policy stated in subsection  
16 (a), criminal cases shall be given precedence over, and set  
17 for trial and heard without regard to the pendency of, any  
18 civil matters or proceedings. No continuance of a trial shall  
19 be granted except upon affirmative proof in open court, upon  
20 reasonable notice, that the ends of justice require a  
21 continuance. No continuance shall be granted for any longer  
22 time than it is affirmatively proved the ends of justice  
23 require. Whenever any continuance is granted, the court  
24 shall enter in its minutes the facts proved which require the  
25 continuance.

26 80.60. (a) Except as otherwise provided in subsection (b),  
27 the court shall dismiss a criminal action if:

28 (1) An information is not filed or an indictment returned  
29 within the time prescribed by Sections 45.45, 45.50 and 45.80;

30 (2) The trial of a defendant, who is in custody at the time  
31 of his arraignment, has not commenced within 45 days after his  
32 arraignment; or

33 (3) The trial of a defendant, who is not in custody at  
34 the time of his arraignment, has not commenced within 60 days  
35 after his arraignment.



1 (b) A criminal action shall not be dismissed pursuant to  
2 subsection (a) if:

3 (1) The action is set on a date beyond the prescribed  
4 period upon motion of the defendant or with his consent,  
5 express or implied, and he is brought to trial on the date so  
6 set or within 10 days thereafter;

7 (2) The defendant failed to appear for trial and he is  
8 brought to trial within 30 days following his next appearance  
9 in the trial court; or

10 (3) Good cause is shown for the failure to commence the  
11 trial within the prescribed period.

12 Article 3. Dismissal

13 80.70. (a) The prosecuting attorney may with leave of  
14 court file a dismissal of an indictment, information or  
15 complaint and the prosecution shall thereupon terminate.  
16 Such a dismissal may not be filed during the trial without  
17 the consent of the defendant. The prosecuting attorney shall  
18 file a statement of his reasons for seeking dismissal when  
19 he applies for leave to file a dismissal and where leave is  
20 granted the court's order shall set forth the reasons for  
21 granting such leave.

22 (b) If there is unnecessary delay in bringing a defendant  
23 to trial, the court, on its own motion, may dismiss the  
24 indictment, information or complaint. The reasons for the  
25 dismissal shall be set forth in an order entered upon the  
26 minutes.

27 (c) The court on its own motion may dismiss a prosecution  
28 pursuant to Section 7.67 of the Criminal and Correctional Code.

29 80.75. If the court directs the action to be dismissed,  
30 the defendant shall, if in custody, be discharged therefrom;  
31 and the dismissal shall exonerate any depositor or surety who  
32 has provided security pursuant to Chapter 40 (commencing with  
33 Section 40.10) and entitles such person to the return of any  
34 money or property he may have deposited.

1 80.80. The entry of a nolle prosequi is abolished, and  
2 a prosecuting attorney cannot discontinue or abandon a prosecu-  
3 tion for any offense, except as provided in Section 80.70.

4 Article 4. Compromise

5 80.90. (a) When the defendant has been charged with the  
6 commission of an offense which is not a felony for which the  
7 person injured by the act constituting the offense has a  
8 remedy by a civil action, the offense may be compromised as  
9 provided by this section.

10 (b) If the person injured appears before, or files his  
11 declaration in, the court in which the criminal action is  
12 pending at any time before trial and acknowledges that he has  
13 received satisfaction for the injury, the court may, on  
14 payment of the costs incurred, order the criminal action  
15 dismissed.

16 (c) A dismissal under this section is a bar to another  
17 prosecution for the same offense.

18 CHAPTER 85. TRIAL BY JURY: CHALLENGE:

19 ALTERNATE JURORS

20 85.10. Cases required to be tried by jury shall be so  
21 tried unless the defendant waives a jury trial in writing  
22 with the approval of the court and the consent of the  
23 government.

24 85.15. Juries shall be of six. However, in a prosecution by  
25 indictment or information, the defendant shall be entitled to  
26 a jury of twelve upon his written request filed with the court  
27 prior to the date of trial. In any case where a jury of twelve  
28 is demanded, at any time before verdict the parties may  
29 stipulate in writing with the approval of the court that the  
30 jury shall consist of any number less than twelve but not less  
31 than six.

32 85.20. The court may permit the defendant or his attorney  
33 and the prosecuting attorney to examine the prospective jurors  
34 to select a fair and impartial jury or may itself conduct

1 the examination. In the latter event the court shall permit  
2 the defendant or his attorney and the prosecuting attorney to  
3 supplement the examination by such further inquiry as it  
4 deems proper or shall itself submit to the prospective jurors  
5 such additional questions by the parties or their attorneys as  
6 it deems proper.

7 85.25. A peremptory challenge is an objection to a  
8 juror for which no reason need be given, but upon which the  
9 court must exclude such juror. It can be taken by either party  
10 and may be oral.

11 85.30. In a prosecution by indictment or information if  
12 the offense charged is punishable by a life sentence, each  
13 side is entitled to twenty peremptory challenges, otherwise  
14 the government is entitled to six peremptory challenges and  
15 the defendant or defendants jointly to ten peremptory challenges.  
16 In a prosecution by complaint, each side is entitled to three  
17 peremptory challenges. If there is more than one defendant,  
18 the court may allow the defendants additional peremptory  
19 challenges and permit them to be exercised separately or  
20 jointly.

21 85.35. (a) A challenge for cause is an objection to a  
22 prospective juror based on any of the following grounds:

23 (1) The prospective juror does not have the qualifications  
24 for jury service required by Section 680.5 of the Code of  
25 Civil Procedure.

26 (2) The prospective juror is related by blood or marriage  
27 within the second degree to the defendant, the person alleged  
28 to be injured by the offense charged or on whose complaint  
29 the prosecution was commenced, a prospective witness or any  
30 attorney representing a party in the action, or the prospective  
31 juror bears some other relationship to any such person of such  
32 nature that it is likely to preclude him from being a fair and  
33 impartial juror.

34 (3) The prospective juror has served on any jury which

1 heard evidence concerning the offense charged.

2 (4) The prospective juror has a state of mind that will  
3 preclude him from being a fair and impartial juror.

4 (b) A challenge for cause may be taken by any party. If  
5 the court finds that grounds exist that support a challenge  
6 for cause against a prospective juror, he shall discharge such  
7 juror.

8 85.40. (a) The court may direct the order in which  
9 challenges are to be taken both as to parties and as to  
10 type of challenge.

11 (b) Each party shall be entitled to have the panel full  
12 before exercising any peremptory challenge. The number of  
13 peremptory challenges remaining with a party shall not be  
14 diminished by any passing of a peremptory challenge.

15 (c) After all parties on both sides pass consecutively,  
16 the jury shall be sworn.

17 85.45. The court may direct that no more than six jurors  
18 in addition to the regular jury be called and impanelled  
19 to sit as alternate jurors. Alternate jurors in the order in  
20 which they are called shall replace jurors who, prior to the  
21 time the jury retires to consider its verdict, become  
22 or are found to be unable or disqualified to perform their  
23 duties. Alternate jurors shall be drawn in the same manner,  
24 shall have the same qualifications, shall be subject to the  
25 same examination and challenges, shall take the same oath and  
26 shall have the same functions, powers, facilities and  
27 privileges as the regular jurors. An alternate juror who does  
28 not replace a regular juror shall be discharged after the jury  
29 retires to consider its verdict. Each side is entitled to one  
30 peremptory challenge in addition to those otherwise allowed by  
31 law if one or two alternate jurors are to be impanelled, two  
32 peremptory challenges if three or four alternate jurors are to  
33 be impanelled, and three peremptory challenges if five or six  
34 alternate jurors are to be impanelled. The additional peremp-  
35 tory challenges may be used against an alternate juror only,

1 and the other peremptory challenges allowed by these rules may  
2 not be used against an alternate juror.

3 CHAPTER 90. TRIAL

4 90.10. It shall be the duty of the judge to control all  
5 proceedings during the trial, and to limit the introduction of  
6 evidence and the argument of counsel to relevant and material  
7 matters, with a view to the expeditious and effective  
8 ascertainment of the truth regarding the matters involved.

9 90.13. Unless otherwise directed by the court, the trial  
10 shall proceed in the following order:

11 (a) If the trial be before the court with a jury, the  
12 jury shall be impanelled and sworn.

13 (b) The court or clerk shall read the indictment, informa-  
14 tion, or complaint and the defendant's plea to the jury, but  
15 shall omit any reference to a prior conviction charged therein.

16 (c) The prosecuting attorney may make an opening statement.  
17 The defendant or his counsel may then make an opening statement  
18 or may, at his option, reserve the right to make an opening  
19 statement until immediately prior to offering evidence in  
20 support of his case.

21 (d) The prosecuting attorney shall offer the evidence  
22 in support of the charge.

23 (e) The defendant or his counsel may then open the defense.  
24 He may make an opening statement, if he has not already done so  
25 pursuant to subsection (c), and may offer his evidence in  
26 support of his defense.

27 (f) The parties may then respectively offer rebutting  
28 evidence unless the court, for good reason, in furtherance  
29 of justice, permits either party to offer evidence upon his  
30 original case.

31 (g) When the evidence is concluded, unless the case is  
32 submitted on either side, or on both sides, without  
33 argument, the prosecuting attorney, and the counsel for the  
34 defendant, may argue the case to the court and jury; the

1 prosecuting attorney opening the argument and having the right  
2 to close.

3 (h) If the trial be before the court with a jury, the  
4 court shall then instruct the jury.

5 90.16. One counsel shall be permitted to argue the cause  
6 for each party but the court, in its discretion, may permit  
7 additional counsel to argue any cause.

8 90.19. (a) If the trial be before the court with a jury,  
9 all requests for instructions on points of law must be made  
10 to the court and all proposed instructions must be delivered  
11 to the court before commencement of argument.

12 (b) Copies of such requests shall be furnished to adverse  
13 parties at the same time they are delivered to the court.  
14 Before the commencement of the argument, the court, on request  
15 of counsel, shall: (1) decide whether to give, refuse, or  
16 modify the proposed instructions; (2) decide which instructions  
17 shall be given in addition to those proposed, if any; and  
18 (3) advise counsel of all instructions to be given.

19 (c) Opportunity shall be given to object to any proposed  
20 instruction before it is given, out of the hearing of the jury  
21 and, on request of any party, out of the presence of the jury.  
22 However, no party may assign as error any portion of an  
23 instruction or omission therefrom unless he objects thereto  
24 stating distinctly the matter to which he objects and the  
25 grounds of his objection.

26 (d) Notwithstanding subsection (b), if, during the argument,  
27 issues are raised which have not been covered by instructions  
28 given or refused, the court may, on request of counsel, give  
29 additional instructions on the subject matter thereof.

30 90.21. (a) No person may be convicted of an offense  
31 unless each element of the offense is proved beyond a reasonable  
32 doubt.

33 (b) Subsection (a) does not require negating a defense (1)  
34 by allegation in the indictment, information or complaint, or

1 (2) by proof at trial, unless the issue is in the case as a  
2 result of evidence at the trial sufficient to raise a reasonable  
3 doubt on the issue.

4 (c) Subsection (a) does not apply to any defense which a  
5 statute explicitly designates as an "affirmative defense".  
6 Defenses so designated must be proved by the defendant by a  
7 preponderance of evidence.

8 90.23. (a) Reasonable doubt is defined as follows:  
9 "It is not a mere possible doubt because everything relating  
10 to human affairs, and depending on moral evidence, is open to  
11 some possible or imaginary doubt. It is that state of the  
12 case, which, after the entire comparison and consideration of  
13 all the evidence, leaves the mind of the trier of fact in  
14 that condition that he cannot say he feels an abiding conviction,  
15 to a moral certainty, of the truth of the charge."

16 (b) In charging a jury, the court may read subsection (a)  
17 to the jury and no further instruction defining reasonable  
18 doubt need be given.

19 90.25. When it appears that the defendant has committed  
20 an offense, and there is reasonable ground of doubt in which  
21 of two or more degrees he is guilty, he can be convicted of  
22 the lowest of such degrees only.

23 90.27. When there is a rational basis for a verdict  
24 acquitting the defendant of the offense charged and convicting  
25 him of an included offense, the court shall charge the jury  
26 with respect to the included offense.

27 90.29. When the court determines ~~that~~ it is appropriate  
28 to take evidence outside the courtroom, ~~the~~ court may be  
29 convened at another location for the limited purpose of taking  
30 such evidence.

31 90.31. The court shall decide all questions of law which  
32 arise in the course of trial.

33 90.34. If by reason of death, sickness or other  
34 disability the judge before whom a jury trial has commenced

1 is unable to proceed with the trial, any other judge regularly  
2 sitting in or assigned to the court, upon certifying that he has  
3 familiarized himself with the record of the trial, may proceed  
4 with and finish the trial.

5 90.37. If by reason of absence, death, sickness or  
6 other disability the judge before whom the defendant has been  
7 tried is unable to perform the duties to be performed by  
8 the court after a verdict or finding of guilt, any other  
9 judge regularly sitting or assigned to the court may perform  
10 those duties; but if such other judge is satisfied that he  
11 cannot perform those duties because he did not preside at the  
12 trial or for any other reason, he may in his discretion grant  
13 a new trial.

14 90.40. The jurors sworn to try an action may, in the  
15 discretion of the court, be permitted to separate or be kept  
16 in charge of a proper officer. Where the jurors are permitted  
17 to separate, the court shall properly admonish them. Where  
18 the jurors are kept in charge of a proper officer, the officer  
19 shall be sworn to keep the jurors together until the next  
20 meeting of the court, to suffer no person to speak to them or  
21 communicate with them, nor to do so himself, on any subject  
22 connected with the trial, and to return them into court at the  
23 next meeting thereof.

24 90.43. The jury shall, at each adjournment of the court  
25 before the submission of the cause to the jury, whether  
26 permitted to separate or kept in charge of officers, be  
27 admonished by the court that it is their duty not to converse  
28 among themselves or with anyone else on any subject connected  
29 with the trial, or to form or express any opinion thereon  
30 until the cause is finally submitted to them.

31 90.46. While the jury are kept together, either during  
32 the progress of the trial or after their retirement for  
33 deliberation, the court shall direct the officer to provide  
34 the jury with suitable and sufficient food and lodging, or  
35 other reasonable necessities.



CHAPTER 95. EVIDENCE

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95.10. Except as otherwise provided by law, in all trials under this code, the testimony of witnesses shall be taken orally in open court and the admissibility of evidence and the competency and privileges of witnesses shall be governed in the same manner as in civil actions.

95.15. For the purpose of establishing prima facie evidence of the fact that a person charged with a crime has previously been convicted of another crime in this Territory, or in any state, territory, or insular possession of the United States, which would be punishable as a crime in this Territory, or has been convicted of an act declared to be a crime by any act or law of the United States, and has served a term therefor in any penal institution, the records or copies of records of the penal institution, in which such person has been imprisoned when such records or copies thereof have been certified by the official custodian of such records, may be introduced as such evidence.

95.20. No person shall be convicted of an offense defined in Sections 52.15, 52.20 or 52.30 of the Criminal and Correctional Code when proof of falsity rests solely upon contradiction by testimony of a single person other than the defendant. Proof of falsity may be established by direct or indirect evidence.

95.30. Upon a trial for conspiracy, ~~the~~ defendant cannot be convicted unless one or more overt acts are expressly alleged in the indictment, information or complaint nor unless one of the acts alleged is proved; but other overt acts not alleged may be given in evidence.

95.40. Upon a trial for bigamy, it is not necessary to prove either of the marriages by the register, certificate, or other record evidence thereof, but the same may be proved by such evidence as is admissible to prove a marriage in other cases, and when the second marriage took place out of this Territory, proof of that fact, accompanied with proof of

1 cohabitation thereafter in this Territory, is sufficient to  
2 sustain the charge.

3 95.50. Upon a trial for compelling prostitution the  
4 defendant cannot be convicted upon the testimony of the  
5 person compelled to commit or engage in prostitution, unless  
6 she (or he) is corroborated by other evidence.

7 95.60 Upon a trial for the violation of paragraph (3)  
8 of subsection (a) of Section 64.10 of the Criminal and  
9 Correctional Code, it is not necessary to prove the existence  
10 of any lottery in which any lottery ticket purports to have  
11 been issued, or to prove the actual signing of any such  
12 ticket, or share, or pretended ticket or share, of any  
13 pretended lottery, nor that any lottery ticket, share,  
14 or interest was signed or issued by the authority of any  
15 manager, or of any person assuming to have authority as  
16 manager, but in all cases proof of the sale, furnishing,  
17 bartering, or procuring of any ticket, share, or interest  
18 therein, or of any instrument purporting to be a ticket,  
19 or part or share of any such ticket, is evidence that such  
20 share or interest was signed and issued according to the  
21 purport thereof.

1 95.75. An official record or an entry therein or the lack  
2 of such a record or entry may be proved in the same manner as  
3 in civil actions.

4 95.80. A party who intends to raise an issue concerning  
5 the law of a foreign country shall give reasonable written  
6 notice of such intention. The court, in determining foreign  
7 law, may consider any relevant material or source, including  
8 testimony, whether or not submitted by a party or admissible  
9 under Section 95.10. The court's determination shall be  
10 treated as a ruling on a question of law.

11 95.85. (a) The court may order the defendant or the  
12 government or both to show cause why an expert witness should  
13 not be appointed, and may request the parties to submit  
14 nominations. The court may appoint any expert witness agreed  
15 upon by the parties, and may appoint a witness of its own  
16 selection. An expert witness shall not be appointed by the  
17 court unless he consents to act.

18 (b) A witness appointed pursuant to subsection (a)  
19 shall be informed of his duties by the court in writing, a  
20 copy of which shall be filed with the clerk, or at a conference  
21 in which the parties shall have an opportunity to participate.  
22 A witness so appointed shall advise the parties of his findings,  
23 if any, and may thereafter be called to testify by the court  
24 or by any party. He shall be subject to cross-examination  
25 by each party.

26 (c) The court shall determine the reasonable compensation  
27 of a witness appointed pursuant to subsection (a) and direct  
28 his payment out of such funds as may be provided by law.

29 (d) Nothing in this section precludes a party from  
30 calling an expert witness of his own selection.

31 95.90. The court may appoint an interpreter of its own  
32 selection. The court shall determine the reasonable  
33 compensation of such an interpreter and direct his payment out  
34 of such funds as may be provided by law.

CHAPTER 100. MOTION FOR ACQUITTAL

1  
2 100.10. The motion for a directed verdict is abolished  
3 and a motion for judgment of acquittal shall be used in its  
4 place. The court on motion of a defendant or on its own  
5 motion shall order the entry of a judgment of acquittal of  
6 one or more offenses charged in the indictment, information  
7 or complaint after the evidence on either side is closed if  
8 the evidence is insufficient to sustain a conviction of such  
9 offense or offenses. If a defendant's motion for judgment of  
10 acquittal at the close of the evidence offered by the  
11 government is not granted, the defendant may offer evidence  
12 without having reserved the right.

13 100.20. If a motion for judgment of acquittal is made  
14 at the close of all the evidence, the court may reserve  
15 decision on the motion, submit the case to the jury and decide  
16 the motion either before the jury returns a verdict or  
17 after it returns a verdict of guilty or is discharged without  
18 having returned a verdict.

19 100.30. If a jury returns a verdict of guilty or is  
20 discharged without having returned a verdict, a motion for  
21 judgment of acquittal may be made or renewed within seven  
22 days after the jury is discharged or within such further time  
23 as the court may fix during the seven-day period. If a  
24 verdict of guilty is returned the court may on such motion  
25 set aside the verdict and enter judgment of acquittal. If  
26 no verdict is returned the court may ~~enter~~ judgment of  
27 acquittal. It shall not be necessary to the making of such  
28 a motion that a similar motion has been made prior to the  
29 submission of the case to the jury.

30 CHAPTER 105. CONDUCT OF JURY AFTER SUBMISSION

31 OF CASE: VERDICT OR FINDING

32 105.10. After receiving the instructions from the court,  
33 the jury shall retire for deliberation and an officer shall  
34 be sworn to keep them together for deliberation in some  
35 private and convenient place, and, during such deliberation

1 not to permit any person to speak to or communicate with them,  
2 nor to do so himself, unless by order of the court, or to ask  
3 them whether they have agreed upon a verdict, and to return  
4 them into court when they have so agreed, or when ordered  
5 by the court. The court shall fix the time and place for  
6 deliberation. The jurors shall not deliberate on the case  
7 except under such circumstances. If the jurors are permitted  
8 by the court to separate, the court shall properly admonish  
9 them. When the jury is composed of both men and women and  
10 the jurors are not permitted by the court to separate, in  
11 the event that it shall become necessary to retire for the  
12 night, the women must be kept in a room or rooms separate and  
13 apart from the men.

14 105.14. Upon retiring for deliberation, the jury may  
15 take with them all papers (except depositions) which have  
16 been received as evidence in the case, or copies of such  
17 public records or private documents given in evidence as ought  
18 not, in the opinion of the court, to be taken from the person  
19 having them in possession. They may also take with them the  
20 instructions given by the court and notes of the testimony or  
21 other proceedings on the trial which they have personally taken  
22 during the course of the trial. The court shall provide for  
23 the custody and safekeeping of such items.

24 105.18. After the jury has retired for deliberation,  
25 if there is any disagreement between them as to the testimony,  
26 or if they desire to be informed on any point of law  
27 arising in the case, they may require the officer to conduct  
28 them into court. Upon being brought into court, the information  
29 required shall be given in the presence of, or after notice  
30 to, the prosecuting attorney, and the defendant or his counsel,  
31 or after they have been called and after a reasonable time  
32 have failed to appear.

33 105.22. (a) The jury cannot be discharged after the  
34 cause is submitted to them until they have agreed upon their

1 verdict and rendered it in open court, except:

2 (1) By consent of both parties, entered upon the minutes;

3 (2) At the expiration of such time as the court may deem  
4 proper, if it satisfactorily appears that there is no  
5 reasonable probability that the jury can agree; or

6 (3) If one of the jurors becomes ill, or by any other  
7 accident or cause, the jury is prevented from continuing its  
8 deliberations.

9 (b) In any case, where a jury is discharged pursuant to  
10 subsection (a), the cause may be tried again.

11 105.24. (a) Before the jury retires for deliberation,  
12 the court may give an instruction which informs the jury:

13 (1) that in order to return a verdict, each juror must  
14 agree thereto;

15 (2) that jurors have a duty to consult with one another  
16 and to deliberate with a view to reaching an agreement, if it  
17 can be done without violence to individual judgment;

18 (3) that each juror must decide the case for himself, but  
19 only after an impartial consideration of the evidence with his  
20 fellow jurors;

21 (4) that in the course of deliberations, a juror should  
22 not hesitate to reexamine his own views and change his opinion  
23 if convinced it is erroneous; and

24 (5) that no juror should surrender his honest conviction  
25 as to the weight or effect of the evidence solely because  
26 of the opinion of his fellow jurors, or for the mere purpose of  
27 returning a verdict.

28 (b) If it appears to the court that the jury has been  
29 unable to agree, the court may require the jury to continue  
30 their deliberations and may give or repeat an instruction  
31 as provided in subsection (a). The court shall not require  
32 or threaten to require the jury to deliberate for an  
33 unreasonable length of time or for unreasonable intervals and  
34 shall not inquire as to the division of the jury.

1 (c) The jury may be discharged without having agreed  
2 upon a verdict if it appears that there is no reasonable  
3 probability of agreement.

4 105.26. While the jury is absent the court may adjourn  
5 from time to time, as to other business, but it shall be open  
6 for every purpose connected with the cause submitted to the  
7 jury until a verdict is rendered or the jury discharged.

8 105.30. (a) When the jury has agreed upon a verdict,  
9 they shall be conducted into court by the officer having them  
10 in charge. When they appear in court, they shall be asked  
11 by the judge, whether they have agreed upon their verdict,  
12 and if the foreman answers in the affirmative, they shall  
13 declare the same. The verdict shall be unanimous.

14 (b) When a verdict is returned, before it is recorded,  
15 the jury shall be polled at the request of any party or upon  
16 the court's own motion. If upon the poll there is not  
17 unanimous concurrence, the jury may be directed to retire for  
18 further deliberation or may be discharged pursuant to Section  
19 105.22.

20 105.34. (a) The jury shall render a general verdict  
21 except when all parties stipulate in writing with the approval  
22 of the court to the return of a special verdict.

23 (b) A general verdict upon a plea of not guilty is either  
24 "guilty" or "not guilty." A general verdict upon a plea of  
25 not guilty by reason of mental illness, disease or defect is  
26 either "guilty" or "not guilty by reason of mental illness,  
27 disease or defect."

28 (c) A special verdict is that by which the jury finds  
29 the facts only, leaving the judgment to the court. It shall  
30 present the conclusions of fact as established by the evidence,  
31 and not the evidence to prove them, and these conclusions of  
32 fact shall be so presented that nothing remains to the court  
33 but to draw conclusions of the law upon them. The special  
34 verdict shall be written but need not be in any particular form

1 provided that it presents intelligibly the facts found by the  
2 jury. The special verdict shall be read to the jury and  
3 agreed to by them, before they are discharged.

4 105.38. The court shall give judgment upon the special  
5 verdict as the facts prove or fail to prove the defendant  
6 guilty of the offense charged in the indictment, information  
7 or complaint or of any other offense of which he could be  
8 convicted under that indictment, information or complaint.

9 105.42. If the jury does not, in a special verdict,  
10 pronounce affirmatively or negatively on the facts necessary  
11 to enable the court to give judgment, the court shall  
12 direct the jury to retire and return another special verdict.  
13 The court may explain to the jury the defect or insufficiency  
14 in the special verdict returned, and the form which the  
15 special verdict to be returned must take.

16 105.46. Whenever the fact of a previous conviction of  
17 another offense is charged in an indictment, information or  
18 complaint, and the defendant is found guilty of the offense with  
19 which he is charged, the court shall, unless the answer of the  
20 defendant admits such previous conviction, find whether or not  
21 he has suffered such previous conviction. If more than one  
22 previous conviction is charged a separate finding must be made  
23 as to each.

24 105.54. When a defendant is charged with a crime which  
25 is distinguishable by degrees, the jury shall, upon a finding  
26 of guilt, also find the degree of the crime of which the  
27 defendant is guilty. If the jury agrees upon the guilt of  
28 the defendant but cannot agree upon the degree, it shall  
29 render that verdict, and the defendant shall be deemed guilty  
30 of the lowest degree of the crime charged. If the jury agrees  
31 that the defendant is not guilty of the higher degree but cannot  
32 agree as to the lower, it shall render a verdict of not guilty  
33 of the higher degree and the defendant may again be tried only  
34 for the lower degree of the crime upon which the jury disagreed.



1        105.53. (a) The jury, or the judge if a jury trial is  
2 waived, may find the defendant guilty of any offense, the  
3 commission of which is included in that with which he is  
4 charged.

5        (b) An offense is included under subsection (a) when:

6        (1) it is established by proof of the same or less than  
7 all the facts required to establish the commission of the  
8 offense charged;

9        (2) It consists of an attempt or solicitation to commit  
10 the offense charged or to commit an offense otherwise  
11 included therein; or

12        (3) it differs from the offense charged only in the  
13 respect that a less serious injury or risk of injury to the  
14 same person, property or public interest or a lesser kind of  
15 culpability suffices to establish its commission.

16        105.62. (a) On a charge against two or more defendants  
17 jointly, if the jury cannot agree upon a verdict as to all,  
18 they may render a verdict as to the defendant in regard to  
19 whom they do agree, on which a judgment shall be entered  
20 accordingly, and the defendant as to whom they do not agree  
21 may be tried again.

22        (b) Where two or more offenses are charged in any  
23 indictment, information or complaint, if the jury cannot agree  
24 upon a verdict as to all of them, they may render a verdict as  
25 to the charge upon which they do agree, and the charge on  
26 which they do not agree may be tried again.

27        105.66. (a) When there is a verdict of conviction, in  
28 which it appears to the court that the jury has mistaken the  
29 law, the court may explain the reason for that opinion and  
30 direct the jury to reconsider its verdict, and if, after  
31 the reconsideration, they return the same verdict, it must  
32 be entered; but when there is a verdict of acquittal, the  
33 court cannot require the jury to reconsider it.

34        (b) If the jury renders a verdict which is neither

1 general nor special, the court may direct the jury to  
2 reconsider it, and it cannot be recorded until it is rendered  
3 in some form from which it can be clearly understood that the  
4 intent of the jury is either to render a general verdict or  
5 to find the facts specially and to leave the judgment to the  
6 court.

7 105.70. If the jury persist in finding an informal  
8 verdict, from which, however, it can be clearly understood that  
9 their intention is to find in favor of the defendant upon the  
10 issue, it must be entered in the terms in which it is found,  
11 and the court must give judgment of acquittal. But no  
12 judgment of conviction can be given unless the jury expressly  
13 find against the defendant upon the issue, or judgment is  
14 given against him on a special verdict.

15 105.74. When the verdict given is such as the court  
16 may receive, the clerk shall record it in full upon the minutes.

17 105.78. In a case tried without a jury the court shall  
18 make a general finding and shall in addition on request find  
19 the facts specially. Such findings shall be entered upon the  
20 minutes. If an opinion or memorandum of decision is filed, it  
21 will be sufficient if the findings of fact appear therein.

## 22 CHAPTER 110. NEW TRIAL

23 110.10. A new trial is a reexamination of the issue in  
24 the same court, after a finding by the court has been given,  
25 or before another jury, after a verdict has been given.

26 110.20. The granting of a new trial places the parties  
27 in the same position as if no trial had been had. All the  
28 testimony must be produced anew, and the former verdict or  
29 finding cannot be used or referred to, either in evidence or  
30 in argument or be pleaded in bar of any conviction which might  
31 have been had under the indictment, information or complaint.

32 110.30. (a) The court on motion of a defendant may grant  
33 a new trial to him if required in the interest of justice.

34 (b) If the trial was by the court without a jury the

1 court on motion of a defendant for a new trial may vacate the  
2 judgment if entered, take additional testimony and direct the  
3 entry of a new judgment.

4 (c) A motion for a new trial based on the ground of newly  
5 discovered evidence may be made only before or within two years  
6 after final judgment, but if an appeal is pending the court  
7 may grant the motion only on a remand of the case.

8 (d) A motion for a new trial based on any ground other  
9 than the ground of newly discovered evidence shall be made  
10 within seven days after verdict or finding of guilty or  
11 within such further time as the court may fix during the  
12 seven-day period.

#### 13 CHAPTER 115. ARREST OF JUDGMENT

14 115.10. (a) The court on motion of a defendant shall  
15 arrest judgment if the indictment, information or complaint  
16 does not charge an offense or if the court was without jurisdic-  
17 tion of the offense charged.

18 (b) The motion in arrest of judgment shall be made and  
19 determined before judgment is pronounced and within seven days,  
20 after verdict or finding of guilty, or after plea of guilty  
21 or nolo contendere, or within such further time as the court  
22 may fix during the seven-day period. When determined the  
23 order shall be immediately entered by the clerk in the minutes.

24 115.20. The effect of an order arresting the judgment  
25 is to place the defendant in the same situation in which he  
26 was before the indictment was found or information or complaint  
27 was filed.

28 115.30. If, from the evidence on the trial, there is  
29 reason to believe the defendant guilty, and a new indictment,  
30 information or complaint can be framed upon which he may be  
31 convicted, the court may order him to be held in custody or  
32 that prior conditions for his release be continued for a  
33 specified time pending the filing of a new indictment,  
34 information or complaint. If the evidence shows him guilty of

1 If the defendant so requests, the clerk of the court shall  
2 prepare and file forthwith a notice of appeal on behalf of the  
3 defendant.

4 120.34. After a judgment of conviction has been entered  
5 pursuant to Section 120.18, the clerk shall deliver a certified  
6 copy of such judgment to the officer whose duty it is to  
7 execute such judgment, and no other warrant or authority is  
8 necessary to justify or require its execution.

9 120.38. If the judgment requires either partial or  
10 total confinement, the defendant shall forthwith be committed to  
11 the custody of the Director of Corrections or his authorized  
12 representative and by him detained until the judgment is  
13 complied with.

14 120.42. A motion to withdraw a plea of guilty or nolo  
15 contendere may be made only before sentence is imposed or  
16 imposition of sentence is suspended; but to correct manifest  
17 injustice the court after sentence may set aside the judgment  
18 of conviction and permit the defendant to withdraw his plea.

19 120.46. The court may correct an illegal sentence at  
20 any time and may correct a sentence imposed in an illegal  
21 manner within the time provided herein for the reduction of  
22 sentence. The court may reduce a sentence within 120 days  
23 after the sentence is imposed, or within 120 days after receipt  
24 by the court of a mandate issued upon affirmance of the  
25 judgment or dismissal of the appeal, or within 120 days after  
26 entry of any order or judgment of the Supreme Court of Guam,  
27 having the effect of upholding a judgment of conviction.

28 120.50. Clerical mistakes in judgments, orders or other  
29 parts of the record and errors in the record arising from  
30 oversight or omission may be corrected by the court at any  
31 time and after such notice, if any, as the court orders.

CHAPTER 130. APPEALS

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130.10. An appeal may be taken in any criminal action in which the offense charged is not a violation.

130.15. An appeal may be taken by the defendant:

(a) From a final judgment of conviction. The commitment of a defendant by reason of mental illness, disease or defect shall be deemed to be a final judgment of conviction within the meaning of this section.

(b) From an order denying a motion for a new trial.

(c) From any order made after judgment, affecting the substantial rights of the defendant.

(d) Pursuant to Section 40.30.

130.20. (a) An appeal may be taken by the government from any of the following:

(1) An order granting a new trial.

(2) An order arresting judgment.

(3) An order made after judgment, affecting the substantial rights of the government.

(4) An order modifying the verdict or finding by reducing the degree of the offense or the punishment imposed.

(5) An order or judgment dismissing or otherwise terminating the action before the defendant has been placed in jeopardy or where the defendant has waived jeopardy.

(b) When an appeal is taken pursuant to paragraph (5) of subsection (a), the prosecuting attorney shall be prohibited from refiling the action which was appealed.

130.25. An appeal taken by the government in no case stays or affects the operation of a judgment in favor of the defendant, until judgment is reversed.

130.30. (a) A sentence of imprisonment shall be stayed if an appeal is taken and the defendant is released pursuant to Section 40.85. If not stayed the court may recommend to the Director of Corrections that the defendant be retained at a place of confinement within the Territory for the period reasonably necessary to permit the defendant to appear in the

1 preparation of any appeal.

2 (b) If an appeal is taken, a sentence to pay a fine may  
3 be stayed by the court upon such terms as the court deems proper.  
4 The court may require the defendant pending appeal to deposit  
5 the whole or part of the fine in the registry of the court, or  
6 to give bond for the payment thereof, or to submit to an  
7 examination of assets, and it may make any appropriate order  
8 to restrain the defendant from dissipating his assets.

9 (c) An order placing the defendant on probation may be  
10 stayed if an appeal is taken. If not stayed, the court shall  
11 specify when the term of probation shall commence. If the  
12 order is stayed the court shall fix the terms of the stay.

13 130.35. (a) An appeal from the superior court shall  
14 be taken by filing a notice of appeal with the clerk of the  
15 superior court within the time allowed by Section 130.40.  
16 Failure of an appellant to take any step other than the timely  
17 filing of a notice of appeal does not affect the validity of  
18 the appeal, but is ground only for such action as the  
19 appellate court deems appropriate, which may include dismissal  
20 of the appeal.

21 (b) If two or more persons are entitled to appeal  
22 from a judgment or order of the superior court and their  
23 interests are such as to make joinder practicable, they may  
24 file a joint notice of appeal, or may join in appeal after  
25 filing separate timely notices of appeal, and they may  
26 thereafter proceed on appeal as a single appellant. Appeals  
27 may be consolidated by order of the appellate court upon  
28 its own motion or upon motion of a party, or by  
29 stipulation of the parties to the several appeals.

30 (c) The notice of appeal shall specify the party  
31 or parties taking the appeal and shall designate the judgment,  
32 order or part thereof appealed from.

33 (d) The clerk of the superior court shall serve  
34 notice of the filing of a notice of appeal by mailing a

1 copy thereof to counsel of record of each party other  
2 than the appellant, or, if a party is not represented by  
3 counsel, to the party at his last known address;  
4 the clerk shall also mail a copy of the notice of appeal  
5 and of the docket entries to the clerk of the appellate  
6 court. When an appeal is taken by a defendant, the clerk shall  
7 also serve a copy of the notice of appeal upon him, either  
8 by personal service or by mail addressed to him. The clerk  
9 shall note on each copy served the date on which the notice  
10 of appeal was filed. Failure of the clerk to serve notice  
11 shall not affect the validity of the appeal. The clerk shall  
12 note in the docket the names of the parties to whom he mails  
13 copies, with the date of mailing.

14 130.40. The notice of appeal by a defendant shall be  
15 filed in the superior court within 10 days after the entry  
16 of the judgment or order appealed from. A notice of appeal  
17 filed after the announcement of a decision, sentence or order  
18 but before entry of the judgment or order shall be treated  
19 as filed after such entry and on the day thereof. If a timely  
20 motion in arrest of judgment or for a new trial on any  
21 ground other than newly discovered evidence has been made,  
22 an appeal from a judgment of conviction may be taken within  
23 10 days after the entry of an order denying the motion. A  
24 motion for a new trial based on the ground of newly discovered  
25 evidence will similarly extend the time for appeal from a  
26 judgment of conviction if the motion is made before or within  
27 10 days after entry of the judgment. The notice of appeal  
28 by the government shall be filed in the superior court within  
29 30 days after the entry of the judgment or order appealed  
30 from. A judgment or order is entered within the meaning of  
31 this section when it is entered in the criminal docket.  
32 Upon a showing of excusable neglect the superior court may,  
33 before or after the time has expired, with or without motion  
34 and notice extend the time for filing a notice of appeal for

1 a period not to exceed 30 days from the expiration of the  
2 time otherwise prescribed by this section.

3 130.45. The record on appeal shall consist of the  
4 original papers in the trial court including any transcript  
5 of the testimony and shall be transmitted by the clerk of the  
6 trial court to the clerk of the appellate court within the time  
7 prescribed by appellate court rule.

8 130.50. (a) Any error, defect, irregularity or variance  
9 which does not affect substantial rights shall be disregarded.

10 (b) Plain errors or defects affecting substantial rights  
11 may be noticed although they were not brought to the attention  
12 of the court.

13 130.55. Exceptions to rulings or orders of the court  
14 are unnecessary and for all purposes for which an exception  
15 has heretofore been necessary it is sufficient that a party  
16 at the time the ruling or order of the court is made or  
17 sought, makes known to the court the action which he desires  
18 the court to take or his objection to the action of the  
19 court and the grounds therefor; but if a party has no  
20 opportunity to object to a ruling or order, the absence of  
21 an objection does not thereafter prejudice him.

22 130.60. The appellate court may reverse, affirm, or  
23 modify a judgment or order appealed from, or reduce the degree  
24 of the offense or the punishment imposed, and may set aside,  
25 affirm, or modify any or all of the proceedings subsequent to,  
26 or dependent upon, such judgment or order, and may, if proper,  
27 order a new trial and may, if proper, remand the cause to the  
28 trial court for such further proceedings as may be just under  
29 the circumstances.

30 130.65. If a judgment against the defendant is reversed  
31 without ordering a new trial, the appellate court shall, if  
32 he is in custody, direct him to be discharged therefrom;  
33 or if on bail, that his bail be exonerated; or if money was  
34 deposited instead of bail, that it be refunded to the defendant  
35 or to the person found by the court to have deposited the money



1 on behalf of the defendant. If a judgment against the  
2 defendant is reversed without ordering a new trial and  
3 defendant has theretofore paid a fine in the case, reversal  
4 shall also be deemed an order that the fine be returned to  
5 defendant.

6 130.70. If a judgment against the defendant is affirmed,  
7 the original judgment shall be enforced.

8 130.75. When the judgment of the appellate court is  
9 given, it must be entered on the record, and a certified  
10 copy of the entry, with a copy of the opinion of the court  
11 attached thereto, forthwith remitted to the clerk of the court  
12 from which the appeal was taken.

13 130.80. After the certificate of the judgment has been  
14 remitted to the court below, the appellate court has no  
15 further jurisdiction of the appeal or of the proceedings thereon,  
16 and all orders necessary to carry the judgment into effect shall  
17 be made by the court to which the certificate is remitted.

18 CHAPTER 135. THE WRIT OF HABEAS CORPUS

19 135.10. Every person unlawfully imprisoned or restrained  
20 of his liberty, under any pretense whatever, may prosecute a  
21 writ of habeas corpus, to inquire into the cause of such  
22 imprisonment or restraint.

23 135.12. Application for the writ is made by petition to the  
24 Superior Court and signed either by the party for whose relief  
25 it is intended, or by some person on his behalf, and shall  
26 specify:

27 (a) That the person in whose behalf the writ is applied for  
28 is imprisoned or restrained of his liberty, the officer or  
29 person by whom he is so confined or restrained, and the place  
30 where, naming all the parties, if they are known, or describing  
31 them, if they are not known;

32 (b) If the imprisonment is alleged to be illegal, the  
33 petition shall also state in what the alleged illegality  
34 consists;

1 (c) The petition shall be verified by the oath or  
2 affirmation of the party making the application.

3 135.14 Every application for a writ of habeas corpus  
4 shall be verified, and shall state whether any prior  
5 application has been made for a writ in regard to the  
6 same detention or restraint complained of in the application,  
7 and if any such prior application has been made the latter  
8 application shall contain a brief statement of all proceedings  
9 had therein, to and including the final order made therein,  
10 on appeal or otherwise.

11 Whenever the person applying for a writ of habeas corpus is  
12 held in custody or restraint by any officer of this Territory or  
13 by any peace officer of this Territory, a copy of the  
14 application for such writ shall in all cases be served upon  
15 the Attorney General at least 24 hours before the time at which  
16 said writ is made returnable and no application for such writ  
17 can be heard without proof of such service in cases where such  
18 service is required.

19 135.16. Any judge authorized to grant the writ, to whom  
20 a petition therefor is presented, shall, if it appears that the  
21 writ ought to issue, grant the same without delay; and if the  
22 person by or upon whose behalf the application for the writ is  
23 made be detained upon a criminal charge, may release him  
24 pursuant to Chapter 40 (commencing with Section 40.10), pending  
25 the determination of the proceeding.

26 135.18. The writ shall be directed to the person having  
27 custody of or restraining the person on whose behalf the  
28 application is made, and shall command him to have the body of  
29 such person before the court, at the time and place therein  
30 specified.

31 135.20. If the writ is directed to the Director of Public  
32 Safety or other ministerial officer of the court out of which  
33 it issues, it shall be delivered by the clerk to such officer

1 without delay, as other writs are delivered for service. If  
2 it is directed to any other person, it shall be delivered to  
3 the Director of Public Safety who shall serve it upon such  
4 person by delivering a copy to him without delay. The Director  
5 shall then make his return on the original to the court of  
6 issuance. If the person to whom the writ is directed cannot  
7 be found, or refuses admittance to the officer or person  
8 serving or delivering such writ, it may be served or delivered  
9 by leaving it at the residence of the person to whom it is  
10 directed or by affixing it to some conspicuous place on the  
11 outside either of his dwelling house or of the place where the  
12 party is confined or under restraint.

13 135.22. If the person to whom the writ is directed refuses,  
14 after service, to obey the same, the court or judge, upon  
15 affidavit, shall issue an attachment against such person,  
16 directed to the Director of Public Safety, commanding him  
17 forthwith to apprehend such person and bring him immediately  
18 before such court or judge; and upon being so brought, he  
19 must be committed to the jail until he makes due return to  
20 such writ, or is otherwise legally discharged.

21 135.24. The person upon whom the writ is served shall  
22 state in his return, plainly and unequivocally:

23 (a) Whether he has or has not the party in his custody, or  
24 under his power or restraint;

25 (b) If he has the party in his custody or power, or under  
26 his restraint, he shall state the authority and cause of such  
27 imprisonment or restraint;

28 (c) If the party is detained by virtue of any writ,  
29 warrant, or other written authority, a copy thereof shall be  
30 annexed to the return, and the original produced and  
31 exhibited to the court on the hearing of such return;

32 (d) If the person upon whom the writ is served had the  
33 party in his power or custody, or under his restraint, at any  
34 time prior or subsequent to the date of the writ of habeas

1 corpus, but has transferred such custody or restraint to  
2 another, the return shall state particularly to whom, at what  
3 time and place, for what cause, and by what authority such  
4 transfer took place;

5 (e) The return shall be signed by the person making the  
6 same, and except when such person is a sworn public officer,  
7 and makes such return in his official capacity, it shall be  
8 verified by his oath.

9 135.26. Except as provided in Section 135.28, the person  
10 to whom the writ is directed, if it is served, shall bring the  
11 body of the party in his custody or under his restraint,  
12 according to the command of the writ.

13 135.28. When, from sickness or infirmity of the person  
14 directed to be produced, he cannot, without danger, be brought  
15 before the court, the person in whose custody or power  
16 he is may state that fact in his return to the writ, verifying  
17 the same by affidavit. If the court is satisfied of the  
18 truth of such return, and the return to the writ is otherwise  
19 sufficient, the court may proceed to decide on such return,  
20 and to dispose of the matter as if such party had been  
21 produced on the writ, or the hearing thereof may be adjourned  
22 until such party can be produced.

23 135.30. The court before whom the writ is returned shall,  
24 immediately after the return, proceed to hear and examine  
25 the return, and such other matters as may be properly  
26 submitted to his hearing and consideration.

27 135.32. The party brought before the court, on the  
28 return of the writ, may deny or controvert any of the material  
29 facts or matters set forth in the return, or except to the  
30 sufficiency thereof, or allege any fact to show either that  
31 his imprisonment or detention is unlawful, or that he is  
32 entitled to his discharge. The court shall thereupon proceed  
33 in a summary way to hear such proof as may be produced against  
34 such imprisonment or detention, or in favor of the same, and

1 to dispose of such party as the justice of the case may  
2 require, and have full power and authority to require and  
3 compel the attendance of witnesses by process of subpoena and  
4 attachment, and to do and perform all other acts and things  
5 necessary to a full and fair hearing and determination of  
6 the case.

7 135.34. If no legal cause is shown for the imprisonment  
8 or restraint, or for the continuation thereof, the court  
9 shall discharge the party from the custody or restraint under  
10 which he is held.

11 135.36. The court, if the time during which the party may  
12 be legally detained in custody has not expired, shall remand  
13 such party, if it appears that he is detained in custody:

14 (a) By virtue of process issued by any court or judge of  
15 the United States, in a case where such court or judge has  
16 exclusive jurisdiction; or,

17 (b) By virtue of the final judgment or decree of any  
18 competent court of criminal jurisdiction, or of any process  
19 issued upon such judgment or decree.

20 135.38. If it appears on the return of the writ that the  
21 prisoner is in custody by virtue of process from any court of  
22 this Territory, or judge or officer thereof, such prisoner may  
23 be discharged in any of the following cases, subject to the  
24 restrictions of 135.36:

25 (a) When the jurisdiction of such court or officer has  
26 been exceeded;

27 (b) When the imprisonment was at ~~first~~ lawful, yet by  
28 some act, omission, or event which has taken place afterwards,  
29 the party has become entitled to a discharge;

30 (c) When the process is defective in some matter of  
31 substance required by law, rendering such process void;

32 (d) When the process, though proper in form, has been  
33 issued in a case not allowed by law;

34 (e) When the person having the custody of the prisoner is  
35 not the person allowed by law to detain him;

1 (f) Where the process is not authorized by any order,  
2 judgment, or decree of any court, nor by any provision of law;

3 (g) Where a party has been committed on a criminal charge  
4 without reasonable or probable cause.

5 135.40. If any person is committed to prison, or is in  
6 custody of any officer on any criminal charge, by virtue of any  
7 warrant of commitment of a judge, such person shall not be  
8 discharged on the ground of any mere defect of form in the  
9 warrant of commitment.

10 135.42. If it appears to the court, by affidavit or  
11 otherwise, or upon the inspection of the process or warrant  
12 of commitment and such other papers in the proceedings as may  
13 be shown to the court, that the party is guilty of a criminal  
14 offense, or ought not to be discharged, the court, although  
15 the charge is defective or unsubstantially set forth in such  
16 process or warrant of commitment, shall cause the complainant  
17 or other necessary witnesses to be subpoenaed to attend at such  
18 time as ordered, to testify before the court; and upon the  
19 examination he may discharge the party, release him pursuant  
20 to Chapter 40 (commencing with Section 40.10) or recommit him  
21 to custody as may be just and legal.

22 135.44. When a person is imprisoned or detained in  
23 custody on any criminal charge, for want of a judicial  
24 determination regarding his release pursuant to Chapter 40  
25 (commencing with Section 40.10), such person is entitled to a  
26 writ of habeas corpus for the purpose of obtaining such  
27 determination, upon averring that fact in his petition,  
28 without alleging that he is otherwise illegally confined.

29 135.46. Any judge before whom a person is brought on a  
30 writ of habeas corpus pursuant to Section 135.44 may order the  
31 release of such person in the manner and subject to the  
32 conditions provided by Chapter 40 (commencing with Section  
33 40.10).

1 135.48. If a party brought before the court on the return  
2 of the writ is not entitled to discharge or release,  
3 the court shall remand him to custody or place him under the  
4 restraint from which he was taken, if the person under whose  
5 custody or restraint he was is legally entitled thereto.

6 135.50. In cases where any party is held under illegal  
7 restraint or custody, but any other person is entitled to the  
8 restraint or custody of such party, the court may order  
9 such party to be committed to the restraint or custody of such  
10 person as by law entitled thereto.

11 135.52. Until judgment is given on the return, the court  
12 before whom any party may be brought on such writ, may  
13 commit him to the custody of the Director of Public Safety, or  
14 place him in such care or under such custody as his age or  
15 circumstances may require.

16 135.54. No writ of habeas corpus can be disobeyed for  
17 defect of form, if it sufficiently appear therefrom in whose  
18 custody or under whose restraint the party imprisoned or  
19 restrained is, the officer or person detaining him, and the  
20 court before whom he is to be brought.

21 135.56. No person who has been discharged by the order of  
22 the court upon habeas corpus can be again imprisoned,  
23 restrained, or kept in custody for the same cause, except in  
24 the following cases:

25 (a) If he has been discharged from custody on a criminal  
26 charge, and is afterwards committed for the same offense, by  
27 legal order or process;

28 (b) If, after a discharge for defect of proof, or for any  
29 defect of the process, warrant, or commitment in a criminal  
30 case, the prisoner is again arrested on sufficient proof and  
31 committed by legal process for the same offense.

32 135.58. When it appears to any court, authorized by law  
33 to issue the writ of habeas corpus, that anyone is illegally  
34 held in custody, confinement, or restraint, and that there is

1 reason to believe that such person will be carried out of the  
2 jurisdiction of the court before whom the application is made,  
3 or will suffer some irreparable injury before compliance with  
4 the writ of habeas corpus can be enforced, such court may cause  
5 a warrant to be issued, reciting the facts, and directed to  
6 the Director of Public Safety, commanding such officer to take  
7 such person thus held in custody, confinement, or restraint,  
8 and forthwith bring him before such court, to be dealt with  
9 according to law.

10 135.60. The court may also insert in a warrant issued  
11 pursuant to Section 135.58 a command for the apprehension of  
12 the person charged with such illegal detention and restraint.

13 135.62. The officer to whom a warrant issued pursuant to  
14 Section 135.58 is delivered shall execute it by bringing the  
15 person therein named before the court who directed the  
16 issuing of such warrant.

17 135.64. The person alleged to have the party under illegal  
18 confinement or restraint may make return to a warrant issued  
19 pursuant to Section 135.58 as in case of a writ of habeas  
20 corpus, and the same may be denied, and like allegations, proofs,  
21 and trial may thereupon be had as upon a return to a writ of  
22 habeas corpus.

23 135.66. If the party is held under illegal restraint or  
24 custody, he shall be discharged; and if not, he shall be  
25 restored to the care or custody of the person entitled thereto.

26 135.68. Any writ or process authorized by this chapter  
27 may be issued and served on any day or at any time.

28 135.70. All writs, warrants, process, and subpoenas  
29 authorized by the provisions of this chapter shall be issued by  
30 the clerk of the court, and, except subpoenas, shall be sealed  
31 with the seal of the court, and served and returned forthwith,  
32 unless the court shall specify a particular time for any return.

33 135.74. An appeal may be taken to the Guam Supreme Court  
34 by the Attorney General from a final order of the Superior Court



1 made upon the return of a writ of habeas corpus discharging  
2 a defendant after his conviction, in all criminal cases prose-  
3 cuted in a court of record. If an appeal is taken, the  
4 defendant shall not be discharged from custody pending a final  
5 decision upon the appeal and he shall be retaken into custody  
6 if he has been discharged, provided, however, that the Guam  
7 Supreme Court may order his release pursuant to Chapter 40  
8 (commencing with Section 40.10).

9 CHAPTER 140. EXTRADITION PROCEEDINGS

10 140.10. This chapter may be cited and referred to as  
11 the Uniform Criminal Extradition Act.

12 140.12. As used in this chapter: (a) "Governor" means  
13 any person performing the functions of Governor of this  
14 Territory by authority of law;

15 (b) "Executive authority" means the Governor, and any  
16 person performing the functions of Governor in a state other  
17 than this Territory;

18 (c) "State" includes any state, district, territory,  
19 possession, organized or unorganized, of the United States of  
20 America; including the Trust Territories of the Pacific Islands;

21 (d) "Laws of the United States" means: (1) Those laws  
22 of the United States passed by Congress pursuant to authority  
23 given to Congress by the Constitution of the United States  
24 where the laws of the United States are controlling, and  
25 (2) those laws of the United States not controlling the several  
26 states of the United States but which are not in conflict  
27 with the provisions of this chapter.

28 140.14. Subject to the provisions of this chapter, the  
29 Constitution of the United States and the laws of the United  
30 States, it is the duty of the Governor to have arrested and  
31 delivered up to the executive authority of any other state of  
32 the United States any person charged in that state with  
33 treason, felony, or other offense, who has fled from justice  
34 and is found in this Territory.

1        140.16. Except as otherwise provided by Sections 140.22  
2 and 140.24, no demand for the extradition of a person charged  
3 with an offense in another state shall be recognized by the  
4 Governor unless it is in writing and alleges that the accused  
5 was present in the demanding state at the time of the commission  
6 of the alleged offense, and that thereafter he fled from the  
7 state. Such demand shall be accompanied by a copy of an indict-  
8 ment found or by information supported by affidavit in the state  
9 having jurisdiction of the crime, or by a copy of an affidavit  
10 made before a magistrate there, together with a copy of any  
11 warrant which was issued thereon, or by a copy of a judgment of  
12 conviction or of a sentence imposed in execution thereof,  
13 together with a statement by the executive authority of the  
14 demanding state that the person claimed has escaped from  
15 confinement or has broken the terms of his bail, probation or  
16 parole. The indictment, information or affidavit made before  
17 the magistrate must substantially charge the person demanded  
18 with having committed an offense under the law of that state,  
19 and the copy of the indictment, information, affidavit,  
20 judgment of conviction or sentence must be authenticated by  
21 the executive authority making the demand.

22        140.18. When a demand is made pursuant to Section 140.16  
23 upon the Governor by the executive authority of another state  
24 for surrender of a person charged with an offense, the Governor  
25 may call upon the Attorney General to investigate or assist in  
26 investigating the demand, and to report to him the situation  
27 and circumstances of the person so demanded, and whether he  
28 ought to be surrendered.

29        140.20. When it is desired to have returned to this  
30 Territory a person charged in the Territory with an offense  
31 and such person is imprisoned or is held under criminal  
32 proceedings then pending against him in another state, the  
33 Governor may agree with the executive authority of such other  
34 state for the extradition of such person before the conclusion

1 of his term of sentence in such other state, upon condition  
2 that such person be returned to such other state at the expense  
3 of this Territory as soon as the prosecution in this Territory  
4 is terminated.

5 140.22. Notwithstanding the provisions of Section 140.16,  
6 the Governor may surrender, on demand of the executive authority  
7 of any other state, any person in this Territory who is charged  
8 in the manner provided in Section 140.16 with having violated  
9 the laws of the state whose executive authority is making the  
10 demand, even though such person left the demanding state  
11 involuntarily.

12 140.24. Notwithstanding the provisions of Section 140.16,  
13 the Governor may surrender, on demand of the executive  
14 authority of any other state, any person in this Territory  
15 charged in such other state in the manner provided in Section  
16 140.16 with committing an act in the Territory or in a third  
17 state, intentionally resulting in an offense in the state whose  
18 executive authority is making the demand, when the acts for  
19 which extradition is sought would be punishable by the laws  
20 of this Territory, if the consequences claimed to have resulted  
21 therefrom in the demanding state had taken effect in this  
22 Territory. The provisions of this chapter, not otherwise  
23 inconsistent, shall apply to such cases, even though  
24 the accused was not in that state at the time of the commission  
25 of the offense, and has not fled therefrom. However,  
26 the Governor may, in his discretion, make any such  
27 surrender conditional upon agreement by the executive  
28 authority of the demanding state, that the person so  
29 surrendered will be held to answer no criminal charges of any  
30 nature except those set forth in the requisition upon which  
31 such person is so surrendered, at least until such person has  
32 been given reasonable opportunity to return to this Territory  
33 after his acquittal, if he shall be acquitted, or if he shall  
34 be convicted, after he shall be released from confinement.

1        140.26. If the Governor decides that the demand should  
2 be complied with, he shall sign a warrant of arrest, which  
3 shall be sealed with the Great Seal of the Territory and be  
4 directed to any peace officer or other person whom he may  
5 think fit to entrust with the execution thereof. The warrant  
6 must substantially recite the facts necessary to the validity  
7 of its issuance.

8        140.28. Such warrant shall authorize the peace officer  
9 or other person to whom directed:

10        (a) to arrest the accused at any time and any place he  
11 may be found within this Territory;

12        (b) to command the aid of all peace officers or other  
13 persons in the execution of the warrant; and

14        (c) to deliver the accused, subject to the provisions of  
15 this chapter, to the duly authorized agent of the demanding  
16 state.

17        140.30. Every peace officer or other person empowered to  
18 make the arrest hereunder shall have the same authority, in  
19 arresting the accused to command assistance therein, as peace  
20 officers have by law in the execution of any criminal process  
21 directed to them, with like penalties against those who refuse  
22 their assistance.

23        140.32. No person arrested upon such warrant shall be  
24 delivered over to the agent whom the executive authority  
25 demanding him shall have appointed to receive him unless he is  
26 first taken forthwith before a judge of the Superior Court, who  
27 shall inform him of the demand made for his surrender and of  
28 the offense with which he is charged, and that he has the  
29 right to demand and procure legal counsel; and if the prisoner  
30 or his counsel shall state that he or they desire to test the  
31 legality of his arrest, the judge of such court shall fix  
32 a reasonable time to be allowed within which to apply for a  
33 writ of habeas corpus. When such writ is applied for, notice  
34 thereof, and of the time and place of hearing thereon, shall

1 be given to the Attorney General as provided in Section 135.14,  
2 and to the agent of the demanding state.

3 140.34. Any officer who shall deliver to the agent for  
4 extradition of the demanding state a person in his custody under  
5 the Governor's warrant, in disobedience of Section 140.32, shall  
6 be guilty of a misdemeanor. Any other willful violation of any  
7 provision of this chapter by any of the above named officers  
8 shall be deemed a misdemeanor.

9 140.36. (a) The officer or persons executing the  
10 Governor's warrant of arrest, or the agent of the demanding  
11 state to whom the prisoner may have been delivered may, when  
12 necessary, confine the prisoner in the Territory of Guam  
13 Penitentiary and the warden of the Penitentiary must receive  
14 and safely keep the prisoner until the officer or person  
15 having charge of him is ready to proceed on his route, such  
16 officer or person, however, being chargeable with the expense  
17 of keeping.

18 (b) The officer or agent of a demanding state to whom a  
19 prisoner may have been delivered following extradition pro-  
20 ceedings in another state, or to whom a prisoner may have been  
21 delivered after waiving extradition in such other state, and  
22 who is passing through this Territory with such a prisoner  
23 for the purpose of immediately returning such prisoner to the  
24 demanding state may, when necessary, confine the prisoner in  
25 the Territory of Guam Penitentiary and the warden of the  
26 Penitentiary must receive and safely keep the prisoner until  
27 the officer or agent having charge of him is ready to proceed  
28 on his route, such officer or agent, however, being chargeable  
29 with the expense of keeping, provided, however, that such  
30 officer or agent shall produce and show to the warden of the  
31 Penitentiary satisfactory written evidence of the fact that he  
32 is actually transporting such prisoner to the demanding state  
33 after a requisition by the executive authority of such  
34 demanding state or waiver thereof. Such prisoner shall not be  
35 entitled to demand a new requisition while in this Territory.

1        140.38. (a) Whenever any person within this Territory  
2 shall be charged on the oath of any credible person before  
3 any judge of the Superior Court of this Territory with the  
4 commission of any offense in any other state or, with having  
5 been convicted of an offense in that state and having escaped  
6 from confinement, or having broken the terms of his bail,  
7 probation or parole, or,

8        (b) whenever complaint shall have been made before any  
9 judge of the Superior Court in this Territory setting forth  
10 on the affidavit of any credible person in another state that  
11 an offense has been committed in such other state and that the  
12 accused has been charged in such other state with the commission  
13 of the offense, or with having been convicted of an offense in  
14 that state and having escaped from confinement or having  
15 broken the terms of his bail, probation or parole and is  
16 believed to be in this Territory, the judge shall issue a  
17 warrant directed to any peace officer directing him to  
18 apprehend the person named therein, wherever he may be found  
19 in this Territory, and to bring him before the same or any  
20 other judge or court who or which may be available in or  
21 convenient of access to the place where the arrest may be made,  
22 to answer the charge or complaint and affidavit. A certified  
23 copy of the sworn charge or complaint and affidavit upon which  
24 the warrant is issued shall be attached to such warrant.

25        140.40. The arrest of a person may be lawfully made also  
26 by any peace officer, without a warrant, upon reasonable  
27 information that the accused stands charged in the courts of a  
28 state with an offense punishable by death or imprisonment  
29 for a term exceeding one year; but when so arrested the  
30 accused must be taken before a judge of the Superior Court,  
31 with all practicable speed and complaint must be made against  
32 him under oath setting forth the grounds for the arrest as in  
33 Section 140.38, and, thereafter, his answers shall be heard  
34 as if he had been arrested on a warrant.

1        140.42. If from the examination before the judge, it  
2 appears that the person held is the person charged with having  
3 committed the offense alleged, the judge shall, by a  
4 warrant reciting the accusation, commit him to jail for such a  
5 time, not exceeding thirty days and specified in the warrant,  
6 as will enable the arrest of the accused to be made under a  
7 warrant of the Governor on a requisition of the executive  
8 authority of the state having jurisdiction of the offense;  
9 unless the accused is released as provided in Section 140.44,  
10 or until he shall be legally discharged.

11        140.44. Unless the offense with which the prisoner is  
12 charged is shown to be an offense punishable by death or life  
13 imprisonment under the laws of the state in which it was  
14 committed, the judge of the Superior Court may release the  
15 person arrested in the manner and subject to the conditions  
16 provided by Chapter 40 (commencing with Section 40.10) and  
17 subject to the further condition that he surrender, as required,  
18 to be arrested upon the warrant of the Governor.

19        140.46. If the accused is not arrested under warrant of  
20 the Governor by the expiration of the time specified in the  
21 warrant issued pursuant to Section 140.42, the judge may  
22 discharge him or may recommit him for a further period of sixty  
23 days, or for further periods not to exceed in the aggregate  
24 sixty days, or may release him, as provided in Section 140.44  
25 subject to his appearance and surrender within a period not to  
26 exceed sixty days.

27        140.48. If a prisoner is released pursuant to Section  
28 140.44 and fails to appear and surrender himself as required,  
29 the judge, by proper order, shall declare any bond forfeited  
30 and order his immediate arrest without warrant if he be within  
31 this Territory. Recovery may be had on such bond or under-  
32 taking in the name of the Territory as in the case of other  
33 bonds or undertakings given by the accused in criminal proceed-  
34 ings within the Territory.

1       140.50. If a criminal prosecution under the laws of  
2 the Territory has been instituted against any person sought  
3 to be extradited and is still pending, the Governor, in his  
4 discretion, may either surrender him on demand of the  
5 executive authority of another state or hold him until he has  
6 been tried and discharged or convicted and punished in the  
7 Territory.

8       140.52. The guilt or innocence of the accused as to the  
9 crime with which he is charged may not be inquired into by the  
10 Governor, or in any proceedings after the demand for  
11 extradition accompanied by a charge of an offense in legal  
12 form as above provided has been presented to the Governor,  
13 except as such inquiry may be involved in identifying the  
14 person held as the person charged with the offense.

15       140.54. The governor may recall his warrant of arrest  
16 or may issue another warrant whenever he deems proper.

17       140.56. Whenever the Governor shall demand the return of  
18 a person charged with an offense or with escaping from  
19 confinement or breaking the terms of his bail, probation or  
20 parole in the Territory from the executive authority of any  
21 other state, or from the chief justice or an associate  
22 justice of the Supreme Court of the District of Columbia  
23 authorized to receive such demand under the laws of the United  
24 States, he shall issue a warrant under the Great Seal of the  
25 Territory to some agent commanding him to receive the person  
26 so charged, if delivered to him, and convey him to the proper  
27 officer in this Territory.

28       140.58. (a) When the return to this Territory of a person  
29 charged with an offense in the Territory is required, the  
30 Attorney General shall present to the Governor his written  
31 application for a requisition for the return of the person  
32 charged. In such application there shall be stated the name  
33 of the person so charged, the offense charged against him,  
34 the approximate time, place and circumstances of its commission,



1 the state in which he is believed to be, including the location  
2 of the accused therein at the time the application is made.  
3 The application shall certify that, in the opinion of the  
4 Attorney General, the ends of justice require the arrest and  
5 return of the accused to the Territory for trial and that the  
6 proceeding is not instituted to enforce a private claim.

7 (b) When the return to the Territory is required of a  
8 person who has been convicted of a crime in the Territory  
9 and who has escaped from confinement or has violated the terms  
10 of his release, probation or parole, the Attorney General,  
11 the parole board, or the warden of the Territory of Guam  
12 Penitentiary, from which escape was made, shall present to the  
13 Governor a written application for a requisition for the  
14 return of such person. In such application there shall be  
15 stated the name of the person, the offense of which he was  
16 convicted, the circumstances of his escape from confinement  
17 or of the breach of the terms of his release, probation or  
18 parole, and the state in which he is believed to be, including  
19 the location of the person therein at the time the application  
20 is made.

21 (c) The application shall be verified by affidavit, shall  
22 be executed in duplicate and shall be accompanied by two  
23 certified copies of the indictment returned, or information and  
24 affidavit filed, or the complaint made to the judge, stating  
25 the offense with which the accused is charged, or of the  
26 judgment of conviction or of the sentence. The Attorney  
27 General, parole board or warden may also attach such further  
28 affidavits and other documents in duplicate as he shall deem  
29 proper to be submitted with such application. One copy of  
30 the application, with the action of the Governor indicated  
31 by endorsement thereon, and one of the certified copies of  
32 the indictment or complaint or information and affidavits, or  
33 of the judgment of conviction or the sentence shall be filed  
34 in the office of the Attorney General to remain of record

1 in that office. The other copies of all papers shall be  
2 forwarded with the Governor's requisition.

3 140.60. All expenses involved in extraditing a person  
4 from another state under the provisions of this chapter shall  
5 be borne by the government of the Territory, and in the event  
6 that the person, who was extradited from another state to the  
7 Territory, is acquitted of the offense specified in the  
8 extradition proceedings and no other offenses are pending or  
9 instigated in the Territory against such person, the government  
10 of the Territory shall, if written request therefore is made  
11 within 60 days after such acquittal provide him with  
12 immediate transportation to the state from whence he was  
13 extradited.

14 140.62. A person brought into the Territory on or after  
15 waiver of extradition based on a criminal charge shall not be  
16 subject to service of personal process in civil actions arising  
17 out of the same facts as the criminal proceeding to answer  
18 which he is being or has been returned until he has been  
19 convicted in the criminal proceeding, or if acquitted, until  
20 he has had reasonable opportunity to return to the state from  
21 which he was extradited.

22 140.64. (a) Any person arrested in the Territory charged  
23 with having committed any offense in another state or alleged  
24 to have escaped from confinement, or broken the terms of his  
25 bail, probation or parole, may waive the issuance and  
26 service of the warrant provided for in Sections 140.26 and  
27 140.28 and all other procedure incidental to extradition  
28 proceedings by executing or subscribing in the presence of a  
29 judge of any court of record within the Territory a writing  
30 which states that he consents to return to the demanding state.  
31 Before such waiver shall be executed or subscribed by such  
32 person it shall be the duty of such judge to inform such person  
33 of his rights to the issuance and service of a warrant of  
34 extradition and to obtain a writ of habeas corpus as provided  
35 for in Section 140.32.

1 (b) If and when such consent has been duly executed, it  
2 shall forthwith be forwarded to the office of the Governor  
3 and filed therein. The judge shall direct the officer having  
4 such person in custody to deliver forthwith such person to the  
5 duly accredited agent of the demanding state, and shall deliver  
6 or cause to be delivered to such agent a copy of such  
7 consent.

8 (c) Nothing in this section shall be deemed to limit the  
9 rights of the accused person to return voluntarily and  
10 without formality to the demanding state, nor shall this  
11 waiver procedure be deemed to be an exclusive procedure or  
12 to limit the powers, rights or duties of the officers of  
13 the demanding state or of the Territory.

14 140.66. Nothing in this chapter shall be deemed to  
15 constitute a waiver by the government of the Territory of its  
16 right, power or privilege to try such demanded person for an  
17 offense committed within the Territory, or of its right,  
18 power or privilege to regain custody of such person by  
19 extradition proceedings or otherwise for the purpose of trial,  
20 sentence or punishment for any offense committed within the  
21 Territory, nor shall any proceedings had under this chapter  
22 which result in or fail to result in extradition be deemed  
23 a waiver by the Territory of any of its rights, privileges  
24 or jurisdiction in any way whatsoever.

25 140.68. After a person has been brought back to the  
26 Territory by extradition proceedings, he may be tried in the  
27 Territory for other offenses which he may be charged with  
28 having committed here as well as that specified in the  
29 requisition for his extradition.

30 140.70. The provisions of this chapter shall be so  
31 interpreted and construed as to effectuate its general  
32 purposes to make uniform the law of those states which enact  
33 legislation based upon the Uniform Criminal Extradition Act.

1 CHAPTER 150. DISPOSITION OF STOLEN PROPERTY,

2 EVIDENCE, CONTRABAND

3 150.10. This chapter shall not apply to any property  
4 which is otherwise subject to seizure and destruction or  
5 forfeiture pursuant to law.

6 150.20. Property held by any law enforcement agency which  
7 is not needed for evidentiary purposes in a criminal action  
8 may be returned by the agency under rules and regulations  
9 established by the Attorney General.

10 150.30. (a) When property is held by a law enforcement  
11 agency and a criminal action in which the property is  
12 needed is not filed within 90 days following the acquisition  
13 of the property by the agency, a person entitled to the  
14 possession of the property may apply for the release of the  
15 property to the Superior Court.

16 (b) The court shall give notice and an opportunity to be  
17 heard to the Attorney General and to the person from whom the  
18 property was taken when the application for release is filed  
19 by another person.

20 (c) After a hearing the court may either order the release  
21 of the property to the person who is entitled to possession  
22 of it or permit the property to remain in the possession of the  
23 law enforcement agency without prejudice to a subsequent  
24 application for release.

25 150.40. (a) In the course of a criminal action the  
26 trial court may order the release of any property received  
27 into evidence or held in connection with the criminal action  
28 by a law enforcement agency when it is possible to do so without  
29 prejudice to any party.

30 (b) A motion for the release of property may be made  
31 by either of the following:

32 (1) The person from whose possession the property was  
33 taken.

34 (2) Any other person asserting the right to possession  
35 of the property.

1 (c) The trial court shall give notice and an opportunity  
2 to be heard to the Attorney General and to the person from whom  
3 the property was taken when the application for release is  
4 filed by another person.

5 150.50. (a) When a criminal action has been finally  
6 determined, the trial court shall, upon application of the  
7 person entitled to the possession of any of the property in the  
8 custody of the court or a law enforcement agency, order the  
9 property released to that person unless good cause to the  
10 contrary is shown by the Attorney General. The court shall  
11 give notice and an opportunity to be heard to the Attorney  
12 General and to the person from whom the property was seized  
13 when the application for release is filed by another person.

14 (b) After the expiration of six months following the final  
15 determination of the criminal action, the trial court may make  
16 an order regarding any property which has not been released  
17 under subsection (a) as follows:

18 (1) Property needed in any other criminal action or kept  
19 for historical purposes shall be retained.

20 (2) Property, the possession of which is prohibited by  
21 law, shall be delivered to the Attorney General for destruction  
22 or other disposition.

23 (3) Money shall be deposited in the general fund of the  
24 Territory.

25 (4) All other property shall be delivered to the  
26 Treasurer of the Territory who may retain it for public use  
27 by the Territory, sell it according to law, or destroy any  
28 property which is unusable.

29 (c) Thirty days prior to any order under subsection (b),  
30 the clerk of the court shall have published one time in a  
31 newspaper of general circulation in the Territory, a description  
32 of the property which will be finally disposed of by court  
33 order unless the property is claimed in accordance with this  
34 section."

1           Section 2. This code shall become operative on  
2 July 1, 1977, and shall govern all proceedings in criminal  
3 actions commenced on or after that date and so far as just and  
4 practicable further proceedings in criminal actions pending  
5 on that date.

6           Section 3. This act shall become operative only if  
7 Bill Numbers 661 and 663 are chaptered and become  
8 operative July 1, 1977, and, in such case shall become  
9 operative at the same time as Bill Numbers 661 and 663.  
10 Except as otherwise provided in this section, this  
11 code does not apply to proceedings in criminal actions  
12 commenced before its operative date and prosecutions for  
13 such offenses shall be governed by the prior law, which  
14 is continued in effect for that purpose, as if this  
15 code were not in force.