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CH. 60 ARRAIGNMENT: PLEAS**

**CHAPTER 60
ARRAIGNMENT: PLEAS**

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§ 60.10. When, How Arraignment Conducted.

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

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

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

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

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

Former § 977 provided that the defendant must be present upon the arraignment. See § 1.13 (same). The same rule is also implicit in the first sentence of Subsection (b). Former § 978 authorized the court to direct any officer having custody of the defendant to bring the defendant before the court to be arraigned. This Section is not continued. Under the release procedures provided by Chapter 40, the occasions when a defendant will be in custody should be reduced and the court has the inherent power to make such an order in any event. Former §§ 979-982 provided for arrest of the

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defendant where he failed to appear for arraignment. These sections are superseded by §§ 40.70-40.75. Former §§ 985 and 986 provided for reexamination of the amount of bail after arraignment for a felony. Reconsideration of release conditions is now dealt with in § 40.75.

§ 60.20. Identity of Defendant.

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

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

§ 60.30. Time to Answer Allowed Defendant.

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

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

§ 60.40. Pleas Which May be Entered.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 60.60. Voluntariness to be Determined.

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

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

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

§ 60.70. Factual Basis of Plea Required.

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

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

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

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

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

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

§ 60.80. Plea Bargaining Regulated.

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

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

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

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

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

(f) Evidence of a plea of guilty, later withdrawn, or a plea of nolo contendere, or of an offer to plead guilty or nolo contendere to the crime

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charged or any other crime, or of statements made in connection with any of the foregoing pleas or offers, is not admissible in any civil or criminal proceeding against the person who made the plea or offer.

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

§ 60.90. Verbatim Record Required.

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

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