

8 GCA CRIMINAL PROCEDURE  
CH. 5 CONSTRUCTION; DEFINITIONS

**CHAPTER 5  
CONSTRUCTION; DEFINITIONS**

- Article 1. Construction.
- Article 2. Definitions.

**ARTICLE 1  
CONSTRUCTION**

- § 5.10. Preliminary Provisions and Rules of Construction to Govern.
- § 5.13. Headings of No Affect on Substance.
- § 5.15. References to Laws or Codes Include Amendments Thereto.
- § 5.17. Tenses.
- § 5.19. Gender.
- § 5.21. Number.
- § 5.23. Shall and May Defined.

**COMMENT:** The rules of construction provided by this Article supplement the basic direction provided by Subsection (a) of § 1.07.

**§ 5.10. Preliminary Provisions and Rules of Construction to Govern.**

Unless the provision or context otherwise requires, these preliminary provisions and rules of construction shall govern the construction of this Code.

**§ 5.13. Headings of No Affect on Substance.**

Chapter, article and section headings do not in any manner affect the scope, meaning or intent of the provisions of this Code.

**§ 5.15. References to Laws or Codes Include Amendments Thereto.**

When any reference is made to any portion of this Code or to any other statute, the reference shall apply to all amendments and additions made after the enactment of this Code.

**§ 5.17. Tenses.**

**8 GCA CRIMINAL PROCEDURE  
CH. 5 CONSTRUCTION; DEFINITIONS**

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

**§ 5.19. Gender.**

The masculine gender includes the feminine and neuter.

**§ 5.21. Number.**

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

**§ 5.23. *Shall* and *May* Defined.**

*Shall* is mandatory and *may* is permissive.

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**ARTICLE 2  
DEFINITIONS**

- § 5.40. Parts of Code Defined.
- § 5.45. Criminal Action.
- § 5.50. *Criminal Action* Defined.
- § 5.55. *Peace Officer* Defined.
- § 5.56. Peace Officers to yield to Guam Police Department.
- § 5.60. *Prosecuting Attorney* Defined.
- § 5.65. *Territory* Defined.

**§ 5.40. Parts of Code Defined.**

Unless otherwise expressly stated:

- (a) *Chapter* means a chapter of this Code.
- (b) *Article* means an article of the chapter in which that term occurs.
- (c) *Section* means a section of this Code.
- (d) *Subsection* means a subsection of the section in which that term occurs.
- (e) *Paragraph* means a paragraph of the subsection in which that term occurs.

**§ 5.45. Criminal Action.**

**8 GCA CRIMINAL PROCEDURE  
CH. 5 CONSTRUCTION; DEFINITIONS**

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

**COMMENT:** Section 5.45 is substantively the same as former § 683, as well as California Penal Code § 683.

**§ 5.50. Criminal Action Defined.**

As used in this Code, *offense, crime, felony, misdemeanor, petty misdemeanor, and violation* have the meanings provided by § 1.18 of the Criminal and Correctional Code [9 GCA].

**§ 5.55. Peace Officer Defined.**

As used in this Code, peace officer includes:

- (a) All Municipal Mayors;
- (b) All Municipal Vice Mayors;
- (c) The Chief of Police and all Officers of the Guam Police Department;
- (d) The Director of Corrections, Correction and Parole Officers, and Rehabilitative Personnel of the Department of Corrections as designated by the Director of Corrections;
- (e) The Attorney General and those investigators employed by the Attorney General's Office whom the Attorney General specifically designates;
- (f) The Director of Customs, Customs and Quarantine Officers of the Customs and Quarantine Agency, and those persons under the service of the Agency whom the Director of Customs specifically designates;
- (g) The Chief of the Division of Aquatic and Wildlife Resources, the Conservation Officers of the Division of Aquatic and Wildlife Resources, the Entomologist, and the Commodity Inspectors of the USDA/Guam Plant Inspection Facility of the Department of Agriculture;
- (h) Compliance Officers and Criminal Investigation Supervisors and Criminal Tax Investigators of the Department of Revenue and Taxation;

**8 GCA CRIMINAL PROCEDURE  
CH. 5 CONSTRUCTION; DEFINITIONS**

(i) The Chief Marshal, Marshals, and Special Deputy Marshals of the Judiciary;

(j) The Director and employees of the Department of Youth Affairs who are engaged in juvenile detention and rehabilitation work as designated by the Director of the Department of Youth Affairs.

(k) The Chief Probation Officer and all probation officers of the Judiciary;

(l) Criminal Investigators and Special Agents of the United States Government as defined as any individual duly authorized by a department, agency *or* armed force of the United States to conduct *or* engage in investigations of *or* prosecutions for violations of the criminal laws of the United States;

(m) Fire Personnel when engaged in the enforcement of the Fire Prevention Code, all Arson Investigators, and those designated by the Fire Chief of the Guam Fire Department;

(n) The Chief of Guam Airport Police and all Guam Airport Police Officers;

(o) The Chief and all of the Jose D. Leon Guerrero Guam Port Authority Police Officers; and

(p) The Chief and all Guam Park Patrol Officers of the Department of Parks and Recreation.

**SOURCE:** Enacted 1977; amended by P.L. 14-111 (Mar. 2, 1978), eff. 03/28/78; Subsection (j) added by P.L. 15-134 (July 3, 1980), eff. 05/03/80; Subsections (k) and (l) added by P.L. 17-016 (July 5, 1983); Subsection (m) added by P.L. 17-078:9 (Dec. 23, 1984); Subsection (h) amended by P.L. 19-004:23 (May 21, 1987). Subsection (f) amended by P.L. 23-044:1 (Oct. 18, 1995). Subsection (e) amended by P.L. 26-038. Amended by P.L. 27-036:1 (Oct. 1, 2001), (Nov. 13, 2003). Amended by P.L. 29-012:3 (Sept. 7, 2007). Subsection (g) amended by P.L. 30-153:2 (July 2, 2010).

**2007 NOTE:** Prior to the enactment of P.L. 29-012:3, subsection (l) defined certain personnel of the U.S. Government and subsection (m) defined certain Fire Personnel of the Guam Fire Department. The amendment of P.L. 29-012:3 inadvertently consolidated subsections (l) and (m), which the Compiler believes to be a manifest error. Renumbered (a) through (p) to harmoniously fit this section.

**8 GCA CRIMINAL PROCEDURE**  
**CH. 5 CONSTRUCTION; DEFINITIONS**

**NOTE:** A.G. Opinion #78-19: Alcoholic Beverage Control inspectors have not been classified as peace officers within the meaning of these two Sections. Therefore, they are not authorized to carry firearms under the exceptions provided for peace officers.

**COMMENT:** Section 5.55 follows exactly former § 851 of the Penal Code, as amended by P.L. 13-117. This amendment added certain officials as Peace Officers for the purpose of aiding their regular statutory duties, not giving competition to the Guam Police Department. Added were those positions listed in Subsections (e) through (h) [in original enactment]. Deleted from former law are Aall other magistrates,@ meaning other judges not hearing the case in question. Now no judge is a peace officer.

The purpose of this amendment is to give the same status to all officers who have as all or part of their duties responsibilities which are those of traditional peace officers. (ADepartment of Public Safety@ changed to AGuam Police Department@ to 5 GCA § 3101 as amended by P.L. 17-78:8)

**CROSS-REFERENCES:** See 10 GCA § 90108 & 90109 relative to enforcing the anti-smoking law enacted by P.L. 21-139; these provisions had been designated as §§ 89108 and 89109 in past publications of the GCA but were renumbered by the Compiler to avoid confusion. For a more recent definition of *Peace Officer*, see 17 GCA § 51101(b) in the Article dealing with the Peace Officer Standards and Training Commission.

**2016 NOTE:** Pursuant to the authority granted by 1 GCA § 1606, the reference to 17 GCA § 32301(b) was altered to reflect its re-codification in the GCA.

**§ 5.56. Peace Officers to Yield to Guam Police Department.**

A peace officer while acting within his statutory law enforcement authority outside of his jurisdiction shall yield and be subordinated to a peace officer of the Guam Police Department who subsequently responds having such jurisdiction as provided within 10 GCA § 77103.

**SOURCE:** Added by P.L. 27-036:2 (Nov. 13, 2003).

**§ 5.60. Prosecuting Attorney Defined.**

As used in this Code, *prosecuting attorney* means any attorney, by whatever title designated, having by law the right of duty to prosecute any offense in behalf of Guam.

**CROSS-REFERENCES:** Section 5.60 is new. It is based on a comparable definition set forth in § 691 of the California Penal Code. At present the Attorney General is the prosecuting attorney. However, from time to time, Aspecial prosecutors@ may be created and perhaps some day the function

**8 GCA CRIMINAL PROCEDURE**  
**CH. 5 CONSTRUCTION; DEFINITIONS**

may be transferred to a separate office. § 5.60 is flexible enough to accommodate all of these possibilities.

**2023 NOTE:** Reference to “Territory” replaced with “Guam” pursuant to 1 GCA § 420.

**§ 5.65. Territory Defined.**

As used in this Code, *Territory* means Guam.

**2023 NOTE:** Reference to “territory” omitted pursuant to 1 GCA § 420.

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