

8 GCA CRIMINAL PROCEDURE
CH. 80 PRETRIAL CONFERENCE; CALENDAR FOR TRIAL;
DISMISSAL; COMPROMISE

CHAPTER 80
PRETRIAL CONFERENCE; CALENDAR FOR TRIAL;
DISMISSAL; COMPROMISE

- Article 1. Pretrial.
- Article 2. Calendar for Trial.
- Article 3. Dismissal.
- Article 4. Compromise.

ARTICLE 1
PRETRIAL

§ 80.10. Pretrial Conference.

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

NOTE: Section 80.10 is substantively the same as former Rule 17.1. See also Fed. R. Crim. P. 17.1. See generally 8 Moore, Federal Practice ¶¶ 17.1.01-17.1.03 (1974); ABA Project on Standards for Criminal Justice Discovery and Procedure Before Trial §§ 1.3, 5.1-5.4 (Approved draft 1970).

ARTICLE 2
CALENDAR FOR TRIAL

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- § 80.50. Criminal Trials Expedited; Precedence.
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§ 80.20. Clerk to Keep Calendar; Enumeration of Cases.

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

NOTE: Section 80.20 is based on former § 1047. See also former Rule 50; Cal. Pen. Code § 1047. See generally B. Witkin, California Criminal Procedure Trial § 277 (1963). The reference to bail under the former statute is deleted. "Custody" includes custody for any specified periods. See § 40.20(d). Where the defendant is not in custody, he may be released under any number of conditions, including bail. See generally Chapter 40 (commencing with § 40.10). "Felony" cases include, of course, cases where a related misdemeanor is joined with a felony charge. See § 1.15.

§ 80.30. Order of Disposition.

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

- (a) Prosecutions for felony, when the defendant is in custody.
- (b) Prosecutions for non-felony offenses, when the defendant is in custody.
- (c) Prosecutions for felony, when the defendant is not in custody.
- (d) Prosecutions for non-felony offenses, when the defendant is not in custody.

NOTE: Section 80.30 is substantively the same as former § 1048. See Note to § 80.20. See also former Rule 50; Cal. Pen. Code § 1048.

§ 80.40. Defendant's Preparation Time.

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

NOTE: Section 80.40 is substantively the same as former § 1049. See also Cal. Pen. Code § 1049 (same, but no express provision for waiver). See generally B. Witkin, California Criminal Procedure Trial § 277(c) (1963).

§ 80.50. Criminal Trials Expedited; Precedence.

(a) The welfare of the people of the territory of Guam requires that all proceedings in criminal cases shall be set for trial and heard and determined at the earliest possible time, and it shall be the duty of all courts and judicial

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officers and of all prosecuting attorneys to expedite such proceedings to the greatest degree that is consistent with the ends of justice.

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

NOTE: Section 80.50 combines the substance of former §§ 681 and 1050. See also former Rule 50; § 1.11(a) (right to speedy trial). See generally B. Witkin, California Criminal Procedure Trial §§ 278-290 (1963, Supp. 1973), (procedure and grounds for continuance). The section is supplemented by the specific time limits provided by § 80.60.

§ 80.60. When a Case to be Dismissed, or Not Dismissed for Reasons of Time.

(a) Except as otherwise provided in Subsection (b), the court shall dismiss a criminal action if:

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

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

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

(b) A criminal action shall not be dismissed pursuant to Subsection (a) if:

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

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

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

COURT DECISIONS: SUPERIOR COURT, 1978. Defendant whose case was properly dismissed under § 80.70(a) of this Code could not later move to predicate dismissal upon § 80.60 of this Code; fact of previous dismissal renders later motion moot. *People v. DeJesus*, Sup. Ct. Cr. #6F-78 (Order, 04/24/78; Abbate, P.J.)

SUPERIOR COURT, 1978. The unavailability of a key prosecution witness for testimony due to injuries suffered as a victim of the alleged crime constitutes good cause for the failure to commence trial within the prescribed period. *People v. Dela Rosa*, Sup. Ct. Cr. #116F-78. (Order, 08/16/78; Abbate, P.J.)

SUPERIOR COURT, 1978. Shortage of court reporters, which situation led to delay in furnishing defendant with transcript of grand jury proceedings but which situation court administrator was making diligent efforts to rectify, constitutes good cause for failure to commence trial within period prescribed by § 80.60(a)(3) of this Code. *People v. Malamanig*, et al., Sup. Ct. Cr. #187F-78. (Decision and Order, 12/18/78; Abbate, P.J.)

SUPERIOR COURT 1980. Whenever the defendant takes an action to help his defense, such action acts as a waiver of time until the question raised is resolved. A reasonable delay while grand jury transcripts are being prepared is not reason for dismissal for lack of a speedy trial. Likewise, a reasonable delay between the hearing of suppression motion and the written order is not grounds for dismissal. *People v. Santos*, Sup. Ct. 1980, S.C. #86F-79.

D.C. Guam App. Div. *People v. Petros*, D.C. 84-00043A (1985). Because defendant was not indicted within the time limit provided within this Title, his conviction must be dismissed with prejudice.

NOTE: Section 80.60 replaces former § 1382 and continues the policy of enforcing specific time limits for filing an information or indictment and commencing trial. It should be noted, however, that this Section merely supplements the guarantee of a speedy trial and the latter issue may be raised without reliance on this Section. See § 80.70 and note thereto.

§ 80.65. Expedited Trials of Sex Crimes Involving Minor Children as Victims or Witnesses; Continuance; Impact Statement.

In any criminal proceeding involving an alleged sex crime perpetrated upon a minor child, *or* in which a minor child is expected to testify as a witness to a sex crime, the court *shall*, in order to minimize stress on such child, take action to expedite trial and give precedence to the case over any other case; provided, however, that nothing in this Section *shall* be construed to mean that trial *shall* be expedited *if* it is *not* in the best interests of the child.

When a motion *or* a request for a continuance is made the prosecutor

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shall file an impact statement which specifies whether the prosecution agrees to the request for continuance, whether the child *or* the child's representative agrees to such request, and the effect, *if* any, the granting of the continuance will have on the child. In ruling on any motion *or* request for continuance *or* other delay, the court *shall* consider and give weight to any possible adverse impact that a delay *or* continuance may have on the child. Prior to issuing an order on a motion for continuance *or* delay, the court *shall* make written findings of fact concerning the impact on the child of continuing *or* delaying the case.

SOURCE: Added by P.L. 29-126:2 (Dec. 22, 2008), as § 80.70. Renumbered by Compiler to harmoniously fit this chapter.

ARTICLE 3
DISMISSAL

- § 80.70. When Prosecutor, Defendant, Court May Dismiss.
- § 80.75. Upon Dismissal Defendant to be Released to Bail Exonerated.
- § 80.80. "Nolle Prosequi" Abolished.

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§ 80.70. When Prosecutor, Defendant, Court May Dismiss.

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

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

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

NOTE: Section 80.70 continues the substance of a portion of former Rule 48 and former § 1385. Compare Fed. R. Crim. P. 48 (same); Cal. Pen. Code § 1385. See also § 80.60. See generally 8A Moore, Federal Practice ¶¶48.01-48.05 (1974); B. Witkin, California Criminal Procedure Trial §§ 302-323 (1963, Supp. 1973).

Subsection (a) provides for dismissal by the government with leave of court. The entry of a *nolle prosequi* is abolished by § 80.80. Subsection (a) authorizes an application for dismissal by the prosecuting attorney only. The court may act on its own motion under Subsections (b) and (c). See also § 80.90 (dismissal after compromise). The last sentence of Subsection (a) has been added to incorporate a procedure from former law which also apparently reflects the federal practice. See 8A Moore, *supra* at 48-7; B. Witkin, *supra* § 303(b).

Subsection (b) provides for dismissal for "unnecessary delay," and supplements the specific guidelines provided by § 80.60. The latter section covers only certain situations, not all. For example, specific time limits are not provided in § 80.60 for making an arrest after the filing of a complaint or return of an indictment. The test in Subsection (b) covers "unnecessary delay" in taking any steps and embraces both dismissal for want of prosecution and for denial of the constitutional right to a speedy trial. See 8A Moore, *supra* ¶¶48.03-48.05. The last sentence of Subsection (b) has been added to require the court to set forth in its order its reasons for dismissal. Obviously, a dismissal for denial of a speedy trial will be a bar to further prosecution and this fact should be made clear. Former § 1383 provided that where dismissal was not ordered and the action was continued, that the court could modify the conditions for the defendant's pretrial release. This Section is not continued here. General authority to modify the defendant's release conditions is provided by § 40.75.

Subsection (c) recognizes the authority provided by § 7.67 of the Criminal and Correctional Code for the court to dismiss *de minimis* infractions of the law.

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§ 80.75. Upon Dismissal Defendant to be Released to Bail Exonerated.

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

NOTE: Section 80.75 is substantively the same as former § 1384. The term “depositor” includes the defendant, of course. See § 40.40.

§ 80.80. “Nolle Prosequi” Abolished.

The entry of a nolle prosequi is abolished, and a prosecuting attorney cannot discontinue or abandon a prosecution for any offense, except as provided in § 80.70.

NOTE: Section 80.80 is substantively the same as former § 1386. See also Cal. Pen. Code § 1386 (same). Federal law is to the same effect. See 8A Moore, Federal Practice ¶48.02[1], at 48-3 (1974). § 80.80 continues the former law. Its practical effect is negligible, however, since the prosecutor can effectively terminate the case by inaction and the rule is clear that mandamus will not lie to compel him to act. See 8A Moore, supra, at 48-8 to 48-9.

ARTICLE 4
COMPROMISE

§ 80.90. Misdemeanors May be Compromised; Procedure.

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

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

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

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NOTE: Section 80.90 is based on former §§ 1377 and 1378. See also Cal. Pen. Code §§ 1377, 1378. Provision for the payment of costs here is analogous to payment of costs in a civil action and constitutes an exception to the general rule under this Code that the defendant in a criminal action is not charged with costs.
