

**8 GCA CRIMINAL PROCEDURE
CH. 120 JUDGMENT & SENTENCE**

**CHAPTER 120
JUDGMENT AND SENTENCE**

NOTE: Chapter 120 provides procedural provisions relating to judgment and sentencing. For other provisions relating to the disposition of offenders, see 9 GCA Chapter 80 (commencing with § 80.10).

2012 NOTE: P.L. 31-171:1 (Feb. 3, 2012) added new Article 3, DNA Profiling Act, to this chapter, which was renumbered to Article 2 by the Compiler to harmoniously fit this chapter.

- Article 1. Judgment and Sentence.
- Article 2. DNA Profiling Act.

**ARTICLE 1
JUDGMENT AND SENTENCE**

- § 120.10. Judgment for Defendant: Discharge; Exceptions.
- § 120.14. Judgment of Guilty: Time for Sentencing; Extensions.
- § 120.15. Judgment of Guilty: Special Assessment.
- § 120.18. Conviction: Form: Procedure on Acquittal.
- § 120.22. Judgment of Criminal Forfeiture: Attorney General to Seize Property or Money.
- § 120.26. Counsel and Defendant Permitted to Speak Before Sentence Imposed.
- § 120.30. Advice of Right to Appeal: When Court Must Give.
- § 120.34. Copy of Judgment to be Given Officer Executing Same.
- § 120.38. Confinement: Delivery to Director of Correction.
- § 120.42. Motion to Withdraw Plea: When Permitted.
- § 120.46. Correcting or Lowering Sentence: Times.
- § 120.50. Clerical Errors; May be Corrected Any Time.
- § 120.60. Medical Examinations of those Convicted of Criminal Sexual Abuse and Services to Victims of Criminal Sexual Conduct.

§ 120.10. Judgment for Defendant: Discharge; Exceptions.

(a) Where a general verdict is rendered or a finding by the court is made in favor of the defendant, a judgment of acquittal shall be given forthwith.

(b) Except as otherwise provided by Subsection (c) and by §§ 7.28 and 7.34 of the Criminal and Correctional Code, if a judgment of acquittal is given, or a judgment imposing a fine only, and the defendant is not detained

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for any other legal cause, he shall be discharged, if in custody, as soon as the judgment is given.

(c) Where the acquittal is because of a variance between the pleading and the proof and the variance may be obviated by a new indictment, information or complaint, the court may order the defendant to be held in custody or may order that prior conditions for the defendant's release be continued for a specified time, so that a new pleading may be filed.

NOTE: Section 120.10 continues the substance of former § 1150. The section has been amended, however, to include appropriate references to both a verdict (by the jury) or findings (by the court), to a judgment of acquittal where evidence of mental illness has been introduced, to a judgment imposing a fine only in Subsection (b), and to a new indictment or information or complaint in Subsection (c). Compare Cal. Pen. Code § 1165; Fed. R. Crim. P.32(b)(1).

§ 120.14. Judgment of Guilty: Time for Sentencing; Extensions.

(a) After a plea, finding or verdict of guilty against the defendant, the court shall order his detention or release as provided by § 40.85 and shall appoint a time for pronouncing judgment, which must be within 21 days after the plea, finding or verdict.

(b) Notwithstanding Subsection (a), the court may extend the period provided in Subsection (a);

(1) Not more than 10 days for the purpose of hearing or determining any motion for a new trial or in arrest of judgment;

(2) For such period as is necessary to permit preparation of the presentence report provided by § 80.12 of the Criminal and Correctional Code; or

(3) If in the opinion of the court there is a reasonable ground for believing the defendant to be incompetent to be proceeded against, until the question of incompetency has been heard and determined as provided by § 7.40 of the Criminal and Correctional Code.

NOTE: Section 120.14 supersedes former §§ 1152 and 1191 and the first two sentences of former Rule 32(a). Compare Fed. R. Crim. P. 32(a); Cal. Pen Code §§ 1166, 1191. Former Rule 32(a) authorized the court to either commit or release on bail a convicted defendant; Similar authority is provided by Section 40.85. See also former § 1152.

For Rule 32(a) did not provide specific time limits for pronouncing sentence but merely required that sentence be imposed without unreasonable delay. Section 1191, on the other hand, provided a very short time limit for pronouncing judgment subject

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to certain exceptions. Section 120.14 adopts an approach similar to former § 1191, *i.e.*, definite guidelines are provided; however, the basic period is extended from three to 21 days and an additional exception is provided to permit time for a presentence report to be prepared. See 9 GCA §§ 80.12-80.14 (presentence report).

§ 120.15. Judgment of Guilty: Special Assessment.

(a) After a plea, finding or verdict of guilty, the Court shall impose against the defendant a special assessment of One Hundred Dollars (\$100.00) for any misdemeanor and Two Hundred Fifty Dollars (\$250.00) for any felony offense.

(b) No person may have his sentence suspended, be placed on probation, enter a deferred plea, be released on parole, be placed in a work release or educational program at the Department of Corrections, or be permitted to operate a motor vehicle if convicted of Driving under the Influence of Drug(s) or Alcohol, until the special assessment is paid. The Court may give the offender reasonable time to make the payment.

(c) All assessments shall be paid at the Superior Court of Guam. The Superior Court shall transfer seventy-five percent (75%) of the collected funds from this Act to a GPD Special Assessments Fund.

(d) All assessment funds shall be deposited into the GPD Special Assessments Fund. The account shall require the signatures of both the Chief of Police, and the Deputy Chief of Police, or the Acting Chief or Acting Deputy, but in no case shall checks be written with less than two (2) signatures.

(e) All Funds in the GPD Special Assessments Fund are appropriated to the Guam Police Department and shall be expended for the purchase or repair of equipment, training of GPD personnel and capital improvement projects.

(f) GPD shall submit an audit of the assessment funds at the end of each fiscal year with the Public Auditor and *I Liheslaturan Guåhan*. All checks, invoices and contracts related to the assessment funds shall, at all times, be available for public inspection and photocopying. Assessment funds may *not* be borrowed against or used to secure any transaction.

(g) All other funds collected by the Court under this Act shall be used by the Superior Court of Guam for the purpose of the establishment of programs such as the Drug Court or Drug-related projects. After the end of

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three (3) years of enactment, the Superior Court of Guam shall submit to *I Liheslaturan Guåhan* for re-appropriation of the funds.

SOURCE: Added by P.L. 24-285:2 (Oct. 16, 1998).

2015 NOTE: This provision was declared unconstitutional in *People v. Iriarte*, Superior Court Case Nos. CM0480-98, CM0815-98, CM1876-98 (Decision & Order, Mar. 15, 1999). This Decision and Order states: “The Court as well as the Government agree that this statute is unconstitutional both due to the fact that it punishes those who are unable to pay the fine and thus violates the equal protection clause, and further due to the fact that such statute is applied ex post facto.” Despite being found to be unconstitutional, this provision has not been removed from the GCA, as 1 GCA §1606 does not authorize the Compiler to remove it from the code.

To date, this provision has not been repealed by the Guam Legislature.

§ 120.18. Conviction: Form: Procedure on Acquittal.

A judgment of conviction shall set forth the plea, the verdict of findings, and the adjudication and sentence. If the defendant is found not guilty or for any other reason is entitled to be discharged, judgment shall be entered accordingly and the court shall order the return of any deposit made and the exoneration of any surety who has provided an undertaking pursuant to Chapter 40 (commencing with § 40.10). Every judgment shall be signed by the judge and entered by the clerk in the minutes and the original of the judgment shall be filed with the record of the action.

NOTE: Section 120.18 is substantively the same as former Rule 32(b)(1). See also Fed. R. Crim. P. 32(b)(1) (same). Compare former § 1207.

§ 120.22. Judgment of Criminal Forfeiture: Attorney General to Seize Property or Money.

Where a verdict (or findings) contains a finding of property subject to a criminal forfeiture, the judgment of criminal forfeiture shall authorize the Attorney General to seize the interest or property subject to forfeiture, fixing such terms and conditions as the court shall deem proper.

NOTE: Section 120.22 is substantively the same as former Rule 32(b)(2). See also Fed. R. Crim. P. 32(b)(2) (same). For examples of provisions providing for forfeiture, see 9 GCA §§ 28.60 (destruction of obscene material); 64.20 (destruction of gambling devices). See generally 8A Moore, Federal Practice ¶132.10 (1974).

§ 120.26. Counsel and Defendant Permitted to Speak Before Sentence Imposed.

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Before imposing sentence the court shall afford counsel an opportunity to speak on behalf of the defendant and shall address the defendant personally and ask him if he wishes to make a statement in his own behalf and to present any information in mitigation of punishment.

NOTE: Section 120.26 is identical to the last sentence of former Rule (a)(1). Compare former §§ 1200, 1201 and 1204. See also Fed. R. Crim. P. 32(a)(1). See generally 8A Moore, Federal Practice ¶¶32.04[4], 32.05 (1974); ABA, Project on Minimum Standards for Criminal Justice Sentencing Alternatives and Procedures § 5.4(a), at 254-55 (Approved draft 1968).

§ 120.30. Advice of Right to Appeal: When Court Must Give.

After imposing sentence in a case which has gone to trial on a plea of not guilty, the court shall advise the defendant of his right to appeal and of the right of a person who is unable to pay the cost of appeal to apply for leave to appeal in forma pauperis. There shall be no duty on the court to advise the defendant of any right of appeal after sentence is imposed following a plea of guilty or nolo contendere. If the defendant so requests, the clerk of the court shall prepare and file forthwith a notice of appeal on behalf of the defendant.

NOTE: Section 120.30 is substantively the same as a portion of former Rule 32(a)(2). See also Fed. R. Crim. P. 32(a)(2). (The second sentence is based on an addition to Rule 32 proposed in 1973). See generally 8A Moore, Federal Practice ¶32.06 (1974). The right to appeal carries the right to appointment of counsel in appropriate cases. See § 1.11.

§ 120.34. Copy of Judgment to be Given Officer Executing Same.

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

NOTE: Section 120.34 continues the substance of former § 1213. Compare Cal. Pen. Code § 1213. The "officer whose duty it is to execute such judgment" may include the Director of Corrections in the case of total or partial confinement or a probation officer in the case of a supervised probation. For provisions to stay of execution, see § 130.30.

§ 120.38. Confinement: Delivery to Director of Correction.

If the judgment requires either partial or total confinement, the defendant shall forthwith be committed to the custody of the Director of

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Corrections or his authorized representative and by him detained until the judgment is complied with.

NOTE: Section 120.38 supersedes former § 1215 and provides for the commitment of a defendant to the Director of Corrections where the defendant's sentence includes either total or partial confinement.

§ 120.42. Motion to Withdraw Plea: When Permitted.

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

NOTE: Section 120.42 is identical to former Rule 32(d). See also Fed. R. Crim. P. 32(d) (same). See generally 8A Moore, Federal Practice ¶32.07 (1974).

§ 120.46. Correcting or Lowering Sentence: Times.

The court may correct an illegal sentence at any time and may correct a sentence imposed in an illegal manner within the time provided herein for the reduction of sentence. The court may reduce a sentence within one hundred twenty (120) days after the sentence is imposed, or within one hundred twenty (120) days after receipt by the court of a mandate issued upon affirmance of the judgment or dismissal of the appeal, or within one hundred twenty (120) days after entry of any order or judgment of the Supreme Court of Guam, having the effect of upholding a judgment of conviction.

COURT DECISIONS: SUPERIOR COURT, 1978. Following expiration of 120-day period set forth by statute, Superior Court is without jurisdiction to reduce sentence. *People v. Santos*, Sup. Ct. Cr. #142F-77 (order, _____, 1978; Abbate, P.J.)

SUPERIOR COURT, 1978. The Superior Court may reduce a sentence only within 120 days after judgment. *People v. Ignacio*, Sup. Ct. Cr. #25F-76. (Order, 06/27/78; Abbate, P.J.)

A motion to reduce a sentence legally imposed or to correct a sentence illegally imposed are both circumscribed by the 120-day period of limitation. Since this motion was brought one year after the case was affirmed by the Appellate Division, such 120-day period has expired and the motion may not be brought. *People v. Lujan*, Cr. #37F-79.

SUPER. CT. 1982. While the defendant timely filed his motion to reduce sentence, the defendant, himself, caused a delay in hearing of the motion for more than two years. This delay, by the defendant, brings such motion to well beyond the 120-day jurisdictional period of time during which the court may act in such cases. Therefore,

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after this time, over two years following the original motion, the court lacks jurisdiction to hear the reduction of sentence. *People v. Tropel*, Cr. #110F-79.

D.C. Guam App. Div: *People v. Cepeda*, D.C. Cr. 86-00014A (1986). "The term *sentence* is imposed as used in 8 GCA § 120.46 should be interpreted to mean the oral pronouncement of sentence. Therefore, the Defendant-Appellant's motion to reduce sentence was filed one day to late and the Superior Court was without jurisdiction to hear such motion."

NOTE: Section 120.46 is identical to the first two sentences of former Rule 35. See also Fed. R. Crim. P. 35. See generally 8A Moore, Federal Practice ¶¶35.01-35.04 (1974); the last sentence of former Rule 35 dealt with reduction of sentence on revocation of probation. For sentencing on revocation of probation, see § 80.66 of the Criminal and Correctional Code.

§ 120.50. Clerical Errors; May be Corrected Any Time.

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

NOTE: Section 120.50 is identical to former Rule 36. See also Fed. R. Crim. P. 36 (same). See generally 8A Moore, Federal Practice ¶¶36.01-36.03 (1974); B. Witkin, California Criminal Procedure Judgment and Attack in Trial Court § 634 (1963).

§ 120.60. Medical Examinations of Those Convicted of Criminal Sexual Abuse and Services to Victims of Criminal Sexual Conduct.

(a) Any person convicted of criminal sexual conduct shall submit to the necessary medical examinations for determining whether such convicted person is infected with the Human Immunodeficiency Virus ('HIV') or with any other sexually transmitted disease such as, but not limited to, the examination of such convicted person's blood, urine, genital discharge or lesions. The Department of Public Health and Social Services shall administer and analyze such necessary medical examinations in accordance with standard medical procedures, and the results of such examinations shall be furnished to the victim of such conduct and to the convicted person.

(b) The Department of Public Health and Social Services with the assistance of the Sexual Abuse and Rape Crisis Center shall provide services to victims of criminal sexual conduct. Such services to the victim shall be free of charge, and shall include, but are not limited to:

(1) Pre and post HIV testing, counseling on HIV prevention and other sexually transmitted diseases (STD), and ensuring that the victim understands the implications of HIV and STD testing, their benefits and

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results of the test(s); HIV or any other sexually transmitted disease testing in accordance with standard medical procedures and applicable law; and

(2) Providing referrals for appropriate health care and support services.

Such treatment shall not be construed to interfere with or diminish any medical support already provided by any health insurer, agency or office; nor shall provision of the services or treatment required by this Section relieve any health insurer of its duty to provide coverage.

SOURCE: Added by P.L. 22-116:2. Amended by P.L. 27-090:2.

**ARTICLE 2
DNA PROFILING ACT**

SOURCE: Added by P.L. 31-171:1 (Feb. 3, 2012) as Article 3. Renumbered by Compiler to harmoniously fit this chapter.

- § 120.201. Title.
- § 120.202. DNA Testing Requirements.
- § 120.203. Mandated Central Criminal Records Repository for DNA Sampling.
- § 120.204. Reporting to CODIS.
- § 120.205. Operations and Budget.

§ 120.201. Title.

This Article may be cited as the “DNA Profiling Act”.

§ 120.202. DNA Testing Requirements.

(a) Any person convicted of any of the following offenses *shall* submit to deoxyribonucleic acid (DNA) testing for law enforcement identification purposes:

- (1) A violation of Chapters 25 and/or 25.01 of Title 9, Guam Code Annotated; and/or

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(2) A violation of Chapter 13 of Title 9, Guam Code Annotated, committed in conjunction with or an attempt to commit a violation of Chapters 25 and/or 25.01 of Title 9, Guam Code Annotated; and/or

(3) A violation of Chapter 22 of Title 9, Guam Code Annotated, committed in conjunction with or an attempt to commit a violation of Chapters 25 and/or 25.01 of Title 9, Guam Code Annotated; and/or

(4) A violation of Chapter 30 of Title 9, Guam Code Annotated, committed in conjunction with or an attempt to commit a violation of Chapters 25 and/or 25.01 of Title 9, Guam Code Annotated.

(b) Persons who are convicted of any of the offenses listed in Subsection (a) above *after* the effective date of this Article *shall* submit to DNA testing within three (3) days of such conviction. Persons who have been convicted of any of the offenses listed in Subsection (a) above *prior* to the effective date of this Article *shall* submit to DNA testing within ninety (90) days if they are not inmates of the Department of Corrections, or prior to their release from detention at the Department of Corrections if they are an inmate of the Department of Corrections.

§ 120.203. Mandated Central Criminal Records Repository for DNA Sampling.

Reports from tests performed pursuant to § 120.202 *shall* be maintained by the central criminal records repository of the Criminal Records Division of the Guam Police Department.

§ 120.204. Reporting to CODIS.

All biological samples for DNA profile information typing that is provided to the Guam Police Department pursuant to the Guam Sex Offender Registry or this Chapter *shall* be submitted for analysis and entry of the resulting DNA profile into the Combined DNA Index System (CODIS), and nothing within this Article shall prevent the dissemination, sharing, or referencing of any DNA tests' results collected pursuant to the provisions of this Article for inclusion in the Federal Bureau of Investigation's (FBI's) Combined DNA Index System (CODIS).

§ 120.205. Operations and Budget.

(a) The Guam Police Department (GPD) *shall* determine the optimum operational requirements for administration of the program authorized by

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this Article. Such options that GPD may consider include, but *not* necessarily be limited to:

(1) procuring the services of a third-party laboratory(ies) to process DNA samples; or

(2) procuring the equipment and hiring the personnel necessary to process DNA samples at a GPD facility.

(b) Budgeting options that GPD may consider include, but *not* necessarily be limited to:

(1) federal grants;

(2) appropriations by *Lihselatura*; and

(3) to the extent possible under public law and/or Parole Board practices, fees assessed to parolees and/or registered sex offenders.

(c) Nothing herein is construed as to limit the authority of judges to require payment, by the defendant, for the cost of DNA testing as a condition of sentencing.
