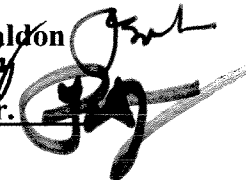


**I MINA' TRENTAI TRES NA LIHESLATURAN GUÁHAN**  
**2016 (SECOND) Regular Session**

Bill No. 342 -33(CoR)

Introduced by:

James V. Espaldon  
F.F. Blas, Jr.  
F.B. Aguon, Jr.



**AN ACT TO ESTABLISH AN AUTOMATED TRAFFIC  
SAFETY ENFORCEMENT PROGRAM ON DESIGNATED  
GUAM HIGHWAYS.**

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

**Section 1. Legislative Intent.** *I Liheslatura Guáhan* finds the need to address the increase in the number of drivers failing to properly transit a signalized intersection. It has become too common a sight to observe automobiles that continue through a "red light" while denying fellow motorists the opportunity to proceed through the intersection "with the light". *I Liheslatura* also finds that the resources of the Guam Police Department would be better served patrolling the island's villages, rather than issuing tickets to "red light runners". To remedy this situation, *I Liheslatura* proposes to authorize the Department of Public Works to implement an automated traffic safety enforcement program. All traffic violations to be assessed as a result of this program shall be given a code that differentiates the manner by which the violations were issued. The fines collected from these traffic violations are to be deposited into a separate fund to be maintained by the Judiciary of Guam.

**Section 2. Automated Traffic Safety Enforcement Program, established.** A new Article 3A is added to 16 GCA, Chapter 3 to read:

**"Article 3A**

**Automated Traffic Safety Enforcement Program**

- § 33A01. Definitions.
- § 33A02. Program Provisions.
- § 33A03. Notification Requirements.
- § 33A04. Citation Authority.
- § 33A05. Ownership of Vehicle.

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- 1    § 33A07.     **Transfer of Violation.**
- 2    § 33A08.     **Unsuccessful Transfer of Responsibility.**
- 3    § 33A09.     **Alternative to Payment of Fine, Costs, Fees.**
- 4    § 33A10.     **Notice/Referral.**
- 5    § 33A11.     **Department of Revenue and Taxation Referral.**
- 6    § 33A12.     **Court Proceedings.**
- 7    § 33A13.     **Citation Fee.**
- 8    § 33A14.     **No Arrest or Imprisonment.**
- 9    § 33A15.     **Elimination of Recorded Images.**
- 10   § 33A16.     **Avoidance of Automated Traffic Safety Enforcement Devices.**
- 11   § 33A17.     **Annual Report on Program.**
- 12   § 33A18.     **Rules and Regulations.**
- 13   § 33A19.     **Distribution of Fines.**
- 14   § 33A01. **Definitions.** As used in this Article,

15           (a) "*Automated Traffic Safety Enforcement Device*" is a device that is:

- 16               (1) capable of producing a photographically recorded still of video image of
- 17               the rear of a motor vehicle, or the rear of a motor vehicle being towed by
- 18               another motor vehicle, including an image of the vehicle's rear license plate;
- 19               and
- 20               (2) indicates on one or more of the images produced the date, time and
- 21               location of the violation and the intersection traffic control signal.

22           (b) "*Agent*" is a person or entity that is authorized to administer a program and does all of

23           the following:

- 24               (1) provides services to the contracting entity;
- 25               (2) operates, maintains, leases, or licenses an automated traffic enforcement
- 26               safety device; and
- 27               (3) is authorized to review and assemble the recorded images captured by
- 28               the devices for review by a police officer, CVPR, or CAPE volunteer who has
- 29               received sufficient training to carry out this function;

30           (c) "*Contracting Entity*" is the Department of Public Works.

1 (d) "*Program*" is the Automated Traffic Safety Enforcement Program authorized by this  
2 Article.

3 (e) "*Masking*" is the intentional use of a spray, film, or cover on a license plate that impedes  
4 the ability of automated traffic safety enforcement devices to capture an image of the license  
5 plate.

6 **§ 33A02. Program Provisions.** (a) The Department of Public Works (hereinafter the '*department*') is  
7 hereby authorized to implement an automated traffic safety enforcement program. In implementing  
8 this program, the department shall cause to publish the locations of the devices on its website or a  
9 designated website, together with the factors leading to the selection of the device placement at a  
10 particular intersection. Such placement information may include the following factors:

11 (1) the number of vehicle crashes that occurred at that intersection during the  
12 preceding year;

13 (2) the average number of pedestrians and non-motorized vehicles crossing the  
14 intersection;

15 (3) whether the intersection is a high-congestion area; and

16 (4) any other traffic-related issues the department considers relevant to ensure public  
17 safety.

18 (b) The department may appoint one or more persons or entities to serve as agent to administer  
19 an automated traffic safety enforcement program and to permit entry into an agreement with a private  
20 agent for the installation, operation, notice processing, and administration and maintenance of the  
21 devices.

22 (c) Before any citations may be issued by this Program, the department will ensure that advance  
23 warning signs are installed within 200 feet along the approach of any highway where a non-mobile  
24 device is located. The warning signs would need to notify motorists of the existence of the device and  
25 the minimum amount of the applicable fine. The design and placement of these advanced warning  
26 signs will need to be in accordance with standards established for traffic violation signs, such as the  
27 Manual of Uniform Traffic Control Devices.

28 **§ 33A03. Notification Requirements.** The department or its agent would be required to mail to the  
29 owner of a motor vehicle alleged to have committed a civil violation notice of the offense by first-  
30 class mail postmarked no later than thirty (30) days after obtaining the name and address of the owner

1 of the vehicle, but no more than sixty (60) days after the date of the alleged violation. If there is more  
2 than one (1) owner, the notice could be issued to the first person listed on the title, or jointly to all  
3 listed owners. The notice would need to include all of the following:

- 4 1) The name and address of the person alleged to be liable as the owner of the vehicle  
5 involved in the civil violation;
- 6 2) The license plate number of the vehicle;
- 7 3) The civil violation charged;
- 8 4) The location, date and time the civil violation occurred;
- 9 5) The photographic images of the vehicle, its operator, and the vehicle license plate that are  
10 captured by the device with information on how to view, through electronic means, the  
11 recorded images;
- 12 6) A statement that the recorded images are prima facie evidence of a civil violation; and
- 13 7) The amount of the civil fine, costs, fees and assessments imposed for the civil violation  
14 along with the time, place and manner of payment.

15 **§ 33A04. Citation Authority.** A citation issued under this Act would have the same force and effect  
16 as a citation issued pursuant to 16 GCA § 77104 by a police officer and the procedures prescribed in  
17 that section would be applicable to the automated device citations. A challenge to the enactment of  
18 this Act would need to be brought within thirty (30) day of the passage of this Act.

19 **§ 33A05. Ownership of Vehicle.** Proof of the registration number of a motor vehicle and  
20 corresponding identity of its owner would be prima facie evidence establishing ownership of the  
21 vehicle. It would be a rebuttable assumption that the owner of the vehicle was operating the vehicle at  
22 the time the violation occurred.

23 **§ 33A06. Citation Defenses.** A person who received a citation could raise the following defenses in  
24 lieu of any other defense:

- 25 1) A citation was issued to the operator of the vehicle for the same conduct by a police  
26 officer present at the scene of the civil violation recorded by the device;
- 27 2) The civil violation occurred during a time when the motor vehicle or license plate had  
28 been reported as stolen to a law enforcement agency and had not been recovered prior to  
29 the time of the offense, if a copy of the report of the thief is authenticated;
- 30 3) At the time of the alleged offense, the vehicle was in the care, custody, or control of a

1 person other than the owner, or an employee of the owner of the vehicle, or under a  
2 written agreement for rental or lease for a period of not more than 60 days.

3 If a defense is invoked, the owner would need to provide to the Traffic Violations Bureau, Superior  
4 Court of Guam a sworn affidavit signed under penalty of perjury containing the name and address of  
5 the person who had care, custody, or control of the vehicle, including an employee of the owner, or  
6 who was renting or leasing the vehicle at the time the alleged civil violation occurred.

7 **§ 33A07. Transfer of Violation.** If the owner of the vehicle meets the affidavit requirements, the  
8 Traffic Violations Bureau, or the agent of the department, would be required to mail a notice of the  
9 citation to the person identified as having the care, custody, or control of the vehicle at the time the  
10 offense occurred. The proof required creates a rebuttable presumption that the person having the care,  
11 custody, or control of the motor vehicle at the time of the offense was the operator of the vehicle at  
12 the time the offense occurred. The notice would need to contain all of the notice information sent to  
13 the owner of the vehicle and also include the following statements:

14 1) That the person receiving the notice was identified by the owner of the motor vehicle as the  
15 person having the care, custody, or control of the vehicle at the time the offense occurred; and

16 2) That the person could offer a defense as previously described. If the person whom the owner  
17 identified denies having the care, custody, or control of the vehicle at the time the offense occurred,  
18 the responsibility for the offense would revert to the owner of the vehicle. However, an owner could  
19 not attempt to transfer responsibility more than one time using the above procedures.

20 In cases where a person other than the owner denies he or she was the operator and declines  
21 responsibility, a new notice would be issued to the owner stating the other person declined  
22 responsibility and giving the owner the option of paying the civil fine, costs, fees, and assessment or  
23 contesting the offense by a stated date that could be not less than twenty (20) days from the mailing  
24 of the new notice.

25 **§ 33A08. Unsuccessful Transfer of Responsibility.** If the owner contests the notice of civil violation  
26 after he or she has unsuccessfully attempted to transfer responsibility, and claims in defense that  
27 another person was the operator of the vehicle, the court could take appropriate action to cause the  
28 owner and the other person to appear at the same hearing to determine responsibility.

29 **§ 33A09. Alternative to Payment of Fine, Cost, Fees.** Under this Act, a person receiving a citation  
30 is responsible for payment of the associated civil fine, costs, fees, and assessment unless he or she (a)

1 timely returns a signed statement on a form, provided with the notice, stating he or she was not the  
2 operator and declining responsibility, in which case responsibility for the offense would revert to the  
3 owner; or (b) admits to being the operator but denies committing the offense, in which case the person  
4 may contest the offense in the same manner as the owner could contest the offense.

5 **§ 33A10. Traffic Violations Bureau Notice/Referral.** Except in those cases where there is an  
6 adjudication that no civil violation occurred or there is otherwise a lawful determination that no civil  
7 fine, costs, fees, or assessment would be imposed, the Traffic Violations Bureau would need to send  
8 notice to the vehicle owner of any unpaid fine if a civil violation had not been contested and the fine,  
9 fees, or costs, and assessments have not been paid. The notice would need to inform the registered  
10 owner that (a) the Traffic Violations Bureau will send a referral to the Department of Revenue and  
11 Taxation if the fine, costs, fees, and assessments are not paid within thirty (30) days and (b) that referral  
12 could result in the non-renewal of the registration of the vehicle, cause the vehicle's title not to be  
13 transferred, and cause the person held responsible to be ineligible to obtain or renew an operators' or  
14 chauffeur's license if the fine, costs, fees, and assessment are not paid. The Traffic Violations Bureau  
15 would have to send a referral to the Department of Revenue and Taxation not sooner than thirty (30)  
16 days after the final notice was mailed if an offense had not been contested and the fine, costs, fees,  
17 and assessment not paid. The referral to the Department of Revenue and Taxation would need to  
18 include: (a) any information known or available to the agent or the department concerning the license  
19 plate number and year of registration and the name of the vehicle owner; (b) the date when the civil  
20 violation occurred; (c) the date when the final notice was mailed; and (d) the seal, logo, emblem, or  
21 electronic seal of the department.

22 **§ 33A11. Department of Revenue and Taxation Referral.** If the Department of Revenue and  
23 Taxation receives a referral, it would be placed into the Motor Vehicle Division's database within five  
24 (5) days of receipt and the Department of Revenue and Taxation may: (a) refuse to renew the  
25 registration of the motor vehicle, (b) cause title not to be transferred, and (c) cause the person held  
26 responsible to be ineligible to obtain or renew an operator's or chauffeur's license until the civil fine,  
27 costs, fees, and assessment are paid. The Department of Revenue and Taxation would need to mail a  
28 notice to the registered owner informing the owner of those consequences. The Department of  
29 Revenue and Taxation would remove the penalties if any person presents adequate proof that the fine,  
30 costs, fees, and assessments have been paid and any imposed reinstatement fee also paid, if applicable.

1 If the Traffic Violations Bureau has given notice of nonpayment to the Department of Revenue and  
2 Taxation and subsequently the fees, costs, assessments, and fines are paid, the Traffic Violations  
3 Bureau would need to transmit notice of the payment to the Department of Revenue and Taxation.

4 **§ 33A12. Court Proceedings over Citation.** Under this Act, the following procedures would apply  
5 to proceedings to contest a citation:

6 1) The citation, any evidence of the civil violation produced by a device, and evidence  
7 of ownership of a vehicle by copies or summaries of official records would be admissible into evidence  
8 as official records or business records without the need for additional foundation; and

9 2) The court could assess a fine of not more than One Hundred Thirty Dollars (\$130.00), which  
10 would be disbursed as described under this Act.

11 **§ 33A13. Citation Fees.** A fee of Ten Dollars (\$10.00) would be collected by the court in connection  
12 with a citation as compensation for record keeping and transaction processing relative to citations  
13 issued. No person would be responsible for payment of a civil fine, costs, fees, or assessment for a  
14 citation issued if the operator of the vehicle who is the subject of the citation is adjudicated to have  
15 not committed a civil violation or there is otherwise a lawful determination that no civil fine costs,  
16 fees, or assessment could be imposed.

17 **§ 33A14. No Arrest or Imprisonment.** A person could not be arrested or imprisoned for nonpayment  
18 of a civil fine, costs, fees, or assessment imposed under this Act.

19 **§ 33A15. Elimination of Recorded Images.** Unless otherwise ordered by a court of competent  
20 jurisdiction, the recorded images and videos produced by a device would be destroyed within ninety  
21 (90) days of the final disposition of the case to which it pertains, including any appeals. In addition,  
22 all recorded images and videos produced by a device that do not identify a civil violation would need  
23 to be destroyed by the department or an agent within ninety (90) days of the date the image was  
24 recorded, unless otherwise ordered by a court.

25 **§ 33A16. Avoidance of Automated Traffic Safety Enforcement Devices.** The registered owner of  
26 a vehicle who seeks to avoid the traffic safety enforcement devices by masking the license plate, shall  
27 be found in violation of this Program and subject to a fine in an amount equal to two (2) times the  
28 amount of the civil violation. The provisions of § 33A07 shall be available to any registered owner  
29 found to be in violation of this subsection.

1 **§ 33A17. Annual Report on Program.** Upon one (1) year from the date the department implements  
2 an automated traffic enforcement safety device program, and each year thereafter, it would be required  
3 to post on its website, a report that includes comparison and analysis of the number of citations issued  
4 under the program.

5 **§ 33A18. Rules and Regulations.** The department, in consultation with the Guam Police Department,  
6 may promulgate such rules and regulations that are necessary to carry out the implementation of this  
7 Act, Such rules and regulations shall be developed in conformance with the Administrative  
8 Adjudication Law.

9 **§ 33A19. Distribution of Fines.** Notwithstanding the provisions of 7 GCA §9502, all fines collected  
10 under this Program shall be transferred to the Traffic Camera Violations Fund and shall be available  
11 upon legislative appropriation."

12 **Section 3. Authorization to Request for Interest.** The Department of Public Works is  
13 authorized to issue a Request for Interest (RFI) to implement the Program described in Section 2 of  
14 this Act. The RFI shall include a reference to the National Highway Traffic Safety Administration  
15 standards for "across the road radar", stating that "If the ATR device is to be considered for unattended  
16 operation, the manufacturer shall provide a secondary method for verifying that the evidential recorded  
17 image properly identifies the target vehicle and reflects this vehicle's location within the roadway.  
18 This may be accomplished by means of a second, appropriately delayed image showing the target  
19 vehicle crossing a specified reference line. After a review of responses to the RFI, the department  
20 shall prepare a report on the estimated costs to implement the program, proposed methods of financing  
21 the startup costs and the annual operating costs of the program, and any other information pertinent to  
22 the successful implementation of the proposed program. Copies of the report shall be transmitted to *I*  
23 *Maga'lahaen Guåhan* and the Speaker of *I Liheslaturan Guåhan*.

24 **Section 4. Traffic Violations Applicable to this Act.** The traffic violations citeable under  
25 this program may include: failure to yield at an intersection left turn (GCA 3325(C)TC); disobeyed  
26 flashing traffic light (GCA 3335TC); disobeyed traffic light signal (GCA 3339ATC); disobeyed traffic  
27 yellow light (GCA 3339B.2TC); disobeyed traffic red light (GCA 3339B.3TC); failure to display  
28 license plate (GCA 7120ATC); license plate – unsecured/illegible (GCA 7129TC); license plate – no  
29 front, rear, with covers (GCA 7129ATC); mobil/elec comm. – use while driving a vehicle (GCA  
30 3346(A)TC; mobil/elec comm. – use while driving a vehicle (GCA 3346(A)2TC); speeding (for each



1 mph in excess of posted speed limit) (GCA 3301FTC); drvr/frnt psngr fail to restrain/secure (GCA  
2 26103TC); drvr/frnt psngr (2<sup>nd</sup> conviction w/in 12 months) (GCA 26103-2NDTC). The fines for each  
3 traffic violation shall follow the schedule in effect at the time of the citation being issued as  
4 promulgated by the Judicial Council of Guam. For accounting purposes, each of the traffic violations  
5 citeable under the program have the letters "TC" added to the end of the applicable GCA code section  
6 to indicate the manner by which the violation(s) were cited.

7 **Section 5. Establishment of Traffic Camera Violations Fund.** A new Chapter 9.7 is  
8 added to Title 7, Guam Code Annotated, to read:

9 **"Chapter 9.7**

10 **Traffic Camera Violations Fund.**

11 **§ 9700. Traffic Camera Violations Fund**

12 **§ 9701. Fund Sources.**

13 **§ 9702. Separation of Accounts.**

14 **§ 9703. Reporting Requirements.**

15 **§ 9704. Legislative Appropriations.**

16 **§ 9700. Traffic Camera Violations Fund.** There is hereby created a Traffic Camera Violations  
17 Fund for the Courts of Guam. All money collected for the Fund shall be deposited in interest-earning  
18 bank accounts as provided in § 9702 and § 9704 of this Chapter.

19 **§ 9701. Fund Sources.** All fines assessed on traffic violations as a result of the Automated Traffic  
20 Safety Enforcement Program established by Article 3A of 16 GCA, Chapter 3 shall be deposited into  
21 the Traffic Camera Violations Fund.

22 **§ 9702. Separation of Accounts.** The Superior Court of Guam shall establish an account or accounts  
23 for the Traffic Camera Violations Fund, separate and apart from that of the government of Guam  
24 General Fund accounts, the Judicial Building Fund, and the existing accounts of the Superior Court.  
25 The new account or accounts established for the Fund together with the interest earned thereon shall  
26 be made available for the maintenance and operation of the Automated Traffic Safety Enforcement  
27 Program. All remaining funds shall be made available to the Guam Police Department for vehicle  
28 procurement and maintenance.

29 **§ 9703. Reporting Requirements.** The Traffic Camera Violations Fund shall be under the  
30 stewardship of the Judicial Council. The Judicial Council shall prepare, or cause to be prepared, full

1 statements of accounts of all money received and expended out of the account or accounts of the  
2 Traffic Camera Violations Fund, and shall transmit such report to I Liheslatura each fiscal year.

3 **§ 9704. Legislative Appropriations.** I Liheslatura may, from time to time, appropriate funds from the  
4 General Fund or other sources for deposit in the Traffic Camera Violations Fund. Such funds, when  
5 appropriated, shall be paid directly to the Traffic Camera Violations Fund."

6 **Section 6. Severability.** If any provision of this Act or its application to any person or  
7 circumstance is found to be invalid or contrary to law, such invalidity shall not affect other provisions  
8 or applications of this Act which can be given effect without the invalid provisions or applications,  
9 and to this end the provisions of this Act are severable.