

I Mina'Trentai Kuáttro Na Liheslaturan
BILL STATUS

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES	NOTES
177-34 (COR)	Therese M. Terlaje	AN ACT TO ENSURE THE SAFETY OF VICTIMS AND WITNESSES OF FAMILY VIOLENCE AND OTHER CRIMES BY INCLUDING ELECTRONIC MONITORING AS A CONDITION OF PRETRIAL RELEASE BY AMENDING § 30.21(a) OF CHAPTER 30, TITLE 9, AND §§ 40.15, 40.20, AND 40.60 OF CHAPTER 40, TITLE 8, GUAM CODE ANNOTATED.	9/13/17 9:10 A.M.						

I MINA'TRENTAI KUÁTTRO NA LIHESLATURAN GUÁHAN
2017 (FIRST) Regular Session

Bill No. 177 -34 (COR)

Introduced by:

Therese M. Terlaje 

AN ACT TO ENSURE THE SAFETY OF VICTIMS AND WITNESSES OF FAMILY VIOLENCE AND OTHER CRIMES BY INCLUDING ELECTRONIC MONITORING AS A CONDITION OF PRETRIAL RELEASE BY AMENDING § 30.21(a) OF CHAPTER 30, TITLE 9, AND §§ 40.15, 40.20, AND 40.60 OF CHAPTER 40, TITLE 8, GUAM CODE ANNOTATED.

2017 SEP 13 AM 9:10CS

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

2 **Section 1. Legislative Findings and Intent.**

3 *I Liheslatura* finds that family violence often escalates after the abuse is
4 reported to law enforcement and that pretrial release puts witnesses at great risk of
5 escalated family violence or death.

6 In February 2013, Emma Catapang Cepeda was shot to death in her home at
7 the age of 35 by her estranged husband while he was on pretrial release on charges
8 of terrorizing and family violence. In addition to the criminal indictment, Emma had
9 obtained a permanent protective order against him to prevent him from threatening,
10 harassing or disturbing Emma and her three children. The family violence, and
11 terrorizing charges alleged that Emma’s estranged husband had held a knife to
12 Emma’s neck and threatened to kill her and the children “because she was going to
13 turn him in to the police,” and further threatened to hurt his middle school-aged son
14 who tried to intervene. In proceedings for the protective order, Emma had told the
15 courts that her husband had threatened that if she reported him and he got arrested,

1 once he was released, he would look for them and kill her and her three sons. Despite
2 Emma’s concerns, her estranged husband was released from jail months before trial
3 on a \$5,000 personal recognizance bond, and went to her Dededo residence with a
4 firearm “with the intent to shoot the victim”.

5 *I Liheslatura* finds that electronic monitoring during the pretrial release of
6 persons accused of family violence is used in many jurisdictions to protect victims
7 from further family violence or death, and is especially effective if it can
8 immediately alert authorities and victims if a defendant violates any condition of
9 release, especially those restricting contact, or ordering the defendant to stay away.

10 *I Liheslatura* further finds that the Judiciary has received an appropriation of
11 \$500,000 for Fiscal Year 2018 to begin an electronic monitoring program during
12 pretrial release.

13 It is the intent of *I Liheslatura* to increase the safety of witnesses and victims
14 who report family violence pending trial of the accused.

15 **Section 2.** § 30.21(a) of Chapter 30, Title 9, Guam Code Annotated, is
16 *amended* to read:

17 **“§ 30.21. Conditions of Release.**

18 (a) Should a person, charged with a crime involving family violence or
19 a violation of a court order, be released, the court may impose the following
20 conditions of release:

21 (1) an order enjoining the person from threatening to commit
22 or committing acts of family violence against the alleged victim or other
23 family or household member;

24 (2) an order prohibiting the person from harassing, annoying,
25 telephoning, contacting or otherwise communicating with the alleged
26 victim, either directly or indirectly;

27 (3) an order directing the person to vacate the residence;

1 (4) an order directing the person to stay away from the alleged
2 victim and any other family or household member, the residence,
3 school, place of employment or any other specified place frequented by
4 the alleged victim or any other family or household member;

5 (5) an order prohibiting the person from using or possessing a
6 firearm or other weapon specified by the Court;

7 (6) an order prohibiting the person from possession or
8 consumption of alcohol or controlled substances;

9 (7) an order granting the alleged victim possession and use of
10 the automobile and other essential personal effects;

11 (8) an order requiring electronic monitoring, electronic
12 monitoring of home arrest, or electronic monitoring that is capable of
13 notifying a victim if the defendant is at or near a location from which
14 the defendant has been ordered to stay away. The court shall indicate
15 the supervising entity and may order the defendant to pay for the
16 monitoring. The supervising entity or electronic device should
17 immediately notify victim and law enforcement officials if a stay away
18 order is violated;

19 (9) any other order required to protect the safety of the alleged
20 victim and to ensure the appearance of the person in Court.”

21 **Section 3.** § 40.15 of Chapter 40, Title 8, Guam Code Annotated, is
22 *amended* to read:

23 **“§ 40.15. Release on Own Recognizance Defined; When Permitted.**

24 (a) As used in this Section, ‘release on own recognizance’ means
25 release of the person charged without bail and upon his written agreement to
26 appear in Court at all required times and places and to fully comply with any
27 other Court-ordered conditions and restrictions.

1 (b) The judge shall order the person charged to be released on
2 recognizance, unless the judge determines, in his discretion, on the basis of
3 available information, that such a release will not reasonably assure the
4 appearance of the person as required or will endanger the safety of any other
5 person or the community.

6 (c) In determining whether there is a substantial risk of
7 nonappearance by the person charged or that the person charged will endanger
8 the safety of any other person or the community, the judge shall consider the
9 following factors:

10 (1) the nature of the offense charged, the apparent possibility
11 of conviction and the likely sentence;

12 (2) the history and characteristics of the person charged,
13 including:

14 (i) length of his/her residence on Guam;

15 (ii) his/her employment status and history, and financial
16 condition;

17 (iii) his/her family ties and relationships;

18 (iv) his/her reputation, character and mental and
19 physical condition;

20 (v) his/her prior criminal record; if any, including any
21 record of prior release on recognizance or on bail;

22 (vi) his/her history relating to drug or alcohol abuse;

23 (vii) the identity of the reasonable members of the
24 community who will vouch for his/her reliability;

25 (viii) whether, at the time of the current offense or arrest,
26 he/she was on probation, on parole or on other release pending

1 trial, sentencing, appeal or completion of sentence of an offense
2 under Federal, state or local law; and

3 (ix) his/her history of compliance with other Court
4 orders;

5 (3) the nature and seriousness of the danger the person would
6 pose to the community or to any individual member thereof if released;
7 and

8 (4) statements of the victim or others as to previous incidences
9 of violence and threats made to the victim;

10 (5) risk assessments; and

11 (6) any other factors which bear on the risk of willful failure
12 to appear or the danger the person would pose to the community or to
13 any individual member thereof if released.

14 (d) Nothing in this Section shall be misconstrued as modifying or
15 limiting the presumption of innocence.

16 **Section 4.** §40.20 of Chapter 40, Title 8, Guam Code Annotated, is
17 *amended* to read:

18 “§ 40.20. **Bail Conditions; Defined, When to be Used.** Where the judge
19 determines that release of the person charged on his/her own recognizance will not
20 reasonably assure his/her appearance as required, or will endanger the safety of any
21 other person or the community, the judge shall impose the least onerous of the
22 following conditions which is reasonably likely to assure the person’s appearance as
23 required and the safety of any other person and the community, or, if no single
24 condition gives that assurance, the least onerous combination of the following
25 conditions:;

1 (a) placement of the person in the custody of a designated person or
2 organization agreeing to supervise him/her and to assist him/her in appearing
3 in Court;

4 (b) placement of restrictions on the activities, movements,
5 associations and residence of the person;

6 (c) subject the person to electronic monitoring;

7 (d) execution of a bond in an amount specified by the judge; such
8 bond in the discretion of the judge to be either unsecured or secured in whole
9 or in part by the deposit of cash or other property, or by the obligation of
10 qualified sureties;

11 (e) release of the person during working hours, but with the
12 condition that he/she return to custody at specified times; or

13 (f) any other condition reasonably necessary to assure appearance as
14 required and the safety of any other person and the community.”

15 (g) (1) A judge may not authorize the pretrial release of a
16 defendant charged with violating the provisions of a temporary
17 protective order or the provisions of a protective order that order the
18 defendant to refrain from abusing or threatening to abuse a person
19 eligible for relief.

20 (2) A judge may allow the pretrial release of a defendant
21 described in paragraph (1) of this subsection on: (i) suitable bail; (ii)
22 any other conditions that will reasonably ensure that the defendant will
23 not flee or pose a danger to another person or the community; or (iii)
24 both bail and other conditions described under item (ii) of this
25 paragraph.
26

1 (3) When a defendant described in paragraph (1) of this
2 subsection is presented to the court, the judge shall order the continued
3 detention of the defendant if the judge determines that neither suitable
4 bail nor any condition or combination of conditions will reasonably
5 ensure that the defendant will not flee or pose a danger to another
6 person or the community before the trial.

7 (4) (i) As a condition of pretrial release of a defendant
8 described in paragraph (1) of this subsection, a judge may order that the
9 defendant: be supervised by means of electronic monitoring, including
10 electronic monitoring with victim stay-away alert technology, if
11 available; and except as provided in subparagraph (ii) of this paragraph,
12 be responsible for paying the fee for electronic monitoring.

13 (ii) If a judge determines that a defendant cannot afford
14 to pay the fee for electronic monitoring, a judge may exempt the
15 defendant wholly or partly from the fee and order that the fee be paid
16 by the supervising authority.”

17 **Section 5.** §40.60 of Chapter 40, Title 8, Guam Code Annotated, is
18 *amended* to read:

19 **“§40.60. Additional Restrictions May be Applied; Application by**
20 **Prosecutor; Additional Restrictions Listed.**

21 (a) At the first appearance or at any time thereafter, upon the
22 application of the prosecuting attorney and a showing that there exists a
23 danger that the person charged will commit an offense or will seek to
24 intimidate witnesses, or will otherwise unlawfully interfere with the
25 orderly administration of justice, the judge may issue an order which:

26 (1) prohibits the person charged from approaching or
27 communicating with particular persons or classes of persons, except

1 that the order shall not be deemed to prohibit any lawful and ethical
2 activity of the person's counsel;

3 (2) prohibits the person charged from going to certain
4 described geographical areas or premises;

5 (3) prohibits the person charged from possessing any
6 dangerous weapon, or engaging in certain described activities or
7 indulging in intoxicating liquors or in certain drugs;

8 (4) requires the person charged to report regularly to and
9 remain under the supervision of an officer of the court.

10 (5) require the person charged to undergo drug testing under
11 the supervision of an officer of the Court.

12 (6) requires the person charged to be subject to electronic
13 monitoring while on pretrial release.

14 (7) requires the person charged with family violence to
15 undergo a risk assessment.

16 (b) For any person charged with family violence, a judge may issue
17 an order for electronic monitoring or an order for risk assessment without
18 application of the prosecuting attorney.

19 (c) The person charged shall execute an acknowledgment of the
20 order and be given a copy of the order at that time.”