


I Mina'trentai Singko Na Liheslaturan Guåhan
BILL STATUS

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES	NOTES
160-35 (COR)	James. C. Moylan	AN ACT TO ADD §40.15(e)(1), (2), (3), (4), AND (5), AND TO AMEND §40.20(c), ALL OF CHAPTER 40, TITLE 8, GUAM CODE ANNOTATED, RELATIVE TO PRE-TRIAL RELEASES FOR THOSE CHARGED WITH CRIMES ASSOCIATED WITH CRIMINAL SEXUAL CONDUCT, ROBBERY, KIDNAPPING, AND DISTRIBUTION OR POSSESSION OF CONTROLLED SUBSTANCES AND MANDATED ELECTRONIC DEVICES FOR BAIL CONDITIONS OF CERTAIN CRIMES.	6/7/19 10:02 a.m.						

I MINA'TRENTAI SINGKO NA LIHESLATURAN GUÅHAN
2019 (FIRST) Regular Session

Bill No. 16035 (copied)

Introduced by:

James. C. Moylan 

AN ACT TO ADD §40.15(e)(1), (2), (3), (4), AND (5), AND TO AMEND §40.20(c), ALL OF CHAPTER 40, TITLE 8, GUAM CODE ANNOTATED, RELATIVE TO PRE-TRIAL RELEASES FOR THOSE CHARGED WITH CRIMES ASSOCIATED WITH CRIMINAL SEXUAL CONDUCT, ROBBERY, KIDNAPPING, AND DISTRIBUTION OR POSSESSION OF CONTROLLED SUBSTANCES AND MANDATED ELECTRONIC DEVICES FOR BAIL CONDITIONS OF CERTAIN CRIMES.

2019 JUN 11 - 7 AM 10:02

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds
3 that on several occasions a crime is committed by an individual who is on a pre-
4 trial release, which is not only concerning in terms of a possible increase in
5 recidivism, but also creates the optics that our community might not be safe.
6 Therefore it is vital to review the requirements associated with pre-trial releases,
7 including for those being released on their own recognizance, and those required to
8 comply with bail conditions.

9 While Superior Court of Guam Justices have the discretion to apply pre-trial
10 conditions as they deem appropriate, it is vital to apply stringent requirements for
11 those who commit certain crimes. For example, those being charged with 1st, 2nd
12 or 3rd Degree Criminal Sexual Conduct, 1st, 2nd, or 3rd Degree Robbery,

1 Kidnapping, or Distribution or Possession of Controlled Substances should not be
2 provided the opportunity of a pre-trial release based on their own recognizance.
3 Rather such defendants, if they are to be released prior to trial, should comply
4 purely with bail conditions for such releases, as this would create challenging
5 layers to assure that these individuals are not easily released with the opportunities
6 of repeating the crimes.

7 Further, for those being charged with such crimes as noted in the previous
8 paragraph, should also be mandated to wear an electronic monitoring device as part
9 of their pre-trial release, once again, to reduce the chances of recidivism. It should
10 also be a requirement that the defendant shall pay for the purchase or lease of the
11 device.

12 If the government is truly to address the rising concerns of crime in the
13 community, an array of approaches needs to be reviewed. From stringent
14 sentencing, increased presence of police officers, and even how pre-trial and is
15 administered is critical in terms of keeping our community safe.

16 **Section 2.** § 40.15(e)(1), (2), (3), (4), and (5) of Chapter 40, Title 8, Guam
17 Code Annotated is hereby *added* to read as follows:

18 **§ 40.15. Release on Own Recognizance Defined; When Permitted.**

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

23 (b) The judge *shall* order the person charged to be released on
24 recognizance, unless the judge determines, in his discretion, on the basis of
25 available information, that such a release will not reasonably assure the
26 appearance of the person as required or will endanger the safety of any other
27 person or the community.

1 (c) In determining whether there is a substantial risk of nonappearance
2 by the person charged or that the person charged will endanger the safety of
3 any other person or the community, the judge *shall* consider the following
4 factors:

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

7 (2) the history and characteristics of the person charged,
8 including:

9 (A) length of his/her residence on Guam;

10 (B) his/her employment status and history, and financial
11 condition;

12 (C) his/her family ties and relationships;

13 (D) his/her reputation, character, and mental and physical
14 condition;

15 (E) his/her prior criminal record, if any, including any
16 record of prior release on recognizance or on bail;

17 (F) his/her history relating to drug or alcohol abuse;

18 (G) the identity of the reasonable members of the
19 community who will vouch for his/her reliability;

20 (H) whether, at the time of the current offense or arrest,
21 he/she was on probation, on parole, or on other release pending
22 trial, sentencing, appeal or completion of sentence of an offense
23 under federal, state or local law; and

24 (I) his/her history of compliance with other court orders;

25 (3) the nature and seriousness of the danger the person would
26 pose to the community or to any individual member thereof if
27 released;

1 (4) statements of the alleged victim or others as to previous
2 incidences of violence and threats made to the alleged victim;

3 (5) lethality risk assessments or other risk assessments deemed
4 appropriate by the Judiciary of Guam; and

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

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

10 (e) Notwithstanding any other provisions of the law, any person
11 charged with the following crimes shall not qualify for a "Release on Own
12 Recognizance", pursuant to § 40.15(a) of this Chapter, and instead shall only
13 qualify for the release requirements pursuant to § 40.20 of this Chapter:

14 (1) § 25.15, § 25.20, and § 25.25 of Chapter 25, Title 9, Guam
15 Code Annotated;

16 (2) § 40.10, § 40.20, and § 40.30 of Chapter 40, Title 9, Guam
17 Code Annotated;

18 (3) § 22.20 and § 22.40 of Chapter 22, Title 9, Guam Code
19 Annotated;

20 (4) § 16.20, § 16.30, § 16.40, and § 16.50 of Chapter 16, Title
21 9, Guam Code Annotated; and

22 (5) § 67.401.1 and § 67.401.2(b)(1) of Chapter 67, Title 9,
23 Guam Code Annotated.

24 (6) Any person who at the time of the charge is on a pre-trial
25 release pursuant to § 40.15 or § 40.20 of this Chapter for a previous
26 charge and is pending trial for that previous charge.

1 **Section 3.** § 40.20(c) of Chapter 40, Title 8, Guam Code Annotated is
2 hereby *amended* to read as follows:

3 **§ 40.20. Bail Conditions; Defined, When to be Used.**

4 (c) placement of the person under supervision by means of electronic
5 monitoring pursuant to § 89.01(w) of Chapter 89, Title 9, Guam Code
6 Annotated, including electronic monitoring with alleged victim stay-away
7 alert technology, if available, and subject to the payment of fees or the
8 exemption of fees, and other rules established by the court for electronic
9 monitoring. Any person being charged with a crime pursuant to § 25.15, §
10 25.20, or § 25.25 of Chapter 25, § 40.10, § 40.20, or § 40.30 of Chapter 40,
11 § 22.20 and § 22.40 of Chapter 22, or § 67.401.1 or § 67.401.2(b)(1) of
12 Chapter 67, all of Title 9, Guam Code Annotated, shall be required to wear a
13 electronic monitoring device as part of the provisions of their pre-trial
14 release, and the defendant shall pay for the purchase or lease of the device.;

15 **Section 4. Severability.** If any provision of this Act or its application to
16 any person or circumstance is found to be invalid or contrary to law, such
17 invalidity *shall not* affect other provisions or applications of this Act that can be
18 given effect without the invalid provision or application, and to this end the
19 provisions of this Act are severable.

20 **Section 5. Effective Date.** The Act *shall* become effective upon enactment.