I Mina'Trentai Kuåttro 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.	09/20/17	Committee on Culture and Justice	09/28/17 5:30 p.m.	11/20/17 8:36 a.m.	**Fiscal Note Request 9/21/17** **Fiscal Note 10/5/17**	

OFFICE OF THE VICE SPEAKER
THERESE M. TERLAJE
Chairperson of the Committee
On Culture and Justice

I Mina'trentai Kuåttro na Liheslaturan Guåhan
34th Guam Legislature

2017 NOV 20 AM 8:36

October 11, 2017

The Honorable Régine Biscoe Lee
Acting Speaker
I Mina'trentai Kuåttro na Liheslaturan Guåhan
34th Guam Legislature
Guam Congress Building, 163 Chalan Santo Papa
Hagåtña, Guam 96910

VIA: **The Honorable Régine Biscoe Lee** RBL
Chairperson, Committee on Rules

RE: **Committee Report on Bill No. 177-34 (COR), As Amended by the Committee on Culture and Justice**

Dear Speaker Cruz:

Transmitted herewith is the **Committee Report** on **Bill No. 177-34 (COR), As Amended by the Committee on Culture and Justice – 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 pre-trial 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.**

Committee votes are as follows:

3 TO DO PASS

____ TO NOT PASS

1 TO REPORT OUT ONLY

____ TO ABSTAIN

____ TO PLACE IN INACTIVE FILE

RECEIVED
NOV 17 2017
COMMITTEE ON RULES
9:44 a.m.

Si Yu'os Ma'åse',

Therese M. Terlaje

Guam Congress Building, 163 Chalan Santo Papa, Hagåtña, Guam 96910
T: (671) 472-3586 | F: (671) 472-3589 | Email: senatorterlajeguam@gmail.com
www.senatorterlaje.com

COMMITTEE REPORT
ON

Bill No. 177-34 (COR)
As Amended by the Committee on Culture and Justice

"An Act to ensure the safety of victims and witnesses of family violence and other crimes by including electronic monitoring as a condition of pre-trial 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.'"

Guam Congress Building, 163 Chalan Santo Papa, Hagåtña, Guam 96910
T: (671) 472-3586 | F: (671) 472-3589 | Email: senatorterlajeguam@gmail.com
www.senatorterlaje.com

OFFICE OF THE VICE SPEAKER
THERESE M. TERLAJE
Chairperson of the Committee
On Culture and Justice
I Mina'trentai Kuåttro na Liheslaturan Guåhan
34th Guam Legislature

October 11, 2017

MEMORANDUM

To: **All Members**
Committee on Culture and Justice

From: **Vice Speaker Therese M. Terlaje**
Committee Chairperson

Subject: **Committee Report on Bill No. 177-34 (COR), As Amended by the Committee on Culture and Justice**

Transmitted herewith for your consideration is the Bill No. 177-34 (COR), As Amended by the Committee on Culture and Justice – 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 pre-trial 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.

This report includes the following:

- Copy of COR Referral of Bill No. 177-34 (COR)
- Notices of Public Hearing
- Copy of the Public Hearing Agenda
- Public Hearing Sign-in Sheet
- Copies of Submitted Testimony & Supporting Documents
- Committee Vote Sheet
- Committee Report Digest
- Copies of Bill No. 177-34 (COR), As Introduced and As Amended by the Committee on Culture and Justice
- Copy of COR Pre-Referral Checklist on Bill No. 177-34 (COR)
- Related News Reports

Please take the appropriate action on the attached vote sheet. Your attention to this matter is greatly appreciated. Should you have any questions or concerns, please do not hesitate to contact me.

Si Yu'os Ma'åse'!

Guam Congress Building, 163 Chalan Santo Papa, Hagåtña, Guam 96910
T: (671) 472-3586 F: (671) 472-3589 Email: senatorterlajeguam@gmail.com
www.guamlegislature.com

COMMITTEE ON RULES
SENATOR RÉGINE BISCOE LEE, CHAIR
SIKRITARIAN LIHESLATURAN GUAHAN
I MINA'TRENTAI KUÅTTRO NA LIHESLATURAN GUÅHAN
LEGISLATIVE SECRETARY • 34TH GUAM LEGISLATURE

September 20, 2017

MEMO

To: **Rennae Meno**
Clerk of the Legislature

Attorney Julian Aguon
Legislative Legal Counsel

From: **Senator Régine Biscoe Lee**
Chairperson, Committee on Rules

Re: **Referral of Bill No. 177-34 (COR)**

Buenas yan Håfa adai.

As per my authority as Chairperson of the Committee on Rules, I am forwarding the referral of **Bill No. 177-34 (COR)**.

Please ensure that the subject bill is referred, in my name, to **Vice Speaker Therese M. Terlaje, Chairperson of the Committee on Culture and Justice.**

I also request that the same be forwarded to the prime sponsor of the subject bill.

Attached, please see the COR pre-referral checklist for your information, which shall be attached as a committee report item to the bill.

If you have any questions or concerns, please feel free to contact Jean Cordero at 472-2461.

Thank you for your attention to this important matter.

Respectfully,

Senator Régine Biscoe Lee
Chairperson, Committee on Rules

GUAM CONGRESS BUILDING • 163 CHALAN SANTO PAPA • HAGÅTÑA, GUAM 96910
Telephone: (671) 472-3455 • Email address: corguamlegislature@gmail.com

I Mina'Trentai Kuåttro Na Liheslaturan

BILL STATUS

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	COMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES	NOTES
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Gmail

Senator Therese Terlaje <senatorterlajeguam@gmail.com>

FIRST NOTICE of Public Hearing - Thursday, September 28, 2017 at 5:30 PM

3 messages

Senator Therese Terlaje <senatorterlajeguam@gmail.com> Wed, Sep 20, 2017 at 5:45 PM
To: phnotice@guamlegislature.org
Cc: Senator Therese Terlaje <senatorterlajeguam@gmail.com>
Bcc: Cynthia Cabot <cynthia@guamcoalition.org>, Maritess Veracruz <maritess@guamcoalition.org>, "GCO-FPO Administrator: Raymond F.Y. Blas" <raymond.blas@guam.gov>, Evonnie Hocog <evonnie.hocog@guam.gov>, "Dwain P. Sanchez" <dwain.sanchez@guam.gov>

Håfa adai,

Please see pasted below and attached, a public hearing notice from Vice Speaker Therese M. Terlaje.

Should you have any questions, please contact our office.

Jocelyn de Guia
Policy Analyst

****

September 20, 2017

MEMORANDUM

From: Vice Speaker Therese M. Terlaje
Chairperson, Committee on Culture and Justice

Subject: FIRST NOTICE of Public Hearing - Thursday, September 28, 2017 at 5:30 PM

Håfa Adai!

In accordance with the Open Government Law, relative to notices for public meetings, please be advised that the Committee on Culture and Justice will convene a public hearing on Thursday, September 28, 2017, beginning at 5:30 PM in I Liheslaturan Guåhan's Public Hearing Room (Guam Congress Building, Hagåtña). On the agenda are the following items:

- Bill No. 175-34 (COR): An Act to ensure that Guam's Family Violence Laws are enforceable and that family violence cases are successfully prosecuted by amending § 30.10 of Title 9, Guam Code Annotated.

- Bill No. 177-34 (COR): 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.

The hearing will broadcast on local television, GTA Channel 21, Docomo Channel 117/60.4 and stream online via I Liheslaturan Guåhan's live feed. If written testimonies are to be presented at the Public Hearing, the Committee requests that copies be submitted prior to the public hearing date and should be addressed to Vice Speaker Therese M. Terlaje. Testimonies may be submitted via hand delivery to the Office of Vice Speaker Therese M. Terlaje at the Guam Congress Building, 163 Chalan Santo Papa, Hagåtña, Guam; at the mail room of the Guam Congress Building, 163 Chalan Santo Papa, Hagåtña, Guam 96910; or via email to senatorterlajeguam@gmail.com. In compliance with the Americans with Disabilities Act, individuals requiring special accommodations or services should contact the Office of Vice Speaker Therese M. Terlaje, 163 Chalan Santo Papa, at (671) 472-3586 or by sending an email to senatorterlajeguam@gmail.com.

We look forward to your attendance and participation.
Si Yu'os Ma'åse

--

The Office of Vice Speaker Therese M. Terlaje
Committee on Culture and Justice
I Mina'trentai Kuåttro na Liheslaturan Guåhan
34th Guam Legislature
Guam Congress Building, 163 Chalan Santo Papa, Hagåtña, Guam 96910
T: (671) 472-3586 F: (671) 472-3589
senatorterlajeguam@gmail.com

First notice PH 9.28.17_Family Violence Bills.pdf
327K

Champaco, Carly <CChampaco@guam.gannett.com> Thu, Sep 21, 2017 at 9:28 AM
To: Senator Therese Terlaje <senatorterlajeguam@gmail.com>

Hafa Adai,

Thank you for sending this information. It has been added to our Government Meetings listing and will be published as soon as possible.

Please be aware that the listing runs on a space-available basis in print with new listings given priority.

Sincerely,

Carly Champaco

News Assistant

Pacific Daily News

Pacific Daily News | USA TODAY NETWORK

W: (671) 479-0404

From: Senator Therese Terlaje <senatorterlajeguam@gmail.com>
Date: Wednesday, September 20, 2017 at 5:48 PM

To: "phnotice@guamlegislature.org" <phnotice@guamlegislature.org>
Cc: Senator Therese Terlaje <senatorterlajeguam@gmail.com>

[Quoted text hidden]

[Quoted text hidden]

Tom Unsiog <sgtarms@guamlegislature.org> Thu, Sep 21, 2017 at 10:16 AM
To: Senator Therese Terlaje <senatorterlajeguam@gmail.com>

Confirming received and posted on the legislative calendar...si tom
[Quoted text hidden]

OFFICE OF THE VICE SPEAKER
THERESE M. TERLAJE
Chairperson of the Committee
On Culture and Justice

I Mina'trentai Kuåttro na Liheslaturan Guåhan
34th Guam Legislature

September 20, 2017

MEMORANDUM

From: Vice Speaker Therese M. Terlaje
Chairperson, Committee on Culture and Justice

Subject: FIRST NOTICE of Public Hearing - Thursday, September 28, 2017 at 5:30 PM

Håfa Adai!

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We look forward to your attendance and participation.

Si Yu'os Ma'åse

Guam Congress Building, 163 Chalan Santo Papa, Hagåtña, Guam 96910
T: (671) 472-3586 F: (671) 472-3589 Email: senatorterlajeguam@gmail.com
www.senatorterlaje.com

Gmail Senator Therese Terlaje <senatorterlajeguam@gmail.com>

SECOND NOTICE of Public Hearing - Thursday, September 28, 2017 at 5:30 PM

Senator Therese Terlaje <senatorterlajeguam@gmail.com> Tue, Sep 26, 2017 at 8:25 AM
To: phnotice@guamlegislature.org
Cc: Senator Therese Terlaje <senatorterlajeguam@gmail.com>
Bcc: Taylor Amdal-Barela <taylor@guamcoalition.org>, "Pauline I. Untalan" <puntalan@guamag.org>, Joann Augustine <jaugustine@guamag.org>, alamorenaiii <alamorenaiii@guamcourts.org>, DPPCR <sgumataotao@guamcourts.org>, Harold Parker <harold.parker@guamlsc.org>, MiChelle Taitano <chellegu@gmail.com>

Håfa adai,

Please see pasted below and attached, a public hearing notice from Vice Speaker Therese M. Terlaje.

Should you have any questions, please contact our office.

Jocelyn de Guia
Policy Analyst
***

September 26, 2017

MEMORANDUM

From: Vice Speaker Therese M. Terlaje
Chairperson, Committee on Culture and Justice

Subject: SECOND NOTICE of Public Hearing - Thursday, September 28, 2017 at 5:30 PM

Håfa Adai!

In accordance with the Open Government Law, relative to notices for public meetings, please be advised that the Committee on Culture and Justice will convene a public hearing on Thursday, September 28, 2017, beginning at 5:30 PM in *I Liheslaturan Guåhan's* Public Hearing Room (Guam Congress Building, Hagåtña). On the agenda are the following items:

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We look forward to your attendance and participation.

Si Yu'os Ma'åse

--

The Office of Vice Speaker Therese M. Terlaje
Committee on Culture and Justice
I Mina'trentai Kuåttro na Liheslaturan Guåhan
34th Guam Legislature
Guam Congress Building, 163 Chalan Santo Papa, Hagåtña, Guam 96910
T: (671) 472-3586 F: (671) 472-3589
senatorterlajeguam@gmail.com

Second notice PH 9.28.17_Family Violence Bills.pdf
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OFFICE OF THE VICE SPEAKER
THERESE M. TERLAJE
Chairperson of the Committee
On Culture and Justice

I Mina'trentai Kuåttro na Liheslaturan Guåhan
34th Guam Legislature

September 26, 2017

MEMORANDUM

From: Vice Speaker Therese M. Terlaje
Chairperson, Committee on Culture and Justice

Subject: SECOND NOTICE of Public Hearing - Thursday, September 28, 2017 at 5:30 PM

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We look forward to your attendance and participation.

Si Yu'os Ma'åse

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www.senatorterlaje.com

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- bshringi@moylans.net
- carlaborja.73@yahoo.com
- carlo.branch@gmail.com
- carlo.branch@senatorbjcruz.com
- carlsonc@pstripes.osd.mil
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- ccastro@guamchamber.com.gu
- ccharfauros@guamag.org
- ccsanchez89@gmail.com
- cgogue@guampdsc.net
- cheerfulcatunao@yahoo.com
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- chucktanner@toduguam.com
- cipo@guamlegislature.org
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- hazel.estrellado@guamlegislature.org
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- hill.bruce@abc.net.au
- hope.senatorsa@gmail.com
- ihernandez@guamlegislature.org
- info@chinesetimesguam.com
- james.servino@guamlegislature.org
- jason@kuam.com
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- jborja@senatorada.org
- jennifer.lj.dulla@gmail.com
- jessica@ghra.org
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- mcpherson.kathryn@abc.net.au
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- natasha@toduguam.com
- news@guampdn.com
- news@spbguam.com
- nick@kuam.com
- norman.aguilar@guamcc.edu
- office@senatorada.org
- officeassistant@frankaguonjr.com
- oliviampalacios@gmail.com
- onlyonguam@acubedink.com
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- senatormary@guamlegislature.org
- senatorsannicolas@gmail.com

W/media

PHNOTICE Listing

senatortcnelson@gmail.com
senatortcnelson@guamlegislature.org
senatorterlajeguam@gmail.com
senjvespaldon@gmail.com
sgtarms@guamlegislature.org
sltarose2@yahoo.com
sixquintanilla@gmail.com
slimtlaco@guampdn.com
smendiola@guamlegislature.org
sonedera-salas@guamlegislature.org
staff@frankaguonjr.com
stephaniemendiola@gmail.com
tcastro@guam.net
tcruznelson@gmail.com
team5andahalfstar@gmail.com
telo.taitague@visitguam.org
thebigshow@k57.com
tina.alicto@yahoo.com
tjtaitano@cs.com
tom@senatorada.org
tommy@senatormorrison.com
tritten@pstripes.asd.mil
tterlaje@guam.net
xlosormd@gmail.com
xlosormd@yahoo.com
ylee2@guam.gannett.com
yourvoice.guam@gmail.com

Gmail

Senator Therese Terlaje <senatorterlajeguam@gmail.com>

Notice for September 28 Public Hearing

Senator Therese Terlaje <senatorterlajeguam@gmail.com> Fri, Sep 22, 2017 at 11:10 AM
To: Katherine Maraman <kamaraman@guamsupremecourt.com>
Cc: alamorenaiii <alamorenaiii@guamcourts.org>, DPPCR <sgumataotao@guamcourts.org>

Dear Chief Justice Maraman,

Please see the attached invitation letter from Vice Speaker Terlaje regarding a public hearing for two family violence related bills that may be of interest to the court. Also attached are the aforementioned bills.

Thank you.
Jocelyn de Guia
Policy Analyst

--

The Office of Vice Speaker Therese M. Terlaje
Committee on Culture and Justice
I Mina'trentai Kuåttro na Liheslaturan Guåhan
34th Guam Legislature
Guam Congress Building, 163 Chalan Santo Papa, Hagåtña, Guam 96910
T: (671) 472-3586 F: (671) 472-3589
senatorterlajeguam@gmail.com

3 attachments

First notice PH 9.28.17_Family Violence Bills.pdf
327K

Bill No. 175-34 (COR).pdf
97K

Bill No. 177-34 (COR).pdf
666K

OFFICE OF THE VICE SPEAKER
THERESE M. TERLAJE
Chairperson of the Committee
On Culture and Justice
I Mina'trentai Kuåttro na Liheslaturan Guåhan
34th Guam Legislature

September 22, 2017

Via Electronic mail
kamaraman@guamsupremecourt.com

The Honorable Katherine Maraman
Chief Justice
The Judiciary
Hagåtña, Guam 96932

Re: Notice for Public Hearing

Håfa Adai Chief Justice Maraman,

The Committee on Culture and Justice will convene a public hearing on Thursday, September 28, 2017, beginning at 5:30 PM in *I Liheslaturan Guåhan's* Public Hearing Room (Guam Congress Building, Hagåtña). On the agenda are the following items:

- **Bill No. 175-34 (COR):** An Act to ensure that Guam's Family Violence Laws are enforceable and that family violence cases are successfully prosecuted by amending § 30.10 of Title 9, Guam Code Annotated.

- **Bill No. 177-34 (COR):** 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.

The hearing will broadcast on local television, GTA Channel 21, Docomo Channel 117/60.4 and stream online via *I Liheslaturan Guåhan's* live feed. If written testimonies are to be presented at the Public Hearing, the Committee requests that copies be submitted prior to the public hearing date and should be addressed to Vice Speaker Therese M. Terlaje. Testimonies may be submitted via hand delivery to the Office of Vice Speaker Therese M. Terlaje at the Guam Congress Building, 163 Chalan Santo Papa, Hagåtña, Guam; at the mail room of the Guam Congress Building, 163 Chalan Santo Papa, Hagåtña, Guam 96910; or via email to senatorterlajeguam@gmail.com. In compliance with the Americans with Disabilities Act, individuals requiring special accommodations or services should contact the Office of Vice Speaker Therese M. Terlaje, 163 Chalan Santo Papa, at (671) 472-3586 or by sending an email to senatorterlajeguam@gmail.com.

We hope the Judiciary will be able to attend and provide testimony.

Si Yu'os Ma'åse',

Therese M. Terlaje Vice Speaker

Cc: Honorable Alberto C. Lamorena III, Presiding Judge
Shawn Gumataotao, Director of Policy Planning and Community Relations

Guam Congress Building, 163 Chalan Santo Papa, Hagåtña, Guam 96910
T: (671) 472-3586 | F: (671) 472-3589 | Email: senatorterlajeguam@gmail.com
www.senatorterlaje.com

Gmail

Senator Therese Terlaje <senatorterlajeguam@gmail.com>

Notice of September 28th Public Hearing

Pauline I. Untalan <puntalan@guamag.org> Fri, Sep 22, 2017 at 10:00 AM
To: Senator Therese Terlaje <senatorterlajeguam@gmail.com>

Thank you Jocelyn. I will talk to the AG.

From: Senator Therese Terlaje [mailto:senatorterlajeguam@gmail.com]
Sent: Friday, September 22, 2017 9:29 AM
To: Elizabeth Barrett-Anderson <ebanderson@guamag.org>
Cc: Pauline I. Untalan <puntalan@guamag.org>; Benny Russell S. Campos III <bcampos@guamag.org>; Joann Augustine <jaugustine@guamag.org>
Subject: Notice of September 28th Public Hearing

Hafa Adai, General Anderson,

Vice Speaker Terlaje would like to invite you and your office to provide testimony at the public hearing on Thursday, September 28, 2017, at 5:30 PM. On the agenda are the following family violence related bills:

- Bill No. 175-34 (COR): An Act to ensure that Guam's Family Violence Laws are enforceable and that family violence cases are successfully prosecuted by amending § 30.10 of Title 9, Guam Code Annotated.

- Bill No. 177-34 (COR): 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.

I am attaching a copy of the public hearing notice and bills for your reference. I am also cc'ing staff at the Victim Service Center who assisted our office in notifying the Cepeda family.

Thank you.

Jocelyn de Guia

Policy Analyst

--

The Office of Vice Speaker Therese M. Terlaje

Committee on Culture and Justice

I Mina'trentai Kuåttro na Liheslaturan Guåhan

34th Guam Legislature

Guam Congress Building, 163 Chalan Santo Papa, Hagåtña, Guam 96910

T: (671) 472-3586 F: (671) 472-3589

senatorterlajeguam@gmail.com

Gmail

Senator Therese Terlaje <senatorterlajeguam@gmail.com>

Public Hearing for Bills No. 175-34 and 177-34

Senator Therese Terlaje <senatorterlajeguam@gmail.com> Wed, Sep 20, 2017 at 5:55 PM
To: Taylor Amdal-Barela <taylor@guamcoalition.org>

Hafa adai, Taylor,

Vice Speaker Terlaje would like to invite the Coalition and its member organizations to our public hearing on September 28, 2017 regarding two bills that were introduced to enhance protections for survivors of family violence.

- Bill No. 175-34 (COR): An Act to ensure that Guam's Family Violence Laws are enforceable and that family violence cases are successfully prosecuted by amending § 30.10 of Title 9, Guam Code Annotated.

- Bill No. 177-34 (COR): 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.

We welcome feedback and testimony from the community on this very important issue. I am attaching a copy of the public hearing notice as well as the bills to this email.

Feel free to call us if you or any of the other member organizations have any questions or concerns.

Warm Regards,
Jocelyn

--

The Office of Vice Speaker Therese M. Terlaje
Committee on Culture and Justice
I Mina'trentai Kuåttro na Liheslaturan Guåhan
34th Guam Legislature
Guam Congress Building, 163 Chalan Santo Papa, Hagåtña, Guam 96910
T: (671) 472-3586 F: (671) 472-3589
senatorterlajeguam@gmail.com

3 attachments

First notice PH 9.28.17_Family Violence Bills.pdf
327K

Bill No. 175-34 (COR).pdf
97K

Bill No. 177-34 (COR).pdf
666K

Gmail

Senator Therese Terlaje <senatorterlajeguam@gmail.com>

Notice of September 28th Public Hearing

1 message

Senator Therese Terlaje <senatorterlajeguam@gmail.com> Fri, Sep 22, 2017 at 11:26 AM
To: alee@catholicsocialserviceguam.org

Hafa Adai, Ms. Paula Perez,

Vice Speaker Terlaje would like to invite the Alee Shelter to provide testimony at the public hearing on Thursday, September 28, 2017, at 5:30 PM. On the agenda are the following family violence related bills:

- Bill No. 175-34 (COR): An Act to ensure that Guam's Family Violence Laws are enforceable and that family violence cases are successfully prosecuted by amending § 30.10 of Title 9, Guam Code Annotated.

- Bill No. 177-34 (COR): 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.

I am attaching a copy of the public hearing notice and bills for your reference. Feel free to contact our office if you have any questions or concerns.

Thank you.
Jocelyn de Guia
Policy Analyst

--

The Office of Vice Speaker Therese M. Terlaje
Committee on Culture and Justice
I Mina'trentai Kuåttro na Liheslaturan Guåhan
34th Guam Legislature
Guam Congress Building, 163 Chalan Santo Papa, Hagåtña, Guam 96910
T: (671) 472-3586 F: (671) 472-3589
senatorterlajeguam@gmail.com

3 attachments

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Bill No. 175-34 (COR).pdf
97K

Bill No. 177-34 (COR).pdf
666K

Gmail **Senator Therese Terlaje <senatorterlajeguam@gmail.com>**

Notice of September 28th Public Hearing

1 message

Senator Therese Terlaje <senatorterlajeguam@gmail.com> Fri, Sep 22, 2017 at 12:33 PM
To: varoguam1@yahoo.com

Hafa Adai, Dr. Julie Ulloa-Heath,

Vice Speaker Terlaje would like to invite Victim Advocates Reaching Out to provide testimony at the public hearing on Thursday, September 28, 2017, at 5:30 PM. On the agenda are the following family violence related bills:

- Bill No. 175-34 (COR): An Act to ensure that Guam's Family Violence Laws are enforceable and that family violence cases are successfully prosecuted by amending § 30.10 of Title 9, Guam Code Annotated.

- Bill No. 177-34 (COR): 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.

I am attaching a copy of the public hearing notice and bills for your reference. Feel free to contact our office if you have any questions or concerns.

Thank you.
Jocelyn de Guia
Policy Analyst

--

The Office of Vice Speaker Therese M. Terlaje
Committee on Culture and Justice
I Mina'trentai Kuåttro na Liheslaturan Guåhan
34th Guam Legislature
Guam Congress Building, 163 Chalan Santo Papa, Hagåtña, Guam 96910
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senatorterlajeguam@gmail.com

3 attachments

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Bill No. 175-34 (COR).pdf
97K

Bill No. 177-34 (COR).pdf
666K

Gmail

Senator Therese Terlaje <senatorterlajeguam@gmail.com>

Notice of September 28th Public Hearing

Senator Therese Terlaje <senatorterlajeguam@gmail.com> Fri, Sep 22, 2017 at 11:47 AM
To: jgmartinez@bsjmlaw.com, mpangelinan@calvofisher.com, ptydingco@guamag.org, gbc@guamlaw.net, info@ecubelaw.com, Harold Parker <harold.parker@guamlsc.org>, dgutierrez@calvofisher.com

Hafa adai, Guam Bar Association,

Please distribute to your members from Vice Speaker Terlaje.

The family violence related bills that will be discussed during the hearing are attached.

Thank you.
Jocelyn de Guia
Policy Analyst

****
September 20, 2017

MEMORANDUM

From: Vice Speaker Therese M. Terlaje
Chairperson, Committee on Culture and Justice

Subject: FIRST NOTICE of Public Hearing - Thursday, September 28, 2017 at 5:30 PM

Håfa Adai!

In accordance with the Open Government Law, relative to notices for public meetings, please be advised that the Committee on Culture and Justice will convene a public hearing on Thursday, September 28, 2017, beginning at 5:30 PM in I Liheslaturan Guåhan's Public Hearing Room (Guam Congress Building, Hagåtña). On the agenda are the following items:

- Bill No. 175-34 (COR): An Act to ensure that Guam's Family Violence Laws are enforceable and that family violence cases are successfully prosecuted by amending § 30.10 of Title 9, Guam Code Annotated.

- Bill No. 177-34 (COR): 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.

The hearing will broadcast on local television, GTA Channel 21, Docomo Channel 117/60.4 and stream online via I Liheslaturan Guåhan's live feed. If written testimonies are to be presented at the Public Hearing, the Committee requests that copies be submitted prior to the public hearing date and should be addressed to Vice Speaker Therese M. Terlaje. Testimonies may be submitted via hand delivery to the Office of Vice Speaker Therese M. Terlaje at the Guam Congress Building, 163 Chalan Santo Papa, Hagåtña, Guam; at the mail room of the Guam Congress Building, 163 Chalan Santo Papa, Hagåtña, Guam 96910; or via email to senatorterlajeguam@gmail.com. In compliance with the Americans with Disabilities Act, individuals requiring special accommodations or services should contact the Office of Vice Speaker Therese M. Terlaje, 163 Chalan Santo Papa, at (671) 472-3586 or by sending an email to senatorterlajeguam@gmail.com.

We look forward to your attendance and participation.

Si Yu'os Ma'åse

--
The Office of Vice Speaker Therese M. Terlaje
Committee on Culture and Justice

I Mina'trentai Kuåttro na Liheslaturan Guåhan
34th Guam Legislature
Guam Congress Building, 163 Chalan Santo Papa, Hagåtña, Guam 96910
T: (671) 472-3586 F: (671) 472-3589
senatorterlajeguam@gmail.com

2 attachments

Bill No. 175-34 (COR).pdf
97K

Bill No. 177-34 (COR).pdf
666K

Gmail

Senator Therese Terlaje <senatorterlajeguam@gmail.com>

Public Hearing for Bill No. 177-34 (COR)

1 message

Senator Therese Terlaje <senatorterlajeguam@gmail.com> Fri, Sep 22, 2017 at 9:50 AM
To: [redacted]>

Hafa adai, Mrs. [redacted]

I am writing on behalf of Vice Speaker Terlaje to inform you that Bill No. 177-34 regarding electronic monitoring for family violence offenders which references Emma's story will be having a public hearing on Thursday, September 28th at 5:30pm. I am attaching a copy of the public hearing notice below and a copy of the two different bills being discussed. We are accepting written testimonies from the public if you are interested in submitting anything. We can read it aloud during the hearing if you would like, but there is no pressure if you would rather not provide any testimony. We just wanted to let you know about the public hearing. It will be available online to view live during the time of the hearing and then as a recording. See the information below for the website information.

Thank you again for allow us to tell Emma's story.

Sincerely,
Jocelyn de Guia
Policy Analyst

MEMORANDUM

From: Vice Speaker Therese M. Terlaje
Chairperson, Committee on Culture and Justice

Subject: FIRST NOTICE of Public Hearing - Thursday, September 28, 2017 at 5:30 PM

Håfa Adai!

In accordance with the Open Government Law, relative to notices for public meetings, please be advised that the Committee on Culture and Justice will convene a public hearing on Thursday, September 28, 2017, beginning at 5:30 PM in I Liheslaturan Guåhan's Public Hearing Room (Guam Congress Building, Hagåtña). On the agenda are the following items:

- Bill No. 175-34 (COR): An Act to ensure that Guam's Family Violence Laws are enforceable and that family violence cases are successfully prosecuted by amending § 30.10 of Title 9, Guam Code Annotated.

- Bill No. 177-34 (COR): 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.

The hearing will broadcast on local television, GTA Channel 21, Docomo Channel 117/60.4 and stream online via I Liheslaturan Guåhan's live feed at https://www.youtube.com/channel/UCWGC3ELFeriK7HtSuf70tyg. If written testimonies are to be presented at the Public Hearing, the Committee requests that copies be submitted prior to the public hearing date and should be addressed to Vice Speaker Therese M. Terlaje. Testimonies may be submitted via hand delivery to the Office of Vice Speaker Therese M. Terlaje at the Guam Congress Building, 163 Chalan Santo Papa, Hagåtña, Guam; at the mail room of the Guam Congress Building, 163 Chalan Santo Papa, Hagåtña, Guam 96910; or via email to senatorterlajeguam@gmail.com. In compliance with the Americans with Disabilities Act, individuals requiring special accommodations or services should contact the Office of Vice Speaker Therese M. Terlaje, 163 Chalan Santo Papa, at (671) 472-3586 or by sending an email to senatorterlajeguam@gmail.com.

We look forward to your attendance and participation.
Si Yu'os Ma'åse

--

The Office of Vice Speaker Therese M. Terlaje
Committee on Culture and Justice
I Mina'trentai Kuåttro na Liheslaturan Guåhan
34th Guam Legislature
Guam Congress Building, 163 Chalan Santo Papa, Hagåtña, Guam 96910
T: (671) 472-3586 F: (671) 472-3589
senatorterlajeguam@gmail.com

On Wed, Sep 13, 2017 at 11:29 AM, Senator Therese Terlaje <senatorterlajeguam@gmail.com> wrote:

Dear Mrs. [redacted]

I would like to sincerely thank you for allowing me to share Emma's story as I advocate for more protections for those experiencing family violence. I am so sorry for your loss and hope to honor her memory and prevent future acts of violence with this bill.

I am attaching a copy of the bill (Bill No. 177-34) to this email and will keep you informed of the progress of the bill. The first step of the process will be a public hearing on the bill. This date has not been set yet but we hope it will be held in early October. I will be accepting written testimonies in support of the bill if you would like to submit a letter of support and I will let you know once the hearing is set. After the public hearing, I will try to get it placed on the Legislative Session Agenda where it will be voted on by my colleagues.

Please do not hesitate to contact me or my office if you have any questions or concerns.

Si Yu'os Ma'åse',
Therese Terlaje

--

The Office of Vice Speaker Therese M. Terlaje
Committee on Culture and Justice
I Mina'trentai Kuåttro na Liheslaturan Guåhan
34th Guam Legislature
Guam Congress Building, 163 Chalan Santo Papa, Hagåtña, Guam 96910
T: (671) 472-3586 F: (671) 472-3589
senatorterlajeguam@gmail.com

Electronic Privacy Notice: *This e-mail and any attachment(s), contains information that is, or may be, covered by electronic communications privacy laws and legal privileges, and is also confidential and proprietary in nature. If you are not the intended recipient, please be advised that you are legally prohibited from retaining, using, copying, distributing, or otherwise disclosing the information in this e-mail or any attachment in any manner. Instead, please reply to the sender that you have received this communication in error, and then immediately delete it. Thank you in advance for your cooperation.*

On Wed, Sep 13, 2017 at 6:56 AM, [redacted] wrote:

---------- Forwarded message ---------
From: [redacted]
Date: Tue, Sep 12, 2017 at 4:53 PM

Subject: Draft Bill
To: <jaugustine@guamag.org>

Dear Ms. Augustine,

Thank you for contacting me through my email. I am so happy that Senator Therese Terlaje
Is drafting a bill there on Guam that concerns my daughter Emma. It's with my pleasure to give Senator Terlaje the permission to use my daughter Emma's story.

I would so appreciate it if you please email me at anytime when the bill is approved.
Praying, wishing and hoping the bill will get through.

Thank you so much. Hoping to here from you soon.

Sincerely,
Mrs. [redacted]

---

2 attachments

Bill No. 175-34 (COR).pdf
97K

Bill No. 177-34 (COR).pdf
666K

GUAM DAILY POST • THURSDAY, SEPTEMBER 21, 2017

...e relief over land issue

Mayor June Blas said the bill supports the plight of the Collado family.

"It also resolved the problem caused by the government of Guam when it allowed the surrounding areas to backfill their lots, therefore causing the Collado property to be classified as wetland," Blas said.

"For too long, [illegible] certain aspects of the [illegible] process.

> "For two decades, we continued to have this issue hanging

would like to request that the funding to construct the proposed ponding basin be provided," Blas added.

According to Ada's legislation, the Army Corps of Engineers had recommended a land exchange citing the valuable function of the Barrigada land as a ponding basin.

DLM director [illegible]

ment Board, 9:30 a.m. first Saturday, Guam Service Center across from JFK. Life scouts and beneficiaries welcome by appointment.

GUAHAN DRUM CIRCLE: 3:30 to 5:30 p.m., first and third Saturdays, Paseo de Susana, Hagåtña. Visit www.guahandc.org.

month at the Dededo Senior Citizen Center. Call 632-9798.

U.S. NAVAL SEA CADET CORPS, MARI-ANAS DIVISION: Meets each third weekend for a drill. Youths ages 11 to 17 interested in joining the program may email: marianas.division@yahoo.com.

Terlaje Professional building.

SANCTUARY SELF-ESTEEM GROUP: 9 to 10:30 p.m. each Saturday, 631 E. Sunset Blvd., Tiyan.

MENTAL HEALTH CRISIS HOTLINE: Available 24/7 for all mental-health related emergencies: 647-8833. National Suicide Prevention Lifeline is also available 24/7 if you

5

a.m. Sept. 26 at the Conference Room, Port ity of Guam, Cabras Piti. Individuals with ties who may need special accommodations may contact Simeon Delos Santos, ADA Coordinator at 477-5931-4, ext. 430.

» The Consolidated Commission on Utilities will hold their regular monthly meeting at 4:30 p.m. Sept. 26 in the CCU Conference Room, 3rd Floor, Gloria B. Nelson Public Service Bldg., Rte. 15, Mangilao. Individuals requiring special accommodations, auxiliary aids or services, may contact Lou Sablan at 648-3002.

» Guam Land Use Commission meeting 1:30 p.m. Sept. 28 in the Land Management Conference Room, 3rd Floor, ITC Building, Tamuning. Individuals requiring special accommodations or services should contact: Cristina, 649-5263 x375 or email Cristina.gutierrez@land.guam.gov.

» Education Financial Supervisory Commission Meeting 3 to 4 p.m. Sept. 28 in the Guam Department of Education Superintendent's Conference Room, Building A - Tiyan, Guam. If you require any special accommodations, auxiliary aids, or other special services, please call 477-2520/1.

» The Committee on Culture and Justice will convene a public hearing beginning at 5:30 p.m. Sept. 28 in I Liheslaturan Guåhan's Public Hearing Room,

OFFICE OF THE VICE SPEAKER
THERESE M. TERLAJE
Chairperson of the Committee
On Culture and Justice

I Mina'trentai Kuåttro na Liheslaturan Guåhan
34th Guam Legislature

Public Briefing

Thursday, September 28, 2017
5:30 P.M.

AGENDA

- **Bill No. 175-34 (COR)**: An Act to ensure that Guam's Family Violence Laws are enforceable and that family violence cases are successfully prosecuted by amending § 30.10 of Title 9, Guam Code Annotated.

- **Bill No. 177-34 (COR)**: 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.

Guam Congress Building, 163 Chalan Santo Papa, Hagåtña, Guam 96910
T: (671) 472-3586 F: (671) 472-3589 Email: senatorterlajeguam@gmail.com
www.senatorterlaje.com

I Mina'trentai Kuåttro na Liheslaturan Guåhan
Office of the Vice Speaker
Senator Therese M. Terlaje

Committee On Culture and Justice

Date: Thursday, September 28, 2017 **Time:** 5:30 p.m. - 7:30 p.m.

Bill No. 177-34 (COR): 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.

	NAME	AGENCY	CONTACT NO.	E-MAIL	POSITION		TYPE OF	
					SUPPORT	OPPOSE	WRITTEN	ORAL
1	Melaine W Brennan	Judiciary of Guam	4753127	mbrennan@guamcourts.org			✓	✓
2	Trisha Suzuki	Judiciary of Guam	475.3305	tsuzuki@guamcourts.org			✓	
3	Hill C. Lem Guerrero	Judiciary of Guam	475-3402	hlemguerrero@guamcourts.org			✓	
4	Joe McDonald	OAG	475 3406	jmcdonald@guamag.org	✓		✓	✓
5	Stephen Hattori	Public Defender	472-8158	sphattori@guampdsc.net	✓		✓	✓
6	Jocelyn Foden	Public Defender	475-3100	jfoden@guampdsc.net				✓
7	Richard Drakx	Public Defender	475-3100	rdrakx@guampdsc.net	"needs work"		✓	✓
8								
9								
10								

JUDICIARY OF GUAM

Administrative Office of the Courts
Guam Judicial Center • 120 West O'Brien Dr • Hagåtña, Gu. 96910
Tel: (671) 475-3544 • Fax: (671) 477-3184

HON. KATHERINE A. MARAMAN
CHIEF JUSTICE

HON. ALBERTO C. LAMORENA III
PRESIDING JUDGE

JOHN Q. LIZAMA
ADMINISTRATOR OF THE COURTS

September 27, 2017

The Honorable Therese M. Terlaje
Vice-Speaker and Chair, Committee on Culture and Justice
34th Guam Legislature
Guam Congress Building
163 Chalan Santo Papa
Hagatna, Guam 96932

Vice Speaker Therese M. Terlaje

SEP 27 2017

Time: 4:30 PM

Received by: JdG

Dear Vice-Speaker Terlaje:

Hafa Adai! On behalf of the Judiciary of Guam, this letter is in response to your September 22, 2017 letter seeking testimony on Bill No. 175-34 (COR) and Bill No. 177-34 (COR). Our Branch of Government recognizes that as we work with you and the Executive Branch on justice reform, community outreach initiatives, and therapeutic models of justice, the core of our mission still rests largely in the work that we do inside our courtrooms. Our efforts spent in fulfilling this important mission are a crucial component in promoting the rule of law and public safety.

Please be advised that the Judiciary takes no position with regard to Bill No. 175-34 (COR). The Judiciary is concerned, however, with the manner in which Bill No. 177-34 (the "Bill") may affect its current efforts to properly assess, classify and supervise pre-trial defendants. Specifically, Section 2 proposes to amend Chapter 30 Title 9 GCA Section 30.21 Conditions of Release to include:

> **8. An order requiring electronic monitoring, electronic monitoring of home arrest, or electronic monitoring that is capable of notifying a victim if the defendant is at or near a location from which the defendant has been ordered to stay away. The court shall indicate the supervising entity and may order the defendant to pay for the monitoring. The supervising entity or electronic device should immediately notify victim and law enforcement officials if a stay away order is violated.**

The Judiciary has yet to secure a contract for electronic monitoring services. Additionally rules to govern the use of electronic monitoring have yet to be adopted. The proposed legislation seems to imply that family violence offenders will need to utilize GPS monitoring to track real time movement twenty four hours a day and seven days a week ("24/7") rather than devices that work off of radio frequency and send alerts when entering or leaving inclusion or exclusion zones. The Judiciary suggests that some

allowance be built into the Bill to allow for choice among technologies when determining the best method of electronic monitoring.

Additionally, the task of immediate victim notification should be defined and assigned to a particular responsible party. Under current law, the Office of the Attorney General ("OAG") bears some responsibility for victim notification. *See* 9 G.C.A. § 30.21(e). Understanding that the notification contemplated in the Bill relates to violation of stay away orders, there would still need to be coordination between the "supervising entity" (presumably, the Superior Court of Guam's Probation Services Division) and the OAG. Specifically, the OAG's Victims Advocate Reaching Out Office is charged with protecting victim interests and should be included in this process.

Also, the methodology used for determining who has to pay for electronic monitoring is not identified. The Bill indicates family violence offenders will undergo a risk assessment. We read the Bill to require that our personnel be trained in lethality assessments, which is training that we have not yet undertaken.

For all the reasons articulated above, we would ask that if the Bill is passed into law, that its effective date be no less than six (6) months from the date of enactment so that the Judiciary can properly train its personnel in lethality assessments, develop a cooperation procedure with the OAG for notification, procure an electronic monitoring service, and adopt rules for the use of electronic monitoring.

If you have any additional questions, we stand ready to address them with you. Thank you for the consideration of this testimony.

Senseramente,

JOHN Q. LIZAMA
Administrator of the Courts

Office of the Attorney General of Guam

590 S. Marine Corps Dr., Ste. 901, Tamuning, Guam 96913

Elizabeth Barrett-Anderson
Attorney General
Phone: (671) 475-3324
ext. 5015/ 5030
Fax: 477-4703
law@guamag.org

Jacqueline Z. Cruz
Chief of Staff
Administration
ext. 5010
jzcruz@guamag.org

Joseph B. McDonald
Chief Prosecutor
Deputy AG
Prosecution
ext. 2410
jmcdonald@guamag.org

Karl P. Espaldon
Deputy AG
Solicitors
ext. 3115
kespaldon@guamag.org

Kenneth D. Orcutt
Deputy AG
Litigation
ext. 3225
korcutt@guamag.org

Fred S. Nishihira
Deputy AG
Consumer Protection
ext. 3250
fnishihira@guamag.org

Rebecca M. Perez
Deputy AG
Child Support
ext. 1610
rebecca.perez@guamcse.net

Carol M. Hinkle-Sanchez
Deputy AG
Family
ext. 4040
csanchez@guamag.org

Pauline Untalan
Administrator
Victim Service Center & Notary Unit
ext. 5030
puntalan@guamag.org

September 28, 2017

Honorable Therese M. Terlaje
Vice-Speaker, *I Mina Trentai Kuattro Na Liheslaturan Guahan*
Committee on Culture & Justice
Guam Congress Building
163 Chalan Santo Papa
Hagatna, GU 96910

Re: Bill 177-34

Hafa Adai Senator and Members of the Committee:

We support Bill 177-34 COR providing for release of defendants with conditions providing for Electronic Monitoring (EM). We, however, provide the following comments for consideration by the Committee.

Phased-in implementation.
Whether the risk of homicide posed by a defendant on release, like the husband of Emma Catapang Cepeda, is sufficiently mitigated by electronic monitoring (EM) is certainly open to debate. A spouse in an emotionally charged state may very well take action whether or not the spouse is being electronically monitored, just as much as a spouse with a court-ordered stay away may be willing to commit homicide as a last, fatal act of violence.

Risk management principles would require that this type of high risk be taken incrementally as the empirical data supports increasing levels of risk. Since the court has adopted the Ohio Risk Assessment System to better gauge risk of nonappearance and or risk to the community, a prudent approach would be to phase in the use of EM and only permit it for the riskiest situations after the empirical data has been studied and the risk taking is supported by historical performance.

For instance, it may be rolled out to nonviolent drug offenders and property crime defendants on house arrest so that its use is understood, then, gradually, it may be provided to offenders who pose more risk.

Similarly, rather than release on house arrest with allowance for work-related travel, EM may be provided as an option so that compliance with conditions can be monitored remotely, a cost savings that would mean less in-person monitoring for probation officers. These types of considerations are especially important considering we are not informed of the technology that will be used by the Judiciary.

Provide clear finding that EM is a privilege and not a right.
We recommend that EM is not to be provided as a matter of course to all otherwise eligible defendants. The statute should include that EM is a privilege and not a right. Accordingly, we recommend the following language be added to Section 1 relative to intent:

> "As a defendant who poses a risk of nonappearance or a risk to the safety of the community may be lawfully held instead of released, the legislature finds that release with conditions for electronic monitoring is a privilege and not a right."

Make the EM program self-sustaining.
So that the taxpayers are not burdened by defendants tampering or destroying EM devices, there should be a cap imposed on the amount of EM fee waiver allowed by judges. For example, no more than 5% of all EM devices may be provided to those seeking waiver of the fee; a waiver cap. It is also recommended that an amount over and above the cost of EM be charged to those who would seek the privilege so that a reserve can be established to reimburse the EM program in the event that a defendant intentionally or inadvertently damages the equipment.

Criminalize tampering or destruction of EM devices.
As additional risk mitigation, we recommend imposing a criminal sanction for intentional damage to EM equipment as follows:

> §40.60.1. Penalty. It shall be punishable as a misdemeanor for any person to intentionally tamper with, or damage, electronic monitoring equipment.

With our recommended change, we stand in full support of the Bill. Thank you for the opportunity to provide testimony.

Sincerely,

ELIZABETH BARRETT-ANDERSON
Attorney General

EXECUTIVE DIRECTOR
Stephen P. Hattori

DEPUTY DIRECTOR
Richard S. Dirkx
ADMINISTRATIVE DIRECTOR
Cathyann C. Gogue

PUBLIC DEFENDER SERVICE CORPORATION
(Kotperasion Setbision Defensot Pupbleku)

GOVERNMENT OF GUAM
779 Route 4
Sinajåña, Guam 96910
Tel: (671) 475-3100 ◆Fax: (671) 477-5844

STAFF ATTORNEYS
Jocelyn M. Roden
Peter J. Sablan
Ali N. Nusbaum
William B. Jones
Kristine B. Borja
William C. Bischoff
Alisha L. Molyneux
Rocky P. Kingree
Zachary C. Taimanglo
Eric R. Overton
Kristin D. Smith
Earl Anthony V. Espiritu

Bill No. 177-34 on Electronic Monitoring
Public Hearing Testimony
Thursday, September 28, 2017

Buenas. I am Stephen P. Hattori. I am the Executive Director of the Public Defender Service Corporation. As you are aware, we are the largest provider of legal services to our indigent population. I appreciate the opportunity to provide testimony in relation to Bill No. 177-34.

The bill on its face is quite admirable. One must remember that individuals charged with crimes are presumed innocent until they are adjudged guilty. The intent of the bill is to recognize that the Courts of Guam may consider risk assessment tools in determining whether a defendant is either a flight risk or a danger to the community or persons. It goes further and explicitly provides the Courts with an additional tool of supervision, i.e. Electronic Monitoring. It even reduces the disparate impact on the indigent population by allowing the fee to be waived for those unable to afford the ankle bracelet. These are all admirable improvements to the law.

Some confusion is created by Section 4 of the Bill which changes the Bail Statute by imposing a presumption of confinement for a defendant charged with violation of a court order. My only concern is that it would demonstrate a legislative preference for incarceration, especially with those charged with violation of a court order. We are all familiar with the Orlando Cepeda case. Mr. Cepeda is an outlier. It would be unfair to caste all citizens charged with similar crimes in the same light. That is exactly what this bill does. The Courts of Guam currently considers a violation of a court order as a factor in determining release and release conditions. Currently, many low risk defendants are released with standard stay away conditions, even without the expense of an ankle bracelet. Very few are ever revoked for violating conditions. The passage of this bill might be construed as a Legislative desire to incarcerate those charged with violating a protective order. I do not believe that this is the Legislature's intent. I hope we can clarify this.

I also want to thank the Legislature for including language that would allow the Court to suspend the fees for electronic monitoring of indigent citizens. This would ensure that electronic monitoring, when necessary, does not unfairly discriminate against our indigent population. I have attached two articles addressing this concern.

Thank you again for consideration of this Bill. It settles issues that we would have been litigating in court, specifically, the cost impact on indigents as well as the use of proper risk assessment tools. I support passage of the bill subject to the concerns limited to the treatment of defendants charged with a violation of a court order.

STEPHEN P. HATTORI
Executive Director

Electronic Monitoring Has Become the New Debtors Prison

Loaded on MARCH 3, 2016 by Eric Markowitz (/news/author/eric-markowitz/)
Filed under: Indigent Defense (/search/?selected_facets=tags:Indigent%20Defense), Parole Conditions (/search/?selected_facets=tags:Parole%20Conditions). Location: United States of America (/search/?selected_facets=locations:998).

It all started with a traffic violation. Antonio Green didn't have a license and admits he shouldn't have been driving. But when his mother's 1994 Chrysler Sebring broke down at a Taco Bell near their home in October last year, he decided to drive over to fix it.

When he apparently failed to flash his turn signal at an intersection, a cop pulled him over just after 10:30 p.m. in his hometown of Lugoff, South Carolina, about 30 miles northeast of Columbia. The police officer placed Green in handcuffs and took him to the county jail, where he waited overnight until his mother posted roughly $2,000 in bail. One of the conditions of his release: Green had to wear—and pay for—an electronic monitoring bracelet. An unemployed construction worker who has five kids and lives on a monthly $900 disability check, Green couldn't believe what he was hearing. "Pay for it?" Green says with disbelief. "I never heard of that."

He heard correctly. In Richland County, South Carolina, any person ordered to wear an ankle monitor as a condition of bail must lease the bracelet from a for-profit company called Offender Management Services. OMS charges the offender $9.25 per day, or about $300 per month, plus a $179.50 setup fee, according to county documents obtained through a Freedom of Information request. If offenders don't—or can't—meet their weekly payments, they get sent back to jail. "People are pleading guilty because it's cheaper to be on probation than it is to be on electronic monitoring," says Jack Duncan, a public defender in Richland County. "It's a newfangled debtors prison."

Richland County is far from the only place in the United States that requires people to pay for their own tracking. In the past decade, similar electronic monitoring programs have become increasingly popular. Georgia, Arkansas, Colorado, Washington and Pennsylvania all now contract with private companies that require individuals to pay for their GPS bracelets, according to county and state records. While there is no centralized database on how often states charge defendants for their tracking, from 2000 to 2014 the use of electronic monitoring as an alternative to jail detention grew by 32 percent, according to figures provided by the Bureau of Justice Statistics. In 2014, NPR conducted (http://www.npr.org/2014/05/19/312158516/increasing-court-fees-punish-the-poor) a survey that found that "in all states except Hawaii and the District of Columbia, there's a fee for the electronic monitoring." One industry report now pegs the number of people under electronic monitoring in the United States at 100,000, and experts say that figure will likely grow.

Some prosecutors say electronic monitoring devices are a pragmatic way to address tight government budgets and overcrowded jails. "We're at peak incarceration as a society," says Alec Karakatsanis, a lawyer and a critic of the monitoring programs who co-founded the nonprofit Equal Justice Under Law. "A lot of these companies are devoting extraordinary efforts to shift their business model and profit off of that growing surveillance and supervision." Companies such as OMS have effectively allowed municipalities to eschew the costs of monitoring offenders. The counties save money, the company makes money, and those like Green—many of whom are poor—are the ones who are forced to pay.

But some counties don't only save money by contracting out the monitoring programs—they profit from it. In Mountlake Terrace, a suburb north of Seattle, the city contracts with a small electronic monitoring firm, which charges the town $5.75 "per client." Yet the person placed on electronic monitoring actually pays the city $20 per day, resulting in a net revenue for the city of "approximately $50,000 to $60,000" per year, according to Mountlake Terrace county documents.

OMS, the ankle bracelet broker, is a relatively small player in the business, but it is part of an industry that has made a fortune from an increasingly high-tech prison industry. OMS leases tracking equipment from Satellite Tracking of People, which is owned by Securus Technologies, a prison tech company valued at well over $1 billion. According to one of the company's balance sheets, Securus recorded $26.3 million in 2014 revenue from its new "offender monitoring systems" business after it purchased Satellite Tracking of People in 2013. Other companies are cashing in too. The GEO group, a private prison firm, purchased Behavioral Incorporated, the largest electronic monitor provider, in 2011 for $415 million. And Omnilink, another large purveyor of electronic monitoring services, was recently acquired for $37.5 million. "The first rule is follow the money," says Duncan, the public defender. "And the big-time corporations are the ones who are getting into the business, because there's a lot of money to be made."

With all this cash at stake, the prison tech industry has hired lobbyists to protect their coffers and establish relationships with corrections departments, especially at the state and local level. The country's largest private corrections company, GEO Group, spent $2.5 million in 2014 on lobbying, in part for its electronic monitoring efforts. In a nod to how local relationships are often the most valuable, GEO noted in company documents that "approximately $0.3 million was for lobbying at the Federal level and approximately $2.2 million was for lobbying at the state and local levels."

Although lobbying efforts have become routine, there are still very few state or federal guidelines that instruct county or state administrators on the legalities (or best practices) of the business. "I think that the companies don't want a clear-cut examination of the legal status of electronic monitoring," says James Kilgore, a criminal justice researcher and activist who is working on a book about privatized electronic monitoring. Kilgore says the legal ambiguity of electronic monitoring offers companies like OMS more latitude to charge as they please.

There have yet to be any legal challenges to the Richland County electronic monitoring program, but several lawyers say forcing defendants to pay for their own tracking is more than just unethical. "The business model itself is blatantly illegal," says Karakatsanis. "If it were ever challenged in court, it would be struck down immediately." Cherise Burdeen, executive director of the Pretrial Justice Institute, a Maryland-based think tank, agrees. "Charging of offenders for their supervision conditions," she says, "is unconstitutional and illegal."

Robert Stewart, a spokesman and lobbyist for OMS, declined to comment on the legality of the devices (he says that's a question the courts should decide). But he says defendants like Green don't necessarily have to pay for anything. "They agree to be on it," he says. "They don't have to take this. They can say, 'I don't want to do it.'"

Saying no to the device, of course, means going back to jail. And whether or not that's a good thing, supporters say the devices keep the public safer. Yet critics, especially Kilgore, say it's a flimsy argument for electronic monitoring. "There's a mythology around the technology, that somehow authorities are in control of individuals who are on electronic monitoring," he says. A major reason: The technology is often used on minor offenders. Since the tracker

program launched in August 2014—just a couple months before Green's arrest—judges in Richland County have made it a condition of bond hundreds of times, often for minor traffic violations or low-level misdemeanors, according to court documents and public defenders. "They've just gone berserk with it," says Duncan. "It's gotten out of hand."

Green agrees. He admits his license was initially suspended for a DUI, and his arrest record includes charges for domestic violence and disorderly conduct. He's tried working odd-jobs to support his family, but the money he's lost from the ankle bracelet has only pushed him further into debt. "I went through all my money," Green says. "It's just a rip-off."

To make matters worse, when Green's lawyer, William Cox III, made a motion in early August to amend his client's bond to remove the electronic monitor, the court informed them that the case had been dismissed on June 8. In other words, for two months Green's monitoring was completely unnecessary, but he was never reimbursed. "Unfortunately, he just sort of slipped through the cracks of the judicial system," says Cox. "I don't see how it's fair."

Originally published by International Business Times (http://www.ibtimes.com/chain-gang-20-if-you-cant-afford-gps-ankle-bracelet-you-get-thrown-jail-2065283) on September 21, 2015. Reprinted with author's permission.

ACKNOWLEDGMENTS

Moving Beyond Money: A Primer on Bail Reform was prepared by the Criminal Justice Policy Program (CJPP) at Harvard Law School. Substantial research and drafting were contributed by Harvard Law School students William Ahee, Micaela Alvarez, Jevhon Rivers, and Grace Signorelli, who participated in the 2015-2016 Criminal Justice Fellows Seminar. The drafting of this primer was overseen by CJPP's executive director, Larry Schwartztol; faculty co-directors, Prof. Carol Steiker and Prof. Alex Whiting; and legal fellow, Anna Kastner. CJPP is grateful for generous insights and feedback from Cherise Fanno Burdeen, Brandon Buskey, Paul Heaton, Alec Karakatsanis, Sandra Mayson, and Timothy R. Schnacke.

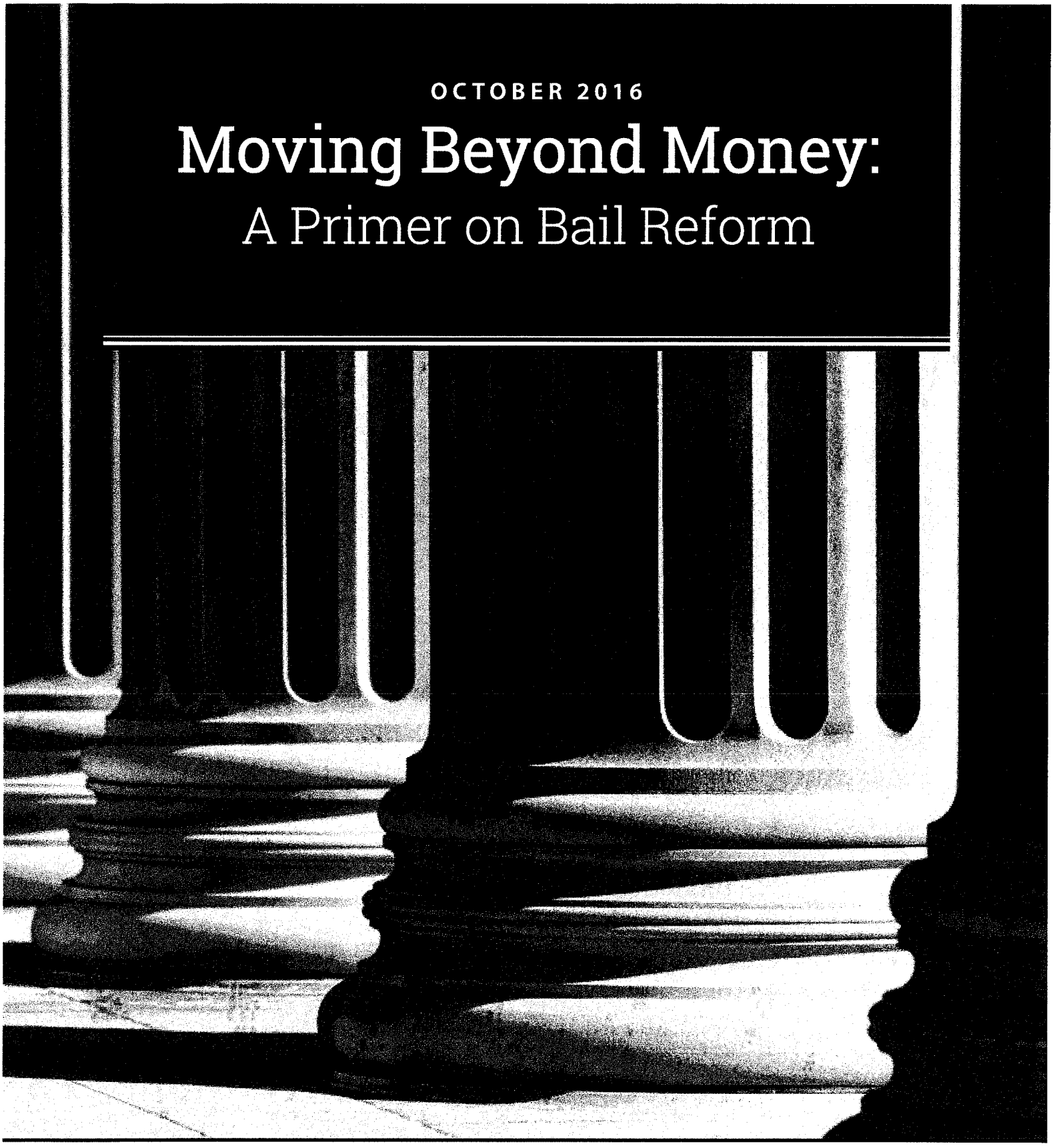
CRIMINAL JUSTICE POLICY PROGRAM
HARVARD LAW SCHOOL

ABOUT THE CRIMINAL JUSTICE POLICY PROGRAM

The Criminal Justice Policy Program (CJPP) at Harvard Law School conducts research and advocacy to support criminal justice reform. It generates legal and policy analysis designed to serve advocates and policymakers throughout the country, convenes diverse stakeholders to diagnose problems and chart concrete reforms, and collaborates with government agencies to pilot and implement policy initiatives.

OCTOBER 2016

Moving Beyond Money:
A Primer on Bail Reform



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I.

INTRODUCTION TO BAIL

OUR NATION'S BAIL SYSTEM AT A CROSSROADS

Bail reform presents a historic challenge – and also an opportunity. Bail is historically a tool meant to allow courts to minimize the intrusion on a defendant's liberty while helping to assure appearance at trial. It is one mechanism available to administer the pretrial process. Yet in courtrooms around the country, judges use the blunt instrument of secured money bail to ensure that certain defendants are detained prior to their trial. Money bail prevents many indigent defendants from leaving jail while their cases are pending. In many jurisdictions, this has led to an indefensible state of affairs: too many people jailed unnecessarily, with their economic status often defining pretrial outcomes.

Money bail is often imposed arbitrarily and can result in unjustified inequalities. When pretrial detention depends on whether someone can afford to pay a cash bond, two otherwise similar pretrial defendants will face vastly different outcomes based merely on their wealth. These disparities can have spiraling consequences since even short periods of pretrial detention can upend a person's employment, housing, or child custody. Being jailed pretrial can also undercut a defendant's ability to mount an effective defense. As these outcomes accumulate in individual cases, improper use of money bail can accelerate unnecessarily high rates of incarceration and deepen disparities based on wealth and race throughout the criminal justice system. Detaining unconvicted defendants because they lack the wealth to afford a cash bond also violates the Constitution.

A recent wave of advocacy has created national momentum for fundamentally rethinking how pretrial decision-making operates. Litigation across the country has resulted in the bail systems of several jurisdictions being declared unconstitutional, destabilizing well-established practices and focusing the attention of policymakers on the problems resulting from money bail.[1] Increasing media attention to the unjust consequences of money bail has intensified scrutiny of existing practice.[2] All of this builds on sustained attention from experts and advocacy groups who have long called for fundamental reform of cash bail.[3] As policymakers across the political spectrum seek to end the era of mass incarceration,[4] reforming pretrial administration has emerged as a critical way to slow down the flow of people into the criminal justice system.

This primer on bail reform seeks to guide policymakers and advocates in identifying reforms and tailoring those reforms to their jurisdiction. In this introductory section, it outlines the basic legal architecture of pretrial decision-making, including constitutional principles that structure how bail may operate. Section II describes some of the critical safeguards that should be in place in jurisdictions that maintain a role for money bail. Where money bail is part of a jurisdiction's pretrial system, it must be incorporated into a framework that seeks to minimize pretrial detention, ensures that people are not detained because they are too poor to afford a cash bond amount, allows for individualized pretrial determinations, and effectively regulates the commercial bail bond industry.

Section III addresses the legal and policy considerations relevant to eliminating the use of money bail. It describes leading reform strategies, highlights competing policy considerations implicated by these strategies, and elaborates constitutional principles that should guide policy reform. It focuses on a set of reforms that many

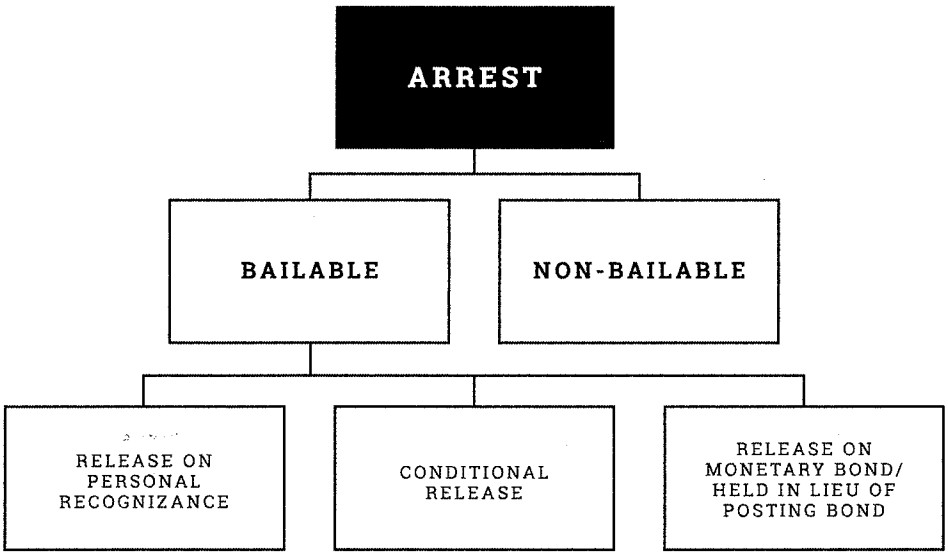
> Bail reform presents a historic challenge – and also an opportunity.

advocates have advanced as a way to move to a "risk-based" system of pretrial decision-making. In particular, it focuses on three aspects of such a system: the expanded use of pretrial services agencies and the tools those agencies employ to supervise pretrial defendants in the community; actuarial risk assessment instruments, which provide judges with a quantitative model for forecasting the risk that particular defendants will fail to appear for trial or will commit a serious crime during the pretrial period; and the limited use of preventive detention. This primer does not prescribe a one-size-fits-all package of pretrial reforms. Indeed, some of the potential reforms raise knotty legal and policy questions. Answering those questions will require jurisdictions to assess local circumstances and needs and make fundamental judgments among competing policy values in order to craft appropriate policies. While this primer does not propose a uniform model of bail reform, it can guide advocates and policymakers through the considerations that should structure a reform strategy. It aims to help translate growing momentum for bail reform into on-the-ground change by providing policymakers and advocates with guidance on what alternatives are available and how they might be implemented.

A. BAIL BASICS

When a person is arrested, the court must determine whether the person will be unconditionally released pending trial, released subject to a condition or combination of conditions, or held in jail during the pretrial process. Any outcome other than unconditional release must be justified by a finding of a significant risk that the defendant will not appear at future court appearances or will commit a serious crime in the community during the pretrial period.[5] In some very rare instances, a judge will determine that there is no condition or combination of conditions that can adequately address those risks; in those instances, a judge is deciding that the person is *non-bailable* and should be subject to pretrial detention.

If, however, the judge decides that the person may be released prior to their court date, then the person is *bailable* and several options are available. The judge can release the person on their own *personal recognizance*, meaning that the person promises to reappear for



scheduled court dates in the future. Alternatively, the judge may *conditionally release* the person such that their continued freedom is subject to certain non-monetary conditions, such as pretrial supervision or enrolling in a substance treatment program.

The court can also conditionally release the person by imposing a secured or unsecured bond. A *secured bond* typically allows a defendant to be released only after he pays the monetary amount set by the court, though a bond may also be secured by the defendant's property (such as a house). When bond is *unsecured*, the defendant will owe the unsecured bond amount if he fails to appear in court.

When secured money bonds are used, the amount of money set by the court that a person is obligated to pay as a condition of his release is that person's *cash bail* or *money bail*.[6] The person may be released upon posting a *bond*, or in some cases 10 percent of the total bond amount. Sometimes the person may be able to make that 10 percent payment directly to the court, which will often return the bond payment if the defendant makes all required pretrial appearances. But in many instances, if the person does not have enough money to pay the money bail set by the court, a bail bonds agent, also known as a surety, may make the payment for them via a *surety bail bond*. If the person cannot make the payment, either personally or through a surety, they will remain incarcerated based on their inability to pay the money bail.

B. PATHOLOGIES OF MONEY BAIL AND THE GROWING MOVEMENT FOR REFORM

Reliance on money bail has been shown to unfairly disadvantage impoverished defendants and to undermine community safety. The money bail system results in presumptively innocent people, who have been determined eligible for release, remaining incarcerated simply because they do not have enough money to afford the cash bond. For instance, a 2013 review of New York City's jail system showed that "more than 50% of jail inmates held until case disposition remained in jail because they couldn't afford bail of $2,500 or less."[7] Most of these people were charged with misdemeanors.[8] Of these non-felony defendants, thirty-one percent remained incarcerated on monetary bail amounts of $500 or less.[9] Nationwide, 34% of defendants are kept in

Jailing people on the basis of what amounts to a wealth-based distinction violates well-established norms of fairness as well as constitutional principles.

jail pretrial solely because they are unable to pay a cash bond, and most of these people are among the poorest third of Americans.[10] National data from local jails in 2011 showed that 60% of jail inmates were pretrial detainees and that 75% of those detainees were charged with property, drug or other nonviolent offenses.[11] In fiscal year 2014 alone, local jails admitted 11.4 million people and the nationwide average daily population included 467,500 pretrial defendants.[12]

The core critique of money bail is that it causes individuals to be jailed simply because they lack the financial means to post a bail payment. Jailing people on the basis of what amounts to a wealth-based distinction violates well-established norms of fairness as well as constitutional principles. It can also lead to significant levels of unnecessary jailing, which imposes intensely negative consequences on individuals, communities, and the justice system.

Unnecessary pretrial jailing carries significant human costs. The experience of even short terms of pretrial detention can be devastating for an individual. Although "jail operations vary considerably, from local detention facilities in rural America that hold three or four inmates to the jail systems of Chicago, Los Angeles, or New York that hold upwards of 20,000 inmates...regardless of facility size, a consistent theme in the extant literature is that jails have always been characterized by overcrowding, resource limitations, litigation, suicide and violence."[13] Jails "collect and concentrate individuals at high risk of violence, substance abuse, mental illness, and infectious disease."[14] The living and sleeping conditions expose inmates to unsafe and unsanitary conditions. A former jail inmate in Baltimore described conditions including "people that are getting skin bacterial

diseases...they have measles, scabies, lice, fleas."[15] Jails, traditionally designed for short periods of detention, often provide inadequate healthcare, activities, and programming.[16] Serious mental illness affects jail inmates at rates "four to six times higher than in the general population," yet "83 percent of jail inmates with mental illness did not receive mental health care after admission."[17] According to the Bureau of Justice Statistics, suicide has been the leading cause of death in jails every year since 2000.[18]

Pretrial detention also impacts many aspects of an individual's life, including the outcome of his criminal case. Even a short period of pretrial detention can have cascading effects on an individual. Pretrial detention can threaten a person's employment, housing stability, child custody, and access to health care.[19] These destabilizing effects may explain the negative impact that pretrial detention has on the prospects of a defendant's case. Defendants who are detained for the entire pretrial period are "over four times more likely to be sentenced to jail and over three times more likely to be sentenced to prison than defendants who were released at some point pending trial."[20] In addition to a greater likelihood of receiving a jail or prison sentence, defendants who are detained pretrial face *longer* sentences once convicted. The sentences of those who are detained pretrial are "significantly longer – almost three times as long for defendants sentenced to jail, and more than twice as long for those sentenced to prison."[21] Recent studies have identified a causal link between pretrial detention and adverse case outcomes.[22] One of those studies analyzed over 375,000 misdemeanor cases filed between 2008 and 2013 in Harris County, Texas, and concluded that "misdemeanor pretrial detention causally affects case outcomes."[23] The study included a regression analysis that controlled for "a wide range of confounding factors" including demographics, criminal history, and wealth, and found that "detained defendants are 25% more likely than similarly situated releasees to plead guilty."[24]

The current money bail system also exacerbates racial disparities in the criminal justice system. Money bail inherently discriminates against poor defendants, who are by definition less likely to be able to cover bond. Due to well-established linkages between wealth and race,[25] money bail will often result in increased rates of pretrial detention for Black and Latino defendants. Studies have shown that Black and Hispanic defendants are more likely to be detained pretrial than white defendants and less likely to be able to post money bail as a condition of release.[26] Because pretrial detention has such a profound effect on later-in-the-case outcomes, racial disparities in the application of cash bail may reinforce or exacerbate larger inequalities in rates of incarceration.

Unnecessary jailing also undermines community safety. Statistical studies have shown that similarly situated, low-risk individuals who are detained pretrial, even for short periods, are actually more likely to commit new crimes following release.[27] This seemingly counterintuitive outcome reflects the profoundly destabilizing effects of even short durations of pretrial detention. Further, the inability to post money bail may induce innocent people accused of relatively low-level crimes to plead guilty, simply so they can be released.[28] In the case of certain offenses, this endangers communities, as the person actually responsible for committing the crime remains free, yet law enforcement is no longer investigating them.[29] Unnecessary detention is also counterproductive from the perspective of guaranteeing appearance at trial. Studies show that those who remain in pretrial detention for longer than 24 hours and are then released are less likely to reappear as required than otherwise similar defendants who are detained for less than 24 hours.[30]

Policymakers in many states around the country have embraced the call for bail reform. For instance, in 2013, Colorado overhauled its bail statutes to discourage the use of money bail and to encourage the use of risk assessment tools when determining which defendants should be released subject to supervision by a pretrial services agency.[31] In August 2014, New Jersey passed legislation to shift from a money-based to a risk-based system.[32] Connecticut's governor recently announced a proposal for bail reform which included a prohibition on setting money bail for anyone charged with a misdemeanor.[33]

Other jurisdictions have been motivated to take legislative action based on court rulings. In November 2016, New Mexico voters will decide on a constitutional amendment that would authorize limited preventive detention and permit those held on a cash bond to petition the court for relief when they cannot afford bail.[34] The amendment was proposed in response to a 2014 New Mexico Supreme Court opinion, which held that a trial judge erred in using a high bond amount to detain a murder defendant prior to his trial when less restrictive conditions of release would protect public

safety.[35] Across the country, a recent wave of civil rights lawsuits filed in federal court have led localities to reform their practices by ending the use of secured money bail in certain situations for arrestees who are unable to pay.[36]

C. CORE LEGAL PRINCIPLES

A starting point for effectively reforming money bail is understanding the existing legal frameworks that govern pretrial decision-making. This section begins by describing some of the baseline federal constitutional requirements relevant to bail. Next, it describes the role that state constitutions play in defining how bail operates. Finally, this section discusses some of the basic elements of state statutory law and suggests resources for assessing whether a particular state's laws are consistent with best practices.

1. Federal Constitutional Principles

Several constitutional provisions establish basic protections in the pretrial setting. As a threshold matter, the Fourth Amendment's protection against unreasonable seizures guarantees that an arrestee receive a probable cause determination by a neutral magistrate within 48 hours of being arrested.[37]

The Eighth Amendment prohibits the use of "excessive bail,"[38] but it does not define what "excessive" means or specify when bail should be granted.[39] In *Stack v. Boyle*, the Supreme Court provided some guidance in assessing whether bail is excessive. Starting from the premise that the "traditional right to freedom before conviction permits the unhampered preparation of a defense, and serves to prevent the infliction of punishment prior to conviction," the Court defined "excessive" as bail "set at a figure higher than an amount reasonably calculated" to "assure the presence of the accused."[40] Significantly, the Court tied the question of whether a bail determination is excessive to the purpose of bail. As the Court explained, the purpose of bail is to help assure the presence of that defendant at subsequent proceedings.[41] "Since the function of bail is limited, the fixing of bail for any individual defendant must be based upon standards relevant to the purpose of assuring the presence of that defendant."[42] This functional analysis of bail suggests that the Eighth Amendment imposes a sliding scale, linking constitutionally permissible bond amounts (or other conditions of release[43]) to the amount needed to incentivize particular defendants to appear at court proceedings. In practice, however, the courts have not applied this Eighth Amendment principle in a way that has meaningfully constrained the use of bail. The Supreme Court has not substantially addressed these principles since deciding *Stack v. Boyle* in 1951.

Although the Eighth Amendment is the only constitutional provision to explicitly address bail, due process and equal protection principles also apply to the pretrial deprivation of liberty. Due process principles govern the circumstances under which any person can be deprived of their liberty, including through pretrial detention. The Supreme Court has emphasized that "[i]n our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception."[44] Due process has a substantive component and a procedural one. Substantive due process "forbids the government to infringe certain 'fundamental' liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest."[45] This means that, as a threshold requirement, any system providing for pretrial detention must be narrowly tailored to the compelling government interest put forward to justify detention. Where that substantive requirement is met, a deprivation of liberty must also reflect procedural safeguards designed to balance public and private interests and to minimize the risk of error.[46] The contours of these due process requirements are discussed in more detail in Section III.C.

The use of money bail also implicates equal protection principles, which forbid courts to impose jail or other adverse consequences on the basis of a defendant's indigence. The Supreme Court has repeatedly reaffirmed that "[t]here can be no equal justice where the trial a man gets depends on the amount of money he has."[47] In *Bearden v. Georgia*, the Supreme Court invalidated the automatic revocation of an indigent defendant's probation on the basis of non-payment of a fine, explaining that to "deprive [a] probationer of his conditional freedom simply because, through no fault of his own he cannot pay [a] fine...would be contrary to the fundamental fairness required by the Fourteenth Amendment."[48] Lower courts have applied this principle to the bail context.[49]

2. Basics of State Law

a. State Constitutional Provisions

Most state constitutions fall into one of two categories:

- **Right to bail:** Most state constitutions include a provisions guaranteeing a right to bail. A typical right-to-bail provision states: "all persons shall be bailable by sufficient sureties, unless for capital offenses, where the proof is evident, or the presumption great." This common formulation, however, has been subject to varied interpretations.[50] In states where courts have interpreted the word "shall" to require an absolute right to bail, all defendants (except in capital cases) are eligible for release and defendants are only detained in practice if they are unable to pay the monetary bond amount set.[51] In other states, despite employing the same or substantially similar language, the word "bailable" and the "sufficient sureties" clause have been interpreted to preserve the court's discretion in extending bail.[52] In these states, non-capital defendants are eligible for bail but the court may always deny bail if it determines that no amount of surety can prevent a defendant's flight or dangerousness to the community.[53] In a few states, this interpretation has been codified in the state constitution.[54] Additionally, in at least one state, the court has interpreted the constitution to mean that the court can revoke the right to bail if a defendant violates a condition of release.[55]

- **No explicit right to bail:** Nine state constitutions mirror the language of the U.S. Constitution and only prohibit the use of excessive bail.[56]

b. State Statutory Provisions

In most states, provisions governing bail appear in the statutory code, the rules of criminal procedure,[57] or court rules.[58] In some states, there is a specific chapter of the code devoted to bail,[59] while in other states, relevant provisions are scattered throughout the code.[60] For instance, the penal code itself may specify minimum bail amounts for certain offenses.[61]

Certain features of a state's law of bail can entrench the use of money bail and impede reform, while others may facilitate change. For example, a statute encouraging the use of an offense-based bail schedule or bail minimums may present challenges to reforming or eliminating money bail.[62] On the other hand, a statute outlining a robust pretrial services program,[63] or limiting the influx of arrestees by encouraging citations in lieu of arrest,[64] may prove useful in reducing a state's reliance on money bail.

There are resources available to advocates or policymakers seeking a comprehensive overview of the terrain that state law should cover in the pretrial context. The American Bar Association's Standards for Criminal Justice: Pretrial Release ("ABA Standards") provides guidance on the core principles that should structure a state's pretrial justice framework.[65] An extensive treatment of the legal considerations and historical background surrounding pretrial issues is available in Timothy R. Schnacke's "Fundamentals of Bail: A Guide for Pretrial Practitioners and a Framework for American Pretrial Reform" which was published by the U.S. Justice Department in 2014.[66]

II.

CRUCIAL SAFEGUARDS FOR PRETRIAL SYSTEMS THAT USE MONEY BAIL

TOOLS TO MITIGATE THE HARM OF MONEY BAIL

There are a variety of ways that states can limit the harms of money bail or eliminate the use of money bail almost entirely. This section describes strategies for mitigating the harmful effects of money bail. Examples of such reforms include guaranteeing meaningful ability to pay determinations, eliminating bail schedules, and regulating commercial sureties. The reforms outlined in this section are each powerful tools for addressing some of the worst harms of money bail; however, they all rest on the premise that money bail is being used at least in some circumstances. Any reforms should reflect the principle that pretrial detention should be reduced except where strictly necessary.

A. GUARANTEEING ABILITY TO PAY DETERMINATIONS

If jurisdictions intend to impose money bail as a condition of release, it is critical to ensure that courts inquire into the defendant's ability to pay any monetary sum imposed. The Supreme Court has held that a person may not be jailed based on his inability to make a monetary payment unless the court has made an inquiry into the person's ability to pay and determined that non-payment was willful or that no other alternative measure will serve the government's legitimate interests.[67] Though elemental, this principle is violated routinely in jurisdictions all over the country.[68] While there are undoubtedly complex questions about how to structure pretrial decision-making, a clear first principle should be that wealth should not be the determining factor in whether any particular defendant is released or detained.

The Supreme Court has provided some guidance on what an ability-to-pay determination should entail. In *Turner v. Rogers*, a case involving unpaid child support obligations, the Court held that jailing a defendant without inquiring into his financial status "violated the Due Process Clause."[69] In reaching its holding, the Court noted certain procedures that, taken together, create "safeguards" that can "significantly reduce the risk of an erroneous deprivation of liberty" in the nonpayment context.[70] These safeguards included:

> (1) notice to the defendant that his "ability to pay" is a critical issue in the contempt proceeding; (2) the use of a form (or the equivalent) to elicit relevant financial information; (3) an opportunity at the hearing for the defendant to respond to statements and questions about his financial status, (e.g., those triggered by his responses on the form); and (4) an express finding by the court that the defendant has the ability to pay.[71]

In the bail context, an ability-to-pay determination with substantially similar safeguards would ensure that people are not held in jail solely as a result of their inability to pay money bail. Although the Supreme Court has not stated exactly what procedures are required, an ability-to-pay determination during a bail hearing should include the following procedures:

- **Notice to the defendant that bail determinations must be individualized.** A defendant should be notified that his ability to pay may be a critical consideration in setting the amount of bail.

- **Use of a standard form.** Courts should use a standard form setting out a defendant's income, assets, financial obligations, and receipt of public benefits, or other financial information relevant to gauging ability to pay.[72]

- **Presumptions about indigence or inability to pay money bail.** At a certain threshold, a defendant should be presumed indigent and therefore unable to pay money bail as a condition of release. Such presumption may be appropriate where, for example, a defendant's income is below a certain threshold, such as income at or below 125% of the Federal Poverty Level.[73]

- **Clearly articulated standards and operative terms.** Terms such as "ability to pay" or "indigence" should be clearly defined by court rules or statute.

- **The right to counsel.** The right to counsel at the bail determination is necessary to ensure that defendants are not unnecessarily detained prior to trial.[74] According to a 2011 national survey, "only ten states guarantee representation at the initial assessment of bail at an initial appearance."[75]

- **A hearing on the record.** A bail hearing on the record will ensure proper procedures are met and give the defendant an opportunity to contest a bail determination.[76]

- **Right to prompt review.** The right to promptly seek review of a bail determination will also ensure that defendants who are unable to pay money bail are not unnecessarily jailed.[77]

Much of the information about a defendant's ability to pay may already be collected when the court determines whether the person qualifies for court-appointed counsel. Such financial information is routinely obtained within minutes from arrestees under penalty of perjury. Drawing on that information-collecting process will be crucial in order to allow prompt ability-to-pay determinations to take place. Having an ability-to-pay determination with these safeguards would ensure that judges set money bond only in an amount that a defendant can afford. This would ensure that money bail is only used where it can facilitate release by realistically incentivizing appearance.

B. INDIVIDUALIZING BAIL DETERMINATIONS AND ELIMINATING BAIL SCHEDULES

Jurisdictions throughout the country use bail schedules to determine the amount of money bail that will be applied to certain categories of offenses. Generally, a bail schedule will list particular offenses or offense types (*e.g.*, various classes of misdemeanor or felony) and assign a specific dollar amount or dollar range. Jurisdictions may embrace bail schedules as a tool of efficiency or because they provide uniformity along certain dimensions (that is, defendants accused of the same offense will have the same bond amount applied to them). Bail schedules present another benefit: by creating a rigid framework for bail determinations, they prevent decision-makers from directly discriminating on the basis of suspect characteristics, like race. But by setting out a simple matrix of offenses and corresponding dollar amounts, bail schedules do not allow for meaningfully individualized considerations of a defendant's circumstances. Bail schedules are often used to set cash bond prior to a defendant's first appearance before a judge or magistrate, precluding judges from determining a defendant's ability to pay or tailoring the amount of the money bond to the defendant's risk of failing to appear.[78]

Bail schedules may be mandatory or advisory and may be set at the state or local level.[79] Once bail schedules are in place, however, they often become de facto law even if they are not formally mandatory. For example, in Alabama, the bail statute states that "[t]he amount of bail shall be set in the amount that the judicial officer feels, in his or her discretion, is sufficient to guarantee the appearance of the defendant."[80] But judges also have the option of using a bail schedule that the Alabama Supreme Court or the local judge has prescribed.[81] Although the bail schedule adopted by the Alabama Supreme Court notes that "courts should exercise discretion in setting bail above or below the scheduled amounts,"[82] in practice this has not always occurred. In a lawsuit challenging bail practices in the City of Clanton, Alabama, a federal judge found that the Clanton Municipal Court did not deviate from a generic bail schedule and that indigent defendants who could not post bail were forced to wait up to a week until they received an individualized bail determination.[83]

By setting out a simple matrix of offenses and corresponding dollar amounts, bail schedules do not allow for meaningfully individualized considerations of a defendant's circumstances.

Some states, rather than require or authorize the creation of bail schedules, will set minimum bail amounts for certain offenses by statute. Statutory bail minimums also preclude judges from making individualized bail determinations. For example, in Alaska, a judge must impose a minimum cash bond of $250,000 for persons charged with offenses involving methamphetamines who have been previously convicted of possession, manufacture, or delivery of the drug.[84] The judge can reduce this amount only if the defendant demonstrates that he or she did not stand to gain financially from the methamphetamine involvement and only participated as an aider or abettor.[85] These standard amounts have no relation either to the amount necessary to ensure appearance or the individual defendant's ability to pay.

Bail schedules are fundamentally inconsistent with individualized decision-making. Money bail may serve only one legitimate role: to incentivize someone to return to court as required.[86] To do that, it must be individualized to the defendant. Just as a fixed bail amount may be too high for a poor defendant to post (and therefore will have the effect of imposing pretrial detention), that same bail amount may be so inconsequential to a wealthy defendant that the prospect of forfeiting bail will not function as a meaningful incentive to appear for trial. The ABA Standards emphasize the importance of properly individualized determinations when setting money bail. Under those standards, money bail may be "imposed only when no other less restrictive condition of release will reasonably ensure the defendant's appearance in court."[87] Cash bonds "should not be set to prevent future criminal conduct during the pretrial period."[88] Significantly, the ABA Standards state:

> Financial conditions should be the result of an individualized decision taking into account the special circumstances of each defendant, the defendant's ability to meet the financial conditions and the defendant's flight risk, and should never be set by reference to a predetermined schedule of amounts fixed according to the nature of the charge.[89]

Individualized determinations of appropriate bail amounts should be seen as a baseline precondition in any system using money bail. It reflects best practices as well as foundational constitutional requirements.[90]

C. REGULATING OR PROHIBITING COMPENSATED SURETIES

Commercial sureties play a central role in the pretrial procedures of many jurisdictions. A commercial surety, or bail bond agent, purports to guarantee a defendant's appearance by promising to pay the financial condition of a bond if the individual does not appear for court. Bail bond agents are usually licensed by a state and the bonds are underwritten by an insurance company. Bond agents not only charge a non-refundable fee for their service, but usually require the defendant or his friends or family to provide collateral for the full amount of the financial condition. Between 1994 and 2004, the percentage of defendants released on commercial sureties increased from 24% to 42%.[91] In some circumstances, the existence of commercial sureties will act as a safety valve against unnecessary detention by enabling some defendants who could not afford a full bond amount to avoid pretrial detention.

But commercial sureties have also been subject to strong criticisms. Commercial sureties can deepen the pathologies of money bail by devolving pretrial decisions from courts to private companies. For many defendants, pretrial release or detention will depend on whether a commercial surety posts their bond. Ironically, some bail bond agents will not post bail for defendants with low money bail amounts because it is less lucrative for the bail bond company than posting bail for defendants

with high cash bonds.[92] The effect of those incentives may be that defendants with lower bond amounts – typically defendants a court perceives to present lower pretrial risk – remain detained because they cannot pay a cash bond and commercial sureties do not view them as worthwhile clients. Moreover, commercial surety companies face frequent criticism for inadequate training and aggressive pricing practices.[93] Private sureties are also notorious for physically and economically coercive practices and exacerbating the potential for violence, bribery, and corruption in the bail context.[94] The prominence of compensated sureties is, from a global perspective, an outlier – outside the U.S., only the Philippines allows the operation of a commercial surety industry.[95]

Some states, such as Kentucky and Illinois, have passed legislation to ban the bail bonds industry entirely.[96] States can also pass legislation that reduces the role of compensated sureties by allowing defendants to pay deposits directly to the court, instead of bond agents. For example, in Massachusetts, trial court judges now routinely set a money bail amount as a percentage of the surety required so that defendants can pay a 10% deposit directly to the court, rather than a bond agent, and have the deposit returned at the resolution of their case – a practice that effectively eliminated the bail bonds industry.[97]

III.

MOVING BEYOND MONEY: PRACTICAL, LEGAL, AND POLICY CONSIDERATIONS SURROUNDING RISK-BASED SYSTEMS FOR PRETRIAL JUSTICE

NAVIGATING ALTERNATIVES TO MONEY BAIL

The reforms described above assume the continued use of money bail and propose safeguards to help mitigate the worst harms that flow from that system. An alternative approach is to re-conceptualize the pretrial process in a way that replaces money bail with tools better suited to further the legitimate purposes of pretrial decision-making. If cash bonds serve to incentivize defendants to appear for trial, are there alternative practices that more effectively and fairly reduce the risk of pretrial flight? Similarly, to the extent that some judges use high cash bonds as a *sub rosa* means of detaining pretrial defendants whom they consider dangerous, are there mechanisms that promote community safety in a more equitable and transparent way?

One model for displacing the role of money bail is a risk-based approach to pretrial justice. A risk-based model proceeds from the presumption that pretrial defendants should be released. When that presumption is overcome by a significant risk that the defendant will fail to appear or commit a serious crime, a court should impose the minimally invasive condition necessary to address that risk.[98] Many champions of bail reform have called for risk-based system composed of three elements:

1. Pretrial service agencies that use a variety of non-detention-based interventions to ensure appearance at trial and promote community safety
2. Quantitative risk assessment determinations that use algorithms to assign a risk category that judges can incorporate into pretrial decision-making
3. Limited use of preventive detention

This section discusses each of those elements in turn, addressing practical, legal, and policy questions. While this primer takes no position on whether jurisdictions should adopt those elements, it does seek to highlight some of the important considerations that a jurisdiction ought to consider in weighing potential approaches to bail reform. The discussion below seeks to bring the relevant considerations to the surface.

A. PRETRIAL SERVICES AGENCIES AND CONDITIONS OF RELEASE

A key element of a risk-based model is the strategic, evidence-based use of pretrial services. Pretrial services can take many forms, but it generally refers to the bundle of interventions that will ensure that an individual defendant appears at trial and is not rearrested during the pretrial period. Pretrial services are thus an indispensable element of a system that replaces money bail. Instead of relying on cash bonds and pretrial detention, pretrial services offer an array

WASHINGTON D.C.: A CASH-LESS BAIL SYSTEM

Washington, DC offers an example of a busy and complex court system that has virtually eliminated money bail and maintained positive pretrial outcomes. The city has a high-functioning pretrial services agency that facilitates pretrial release and detention decisions and provides appropriate levels of supervision and treatment for released defendants that do not rely on money bail.[99] Nearly 88% of defendants in Washington D.C. are released with non-financial conditions.[100] This nearly cash-less bail system has proven successful in maintaining public safety and the integrity of the court system. Between 2007 and 2012, 90% of released defendants have made all scheduled court appearances and over 91% were not rearrested while in the community before trial.[101] Ninety-nine percent of released defendants were not rearrested on a violent crime while in the community.[102] At the same time, the D.C. bail system has allowed defendants awaiting trial to remain in their communities for the entirety of their pretrial period; 88% of released defendants remained in the community while their cases were pending without a revocation of release or supervision.[103] Of course, the DC system has certain unique characteristics: all of its judges operate in a single courthouse, which may reinforce a culture of pretrial release; it has an extremely high-functioning public defender system, which helps ensure proper representation at pretrial detention hearings; and its pretrial services agency receives funding from the federal government. Still, the D.C. bail system demonstrates that, with alternative methods to manage risk, money can be virtually eliminated from the bail process without negatively affecting court appearance rates or public safety.

of less restrictive tools that are likely to produce better outcomes for the jurisdictions in which they operate. For these reasons, expanded pretrial services have been an important component of recent state-based efforts at bail reform.

Some states already authorize the creation of a pretrial services agency that is empowered to screen defendants, make recommendations regarding detention or bail, and provide services such as treatment for mental health conditions and substance use disorder.[104] In recent years, six states – Colorado, Hawaii, Nevada, New Jersey, Vermont, and West Virginia – have passed legislation to create or bolster pretrial services agencies.[105] In Colorado, for example, pretrial services are authorized by state statute and administered at the county level.[106] The Mesa County, Colorado Pretrial Services Agency has been held up as a national model. The agency uses risk assessment tools to determine a defendant's risk of failure to appear or re-arrest and supervises defendants who are released prior to trial.[107] The lowest level defendants receive phone calls reminding them of their court dates, while other defendants may be required to meet with their pretrial services officer as often as once a week.[108] From July 2013 to December 2014, the county was able to reduce its pretrial jail population by 27% without negative consequences for public safety.[109]

While some jurisdictions attach pretrial services to probation or other supervisory departments or include it in the role of the courts, the best practice is to create a separate agency to administer pretrial service. The National Association of Pretrial Services Agencies (NAPSA) has emphasized the importance of independence to the critical role of the pretrial services agency, especially in light of the "unique mission and role of pretrial services, which in some instances may not be congruent with the mission of the host entity" if the agency is housed within another department.[110] NAPSA's Standards on Pretrial Release reiterates that "although a pretrial services program may be organizationally housed within a probation department, sheriff's office, or local corrections department, it should function as an independent entity."[111]

Any state seeking to mandate the use of pretrial service agencies, of course, must contend with the budgetary implications of establishing or expanding a freestanding criminal justice agency. The costs involved will vary depending on the needs of particular jurisdictions. Though it is not possible to forecast those costs for all jurisdictions,

> Electronic monitoring should only be used as an alternative to incarceration, not as a way to monitor low or medium-risk defendants whose detention would clearly not be justified.

in many instances those start-up and operational costs may be counterbalanced by the savings that flow from decreased detention and improved pretrial outcomes, including fewer new crimes being committed.[112]

Pretrial services may employ an array of interventions to ensure appearance and protect public safety. Most of these interventions operate on a continuum of liberty restrictions from the most minor, such as monthly phone calls with a pretrial services agency, to the most restrictive, such as electronic monitoring or house arrest. As discussed below, more restrictive interventions may raise significant constitutional considerations.[113] Depending on how they are implemented, pretrial conditions of supervision may implicate the prohibitions against unreasonable searches, deprivations of liberty without due process, or excessive bail.[114] For both legal and policy reasons, it is crucial that the least restrictive alternatives to detention be imposed in order to ensure a defendant returns to court or avoids re-arrest during the pretrial period.

Jurisdictions may consider a broad range of potential conditions. Without attempting to exhaustively catalogue every condition a jurisdiction may employ, each of the following sub-sections describes a potential pretrial intervention, highlighting practical and constitutional considerations that should inform decisions about whether to deploy those interventions.

1. Court Date Notification

The least invasive tool to ensure that defendants show up to court is also one that has been shown to be quite effective: reminders. Studies over the past three decades have demonstrated that simply reminding defendants of their upcoming court date improved appearance rates.[115] These studies highlight how notifications had varying degrees of effectiveness depending on the type of contact. The different approaches included: (1) having people call the defendants; (2) using an automated calling system to contact defendants; (3) sending letters or postcards; and (4) a combination of the above. While it is not possible to make a direct comparison between the approaches because the studies employed different methodologies, the results indicate that all effectively reduced failures to appear in court. In Multnomah County, Oregon, simply calling defendants dramatically decreased rates of failure to appear. The use of automated telephone call reminders, referred to as "Court Appearance Notification System," was associated with a 41 percent decrease in failures to appear among defendants who successfully received a phone call.[116] Similarly, Coconino County, California[117] and Jefferson County, Colorado[118] reduced their failure to appear rates significantly through phone calls by volunteers.[119]

2. Pretrial Supervision

Pretrial supervision refers to the practice of maintaining regular contact with defendants, often to facilitate, support, and monitor their compliance with their pretrial release conditions. There is no consensus definition of what pretrial supervision entails, and the requirements and practices referred to as pretrial supervision vary widely.[120] The primary mechanisms used to supervise pretrial defendants include in-person contact, home contact, telephone contact, contact with those knowledgeable about the defendant's situation, regular criminal history checks, and also court date reminders.[121] The most recent studies that focus on regular communication suggest that it may reduce rates of failure to appear and re-arrest compared with defendants released without supervision. A 2006 study in Philadelphia found that regular supervision substantially reduced rates of re-arrest and failure to appear,[122] and a study by the Laura and John Arnold Foundation also found that moderate-to-high-risk defendants who were regularly supervised were more likely to appear in court and less likely to be re-arrested.[123] Controlling for relevant variables, moderate-risk defendants who were supervised missed court dates 38% less than unsupervised defendants. Supervised high-risk defendants missed court appearances 33% less often.[124] The study found that supervision decreased re-arrest rates for medium and high risk defendants.[125]

3. Electronic Monitoring

Electronic monitoring is a tool to track a defendant's movements in order to deter him from absconding or committing a serious offense. Electronic monitoring has been used for the past twenty years and its popularity is growing.[126] From 2000 to 2014 the use of electronic monitoring grew by 32 percent.[127]

Existing research on the efficacy of electronic monitoring has documented mixed results. This is probably because increased monitoring also increases the rate at which violations are detected, and because of the comparatively high-risk population that currently receives electronic monitoring.[128] Electronic monitoring as a condition of pretrial release has not been shown to reduce pretrial failure.[129] However, there are significant limitations to the studies, which examined programs that may have already been using electronic monitoring for more high-risk defendants – defendants who may not otherwise have been released if not for the availability of this alternative to detention. Electronic monitoring may have potential to reduce unnecessary detention for higher risk defendants with an acceptable level of risk. Electronic monitoring may be a powerful tool for ensuring pretrial success while reducing or minimizing the need for detention.

Electronic monitoring should only be used as an alternative to incarceration, not as a way to monitor low or medium-risk defendants whose detention would clearly not be justified.[130] Electronic monitoring is not a neutral restriction that should simply be imposed as a matter of course; it restricts liberty in profound but sometime subtle ways. Electronic monitoring can be intrusive and deleterious to a defendant's relationships and employment.[131] In a survey of probation officers and convicted people who were given an electronic monitoring device in Florida, both groups described a negative impact on the individual's relationships and employment.[132] Those who had to wear the electronic monitoring device told researchers that the device gave them a "sense of shame" and a feeling of being "unfairly stigmatized."[133] Forty-three percent of those who wore it believe that electronic monitoring had a negative impact on their partners because of the inconvenience it created.[134] Probation officers and those who wore the devices were unanimous in their belief that wearing an electronic monitoring device made it difficult to hold a job.[135]

Jurisdictions considering electronic monitoring must also tailor such programs to ensure that they comply with constitutional requirements. For example, several federal courts have ruled that it is unconstitutional to impose electronic monitoring as a mandatory condition for certain categories of offenses. Because electronic monitoring constitutes a significant deprivation of liberty,[136] these courts have found that imposing it categorically – without an inquiry into whether it serves legitimate pretrial needs in particular cases – may violate the Constitution.[137] And in light of the growing understanding that GPS empowers the government to invade constitutionally-protected privacy in unique ways,[138] courts may

AVOIDING "OFFENDER-FUNDED" INTERVENTIONS

Moving away from a money bail system that penalizes the poor is a good thing, but policymakers and reformers should be wary of a new hazard that may emerge: "offender-funded" supervision. For example, in all states except Hawaii and the District of Columbia, defendants are charged a fee for electronic monitoring.[147] Defendants may also be charged a monthly fee for pretrial services supervision, drug or alcohol testing, or participation in counseling or anger management classes.[148] In some cases, a defendant who is ordered released with conditions like electronic monitoring may be forced to wait in jail until he can pay a fee to setup the GPS monitoring, or may be sent back to jail if he cannot continue paying fees.

These onerous conditions of release may create harms that mirror the injustices associated with money bail. Jurisdictions should avoid charging fees for pretrial supervision. Any jurisdiction that charges fees pretrial should ensure that defendants receive an ability-to-pay hearing and provide judges the option of fee waiver. If fees are imposed on pretrial defendants, it is critical that defendants not be detained because of their inability to pay such fees.

increasingly subject electronic monitoring of pretrial defendants to probing Fourth Amendment scrutiny. Ultimately, the invasiveness of electronic monitoring will almost always be less severe than detention, so these constitutional considerations should not lead jurisdictions to conclude that electronic monitoring is unavailable as an alternative to incarceration. But as a general matter, these constitutional considerations counsel in favor of procedures that require courts to engage in individualized decision-making to determine whether electronic monitoring will significantly advance the purposes of pretrial supervision in light of the circumstances of particular defendants.

Electronic monitoring can also be expensive for defendants, many of whom are required to pay fees in order to be subject to electronic monitoring.[139] One recent news report documented the experience of a man in Richland County, South Carolina who was charged with driving without a license and required to pay a $179.50 setup fee and $300 a month fee to be on electronic monitoring as a condition of his release – if he stopped making payments, he would be detained prior to his trial.[140] The unnecessary use of expensive electronic monitoring could potentially replicate the same economic injustices that exist in a money bail system. For that reason, jurisdictions should eliminate or minimize fees imposed on pretrial defendants, and any fees imposed should be conditioned on a judicial finding that the defendant has a reasonable ability to pay such fees.

4. Drug Testing

Drug testing is a widely used condition of release that is counterproductive in the pretrial supervision context.[141] Drug testing has increased considerably as a condition of release since its inception in the 1980s, despite the fact that no empirical studies have found solid evidence that it is effective at reducing pretrial failure. The number of pretrial services agencies offering drug testing as a pretrial release condition has grown from 75 percent in 2001 to 90 percent in 2009.[142] Yet the studies examining the effectiveness of drug testing have all found that drug testing fails to improve pretrial outcomes.[143] Drug testing is simply ineffective in reducing pretrial failure, even when the court subjects defendants to increasingly severe sanctions for noncompliance.[144] Moreover, a program that adopts drug testing as a condition of pretrial release may not only be less effective at reducing pretrial failure rates but could entrench a defendant even further in the criminal justice system. Mandatory drug testing also raises well-established Fourth Amendment considerations,[145] and for court-ordered drug testing to survive Fourth Amendment scrutiny a jurisdiction utilizing drug testing on pretrial defendants will need to ensure that it has adequate empirical evidence justifying the use of drug testing to further the legitimate aims of pretrial supervision.[146] Because defendants seem to fail to abide by drug testing conditions regardless of the sanctions imposed, programs that use drug testing and impose sanctions for noncompliance are setting defendants up to fail.

B. ACTUARIAL RISK ASSESSMENT

"Risk assessment" is a broad term that encompasses a range of procedures for predicting criminal justice outcomes, and risk assessment tools are used widely beyond the pretrial context. In the pretrial context, risk assessment instruments are typically used to gauge the risk of failing to appear for court proceedings or being arrested while awaiting trial. Pretrial decision-making is always, at bottom, a process of risk assessment. Whether applying categorical criteria, exercising unfettered judicial discretion, or implementing charge-based schedules, pretrial decisions represent a forward-looking appraisal of what interventions (if any) are needed to prevent a defendant from failing to appear or committing a serious crime while his case is pending. When reformers or scholars refer to "risk assessment tools" or "risk assessment instruments," they generally refer to a formalized system for incorporating those kinds of forward-looking assessments into the pretrial decision-making process.

Broadly, pretrial risk assessment tools will fall into two categories: clinical tools, which rely on specialists within the court system (typically pretrial services workers) to exercise judgment, and actuarial risk assessment instruments, which generate risk scores based on statistical analysis. The discussion in this primer focuses on actuarial tools, often referred to as Actuarial Pretrial Risk Assessment Instruments (APRAIs).[149]

Building an APRAI requires not only the expertise of statisticians, but also access to and maintenance of a high-quality pretrial database. An APRAI assesses the risk that a defendant presents on the basis of "risk factors" incorporated into a statistical formula that uses existing

data to estimate future outcomes.[150] Some factors may reflect information that is immediately available from mining a defendant's criminal history and current charge. Other factors, like employment, history of substance abuse, and residency status, will require interviewing the defendant. The complexity of the risk-factor scheme presents a set of trade-offs: more factors may allow an instrument to achieve greater accuracy, but collecting more extensive information may add administrative costs to or slow-down the application of the instrument, which may result in some defendants remaining in jail during that information-gathering process. Once the risk factors are entered into an APRAI's statistical algorithm, the judge considers the resulting "risk score" in setting conditions of release.

It is not enough for a jurisdiction to proclaim that it will use a quantitative risk assessment tool – jurisdictions must ensure the tool's validity. A valid tool is one that has been shown (and can be shown on an ongoing basis) to accurately predict the outcomes it purports to track.[151] After an APRAI is in use, ongoing validation of the tool is required to ensure its continued efficacy, particularly in light of changes to a jurisdiction's population or other conditions.[152] This validation process consists of applying an instrument to an existing dataset and comparing risk scores to results.[153] Validation studies may include not only the examination of actual re-arrest or failure to appear rates, but also racial disparities or other unwarranted disparities that cannot be justified by risk differences.[154] This validation process may be costly and complicated. Indeed, once an APRAI is implemented within a jurisdiction, it becomes increasingly difficult to validate the accuracy of its results because there may no longer be a comparison group available. For example, if a tool designates certain offenders as "high risk," and almost all of those "high risk" defendants are detained, it becomes impossible to test whether individuals who receive that designation actually have high rates of pretrial failure.

A NATIONAL ACTUARIAL MODEL

Increasingly, individual jurisdictions or entire states may consider deploying nationally applicable risk assessment instruments.[159] Much of that change is being driven by a national APRAI developed by the Laura and John Arnold Foundation (LJAF).[160] It has developed an APRAI it describes as an "entirely objective risk assessment score" based solely on factors related to criminal history, current charge, and age.[161] The tool was piloted in Kentucky, and one Arnold Foundation-funded study found that the predictive power of the APRAI was not diminished by the elimination of the interview-dependent factors, which had previously made the assessment difficult to administer.[162] After deploying the tool, Kentucky was able to reduce re-arrests among defendants on pretrial release while increasing the percentage of defendants who are released before trial.[163] These findings led the foundation to the second phase of its project, in which the researchers amassed a database comprised of over 1.5 million cases drawn from over 300 jurisdictions.[164] Researchers analyzed the predictive power of and relationship between hundreds of factors, both interview and non-interview dependent. They identified the nine most predictive factors, all of which were drawn from a defendant's existing case and prior criminal history.[165] From this dataset they constructed the Public Safety Assessment-Court (PSA-Court), which produces three separate risks scores for each defendant, on a scale of one to six.[166] The three axes on which defendants are scored are risk of "failure to appear," "new crime", and "new violence."[167]

A report published in June of 2014 summarizing the results of the first six months of Kentucky's use of the PSA-Court revealed that 70% of defendants were released, which represented only a slight increase in the rate of release, which had averaged 68% in the four years prior.[168] The rate of pretrial arrest was reduced by close to 15%.[169] Using a control group to test the usefulness of the third category of risk (new violent crime), the summary reports that the PSA-Court predicted this risk with a "high degree of accuracy."[170] Specifically, those flagged as posing an increased risk of violent crime were arrested for a violent offense at a rate 17 times that of defendants who were not flagged (8.6% versus 0.5%).[171] The PSA-Court has been adopted in jurisdictions around the country, including across Arizona, New Jersey and in several major cities.[172]

Actuarial pretrial risk assessment tools are in use around the country. They are currently employed statewide in Virginia, Kentucky, and Ohio, in at least one county of several states (Arizona, Illinois, Minnesota, New York, Pennsylvania, and Texas), in Washington, D.C., and for certain defendants in the federal system.[155] Although risk assessment may be used in a cash-based bail system, states aiming to reduce their reliance on money bail, including New Mexico and New Jersey, have relied on risk assessment as a key feature of reform.[156] APRAIs may be developed on behalf or specific state agencies, by non-profit groups, or by for-profit corporations.[157]

Actuarial risk assessment tools have been embraced by many reformers seeking to ensure greater fairness and efficacy in pretrial justice. Instead of setting bail using offense-based bail schedules or a judge's hunch, these tools give judges an evidence-based framework to set appropriate conditions of release, reducing the risk that a defendant will fail to appear in court or be a danger to the public in the pretrial period. When used properly, risk assessment tools may offer great promise as a way to replace money bail with an alternative grounded in statistical assessments of pretrial outcomes.

At the same time, the use of risk assessment tools in the pretrial context raises very serious concerns and has attracted considerable criticism. Even the strongest arguments in favor of risk assessment recognize that a tool must be properly calibrated to reflect a jurisdiction's specific population, which means that the potential benefits turn on complicated and potentially costly determinations about which instrument to use.[158] Moreover, even the best risk assessment tools may generate serious disparities along racial or other demographic lines. Without being considered in a broader context, quantitative risk assessment scores may also displace other potentially relevant considerations, resulting in mechanical application of pretrial outcomes that may be poorly suited to the circumstances and needs of individual defendants.

Risk assessment tools, in other words, present complex considerations. This primer does not attempt to provide a standard prescription for every jurisdiction. Instead, the following discussion outlines some of the policy and legal considerations that should guide the decision-making about whether to utilize quantitative risk assessment tools in any particular jurisdiction.

1. Policy Considerations

a. Potential Benefits of Risk Assessment

Several policy considerations may counsel in favor of using actuarial risk assessment as one factor during bail determinations. Risk assessment tools may transform some of the worst pathologies of the pretrial process by replacing arbitrary or discriminatory decision-making with a more systematic method grounded in evidence. As noted earlier, there are only two legitimate bases for restricting a pretrial defendant's liberty: preventing failure to appear at trial and protecting the community from serious crime. Both of those justifications are, at bottom, inescapably about assessing risk. The promise of risk assessment tools is that they allow judges to consider risk based on sophisticated analysis of data, as opposed to a more intuitive or amorphous kind of risk prediction grounded in an individual decision-maker's experiences or analysis.[173] While no quantitative instrument can perfectly predict the outcome in a particular defendant's case, proponents of risk assessment argue that it is far superior to a judge's unguided discretion, which may reflect stereotypes and other biases or otherwise fail to engage in individualized consideration of a defendant.[174] Indeed, researchers have found that actuarial predictions are in many contexts more predictive than clinical assessments of dangerousness and risk of re-offense.[175]

In addition to improving individual outcomes, risk assessment tools may decrease the overall rates of pretrial detention. A 2012 study, which looked at a dataset of 116,000 defendants from 1990 to 2006, found that if judges chose to release all defendants with less than a 30 percent chance of being rearrested for any crime during the pretrial period, 85 percent of pretrial defendants would have been released, significantly more than the number of defendants who were actually released during that period.[176] Risk assessment tools may supply courts with an objective basis to release low-risk defendants on their own recognizance or with limited pretrial conditions. Reducing the jail population serves many important interests: it spares individuals from the serious infringement on liberty and collateral consequences (such as exposure to violence or job loss) that can follow even a short period of pretrial detention,[177] and it spares defendants' families the destabilizing effects that may follow from loss of income, housing, or child custody. Reduction of detention at a sufficiently significant scale also lowers the economic costs associated with administering jails.

Risk assessment tools may also counteract unfair disparities in current bail practices, particularly along racial and socioeconomic lines. Actuarial predictions may help ameliorate these disparities in several ways. First, simply by helping to displace money bail, risk assessment tools may substantially cure racial or other unwarranted disparities. As noted earlier, entrenched linkages between race and wealth will result in patterns of racial inequality when a policy has the effect of discriminating against the poor.[178] Risk assessment may also diminish racial or socioeconomic disparities by counterbalancing implicit or explicit biases of judges.[179] To the extent that evidence-based methods run counter to those biases, a jurisdiction may achieve significantly fairer outcomes.

Initial experiences in some jurisdictions suggest that risk assessment tools may improve pretrial outcomes on many dimensions. After Kentucky began to use a risk assessment tool, the state was able to increase the percentage of defendants who were released before trial while reducing re-arrests among defendants on pretrial release.[180] Virginia has also kept pretrial failure rates low by using a risk assessment tool. In fiscal year 2012, Virginia defendants who were released pretrial had a 96.3% appearance rate in court and less than 4% of released defendants were re-arrested.[181] Mecklenburg County, North Carolina has been able to reduce the number of people held in jail pretrial since using a risk assessment tool.[182] Just a month after Allegheny County, Pennsylvania instituted changes to its pretrial services program, including the use of risk assessment tools to inform bail determinations, the number of defendants held in jail after their first appearance was reduced by 30 percent.[183]

b. Implementation Considerations

Capturing the potential benefits of risk assessment requires close attention to several important implementation considerations. First, policymakers must carefully consider how to characterize different risk levels. Risk assessment tools typically define certain risk levels as "high," "moderate," or "low," but that characterization is a policy judgment, not a statistical one. Calling a risk score "high" is likely to significantly impact how judges, and the public, view particular outcomes. An initial decision over where to set that threshold – is a "high risk" defendant one with a 30% risk of failure, or should that label be reserved for 50% or 75% risk? – should take place transparently and with the involvement of all criminal justice system stakeholders. Second, judges and other system actors must undergo training that allows them to understand precisely what it is that a risk score conveys: a statistical estimate of a particular outcome based on the observed outcomes among a population of individuals who share certain characteristics. In many instances, an actuarial tool may be very predictive for the group on average but not accurate for any given member of that group.[184] If a judge relies on a risk score without considering other factors that may be relevant in making a bail determination, the risk score could carry undue weight.

It is also important to ensure a consistent structure for balancing a risk assessment score with other considerations. If the point of risk assessment is to displace arbitrary or biased decision-making, that purpose would be defeated if the ultimate pretrial decisions are not structured to ensure consistent risk-based decision-making. Jurisdictions should issue guidance for judges to structure the relationship between a defendant's risk score and other considerations. This might include a list of factors that can justify departing from what the instrument indicates. Such criteria should embody the principle that a pretrial decision should impose the least restrictive conditions necessary.[185] It could do this, for example, by requiring that any outcome *more restrictive* than a risk score indicates must be justified in writing based

> Risk assessment tools may transform some of the worst pathologies of the pretrial process by replacing arbitrary or discriminatory decision making with a more systematic method grounded in evidence.

on certain enumerated criteria. Judges, prosecutors, defense attorneys, and other practitioners will need to be trained in how to interpret and utilize risk assessment scores before a jurisdiction implements an actuarial risk instrument in the pretrial setting. Defense counsel should also have a role in the application of a risk assessment instrument – this may include being present with a defendant during an initial interview and promptly receiving a copy of the data inputted into an APRAI and the ultimate report. Finally, implementation of any APRAI should be accompanied by a robust data-collection requirement that allows a jurisdiction and outside observers to measure the instrument's effects in terms of overall detention rates, pretrial failure rates, and racial disparities.

Potential Harms of Risk Assessment

Despite the potentially promising aspects of risk assessment, policymakers should also consider the very serious possible drawbacks. For one thing, all of the potential benefits of risk assessment hinge on generating consistently accurate predictions. That requires a reliable method of gathering data for the underlying algorithm and properly inputting information about individuals who the risk assessment instrument evaluates. But "criminal justice data is notoriously poor,"[186] and reliance on an ostensibly scientific process fueled by faulty data may skew outcomes.[187] Before utilizing risk assessment, many jurisdictions will need to improve the collection of criminal justice data that they will rely on. This is an ongoing process. It means having sufficiently reliable means for collecting data relevant to individual defendants to input into their risk calculation; depending on the instrument, it may also mean continually collecting reliable information about the overall population of pretrial defendants and other related aggregate-level data to ensure that the instrument reflects current populations and pretrial outcomes. In many jurisdictions, the costs related to data collection and maintenance may significantly strain limited budgets.

In addition to the possibility of inaccuracies flowing from erroneous inputs, risk assessment tools may distort pretrial outcomes to the extent that the "risk" they forecast is ambiguous or otherwise subject to broad interpretation. In many instances, prediction tools do not distinguish between risk of pretrial flight and risk of arrest. Even when tools make that basic distinction, a simple designation of "high risk" may not tell a decision-maker whether that reflects risk of arrest for a serious violent crime, whether the arrest will be occurring during the pendency of the defendant's case, or which interventions are likely to be effective in mitigating that risk.[188]

The potentially negative effects of risk assessment, moreover, may disproportionately impact Black and Latino defendants or other minority groups. In particular, many critics argue that by relying on underlying factors that are shaped by race discrimination, statistical tools may reinforce and deepen inequalities in the criminal justice system.[189] To the extent that risk scores reflect prior interaction with the criminal justice systems, the disproportionate exposure of African Americans and Latinos to law enforcement will skew those assessments – even where those underlying disparities reflect discrimination or other unjust patterns.[190] Similarly, risk assessment scores that incorporate educational history, housing instability, or other socioeconomic factors that correlate with race may also import serious racial disparities.[191]

Former Attorney General Eric Holder has expressed the concern that, in the sentencing context, actuarial risk assessment "may inadvertently undermine our efforts to ensure individualized and equal justice."[192] In Holder's view, "[b]y basing sentencing decisions on static factors and immutable characteristics – like the defendant's education level, socioeconomic background, or neighborhood – [risk assessment instruments] may exacerbate unwarranted and unjust disparities that are already far too common in our criminal justice system and in our society."[193] This can lead to a vicious cycle: because pretrial detention has been shown to lead to worse criminal justice outcomes, the characteristics of the individuals detained pursuant to risk assessment will gain an even stronger association with pretrial failure over time, thus strengthening the seeming predictive power of those features.[194] Indeed, because APRAIs are based on empirically-derived factors, it is possible that risk assessment tools will not only entrench but exacerbate existing racial and socioeconomic disparities by appearing to give a scientific imprimatur to unequal outcomes.

Some critics of risk assessment have also argued that the very premise of an actuarial model – drawing on aggregate data to make decisions about individuals – violates fundamental norms of fairness. While an *individual's* conduct is within his control, that individual cannot control the aggregate conduct of others who share some characteristic deemed relevant for the risk

assessment instrument.[195] Therefore, because actuarial models derive outcomes from aggregated data, the individual's treatment is based, at least partially, on the independent decisions of others.[196]

Jurisdictions considering the use of actuarial risk assessment tools should consider the policy considerations outlined above in deciding what framework will deliver a fair and effective pretrial system. Significantly, the determination of whether to use actuarial risk assessment is inherently a relative decision. In other words, the potential costs and benefits – including the effects on detention rates, efficacy in improving pretrial outcomes, fairness to individual defendants, and racial disparities – must be considered relative to a preexisting status quo or a likely alternative pretrial framework. In making those judgments, the details will matter. The potential benefits and drawbacks of risk assessment will vary depending on how an instrument is implemented – whether it is accompanied by a reliable system for collecting and maintaining data, whether judges and other system actors receive proper training, whether appropriate procedural safeguards are in place, and how risk assessment is integrated into an overall decision-making framework. Policymakers considering a risk-based system should begin from the premise that the efficacy and fairness of risk assessment instruments are not matters that can be resolved in a vacuum. Rather, the policy value of risk assessment should be measured against the kinds of potential advantages and hazards outlined in this section.

2. Constitutional Considerations

There is very little judicial guidance on the constitutional implications of risk assessment tools, and the cases that have examined issues related to risk assessment have not arisen in the pretrial context.[197] Depending on how such tools are used, substantial constitutional considerations may come into play. Much will depend on the specific context in which risk assessment tools are used. For example, one set of constitutional implications may attach to risk assessment instruments used to determine what conditions are necessary to ensure appearance at trial; different constitutional considerations may apply where risk scores are incorporated into a decision of whether to preventively detain an individual deemed dangerous to the community. The discussion here does not attempt to provide definitive or exhaustive answers to jurisdictions navigating that constitutional terrain. Rather, it outlines the principal constitutional considerations likely to be relevant to any jurisdiction considering the use of quantitative risk assessment tools as part of their pretrial system.

Any risk assessment tool that determines or influences pretrial outcomes must conform to the Equal Protection Clause of the Fourteenth Amendment. Equal protection principles generally prohibit the government from taking adverse action against a person on the basis of certain protected characteristics, particularly race, national origin, and sex.[198] Typically, this prevents the government from acting on the basis of racial classification except in exceedingly narrow circumstances; classifications based on sex will receive slightly more deference but must also satisfy exacting judicial scrutiny.[199] In the risk assessment context, those "classifications" will consist of the inputs that drive an assessment tool's statistical analysis. As a starting point, then, equal protection considerations counsel strongly against using a system in which race or sex are incorporated into risk scores.[200] It is important to note that equal protection principles will generally prohibit express classification based on race or sex or intentional discrimination on those bases, but the Constitution does *not* proscribe policies that have an unintentional disparate impact on particular groups, even if those disparities are foreseeable.[201] While such disparities will not violate constitutional guarantees, they may violate core policy imperatives to avoid racially unjust outcomes. Jurisdictions should carefully consider these policy issues before implementing a risk assessment tool. Those considerations are discussed further in Section III.B.1.

Incorporating risk assessment tools into pretrial decision-making may also implicate constitutional due process guarantees. Again, the dimensions of any due process analysis will depend on what purpose the risk assessment instrument serves. Decisions about whether or not to detain someone pretrial will demand more stringent due process protections than decisions about what array of non-detention conditions – such as check-in requirements or electronic monitoring – may be necessary to ensure appearance at trial. But all of these decisions involve potential infringements on a defendant's pretrial liberty, which means that any risk assessment tool must be consistent with a defendant's due process rights.

The Constitution's due process protections require that, before a person is deprived of liberty by the government, she must enjoy sufficient procedural safeguards to "minimize substantively unfair or mistaken outcomes."[202] The hallmarks of such procedures are reasonable notice and an opportunity to be heard.[203] In the pretrial context, the Supreme Court has emphasized that, at least for a preventive detention decision, the procedural due process inquiry turns on whether a defendant enjoys "procedures by which a judicial officer evaluates the likelihood of future dangerousness [that] are specifically designed to further the accuracy of that determination."[204] These principles should be reflected in any procedures that rely on actuarial risk assessment. Generally, that means that a defendant must have some opportunity to contest potentially inaccurate or substantively unfair risk assessment procedures.

There is no case law at this point elaborating what that should mean in the pretrial context, but case law in other areas suggests some ways jurisdictions might ensure adequate procedures. In one recent case, the Wisconsin Supreme Court upheld the use of a risk assessment instrument in the sentencing context, but outlined several requirements for applying it consistently with due process. The court held that the instrument could be used to determine whether portions of a sentence could be served in the community instead of prison. But the court went on to hold that the instrument could not be used "to determine the severity of the sentence or whether an offender is incarcerated" and the court imposed "the corollary limitation that risk scores may not be considered the determinative factor in deciding whether the offender can be supervised safely and effectively in the community."[205] The court further held that sentencing judges considering risk reports must receive an accompanying advisory alerting them to four points: that the company that created the tool has invoked its proprietary interest to prevent disclosure of how factors are weighted or risk scores are determined; that risk assessment scores are based on group data and are able to identify groups of high-risk offenders, not a particular high risk offender; that some studies of the tool being used have "raised questions about whether they disproportionately classify minority offenders as higher risk of recidivism"; and that the tool is based on a national sample that has not been validated for Wisconsin and that risk assessment tools must be constantly monitored and re-calibrated for accuracy as the population changes.[206]

In light of these due process principles, numerous safeguards should be in place when risk assessment instruments are used in the pretrial context. Those safeguards should reflect the weighty liberty interests involved in the pretrial setting, where presumptively innocent defendants face a deprivation of liberty.[207] While the specific framework will depend on the instrument being used and its role in pretrial decision-making, a defendant should be provided with a substantive understanding of how the instrument works and a meaningful opportunity to contest its application in his case. This means disclosing the defendant's risk assessment score, the factors considered in determining the score, the relative weights given to different factors, and information about when and how the instrument was validated and re-normed, including information about the population samples used in validating it.[208] A procedural framework should also ensure disclosure of relevant information about the instrument's accuracy – including studies demonstrating unwarranted race disparities or other inaccuracies – and set out clear parameters about precisely what role the instrument may play in shaping pretrial decisions.

C. PREVENTIVE DETENTION

One of the most significant pathologies of money bail is its use as a subterranean mode of preventive detention; judges address perceived risk to the community by setting bond at a level that will be presumptively out of reach to a defendant.[209] Using cash as a proxy to preventively detain defendants viewed as dangerous

> "In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception."

is indefensible as a matter of principle, but it reflects a real concern by many judges about the risk that certain people will commit serious crimes while on pretrial release. For this reason, the discussion of moving to a risk-based bail system is often accompanied by a call for risk-based preventive detention.

At least twenty-two states, the District of Columbia, and the federal system already authorize the use of pretrial preventive detention in some circumstances.[210] Many more states are likely to consider using or expanding preventive detention in conjunction with a risk assessment system. But a jurisdiction that chooses this path should do so with extreme care. Insofar as states choose to utilize preventive detention as an aspect of pretrial reform, this section outlines the baseline legal and policy considerations that should guide policymaking.

This primer does not take a position on whether, as a policy matter, preventive detention is appropriate. Indeed, many observers raise grave concerns about the use of preventive detention. Among other things, critics point out that there is no guarantee that authorizing judges to use preventive detention will reduce the number of individuals detained pretrial – if the standards are open-ended enough, or define pretrial risk broadly enough, a tool intended to reform excessive jail populations could have the opposite effect. More fundamentally, some question whether preventive detention is legitimate as a matter of principle.[211] Pretrial defendants are presumed innocent and using a mere arrest as a trigger for depriving a person of his liberty strikes some as contrary to the basic underpinnings of a free society. On the other hand, many reformers have championed risk-based pretrial detention as a way to cure the arbitrary and discriminatory practices inherent in money bail while providing judges with a more transparent and rational tool for addressing serious risk to the community. Proponents of limited authority for pretrial detention note that the Supreme Court has ruled that such mechanisms can be consistent with constitutional guarantees, and they maintain that the Court's rulings will ensure robust procedural safeguards as a prerequisite to any pretrial detention authority.

1. Constitutional Requirements

The Supreme Court's decision in *United States v. Salerno* articulates the constitutional principles governing the use of preventive detention in the pretrial context. In upholding the constitutionality of the federal Bail Reform Act, the *Salerno* Court first emphasized the importance of the statutory purpose of preventive detention: detention that is "regulatory, not penal" does not constitute "impermissible punishment before trial."[212] The test for determining whether a preventive detention policy is regulatory or punitive depends, first, on whether there was an express legislative intent to punish; if not, the inquiry turns to whether there is a rational connection between the policy and a non-punitive justification and, finally, whether the policy is proportional to that justification.[213] In *Salerno*, the Court found that the federal bail statute fell on the regulatory side of this distinction. Significantly, in examining whether the preventive detention scheme embedded in the Bail Reform Act was proportionate to the regulatory interest in preventing danger to the community, the *Salerno* Court emphasized the statute's limited reach and detailed safeguards:

> The Bail Reform Act carefully limits the circumstances under which detention may be sought to the most serious of crimes. The arrestee is entitled to a prompt detention hearing, and the maximum length of pretrial detention is limited by the Speedy Trial Act. Moreover...the conditions of confinement envisioned by the Act appear to reflect the regulatory purposes relied upon by the Government...[T]he statute at issue here requires that detainees be housed in a facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal.[214]

Having determined that the statutory authority to detain pretrial defendants was regulatory rather than punitive, the Court went on to decide that the restrictions the statute imposed on pretrial liberty could be adequately justified by the compelling governmental interest. In doing so, the Court emphasized the "narrow circumstances" in which preventive detention was authorized.[215] Once again, the Court's detailed description of the Bail Reform Act's procedural framework reveals the considerations it deemed vital to the constitutional analysis:

> The Bail Reform Act...narrowly focuses on a particularly acute problem in which the Government interests are overwhelming. The

> Act operates only on individuals who have been arrested for a specific category of extremely serious offenses. Congress specifically found that these individuals are far more likely to be responsible for dangerous acts in the community after arrest. Nor is the Act by any means a scattershot attempt to incapacitate those who are merely suspected of these serious crimes. The Government must first of all demonstrate probable cause to believe that the charged crime has been committed by the arrestee, but that is not enough. In a full-blown adversary hearing, the Government must convince a neutral decision maker by clear and convincing evidence that no conditions of release can reasonably assure the safety of the community or any person.[216]

Given this detailed and robust procedural framework, the Court ruled that, "[w]hen the Government proves by clear and convincing evidence that an arrestee presents an identified and articulable threat to an individual or the community...a court may disable the arrestee from executing that threat."[217]

Jurisdictions contemplating the use of preventive detention should adopt the safeguards emphasized by the *Salerno* Court to the greatest degree possible. While the *Salerno* Court never stated explicitly which individual safeguards may be constitutionally mandatory, two appear to be particularly important components of ensuring the constitutionality of preventive detention schemes: an adversarial hearing and the right to the presence of counsel at bail hearings. As described in more detail below, those two features are elemental to the broader array of procedural protections at the heart of the court's analysis. Beyond these two overarching, structural protections, the Court's analysis gives useful guidance for states seeking ways to structure preventive detention authority. As a matter of law and policy, such systems should treat as a first principle one of the Court's concluding remarks: "In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception."[218]

a. Adversarial Hearings

All preventive detention frameworks should provide defendants with an adversarial hearing. The statutory provisions identified by the *Salerno* Court as sufficient to satisfy due process included defendants' ability to "testify in their own behalf, present information by proffer or otherwise, and cross-examine witnesses,"[219] which necessarily must be part of an adversarial hearing. Similarly, the Court emphasized that in detention hearings under the Bail Reform Act the government bears the burden of demonstrating by clear and convincing evidence that no less restrictive conditions suffice; this kind of stringent burden of proof implies the use of an adversarial hearing to test the government's showing. While the exact protections within a hearing may vary, the Court's reasoning assumes an adversarial hearing to be an essential component of a constitutional preventive detention framework.

b. Right to Counsel

Just as an adversarial hearing provides the structure in which the procedural protections outlined in *Salerno* can operate, the right to counsel ensures that a pretrial defendant can enjoy those protections in a meaningful way. Like the right to an adversarial hearing, the right to counsel is an indispensable safeguard. Indeed, *Salerno* stressed the importance of a combination of procedures and rights "specifically designed to further the accuracy" of a determination of dangerousness.[220] Many of the same safeguards that imply the structure of an adversarial hearing – the ability to testify, present evidence, and cross-examine adverse witnesses – will typically require the presence of counsel to ensure they are meaningful. The Court also noted that the ultimate detention or release decision must be rooted in statutorily enumerated factors.[221] Those protections will lack any functional significance unless defendants have competent lawyers to take advantage of such procedural opportunities.[222] Because failing to provide a right to counsel would, in practical terms, vitiate the other procedural safeguards emphasized in upholding the Bail Reform Act, it should be regarded as a bedrock requirement in any system allowing preventive detention.

2. Vital Procedural Protections

Salerno did not dictate a universal statutory architecture for preventive detention. While the rights to an adversarial hearing and an attorney emerge as indispensable elements, the Court's analysis suggests that standing alone, those safeguards would be insufficient. The following procedural protections would fortify a preventive detention framework's compliance with due process.

a. Speedy Trial

Where a defendant's liberty is substantially impaired prior to trial, the pretrial period should be limited. The specific language used to guarantee a speedy trial for pretrial detainees may vary from state to state, but it should be defined for preventively detained individuals in particular. Some jurisdictions have implemented statutory language designed to give effect to this principle:

b. D.C.

> The case of the person [preventively] detained pursuant to ... this section shall be placed on an expedited calendar and, consistent with the sound administration of justice, the person shall be indicted before the expiration of 90 days, and shall have trial of the case commence before the expiration of 100 days.[223]

c. Vermont

> (a) Except in the case of an offense punishable by death or life imprisonment, if a person is held without bail prior to trial, the trial of the person shall be commenced not more than 60 days after bail is denied.
>
> (b) If the trial is not commenced within 60 days and the delay is not attributable to the defense, the court shall immediately schedule a bail hearing and shall set bail for the person.[224]

Additionally, states should examine their speedy trial statutes to ensure that carve-outs do not render the law ineffective. For example, under New York's "ready rule," as long as the prosecutor has declared that he or he is ready for trial, the delays from "court congestion" or even an adjournment because the prosecutor failed to turn over evidence are not counted as part of the trial clock.[2255]

d. Limited Entry Points

In *Salerno*, the Court repeatedly emphasized the narrow scope of the preventive detention authority in the federal pretrial system – it noted that the challenged statute "carefully limits the circumstances under which detention may be sought to the most serious crimes;"[226] that the statute "narrowly focuses on a particularly acute problem in which the Government interests are overwhelming;"[227] and that it applied only in "narrow circumstances."[228] In other words, the Court placed significant weight on the *limited entry points* to the scheme of preventive detention – the carefully circumscribed threshold circumstances under which any defendant might face a preventive detention determination. Policymakers and advocates seeking to implement preventive detention schemes should carefully limit the entry points to preventive detention hearings. There are three different types of entry points that may be utilized to preventively detain a defendant – risk assessment score, offense charged, and motion by a prosecutor – each of which is discussed in turn.

One way to limit the entry points to preventive detention determinations is to use actuarial risk assessment scores as a necessary, but not sufficient, basis to trigger a hearing. Significantly, this will require that states rely on risk assessment instruments geared specifically to the risk of re-arrest for violent or serious crime, as opposed to instruments that lump together re-arrest for serious and non-serious crime or do not distinguish between re-arrest and non-appearance. Kentucky's pilot program is one example. That system allows the state to conduct initial assessments that channel individuals with high risk assessment scores into hearings that afford greater rights and safeguards in order to make more accurate individualized determinations.[229] A jurisdiction might further assure limited entry points by only utilizing risk assessment tools for individuals charged with particular offenses, as is the case in New Jersey.[230]

Some jurisdictions have automatically triggered preventive detention hearings based on the offense charged, even though the offense charged may not correspond to risk of reoffending. For example, under both the D.C. and federal system, particular types of offenses create a rebuttable presumption that no condition or combination of conditions will reasonably assure appearance of public safety.[231] These rebuttable presumptions trigger detention hearings and lead to the detention of many charged individuals. Offense-based triggers are problematic because they are not tied to individual circumstances of a defendant and reflect the relatively low threshold for issuing a charge. If used, it is crucial that such enumerated offenses remain narrow and that, even when they trigger hearings, they do not dictate outcomes or prevent an individualized determination based on the defendant's circumstances. This is especially important because prosecutors exercise wide discretion in making charging decisions, and inappropriate charging decisions could lead to unnecessary preventive detention.[232]

Another potential pathway to preventive detention hearings is authorizing prosecutors to move for such hearings. Both the D.C. and federal systems also allow the prosecutor to move for pretrial detention based on a number of grounds.[233] This discretion may be appropriate in some circumstances, but it should be structured so that prosecutors may only move for pretrial detention based on clearly defined, limited circumstances. To the extent a defendant is detained prior to the hearing, the prosecutor should be required to make a substantial initial showing to justify that detention.

e. Statutorily Enumerated Factors Guiding Bail Determinations

The *Salerno* Court noted that, in the federal scheme, judicial officers must follow statutory guidelines and make a finding by clear and convincing evidence that there is a statutorily permissible reason for detention.[234] Imposing clear and stringent standards that must be satisfied to preventively detain a defendant helps ensure adherence to constitutional standards.

In addition to imposing a stringent standard, jurisdictions should supply courts with clear criteria to apply in weighing a preventive detention decision. The D.C. statute offers an example of the types of factors that states should address:

1. The **nature and circumstances of the offense** charged, including whether the offense is a crime of violence or dangerous crime...or involves obstruction of justice...;
2. The **weight of the evidence** against the person;
3. The **history and characteristics of the person,** including:
   A. The person's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and
   B. Whether, at the time of the current offense or arrest, the person was on probation, on parole, on supervised release, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under local, state, or federal law; and
4. The **nature and seriousness of the danger** to any person or the community that would be posed by the person's release.[235]

Many other states mirror D.C.'s statute.[236]

Given the forward-looking, regulatory nature of preventive detention, states should not place exclusive or predominant weight on the nature of the charged offense, or the weight of the evidence, in prescribing standards for pretrial release or detention. The charged offense may deserve some weight in those determinations, insofar as the most serious charges carry elevated penalties that may increase a defendant's incentive to abscond. But it is important that these considerations not subsume the individual determination focused on a defendant's particular circumstance, nor should a focus on the charged offenses give rise to a mini-trial on the defendant's guilt or innocence. To the extent that the gravity of the charged offense informs the pretrial release decision, it should be just one consideration that may be reinforced or counterbalanced by other factors. Policymakers should avoid statutory language that requires or implies that the charged offense is the sole or predominant consideration.

Additionally, while actuarial risk assessment tools may be utilized in an initial screening, they should not displace

Policymakers and advocates seeking to implement preventive detention schemes should carefully limit the entry points to preventive detention hearings.

the other listed factors. Where actuarial risk assessment tools suggest a high risk of committing some future crime, a judicial officer should still consider the nature and seriousness of the danger and allow the defendant to rebut the risk assessment by providing additional evidence through an adversarial hearing with the assistance of counsel.

IV.

MOVING FORWARD

SEIZING THE MOMENTUM FOR REFORM

The country's approach to the pretrial process is undergoing intensive reexamination and may be on the verge of fundamental change. Money bail, nearly ubiquitous and deeply entrenched for decades, is now subject to scrutiny and criticism from a broad array of observers and advocates. Litigation challenging practices that result in wealth-based detention have gained traction, creating an opening for remaking pretrial systems in jurisdictions around the country. An energized movement for reform has embraced a risk-based model that a number of jurisdictions have now implemented, with many others watching closely. These trends are encouraging and should spur further action. At the same time, all stakeholders need to ensure that this wave of reform yields workable new models that solve the problems plaguing the current system without producing new forms of injustice. Striking that balance will require careful attention by all stakeholders to the legal and policy questions outlined in this primer. With those considerations in mind, and guided by local needs and opportunities, advocates and policymakers should forge a new path for pretrial justice that furthers the highest ideals of our legal system and ensures fair, consistent, and efficient administration of justice.

V.

ENDNOTES

1. *See infra*, note 36, listing cases.
2. *See, e.g.*, Nick Pinto, *The Bail Trap*, N.Y Times Magazine, Aug. 13, 2015; Leon Neyfakh, *Is Bail Unconstitutional?*, Slate, June 30, 2015, *available at* http://www.slate.com/articles/news_and_politics/crime/2015/06/is_bail_unconstitutional_our_broken_system_keeps_the_poor_in_jail_and_lets.html; Last Week Tonight with John Oliver, *Bail* (June 7, 2015), *available at* https://www.youtube.com/watch?v=IS5mwymTIJU.
3. *See, e.g.*, Ram Subramanian et al., Vera Inst. of Justice, *Incarceration's Front Door: The Misuse of Jails in America*, July 29, 2015, *available at* https://storage.googleapis.com/vera-web-assets/downloads/Publications/incarcerations-front-door-the-misuse-of-jails-in-america/legacy_downloads/incarcerations-front-door-report_02.pdf; Timothy R. Schnacke, Nat'l Inst. of Corrs., *Money as a Criminal Justice Stakeholder: The Judge's Decision to Detain or Release a Person Pretrial* (Sept. 2014), *available at* http://www.clebp.org/images/2014-11-05_final_nic_money_as_a_stakeholder_september_8,_2014_ii.pdf; Christopher T. Lowenkamp et al., Laura & John Arnold Found., *The Hidden Cost of Pretrial Detention* (Nov. 2013), *available at* http://www.pretrial.org/download/research/The%20Hidden%20Costs%20of%20Pretrial%20Detention%20-%20LJAF%202013.pdf; Michael R. Jones, Pretrial Justice Inst., *Unsecured Bonds: The Most Effective and Most Efficient Pretrial Release Option* (Oct. 2013), *available at* http://www.pretrial.org/download/research/Unsecured%20Bonds,%20The%20As%20Effective%20and%20Most%20Efficient%20Pretrial%20Release%20Option%20-%20Jones%202013.pdf.
4. *See, e.g.*, Carl Hulse, *Unlikely Cause Unites the Left and the Right: Justice Reform*, N.Y. Times, Feb. 18, 2015.
5. *See* Amer. Bar Ass'n, *ABA Standards for Criminal Justice: Pretrial Release*, Standard 10-1.4(a) (3d ed. 2007) ("additional conditions should be imposed on release only when the need is demonstrated by the facts of the individual case reasonably to ensure appearance at court proceedings, to protect the community, victims, witnesses or any other person and to maintain the integrity of the judicial process.").
6. Timothy R. Schnacke, U.S. Dept. of Justice, Nat'l Inst. of Corrs., *Fundamentals of Bail: A Resource Guide for Pretrial Practitioners and a Framework for American Pretrial Reform* 2 (2014), *available at* http://static.nicic.gov/UserShared/2014-11-05_final_bail_fundamentals_september_8,_2014.pdf (recognizing that "depending on the source, one will see bail defined variously as money, as a person, as a particular type of bail bond, and as a process of release"). When this primer refers generally to "money bail" or "cash bail," it is referring to secured money bonds.
7. Subramanian et al., *supra* note 3, at 32.
8. *Id.*
9. *Id.*
10. Prison Pol'y Inst., *Detaining the Poor* 2-3 (2016), *available at* http://www.prisonpolicy.org/reports/DetainingThePoor.pdf.
11. *See* Richard Williams, *Bail or Jail: State Legislatures* (May 2012), *available at* http://www.ncsl.org/research/civil-and-criminal-justice/bail-orjail.aspx.
12. Todd Minton & Zhen Zeng, Bureau of Justice Statistics, *Jail Inmates at Midyear 2014* 1-3, 8 (2015), *available at* http://www.bjs.gov/content/pub/pdf/jim14.pdf.
13. David C. May, et al., *Going to Jail Sucks (And It Really Doesn't Matter Who You Ask)*, 39 Am. J. Crim. Just. 250, 251 (2014), available at http://link.springer.com/article/10.1007/s12103-013-9215-5#enumeration.
14. Nicholas Freudenberg, *Jails, Prisons, and the Health of Urban Populations: A Review of the Impact of the Correctional System on Community Health*, 78 J. of Urban Health: Bulletin of the New York Academy of Medicine 214 (June 2001).
15. Justice Pol'y Inst., *Bailing on Baltimore: Voices from the Front Lines of the Justice System* 15 (Sept. 2012), *available at* http://www.justicepolicy.org/uploads/justicepolicy/documents/bailingonbaltimore-final.pdf.
16. *See* Norimitsu Onishi, *In California, County Jails Face Bigger Load*, N.Y. Times, August 6, 2012, *available at* http://www.nytimes.com/2012/08/06/us/in-california-prison-overhaul-county-jails-face-bigger-load.html?_r=0.
17. Subramanian, *supra* note 3, at 12.
18. Noonan et al., U.S. Dept. of Justice, Bureau of Justice Statistics, *Mortality in Local Jails and State Prisons, 2000- 2013*, Statistical Tables 1 (August 2015), *available at* http://www.bjs.gov/content/pub/pdf/mljsp0013st.pdf.
19. *See* Laura Sullivan, *Inmates Who Can't Make Bail Face Stark Options*, Nat'l Public Radio (Jan 22, 2010), *available at* http://www.npr.org/templates/story/story.php?storyId=122725819. *See also Barker v. Wingo*, 407 U.S. 514, 532-33 (1972) ("The time spent in jail awaiting trial has a detrimental impact on the individual. It often means loss of a job; it disrupts family life; and it enforces idleness. Most jails offer little or no recreational or rehabilitative programs. The time spent in jail is simply dead time. Moreover, if a defendant is locked up, he is hindered in his ability to gather evidence, contact witnesses, or otherwise prepare his defense. Imposing those consequences on anyone who has not yet been convicted is serious. It is especially unfortunate to impose them on those persons who are ultimately found to be innocent.").
20. Laura & John Arnold Found., *Pretrial Criminal Justice Research* 2 (2013), *available at* http://www.arnoldfoundation.org/wp-content/uploads/2014/02/LJAF-Pretrial-CJResearch-brief_FNL.pdf
21. *See id.*
22. Megan Stevenson, *Distortion of Justice: How the Inability to*

Pay Bail Affects Case Outcomes 22 (Working Paper, 2016), *available at* https://www.law.upenn.edu/cf/faculty/mstevens/workingpapers/Distortion-of-Justice-April-2016.pdf; Heaton et al., *The Downstream Consequences of Misdemeanor Pretrial Detention* 3 (July 2016), *available at* http://ssrn.com/abstract=2809840.

23. Heaton et al., *supra* note 22, at 3.

24. *Id.* at 3-4, 19, 21.

25. *See, e.g.,* Rakesh Kochhar & Richard Fry, Pew Research Ctr., *Wealth Inequality has Widened Along Racial, Ethnic Lines Since End of Great Recession*, Dec. 12, 2014, *available at* http://www.pewresearch.org/fact-tank/2014/12/12/racial-wealth-gaps-great-recession (discussing the wealth gap between white and black households). Studies have also shown that white defendants receive more favorable bail determinations than similarly situated African American defendants, either because of racial animus or implicit bias on the part of decision makers. Cynthia E. Jones, *Give Us Free*, 16 Legis. & Pub. Pol'y 919, 943 (2013).

26. *See, e.g.,* Traci Schlesinger, *Racial and Ethnic Disparities in Pretrial Criminal Justice Processing*, 22 Justice Quarterly 170, 187-88 (2005); Stephen DeMuth, *Racial and Ethnic Differences in Pretrial Release Decisions and Outcomes: A Comparison of Hispanic, Black and White Felony Arrestees*, 41 Criminology 873, 895, 897 (2003); Ian Ayres & Joel Waldfogel, *A Market Test for Race Discrimination in Bail Setting*, 46 Stanford L. Rev. 987 (1994).

27. *See, e.g.,* Arpit Gupta, et al., *The Heavy Costs of High Bail: Evidence from Judge Randomization* 3, 19 (May 2, 2016), *available at* http://www.columbia.edu/~cjh2182/GuptaHansmanFrenchman.pdf (studying the assessment of money bail in Philadelphia and Pittsburgh courts and finding that the imposition of money bail led to a 6-9 percent yearly increase in recidivism;) Laura & John Arnold Found., *supra* note 20, at 5 ("Compared to individuals released within 24 hours of arrest, low-risk defendants held 2-3 days were 17 percent more likely to commit another crime within two years. Detention periods of 4-7 days yielded a 35 percent increase in re-offense rates. And defendants held for 8-14 days were 51 percent more likely to recidivate than defendants who were detained less than 24 hours.").

28. Justice Pol'y Inst., *Bail Fail: Why the U.S. Should End the Practice of Using Money for Bail* 25 (2012), *available at* http://www.justicepolicy.org/uploads/justicepolicy/documents/bailfail.pdf.

29. *Id.* at 26.

30. Laura & John Arnold Found., *supra* note 27, at 5 (finding that "[l] ow risk defendants held for 2-3 days were 22 percent more likely to fail to appear than similar defendants (in terms of criminal history, charge, background, and demographics) held for less than 24 hours").

31. Colo. H.B. 13-1236 (2013). *See also*, Timothy R. Schnacke, *Best Practices in Bond Setting: Colorado's New Pretrial Bail Law* 20-24 (July 3, 2013), *available at* http://www.pretrial.org/download/law-policy/Best%20Practices%20in%20Bond%20Setting%20-%20Colorado.pdf.

32. N.J. P.L. 2014, Ch. 31, §1-20. *See also*, Amer. Civil Liberties Union, *ACLU-NJ Hails Passage of NJ Bail Reform as Historic Day for Civil Rights*, (Aug. 4, 2014), *available at* https://www.aclu.org/news/aclu-nj-hails-passage-nj-bail-reform-historic-day-civil-rights.

33. Christine Stuart, *Malloy Pitches Bail Reform as Part of Connecticut's Second Chance Society 2.0*, New Haven Register, Jan. 28. 2016, *available at* http://www.nhregister.com/article/NH/20160128/NEWS/160129552.

34. N.M. State Legis., *Final Senate Joint Resolution* 1, *available at* http://www.nmlegis.gov/Sessions/16%20Regular/final/SJR01.pdf. *See also, New Mexico House GOP, Senate Dems Reach Deal on Bail Reform*, KQRE News 13, Feb. 12, 2016, *available at* http://krqe.com/2016/02/12/new-mexico-house-gop-senate-dems-reach-deal-on-bail-reform/.

35. *See State v. Brown*, 338 P.3d 1276, 1278 (N.M. 2014) (concluding that "the district court erred by requiring a $250,000 bond when the evidence demonstrated that less restrictive conditions of pretrial release would be sufficient").

36. *See Walker v. City of Calhoun*, 2016 WL 361580 (N.D. Ga. 2016) (court order certifying as a class for declaratory and injunctive relief "all arrestees unable to pay for their release who are or will be in the custody of the City of Calhoun as a result of an arrest involving a misdemeanor, traffic offense, or ordinance violation"); *Jones v. City of Clanton*, 2015 WL 5387219, at *4-5 (M.D. Ala. 2015) (granting declaratory judgment); *Rodriguez v. Providence Cmty. Corr., Inc.*, 155 F. Supp. 3d 758, 767 (M.D. Tenn. 2015) (enjoining the practice of arresting and detaining probationers for nonpayment of court costs); *Pierce v. City of Velda City*, 2015 WL 10013006, at *1 (E.D. Mo. 2015) (issuing declaratory judgment that "no person may, consistent with the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, be held in custody after an arrest because the person is too poor to post a monetary bond"); *Thompson v. Moss Point*, 2015 WL 10322003, at *1 (S.D. Miss. 2015) (issuing declaratory judgment); *Mitchell v. City of Montgomery*, 2014 WL 11099432 (M.D. Ala. 2014) (granting declaratory and injunctive relief).

37. *See City of Riverside v. McLaughlin*, 500 U.S. 44 (1991) (requiring that probable cause determination for arrestees occur within 48 hours of arrest); *Gerstein v. Pugh*, 420 U.S. 103 (1975) (holding that the Fourth Amendment requires a judicial determination of probable cause as a prerequisite to extended restraint of liberty following arrest).

38. U.S. Const. amend. VIII

39. *See U.S. v. Salerno*, 481 U.S. 739, 752 (1987); *Carlson v. Landon*, 342 U.S. 524, 546 (1952) ("[T]he very language of the Amendment fails to say all arrests must be bailable.").

40. *Stack v. Boyle*, 342 U.S. 1, 3 (1951).

41. *Id.* at 5.

42. *Id.*

43. *See Salerno*, 481 U.S. at 754 (holding that under Excessive Bail clause "proposed conditions of release or detention" may not be excessive).

44. *Id.* at 751.

45. *Reno v. Flores*, 507 U.S. 292, 302 (1993); *see also Washington v. Glucksberg*, 521 U.S. 702, 721 (1997); *Salerno*, 481 U.S. at 749-51.

46. *See Mathews v. Eldridge*, 424 U.S. 319, 335 (1976); *see also Salerno*, 481 U.S. at 751-52.

47. *Griffin v. Illinois*, 351 U.S. 12, 19 (1956); *see also, Williams v. Illinois*, 399 U.S. 235, 241 (1970).

48. *Bearden v. Georgia*, 461 U.S. 660, 672–73 (1983).

49. *See, e.g., Pugh v. Rainwater*, 572 F.2d 1053, 1058 (5th Cir. 1978) (*en banc*) ("We have no doubt that in the case of an indigent, whose appearance at trial could reasonably be assured by one of the alternate forms of release, pretrial confinement for inability to post money bail would constitute imposition of an excessive restraint."); *Jones v. City of Clanton*, 2015 WL 5387219, at *3 (M.D. Ala. 2015) ("Criminal defendants, presumed innocent, must not be confined in jail merely because they are poor. Justice that is blind to poverty and indiscriminately forces defendants to pay for their physical liberty is no justice at all."); *Pierce v. City of Velda City*, 2015 WL 10013006, at *1 (E.D. Mo. 2015) ("No person may, consistent with the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, be held in custody after an arrest because the person is too poor

to post a monetary bond."); *Walker v. City of Calhoun*, 2016 WL 361580 at *49 (N.D. Ga. 2016) ("Any bail or bond scheme that mandates payment of pre-fixed amounts for different offenses to obtain pretrial release, without any consideration of indigence or other factors, violates the Equal Protection Clause."); *Williams v. Farrior*, 626 F.Supp. 983, 985 (S.D. Miss. 1986) ("For the purposes of the Fourteenth Amendment's Equal Protection Clause, it is clear that a bail system which allows only monetary bail and does not provide for any meaningful consideration of other possible alternatives for indigent pretrial detainee infringes on both equal protection and due process requirements.")

50. Ariana Lindermayer, Note, *What The Right Hand Gives: Prohibitive Interpretation of the State Constitutional Right to Bail*, 78 Fordham L. Rev. 267, 275 (2009).

51. *See, e.g., Henley v. Taylor*, 918 S.W.2d 713, 714 (Ark. 1996) ("As can be seen from the constitutional provision and the criminal procedure rule [setting out conditions of release that may be required for defendants who are likely to commit another crime], a non-capital defendant's absolute right to bail may only be curbed by the setting of certain conditions upon his release, and not its complete denial."); *Sprinkle v. State*, 368 So.2d 554, 559 (Ala. Crim. App. 1978) ("In Alabama, an accused upon arrest and before conviction, is entitled to bail as an absolute right provided he has sufficient sureties. Bail may only be denied in capital offenses, when the proof is evident or the presumption great."); *see also Lindermayer, supra* note 50, at 276.

52. *See, e.g., Rendel v. Mummert*, 474 P.2d 824, 828 (Ariz. 1970) (finding that the constitution "does not guarantee bail as a matter of absolute right but is conditioned upon the giving of 'sufficient sureties.' We are of the opinion that the words 'sufficient sureties' mean, at a minimum, that there is reasonable assurance to the court that if the accused is admitted to bail, he will return as ordered until the charge is fully determined"); *People ex rel. Hemingway v. Elrod*, 322 N.E.2d 837, 840-41 (Ill. 1975) ("In our opinion the constitutional right to bail must be qualified by the authority of the courts, as an incident of their power to manage the conduct of proceedings before them, to deny or revoke bail when such action is appropriate to preserve the orderly process of criminal procedure."); *see also Lindermayer, supra* note 50, at 276.

53. *See, e.g., Rendel*, 474 P.2d at 828, (defining sufficient sureties as a reasonable assurance to the court that the defendant will appear for trial if admitted to bail).

54. *See, e.g.*, Ariz. Const. art II, § 22 (public safety exception for felony offenses); Cal. Const. art. I § 12 (public safety exception for sexual assault and violent felonies); Mo. Const. Art. 1 § 32.2 ("Notwithstanding section 20 of article I of this Constitution [which states that '[a]ll persons shall be bailable upon sufficient sureties'"], upon a showing that the defendant poses a danger to a crime victim, the community, or any other person, the court may deny bail or may impose special conditions which the defendant and surety must guarantee.").

55. *State v. Cardinal*, 147 Vt. 461, 465 (1986) ("[If a] defendant violates conditions of release other than an appearance condition, a court can impose increasingly more restrictive conditions, as well as revoke the right to bail altogether, if the court determines that no conditions of release will assure the defendant's appearance at trial.") (citations omitted).

56. *See* Ga. Const. art. 1, § 1, ¶ XVII; Haw. Const. art. 1, § 12; Md. Const. [Declaration of rights] art. 25; Ma. Const. Pt. 1, art. 26; N.H. Const. Pt. 1, art. 33; N.Y. Const. art. 1, § 5; N.C. Const. art. 1, § 27; Va. Const. art. 1, § 9; W.V. Const. art. 3 § 5.

57. *See, e.g.*, Ala. R. Cr. Proc. 7.2.

58. *See, e.g.*, Cal. R. Super. Ct., County of Colusa Local R. Ct. 6.02 ("Bail").

59. *See, e.g.*, Ala. Code § 15, chapter 13 ("Bail"); Alaska Stat. Ann. § 12.30 ("Bail").

60. *See, e.g.*, Ariz. Rev. Stat. Ann. § 20, Ch. 2, art. 3.5 ("Bail Bond Agents and Bail Recovery Agents" appears in the section of the code devoted to insurance regulation).

61. *See, e.g.*, Alaska Stat. Ann. § 12.30.016(d) (imposing a minimum cash bond of $250,000 for those persons charged with misconduct regarding methamphetamines who have been previously convicted of possession, manufacture, or delivery of methamphetamines).

62. *See, e.g.* Ga. Code Ann. § 17-6-1(f)(1) ("the judge of any court of inquiry may by written order establish a schedule of bails and unless otherwise ordered by the judge of any court, a person charged with committing any offense shall be released from custody upon posting bail as fixed in the schedule."); Alaska Code § 12.30.016(d) (requiring $250,000 cash bond for offense involving manufacture of methamphetamine after a prior conviction for similar offense).

63. One example is the Illinois Pretrial Services Act of 1990, which created a legal framework for pretrial services in the state. Unfortunately, Administrative Office of the Illinois Courts found that the Act "has become largely aspirational" in Cook County, at least in part because of concerns about the credibility of risk assessment determinations made by pretrial services officers. *See* Illinois Supreme Court, Administrative Office of the Illinois Courts, *Circuit Court of Cook County Pretrial Operational Review* 5 (2014) *available at* http://www.illinoiscourts.gov/SupremeCourt/Reports/Pretrial/Pretrial_Operational_Review_Report.pdf.

64. *See, e.g.*, Cal. Penal Code § 853.6(a)(1) ("In any case in which a person is arrested for an offense declared to be a misdemeanor, including a violation of any city or county ordinance, and does not demand to be taken before a magistrate, that person shall, instead of being taken before a magistrate, be released...").

65. Amer. Bar Ass'n, *supra* note 5.

66. Schnacke, *supra* note 6.

67. *Bearden*, 461 U.S. at 672-73.

68. *See* Prison Pol'y Inst., *supra* note 10, at 1 (noting that 34% of defendants are kept in jail pretrial solely because they are unable to pay a cash bond, and most of these people are among the poorest third of Americans); Marie VanNostrand, *New Jersey Jail Population Analysis* at 13 (March 2013) (finding that 38.5% of New Jersey pretrial inmates are held in custody "solely due to their inability to meet the terms of bail" and that approximately 800 inmates held in custody "could have secured their release for $500 or less"), *available at* https://www.drugpolicy.org/sites/default/files/New_Jersey_Jail_Population_Analysis_March_2013.pdf; Human Rights Watch, *The Price of Freedom: Bail and Pretrial Detention of Low Income Nonfelony Defendants in New York City* at 20-21 (Dec. 2010) *available at* https://www.hrw.org/sites/default/files/reports/us1210webwcover_0.pdf (reporting that "at any given moment, 39 percent of New York City's jail population consists of inmates who are in jail pretrial solely because they have not posted bail").

69. *Turner v. Rogers*, 131 S. Ct. 2507, 2520 (2011).

70. *Id.* at 2511.

71. *Id.* at 2519.

72. *See* Agreement to Settle Injunctive and Declaratory Relief Claims, *Mitchell v. City of Montgomery*, No. 2:14-cv-186-MHT-CSC (M.D. Ala. Nov. 17, 2014), *available at* http://equaljusticeunderlaw.org/wp/wp-content/uploads/2014/07/Final-Settlement-Agreement.pdf (setting out a standard "Affidavit of Substantial Hardship Form" to prevent indigent people from being jailed based on their inability to pay fines and fees).

73. *See id.* (creating a presumption that those with income at or

below 125% of the Federal Poverty Level, who do not have substantial assets, will be considered indigent).

74. *See* Douglas L. Colbert, *Thirty-Five Years After Gideon: The Illusory Right to Counsel at Bail Proceedings*, 1998 U. Ill. L. Rev. 1, 5 (1998) (noting that "most state courts decline to provide poor people with a lawyer during the first stage of a criminal case when her presence truly matters: at the initial bail determination").

75. Douglas L. Colbert, *Prosecution Without Representation*, 59 Buff. L. Rev. 333, 345 (2011).

76. *Cf. Turner*, 131 S. Ct. at 2519.

77. For example, in November 2016, New Mexico voters may decide to enact a constitutional amendment with the following protections: "A person who is not detainable on grounds of dangerousness nor a flight risk in the absence of bond and is otherwise eligible for bail shall not be detained solely because of financial inability to post a money or property bond. A defendant who is neither a danger nor a flight risk and who has a financial inability to post a money or property bond may file a motion with the court requesting relief from the requirement to post bond. The court shall rule on the motion in an expedited manner." *Supra* note 34, at 1.

78. The use of bail schedules has been challenged through litigation in California, Georgia, and Mississippi. *See* Compl., *Buffin, v. City and County of San Francisco*, 2015 WL 6530384 (N.D. Ca. Oct. 28, 2015) (order certifying class); *Walker v. City of Calhoun, Georgia*, 2016 WL 361580 (N.D. Ga. 2016); *Thompson v. Moss Point*, 2015 WL 10322003 (S.D. Miss. 2015) (declaratory judgment).

79. *See, e.g.*, Ga. Code Ann. § 17-6-1 (f)(1) ("Except as provided in subsection (a) of this Code section or as otherwise provided in this subsection, the judge of any court of inquiry may by written order establish a schedule of bails and unless otherwise ordered by the judge of any court, a person charged with committing any offense shall be released from custody upon posting bail as fixed in the schedule."); Utah Code of Judicial Administration, Rule 4-302 ("The Uniform Fine/Bail Schedule Committee shall establish a uniform fine/bail schedule setting forth recommended fine and bail amounts for all criminal and traffic offenses, pursuant to the Utah Code...[w]hen imposing fines and setting bail, courts should conform to the uniform fine/bail schedule except in cases where aggravating or mitigating circumstances warrant a deviation from the schedule.") Cal. Penal Code § 1269b(b) ("If a defendant has appeared before a judge of the court on the charge contained in the complaint, indictment, or information, the bail shall be in the amount fixed by the judge at the time of the appearance. If that appearance has not been made, the bail shall be in the amount fixed in the warrant of arrest or, if no warrant of arrest has been issued, the amount of bail shall be pursuant to the uniform countywide schedule of bail for the county in which the defendant is required to appear, previously fixed and approved as provided in subdivisions (c) and (d).").

80. Ala. Code § 15-13-103.

81. *Id.*

82. Ala. Rules of Crim. Proc., Rule 7.2(b).

83. *Jones v. City of Clanton*, No. 215CV34-MHT, 2015 WL 5387219, at *3 (M.D. Ala. 2015).

84. Alaska Stat. Ann. § 12.30.016. Alaska is in the process of reviewing its bail practices as part of the Justice Reinvestment Initiative, and this provision may change. *See* Alaska Crim. Justice Comm'n., *Justice Reinvestment Initiative Report* 8 (Dec. 2015), *available at* http://www.ajc.state.ak.us/sites/default/files/imported/acjc/recommendations/ak_justice_reinvestment_intiative_report_to_acjc_12-9.pdf. (identifying "one of the likely contributors to pretrial length of stay in Alaska is the use of secured money bail").

85. Alaska Stat. Ann. § 12.30.016.

86. *Stack*, 342 U.S. at 4-5.

87. Amer. Bar Ass'n, *supra* note 5, at 17.

88. *Id.*

89. *Id.*

90. *See, e.g.*, Statement of Interest of the United States, *Jones v. City of Clanton*, 2:15-cv-34 (M.D. Ala. Feb. 13, 2015), at 14, *available at* https://www.justice.gov/file/340461/download ("The use of a more dynamic bail scheme...not only ensures adherence to constitutional principles of due process and equal protection, but constitutes better public policy. Individualized determinations, rather than fixed-sum schemes that unfairly target the poor, are vital to...providing equal justice for all."); *Walker v. City of Calhoun*, 2016 WL 361612 at *10 (N.D. Ga. 2016) (granting preliminary injunction) (holding "any bail or bond scheme that mandates payment of pre-fixed amounts for different offenses to obtain pretrial release, without any consideration of indigence or other factors, violates the Equal Protection Clause").

91. Alysia Santo, *When Freedom Isn't Free*, The Marshall Project, (Feb. 23, 2015), https://www.themarshallproject.org/2015/02/23/buying-time#.hnv6qqKdO.

92. *See* International Ass'n. of Chiefs of Police, *Law Enforcement's Leadership Role in the Pretrial Release and Detention Process* 7 (Feb. 2011), *available at* http://www.theiacp.org/portals/0/pdfs/Pretrial_Booklet_Web.pdf.

93. *See, e.g.*, The Nat'l Ass'n. of Pretrial Services Agencies, *The Truth About Commercial Bail Bonding in America* (Aug. 2009) *available at* https://www.pretrial.org/download/pji-reports/Facts%20and%20Positions%201.pdf; Shane Bauer, *Inside the Wild, Shadowy, and Highly Lucrative Bail Industry*, Mother Jones, May/June 2014, *available at* http://www.motherjones.com/politics/2014/06/bail-bond-prison-industry.

94. *See* Justice Policy Inst., *For Better or For Profit: How the Bail Bonding Industry Stands in the Way of Fair and Effective Pretrial Justice* 40-42 (Sept. 2012), *available at* http://www.justicepolicy.org/uploads/justicepolicy/documents/_for_better_or_for_profit_.pdf.

95. *See* Brian R. Johnson & Ruth S. Stevens, *The Regulation and Control of Bail Recovery Agents: An Exploratory Study*, 38 Crim. Justice Rev. 190, 193 (2013); Brian Liptak, *Illegal Globally, Bail for Profit Remains in U.S.*, N.Y. Times, Jan. 29, 2008. *See also* Schnacke, *supra* note 6, at 36-37 (examining the historical origins of the modern surety system, comprised of "what we might now call unsecured bonds using co-signors, with nobody required to pay any money up-front, and with the security on any particular bond coming from the sureties...who were willing to... acknowledge the amount potentially owed upon default.").

96. Ky. Rev. Stat. Ann. § 431.510 (West 1976); 725 Ill. Comp. Stat. 5/103-9 (1986); 725 Ill. Comp. Stat. 5/110-7 & -8.

97. Fred Contrada, *Bail Bondsmen are a thing of the Past in Mass.*, Mass Live (2014), http://www.masslive.com/news/index.ssf/2014/03/bail_bondsmen_are_a_thing_of_t.html.

98. The American Bar Association standards for pretrial release reflect these principles, noting that the "presumption that defendants should be released under the least restrictive conditions necessary to provide reasonable assurance they will not flee or present a danger is tied closely to the presumption favoring release generally. It has been codified in the Federal Bail Reform Act and the District of Columbia release and pretrial detention statute, as well as in the laws and court rules of a number of states." Amer. Bar Ass'n, *supra* note 5, at 39-40.

99. Spurgeon Kennedy, *Freedom and Money – Bail in America*, *available at* https://www.psa.gov/?q=node/97.

100. *Id.*

101. Pretrial Services Agency for the District of Columbia, *Research and Data, Performance Measures, available at* https://www.psa.gov/?q=data/performance_measures.

102. *Id.*

103. *Id.*

104. *See, e.g.*, Ariz. St. Code of Jud. Admin. §5-201; Colorado Rev. Stat. Ann. §16-4-105; New Jersey P.L. 2014, Ch. 31, §1-20.

105. National Center for State Courts, *Pretrial Services and Supervision*, http://www.ncsc.org/Microsites/PJCC/Home/Topics/Pretrial-Services.aspx.

106. Colo. Rev. Stat. Ann. §16-4-105.

107. Kathy Rowings, Nat'l Ass'n of Counties, *County Jails at a Crossroads – Mesa County, CO*, (July 6, 2015), available at http://www.naco.org/resources/county-jails-crossroads-mesa-county-co.

108. *See* Pretrial Justice Inst., *Mesa County Pretrial SMART Praxis* (2013), *available at* http://www.pretrial.org/download/risk-assessment/Mesa%20County%20SMART%20Praxis.pdf.

109. *Id.*

110. Nat'l Ass'n of Pretrial Services Agencies, *Standards on Pretrial Release, Third Edition* 14 (Oct. 2004), *available at* https://drive.google.com/file/d/0B1YIoljVNUF5NmJkY0wzRHR1Tmc/view.

111. *Id.*

112. *See, e.g.*, Superior Court of Fulton County, *Pretrial Services – Savings to Taxpayers, available at* https://www.fultoncourt.org/pretrial/savings.php (cost-benefit analysis estimating a $51.8 million dollar savings in fiscal year 2011 comparing the pretrial services budget in Fulton County, Georgia to the cost of keeping defendants in jail); Alex Piquero, *Cost-Benefit Analysis for Jail Alternatives and Jail* 5 (Oct. 2010) *available at* http://criminology.fsu.edu/wp-content/uploads/Cost-Benefit-Analysis-for-Jail-Alternatives-and-Jail.pdf (comparing daily costs of jail and pretrial services in Broward County, Florida and concluding that "cost savings via pretrial (in lieu of jail) are over $100 million in both 2009 and 2010"); Marie VanNostrand, *Alternatives to Pretrial Detention: Southern District of Iowa* (2010), *available at* https://www.pretrial.org/download/risk-assessment/Alternatives%20to%20Pretrial%20Detention%20Southern%20District%20of%20Iowa%20-%20VanNostrand%202010.pdf (evaluating pretrial services programs in Iowa, showing pretrial services resulted in cost savings of $15,393 per defendant and a cost avoidance of $5.33 million in the 2008 and 2009 fiscal years).

113. *See United States v. Scott*, 450 F.3d 863, 868 (9th Cir. 2006) ("[O]ne who has been released on pretrial bail does not lose his or her Fourth Amendment right to be free of unreasonable seizures.") (*quoting Cruz v. Kauai County*, 279 F.3d 1064, 1068 (9th Cir. 2002)).

114. *See, e.g., id.* (holding that mandatory random drug testing as a condition of release constituted an unreasonable search under the Fourth Amendment where there was no showing that drug testing advanced goals of public safety of guaranteeing appearance at trial); *United States v. Karper*, 847 F. Supp. 2d 350 (N.D.N.Y. 2011) (finding that mandatory electronic monitoring conditions on defendants accused of certain sex offenses violates due process and constitutes excessive bail); *United States v. Polouizzi*, 697 F. Supp. 2d 381 (E.D.N.Y. 2010) (same).

115. *See* Timothy R. Schnacke, et al., *Increasing Court-Appearance Rates and Other Benefits of Live-Caller Telephone Court-Date Reminders: The Jefferson County, Colorado FTA Pilot Project and Resulting Court Date Notification*, 48 Court Rev. 86 (2012); Wendy F. White, *Court Hearing Call Notification Project*, Coconino County, AZ: Criminal Coordinating Council and Flagstaff Justice Court (2006).

116. Matt O'Keefe, *Court Appearance Notification System: 2007 Analysis Highlights*, LPSCC (2007), *available at* http://www.pretrial.org/download/research/Multnomah%20County%20Oregon%20-%20CANS%20Highlights%202007.pdf.

117. Wendy F. White, *Court Hearing Call Notification Project*, Coconino County, AZ: Criminal Coordinating Council and Flagstaff Justice Court (2006) http://www.pretrial.org/download/supervision-monitoring/Coconino%20County%20AZ%20Court%20Hearing%20Notification%20Project%20(2006).pdf. (finding that advance phone calls to defendants reduced the percentage of failure to appear from over 25% to less than 13%).

118. Schnacke, *supra* note 115, at 86 (2012) (finding that phone calls from volunteers increased court appearance rates from 79% to 88%).

119. Pretrial Justice Inst., *Using Technology to Enhance Pretrial Services: Current Applications and Future Possibilities* 14-16, *available at* https://www.pretrial.org/download/pji-reports/PJI%20USING%20TECHNOLOGY%20TO%20ENHANCE%20PRETRIAL%20SERVICES.pdf (discussing the potential for implementation of new technologies like e-mail and text message reminders).

120. *See* Marie VanNostrand, et al., Pretrial Justice Inst., *State of the Science of Pretrial Release Recommendations and Supervision* 29 (2011), *available at* http://www.pretrial.org/download/research/PJI percent20State percent20of percent20the percent20Science percent20Pretrial percent20Recommendations percent20and percent20Supervision percent20(2011).pdf (finding that "review of supervision strategies in numerous pretrial services agencies nationally revealed disparate practices for what constitutes pretrial supervision. The frequency and types of contacts ranged from monthly phone contacts with an automated calling system to daily in-person reporting by defendants").

121. *Id.*

122. John S. Goldkamp & Michael D. White, *Restoring Accountability in Pretrial Release: The Philadelphia Pretrial Release Supervision Experiments*, 2 J. of Experimental Criminology 143 (2006).

123. Laura & John Arnold Found., *supra* note 20, at 6.

124. *Id.*

125. *Id.*

126. Sharon Aungst, ed., Partnership for Community Excellence, *Pretrial Detention and Community Supervision: Best Practices and Resources for California Counties*, 13 (2012), *available at* http://caforward.3cdn.net/7a60c47c7329a4abd7_2am6iyh9s.pdf.

127. Eric Markowitz, *Electronic Monitoring Has Become the New Debtors Prison*, Newsweek, Nov. 26, 2015, *available at* http://www.msn.com/en-us/news/us/electronic-monitoring-has-become-the-new-debtors-prison/ar-BBnlTfa?ocid=spartandhp.

128. *See* Aungst, *supra* note 126, at 13; Keith Cooprider & Judith Kerby, *Practical Application of Electronic Monitoring at the Pretrial Stage*, 1 Federal Probation 28, 33 (1990) (noting that "[t]he higher violation rate(s) of electronically monitored defendants is probably related to the fact that, as a rule, the riskier clients (serious charge in terms of felony class, recidivist, already on some other form of community supervision, FTA history, chemical dependency, etc.) are supervised with electronic monitoring"); Timothy P. Cadigan, *Electronic Monitoring in Federal Pretrial Release*, 55 Federal Probation 1, 26 (1991) (finding "the electronic monitoring defendants were charged more frequently with serious offenses" than average, which helps explain their higher rates of re-arrest) 29-30; Albert J. Lemke, *Institute for Court Management, Evaluation of the Pretrial Release Pilot Program in the Mesa Municipal Court* 50 (2009), *available at* https://www.ncsc.org/~/media/Files/PDF/Education%20and%20Careers/CEDP%20Papers/2009/Lemke_EvalPretrialReleaseProg.ashx; Nat'l Inst. of Justice, Office

of Justice Programs, *Electronic Monitoring Reduces Recidivism* 2 (2011), *available at* https://www.ncjrs.gov/pdffiles1/nij/234460.pdf (discovering quantitatively "significant decreases in the failure rate for all groups of offenders, and the decreases were similar for all age groups").

129. VanNostrand, *supra* note 120, at 27.

130. *See generally* Avlana K. Eisenberg, *Mass Monitoring*, 90 S. Cal. L. Rev. __ (forthcoming 2017).

131. *See* Nat'l Inst. of Justice, *supra* note 128, at 1-4 (describing the results of a survey conducted by Florida State University's Center for Criminology and Public Policy Research comparing the experiences of more than 5,000 medium-and high-risk offenders who were monitored electronically to more than 266,000 offenders not placed on monitoring over six years). *See also* M.M., *Living With an Ankle Bracelet: Freedom, With Conditions*, The Marshall Project, (July 16, 2015), *available at* https://www.themarshallproject.org/2015/07/16/living-with-an-ankle-bracelet#.th8stdccH.

132. Nat'l Inst. of Justice, *supra* note 128.

133. *Id.* at 2.

134. *Id.*

135. *Id.*

136. *See Polouizzi*, 697 F. Supp. 2d at 389 ("Required wearing of an electronic bracelet, every minute of every day, with the government capable of tracking a person not yet convicted as if he were a feral animal would be considered a serious limitation on freedom by most liberty-loving Americans.").

137. *See, e.g., United States v. Karper*, 847 F. Supp. 2d 350 (N.D.N.Y. 2011) (finding that mandatory electronic monitoring conditions on defendants accused of certain sex offenses violates due process and constitutes excessive bail); *Polouizzi*, 697 F. Supp. 2d 381 (same). *But see, e.g., United States v. Gardner*, 523 F. Supp. 2d 1025 (N.D. Cal. 2007) (rejecting due process and excessive bail challenges to mandatory electronic monitoring).

138. *United States v. Jones*, 132 S. Ct. 945, 955 (2012) (Sotomayor, J., concurring) ("In cases involving even short-term monitoring, some unique attributes of GPS surveillance...will require particular attention. GPS monitoring generates a precise, comprehensive record of a person's public movements that reflects a wealth of detail about her familial, political, professional, religious, and sexual associations.").

139. All states, except Hawaii and the District of Columbia, charge fees to those who are under electronic monitoring. Joseph Shapiro, *As Court Fees Rise, The Poor Are Paying the Price*, NPR, (May 19, 2014), *available at* http://www.npr.org/2014/05/19/312158516/increasing-court-fees-punish-the-poor.

140. Markowitz, *supra* note 127.

141. VanNostrand, *supra* note 120, at 24.

142. Pretrial Justice Inst., *Survey of Pretrial Programs* 47 (2009), *available at* http://www.pretrial.org/download/pji-reports/new-PJI%202009%20Survey%20of%20Pretrial%20Services%20Programs.pdf.

143. Stefan Kapsch & Louis Sweeny, Bureau of Just Assistance, *Multnomah County DMDA Project: Evaluation Final Report* (1990); *see also* VanNostrand, *supra* note 120, at 21-22 (discussing separate studies of Washington D.C. and Milwaukee which found, respectively, that drug testing pretrial did not reduce failure to appear and that increasingly severe judicial sanctions changed nothing); Michael R. Gottfredson, et al., U.S. Dept. of Justice, Nat'l. Inst. of Justice, *Evaluation of Arizona Pretrial Services Drug Testing Programs: Final Report to the National Institute of Justice* (1990) (finding that "knowledge of drug test results does not appreciably improve the ability to estimate pretrial misconduct"); Chester L. Britt, et al., *Drug Testing and Pretrial Misconduct: An Experiment on the Specific Deterrent Effect of Drug Monitoring Defendants on Pretrial Release*, J. of Crime and Delinquency (1992) (finding that drug testing only leads to a slight decrease in pretrial arrest but does not alter failure to appear).

144. VanNostrand, *supra* note 120, at 24.

145. A series of Supreme Court cases has addressed the Fourth Amendment considerations surrounding drug testing in a variety of settings. While government-ordered drug tests indisputably constitute searches for Fourth Amendment purposes, the Court has generally scrutinized the particular contexts in which such tests are imposed to determine whether they are constitutionally reasonable searches. *Compare Ferguson v. City of Charleston*, 532 U.S. 67 (2001) (holding that mandatory urinalysis of pregnant mothers violates Fourth Amendment) *and Chandler v. Miller*, 520 U.S. 305 (1997) (striking down drug testing for candidates for designated state offices) *with Bd. of Educ. Of Independent Sch. Dist. No. 92 of Pottawatomie Cty. v. Earls*, 536 U.S. 822 (2002) (upholding mandatory drug testing of high school students participating in extracurricular activities) *and Skinner v. Railway Labor Executives' Ass'n*, 489 U.S. 602 (1989) (upholding drug and alcohol testing of railway operators).

146. *See Scott*, 450 F.3d at 870 ("Drug use during pretrial release may result in a defendant's general unreliability or, more nefariously, an increased likelihood of absconding. Whether this is plausible depends on whether drug use is a good predictor of these harms – a case that must be established empirically by the government when it seeks to impose the drug testing condition."); *Berry v. District of Columbia*, 833 F.2d 1031, (D.C. Cir. 1983) (holding that to justify mandatory pretrial drug testing "the District must proffer reliable evidence, statistical or otherwise, from which the trial court can reasonably conclude that drug testing makes it significantly more likely that an arrestee will commit crimes or fail to appear for scheduled court dates").

147. Markowitz, *supra* note 127.

148. *See* Jason Blalock, *Profiting from Probation: America's "Offender-funded" Probation Industry*, Human Rights Watch (2014), *available at* https://www.hrw.org/report/ 2014/02/05/profiting-probation/americas-offender-funded-probation-industry.

149. Charles Summers & Tim Willis, Bureau of Justice Assistance, *Pretrial Risk Assessment: Research Summary* 2 (2010), *available at* https://www.bja.gov/Publications/PretrialRiskAssessmentResearchSummary.pdf.

150. Cynthia Mamalian, *State of the Science of Pretrial Risk Assessment* 7 (2011), *available at* http://www.pretrial.org/download/risk-assessment/PJI%20State%20of%20the%20Science%20Pretrial%20Risk%20Assessment%20 (2011).pdf; *see also*, Pretrial Justice Institute, *Pretrial Risk Assessment: Science Provides Guidance on Assessing Defendants* 3 (2015), *available at* http://www.pretrial.org/download/advocacy/Issue%20Brief-Pretrial%20Risk%20Assessment%20(May%202015).pdf.

151. *See* Council of State Govts, *Risk and Needs Assessment and Race in the Criminal Justice System*, May 31, 2016, *available at* https://csgjusticecenter.org/reentry/posts/risk-and-needs-assessment-and-race-in-the-criminal-justice-system (discussing the ways in which a risk assessment tool must be used properly and accurately in order to ensure that it does not perpetuate racial biases in the criminal justice system).

152. *See* Timothy Cadigan, et al., *Implementing Risk Assessment in the Federal Pretrial Services System*, 75 Fed. Prob. 30, 31 (Sept. 2011) (noting that "[r]isk tools, while tremendously useful in improving agency decision making and ultimately release recommendations, have limitations...[and] the tool should not be followed blindly").

153. *See id.* at 32.

154. Jeff Larson et al., *How We Analyzed the COMPAS Recidivism*

Algorithm, May 23,2016, *available at* https://www.propublica.org/article/how-we-analyzed-the-compas-recidivism-algorithm

155. Samuel Wiseman, *Fixing Bail*, 84 Geo. Was. L. Rev. 417, 442 n. 145 (2016) (citing Charles Summers & Tim Willis, Bureau of Justice Assistance, *Pretrial Risk Assessment Research Summary* 2 (2010); Vera Inst. of Justice, *Evidence-Based Practices in Pretrial Screening and Supervision*, 2–3 (2010)). The use of risk assessment in the federal system has been limited: In 2011, there were an average of 26,000 pretrial defendants each quarter in the federal system, but only 4,000 reports with Pretrial Risk Assessment scores. Cadigan, *supra* note 152, at 30, 33.

156. For example, New Jersey has partnered with the Laura and John Arnold Foundation to implement a pretrial risk assessment tool as part of its bail reform efforts. *See* N.J. State Legis., *FY 2015-2016 Budget, Judiciary Response* 3, *available at* http://www.njleg.state.nj.us/legislativepub/budget_2016/JUD_response.pdf). New Mexico is also investigating the use of risk assessment. *See* N.M. Senate, *Joint Resolution 1, Fiscal Impact Report*, Feb. 16, 2016, *available at* http://www.nmlegis.gov/Sessions/16%20Regular/firs/SJR01.PDF.

157. *See, e.g.*, Pretrial Justice Inst., *The Colorado Pretrial Assessment Tool, Revised Report*, Oct. 19, 2012, *available at* http://www.pretrial.org/download/risk-assessment/CO%20Pretrial%20Assessment%20Tool%20Report%20Rev%20-%20PJI%202012.pdf; Ohio Dep't of Rehabilitation and Correction, *Ohio Risk Assessment System*, Nov. 17, 2014, *available at* http://www.drc.ohio.gov/web/oras.htm; Northpointe, *Northpointe Software Suite, available at* http://www.northpointeinc.com/products/northpointe-software-suite.

158. A 2011 report noted that the cost of validating a risk assessment instrument could range from $20,000 to $75,000, depending on the jurisdiction and the type of study that is being done. *See* Mamalian, *supra* note 150, at 35 n. 91.

159. Indeed, two of the most recent states to undertake major reform, New Jersey and New Mexico, have explored the use of national APRAI models. See N.J. State Legis., *supra* note 156 at 3; N.M. Senate, *supra* note 156 at 1.

160. The Arnold Foundation has funded the Criminal Justice Policy Program on work that is unrelated to this primer.

161. Laura & John Arnold Found., *Developing a National Model for Pretrial Risk Assessment* (Nov. 2013), *available at* http://www.arnoldfoundation.org/wp-content/uploads/2014/02/LJAF-research-summary_PSA-Court_4_1.pdf.

162. VanNostrand, *supra* note 120, at 29.

163. *See* Laura & John Arnold Found., *Results from the First Six Months of the Public Safety Assessment - Court in Kentucky* (July 2014), *available at* http://www.ncjp.org/pretrial/universal-risk-assessment#sthash.ZhtdTaoL.dpuf.

164. Laura & John Arnold Found, *Developing a National Model for Pretrial Risk Assessment*, (Nov. 2013), *available at* http://www.arnoldfoundation.org/wp-content/uploads/2014/02/LJAF-research-summary_PSA-Court_4_1.pdf.

165. *Id.*

166. *Id.*

167. *Id.*

168. *Id.*

169. *Id.*

170. *Id.*

171. *Id.*

172. Laura & John Arnold Found., *More Than 20 Cities and States Adopt Risk Assessment Tool to Help Judges Decide Which Defendants to Detain Prior to Trial*, June 26, 2015, *available at* http://www.arnoldfoundation.org/more-than-20-cities-and-states-adopt-risk-assessment-tool-to-help-judges-decide-which-defendants-to-detain-prior-to-trial/.

173. *See* Shima Baradaran & Frank L. McIntyre, *Predicting Violence*, 90 Tex. L. Rev. 497, 553 (2012) (finding among pretrial defendants nationally that "almost exactly half of those held...in reality have a lower than 20% chance of rearrest, while an equivalent number of those *released* have a higher than 20% chance of committing a crime") (emphasis added).

174. Samuel Wiseman, *Fixing Bail*, 84 Geo. Was. L. Rev. 417, 467-68 (2016).

175. Vernon Lewis Quinsey, et al., *Violent Offenders: Appraising and Managing Risk* 171 (1998).

176. Baradaran & McIntyre, *supra* note 173, at 553.

177. *See, e.g.,* Justice Pol'y Inst., *supra* note 28, at 13-14 (discussing the potential interruption to jobs, housing, health insurance, familial and community well-being that can occur as a result of pretrial detention).

178. *See supra* note 25.

179. Even one of the scholars most critical of actuarial risk assessment tools has observed that the bail context constitutes "one instance of actuarial progress that unquestionably has benefited poor and minority communities." Bernard E. Harcourt, *Against Prediction: Profiling, Policing, and Punishing in an Actuarial Age* 216 (2007).

180. *See* Laura & John Arnold Found., *supra* note 163.

181. Kenneth Rose, Virginia Dep't of Criminal Justice Services, *A "New Norm" for Pretrial Justice in the Commonwealth of Virginia* 6 (2013), *available at* https://www.dcjs.virginia.gov/corrections/documents/A%20New%20Norm%20for%20Pretrial%20Justice%20in%20the%20Commonwealth%20of%20Virginia.pdf.

182. *See* Mecklenburg County Criminal Justice Services Planning, *Jail Population Trend Report, January-March 2016, available at* http://charmeck.org/mecklenburg/county/CriminalJusticeServices/Documents/Jail%20Population/Population%20FY16%203Q.pdf. In 2008, the average pretrial jail population was 1,953 people but by December 2015 the daily population was reduced to 817 people. Nat'l. Ass'n. of Counties, *Effectively Framing the Pretrial Justice Narrative*, Webinar, April 14, 2016, *available at* http://www.naco.org/sites/default/files/event_attachments/Effectively%20Framing%20the%20Pretrial%20Justice%20Narrative.pdf.

183. Pretrial Justice Inst., *The Transformation of Pretrial Services in Allegheny County, Pennsylvania: Development of Best Practices and Validation of Risk Assessment*, vii (Oct. 9, 2007), *available at* http://www.pretrial.org/download/pji-reports/Allegheny%20County%20Pretrial%20Risk%20Assessment%20Validation%20Study%20-%20PJI%202007.pdf.

184. *See* Sonja B. Starr, *Evidence-Based Sentencing and the Scientific Rationalization of Discrimination*, 66 Stan. L. Rev. 803, 842 (2014) ("[In the sentencing context,] the models are designed to predict the average recidivism rate for all offenders who share with the defendant whichever characteristics are included as variables in the model. If the model is well specified and based on an appropriate and large enough sample, then it might perform this task well. But because individuals vary much more than groups do, even a relatively precisely estimated model will often not do well at predicting individual outcomes in particular cases.").

185. Amer. Bar Ass'n, *supra* note 5.

186. Executive Office of the President, *Big Data: A Report on Algorithmic Systems, Opportunity, and Civil Rights* 21 (May 2016), *available at* https://www.whitehouse.gov/sites/default/files/microsites/ostp/2016_0504_data_discrimination.pdf.

187. *See, e.g.*, Angele Christin et al., *Courts and Predictive Algorithms*

7-8 (Oct. 27, 2015) (outlining ways that inputting and interpretation of data may result in shifting discretion rather than rationalizing decisions), *available at* http://www.datacivilrights.org/pubs/2015-1027/Courts_and_Predictive_Algorithms.pdf.

188. *See, e.g.*, Christopher Slobogin, *Risk Assessment and Risk Management in Juvenile Justice*, 27 Wtr. Crim. Justice 10, 16-17 (2013).

189. *See, e.g.*, Michael Tonry, *Legal and Ethical Issues in the Prediction of Recidivism*, 26 Fed. Sent. Rep. 167, 173 (2014) (concluding that reliance on criminal histories intertwined with socioeconomic factors, such as age at time of first arrest, custody status at time of first arrest, and total number of convictions, inherently disadvantage minority defendants).

190. *See, e.g.*, Marc Mauer & Ryan S. King, *The Sentencing Project, Uneven Justice: State Rates of Incarceration by Race and Ethnicity* 4 (July 2007) (finding that "[t]he American prison and jail system is defined by an entrenched racial disparity in the population of incarcerated people").

191. For example, the nine factors that the Virginia Pretrial Risk Assessment Instrument (VPRAI) considers include whether the defendant has lived at their current residence for a year or more and whether he or she has been employed continuously or served as a primary caretaker for children over the past two years. *Virginia Pretrial Risk Assessment Instrument (VPRAI) Instruction Manual*, 5-7 https://www.dcjs.virginia.gov/sites/dcjs.virginia.gov/files/publications/corrections/virginia-pretrial-risk-assessment-instrument-vprai.pdf. Factors like these may systematically import racial bias. *See, e.g.*, Matthew Desmond, *Eviction and the Reproduction of Urban Poverty*, 118 Am. J. of Sociology 88, 110 (July 2012) (explaining the structural reasons why black women are overrepresented in evictions in Milwaukee).

192. Atty. Gen. Eric Holder, *Remarks of Attorney General Eric Holder at National Association of Criminal Defense Lawyers 57th Annual Meeting* (Aug. 1, 2014), *available at* https://www.justice.gov/opa/speech/attorney-general-eric-holder-speaks-national-association-criminal-defense-lawyers-57th.

193. *Id.*

194. *See* Harcourt, *supra* note 179, at 220 (2007) (discussing the "ratchet effect" that may occur when using risk assessment in the pretrial context).

195. *See* Atty. Gen. Eric Holder *supra* note 192 ("Criminal sentences must be based on the facts, the law, the actual crimes committed, the circumstances surrounding each individual case, and the defendant's history of criminal conduct. They should not be based on unchangeable factors that a person cannot control.").

196. *See*, e.g., Sonja Starr, *Risk Assessment Era: An Overdue Debate*, 27 Fed. Sent'g Rep. 205 (Apr. 2015)

197. *See, e.g., State v. Loomis*, 881 N.W.2d 749 (Wisc. 2016) (examining the use of risk assessment at sentencing); *State v. Duchay*, 647 N.W.2d 467, 2002 WL 862458, at *1-2 (Wis. Ct. App. May 7, 2002) (holding that a court's reliance on a risk assessment instrument in sentencing was not a due process violation because the defendant did not show that the information was inaccurate); *Malenchik v. State*, 928 N.E.2d 564, (Ind. 2010) (upholding the use of a risk assessment tool in the sentencing context).

198. *See, e.g., Fisher v. University of Texas at Austin*, 133 S.Ct. 2411, 2419 (2013) (government policies that rely on "suspect classifications" will survive judicial scrutiny only if they are narrowly tailored to serve a compelling governmental interest).

199. *See United States v. Virginia*, 518 U.S. 515, 532-33 (1996).

200. *See* Carissa Byrne Hessick, *Race and Gender as Explicit Sentencing Factors*, 14 J. Gender Race & Justice 127 (2010) (discussing the "explicit commitment to ensuring that a defendant's sentence is not affected by the defendant's race or gender" present in "most modern sentencing systems" and the Equal Protection underpinnings of that practice). *See also* Starr, *supra* note 184, at 823-24 (arguing that risk assessment instruments in the sentencing context which rely on "statistical generalizations about groups" based on gender and socioeconomic status violate the Equal Protection Clause). Observers have reached competing conclusions about whether including sex as a variable in an actuarial risk assessment would survive equal protection scrutiny. *See* Melissa Hamilton, *Risk-Needs Assessment: Constitutional and Ethical Challenges*, 52 Am. Crim. L. Rev. 231, 250-53 (2015) (outlining divergent views by scholars and commentators). The Wisconsin Supreme Court recently upheld the use of a risk assessment instrument in the sentencing context that included gender as a risk factor. *See Loomis*, 881 N.W.2d at 766. Significantly, however, the court in that case considered a claim based on due process, not equal protection. *Id.*

201. *See, e.g., Personnel Adm'r of Massachusetts v. Feeney*, 442 U.S. 256, 279 (1979).

202. *Fuentes v. Shevin*, 407 U.S. 67, 81 (1972).

203. *See Mathews v. Edridge*, 424 U.S. 319 (1976).

204. *Salerno*, 481 U.S. at 751.

205. *Loomis*, 881 N.W.2d at 760.

206. *Id.* at 769.

207. *See generally Salerno*, 481 U.S. at 750-51; *Mathews*, 424 U.S. at 334-35.

208. See Hamilton, *supra* note 200, at 271 (2015) (considering potential due process requirements in various contexts).

209. *See* John S. Goldkamp, *Danger and Detention: A Second Generation of Bail Reform*, 76 J. Crim. Justice & Criminology 1, 4 (1985) (listing five common objections to cash bail systems including that judges often set bond at a level without relation to the dangerousness of the defendant and which may handicap the defendant at later stages in the criminal procedure).

210. *See* Alaska Stat. Ann. § 12.30.011(d)(2); Arizona Rev. Stat. Ann. § 13-3961; Colorado Rev. Stat. Ann. § 16-4-101; D.C. Code §23-1322; Florida Const. Art. 1 § 14; Hawaii Rev. Stat. §804-3; Illinois 725 Ill. Comp. Stat. 5/110-6.1; Indiana Code Ann. §35-33-8-2 (only for murder charges where "the proof is evident or the presumption strong"); Louisiana Code Crim. Proc. Ann. art. 330.1; Maine Rev. Stat. Ann. tit. 15 § 1027, § 1029 (for crimes that are or were formerly capital offenses); Maryland Rules Crim. Proc. § 5-202; Massachusetts G. L. 276 § 58A; Michigan §765.5; Mississippi Const. Art. 3, §29; Mo. Const. Art. 1 § 32.2; New Jersey P.L. 2014, Ch. 31, §1-20; Ohio Rev. Code Ann. §2937.222; Oregon Rev. Stat. Ann. § 135.240; Pennsylvania Const. Art. 1 § 14; Rhode Island Gen. Laws Ann. § 12-13-1.1; Texas Const. Art. 1 § 11a; Washington Rev. Code Ann. § 10.21.040, § 10.21.060 (for capital offenses and offenses punishable by life in prison); Wisconsin Const. Art. 1 § 8.

211. *See, e.g.*, Shima Baradaran Baughman, *Restoring the Presumption of Innocence*, 72 Ohio State L.J. 723 (2011) (questioning bail and pretrial detention given the presumption of innocence); R.A. Duff, *Pre-trial Detention and the Presumption of Innocence* (2012), *available at* http://ssrn.com/abstract=2103303 (assessing whether pretrial detention can coexist with the presumption of innocence); Sandra G. Mayson, *Dangerous Defendants*, University of Pennsylvania Law School, Public Law Research Paper No. 16-30 (August 15, 2016), *available at* http://ssrn.com/abstract=2826600.

212. *Id.* at 746. *See also Bell v. Wolfish*, 441 U.S. 520, 535-39 (1979) ("In evaluating the constitutionality of conditions or restrictions of pretrial detention that implicate only the protections against deprivation of liberty without due process of law, we think the proper inquiry is whether those conditions amount to punishment of the detainee...[I]f a particular condition or restriction of pretrial detention is reasonably related to a

legitimate government objective, it does not, without more, amount to 'punishment.'").

213. *Salerno*, 481 U.S. at 747.

214. *Id.*

215. *Id.* at 750.

216. *Id.* at 750 (internal quotations and citations omitted).

217. *Id.* at 751.

218. *Id.* at 755.

219. *Id.* at 751.

220. *Id.*

221. *Id.* at 751–52.

222. The right to counsel at bail hearings is crucial not only to reduce unnecessary pretrial detention, but also to ensure that defendants are able to preserve their right to a fair trial. Having counsel involved at an early stage allows the attorney to begin a prompt investigation of the case and build trust with the client. *See* Colbert, *supra* note 74, at 6.

223. D.C. Code § 23-1322(h)(1). Significantly, the statute allows for 20 day extensions when good cause is shown if a judicial officer approves of the requested extension.

224. Vt. Stat. tit. 13, § 7553b.

225. *See* Thomas M. O'Brien, *The Undoing of Speedy Trial in New York: the "Ready Rule,"* N.Y. Law Journal (Jan. 14, 2014), *available at* http://www.newyorklawjournal.com/id=1202638065307/The-Undoing-of-Speedy-Trial-in-New-York-the-Ready-Rule?mcode=0&curindex=0&curpage=ALL (noting the case of Kalief Browder who was jailed for three years in Rikers Island awaiting trial); William Glaberson, *Justice Denied: Inside the Bronx's Dysfunctional Court System*, N. Y. Times, *available at* http://www.nytimes.com/2013/04/14/nyregion/justice-denied-bronx-court-system-mired-in-delays.html?pagewanted=all&_r=0.

226. *Salerno*, 481 U.S. at 747.

227. *Id.* at 750.

228. *Id.*

229. Laura & John Arnold Found., *supra* note 20, at 4-5.

230. N.J.P.L. 2014, Ch. 31, § 1 (defining "eligible defendants" for the purpose of administering risk assessment based on the crime for which a defendant is charged).

231. *See* D.C.Code §23-1322; 18 U.S.C § 3142(e).

232. Cf. Kate Stith, *The Arc of the Pendulum: Judges, Prosecutors, and the Exercise of Discretion*, 117 Yale L. J. 1420 (2008) (arguing that the federal sentencing guidelines have increased prosecutorial discretion, not only in charging decisions but also in sentencing).

233. D.C. Code §23-1322(b)(1); 18 U.S.C § 3142(f).

234. *Salerno*, 481 U.S. at 751.

235. D.C.Code § 23-1322(e).

236. *See, e.g.*, Ohio Rev. Code § 2937.222; Washington Rev. Code Ann. §10.21.050 (mirroring almost exactly the D.C. language); Mass. Gen. Laws Ann. ch. 276, § 58A ("The nature and seriousness of the danger posed to any person or the community that would result by the person's release, the nature and circumstances of the offense charged, the potential penalty the person faces, the person's family ties, employment record and history of mental illness, his reputation, the risk that the person will obstruct or attempt to obstruct justice or threaten, injure or intimidate or attempt to threaten, injure or intimidate a prospective witness or juror, his record of convictions, if any, any illegal drug distribution or present drug dependency, whether the person is on bail pending adjudication of a prior charge..."). New Jersey's preventative detention statute contains a discussion of similar factors in addition to the "release recommendation of the pretrial services program obtained using a risk assessment instrument under section 11 of P.L.2014, c.31 (C.2A:162-25)." N.J. P.L.2014, c.31 C.2A:162-20(6)(f).

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Austin Hall, 1st floor | 1515 Massachusetts Ave | Cambridge, MA 02138
Phone: 617-495-4848 | cjpp.law.harvard.edu

EXECUTIVE DIRECTOR
Stephen P. Hattori

DEPUTY DIRECTOR
Richard S. Dirkx
ADMINISTRATIVE DIRECTOR
Cathyann C. Gogue

PUBLIC DEFENDER SERVICE CORPORATION
(Kotperasion Setbision Defensot Pupbleku)
GOVERNMENT OF GUAM
779 Route 4
Sinajåña, Guam 96910
Tel: (671) 475-3100 ◆Fax: (671) 477-5844

STAFF ATTORNEYS
Jocelyn M. Roden
Peter J. Sablan
Ali N. Nusbaum
William B. Jones
Kristine B. Borja
William C. Bischoff
Alisha L. Molyneux
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Earl Anthony V. Espiritu

RE: Bill No. 177-34

Hafa Adai Vice Speaker and Chairperson Terlaje:

The Court tried electronic monitoring nearly 20 years ago. Frankly, the technology completely let us down. In addition, the expense was so great that it did little to benefit Public Defender clients, and proved to be another way out of jail for people who were charged with serious crimes, but who had access to money. I hope it works better this time. I'll try to keep an open mind for this experiment, but I am concerned that it can easily add another expensive hurdle to the recovery paths of minor offenders who are trying to break the cycle of poverty and despair.

It is unfortunate that the Bill ties this electronic monitoring effort so closely to family violence. Yes, it is a terrible thing what happened to Mrs. Cepeda. It is the nightmare situation that haunts everyone who works in the criminal justice system, and why we all work so hard to banish violence from our island. In truth, however, the number of similar cases in the last 30 years can be counted on the fingers of one hand. A man charged with armed robbery, burglary, or a drug offense is much more likely to commit the same crime while on pretrial release. Most people charged with family violence do not commit the crime again. Yes, there are cases which involve injuries, but the more typical case involves a slap, a shove, or a thrown object, zories and shoes being the most popular. If the Magistrate sets bail at $1000 cash, a surprising number of arrestees can't make the bail.

I believe Mr. Hattori will be addressing the financial aspects of this bill. I'd like to examine, briefly, a couple of other aspects

This bill assumes that all people who are alleged to be victims, agree that they are victims, and that they want the vigorous protection of the court. It further assumes that all individuals who are "protected" by a court order actually want that "protection", and that anyone who violates a protective order presents a danger to the victim and ought not to be released.

Let's take a moment to look at the machinery.

After a person is arrested for family violence, he is locked up until he appears before a Magistrate. Whether he is released or not, he is almost always ordered to have no contact with the alleged victim in

any way, and not to pass messages to her through a third party. This is so even if it is contrary to the victim's wishes, even if she is in court to ask for contact. Usually, she doesn't know of the hearing and isn't there.

This can have a number of unintended consequences. The victim may not know about the "no contact" order, and she will go looking for her man as soon as she hears he's out. By ordering "no contact" the Court may have just deprived the victim of her home, or her day care provider, or her only licensed driver, or her ride to dialysis. Three times in the past five years I've seen cases where family violence was reported in the ninth month of the woman's pregnancy, the man was arrested and vanished for weeks. None of these women knew until much later that there was a "no contact" order, and each gave birth thinking she'd been abandoned by the baby's father. Earlier this year I met a family whose father had been arrested for family violence and had to act as his own lawyer. Their mother, the victim, was dying of cancer, and they claim they went to the prosecutor's office and tried to get the order lifted. It didn't happen. At the very end, the man chose, with his children's support, to violate the court order and be by his wife when she passed on.

How does a "no contact" order, once it's in place, get lifted if the victim doesn't even want it the order? Many victims go to the prosecutor's office and try to drop charges, but prosecution never does that. By statute, information given to an advocate at the AG's office is confidential, so a wish to have contact restored may go nowhere. I have never once seen a prosecutor file a motion to lift a "no contact" order. I have never once seen a defendant representing himself file a written motion to allow contact. Many victims come to our office trying to help their accused "abusers", but it takes a minimum of three weeks to get a motion heard, and the prosecution may oppose the victim's efforts in court when we get to the hearing.

We have created a legal environment in which it is very easy to get a protective order in place, but very difficult to get it lifted, and in at least half of the cases the victim doesn't want it at all. If the victim feels bad about the arrest, she may do whatever she has to do to show the man she will be there for him. In my opinion, this practice of ordering everyone apart, and disregarding what the victim really wants, has cheapened the authority of the court.

The situation with civil protective orders isn't any better. People get those orders when they are mad or afraid or both, and the order has a specific lifespan of between one and three years. The respondent in a protective order case almost never has a lawyer; he just agrees with what she wants as long as he can see the kids. Some people, though, lose their anger or fear, and feel the itch to get back together again. How do you lift such an order? Well, you can hire a lawyer. If Guam Legal Services got the order, they will undo it, but only if the petitioner requalifies for services. The Public Defender will try to lift an order if our client requests. If you got the order yourself using the kiosk downstairs, it is going to be much harder to figure out how to cancel the order. Much easier just to ignore the order, if that's what you both want. Until you get caught. Then one of you is going to jail.

This was preamble for what I see to be the two big shortcomings of the current Bill.
The first is at Section 40.15(c) (4) which requires the court to consider "statements of the victim or others as to previous incidences {sic} of violence and threats made to the victim." Why are we only allowing the victim's statements if they concern prior incidents of violence or threats? It's not the hearsay aspect of this that troubles me, it's that the statute is willing to disallow the input unless it is bad stuff. The victim's feelings and attitude toward release should be considered, whatever they are, and he or she should have the right to be heard. It is very common, for example, for a victim to want the man out of jail and supporting his family, but still to want him to stay away. The judge should know that, and if the victim wants to say it in open court, that should be her right, just as it should be her right to say she wants him home, or she wants him locked up forever.

The most troubling aspect of the statute is the material starting at Section 40.20(g). Subsection (1) states a flat prohibition on the pretrial release of a defendant charged with violating a protective order, a more strict standard than is applied to persons charged with murder. Then, in the two sections that follow, the prohibition is modified. The language is inelegant to say the least, and I'm not sure two lawyers would agree on what all parts of it mean. I won't try to change the wording, but will make two observations. First, the alternative of electronic monitoring is OK, since the money has already been allocated. A judge should have as many tools as possible in her toolbox. However, as I've tried to show, not all the people who violate court orders should be presumed to be a danger and locked up.

One last example. Not long ago, I was awaiting a scheduled visit from a client charged with family violence. He's a consumer at Guam Behavioral Health and has been homeless lately, so I was not sure he would make it. He arrived a bit late, with a woman I recognized from the police report, and a baby in a carrier on his chest. The woman is also a consumer at the same agency, and I hope we all know that a family violence charge is the primary gateway for people with mental disabilities into the criminal justice system. He was gushing with apologies, he knew he wasn't supposed to be with her, but she was homeless, their baby was homeless, and she came to him and needed his help. He knows how to use the transit system, and he was taking her around and teaching her and they were trying to get Medicaid for their baby, and he had a relative who was going to let them live in the carport.... He went on, but mostly he was scared he would go back to jail. I tried to reassure him that we'd tell the judge at the next hearing. He and his family hustled away to their carport before the rain broke again.

At the next hearing a couple of days later, we explained it all to the judge and the prosecutor. He confessed to violating a court order, and I guess it's still possible he could be prosecuted, but the judge and the prosecutor had discretion, decency and common sense, and it all came out as it should.

To the degree that subsection (g) takes away the discretion of a judge to do what is appropriate to the specific situation in front of her, it's not a law we need.

Thank you for this opportunity to voice my concerns about this Bill.

Regards,

Richard

RICHARD S. DIRKX
Deputy Director

Gmail **Senator Therese Terlaje <senatorterlajeguam@gmail.com>**

FW: MEASURES AIMED AT KEEPING PPL OUT OF JAIL ARTICLE

Richard Dirkx <rdirkx@guampdsc.net> Thu, Sep 21, 2017 at 9:28 AM
To: "Senator Therese Terlaje (senatorterlajeguam@gmail.com)" <senatorterlajeguam@gmail.com>
Cc: Stephen Hattori <sphattori@guampdsc.net>

Dear Vice Speaker Terlaje,

Thank you very much for scheduling this afternoon's round table.

I don't think my office actually opposes electronic monitoring, but I've attached an article that raises some of the same concerns we have.

I'll see you this afternoon.

Thank you.

Richard

From: Ramona Guerrero
Sent: Thursday, September 21, 2017 9:08 AM
To: Richard Dirkx <rdirkx@guampdsc.net>
Subject: MEASURES AIMED AT KEEPING PPL OUT OF JAIL ARTICLE

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guilty and charged

Measures Aimed At Keeping People Out Of Jail Punish The Poor

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May 24, 2014 · 4:58 PM ET
Heard on All Things Considered

JOSEPH SHAPIRO

Tom Barrett returned to the convenience store where he stole a can of beer. He spent time in jail, not for the crime, but because he couldn't afford the fines and fees that went along with wearing an electronic monitoring device.
Joseph Shapiro/NPR

Electronic monitoring devices provide an alternative to sending someone to jail. For a defendant, an ankle bracelet means returning to family and work. For corrections

officials, it saves money by reducing overcrowded jails and prisons. But those devices are expensive.

GUILTY AND CHARGED: KEY FINDINGS

NPR's yearlong investigation included more than 150 interviews with lawyers, judges, offenders in and out of jail, government officials, advocates and other experts. It also included a nationwide survey — with help from NYU's Brennan Center for Justice and the National Center for State Courts — of which states are charging defendants and offenders fees. Findings of this investigation include:

- Defendants are charged for a long list of government services that were once free — including ones that are constitutionally required.
- Impoverished people sometimes go to jail when they fall behind paying these fees.
- Since 2010, 48 states have increased criminal and civil court fees.
- Many courts are struggling to interpret a 1983 Supreme Court ruling protecting defendants from going to jail because they are too poor to pay their fines.

A nationwide survey by NPR found that 49 states — every state except Hawaii, plus the District of Columbia — now allow or require the cost to be passed along to the person ordered to wear one.

Sometimes that means people with money get to go home, while those without go to jail. Like Tom Barrett.

The Augusta, Ga., man was arrested after he stole a can of beer from a refrigerator in a gas station convenience store in 2012. He pleaded "no contest" and a judge sentenced him to 12 months of probation and said Barrett could be released as long as he wore an ankle bracelet. But when he didn't have the money to pay for it, he was sent to jail.

The bracelet, which is a kind of Breathalyzer strapped to his ankle, was expensive. It cost $12 a day. In addition, there was a $50 set up fee, a $39 a month fee to the private probation company that supervised his release, and the money to install a land-line phone for the system to work. It totaled more than $400 a month.

Barrett had been homeless, until just before he stole that beer. He was living in a subsidized efficiency apartment that cost him $25 a month. To afford even that much, he had to sell his plasma at the blood bank.

- Technology, such as electronic monitors, aimed at helping defendants avoid jail time is available only to those who can afford to pay for it.

As a former pharmacist, Barrett had once lived a comfortable, middle-class life. But he became addicted to the drugs he was supposed to be safeguarding. He lost his job, and his family.

There were years of run-ins with the law, mostly related to public drunkenness.

This time, however, it was for a minor shoplifting charge, which shouldn't carry any jail time. It "didn't seem like justice," Barrett says about being jailed when he couldn't pay for the electronic monitor.

"I should not have taken that beer. I was dead wrong," he says. "But to spend 12 months in jail for stealing one can of beer? It just didn't seem right."

'The Monitor Worked'

Barrett, who turned down a public defender because it would have cost him $50, was sentenced to 12 months in jail. But after two months, his Alcoholics Anonymous sponsor agreed to help him start paying for the electronic monitoring.

Barrett got out of jail. And that's when the alcohol monitoring bracelet — a kind of black plastic collar — was attached to his leg.

> “I should not have taken that beer. I was dead wrong. But to spend 12 months in jail for stealing one can of beer? It just didn't seem right.
>
> Tom Barrett

- "The monitor worked," he says. "The monitor was a good thing. And my life started getting better, just by me not drinking."

With the monitor on, for the first time in years, Barrett was sober.

But he still had to pay the high fees that went with it. His only income was food stamps and the $30 he made when he sold his plasma.

So the fees went unpaid. After almost six months, Barrett was called back to court. He faced going back to jail.

Only this time, he found an attorney, Jack Long, who challenged the fees. Augusta Superior Court Judge Daniel Craig then ruled that Barrett's monitor should be removed and he didn't have to return to jail.

Last September, Craig expanded his ruling and put a temporary stop to forcing people to pay for the devices. The Supreme Court of Georgia will take up the issue later this year.

The Costs Of Electronic Monitoring

GUILTY AND CHARGED
The History Of Electronic Monitoring Devices

The device that helped Barrett is called SCRAMX, for Secure Continuous Remote Alcohol Monitor. It can measure a person's sweat for evidence of drinking alcohol.

The more common electronic monitoring devices check a person's location. So if a judge gives a curfew to someone awaiting trial, the device can tell if they are home on time. Some devices come with a GPS unit and can tell if, for example, a sex offender has been lurking near an elementary school.

Companies that make the devices — in their marketing materials — tell courts, and probation and parole agencies they can charge the users of those electronic monitoring devices.

"It's very easy for jurisdictions to pass the cost on to the offender," says George Drake, a consultant to government agencies that want to set up electronic monitoring systems. "No one wants to raise taxes on the public. Politicians — it's the last thing they want to do."

Most states face sizable budget deficits. So state legislators — often lobbied by the companies that make the devices — pass legislation to require offenders to pay the fees.

More From This Series

GUILTY AND CHARGED
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GUILTY AND CHARGED
Chart: State-By-State Court Fees

But Drake often advises that government agencies are better off paying the bill for the monitors; rather than chasing after money from the usually indigent offenders.

"More often than not, these offenders don't have resources," he says. "They're paying court fees, they're paying other fines, they're paying supervision fees and restitution to the victim and they're being set up to fail because they just cannot afford all these fees that have been assessed to them."

A spokeswoman for Alcohol Monitoring Systems, the company that makes the SCRAMX, says it points courts to alternative ways of charging fees.

Most courts use sliding scale fees, based on how much the offender can pay. Or, the company tells them how to find grant money to help poor people pay for the monitors.

Barrett is trying to turn his life around. He's sober now.

One day last year, Barrett returned to the convenience store where he was arrested. He wanted to apologize to the owner for stealing the beer. Nervously, he walked in. The owner was gone, but he apologized to the man's wife. Then he went outside, borrowed a phone, and called the blood bank, to set up an appointment to come in to donate and get the money to pay back the $1.29 he owes the convenience store.

Barrett will be the first to tell you that it was his substance abuse and his crimes that caused his problems. But it was his debt from going through court that seemed to mock his every attempt to recover and get his life going again — the fee after fee after fee that is now common across America.

NPR's Emma Anderson, Nicole Beemsterboer, Robert Benincasa and Barbara Van Woerkom contributed reporting and research to this investigation.

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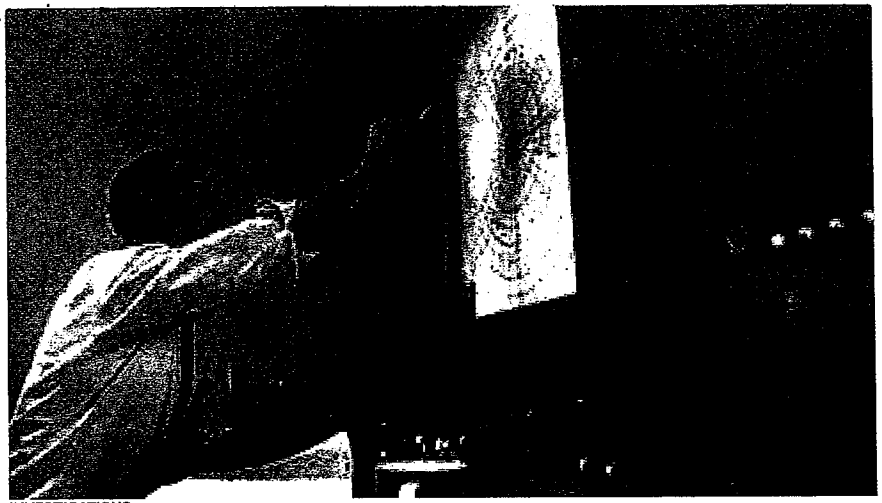
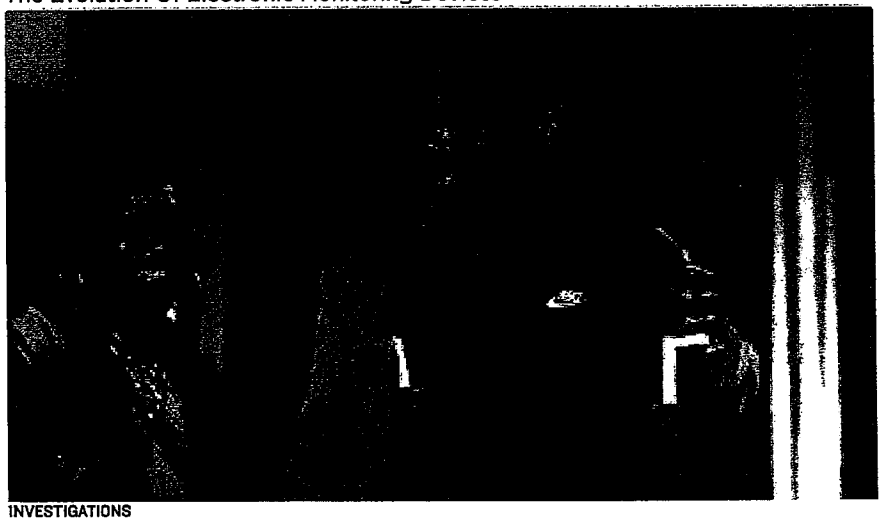


INVESTIGATIONS

The Evolution Of Electronic Monitoring Devices



INVESTIGATIONS

Court Fines And Fees Almost Delay Homecoming For Wrongly Convicted Michigan Man

Chapter 30
Family Violence

§ 30.10. Definitions.

As used in this Chapter:

(a) Family violence means the occurrence of one (1) or more of the following acts by a family or household member, but does not include acts of self-defense or defense of others:

(1) Attempting to cause or causing bodily injury to another family or household member;

(2) Placing a family or household member in fear of bodily injury.

(3) Knowingly or intentionally, against the will of another, impeding the normal breathing or circulation of the blood of a family or household member by applying pressure to the throat or neck or by blocking the nose or mouth of a family or household member.

(b) Family or household members include:

(1) Adults or minors who are current or former spouses;

(2) Adults or minors who live together or who have lived together;

(3) Adults or minors who are dating or who have dated;

(4) Adults or minors who are engaged in or who have engaged in a sexual relationship;

(5) Adults or minors who are related by blood or adoption to the fourth degree of affinity;

(6) Adults or minors who are related or formerly related by marriage;

(7) Persons who have a child in common; and

(8) Minor children of a person in a relationship described in paragraphs (1) through (7) above.

(c) Bodily injury as used in this Chapter, has the same meaning as that provided in subsection (b) of § 16.10 of this title;

(d) Attempt as used in this Chapter, has the same meaning as that provided in § 13.10 of this title;

(e) Peace officer means any person so defined in 8 GCA § 5.55;

(f) Victim means any natural person against whom a crime, as defined under the laws of Guam, has been committed or attempted to be committed;

(g) Witness means any natural person,

(1) having knowledge of the existence or nonexistence of facts relating to any crime, or

(2) whose declaration under oath is received or has been received as evidence for any purpose, or

(3) who has reported any crime to any peace officer, or

(4) who has been served with a subpoena issued under the authority of any court in Guam, or

(5) who would be believed by any reasonable person to be an individual described in subparagraphs (1) through (4), above, inclusive;

(h) Prosecuting attorney as used in this Chapter means the Attorney General of Guam and those persons employed by the Attorney General's office specifically designated by the Attorney General.

SOURCE: Added by P.L. 22-160:2 (Dec. 30, 1994). Subitem (a)(3) added by P.L. 33-205:2 (Dec. 15, 2016).

2013 NOTE: Numbers and/or letters in subsection (g) were altered to adhere to the Compiler's alpha-numeric scheme in accordance to 1 GCA § 1606.

§ 30.20. Family Violence.

(a) Any person who intentionally, knowingly, or recklessly commits an act of family violence, as defined in § 30.10 of this Chapter, is guilty of a misdemeanor, or of a third degree felony, and shall be sentenced as follows:

(1) for the first offense, the court shall impose a sentence of no less than forty-eight (48) hours imprisonment;

(2) for the second offense, the court shall impose a sentence of no less than thirty (30) days imprisonment; and

(3) for the third offense, the offense shall be classified as a third degree felony and the court shall impose a sentence of no less than one (1) year imprisonment. The person, upon conviction, shall be termed a "repeat offender" and may be subject to extended terms pursuant to § 80.38 of Article 2, Chapter 80 of this Title.

(b) Upon a written, noticed motion prior to commencement of trial, the defendant may move that a felony charge filed pursuant to this § 30.20, other than a felony charge filed pursuant to § 30.20(a)(3), be reduced to a misdemeanor. Whether any charge, other than a felony charge filed pursuant

to § 30.20(a)(3), shall proceed as a misdemeanor or a felony rests within the discretion of the court.

(c) In determining whether a felony charge filed pursuant to this § 30.20, other than a felony charge filed pursuant to § 30.20(a)(3), should be reduced to a misdemeanor, the court shall consider the following factors, among others:

(1) the extent or seriousness of the victim's injuries;

(2) the defendant's history of violence against the same victim whether charged or uncharged;

(3) the use of a gun or other weapon by the defendant;

(4) the defendant's prior criminal history;

(5) the victim's attitude and conduct regarding the incident;

(6) the involvement of alcohol or other substance, and the defendant's history of substance abuse as reflected in the defendant's criminal history and other sources; and

(7) the defendant's history of and amenability to counseling.

(d) If the court, after a hearing, finds substantial evidence that a victim suffered serious bodily injury, as defined in Subsection (c) of § 16.10, Chapter 16 of this Title, no felony charged filed under this § 30.20 shall be reduced to a misdemeanor unless the court finds that due to unusual circumstances a reduction of the charge is manifestly in the interest of justice.

(e) The fact that an alleged criminal act involved family violence, as defined in § 30.10 of this Chapter, shall not preclude the prosecuting attorney from charging and prosecuting the defendant for any other violations of law, subject to the provisions set forth in § 1.22 of Article 1, Chapter 1 of this Title;

(f) In any case in which a person is convicted of violating this § 30.20 and probation is granted, the court shall require participation in an education and treatment program as a condition of probation unless, considering all the facts and the circumstances, the court finds participation in an education and treatment program inappropriate for the defendant.

(g) If probation is granted, or the imposition of a sentence is suspended, for any person convicted under Subsection (a) of this § 30.20 who

previously has been convicted under such Subsection (a) for an offense that occurred within seven (7) years of the offense of the second conviction, it shall be a condition of such probation or suspended sentence that he or she be punished by imprisonment for not less than thirty (30) days, and that he or she participate in, for no less than one (1) year, and successfully complete an education and treatment program, as designated by the court

(h) Probation shall not be granted for any person convicted under Subsection (a) of this § 30.20 who previously has been convicted of two (2) or more violations of such Subsection (a) for offenses that occurred within seven (7) years of the most recent conviction. The person shall be sentenced to imprisonment for not less than one (1) year, and shall participate in, for no less than one (1) year, and successfully complete an education and treatment program, as designated by the court.

SOURCE: Added by P.L. 22-160:2 (Dec. 30, 1994). Amended by P.L. 32-017:1 (Apr. 11, 2013).

§ 30.21. Conditions of Release.

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

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

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

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

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

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

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

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

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

(b) If conditions of release are imposed, the Court shall:

(1) issue a written order for conditional release; and

(2) immediately distribute a copy of the order to the Guam Police Department and the Office of the Attorney General, Prosecution Division.

(c) The Court shall provide a copy of the conditions to the arrested or charged person and his/her counsel upon his or her release. Failure to provide the person with a copy of the conditions of release does not invalidate the conditions if the arrested or charged person has notice of the conditions.

(d) If conditions of release are imposed without a hearing, the arrested or charged person may request a prompt hearing before the Court to review the conditions. Upon such a request, the Court shall hold a prompt hearing to review the conditions.

(e) When a person who is arrested for or charged with a crime involving family violence or a violation of a court order is released from custody, the Office of the Attorney General shall:

(1) use all reasonable means to immediately notify the victim of the alleged crime of the release; and

(2) furnish the victim of the alleged crime, at no cost, a certified copy of any conditions of release.

SOURCE: Added by P.L. 24-239:9 as part of *The Family Violence Act of 1998*.

§ 30.30. Powers and Duties of Peace Officers to Arrest for Crimes Involving Family Violence; Determination of Primary Aggressor; Required Report.

(a) If a peace officer has reasonable cause to believe that a person has committed a felony or misdemeanor involving family violence, the peace officer shall presume that arresting and charging the person is the appropriate response.

(b) If a peace officer receives complaints of family violence from two (2) or more opposing persons, the officer shall evaluate each complaint separately to determine who was the primary aggressor. If the officer determines that one (1) person was the primary aggressor, the officer need not arrest the other person believed to have committed family violence but the peace officer shall document to the best of his or her ability the evidence concerning the actions of each participant in the incident.

(c) In determining whether a person is the primary aggressor the officer shall consider:

(1) Prior complaints of family violence;

(2) The relative severity of the injuries inflicted on each person;

(3) The likelihood of future injury to each person;

(4) Whether one of the persons acted in self-defense;

(5) The use or threatened use of a weapon; and

(6) The use or threatened use of physical force.

(d) A peace officer shall not:

(1) Threaten, suggest, or otherwise indicate the possible arrest of all parties to discourage requests for intervention by peace officers by any party; or,

(2) Base the decision to arrest or not to arrest on:

(A) The specific consent or request of the victim; or,

(B) The officer's perception of the willingness of a victim of or witness to the family violence to testify or otherwise participate in a judicial proceeding.

(e) In addition to any other report required, a peace officer who does not make an arrest after investigating a complaint of family violence or who arrests two (2) or more persons for a crime involving family violence must submit a written report setting forth the grounds for not arresting or for arresting both parties.

SOURCE: Added by P.L. 22-160:2 (Dec. 30, 1994).

2013 NOTE: Numbers and/or letters were altered in subsection (d)(2) to adhere to the Compiler's alpha-numeric scheme in accordance to 1 GCA § 1606.

§ 30.31. Mandatory Confinement.

When a peace officer makes an arrest for family violence the arrestee shall be confined until the magistrate's hearing, unless released earlier by the Office of the Attorney General.

SOURCE: Added by P.L. 24-239:6 as part of *The Family Violence Act of 1998.*

§ 30.32. Duties of Peace Officers to Victim of Family Violence; Required Notice to Victim.

(a) Peace officers shall respond to every request for assistance or protection, from or on behalf of a victim of alleged family violence, whether or not an order has been issued against the alleged abuser.

(b) A high priority shall be assigned to calls involving alleged incidents of abuse or violations of orders relative to family violence. Every law enforcement agency shall develop and implement a comprehensive inter-agency and intra-agency or departmental family violence policy and protocol to include:

(1) the number of children in the family and/or household exposed to family violence; and

(2) referral to Child Protective Services for coordination and referral for assessment for appropriate counseling services.

(c) If the peace officer has reason to believe that a person is a victim of family violence, the officer shall use all reasonable means to prevent further family violence and to ensure the victim's safety including:

(1) taking the action necessary to provide for the safety of the victim and any family or household member;

(2) exercising arrest powers pursuant to this Chapter;

(3) confiscating any weapon involved in the alleged family violence incident and the firearms identification card of any person(s) arrested;

(4) promptly filling out and filing a family violence report;

(5) arranging for transportation for the victim to a safe place or shelter;

(6) arranging transportation for the victim to the nearest hospital or medical facility for treatment of injuries;

(7) accompanying the victim to a previous residence to remove essential personal belongings;

(8) supervising the Court-ordered removal of an abuser from a residence shared with a victim; and

(9) giving the victim immediate and adequate written notice of the rights of victims and of the remedies and services available to victims of family violence.

(d) As part of the notice to the victim, the required written notice shall be given as follows:

> "You have the right to request a peace officer's assistance for your safety. You may also request that the peace officer assist you in obtaining your essential personal effects, and arranging transportation to a safe place, including but not limited to a designated meeting place for a shelter, a family member's or a friend's residence, or a similar place of safety. If you are in need of medical treatment, you have the right to request that the officer assist you in obtaining medical treatment. If you would like to speak with a victim's assistance representative, one will be contacted for you."

The above paragraph shall be read to all victims of family violence by the responding officer. Furthermore, the written notice shall advise the victim that victim advocates at the Office of the Attorney General are available to provide assistance to all victims, and can provide information about other support services in the community. The advocates' address and current telephone numbers shall be displayed prominently on the written notice.

In addition, a responding officer shall give written notice to every victim of family violence that full legal services are available at no cost from the Guam Legal Services Corporation and from the Public Defender Service Corporation. The addresses and current telephone numbers of both offices shall be displayed prominently on the written notice. Full legal services could include the following orders:

(1) an order enjoining your abuser from threatening to commit or committing further acts of family violence;

(2) an order prohibiting your abuser from harassing, annoying, telephoning, contacting or otherwise communicating with you, directly or indirectly;

(3) an order removing your abuser from your residence;

(4) an order directing your abuser to stay away from you and any other family or household members, your residence, school, place of employment or any other specified place frequented by you and another family or household member;

(5) an order prohibiting your abuser from using or possessing any kind of weapon, instrument or thing to inflict bodily harm or injury;

(6) an order granting you possession and use of the automobile and other essential personal effects;

(7) an order granting custody of your child or children;

(8) an order denying your abuser visitation;

(9) an order specifying arrangements for visitation, including requiring supervised visitation; and

(10) an order requiring your abuser to pay certain costs and fees, such as rent or mortgage payments, child support payments, medical expenses, expenses for shelter, court costs and attorney's fees.

The written notice may be revised from time to time to include contact information for other providers of victim support services, so long as those services are provided at no cost to the victim.

(e) The written notice:

(1) must not include the addresses of shelters; and

(2) must be provided in a language the victim can understand.

SOURCE: Added by P.L. 24-239:7 as part of *The Family Violence Act of 1998*. Subsection (b) amended by P.L. 32-017:2 (Apr. 11, 2013).

§ 30.33. Limitations of Liability.

Law enforcement agencies and peace officers shall not be liable for personal injury or property damage which occurs in the course of any good-faith effort to protect a victim of family violence, including, but not limited to, action taken during the course of an arrest, an attempt to separate two (2)

parties or to enforce a Court order, or action taken during the transportation of the victim to a shelter, hospital or other safe place.

SOURCE: Added by P.L. 24-239:19 as part of the *Family Violence Act of 1998*.

§ 30.40. Violation of a Court Order.

(a) Any knowing violation of any of the following court orders shall be a misdemeanor punishable by imprisonment of no less than forty-eight (48) hours and not more than one (1) year, and by a fine of not more than One Thousand Dollars ($1,000):

(1) an order enjoining a person from threatening to commit or committing acts of family violence against, or from harassing, annoying, or molesting, a family or household member, or any person named in the order;

(2) an order removing or excluding a person from the family dwelling or from the dwelling of another, or from any habitable property, as defined in Subsection (b) of § 34.10, Chapter 34 of this Title;

(3) an order requiring a person to stay away from the residence, dwelling, school, day care center, place of employment, or any other specified place or from a specified person, within five hundred feet (500') of the specified place or specified person;

(4) an order prohibiting a person from possessing a firearm or other weapon specified by the court; or

(5) an order in a criminal case prohibiting the defendant from harassing, annoying, telephoning, contacting, or otherwise communicating with a victim or specified witness, either directly or indirectly.

(b) In the event of a conviction for a second violation ~~of~~ under Subsection (a) of this § 30.40, or of a conviction for a violation under Subsection (a) which results in bodily injury, as defined in Subsection (b) of § 16.10, Chapter 16 of this Title, the defendant shall be imprisoned for at least thirty (30) days.

(c) In the event of a conviction for a third violation under Subsection (a) of this § 30.40, or of a conviction for a violation under Subsection (a) of this § 30.40 which results in bodily injury as defined in Subsection (b) § 16.10, Chapter 16 of this Title, after a prior conviction of a violation under

Subsection (a) of this § 30.40, occurring within two (2) years of the prior conviction, committed against the same victim or the victim's family, the defendant shall be imprisoned for no less than one (1) year.

(d) When a peace officer has reasonable cause to believe that a person has violated one (1) of the orders of the court specified in Subsection (a) of this § 30.40 and verifies the existence of the order, the peace officer shall presume that arresting and charging the person is the appropriate response.

(e) An admission by the defendant that he or she had knowledge of the court order shall be admissible in court notwithstanding the *corpus delicti* rule.

SOURCE: Added by P.L. 22-160:2 (Dec. 30, 1994). Amended by P.L. 32-017:3 (Apr. 11, 2013).

§ 30.50. Authority of Peace Officer to Seize Weapons.

For a crime involving family violence, a peace officer:

(a) Shall, incident to an arrest, seize all weapons that are alleged to have been involved or threatened to be used in the commission of a crime.

(b) May seize a weapon that is in the plain view of the officer or was discovered pursuant to consensual search, as necessary for the protection of the officer or other persons.

SOURCE: Added by P.L. 22-160:2 (Dec. 30, 1994).

§ 30.60. Disclosure of Family Violence Shelter.

(a) Any person who knowingly publishes, disseminates, or otherwise discloses the location of any family violence shelter or any place designated as a family violence shelter with the intent to harass, annoy, harm, or injure in any way another person, or to thwart or interfere in any manner with the orderly administration or operation of the shelter, is guilty of a misdemeanor.

(b) For purposes of this § 30.60, family violence shelter means a confidential location which provides emergency services on a 24-hour basis for victims of family violence, and their families.

SOURCE: Added by P.L. 22-160:2 (Dec. 30, 1994).

§ 30.70. Spousal Privileges Inapplicable in Criminal Proceedings Involving Family Violence.

Notwithstanding any other provision of law, the following evidentiary privileges do not apply in any criminal proceeding in which a spouse or other family or household member is the victim of an alleged crime involving family violence:

(a) the privilege not to testify against one's spouse;

(b) the privilege for confidential marital communication; and

(c) the physician-patient privilege.

SOURCE: Added by P.L. 22-160:2 (Dec. 30, 1994). Amended by P.L. 24-239:19 as part of the *Family Violence Act of 1998*.

§ 30.80. Deferred Guilty Plea for Family Violence.

Upon a proper motion, when a defendant voluntarily pleads guilty, prior to the commencement of trial, to a misdemeanor charge of family violence, as defined in this Chapter, he or she is found eligible for a deferred guilty plea pursuant to § 30.80.1 of this Chapter, and the defendant agrees to participate in education, counseling and/or treatment program(s) as directed by the court, the court may defer criminal proceedings until such a time as may be required for the defendant to complete the education, counseling and/or treatment program(s). Upon the defendant's completion of the period designated by the court and in compliance with the terms and conditions established, the court may discharge the defendant and dismiss the charge against the defendant. Such discharge of the defendant and dismissal of the case shall be without adjudication of guilt and shall eliminate any civil admission of guilt and is not a conviction. Offenses dismissed under this Section and/or under a family violence diversion program shall count as prior offenses in the application of minimum sentences under this Chapter.

SOURCE: Added by P.L. 22-160:2 (Dec. 30, 1994). Repealed and reenacted by P.L. 31-109:3 (Sept. 30, 2011), effective (180) days from date of enactment, pursuant to P.L. 31-109:4. Amended by P.L. 32-017:4 (Apr. 11, 2013)

§ 30.80.1. Deferred Plea Eligibility.

Notwithstanding any other provision of law, and upon the determination of the judge, this § 30.80.1 shall apply whenever a case is before the court upon an accusatory pleading for any criminal act against a family or household member as defined in Subsection (b) of § 30.10 of this Chapter.

(a) The following persons are ineligible for the deferred guilty plea for family violence process:

(1) a defendant who has a felony conviction for any offense involving violence within seven (7) years prior to the alleged commission of the charged offense;

(2) a defendant who has participated in a diversion or deferred plea program for family violence, or a similar offense in Guam or another locality;

(3) a defendant who has been sentenced for a violation of § 30.40 of this Chapter within one (1) year prior to the alleged commission of the charged offense; or

(4) a defendant whose current charge involves serious bodily injury as defined in Subsection (c) of § 16.10, Chapter 16 of this Title, or criminal sexual conduct involving sexual penetration as defined in Item (9) of Subsection (a) of § 25.10, Chapter 25 of this Title, unless the court finds that due to unusual circumstances deferral of the criminal proceedings is manifestly in the interest of justice.

(b) The fact that a defendant is not made ineligible by Subsection (a) of this § 30.80.1 does not automatically entitle a defendant to the deferred guilty plea for family violence.

(c) The prosecuting attorney shall determine whether the defendant is ineligible for deferral by reason of any of the factors set forth in Subsection (a) of this § 30.80.1. If the prosecutor finds that the person is not ineligible, and will agree to a deferred plea, the prosecutor shall notify the defendant.

(d) If the prosecutor finds that the defendant is ineligible, or if the prosecutor will not agree to a deferral although the defendant is not excluded by reason of Subsection (a) of this § 30.80.1, the prosecutor shall notify the defendant.

(e) Any defendant who is not specifically ineligible for the deferral process pursuant to Subsection (a) of this § 30.80.1 may apply to the court, by noticed motion for an order granting a deferred plea. The prosecuting attorney may oppose this application.

SOURCE: Added by P.L. 22-160:2 (Dec. 30, 1994). Repealed and reenacted by P.L. 31-109:3 (Sept. 30, 2011) effective (180) days from date of enactment, pursuant to P.L. 31-109:4.

§ 30.80.2. Deferred Guilty Plea Hearing.

(a) Upon noticed motion, the court shall hold a hearing and, after consideration of any and all information the court believes to be relevant to its decision, the court shall determine if the defendant consents to further proceedings under this § 30.80.2 and waives his or her right to a speedy trial, and if the defendant should be allowed to enter a deferred guilty plea in the criminal proceedings and referred for education, counseling and/or treatment program(s) directed specifically to the violent conduct of the defendant. The court, in determining the defendant's eligibility for a deferred guilty plea, shall consider the nature and extent of the injury inflicted upon the victim, any prior incidents of family violence by the defendant, and any factors which would adversely influence the likelihood of successful completion of the deferred guilty plea agreement. If the court does not deem the defendant a person who would be benefited by a deferred guilty plea, or if the defendant does not consent to participate, the criminal proceedings shall continue as in any other case. If the court accepts the deferred plea agreement, the court shall make inquiry into the financial condition of the defendant and upon a finding that the defendant is able in whole or part to pay the expense of such counseling the court may order him or her to pay for all or part of such expense.

Nothing in this Subsection shall prohibit the placement of a defendant in another appropriate counseling program if the court determines that there is no available education and/or treatment program.

(b) At such time that the defendant's plea in a case is deferred, any bail bond or undertaking, or deposit in lieu thereof, on file by or on behalf of him or her shall be exonerated, and the court shall enter an order so directing.

(c) The period during which further criminal proceedings against a person may be deferred pursuant to this Section shall be no less than one (1) year, and no more than three (3) years.

(d) The court shall set forth in writing or state on the record its reason for granting or denying a deferred plea agreement. The court's decision in such a matter shall be final and shall not constitute an appealable order.

SOURCE: Added by P.L. 22-160:2 (Dec. 30, 1994). Repealed and reenacted by P.L. 31-109:3 (Sept. 30, 2011) effective (180) days from date of enactment, pursuant to P.L. 31-109:4.

§ 30.80.3. Enforcement of a Deferred Plea Proceedings; Dismissal.

If it appears to the prosecuting attorney, the court or the probation department that the defendant under § 30.80.1 of this Chapter is performing

unsatisfactorily in the assigned program, or that the defendant is not benefiting from education, counseling and/or treatment program(s), or that he or she has been convicted of any offense involving violence, after notice to the defendant, and upon motion by the prosecuting attorney or on the court's own motion, the court shall hold a hearing to determine whether the defendant shall be sentenced accordingly. If the court finds by substantial evidence that the defendant is not performing satisfactorily in the assigned program(s), or that the defendant is not benefiting from the deferral, or the court finds that the defendant has been convicted of a crime as set out above, the criminal case shall be referred back to the court for adjudication. If the defendant has performed satisfactorily during the deferral period, at the end of the period of deferral, the criminal charges shall be dismissed upon motion or application of the defendant.

SOURCE: Added by P.L. 22-160:2 (Dec. 30, 1994). Repealed and reenacted by P.L. 31-109:3 (Sept. 30, 2011) effective (180) days from date of enactment, pursuant to P.L. 31-109:4.

§ 30.80.4. Use of Arrest Record Following Successful Completion of Deferred Plea Agreement.

Any records filed with the Guam Police Department and the Office of the Attorney General, Prosecution Division, shall set out the disposition of those cases for which a deferred guilty plea has been dismissed pursuant to § 30.80.1 of this Chapter. Upon successful completion of a deferred plea agreement, the arrest upon which the deferral of plea was based shall be expunged, as provided by Chapter 11 of Title 8, Guam Code Annotated. The defendant may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested, or that his/her plea was deferred for such offense. A record pertaining to an arrest resulting in successful completion of the deferred plea agreement shall not, without the defendant's consent, be used in any way which could result in the denial of any employment, benefit, license, or certificate. Failure to affirm or acknowledge a deferred plea, following successful completion of a deferred plea agreement, on any application for employment, benefit, license, or certificate, or in any affidavit is not perjury or an unsworn falsification.

SOURCE: Added by P.L. 22-160:2 (Dec. 30, 1994). Repealed and reenacted by P.L. 31-109:3 (Sept. 30, 2011) effective (180) days from date of enactment pursuant to P.L. 31-109:4.

§ 30.80.5. Counseling and Education Programs.

(a) If a person is ordered to complete education, counseling and/or treatment program(s) as a result of being in diversion, entering a deferred plea of guilty to family violence, or is adjudged guilty of family violence, he or she shall be ordered to pay a fee to the Superior Court of Guam for such service.

(b) The fee shall be set by order of the Judicial Council.

(c) The fee shall be paid into a revolving fund hereby established and maintained apart from other funds of the Superior Court of Guam.

(1) The Court Administrator of the Superior Court of Guam shall be the certifying officer for the Fund.

(2) The revolving fund shall be expended by the Superior Court of Guam to hire, as independent contractors, licensed individual and family counselors who shall conduct either group sessions or individual sessions for the perpetrators of family violence, victims of family violence, or children who have witnessed family violence, and to purchase supplies and therapeutic curricula materials.

SOURCE: Added by P.L. 24-0059:IV:18 (Sept. 12, 1997). Repealed and renacted by P.L. 31-109:3 (Sept. 30, 2011) effective (180) days from date of enactment pursuant to P.L. 31-109:4.

2017 NOTE: Subitem designations added/altered pursuant to the authority of 1 GCA § 1606.

§ 30.90. Establishment and Requirement of the Domestic Abuse Response Team ('DART').

(a) The Chief of Police shall establish, as an integral division of the Guam Police Department, the Domestic Abuse Response Team ('DART') unit consisting of peace officers, social workers, victim advocates or other persons who completed the Family Violence Training Program, or specifically trained in counseling, crisis intervention or in the treatment of domestic or family violence victims. Such teams may be dispatched, along with a peace officer, to the scene of a reported incident of domestic or family violence.

(b) The Chief of Police shall establish and maintain a continuation education and training program consistent with the Family Violence Training Program for peace officers and those involved and participating in DART.

SOURCE: Added by P.L. 22-160:2 (Dec. 30, 1994). Repealed/reenacted by P.L. 24-242:2.

§ 30.100. Maintenance of Systematic Records.

(a) Law enforcement agencies shall maintain a complete and systematic record of all protection orders with respect to family violence incidents, including orders which have not yet been served, restraining orders, and proofs of service in effect. This shall be used to inform law enforcement officers responding to family violence calls of the existence, terms, and effective dates of protection orders in effect.

(b) The terms and conditions of the protection under order remain enforceable, notwithstanding the acts of the parities, and may be changed only by order of the court.

(c) Upon request, law enforcement agencies shall serve the court orders specified in § 30.40 of this Chapter upon the party to be restrained at the scene of a family violence incident or at any time the party is in custody.

SOURCE: Added by P.L. 22-160:2 (Dec. 30, 1994).

§ 30.200. Family Violence Registry: Central Database of Offenders Who Have Committed Offenses Involving Family Violence, to be Known and Cited as the "Family Violence Registry Act."

(a) The Office of the Attorney General, with the mandatory cooperation of law enforcement agencies, shall maintain a computerized registry database containing information regarding persons who on two (2) or more occasions have been convicted of a family, domestic or dating violence, and/or stalking offense, provided, however, if the person is convicted of the offense with the special allegation of the use of a deadly weapon, or an additional charge of criminal sexual conduct against a minor, or an additional charge of any sex offenses against a family member, then only one (1) such offense shall be required for his or her listing on the registry database.

(1) Persons listed in the database pursuant to this Subsection (a) shall be cross-referenced for any violation(s) of criminal sexual conduct, and/or aggravated assault conviction(s). Any such offense(s) shall be listed as additional information in the Family Violence Registry database.

(b) The information contained in the Family Violence Registry database is public information, with the exception of the following:

(1) information regarding the person's social security number, driver's license number, or telephone number; or

(2) information that would identify the victim of the offense with respect to which the conviction was made.

(c) The database maintained by the Office of the Attorney General under this Section must contain, to the extent the information is available:

(1) the person's full name, each alias used by the person, and the person's date of birth;

(2) the person's last known address;

(3) a physical description and recent photograph of the person;

(4) a list of offenses for which the person was convicted of two (2) or more cases of domestic, family or dating violence, and/or stalking; the date of conviction for each offense; and the punishment prescribed for each offense; and

(5) an indication as to whether the person was discharged, placed on probation or community supervision, or released on parole or to mandatory supervision following the conviction for each offense.

(d) The Office of the Attorney General shall permit a person whose name is included in the database established under this Section to petition the Department to remove the person's name from the Family Violence Registry database in response to the petition if:

(1) a court order of expungement is issued with respect to one (1) of two (2) family, domestic or dating violence, and/or stalking convictions, unless the person has two (2) or more additional convictions, or when the person was convicted of the family, domestic or dating violence, and/or stalking offense with the special allegation of the use of a deadly weapon; or

(2) during the ten (10) year period preceding the date of the petition, the person has not since been convicted of an offense described in § 30.10, Chapter 30, Title 9, Guam Code Annotated. It is further provided, however:

(A) that the Office of the Attorney General shall conduct an investigation to see if any other convictions have occurred under circumstances for which there was a conviction of domestic,

family or dating violence, and/or stalking, criminal sexual conduct, aggravated assault, and/or homicide, either on Guam or in any other jurisdiction of the United States.

(B) Any conviction for family, domestic or dating violence, and/or stalking, criminal sexual conduct, aggravated assault or homicide during the prior ten (10) year period shall be cause for the person not to be removed from the Family Violence Registry.

(e) The Office of the Attorney General may promulgate rules and regulations for petitioning for removal from the Family Violence Registry database. On the website through which a person may search the database described by this Section, the Office of the Attorney General shall also include information regarding:

(1) the manner in which a person may petition for removal of the person's name from the database.

(2) The Family Violence Registry database may include information concerning persons convicted of at least one (1) family, domestic or dating violence, and/or stalking offense committed prior to or after the effective date of this Act for which there is a conviction of family, domestic or dating violence, and/or stalking.

SOURCE: Added by P.L. 31-103:2 (Sept. 30, 2011).

2017 NOTE: Subitem (d)(2)(A) was altered and a subitem (B) was added pursuant to the authority of 1 GCA § 1606.

§ 30.300. Interfering with the Reporting of Family Violence.

(a) Any person commits the crime of interfering with the reporting of family violence if the person:

(1) commits an act of family violence, as defined in § 30.10 of this Chapter; and

(2) intentionally, knowingly, or recklessly prevents or attempts to prevent the victim of or a witness to that act of family violence from calling a 911 emergency communication system, obtaining medical assistance, or making a report to any law enforcement official.

(b) Commission of a crime of family violence under Subsection (a) of this Section is a necessary element of the crime of interfering with the reporting of family violence.

(c) Interference with the reporting of family violence is a felony of the third degree.

SOURCE: Added by P.L. 33-202:1 (Dec. 15, 2016).

2017 NOTE: P.L. 33-202:2 (Dec. 15, 2016) enacted virtually identical language as 9 GCA § 19.81.

CHAPTER 40
RELEASE

NOTE: References to Director of Public Safety and Director changed to *Chief of Police* pursuant to P.L. 17-78:1, which repealed § 5102 GC providing for the Department of Public Safety, and reenacted § 5102 establishing the Guam Police Department.

NOTE: Release - continues parts of Criminal Rule 46 and of Penal Code Title IX, Chapter I of Part 2 -- "Bail." This Chapter incorporates much of the substance of the Federal Bail Reform Act of 1966 (18 U.S.C., Chapter 207). The change in title reflects a change from release only upon bail to release subject only to those conditions required by the circumstances of the case -- a practice now followed by the Superior Court in a different form.

No provision is made for "station-house bail - never used on Guam although authorized - because it is expected that a citation will be used where such bail may have been used. Compare Cr. Rule 46(a) with Chapter 25. See § 20.60, but also § 15.50 where the court may fix conditions of release in the warrant.

18 U.S.C. § 3149 provides for release of material witnesses. See Cr. Rule 46(b) - bail for witnesses; § 75.40, CPC.

This Chapter does not limit the Judicial Council from providing bail in traffic cases, and for a "forfeiture of bail" in lieu of fine. See § 1.09, CPC.

§ 40.10. Release on Bail Generally Permitted.

At his first appearance before a judge of the Superior Court, every person charged with an offense shall be ordered released pending trial in the manner and subject to the conditions provided by §§ 40.15 and 40.20.

NOTE: Section 40.10 is an introductory provision comparable to the first sentence of former Rule 46. "Excessive bail" is proscribed by the 8th Amendment of the U.S. Constitution as incorporated into the Organic Act by §§ 1421b(h) and 1421b(u). (48 U.S.C.A. § 1421b).

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

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

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

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

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

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

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

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

(iii) his/her family ties and relationships;

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

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

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

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

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

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

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

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

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

NOTE: Section 40.15 was amended by P.L. 20-111; P.L. 24-239:11..

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

Where the judge determines that release of the person charged on his/her own recognizance will not reasonably assure his/her appearance as required, or will endanger the safety of any other person or the community, the judge shall impose the least onerous of the following conditions which is reasonably likely to assure the person's appearance as required and the safety of any other person and the community, or, if no single condition gives that assurance, the least onerous combination of the following conditions.

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

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

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

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

(e) any other condition reasonably necessary to assure appearance as required and the safety of any other person and the community.

NOTE: Section 40.20 is new. It is based on 18. U.S.C. § 3146(a) and ABA, Project on Minimum, Standards for Criminal Justice Pretrial Release §§ 5.2, 5.3 (Approved draft 1968). See also former Rule 46(c), (d). Subsection (a) follows the basic form of § 3146 (a)(1). The ABA standards add a separate condition providing for the supervision of the accused by "a probation officer or other appropriate public official." See § 5.2(b) (ii). Although not specifically so stated, Subsection (a) permits placing the accused under the supervision of any person, including a probation officer other public official. Subsection (c) deals with bonds generally and grants the court broad discretion to fashion the terms of the bond in whatever manner appears necessary. Unlike 18 U.S.C. § 3146(a), this Section makes no attempt to list the possible conditions in order of degree of onerousness. The impact of the different conditions on different persons will vary and the court should consider these differences as they apply in each case. For example, money bail to a very wealthy person would have little impact unless set extremely high. On the other hand, money bail even in a low amount to an indigent would preclude release.

Amended by P.L. 24-239:12 (*Family Violence Act of 1998*).

§ 40.25. Solvency of Sureties to be Assured; Procedure.

(a) Where a bond secured by a surety is required pursuant to this Chapter, the judge may require the person seeking to be the surety to show by affidavit that he is worth the amount of the bond and is otherwise responsible. In the affidavit the person may be required to describe the property by which he proposes to justify and the encumbrances thereon, and to list all his other assets and liabilities. The judge may further examine the person under oath and may call and examine witnesses to determined whether the person is qualified.

(b) Nothing in this Section precludes the judge from allowing two or more sureties to justify severally in amounts less than that expressed in the bond, if the whole justification equals the amount required.

NOTE: Section 40.25 is based on former Rule 46(e)and §§ 1279-1280b. However, § 40.20 now provides the court greater flexibility in setting the terms of the appearance bond. The bond may be unsecured or secured, in whole or in part, by deposit or the obligation of sureties. Because of this flexibility no purpose would be served in

requiring the surety to show more than sufficient solvency and responsibility. Hence, this Section eliminates some of the specificity regarding qualifications of the surety contained in the former sections. If, however, there is a fear that the surety's solvency or responsibility may be illusory or temporary the court can require actual deposit. See §§ 40.20, 40.30.

§ 40.30. Procedure Where Surety Loses Worth.

Where a person is released pursuant to this Chapter on an appearance bond secured by a surety, and it is thereafter shown, on noticed motion, that the surety is no longer worth the required amount or has become otherwise insufficient, the court may order the furnishing of such additional security as may be required to satisfy the condition imposed and may order the person detained until such security is furnished.

NOTE: Section 40.30 is based on a portion of former PC § 1310.

§ 40.35. How Surety May be Exonerated; Deposit Sum With Clerk.

A person released pursuant to this Chapter on the condition that an appearance bond secured by a qualified surety be furnished, may, at any time before declaration of forfeiture, deposit with the clerk of the court a sum equal to the amount of the bond, and upon the deposit being made the surety on such bond is exonerated.

NOTE: Section 40.35 continues the substance of former § 1296 and a portion of former Rule 46(g).

§ 40.40. Procedure for Handling Cash Bail.

Any deposit required or authorized as a condition of release may be made by the person released or by any other person. A receipt shall be issued in the name of the depositor. If the money remains on deposit at the time of a judgment for the payment of a fine, the clerk shall, under the direction of the court, if the defendant be the depositor, apply the money in satisfaction thereof, and after satisfying the fine, shall refund the surplus, if any, to the defendant. If the person to whom the receipt for the deposit was issued was not the defendant, the deposit shall be returned to him at any time after the court has ordered such return and upon the depositor's submission of his receipt.

NOTE: Section 40.40 continues the substance of former § 1297 but also authorized and provides for the disposition of a deposit made on behalf of the defendant by a third person. Compare Cal. Pen. Code §§ 1295, 1297. Return may be ordered under various circumstances. See § 40.45 (exoneration by surrender of the person released); 40.95 (order setting aside forfeiture of requiring remission); 120.18 (order following acquittal of the defendant).

§ 40.45. Bail Bondsman May Arrest Person.

Any person released pursuant to this Chapter on a deposit by a third person or an appearance bond secured by a surety, may be arrested by the depositor, surety, or his agent, and delivered to the custody of the Chief of Police. The depositor or surety shall at the same time deliver a copy of his deposit receipt or bond to the Director who shall acknowledge such delivery by a certificate in writing. The Chief of Police shall take custody of the person arrested and forthwith file the copy of the deposit receipt or bond and his certificate in the Court in which the action is pending and bring the depositor or surety exonerated, and shall, after notice to the prosecuting attorney, either release the person on such new conditions as are reasonably necessary to assure the person's appearance as required or the safety of any other person and the community or detain the person until he/she has furnished the necessary security.

SOURCE: Amended by P.L. 24-239:12.

NOTE: Section 40.45 is based on 18 U.S.C. § 3124, former §§ 1300-1301, and portion of former Rule 46(g). The section continues the generally recognized authority of the depositor or surety to surrender his principal and obtain exoneration. The section also makes clear the court must then review its release decision and either impose new conditions or detain the accused until a proper appearance bond is provided. For law did not permit deposits by a third person. This however, has been changed in conformity with a procedure authorized in California. Compare Cal. Pen. Code §§ 1295, 1300.

§ 40.50. Bail Redetermination Hearing; When; Procedure.

(a) A person for whom conditions of release are imposed pursuant to this Chapter, and who after twenty-four (24) hours from the time of release hearing continues to be detained as a result of his inability to meet the conditions of release, shall, upon application, be entitled to have the conditions reviewed by the Court. If the case has not yet been assigned to a particular Court, the conditions are to be reviewed by the judge who imposed them, or by the assigned ex-parte judge if the judge who imposed the conditions is not available. If the case has been assigned to a particular Court, the conditions are to be reviewed by the assigned judge. Unless the conditions of release are amended and the person is thereupon released, the judge shall set forth in writing the reasons for requiring the conditions imposed.

(b) A person who is ordered released pursuant to this Chapter on the condition that he return to custody after specified hours shall, upon application, be entitled to a review by the judge who imposed the condition. Unless

the requirement is removed and the person is thereupon released on another condition, the judge shall set forth in writing the reasons for continuing the requirement.

(c) Notwithstanding the provisions of Subsections (a) and (b), if the judge who imposed conditions of release is not available, any other judge may review such conditions.

(d) *If* conditions of release are imposed by a magistrate pursuant to §4401, Title 7 of the Guam Code Annotated, any judge may review such conditions.

SOURCE: Subsection (a) amended by P.L. 24-239:13 (*Family Violence Act of 1998*). Subsection (d) added by P.L. 29-109:3 (Aug. 26, 2008).

NOTE: Section 40.50 is new. It is substantively the same as 18 U.S.C. § 3146(d). See also ABA, Project on Minimum Standards for Criminal Justice Pretrial Release § 5.9 (Approved draft 1968). Compare former Rule 46(h) and Cal. Pen. Code § 1320. For provisions relating to appeal from an adverse ruling by the judge, see § 40.80.

§ 40.55. Statement to Arrestee Upon Release With Conditions.

(a) Whenever a person is released pursuant to this Chapter, the judge authorizing such release shall issue an order which contains a statement of the conditions imposed, if any, informs the person of the penalties applicable to violations of the conditions of his release, and advises the person that a warrant for his arrest will be issued immediately upon any such violation.

(b) The person charged shall execute an agreement that he will appear as required and an acknowledgment that he understands the conditions of his release and the penalties and forfeitures applicable in the event that he violates any condition or fails to appear as required. A copy of the order shall be given to the person before he is released.

NOTE: Section 40.55 is new. It is based on 18 U.S.C. § 3146(c). § 40.55(b) has no federal statutory counterpart but reflects the actual practice under the federal statute. See Bail Reform Act Form No. 2, set forth in ABA, Project on Minimum Standards for Criminal Justice Pretrial Release, Appendix A, at 77.

§ 40.60. Additional Restrictions May be Applied; Application by Prosecutor; Additional Restrictions Listed.

(a) At the first appearance or at any time thereafter, upon the application of the prosecuting attorney and a showing that there exists a danger that the person charged will commit an offense or will seek to

intimidate witnesses, or will otherwise unlawfully interfere with the orderly administration of justice, the judge may issue an order which:

(1) prohibits the person charged from approaching or communicating with particular persons or classes of persons, except that the order shall not be deemed to prohibit any lawful and ethical activity of the person's counsel;

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

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

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

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

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

SOURCE: Subsection (a)(5) added by P.L. 24-239:14 (*Family Violence Act of 1988*).

NOTE: Section 40.60 is new. It is based on ABA, Project on Minimum Standards for Criminal Justice Pretrial Release § 5.5 (Approved draft 1968). It supplements the authority to impose conditions granted by § 40.20 and makes explicit the court's power to impose reasonable restrictions on the accused's activities pending trial. See also 18 U.S.C. § 3146(e). The purpose of this Section is to prohibit acts before they occur. The section is distinguished in this respect from § 40.75 which deals with a violation of the court's order or other changes in circumstances.

§ 40.65. Retaking of Defendant Upon Violation of Conditions.

(a) Upon the ex parte application of the prosecuting attorney and a showing that the person charged has willfully violated the conditions of his release, any judge may issue a warrant directing that the person be arrested and taken forthwith before the court in which the action is pending.

(b) Where it would be impracticable to secure a warrant pursuant to Subsection (a), any peace officer having reasonable grounds to believe that a person released pursuant to this Chapter has violated the conditions of his release may arrest the person and take him forthwith before the court in which the action is pending.

COURT DECISIONS: D.C. GUAM APP. DIV. 1979. Because there was no evidence before the Superior Court to support the revocation of appellate's release on bail in that the defendant had not violated any of his conditions of release, defendant's arrest for violation of bail was improper and defendant was ordered to be released on original conditions of bail with the additional condition that he observe a curfew at his parents house between the hours of 9:00 p.m. and 6:00 a.m. *People v. Ulloa,* Anthony, D.C.Guam 1979, Crim. #79-00065A.

NOTE: Section 40.65 is based on ABA, Project on Minimum Standards for Criminal Justice Pretrial Release § 5.6 (Approved draft 1968). General law has always permitted the arrest and surrender of a defendant by a surety who feared his principal was about to disappear. See § 40.45 and former § 1300. Under the procedures provided by this Chapter it is necessary to vest a similar authority in the proper public officers. It should be noted, however, that Subsection (a) merely authorizes a warrant to be issued, it does not require the court to do so. Where the showing is weak or the violations are insignificant, the court may refuse to issue a warrant and issue an order to show cause or require a noticed motion as a prerequisite to further judicial action. Similarly Subsection (b) is conditioned upon circumstances where securing a warrant would be impracticable. Arbitrary and unreasonable arrests are not authorized and should not be tolerated.

The purpose of this Section is to provide for arrest where there is a threat of nonappearance. Nothing in this Section is intended to limit the normal authority of a police officer to arrest the person without a warrant for a subsequent offense. See generally §§ 20.15 and 20.20 (arrest without a warrant). Separate authority for the issuance of a warrant where the person fails to appear as required is provided by § 40.70.

§ 40.70. Warrant Upon Failure to Appear.

Upon the failure of a person released pursuant to this Chapter to appear as required, the court in which the action is pending may issue a warrant directing that the person be arrested and taken before it forthwith.

COURT DECISIONS: D.C. GUAM APP. DIV. 1979. Where there is no evidence that defendant would not subsequently appear, he may not be arrested under this Section for violation of bail. *People v. Anthony Ulloa,* D.C.Guam 1979, Crim. #79-00065A.

NOTE: Section 40.70 continues the substance of a portion of former § 1310. As to penalties for failure to appear, see § 40.90.

§ 40.75 Actions Allowed Upon Violation of Conditions or Failure to Appear.

(a) When a person is brought before the court pursuant to §§ 40.65 or 40.70, or, when after a noticed hearing, the court finds that a person released pursuant to this Chapter has willfully violated the conditions imposed on his release or that a change in circumstances or new evidence shows a need for the imposition of different or additional conditions upon

the person's release, the court may order the imposition of such conditions as are reasonably necessary to assure the person's appearance as required (and his compliance with any conditions imposed pursuant to this Chapter).

(b) Notwithstanding Subsection (a), where the court finds that the person has willfully violated the conditions imposed on his release or that an indictment or information has been filed charging the person with the commission of an offense while released in the pending action, the court may revoke the person's release.

COURT DECISIONS: D.C. GUAM, APP. DIV. 1979. The fact that a defendant has been charged by police with an offense does not bring him within the provisions of Subsection (b), 8 GCA § 40.75. The defendant must have an indictment or information filed against him before Subsection (b) can be a ground for bail revocation. *People v. Anthony Ulloa*, D.C. Guam 1979, Crim. #79-00065A. This case may have been modified by the amendment of 8 GCA § 1.15 dealing when indictments, information and complaints may be brought.

SUPERIOR COURT 1980. The Superior Court has jurisdiction to determine revocation of defendant's release while the defendant's appeal is pending. *People v. James*, Sup. Ct. 1980, Cr. #18S-80.

NOTE: Section 40.70 is new. It is based on 18 U.S.C. § 3143 and ABA, Project on Minimum Standards for Criminal Justice Pretrial Release §§ 5.7, 5.8. (Approved draft 1968). See also 18 U.S.C. § 3146(e) and former § 1310. Under Subsection (a), the court is granted rather broad authority to modify its prior release order on a showing that such modification is needed. Subsection (b), on the other hand, is more limited in that the court must find either that there have been willful violations of his prior order or that a court or grand jury has found probable cause to believe that the person released has committed a subsequent crime while released on the pending charge. In the latter circumstances, preventive detention seems constitutionally permissible.

§ 40.80. Appeal of Conditions Allowed.

(a) In any case in which a person is detained or released on a condition requiring him to return to custody after specified hours, after review of his application pursuant to § 40.50, or in which a person's release is revoked pursuant to § 40.75, an appeal may be taken.

(b) Any order appealed pursuant to Subsection (a) shall be affirmed if it is supported by the proceedings below. If the order is not so supported, the court may remand the case for a further hearing, or may, with or without additional evidence, order the person released pursuant to either §§ 40.15 or 40.20.

(c) Any appeal pursuant to this Section shall be determined promptly.

COURT DECISIONS: D.C. GUAM APP. DIV. 1980. Pursuant to § 40.80 of this Title, the District Court of Guam has discretion to modify the conditions of release

rather than to order a remand and direct that the Superior Court make such an order. *People v. Jones*, D.C. App. Guam 1980, D.C. Cr. #80-0013A.

NOTE: Section 40.80 is new. It is substantively the same as 18 U.S.C. § 3147 and provides an immediate appeal from a pretrial order detaining the appellant. See generally 9 Moore, Federal Practice ¶¶209.01-209.05 (1973).

§ 40.85. Release After Conviction Pending Appeal; Conditions.

(a) A person who has been convicted of an offense and is either awaiting sentence or has filed an appeal, shall be released pursuant to §§ 40.15 or 40.20 pending the imposition of sentence or the final determination of the appeal, by the court having jurisdiction of the case, unless the court has reason to believe that no one or more conditions of release will reasonably assure that the person will not flee or pose a danger to any other person or the community. If such a risk of flight or danger is believed to exist, or if it appears that an appeal is frivolous or taken for delay, the person may be ordered detained.

(b) The provisions of § 40.80 shall not apply to persons described in this Section. However, other rights to judicial review of conditions of release or orders of detention shall not be affected.

NOTE: Section 40.85 is new. It is substantively the same as 18 U.S.C. § 3148. Compare former Rule 46(a)(2) and former §§ 1272 and 1273. See also Fed. R. App. P. 9(b). See generally B. Witkin, California Criminal Procedure Appeal §§ 673-680 (1963) (bail on appeal); 9 Moore, Federal Practice ¶¶209.06-209.08 (1973).

§ 40.90. Penalty for Willful Failure to Appear: Felony if Underlying Offense is Felony; Misdemeanor if Misdemeanor.

(a) Any person released pursuant to this Chapter who willfully fails to appear before any court or judge as required is:

(1) guilty of a felony, if he was released in connection with a charge of felony, or while awaiting sentence or pending appeal of any offense.

(2) guilty of a misdemeanor, if he was released in connection with a charge of any offense not a felony.

(b) If any person released pursuant to this Chapter fails to appear, without sufficient excuse, before any court or judge as required, such fact shall be noted by the court in which the person was to appear in its minutes and any security which was given or pledged for his release shall immediately be declared forfeited.

NOTE: Section 40.90 is new. It is based on 18 U.S.C. § 3150. See also ABA, Project on Minimum Standards for Criminal Justice Pretrial Release § 1.3 (Approved draft 1968). Compare former Rule 46(f)(1) and § 1305 and Cal. Pen. Code §§ 1305, 1319.4, 1319.6. Although Subsection (b) provides forfeiture, such forfeiture may be set aside. See § 40.95.

§ 40.95. Procedure Upon Forfeiture of Bail.

(a) Upon the declaration of a forfeiture pursuant to § 40.90, the clerk of the court shall mail notice of the forfeiture to any surety or depositor, other than the person required to appear. The clerk shall execute an affidavit of mailing and place it in the court's file in the case.

(b) The surety or depositor may, not later than thirty days after the mailing of the notice of forfeiture, apply by noticed motion to have the forfeiture set aside. After hearing, the court may set aside the forfeiture, upon such conditions as it may impose, if it appears that justice does not require enforcement of the forfeiture.

(c) If after thirty days from the mailing of the notice of forfeiture, the forfeiture has not been set aside and no motion to set aside is pending, the court shall on motion of the prosecution attorney enter a judgment of default and execution may issue thereon. Payments made in satisfaction of a judgment entered pursuant to this Section shall be deposited in the general fund of the Territory. By entering into a bond a surety submits to the jurisdiction of the court and irrevocably appoints the clerk of the court as his agent upon whom any papers affecting his liability may served. His liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court, who shall forthwith mail a copy to the surety to his last known address.

(d) Where money deposited with the clerk is declared forfeited pursuant to § 40.90, the clerk with whom it is deposited shall, upon entry of a judgment of default pursuant to this Section, pay the money deposited into the general fund of the Territory.

(e) At any time after entry of judgment pursuant to Subsection (c), the court may remit it in whole or in part upon application by the judgment debtor on noticed motion and a showing that justice does not require endorsement of the judgment.

NOTE: Section 40.95 is based on former Rule 46(f) and §§ 1305-1307. However, former Rule 46 provided no time limits for setting aside a forfeiture while former §§ 1305 and 1306 had very narrow limits (10 days). Section 40.95 increases the initial

period to 30 days during which the surety or depositor may move to have the declaration of forfeiture set aside and, like the federal law, places no time limits on a motion seeking remission of a judgment. As under prior law, no attempt is made here to specify precise grounds for setting aside a forfeiture or remitting a judgment. Section 40.95 permits such action simply as justice requires. It should be noted, however, that unlike under former § 1305, there is no requirement that the person who was required to appear, actually appear. Reasons that the court might consider include death, illness, or detention by other authorities. Compare Cal. Pen. Code § 1305. However, these reasons are neither exhaustive nor necessarily compelling. Similarly, the effect, if any, of a dismissal of the charge after nonappearance is left to the judgment of the court. Compare former § 1306.

OFFICE OF THE VICE SPEAKER
THERESE M. TERLAJE
Chairperson of the Committee
On Culture and Justice

I Mina'trentai Kuåttro na Liheslaturan Guåhan
34th Guam Legislature

COMMITTEE VOTE SHEET

Bill No. 177-34 (COR), As Amended by the Committee on Culture and Justice – 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 pre-trial 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.

	SIGNATURE	TO DO PASS	TO NOT PASS	TO REPORT OUT ONLY	TO ABSTAIN	TO PLACE IN INACTIVE FILE
Vice Speaker Therese M. Terlaje Chairperson	TMT	✓				
Senator Telena Cruz Nelson Vice Chairperson	for TCN			✓		
Speaker B.J.F. Cruz Member						
Senator FRANK B. AGUON, JR. Member 11/17/17						
Senator Joe S. San Agustin Member						
Senator Louise B. Muña Member						
Senator Fernando Esteves Member	FBE	✓				

Guam Congress Building, 163 Chalan Santo Papa, Hagåtña, Guam 96910
T: (671) 472-3586 | F: (671) 472-3589 | Email: senatorterlajeguam@gmail.com
www.senatorterlaje.com

I Mina'trentai Kuåttro na Liheslaturan Guåhan
34th Guam Legislature

OFFICE OF THE VICE SPEAKER
THERESE M. TERLAJE
Chairperson of the Committee
On Culture and Justice

COMMITTEE REPORT DIGEST

Bill No. 177-34 (COR), As Amended by the Committee on Culture and Justice – 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 pre-trial 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.

I. OVERVIEW

Bill No. 177-34 (COR) was introduced on September 13, 2017 by Vice Speaker Therese M. Terlaje and was subsequently referred by the Committee on Rules to the Committee on Culture and Justice on September 20, 2017.

The Committee on Culture and Justice convened a public hearing on Bill No 175-34 (COR) on September 28, 2017 at 5:30 PM in *I Liheslatura*'s Public Hearing Room.

Public Notice Requirements

Notices for this public hearing were disseminated via email to all senators and all main media broadcasting outlets on September 20, 2017 and again on September 26, 2017. The notice was also published in the Guam Daily Post on September 21, 2017 and in the Pacific Daily News on September 23, 2017.

Senators Present

Vice Speaker Therese M. Terlaje, Chairperson

Appearing Before the Committee

Melanie W. Brennan, Acting Chief Probation Officer, Judiciary of Guam
Joe McDonald, Chief Prosecutor, Office of the Attorney General
Stephen Hattori, Executive Director, Public Defender Service Corporation
Jocelyn Roden, Attorney, Public Defender Service Corportation
Richard Dirkx, Deputy Director, Public Defender Service Corporation

Guam Congress Building, 163 Chalan Santo Papa, Hagåtña, Guam 96910
T: (671) 472-3586 | F: (671) 472-3589 | Email: senatorterlajeguam@gmail.com
www.senatorterlaje.com

Submitted Written Testimony
John Q. Lizama, Administrator of the Courts, Judiciary of Guam
Elizabeth Barrett Anderson, Attorney General, Office of the Attorney General
Stephen Hattori, Executive Director, Public Defender Service Corporation
Richard Dirkx, Deputy Director, Public Defender Service Corporation
Harold Parker, Guam Legal Services Corporation-Disability Law Center

II. SUMMARY OF TESTIMONY & DISCUSSION

Vice Speaker Therese Terlaje, Chairperson of the Committee on Culture and Justice called the public hearing to order at 5:33 PM. The Chairperson presented the agenda items that would be heard during the hearing. There were no other Committee members present. Bill No. 177-34 (COR) was the second item on the agenda. Chairperson Terlaje provided introductory remarks on Bill No. 177-34 (COR).

Chairperson Terlaje
I would like to thank the public for attending this evening's hearing. Both bills that we are discussing today are regarding family violence. We know nationally and in Guam this continues to be a serious issue for our community.

Based on statistics from the National Coalition Against Domestic Violence, 1 in 3 women and 1 in 4 men have been physically abused by an intimate partner. On a typical day, domestic violence hotlines nationwide receive approximately 20,800 calls.

And on Guam, according the Judiciary's 2016 annual report, over the last 3 years, Family Violence has consistently been the top offense charged of all their cases annually. In 2016, there were 494 cases involving family violence charges and 128 of them were felony offense.

Both of the bills that will be discussed tonight were introduced in an effort to protect victims and witnesses of family violence.

The second item on our agenda is bill 177. Bill No. 177-34, the intent of this is to ensure the protection of victims and witnesses of family violence. It was motivated by news reports of persons committing further acts of violence after arrest and pending trial, such as the 2013 tragic death of Emma Catapang Cepeda, who was shot to death in her home at the age of 35 by her estranged husband while he was on pretrial release on charges of terrorizing and family violence. Cases in Guam and other jurisdictions have proven that arrest, protective orders, and strict release conditions issued by the courts are sometimes not enough to deter further violence on release pending trial. Electronic

monitoring systems that notify victims and law enforcement when a defendant violates a stay-away order may help to ensure victims' safety pending trial. And the court is established a pilot program and they have just received funding in the FY 2018 budget for electronic monitoring program. We were hoping that this bill could be tied into their plans.

The Judiciary has submitted testimony. Are you going to testify on behalf of the Judiciary?

Officer Melanie Brennan: Yes Madame Vice Speaker. I'm here to just reiterate the written testimony from our Administrative Director, John Lizama.

Chairperson Terlaje: Ok.

Officer Melanie Brennan: And answer any questions that you might have.

Chairperson Terlaje: Thank you. So, we got written testimony by the Judiciary and I thank you for being here. Alright let's begin with who we have signed up. Melanie Brennan, oh no written. Tricia Suzuki written. Hill Leon Guerrero, written. Joe McDonald, Stephen Hattori, Jocelyn Roden, and Richard Dirkx. Let's begin.

Officer Melanie Brennan: Madame Vice Speaker, just to reiterate our AOC's written testimony. The concern is that the manner in which Bill No. 177-34 may affect its current efforts to properly assess, classify, and supervise pre-trial defendents. See attached written testimony from Adminstrator John Lizama of the Judiciary read aloud by Officer Melanie Brennan.

Chairperson Terlaje: Thank you very much. Chief McDonald?

Chief Prosecutor Joe McDonald: Thank you Madame Vice Speaker.

Chief Prosecutor Joe McDonald: See attached written testimony from Attorney General Elizabeth Barrett Anderson which was read aloud by Chief Prosecutor Joe McDonald.

Chairperson Terlaje: Thank you very much. Attorney Hattori?

Attorney Stephen Hattori: Thank you. On behalf of the Public Defenders Service Corporation I would like to offer the following testimony. See attached written testimony from Attorney Stephen Hattori.

Chairperson Terlaje: Thank you very much. Attorney Dirkx?

Attorney Richard Dirkx: Thank you very much for this opportunity. I remember the last time the courts tried the electronic monitoring and the technology just plain let us down. I'm going to keep an open mind and I think it's a good experiment. I think the probation department, the court, and the Attorney General have made some very good suggestions. I want to see how it works out. I also thank you for putting in the bill the possibility of a waiver. The last time around, frankly, it wasn't a remedy for our clients. The technology last time required a landline and most of our clients don't even have a landline. I don't know what it will require this time. But I look at this being another way for people to be charged with serious crimes and needing access to money to get out of jail and that's not my people.

I am a little worried because of the legislative intent, tying it to family violence. That was a murder. Yes, it did involve family violence but that was a murder. And the little fish, the many, many little fish who are caught up in the net would violate a court order before they would hurt their spouse at the time. If a typhoon comes and she says I don't care what the judge says come over and help me and the kids, he's there. And that's the way most of them are. I tried in the written response to point out that I think the bill in the section about violation of court orders assumes that every victim wants the protective order that she's carrying around that and that she zealously supports what the courts want against the guy who violates the order. But that just isn't the case.

There are a lot of people and I won't go into this right now but in criminal cases virtually everybody gets a no contact order. I've seen it happen with a woman in the courtroom begging the Magistrate, no I want him to come home. There's a no contact order and just because of the way the mechanisms work, 3 week to many months before that changes. People violate and a lot of it is because the victims didn't want the order in the first place. Our system puts the orders in place very easily and it's hard to get them lifted. It's even worse with civil restraining orders because those orders when they go in place, it lives one, two, or three years and there's no further hearing. If the petitioner wants it changed, she's got to hire a lawyer. We take our clients back and will modify it anytime. But if she hired an attorney, she has to come up with a separate fee. And I don't think there are forms in the kiosk downstairs to say, we've changed our minds, we are going to try and get back together and give it another go. People violate the orders and they aren't all bad. The two things I've focused on that troubled me is the section that modifies the bail statute. Let's see if I can point to it.

Chairperson Terlaje: Section 4.

Attorney Richard Dirkx: Yeah, 40.15(c)(4). I think victims should be heard at all of these bail hearings. This statute would add a section that will allow the judge to consider statements by the victims about prior threats or acts of violence. Of course, the judge should hear that but he should also hear from the victim who wants to come in and say

I'm not really a victim. We're going to try and fix this. I know the courts has to do its thing but our family priority right now is getting our family back together. She should have the right to say that. And it troubles me a little bit because I get the feeling that all of us educated types think we know better. We think we know not to go back into that relationship. Well I don't have 9 kids with somebody. And that changes things. Give the women a voice. Give them a chance to come in and say whatever they want. And they really have a very good idea of what they want. First, they may him out so he's working. Maybe not have him come home right now but we'll go to church as a family. There are ways that can be compromised and worked out and can keep everybody safe. But the judge has to hear all of it. And the statute currently allows the victim to have complete input. The Victims' Bill of Rights unfortunately only kicks in if the victim gives written notice, which is too bad. But please don't pass this. We shouldn't silence the victims because it's inconsistent with what the prosecution wants. He or she should have the right to say whatever they want.

The other problem that really troubles me is the material starting at 40.20 (g). I realize that this was constructed in the hope of finding a class of people who were eligible for electronic monitoring, namely those who violate restraining orders. Come on down the court and see who is really violating restraining orders. People get caught voluntarily. There are some guys who are stalkers and they might fall into this group. But to build a presumption that anyone who is charged with violating a restraining order should not be released. We don't even do that for homicide cases. And then the next 2 sections basically destruct the presumptions so I'm not sure it adds anything to our current statute. And it raises a presumption that is very troubling for the 2 people who during their motion to lift a no contact order that it comes out that they've actually been in contact for a while and couldn't wait for the court hearing. The AG can still charge him. The judge has to enforce every no contact order. The judge has to do something but it could be a lecture. It could be 5 or 10 hours of community service or it could be throwing him back into jail. But please don't take away from the judge, who is dealing with right there and the victim who is in court hopefully saying what she wants and the attorneys would know the case best. Please don't take away from all these people the judge with the discretion to do the right thing.

As far as electronic monitoring I guess if we've got the money let's do the experiment. I'm glad to hear that probation had some very constructive offers. She also saw the experiment the first time around. And I think it's very important to get the technology right and look carefully at what we're doing because it just might work or it might not. Last time the technology let us down. So that's about it.

I don't think we need to do this extensive change to our release procedure to just add a provision that one of the things that the judge can consider is electronic monitoring. Let's do it but if there is ever a half a million dollars available for another project, if you

approach the Attorney General or the Public Defender or Probation, I bet we would find another one for you. Thank you very much.

Chairperson Terlaje: Thank you. Attorney Roden?

Attorney Jocelyn Roden: Yes, Madame Vice Speaker. I meant to speak about the proposed electronic monitoring under the family violence statute. My thoughts echo what has been stated by probation. If you decide to pass the statute that it be done in phases to implement current technology. Because the first experiment, which I also remembered because I was a practicing attorney, it was expensive. The technology was not present to achieve the results that you envisioned at this point. So my thoughts are similar to the courts. It is also similar to the Attorney General's Office that perhaps electronic monitoring should be left for the riskiest situations based on empirical data that he presented to you. And I stand shoulder to shoulder with my Director and Senior Attorney Dirkx, that electronic monitoring is only one of the many tools the presiding judge over the particular case has under the statute to decide whether a person should released or not. With the implementation of the higher risk assessment system by the Judiciary, I have notice consistent decision making among the judges which has been for the most part, very smooth with very little problems and took into account lethality factors. Probation officers are trained in accessing lethality factors with regards to family violence or dangerous situations not involving family members. At best I would say the whole statute should only be one of the tools left to the judge.

And I'd like to address the proposed change to the bail statute at 40.15. As it is now, the current family violence statute that it seems you want to address the concern about the Cepeda case. The current family violence statute already gives the trial judge that discretion, that ability to assess whether or not they are going to release that person. And it is my personal experience that mostly they will not. So perhaps (g) is not necessary under the current iteration of the family violence statute. And lastly I would like to point out that the current iteration of the family violence statute allows input of the victims in family violence to appear at court hearings, to give their input. So for you to restrict it to only specific incidents, that would limit them. So wouldn't it be better for them to speak plainly, forth rightly and whatever the judge may ask. Let's place it to the judge to ask the appropriate questions upon examination. So that's my 3 points that I'd like to bring to you. And I want to thank you for the proposed legislation and giving us a chance to speak about it.

Chairperson Terlaje: I want to thank you. And thank you all for the very good suggestions. And just a couple of things. I don't know if you all know but when the Judiciary came in and testified for their budget, they did describe this electronic monitoring program. They said it's going to hopefully save us 4 million dollars at DOC. When DOC came in they weren't as optimistic. So that was their intent. I think it was to

save money and to give the judges this tool to use. They weren't very specific as to which cases it would be necessary or used. So this me, and is in response to that one case, and the fact that there was a protective order, and the victim said in her sworn statement that he specifically said if you arrest me or you have me arrested, you are going to have harm. So it's only my intent and I understand I tried to make it as flexible as possible so that it's not mandating the court does anything except consider. So I tried to make it very clear that they still have the discretion that they always had except with this additional tool. And so I put those in so they can consider them like a checklist. So that we don't ever hear a case where they just didn't hear that part of it. But that was it. But I totally agree with you. If this in any way might restrict what they hear from the victim then I that's not my intent. My intent was just to add to the checklist of things that they were going to ask for. And so we don't have that type of incident where the victim knows and they have been specifically threaten with someone saying if I am arrested or press charges against me then I'm going to come after you. That is a specific type of case. I just want to make sure the judges don't forget to check if those are present.

I was wondering Melanie if you could describe to us what types of technology is being considered. Do you think the technology has changed since the last pilot program you tried out?

Officer Melanie Brennan: It definitely has changed. We did run a pilot project and it seemed to be more effective than 20 years ago obviously. With GPS technology, which is a little more expensive than their radio frequency, you don't need a landline. You don't need a telephone. It operates off a satellite. And we seem to have 80% coverage on island with the GPS. The radio frequency has coverage all over the island.

Chairperson Terlaje: I did include in here some ideal things. It would be ideal if it notified the victim right away. And I saw it in some jurisdictions. But it's very clear that in some jurisdictions the technology changes so fast and they debate all the time how useful it's going to be after they use it for a while. I'm just wishing you the best of luck in developing this. And I know the Judiciary will be very thorough. It has not developed its rules in this program yet but I want to hopefully influence that.

Officer Melanie Brennan: We are at this moment crafting this scope of work and also refining the protocols on who actually would be assessed.

Chairperson Terlaje: Ok. Great. Could you describe a little bit about your lethality assessment? I know we have talked very shortly about how you are working on that right now.

Officer Melanie Brennan: So all of our reform efforts in juvenile justice, in adult, and pre- trial, involve risk classification. And so far, we rolled out our juvenile justice. The

risk assessment we used for juveniles it's very comprehensive. It's called the Structured Assessment of Violence Risk and Youth (SAVRY). So it really covers all domains and it identifies the needs factors. And actually it gives us a case plan that is driven by the assessment. So our juvenile probation officers have all been trained and it is rolled out and we're currently using it. The Ohio Risk Assessment refers to a system of tools, a suite of tools. So at the pretrial stage, it really speaks to pretrial. Will he come in to his hearings? Will he attend his hearings if he is released and is he a threat, a general threat to the community? Some of the judges who have seen the Ohio Risk Assessment aren't really satisfied with the pretrial assessment. They believe with family violence offenses that we should move further. And it should really address, not as general threat to the community but it should address the current charge and also it should address the victim's safety. So that is specific risk to the victim. So we're looking at the ODARA which is a lethality risk assessment and we do have a scheduled training at the end of the year. So I know that will satisfy the Public Defenders' questions.

Chairperson Terlaje: Great to hear that. And that is consistent with the risk assessment that you were suggesting?

Chief Prosecutor Joe McDonald: Yes, since there's so many pieces of this proposal, that are influx and not understood, I think that's totally appropriate. Especially, I'm encouraged to hear we are also thinking about a family violence specific assessment because many of those are some of the richest factual finds on both sides of the equation.

Officer Melanie Brennan: And if I could, the Ohio Risk Assessment System, moves throughout the different junctures in the criminal justice system. So even before a case is adjudicated, let's say somebody is going up for sentencing, here is a community supervision tool and any of you folks can ask us, we are trained in that already. Any of you folks can ask us to administer those types of assessments for those types of cases, general cases, general jurisdiction cases. But for family violence cases, right now we don't have training on that but we are looking forward to it and should be completing it by the end of this year.

Chairperson Terlaje: Good to hear it. I want to thank you again very much. The testimonies have been very helpful and we hope to continue to work together to get this to be how you think it should be. Again you are the ones whose advice we need to take in this matter. So I just want to point out again that it is a tool for use in all cases supposedly, or right now until the Judiciary comes up with more specific rules. And I just wanted to make sure it was a tool that would be available in family violence cases where the facts might warrant it and to prevent any fact patterns where we know there have been specific threats like what we saw in that last case.

There being no additional individuals to present testimony, the Committee will continue to remain open until October 10, 2017 for acceptance of additional information or testimony on these bills. You may submit it at the Guam Congress Building or through email to senatorterlajeguam@gmail.com. Thank you again to everyone and for your testimony and thank you for your help. Si yu'os ma'åse.

The public hearing was adjourned at 7:00 PM.

III. FINDINGS & RECOMMENDATIONS

Based on testimony from the Judiciary, the Office of the Attorney General and the Public Defender Service Corporation, the Committeed on Culture and Justice is amending the introduced bill by adding language in Section 1 regarding electronic monitoring as a privilege and not a right. The Committee also added language that would encourage coordination around electronic monitoring and victim notifications in Section 2. The Committee added language regarding the use of a lethality risk assessement in Section 3. The Committee removed language in Section 4 as recommended by testimony received during the public hearing.

The Committee on Culture and Justice hereby reports out **Bill No. 177-34 (COR), As Amended by the Committee on Culture and Justice**, 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 to *I Mina'trentai Kuåttro na Liheslaturan Guåhan*, with the recommendation to report out only.

I MINA'TRENTAI KUÅTTRO NA LIHESLATURAN GUÅHAN
2017 (FIRST) Regular Session

Bill No. 177 -34 (COR)

Introduced by: Therese M. Terlaje TMT

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 9:10 OCS

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent.

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

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

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

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

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

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

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

"**§ 30.21. Conditions of Release.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) his/her family ties and relationships;

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

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

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

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

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

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

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

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

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

(5) risk assessments; and

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

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

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

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

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

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

(c) subject the person to electronic monitoring;

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

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

(ef) any other condition reasonably necessary to assure appearance as required and the safety of any other person and the community."

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

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

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

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

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

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

"**§40.60. Additional Restrictions May be Applied; Application by Prosecutor; Additional Restrictions Listed.**

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

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

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

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

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

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

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

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

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

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

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

COMMITTEE ON RULES
SENATOR RÉGINE BISCOE LEE, CHAIR
SIKRITARIAN LIHESLATURAN GUAHAN
I MINA'TRENTAI KUÅTTRO NA LIHESLATURAN GUÅHAN
LEGISLATIVE SECRETARY • 34TH GUAM LEGISLATURE

PRE-REFERRAL CHECKLIST

BILL NO. 177-34 (COR)

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.

(A) Legal Bureau	**(1) One subject matter?** [SR § 6.01(a), 2 GCA § 2108(a)] ☒ YES ☐ NO (Return to Prime Sponsor) **(2) Conform to Standing Rules as to form and style?** [SR §§ 6.02(b) and (d), 6.03(d)] ☒ YES ☐ NO (Return to Prime Sponsor)	**Notice to Legal Bureau:** September 13, 2017 @ 9:31 a.m. **Completed by Legal Bureau:** September 15, 2017 @ 3:26 p.m.
(B) Office of Finance & Budget (OFB)	**(1) Does the Bill contain appropriations or authorizations for appropriations from any fund sources?** ☐ YES ☒ NO **(2) Does the Bill contain an authorization to expend government funds?** ☐ YES ☒ NO ☐ N/A **(3) Does the Bill contain provisions that have potential fiscal impacts on the government of Guam budget?** ☐ YES ☒ NO ☐ N/A	**Notice to OFB:** September 13, 2017 @ 9:33 a.m. **Completed by OFB:** September 20, 2017 @ 2:40 p.m.
COR Action	**Is the fiscal impact revenue negative to the government of Guam budget?** ☐ YES (Refer to Committee on Appropriations) ☒ NO ☐ N/A	**Completed by:** 9.20.17 @ 3:21 pm.

GUAM CONGRESS BUILDING • 163 CHALAN SANTO PAPA • HAGÅTÑA, GUAM 96910
Telephone: (671) 472-3455 • Email address: corguamlegislature@gmail.com

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(C) DEBT

(1) SR § 6.01 (b)(1)(A) Land, Infrastructure, Building Projects, Capital Improvement Projects	☒ N/A ☐ YES ☐ NO (Return to Prime Sponsor)	**Received by:** **(Signature, Date & Time)** 9.18.17 10:30 a.m.
(2) SR § 6.01 (b)(1)(B) Refinancing of existing debt (not less than 2%)	☒ N/A ☐ YES ☐ NO (Return to Prime Sponsor)	
(3) SR § 6.01 (b)(2) Authorize public debt to fund operations of agency, instrumentality, public corporation	☒ N/A ☐ YES (Return to Prime Sponsor) ☐ NO ☐ Waived (per official state of emergency, as attached)	**Completed by:** (Signature, Date & Time) 9.18.17 10:30 a.m.
COR Action	☐ Return to Prime Sponsor ☒ Refer to: Vice Speaker Therese M. Terlaje; Cmte on Culture and Justice.	**Date & Time:** 9.20.17 3:27 p.m.

For COR Office Use Only	**Pursuant to COR decision (COR Meeting, April 3, 2017):** Completed within five (5) working days? ☒ YES ☐ NO	**Initial:** RBL 9-20-17 4:45pm ***If NO:*** Provide letter of explanation (see attached).

I MINA'TRENTAI KUÅTTRO NA LIHESLATURAN GUÅHAN
2017 (FIRST) Regular Session

Bill No. 177-34 (COR)

As Amended By the Committee on Culture and Justice

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.

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courts that her husband had threatened that if she reported him and he got arrested, once he was released, he would look for them and kill her and her three sons. Despite Emma's concerns, her estranged husband was released from jail months before trial on a $5,000 personal recognizance bond, and went to her Dededo residence with a firearm "with the intent to shoot the victim".

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

As a defendant who poses a risk of nonappearance or a risk to the safety of the community may be lawfully held instead of released, *I Liheslatura* finds that release with conditions for electronic monitoring is a privilege and not a right.

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

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

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

"**§ 30.21. Conditions of Release.**

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

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

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

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

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

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

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

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

(8) an order requiring electronic monitoring, electronic monitoring of home arrest, or electronic monitoring that is capable of notifying a victim if the defendant is at or near a location from which the defendant has been ordered to stay away. The court shall indicate the supervising entity and may order the defendant to pay for the monitoring. The electronic device or the supervising entity in coordination with the Office of the Attorney General should immediately notify victim and law enforcement officials if a stay away order is violated;

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

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

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

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

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

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

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

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

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

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

(iii) his/her family ties and relationships;

(iv) his/her reputation, character and mental and

physical condition;

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

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

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

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

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

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

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

(5) lethality risk assessments or other risk assessments deemed appropriate by the Judiciary; and

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

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

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

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

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

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

(c) placement of the person under supervision by means of electronic monitoring, including electronic monitoring with victim stay–away alert technology, if available, and subject to the payment of fees or the exemption of fees, and other rules established by the Court for electronic monitoring;

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

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

(f) require the person charged with family violence or violation of a protective order to undergo a lethality risk assessment or other risk assessments deemed appropriate by the Judiciary; or

(eg) any other condition reasonably necessary to assure appearance as required and the safety of any other person and the community."

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

"**§40.60. Additional Restrictions May be Applied; Application by Prosecutor; Additional Restrictions Listed.**

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

(1) prohibits the person charged from approaching or communicating with particular persons or classes of persons, except that the order shall not be deemed to prohibit any lawful and ethical activity of the person's counsel;

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

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

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

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

(6) requires the person charged to be placed under supervision by means of electronic monitoring, subject to the payment of fees or the

exemption of fees, and subject to other rules established by the Court for electronic monitoring.

(7) requires the person charged with family violence or violation of a protective order to undergo a lethality risk assessment or other risk assessments deemed appropriate by the Court.

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

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

COMMITTEE ON RULES
SENATOR RÉGINE BISCOE LEE, CHAIR
SIKRITARIAN LIHESLATURAN GUAHAN
I MINA'TRENTAI KUÅTTRO NA LIHESLATURAN GUÅHAN
LEGISLATIVE SECRETARY • 34TH GUAM LEGISLATURE

October 5, 2017

MEMO

To: **Rennae Meno**
Clerk of the Legislature

From: **Senator Régine Biscoe Lee**
Chairperson, Committee on Rules

Re: **Fiscal Note**

Buenas yan Håfa adai.

Attached, please find the fiscal note for the following bill:

Bill No. 177-34 (COR)

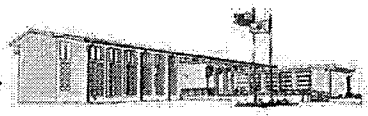
Please forward the same to Management Information Services (MIS) for posting on our website.

For any questions or concerns, please feel free to contact Jean Cordero, Committee on Rules Director, at 472-2461.

Thank you for your attention to this important matter.

Respectfully,

Senator Régine Biscoe Lee
Chairperson, Committee on Rules



GUAM CONGRESS BUILDING • 163 CHALAN SANTO PAPA • HAGÅTÑA, GUAM 96910
Telephone: (671) 472-3455 • Email address: corguamlegislature@gmail.com

Dept./Agency Head: Honorable Katherine A. Maramman, Chief Justice	
	$34,696,443
	$162,875
	$34,859,318

Proposed Appropriation

	General Fund:	(Specify Special Fund):	Total:
FY 2017 Unreserved Fund Balance		$0	$0
FY 2018 Adopted Revenues	$688,559,103	$0	$688,559,103
FY 2018 Appro. (P.L. 34-42)	($688,559,103)	$0	($688,559,103)
Sub-total:	$0	$0	$0
Less appropriation in Bill	$0	$0	$0
Total:	$0	$0	$0

Estimated Fiscal Impact of Bill

	One Full Fiscal Year	For Remainder of FY 2018 (if applicable)	FY 2019	FY 2020	FY 2021	FY 2022
General Fund	1/	$0	$0	$0	$0	$0
(Specify Special Fund)	$0	$0	$0	$0	$0	$0
Total	1/	$0	$0	$0	$0	$0

1. Does the bill contain "revenue generating" provisions? / / Yes /X/ No
   If Yes, see attachment
2. Is amount appropriated adequate to fund the intent of the appropriation? /X/ N/A / / Yes / / No
   If no, what is the additional amount required? $ _____ /X/ N/A
3. Does the Bill establish a new program/agency? / / Yes /X/ No
   If yes, will the program duplicate existing programs/agencies? /X/ N/A / / Yes / / No
   Is there a federal mandate to establish the program/agency? / / Yes /X/ No
4. Will the enactment of this Bill require new physical facilities? / / Yes /X/ No
5. Was Fiscal Note coordinated with the affected dept/agency? If no, indicate reason: / / Yes /X/ No
   / / Requested agency comments not received by due date / / Other:

Date: OCT 04 2017

Lester L. Carlson, Jr., Acting Director

Footnotes:

1/: Bill No. 177-34 (COR) is 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. It should be noted that $551,966 has been appropriated to the Unified Judiciary per P.L. 34-42 (FY2018 Budget Act) for the implementation of an Electronic Monitoring Program. This fund source will likely cover most monitoring costs for defendants on pretrial release conditions outlined in the Bill. Provisions of the Bill also stipulate that, under certain conditions, the Court may order the defendant to pay for the cost of monitoring. If it is determined that the defendant cannot afford the cost, the "supervising authority" would cover such cost(s). Lastly, it should be noted that the subject Bill will likely result in a cost savings to the Government of Guam as the estimated cost for electronic monitoring is approximately $10 - $20 per day while cost for detention at the Adult Correctional Facility is approximately $110 - $130 per day.

VIDEO: Emma Cepeda – Could Her Murder Have Been Prevented?

By **Pacific News Center** - February 19, 2013

Guam – The murder of an Astumbo woman on Sunday has many wondering if her death could have been prevented. Emma Catapang Cepeda had a protection order against her accused killer, and he was recently released from jail on a $5,000 bond.

Guam Legal Services Executive Director Hank Parker says that while protection orders are enforceable no one can force the respondent to obey the order.

"The problem is ultimately when you have somebody who is willing to rise to the level of committing a murder a piece of paper isn't gonna stop him," Parker told PNC. "Thats the problem that we always face in these cases. Once we get our protective order there isn't a lot that we can do to enforce the order other than bring him back for contempt of court."

Guam Police Department PIO A.J. Balajadia tells PNC that he's received no indication that the Cepeda protection order was violated prior to Sunday's shooting.

The protection order was filed in october after Emma Cepeda accused her husband of holding a knife to her neck and saying that *"he was going to end her and their three kids lives because she was going to turn him into police"* court documents state.

Emmanuel Cepeda was charged with two counts of Felony Terrorizing and Family Violence as a result of the October incident and he was arrested. On November 28th Emmanuel posted $5,000 bail and was ordered to stay away from Emma. The conditional release was signed by Magistrate Judge Alberto Tolentino.

Parker would not speculate on whether Cepeda should have been allowed bail or not saying that with the number of domestic violence cases on Guam its difficult to know which defendants are going to be dangerous. For Parker the most troubling thing about the Cepeda case is that Emmanuel Cepeda should not have had access to a gun.

"With a protection order you're not supposed to be in possession of a gun its a federal offense," Parker said.

Meanwhile Alee Shelter Program Manger Sister Brigid Perez is saddened by the news of Emma's death and she urges victims of domestic violence to get help, even if they are being threatened. Women in need of help can call the Alee Shelter crisis hotline at 648-4673.

Emmanuel Cepeda is scheduled to appear in Superior Court tomorrow on the felony terrorizing charges and later this month on a charge of murder.

Related

GPD Launches Internal Investigation of Cepeda Protection Order
March 1, 2013
In "Guam News"

VIDEO: Investigation Into Cepeda Protection Order Complaint Ongoing
March 12, 2013
In "Guam News"

VIDEO: Emmanuel Cepeda Accused of Killing Estranged Wife Emma; Already Faced Charges of Family Violence
February 17, 2013
In "Guam News"

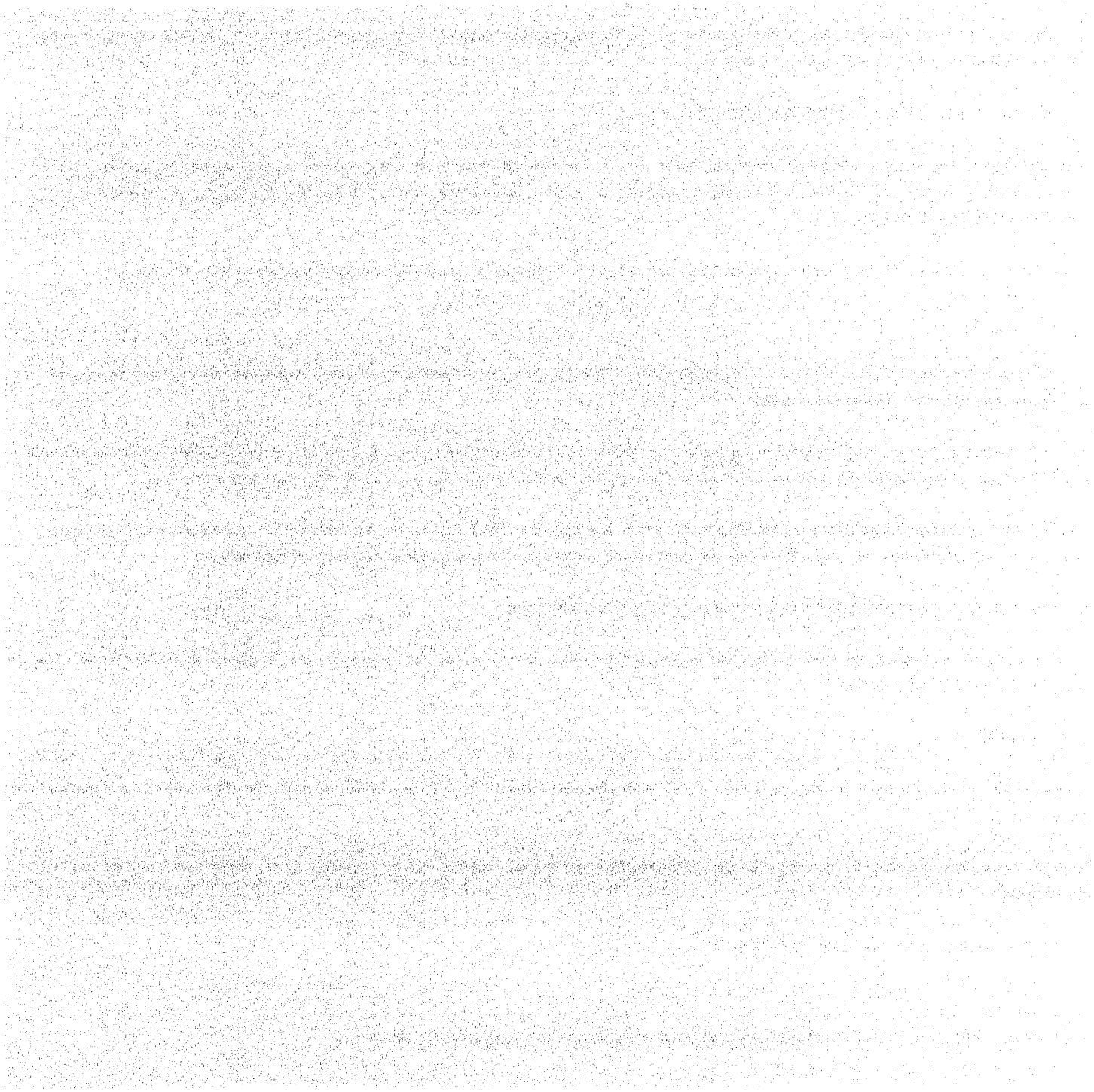
Comments

Pacific News Center

https://www.postguam.com/news/local/cop-charged-with-family-violence-allowed-limited-contact-with-wife/article_41f8e924-0ddf-11e7-bb3a-6f202fe68e79.html

Cop charged with family violence allowed limited contact with wife, kids

Neil Pang | The Guam Daily Post Mar 22, 2017



Donny Pangelinan

The wife of a Guam Police Department officer arrested on charges of family violence requested that she and her family be able to have contact with the defendant, who is awaiting trial.

During a criminal trial setting hearing yesterday before Superior Court of Guam Judge Arthur Barcinas, Donny Pangelinan's attorney, Jeffrey Moots, told the court that Pangelinan's wife had approached the assistant attorney general prosecuting the case and asked that she be allowed to have contact with her husband.

Assistant Attorney General Thomas Neuman said that, based on the severity of the charges and the fact Pangelinan had been arrested on prior family violence charges, the government would oppose any kind of contact between the victim and the defendant in this case.

After inquiring as to the current residence of the defendant, Judge Barcinas granted Pangelinan's wife visitation rights to her in-laws' residence on the condition that other adults be present during the visit.

"The defendant is not to be alone with the victim," Barcinas ordered.

The court further granted Pangelinan the right to attend family and social gatherings where his wife and children are present, so long as he is never alone with either his wife or children. The court explained that meant he could not walk with his family to the parking lot, or do anything else that might result in his being alone with them.

Stating that he did not see any harm in phone contact, the court also allowed Pangelinan to have phone communications with his family.

February incident

Pangelinan currently stands charged of aggravated assault, two counts of family violence, felonious restraint and unlawful restraint after an argument at their Yigo residence on Feb. 16 ended in violence.

The Guam Daily Post archives state Pangelinan allegedly struck the victim's head, punched both of her arms with closed fists, kicked the victim's thigh when she fell to the ground and then threw the victim out the front door when she asked to leave the residence, court documents state.

The magistrate's complaint states Pangelinan charged at the victim, and used both hands to strangle her until she lost consciousness and fell into a seizure. The defendant's sister told police she witnessed the incident, and saw the victim lose consciousness and start shaking.

The victim told police she didn't report the incident because Pangelinan apologized.

Court documents indicate police observed bruises and swelling to the victim's face as well as text messages from Pangelinan admitting that he "went too far this time" and "I nearly killed (you)."

Previous arrest

Pangelian was previously arrested for assault, family violence and felonious restraint in May 2016 and was on probation at the time of the February incident.

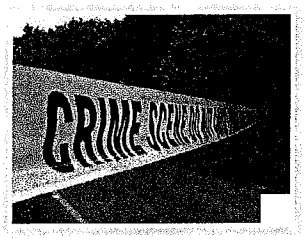
Pangelinan was placed on administrative leave by GPD following the latest incident and was ordered to attend anger management class as part of his deferred plea.

Pangelinan's trial date was set for Sept. 10 at 10 a.m.

Neil Pang
English teacher turned reporter covering GHURA, military affairs, church/religion, mass transit, parks and rec and more.

Man arrested in connection with assault, family violence

Dana M Williams, Pacific Daily News Published 12:51 p.m. ChT June 21, 2017 | **Updated 12:54 p.m. ChT June 21, 2017**



(Photo: PDN file photo)

A man who reportedly left the island earlier this month was arrested Tuesday in connection with assault and family violence, police said.

On June 6, officers went to a home in upper Tumon, where a man identified as Chun Kai Wang, 52, was accused of choking and slapping a woman several times, shoving her head into a toilet, banging her head on the toilet and threatening to kill her, according to Guam Police Department spokeswoman Capt. Kim Santos.

Wang reportedly left Guam before police could find him, Santos said.

At 4:15 p.m. Tuesday, officers were called to the same residence after Wang returned to the woman's home. When police arrived, Wang was uncooperative and refused to open the door, Santos said.

Officers from the Special Operations Division were called, and Wang was taken into custody soon after they arrived, Santos said.

Santos said Wang was booked and confined on allegations of family violence, aggravated assault, resisting arrest and terrorizing.

COMMITTEE ON RULES
SENATOR RÉGINE BISCOE LEE, CHAIR
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I MINA'TRENTAI KUÅTTRO NA LIHESLATURAN GUÅHAN
LEGISLATIVE SECRETARY • 34TH GUAM LEGISLATURE

COMMITTEE REPORT CHECKLIST

Part 1 / 1

Bill No. 177-34 (COR) As amended by the Committee
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.

REFERRED TO:
Vice Speaker Therese M. Terlaje, Committee on Culture and Justice

(A) FISCAL NOTE *or* WAIVER

(1) Requested by COR ☒ YES ☐ NO	Date & Time: Thurs., September 21, 2017 @ 3:06 p.m.
(2) Received by COR ☒ YES ☐ NO	Date & Time: Thurs., October 5, 2017 @ 9:16 a.m.
(3) Waived by COR ☐ YES ☒ NO	Date & Time:
(4) Bill contains appropriations or authorizations for appropriations from any fund sources? ☐ YES ☒ NO	*If YES:* **(4/5)(a) Funding Availability Note/Waiver (OFB) attached?** ☐ YES ☐ NO (Unable to file CMTE Report)
(5) Bill contains an authorization to expend government funds? ☐ YES ☒ NO	**(4/5)(b) Funding source identified?** 2 GCA § 9101 ☐ YES ☐ NO (Proceed to (A)(6)) **(4/5)(c) Funds available and sufficient?** 2 GCA § 9101 ☐ YES ☐ NO (Proceed to (A)(6))

(6) Restrictions Against Unfunded Appropriations (2 GCA § 9101)
- ☐ Identifies specific alternate funding source
- ☐ De-appropriates from previous appropriation with available funds and fiscal note
- ☐ Written certification by CMTE Chair that a situation exists which "threatens the safety, health and welfare of the community"

*If **no boxes** checked:*

UNABLE TO PLACE ON SESSION AGENDA
2 GCA § 9102

Committee Report Checklist on
Bill No. 177-34 (COR) As amended by the committee.
Part 1 / 1

(B) PUBLIC HEARING

(1) HEARING NOTICES
SR §§ 6.04(a)(1) and 6.04(a)(2), Open Government Law (5 GCA, Ch. 8)

☒ **(a)** Five (5) working days prior (A L Senators & ALL Media)	**Date and Time of Notice:** Wed, September 20, 2017 @ 9:45 p.m
☒ **(b)** Forty-eight (48) hours prior (ALL Senators & ALL Media)	**Date and Time of Notice:** Tues., September 26, 2017 @ 8:25 a
(2) Date and Time of Hearing: Thurs., September 28, 2017 @ 5:30 p.m.	***or*** **(4) HEARING WAIVED by Speaker in case of emergency** SR § 6.04(a)(1) ☐ YES ☐ NO ☐ N/A
(3) Location: **Public Hearing Room, Guam Congress Building**	*If YES:* **Attach memo indicating WAIVER**

(5) AMENDMENTS or SUBSTITUTIONS BY COMMITTEE
SR § 6.04(b)

(a) Committee elects to ~~substitute~~ amend bill? ☒ YES ☐ NO	*If YES:* **Date and Time:** Nov. 17, 2017 @ 9:44 a **(a)(1) Vote sheet affirmative?** ☒ YES ☐ NO **(a)(2) Preliminary report filed with COR?** SR § 6.04(b)(2) ☐ YES ☒ NO **(a)(3) Public Hearing noticed?** ☒ YES ☐ NO
(b) Bill materially different after committee amendment or substitution? ☐ YES ☒ NO	If YES: **SECONDARY PUBLIC HEARING MAY BE REQUIRED** SR § 6.04(c)(3) ☐ YES ☐ NO COR Chair

Committee Report Checklist on
Bill No. 177-34 (COR) as amended by the committee.
Part 1 / 1

<table>
<tr><td rowspan="8">(C) COMMITTEE REPORT</td><td>(1) Committee Report filed with COR?
☒ YES ☐ NO

If YES:
Date & Time:
Friday, November 17, 2017 @ 9:44 a.m.</td><td>Notes:</td><td>If NO:
UNABLE TO PLACE ON SESSION AGENDA
SR § 6.04(d)(1)</td></tr>
<tr><td colspan="2">(1)(a) Secondary CMTE Report filed with COR?
☐ YES ☐ NO ☒ N/A

If YES:
Date & Time:</td><td></td></tr>
<tr><td colspan="3">(2) LAND LEGISLATION</td></tr>
<tr><td colspan="2">(a) Bill involves government taking, transfer, purchase, or lease of land?
☐ YES ☐ NO ☒ N/A</td><td rowspan="3">If YES:
ATTACH TWO (2) PROPERTY APPRAISALS TO CMTE REPORT
SR § 6.04(c)(4)
2 GCA § 2107(b)</td></tr>
<tr><td colspan="2">(a)(1) Please indicate on both columns:</td></tr>
<tr><td>(i) Type of transaction:
☐ Taking
☐ Transfer
☐ Purchase
☐ Lease</td><td>(ii) Type of entity:
☐ Government
☐ Non-government</td></tr>
<tr><td colspan="2">(b) Bill involves legislative land rezoning?
☐ YES ☐ NO ☒ N/A</td><td>If YES:
INCLUDE Land Zoning Consideration Report
2 GCA § 2110</td></tr>
<tr><td colspan="2">(b)(1) Bill involves legislative rezoning of property zoned Agricultural (A)?
☐ YES ☐ NO ☒ N/A</td><td>If YES:
INCLUDE Agricultural Consideration Report (Dept. of Agriculture)
2 GCA § 2110
[Proceed to (b)(2)]</td></tr>
<tr><td colspan="3">(b)(2) Proof of Agricultural consideration report reviewed by Guam Land Use Commission? 21 GCA § 61637
☐ YES ☐ NO ☒ N/A</td></tr>
</table>

Committee Report Checklist on
Bill No. 177-34 (COR) As amended by the Committee.
Part 1 / 1

(D) COMMITTEE REPORT (continued)	**(3) G.A.R.R. LEGISLATION** SR § 6.04(c)(1) 5 GCA §§ 9301 and 9303		
	a) Bill involves approving or amending *Rules and Regulations*? □ YES □ NO ☒ N/A	*If YES:* **INCLUDE** **Economic Impact Statement** 5 GCA §§ 9301(d), 9301(e), 9301(f)	
	(4) COMMITTEE REPORT COMPONENTS		
	(a) Front Page Transmittal to Speaker		☒
	(a)(1) COR Chair Signature Line		☒
	(b) Title Page		☒
	(c) Committee Chair Memo to All Committee Members		☒
	(d) COR Referral Memorandum		☒
	(e) Notice of Public Hearing & Other Correspondence		☒
	(f) Public Hearing Agenda		☒
	(g) Public Hearing Sign-in Sheet		☒
	(h) Written Testimonies & Additional Documents		☒
	(i) Committee Vote Sheet(s)		☒
	(j) Committee Report Digest(s)		☒
	(k) Bill History		☒
	(k)(1) Copy of Bill as introduced		☒
	(k)(2) COR Pre-Referral Checklist		☒
	(k)(3) Copy of Bill as corrected by Prime Sponsor (if applicable)		□ N/A
	(k)(4) Copy of Bill as amended/substituted by Committee (if applicable)		☒
	Substitute/Amended Mark-Up Version		☒
	Substitute/Amended Word-Version Emailed to COR?		☒
	(l) Fiscal Note/Waiver and Funding Availability Note (OFB)		☒
	(m) Two (2) Property Appraisals (if applicable)		□ N/A
	(n) Related News Reports (optional)		☒
	(o) Miscellaneous (optional)		□ N/A
	(p) Committee Report Checklist(s)		☒
	Originals		☒
	Single-Sided		☒
	Letter Size		☒
	No Staples/ Paper Clips		☒
(E) COR Action	☒ CMTE Report duly filed; Available for Placement on Session Agenda □ CMTE Report non-conforming for acceptance; Return to Committee	**COR CHAIR** (Signature, Date & Time) 11.7.17 @ 12pm.	