

I Mina'Trentai Kuáttro Na Liheslaturan
BILL STATUS

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES	NOTES
177-34 (COR) As amended by the Committee on Culture and Justice; and further amended on the Floor.	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	
	SESSION DATE	TITLE	DATE PASSED	DATE AND TIME TRANSMITTED	DUE DATE	PUBLIC LAW NO.	DATE SIGNED	NOTES	
	11/27/2017	AN ACT TO AMEND § 30.21(a) OF CHAPTER 30, TITLE 9, GUAM CODE ANNOTATED, AND §§ 40.15, 40.20, AND 40.60 OF CHAPTER 40, TITLE 8, GUAM CODE ANNOTATED, RELATIVE TO ENSURING THE SAFETY OF ALLEGED VICTIMS AND WITNESSES OF FAMILY VIOLENCE AND OTHER CRIMES BY INCLUDING ELECTRONIC MONITORING AS A CONDITION OF PRETRIAL RELEASE.	12/05/17	12/5/17 4:51 p.m.	12/16/17	34-71	12/15/2017	Received: 12/19/17 Mess and Comm. Doc. No. 34GL-17-1330.	



EDDIE BAZA CALVO
Governor

RAY TENORIO
Lieutenant Governor

Office of the Governor Of Guam.

DEC 19 2017

Honorable Benjamin J.F. Cruz
Speaker
I Mina'trentai Kuattro Na Liheslaturan Guahan
Guam Congress Building
163 Chalan Santo Papa
Hagåtña, Guam 96910

GLA34A-1330
Speaker Benjamin J.F. Cruz

DEC 19 2017
Time: 3:17 [] AM [] PM File No. _____
Received By: _____

Dear Mr. Speaker:

Transmitted herewith is Bill No. 177-34 (COR), "AN ACT TO AMEND § 30.21(a) OF CHAPTER 30, TITLE 9, GUAM CODE ANNOTATED, AND §§ 40.15, 40.20, AND 40.60 OF CHAPTER 40, TITLE 8, GUAM CODE ANNOTATED, RELATIVE TO ENSURING THE SAFETY OF ALLEGED VICTIMS AND WITNESSES OF FAMILY VIOLENCE AND OTHER CRIMES BY INCLUDING ELECTRONIC MONITORING AS A CONDITION OF PRETRIAL RELEASE," which was signed on December 15, 2017, as Public Law 34-71.

Senseramente,

EDDIE BAZA CALVO

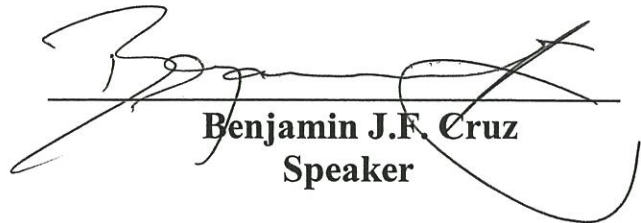
2017 DEC 19 PM 3:26 G.S.




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

CERTIFICATION OF PASSAGE OF AN ACT TO *I MAGA'LÁHEN GUÁHAN*


This is to certify that **Bill No. 177-34 (COR)**, “AN ACT TO *AMEND* § 30.21(a) OF CHAPTER 30, TITLE 9, GUAM CODE ANNOTATED, AND §§ 40.15, 40.20, AND 40.60 OF CHAPTER 40, TITLE 8, GUAM CODE ANNOTATED, RELATIVE TO ENSURING THE SAFETY OF ALLEGED VICTIMS AND WITNESSES OF FAMILY VIOLENCE AND OTHER CRIMES BY INCLUDING ELECTRONIC MONITORING AS A CONDITION OF PRETRIAL RELEASE,” was on the 5th day of December 2017, duly and regularly passed.


Benjamin J.F. Cruz
Speaker


Attested:


Thomas C. Ada
Acting Legislative Secretary

This Act was received by *I Maga'láhen Guáhan* this 5th day of DEC,
2017, at 4:51 o'clock P.M.


Assistant Staff Officer
Maga'láhi's Office

APPROVED:


EDWARD J.B. CALVO
I Maga'láhen Guáhan

Date: DEC 15 2017

Public Law No. 34-71

I MINA'TRENTAI KUATTRO NA LIHESLATURAN GUÅHAN
2017 (FIRST) Regular Session

Bill No. 177-34 (COR)

As amended by the Committee on Culture
and Justice; and further amended on the Floor.

Introduced by:

Therese M. Terlaje
Thomas C. Ada
FRANK B. AGUON, JR.
William M. Castro
B. J.F. Cruz
James V. Espaldon
Fernando Barcinas Esteves
Régine Biscoe Lee
Tommy Morrison
Louise B. Muña
Telena Cruz Nelson
Dennis G. Rodriguez, Jr.
Joe S. San Agustin
Michael F.Q. San Nicolas
Mary Camacho Torres

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

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds
3 that family violence often escalates after the abuse is reported to law enforcement,

1 and that pretrial release puts witnesses at great risk of escalated family violence or
2 death.

3 In February 2013, Emma Catapang Cepeda was shot to death in her home at
4 the age of thirty-five (35) by her estranged husband while he was on pretrial release
5 on charges of terrorizing and family violence. In addition to the criminal indictment,
6 Emma had obtained a permanent protective order against him to prevent him from
7 threatening, harassing or disturbing Emma and her three (3) children. The family
8 violence and terrorizing charges alleged that Emma's estranged husband had held a
9 knife to Emma's neck and threatened to kill her and the children "because she was
10 going to turn him in to the police," and further threatened to hurt his middle school-
11 aged son who tried to intervene. In proceedings for the protective order, Emma had
12 told the courts that her husband had threatened that if she reported him and he got
13 arrested, once he was released, he would look for them and kill her and her three (3)
14 sons. Despite Emma's concerns, her estranged husband was released from jail
15 months before trial on a Five Thousand Dollars (\$5,000) personal recognizance
16 bond, and went to her *Dededo* residence with a firearm "with the intent to shoot the
17 victim."

18 *I Liheslaturan Guåhan* finds that electronic monitoring during the pretrial
19 release of persons accused of family violence is used in many jurisdictions to protect
20 alleged victims from further family violence or death, and is especially effective if
21 it can immediately alert authorities and alleged victims if a defendant violates any
22 condition of release, especially those restricting contact, or ordering the defendant
23 to stay away.

24 As a defendant who poses a risk of nonappearance or a risk to the safety of
25 the community may be lawfully held instead of released, *I Liheslaturan Guåhan*
26 finds that release with conditions for electronic monitoring is a privilege and not a
27 right.

1 *I Liheslaturan Guåhan* further finds that the Judiciary of Guam has received
2 an appropriation of Five Hundred Thousand Dollars (\$500,000) for Fiscal Year 2018
3 to begin an electronic monitoring program during pretrial release.

4 Therefore, it is the intent of *I Liheslaturan Guåhan* to increase the safety of
5 witnesses and alleged victims who report family violence and to increase the safety
6 of the community pending trial of the accused.

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

9 “§ 30.21. **Conditions of Release.**

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

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

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

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

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

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

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

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

3 (8) an order requiring electronic monitoring, electronic
4 monitoring of home arrest, or electronic monitoring that is capable of
5 notifying an alleged victim if the defendant is at or near a location from
6 which the defendant has been ordered to stay away. The court *shall*
7 indicate the supervising entity and may order the defendant to pay for
8 the monitoring. The electronic device or the supervising entity, in
9 coordination with the Office of the Attorney General, should
10 immediately notify the alleged victim and law enforcement officials if
11 a stay away order is violated;

12 (9) any other order required to protect the safety of the alleged
13 victim and to ensure the appearance of the person in court.”

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

16 **“§ 40.15. Release on Own Recognizance Defined; When Permitted.**

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

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

26 (c) In determining whether there is a substantial risk of
27 nonappearance by the person charged or that the person charged will endanger

1 the safety of any other person or the community, the judge *shall* consider the
2 following factors:

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

5 (2) the history and characteristics of the person charged,
6 including:

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

8 (ii) his/her employment status and history, and financial
9 condition;

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

11 (iv) his/her reputation, character, and mental and
12 physical condition;

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

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

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

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

22 (ix) his/her history of compliance with other court
23 orders;

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

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

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

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

6 (d) Nothing in this Section shall be misconstrued as modifying or
7 limiting the presumption of innocence.”

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

10 “**§ 40.20. Bail Conditions; Defined, When to be Used.**

11 Where the judge determines that release of the person charged on
12 his/her own recognizance will not reasonably assure his/her appearance as
13 required, or will endanger the safety of any other person or the community,
14 the judge *shall* impose the least onerous of the following conditions which is
15 reasonably likely to assure the person’s appearance as required and the safety
16 of any other person and the community, or, if no single condition gives that
17 assurance, the least onerous combination of the following conditions:

18 (a) placement of the person in the custody of a designated person or
19 organization agreeing to supervise him/her and to assist him/her in appearing
20 in court;

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

23 (c) placement of the person under supervision by means of
24 electronic monitoring, including electronic monitoring with alleged victim
25 stay-away alert technology, if available, and subject to the payment of fees or
26 the exemption of fees, and other rules established by the court for electronic
27 monitoring;

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

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

7 (f) require the person charged with family violence or violation of a
8 protective order to undergo a lethality risk assessment or other risk
9 assessments deemed appropriate by the Judiciary of Guam; or

10 (g) any other condition reasonably necessary to assure appearance as
11 required and the safety of any other person and the community.”

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

14 **“§ 40.60. Additional Restrictions May be Applied; Application by**
15 **Prosecutor; Additional Restrictions Listed.**

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

21 (1) prohibits the person charged from approaching or
22 communicating with particular persons or classes of persons, except
23 that the order *shall not* be deemed to prohibit any lawful and ethical
24 activity of the person’s counsel;

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

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

4 (4) requires the person charged to report regularly to and
5 remain under the supervision of an officer of the court;

6 (5) requires the person charged to undergo drug testing under
7 the supervision of an officer of the court;

8 (6) requires the person charged to be placed under supervision
9 by means of electronic monitoring, subject to the payment of fees or the
10 exemption of fees, and subject to other rules established by the court
11 for electronic monitoring; or

12 (7) requires the person charged with family violence or
13 violation of a protective order to undergo a lethality risk assessment or
14 other risk assessments deemed appropriate by the court.

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

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

20 **Section 6. Effective Date.** This Act *shall* become effective six (6) months
21 from the date of enactment.