EDDIE BAZA CALVO
Governor

RAY TENORIO
Lieutenant Governor

Office of the Governor Of Guam

DEC 19 2017

GL#34-17-1330
Speaker Benjamin J.F. Cruz

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Received By:

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

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

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; 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.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. *I Liheslaturan Guåhan* 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 thirty-five (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 (3) 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 (3) sons. Despite Emma's concerns, her estranged husband was released from jail months before trial on a Five Thousand Dollars ($5,000) personal recognizance bond, and went to her *Dededo* residence with a firearm "with the intent to shoot the victim."

I Liheslaturan Guåhan finds that electronic monitoring during the pretrial release of persons accused of family violence is used in many jurisdictions to protect alleged victims from further family violence or death, and is especially effective if it can immediately alert authorities and alleged 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 Liheslaturan Guåhan* finds that release with conditions for electronic monitoring is a privilege and not a right.

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

Therefore, it is the intent of *I Liheslaturan Guåhan* to increase the safety of witnesses and alleged 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 an alleged 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 the alleged 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;

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

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

(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;

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

(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 of Guam; or

(g) 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) requires 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; or

(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."

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

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

CERTIFICATION OF PASSAGE OF AN ACT TO *I MAGA'LÅHEN GUÅHAN*

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'låhen Guåhan* this 7th day of DEC, 2017, at 4:21 o'clock P.M.

Assistant Staff Officer
Maga'låhi's Office

APPROVED:

EDWARD J.B. CALVO
I Maga'låhen Guåhan

Date: DEC 15 2017

Public Law No. 34-71