

Twentieth Northern Marianas Commonwealth Legislature

IN THE HOUSE OF REPRESENTATIVES

Session, 2017

H. B. 20-14

A BILL FOR AN ACT

To improve the justice system's response to domestic violence, and for other purposes.

BE IT ENACTED BY THE TWENTIETH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE:

1 **Section 1. Findings and Purpose.** The Legislature finds that strangulation
2 is one of the most lethal forms of domestic violence. Unconsciousness may occur
3 within seconds and death within minutes. Strangulation is among the best
4 predictors of future homicide in domestic violence cases. According to a 2008
5 study by the Journal of Emergency Medicine, the odds of becoming an attempted
6 homicide increased by about sevenfold for women who had been strangled by
7 their partner.

8 Strangulation is currently charged as battery. The penalties for battery are
9 not sufficient to reflect the severity of this offense. The National Center for the
10 Prosecution of Violence Against Women, the National District Attorneys
11 Association, and the National Family Justice Center Alliance all support the
12 establishment of a separate felony offense for strangulation.

13 The Legislature finds that many perpetrators of domestic violence use

1 threats and intimidation against their victims to prevent them from testifying in
2 court. The courts of the Commonwealth should not reward such behavior.
3 Therefore, the Commonwealth should adopt the doctrine of forfeiture by
4 wrongdoing in domestic violence cases: a defendant who engages in conduct
5 designed to prevent a witness from testifying has forfeited their right to confront
6 the witness in court. The United States Supreme Court approved this doctrine in
7 *Giles v. California*, 554 U.S. 353 (2008).

8 The Commonwealth can also reduce the use of intimidation to prevent
9 victims from testifying by allowing the use of prior inconsistent sworn statements
10 as substantive evidence, rather than merely as impeachment. This provision is
11 adopted from 725 Ill. Comp. Stat. 5/115-10.1 and should be interpreted consist
12 with that statute.

13 The Legislature finds that the behavior of victims of domestic violence
14 may be counterintuitive. Mental health experts as well as other professionals who
15 work with domestic violence victims, however, understand that behavior viewed
16 as counterintuitive by the public actually represents common victim responses to
17 trauma. The Commonwealth should adopt a statute to expand the scope of expert
18 testimony in domestic violence cases. This provision is adapted from 42 Pa.C.S.
19 § 5920 and should be interpreted consistently with that statute.

20 The Legislature finds that the Commonwealth's current laws against
21 stalking are based on Alaska Stat. §§ 11.41.260-270. These statutes have come

1 under criticism because they do not address the full range of stalking behaviors,
2 including indirect communications with victims. Stalking includes, but is not
3 limited to, a pattern of following, observing, or monitoring the victim, or
4 committing violent or intimidating acts against the victim, regardless of the
5 means.

6 The Legislature intends to enact a stalking statute that permits the criminal
7 justice system to hold stalkers accountable for a wide range of acts,
8 communications, and conduct. This statute is adapted from the 2007 edition of the
9 Model Stalking Code and should be interpreted consistently with other states that
10 have enacted that statute, and with the publication “The Model Stalking Revisited:
11 Responding to the New Realities of Stalking, published by the National Center for
12 Victims of Crime in 2007.

13 **Section 2. Amendment.** Title 6, Division 1, Part 1, Chapter 4, Article 5 of
14 the Commonwealth Code is amended by the addition of a new section 1468, as
15 follows:

16 **“§ 1468. Strangulation.**

17 **(a) In this section:**

18 **(1) ‘Strangle’ means to impede the normal breathing or**
19 **circulation of the blood of another person by applying pressure to**
20 **the throat or the neck of another person, or by blocking the nose or**
21 **the mouth of the other person.**

1 (2) ‘Household member’ has the same definition as the
2 term ‘household member’ found in 6 CMC § 1461(a)(2).

3 (b) Any person who willfully and unlawfully strangles or attempts
4 to strangle a household member is guilty of a felony punishable by
5 imprisonment for not more than seven years.

6 (c) No injuries are required to prove attempted strangulation.

7 (d) The prosecution is not required to prove that the defendant
8 intended to injure or kill the victim. The only intent required is the intent
9 to strangle or attempt to strangle.”

10 **Section 3. Amendment.** Title 6, Division 1, Part 1, Chapter 4, Article 5 of
11 the Commonwealth Code is amended by the addition of a new section 1469, as
12 follows:

13 “§ 1469. Special Evidentiary Standards in Domestic Violence
14 Actions.

15 (a) Every party in a criminal or civil action involving domestic
16 violence forfeits the right to object to a statement on hearsay and
17 Confrontation Clause grounds when the party engaged in conduct, or
18 acquiesced to conduct, designed to procure the unavailability of the
19 declarant of the statement of a witness. The conduct need not consist of a
20 criminal act.

21 (b) In any domestic violence case, evidence of a statement made by

1 a witness is not made inadmissible by the hearsay rule if

2 (1) the statement is inconsistent with his testimony at the
3 hearing or trial, and

4 (2) the witness is subject to cross-examination concerning
5 the statement, and

6 (3) the statement—

7 (i) was made under oath at a trial, hearing, or other
8 proceeding, or

9 (ii) narrates, describes, or explains an event or
10 condition of which the witness had personal knowledge,
11 and

12 (A) the statement is proved to have been
13 written or signed by the witness, or

14 (B) the witness acknowledged under oath
15 the making of the statement either in his testimony
16 at the hearing or trial in which the admission into
17 evidence of the prior statement is being sought, or at
18 a trial, hearing, or other proceeding, or

19 (C) the statement is proved to have been
20 accurately recorded by a tape recorder, videotape
21 recording, or any other similar electronic means of

1 sound recording.

2 (4) Nothing in this subsection shall render a prior
3 inconsistent statement inadmissible for purposes of impeachment
4 because such statement was not recorded or otherwise fails to meet
5 the criteria set forth herein.

6 (c) In a criminal proceeding involving domestic violence, a witness
7 may be qualified by the court as an expert if the witness has specialized
8 knowledge beyond that possessed by the average layperson based on the
9 witness's experience with, or specialized training or education in, criminal
10 justice, behavioral sciences or victim services issues, related to domestic
11 violence, that will assist the trier of fact in understanding the dynamics of
12 domestic violence, victim responses to domestic violence and the impact
13 of domestic violence on victims during and after being assaulted.

14 (1) If qualified as an expert, the witness may testify to facts
15 and opinions regarding specific types of victim responses and
16 victim behaviors.

17 (2) The witness's opinion regarding the credibility of any
18 other witness, including the victim, shall not be admissible.

19 (3) A witness qualified by the court as an expert under this
20 section may be called by the attorney for the Commonwealth or the
21 defendant to provide the expert testimony.”

1 **Section 4. Repeal and Re-Enactment.** 6 CMC § 1471 is repealed and re-
2 enacted as follows:

3 **“§ 1471. Definitions.**

4 As used in this article:

5 (a) “Course of conduct” means two or more acts, including,
6 but not limited to, acts in which the stalker directly, indirectly, or
7 through third parties, by any action, method, device, or means,
8 follows, monitors, observes, surveils, threatens, or communicates
9 to or about, a person, or interferes with a person’s property.

10 (b) “Emotional distress” means significant mental suffering
11 or distress that may, but does not necessarily, require medical or
12 other professional treatment or counseling.

13 (c) “Reasonable person” means a reasonable person in the
14 victim’s circumstances.”

15 **Section 5. Repeal and Re-Enactment.** 6 CMC § 1472 is repealed and re-
16 enacted as follows:

17 **“§ 1472. Stalking.**

18 (a) Any person who purposefully engages in a course of conduct
19 directed at a specific person and knows or should know that the course of
20 conduct would cause a reasonable person to:

21 (1) fear for his or her safety or the safety of a third person;

1 or

2 (2) suffer other emotional distress is guilty of stalking.

3 (b) In any prosecution under this law, it shall not be a defense that:

4 (1) the actor was not given actual notice that the course of
5 conduct was unwanted; or

6 (2) the actor did not intend to cause the victim fear or other
7 emotional distress.

8 (c) A person commits the crime of stalking in the first degree if the
9 person violates subsection (a) and:

10 (1) the defendant violated any order prohibiting contact
11 with the victim; or

12 (2) the defendant was convicted of stalking any person
13 within the previous 10 years; or

14 (3) the defendant used force or a weapon or threatened to
15 use force or a weapon; or

16 (4) the victim is a minor.

17 (d) All acts of stalking not described in subsection (c) constitute
18 the crime of stalking in the second degree.

19 (e) Stalking in the first degree is a felony punishable by
20 imprisonment of up to four years, by a fine of up to \$2,000, or both.

21 (f) Staling in the second degree is a felony punishable by

1 imprisonment of up to one year, by a fine of up to \$1,000, or both.”

2 **Section 6. Amendment.** 6 CMC § 1461(a)(1) is amended by the addition
3 of the following subsection:

4 “(L) Strangulation under 6 CMC § 1468.”

5 **Section 7. Severability.** If any provision of this Act or the application of
6 any such provision to any person or circumstance should be held invalid by a
7 court of competent jurisdiction, the remainder of this Act or the application of its
8 provisions to persons or circumstances other than those to which it is held invalid
9 shall not be affected thereby.

10 **Section 8. Savings Clause.** This Act and any repealer contained herein
11 shall not be construed as affecting any existing right acquired under contract or
12 acquired under statutes repealed or under any rule, regulation or order adopted
13 under the statutes. Repealers contained in this Act shall not affect any proceeding
14 instituted under or pursuant to prior law. The enactment of the Act shall not have
15 the effect of terminating, or in any way modifying, any liability, civil or criminal,
16 which shall already be in existence on the date this Act becomes effective.

17 **Section 9. Effective Date.** This Act shall take effect upon its approval by
18 the Governor or upon its becoming law without such approval.

Prefiled: 1/17/17

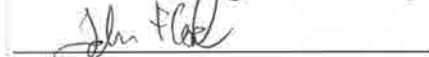
Date: 1/17/17

Introduced By:



Rep. Rafael S. Demapan

Reviewed for Legal Sufficiency by:



House Legal Counsel