

I MINA'TRENTAI SAIS NA LIHESLATURAN GUÅHAN
2022 (SECOND) Regular Session
VOTING RECORD

NAME	Aye	Nay	Not Voting/ Abstained	Out During Roll Call	Absent	Excused
Senator V. Anthony Ada	✓					
Senator Frank Blas Jr.	✓					
Senator Joanne Brown	✓					
Senator Christopher M. Dueñas	✓					
Senator James C. Moylan	✓					
Vice Speaker Tina Rose Muña Barnes	✓					
Senator Telen Cruz Nelson	✓					
Senator Sabina Flores Perez	✓					
Senator Clynton E. Ridgell	✓					
Senator Joe S. San Agustin	✓					
Senator Amanda L. Shelton	✓					
Senator Telo T. Taitague	✓					
Senator Jose "Pedo" Terlaje	✓					
Speaker Therese M. Terlaje	✓					
Senator Mary Camacho Torres	✓					

TOTAL

15

0

Aye

Nay

Not
Voting/
Abstained

Out
During
Roll Call

Absent

Excused

CERTIFIED TRUE AND CORRECT:

RENNAE V.C. MENO
 Clerk of the Legislature

I = Pass

I MINA'TRENTAI SAIS NA LIHESLATURAN GUÅHAN
2022 (SECOND) Regular Session

Bill No. 313-36 (COR)

As amended by the Committee on Health,
Land, Justice, and Culture and further amended on the Floor.

*

Introduced by:

Mary Camacho Torres
Tina Rose Muña Barnes
Christopher M. Dueñas
Jose “Pedo” Terlaje
Telena Cruz Nelson
James C. Moylan
V. Anthony Ada
Frank Blas Jr.
Joe S. San Agustin
Amanda L. Shelton
Sabina Flores Perez
Therese M. Terlaje
Joanne Brown
Telo T. Taitague
Clynton E. Ridgell

**AN ACT TO *ADD* A NEW CHAPTER 40A TO TITLE 7,
GUAM CODE ANNOTATED, RELATIVE TO
ESTABLISHING A PROTECTION ORDER FOR A
PERSON WHO IS A VICTIM OF NONCONSENSUAL
SEXUAL CONTACT OR NONCONSENSUAL SEXUAL
PENETRATION.**

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds
3 that sexual violence remains an enduring issue in the community. According to the
4 National Organization of Asians and Pacific Islanders Ending Sexual Violence,

1 Guam has the second highest number of sexual assaults per capita with 64.2 reported
2 rapes per 100,000 people.

3 *I Liheslaturan Guåhan* further recognizes that, in addition to physical and
4 emotional pain, victims of sexual assault are often subjected to shame and
5 degradation. While reporting is encouraged, those who choose not to come forward
6 are still entitled to protection from their perpetrator. Moreover, even when rape is
7 reported, the perpetrator is not always brought to justice. Restricting an offender’s
8 contact with a victim in certain cases should be possible through a civil remedy.

9 *I Liheslaturan Guåhan* notes that Guam’s protection from abuse statute under
10 Chapter 40, Title 7, Guam Code Annotated, is limited to specific acts of abuse
11 inflicted on victims of family violence, such as attempting to cause or intentionally,
12 knowingly, or recklessly causing bodily injury or serious bodily injury with or
13 without a deadly weapon; placing by physical menace another person in fear of
14 imminent serious bodily injury; or sexually abusing minor children (7 GCA, Chapter
15 40, § 40101). Under this definition, victims of sexual assault may not be eligible to
16 use the protective order process under current law. At a legislative public hearing
17 held on April 6, 2022, the Office of the Attorney General of Guam (OAG) likewise
18 testified that it may be easier for domestic abuse victims to obtain a stay away order
19 than for victims of sexual assault.

20 It is, therefore, the intent of *I Liheslaturan Guåhan* that a sexual offense
21 protection order be created as a remedy for victims of nonconsensual sexual contact
22 or penetration who do not qualify for a protection from abuse order under 7 GCA
23 Chapter 40.

24 **Section 2.** A new Chapter 40A is hereby *added* to Title 7, Guam Code
25 Annotated, to read:

26 **“CHAPTER 40A**
27 **SEXUAL OFFENSE PROTECTION ORDER**

- 1 § 40A101. Definitions.
- 2 § 40A102. Jurisdiction.
- 3 § 40A103. Petition for Sexual Offense Protection Order.
- 4 § 40A104. Fees Not Permitted.
- 5 § 40A105. Hearing.
- 6 § 40A106. Remedies.
- 7 § 40A107. *Ex Parte* Temporary Order for Protection.
- 8 § 40A108. Court Initiated Issuance of Sexual Offense Protection Orders
- 9 § 40A109. Notification to Enforce Protection Order.
- 10 **§ 40A101. Definitions.**

11 The definitions in this Section apply throughout this Chapter unless the
12 context clearly requires otherwise.

13 (a) *Intimate parts* means the primary genital area, groin, inner thigh,
14 buttock, or breast of a human being;

15 (b) *Nonconsensual* means the lack of a freely given present
16 agreement to perform a particular sexual act with the respondent;

17 (c) *Nonphysical contact* includes, but is not limited to, telephone
18 calls, mail, electronic mail, facsimile, mobile messaging, private messaging,
19 direct messaging, and other written notes;

20 (d) *Petitioner* means any named petitioner for the sexual offense
21 protection order or any named victim of nonconsensual sexual conduct or
22 nonconsensual sexual penetration on whose behalf the petition is brought;

23 (e) *Sexual offense protection order* means an *ex parte* temporary
24 order or a final order granted under this Chapter, which includes a remedy
25 authorized by § 40A106 of this Chapter;

26 (f) *Sexual contact* means any of the following:

1 (1) any intentional touching of the victim's or respondent's
2 intimate parts or the intentional touching of the clothing covering the
3 immediate area of the victim's or respondent's intimate parts, if that
4 intentional touching can reasonably be construed as being for the
5 purpose of sexual arousal or gratification; or

6 (2) any intentional display of the victim's or respondent's
7 genitals, anus, or breasts for the purposes of sexual arousal or
8 gratification;

9 (g) *Sexual penetration* means sexual intercourse, cunnilingus,
10 fellatio, anal intercourse, or any other intrusion, however slight, of any part of
11 a person's body or of any object into the genital or anal openings of another
12 person's body, but emission of semen is not required.

13 **§ 40A102. Jurisdiction.**

14 The Superior Court of Guam shall have jurisdiction over all proceedings under
15 this Chapter.

16 **§ 40A103. Petition for Sexual Offense Protection Order.**

17 (a) A person who does not qualify for a protection order under 7 GCA
18 Chapter 40 and who is a victim of nonconsensual sexual contact or nonconsensual
19 sexual penetration, including a single incident of nonconsensual sexual contact or
20 nonconsensual sexual penetration, may seek relief under this Chapter by filing a
21 petition with the court alleging that the person has been the victim of nonconsensual
22 sexual contact or nonconsensual sexual penetration committed by the respondent. A
23 petition for relief may be made regardless of whether or not there is a pending
24 lawsuit, complaint, petition, or other action between the parties.

25 (b) A person may seek relief under this Chapter on behalf of another person
26 if they have personal knowledge that such person has been a victim of nonconsensual
27 sexual contact or nonconsensual sexual penetration, or any adult household member

1 may seek relief under this Chapter on behalf of minor children by filing a petition
2 with the court alleging nonconsensual sexual contact or nonconsensual sexual
3 penetration by the defendant.

4 (c) Victim advocates, as defined in 6 GCA, Chapter 9, § 9102(a), shall be
5 allowed to accompany the victim and confer with the victim, unless otherwise
6 directed by the court. The court shall allow victim advocates to assist victims of
7 nonconsensual sexual contact or nonconsensual sexual penetration in the preparation
8 of petitions for sexual offense protection orders. Communications between the
9 petitioner and a victim advocate are protected as provided by 6 GCA, Chapter 9, §
10 9102(b).

11 (d) Any proceeding under this Chapter shall be in accordance with the
12 Rules of Civil Procedure and shall be in addition to any other available civil or
13 criminal remedies.

14 **§ 40A104. Fees Not Permitted.**

15 No fees for filing or service of process may be charged by a public agency to
16 petitioners seeking relief under this Chapter. Petitioners shall be provided the
17 necessary number of certified copies at no cost.

18 **§ 40A105. Hearing.**

19 Upon receipt of the petition, the court shall order a hearing which shall be held
20 no later than ten (10) days from the date of the order. A plaintiff or witness in a
21 protective order case may request, without the need for a motion, or good cause
22 determination, that the court allow appearance by telephone, videoconference, or by
23 other two (2)-way electronic communication device. The court shall consider
24 whether the safety or welfare of the plaintiff or witness would be threatened if
25 testimony were required to be provided in person at a proceeding. The court may
26 issue an *ex parte* temporary sexual offense protection order pending the hearing as
27 provided in § 40A108 of this Chapter.

1 **§ 40A106. Remedies.**

2 (a) If the court finds by a preponderance of the evidence that the petitioner
3 has been a victim of nonconsensual sexual contact or nonconsensual sexual
4 penetration by the respondent, the court shall issue a sexual offense protection order.
5 The petitioner shall not be denied a sexual offense protection order because the
6 petitioner or the respondent is a minor or because the petitioner did not report the
7 assault to law enforcement. The court, when determining whether or not to issue a
8 sexual offense protection order, may not require proof of physical injury on the
9 person of the victim or proof that the petitioner has reported the sexual assault to law
10 enforcement.

11 (b) The court may provide relief as follows:

12 (1) restrain the respondent from having any contact, including
13 nonphysical contact, with the petitioner directly, indirectly, or through third
14 parties regardless of whether those third parties know of the order;

15 (2) exclude the respondent from the petitioner's residence,
16 workplace, or school, or from the day care or school of a child, if the victim
17 is a child;

18 (3) prohibit the respondent from knowingly coming within, or
19 knowingly remaining within, a specified distance from a specified location;
20 and

21 (4) order any other injunctive relief as necessary or appropriate for
22 the protection of the petitioner.

23 (c) Denial of a remedy may not be based, in whole or in part, on evidence
24 that:

25 (1) the respondent was voluntarily intoxicated;

26 (2) the petitioner was voluntarily intoxicated; or

27 (3) the petitioner engaged in limited consensual sexual touching.

1 (d) The court may order the respondent to surrender all firearms,
2 ammunition, permits to purchase firearms, permits to carry firearms, and other
3 dangerous weapons that are in the care, custody, possession, ownership, or control
4 of the respondent if the court finds any of the following factors are present and the
5 petitioner requests that the respondent's firearms, ammunition, permits to purchase
6 firearms, permits to carry concealed firearms, and other dangerous weapons be
7 seized:

8 (1) the use or threatened use of a dangerous weapon by the
9 respondent or a pattern of prior conduct involving the use or threatened use of
10 violence with a firearm against persons;

11 (2) threats to seriously injure or kill the petitioner or minor child by
12 the respondent;

13 (3) threats to commit suicide by the respondent; or

14 (4) serious injuries inflicted by the respondent upon the petitioner or
15 a minor child.

16 (e) Any protection order shall be for a fixed period of time as the court
17 deems appropriate. The court may amend its order or agreement at any time upon
18 subsequent petition or motion filed by either party.

19 (f) A knowing violation of a court order issued under this Section is a
20 misdemeanor punishable by imprisonment of no less than forty-eight (48) hours and
21 not more than one (1) year, and by a fine of not more than One Thousand Dollars
22 (\$1,000).

23 **§ 40A107. Ex Parte Temporary Order for Protection.**

24 (a) An *ex parte* temporary sexual offense protection order shall issue if the
25 petitioner satisfies the requirements of this Subsection by a preponderance of the
26 evidence. The petitioner shall establish that:

1 (1) the petitioner has been a victim of nonconsensual sexual contact
2 or nonconsensual sexual penetration by the respondent; and

3 (2) there is good cause to grant the remedy, regardless of the lack of
4 prior service of process or of notice upon the respondent, because the harm
5 which that remedy is intended to prevent would be likely to occur if the
6 respondent were given any prior notice, or greater notice than was actually
7 given, of the petitioner's efforts to obtain judicial relief.

8 (b) Upon issuance of an *ex parte* order, the court may order the respondent
9 to surrender all firearms, ammunition, permits to purchase firearms, permits to carry
10 firearms, and other dangerous weapons that are in the care, custody, possession,
11 ownership, or control of the respondent if the court finds any of the following factors
12 are present and the petitioner requests that the respondent's firearms, ammunition,
13 permits to purchase firearms, permits to carry concealed firearms, and other
14 dangerous weapons be seized:

15 (1) the use or threatened use of a dangerous weapon by the
16 respondent or a pattern of prior conduct involving the use or threatened use of
17 violence with a firearm against persons;

18 (2) threats to seriously injure or kill the petitioner or minor child by
19 the respondent;

20 (3) threats to commit suicide by the respondent; or

21 (4) serious injuries inflicted by the respondent upon the petitioner or
22 a minor child.

23 (c) If the court declines to issue an *ex parte* temporary sexual offense
24 protection order, the court shall state the particular reasons for the court's denial.

25 (d) A knowing violation of a court order issued under this Section is a
26 misdemeanor punishable by imprisonment of no less than forty-eight (48) hours and

1 not more than one (1) year, and by a fine of not more than One Thousand Dollars
2 (\$1,000).

3 **§ 40A108. Court Initiated Issuance of Sexual Offense Protection**
4 **Orders.**

5 (a) When any person charged with or arrested for criminal sexual conduct
6 as defined in Title 9 GCA Chapter 25, or any other crime as defined in Title 9 GCA
7 Chapter 25A, Chapter 26, Chapter 28, and Chapter 89 is released from custody
8 before arraignment or trial on bail or personal recognizance, the court authorizing
9 the release may prohibit that person from having any contact with the victim.

10 (1) A sexual offense protection order issued by the court in
11 conjunction with criminal charges shall terminate if the respondent is
12 acquitted or the charges are dismissed, unless the victim files an independent
13 action for a sexual offense protection order. If the victim files an independent
14 action for a sexual offense protection order, the order may be continued by
15 the court until a full hearing is conducted pursuant to § 40A105 of this
16 Chapter.

17 (2) The written order releasing the person charged or arrested shall
18 contain the court's directives and shall bear the legend: "Violation of this
19 order is a criminal offense and will subject a violator to arrest. You can be
20 arrested even if any person protected by the order invites or allows you to
21 violate the order's prohibitions. You have the sole responsibility to avoid or
22 refrain from violating the order's provisions. Only the court can change the
23 order."

24 (3) A certified copy of the order shall be provided to the victim at no
25 charge.

26 (b) When a respondent is found guilty of criminal sexual conduct as
27 defined in Title 9 GCA Chapter 25, or any other crime as defined in Title 9 GCA

1 Chapter 25A, Chapter 26, Chapter 28, and Chapter 89 and a condition of the sentence
2 restricts the respondent's ability to have contact with the victim, the condition shall
3 be recorded as a sexual offense protection order.

4 (1) The written order entered as a condition of sentencing shall
5 contain the court's directives and shall bear the legend: "Violation of this
6 order is a criminal offense and will subject a violator to arrest. You can be
7 arrested even if any person protected by the order invites or allows you to
8 violate the order's prohibitions. You have the sole responsibility to avoid or
9 refrain from violating the order's provisions. Only the court can change the
10 order."

11 (2) A certified copy of the order shall be provided to the victim at no
12 charge.

13 (c) A final sexual offense protection order entered in conjunction with a
14 criminal prosecution shall remain in effect for a period of five (5) years following
15 the expiration of the latest sentence of imprisonment and subsequent period of
16 community supervision, conditional release, probation, or parole.

17 (d) A knowing violation of a court order issued under this Section is a
18 misdemeanor punishable by imprisonment of no less than forty-eight (48) hours and
19 not more than one (1) year, and by a fine of not more than One Thousand Dollars
20 (\$1,000).

21 **§ 40A109. Notification to Enforce Protection Order.**

22 A copy of any order under this Chapter shall be issued to the plaintiff, the
23 defendant, and the Guam Police Department with appropriate jurisdiction to enforce
24 the order or agreement."

25 **Section 3. Effective Date.** This Act shall be effective thirty (30) days
26 following the date of enactment, but the Superior Court of Guam may take such

1 anticipatory administrative action in advance thereof as shall be necessary for the
2 implementation of this Act.

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