

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

Bill No. 314-36 (COR) As amended by the Committee on Health, Land, Justice, and Culture; and further amended on the Floor.	Speaker Antonio R. Unpingco Legislative Session Hall Guam Congress Building December 16, 2022					
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 Telena 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. MENG
Clerk of the Legislature

I = Pass

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Introduced by:

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**AN ACT TO *ADD* A NEW CHAPTER 40B TO TITLE 7,
GUAM CODE ANNOTATED, RELATIVE TO
ESTABLISHING A STALKING PROTECTION ORDER
FOR VICTIMS OF STALKING.**

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds
3 that stalking impacts 3.4 million people in the United States every year. Of those
4 stalked, almost seventy-five percent (75%) know their stalker. *I Liheslaturan*
5 *Guåhan* further finds that stalking can escalate to other crimes perpetrated against

1 victims. According to a national study on stalking victimization (Baum, Catalano,
2 Rand & Rose 2009), over thirty-five percent (35%) of victims reported that they
3 were physically attacked by their stalker, or that a family member, friend, coworker,
4 or pet was attacked by their stalker; and twenty-four percent (24%) had property
5 damaged by the stalker.

6 *I Liheslaturan Guåhan* duly notes that there are few legal options for victims
7 who have not had an intimate relationship with the individual stalking them. Some
8 stalking cases are not prosecuted despite being reported. Further, while reporting is
9 encouraged, victims who do not come forward are still entitled to protection from
10 their stalker. These cases necessitate civil remedies that require the stalker to keep
11 away from his or her victim.

12 It is, therefore, the intent of *I Liheslaturan Guåhan* that a stalking protection
13 order be a remedy for victims who do not qualify for a protection from abuse order
14 under 7 GCA Chapter 40. Stalking victims require the same protection and judicial
15 access as domestic violence and sexual assault victims, and this may be done without
16 intruding on constitutionally protected speech or activities.

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

19 **“CHAPTER 40B**

20 **STALKING PROTECTION ORDER**

- 21 § 40B101. Definitions.
22 § 40B102. Jurisdiction.
23 § 40B103. Petition for Stalking Protection Order.
24 § 40B104. Fees Not Permitted.
25 § 40B105. Hearing.
26 § 40B106. Remedies.
27 § 40B107. *Ex Parte* Temporary Order for Protection.

1 § 40B108. Court Initiated Stalking No-Contact Orders.

2 § 40B109. Notification to Enforce Protection Order.

3 **§ 40B101. Definitions.**

4 The definitions in this Section apply throughout this Chapter unless the
5 context clearly requires otherwise.

6 (a) *Petitioner* means any named petitioner for the stalking protection
7 order or any named victim of stalking conduct on whose behalf the petition is
8 brought.

9 (b) *Stalking conduct* means any of the following:

10 (1) any act of stalking as defined under 9 GCA, Chapter 19,
11 §19.70;

12 (2) any course of conduct, whether physical, verbal, written,
13 electronic, telephonic, via or by use of a computer, computer network,
14 computer system, telephone network, data network, text message,
15 instant message, or otherwise, involving repeated or continuing
16 contacts, attempts to contact, monitoring, tracking, keeping under
17 observation, or following of another that:

18 (A) would cause a reasonable person to feel intimidated,
19 frightened, or threatened;

20 (B) serves no lawful purpose; and

21 (C) the stalker knows or reasonably should know their
22 conduct threatens, frightens, or intimidates the person, even if the
23 stalker did not intend to intimidate, frighten, or threaten the
24 person.

25 (c) *Stalking no-contact order* means a temporary order or a final
26 order granted under this Chapter against a person charged with or arrested for
27 stalking, which includes a remedy authorized under § 40B106 of this Chapter.

1 (d) *Stalking protection order* means an *ex parte* temporary order or
2 a final order granted under this Chapter, which includes a remedy authorized
3 under § 40B106 of this Chapter.

4 **§ 40B102. Jurisdiction.**

5 The Superior Court of Guam shall have jurisdiction over all proceedings under
6 this Chapter.

7 **§ 40B103. Petition for Stalking Protection Order.**

8 (a) A person who does not qualify for a protection from abuse order under
9 7 GCA Chapter 40 and who is a victim of stalking conduct may seek relief under
10 this Chapter by filing a petition with the court alleging that the person has been the
11 victim of stalking conduct committed by the respondent. A petition for relief may be
12 made regardless of whether or not there is a pending lawsuit, complaint, petition, or
13 other action between the parties.

14 (b) A person may seek relief under this Chapter on behalf of another person
15 if they have personal knowledge that such person has been a victim of stalking, or
16 any adult household member may seek relief under this Chapter on behalf of minor
17 children by filing a petition with the court alleging stalking by the defendant.

18 (c) Victim advocates, as defined in 6 GCA, Chapter 9, § 9102(a), shall be
19 allowed to accompany the victim and confer with the victim, unless otherwise
20 directed by the court. The court shall allow victim advocates to assist victims of
21 stalking in the preparation of petitions for stalking protection orders.
22 Communications between the petitioner and a victim advocate shall be protected as
23 provided in 6 GCA, Chapter 9, § 9102(b).

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

27 **§ 40B104. Fees Not Permitted.**

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

4 **§ 40B105. Hearing.**

5 Upon receipt of the petition, the court shall order a hearing which shall be held
6 no later than ten (10) days from the date of the order. A plaintiff or witness in a
7 protective order case may request, without the need for a motion, or good cause
8 determination, that the court allow appearance by telephone, videoconference, or by
9 other two (2)-way electronic communication device. The court shall consider
10 whether the safety or welfare of the plaintiff or witness would be threatened if
11 testimony were required to be provided in person at a proceeding. The court may
12 issue an *ex parte* temporary order pending the hearing as provided in § 40B107 of
13 this Chapter.

14 **§ 40B106. Remedies.**

15 (a) If the court finds by a preponderance of the evidence that the petitioner
16 has been a victim of stalking conduct by the respondent, the court shall issue a
17 stalking protection order. The petitioner shall not be denied a stalking protection
18 order because the petitioner or the respondent is a minor or because the petitioner
19 did not report the stalking conduct to law enforcement. The court, when determining
20 whether or not to issue a stalking protection order, may not require proof of the
21 respondent's intentions regarding the acts alleged by the petitioner.

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

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

1 (2) exclude the respondent from the petitioner’s residence,
2 workplace, or school, or from the daycare or school of the petitioner’s minor
3 children;

4 (3) prohibit the respondent from knowingly coming within, or
5 knowingly remaining within, a specified distance from a specified location;

6 (4) prohibit the respondent from keeping the petitioner and/or the
7 petitioner’s minor children under surveillance, to include electronic
8 surveillance;

9 (5) order any other injunctive relief as necessary or appropriate for
10 the protection of the petitioner;

11 (6) order any other injunctive relief as necessary or appropriate for
12 the protection of the petitioner, to include a mental health and/or chemical
13 dependency evaluation; and

14 (7) require the respondent to pay the administrative court costs and
15 service fees incurred in bringing the action, including reasonable attorneys’
16 fees.

17 (c) The court may order the respondent to surrender all firearms,
18 ammunition, permits to purchase firearms, permits to carry firearms, and other
19 dangerous weapons that are in the care, custody, possession, ownership, or control
20 of the respondent if the court finds any of the following factors are present and the
21 petitioner requests that the respondent’s firearms, ammunition, permits to purchase
22 firearms, permits to carry concealed firearms, and other dangerous weapons be
23 seized:

24 (1) the use or threatened use of a dangerous weapon by the
25 respondent or a pattern of prior conduct involving the use or threatened use of
26 violence with a firearm against persons;

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

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

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

6 (d) Any protection order shall be for a fixed period of time as the court
7 deems appropriate. The court may not terminate or modify an existing stalking
8 protection order unless the respondent proves by a preponderance of the evidence
9 that there has been a substantial change in circumstances such that the respondent
10 will not resume acts of stalking conduct against the petitioner or those persons
11 protected by the protection order if the order is terminated or modified. The
12 petitioner bears no burden of proving that he or she has a current reasonable fear of
13 harm by the respondent.

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

18 **§ 40B107. *Ex Parte* Temporary Order for Protection.**

19 (a) Where it appears from the petition and any additional evidence that the
20 respondent has engaged in stalking conduct and that irreparable injury could result
21 if an order is not issued immediately without prior notice, the court may grant an *ex*
22 *parte* temporary order for protection, pending a full hearing, and grant such
23 injunctive relief as it deems proper, including the relief as specified under §
24 40B106(b)(1)-(4) of this Chapter.

25 (b) Irreparable injury under this Section includes, but is not limited to,
26 situations in which the respondent has recently threatened the petitioner with bodily
27 injury or has engaged in acts of stalking conduct against the petitioner.

1 (c) Upon issuance of an *ex parte* order, the court may order the respondent
2 to surrender all firearms, ammunition, permits to purchase firearms, permits to carry
3 firearms, and other dangerous weapons that are in the care, custody, possession,
4 ownership, or control of the respondent if the court finds any of the following factors
5 are present and the petitioner requests that the respondent's firearms, ammunition,
6 permits to purchase firearms, permits to carry concealed firearms, and other
7 dangerous weapons be 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 (d) If the court declines to issue an *ex parte* temporary stalking protection
17 order, the court shall state the particular reasons for the court's denial.

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

22 **§ 40B108. Court Initiated Stalking No-Contact Orders.**

23 (a)(1) When any person charged with or arrested for stalking, as defined in
24 Title 9 GCA, Chapter 19, § 19.70 or any other stalking-related offense, is released
25 from custody before arraignment or trial on bail or personal recognizance, the court
26 authorizing the release may prohibit that person from having any contact with the
27 victim. If there is no outstanding restraining or protective order prohibiting that

1 person from having contact with the victim, and the victim does not qualify for a
2 protection from abuse order under 7 GCA Chapter 40, the court authorizing the
3 release may issue a stalking protection order prohibiting the person charged or
4 arrested from having contact with the victim or from knowingly coming within, or
5 knowingly remaining within, a specified distance of a location.

6 (2) In issuing the order, the court shall order the respondent to surrender all
7 firearms, ammunition, permits to purchase firearms, permits to carry firearms, and
8 other dangerous weapons that are in the care, custody, possession, ownership, or
9 control of the respondent if the court finds any of the following factors are present
10 and the petitioner requests that the respondent's firearms, ammunition, permits to
11 purchase firearms, permits to carry concealed firearms, and other dangerous
12 weapons be seized:

13 (A) the use or threatened use of a dangerous weapon by the
14 respondent or a pattern of prior conduct involving the use or threatened use of
15 violence with a firearm against persons;

16 (B) threats to seriously injure or kill the petitioner or minor child by
17 the respondent;

18 (C) threats to commit suicide by the respondent; or

19 (D) serious injuries inflicted by the respondent upon the petitioner or
20 a minor child.

21 (b) A stalking protection order issued by the court in conjunction with
22 criminal charges shall terminate if the respondent is acquitted or the charges are
23 dismissed, unless the victim files an independent action for a stalking protection
24 order. If the victim files an independent action for a stalking protection order, the
25 order may be continued by the court until a full hearing is conducted pursuant to §
26 40B105 of this Chapter.

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

7 (d) A certified copy of the order shall be provided to the victim at no
8 charge.

9 (e) When a respondent is found guilty of stalking, as defined in Title 9
10 GCA Chapter 19, § 19.70 or any other stalking-related offense, and a condition of
11 the sentence restricts the respondent's ability to have contact with the victim, and
12 the victim does not qualify for a protection from abuse order under 7 GCA Chapter
13 40, the condition shall be recorded as a stalking no-contact order.

14 (f) The written order entered as a condition of sentencing shall contain the
15 court's directives and shall bear the legend: "Violation of this Order is a criminal
16 offense and will subject a violator to arrest. You can be arrested even if any person
17 protected by the Order invites or allows you to violate the Order's prohibitions. You
18 have the sole responsibility to avoid or refrain from violating the Order's provisions.
19 Only the Court can change the Order."

20 (g) A final stalking no-contact order entered in conjunction with a criminal
21 prosecution shall remain in effect for a period of at least five (5) years following the
22 expiration of the latest sentence of imprisonment and subsequent period of
23 community supervision, conditional release, probation, or parole.

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

26 (i) A knowing violation of a court order issued under this Section is a
27 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 **§ 40B109. Notification to Enforce Protection Order.**

4 A copy of any order under this Chapter shall be issued to the plaintiff, the
5 defendant, and the Guam Police Department with appropriate jurisdiction to enforce
6 the order or agreement.”

7 **Section 3. Effective Date.** This Act shall be effective thirty (30) days
8 following the date of enactment, but the Superior Court of Guam may take such
9 anticipatory administrative action in advance thereof as shall be necessary for the
10 implementation of this Act.

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