








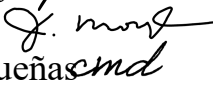




I Mina'trentai Sais Na Liheslaturan Guåhan
BILL STATUS

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES	NOTES
299-36 (LS)	Mary Camacho Torres Telena Cruz Nelson Therese M. Terlaje Tina Rose Muña Barnes Sabina F. Perez Amanda L. Shelton Jose "Pedo" Terlaje James C. Moylan Christopher M. Dueñas V. Anthony Ada Joe S. San Agustin Frank Blas Jr.	AN ACT TO <i>ADD</i> A NEW § 13301.1 AND § 13301.2 TO CHAPTER 13, TITLE 19 OF THE GUAM CODE ANNOTATED, RELATIVE TO REQUIRING REASONABLE EFFORTS TO PRESERVE AND REUNIFY FAMILIES AND TO ESTABLISHING CIRCUMSTANCES NEGATING REQUIREMENT FOR SUCH REASONABLE EFFORTS; AND TO AMEND §13320(a)-(f) OF CHAPTER 13, TITLE 19 OF THE GUAM CODE ANNOTATED, RELATIVE TO UPDATING DISPOSITION HEARING REQUIREMENTS; AND TO AMEND § 13324 OF CHAPTER 13, TITLE 19 OF THE GUAM CODE ANNOTATED, RELATIVE TO UPDATING THE TIMELINES FOR THE PERMANENT PLACEMENT OF CHILDREN; AND TO FURTHER ADD A NEW § 4303(b)(6), § 4303(b)(7), AND §4303(d) TO ARTICLE 3, CHAPTER 4 OF TITLE 19, GUAM CODE ANNOTATED, RELATIVE TO TERMINATING THE PARENTAL RIGHTS OF A PARENT WHO SUBJECTS A CHILD TO AGGRAVATED CIRCUMSTANCES.	4/26/22 4:43 p.m.						

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

Bill No. 299-36 (LS)

Introduced by:

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Telen Cruz Nelson 
Therese M. Terlaje 
Tina Rose Muña Barnes 
Sabina Flores Perez 
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AN ACT TO *ADD* A NEW § 13301.1 AND § 13301.2 TO CHAPTER 13, TITLE 19 OF THE GUAM CODE ANNOTATED, RELATIVE TO REQUIRING REASONABLE EFFORTS TO PRESERVE AND REUNIFY FAMILIES AND TO ESTABLISHING CIRCUMSTANCES NEGATING REQUIREMENT FOR SUCH REASONABLE EFFORTS; AND TO *AMEND* §13320(a)-(f) OF CHAPTER 13, TITLE 19 OF THE GUAM CODE ANNOTATED, RELATIVE TO UPDATING DISPOSITION HEARING REQUIREMENTS; AND TO *AMEND* § 13324 OF CHAPTER 13, TITLE 19 OF THE GUAM CODE ANNOTATED, RELATIVE TO UPDATING THE TIMELINES FOR THE PERMANENT PLACEMENT OF CHILDREN; AND TO FURTHER *ADD* A NEW § 4303(b)(6), § 4303(b)(7), AND §4303(d) TO ARTICLE 3, CHAPTER 4 OF TITLE 19, GUAM CODE ANNOTATED, RELATIVE TO TERMINATING THE PARENTAL RIGHTS OF A PARENT WHO SUBJECTS A CHILD TO AGGRAVATED CIRCUMSTANCES.

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* declares
3 that the family unit is a fundamental resource of the island which should be nurtured.
4 Toward the continuance of this principle, *I Liheslatura* declares that the family unit
5 should remain intact unless a child's right to conditions of basic nurture, health, or
6 safety is jeopardized. When the rights of basic nurture, physical and psychological
7 health, and safety of the child and the legal rights of the parents are in conflict, *I*
8 *Liheslatura* declares that the rights and safety of the child should prevail. Further, in
9 making reasonable efforts to preserve or reunify the family, the child's health and
10 safety should be the paramount concern.

11 *I Liheslaturan Guåhan* finds that in all fifty (50) states, the District of
12 Columbia, Puerto Rico, and the Virgin Islands, reasonable efforts to preserve or
13 reunify the family are *not* required when the state's welfare agency or the court has
14 determined the existence of *specific* circumstances. These circumstances include that
15 the parent subjected the child to abandonment, torture, chronic abuse, and sexual
16 abuse; that the parent committed murder of another child of the parent; that the
17 parent committed voluntary manslaughter of another child of the parent; that the
18 parent aided or abetted, attempted, conspired, or solicited to commit such a murder
19 or voluntary manslaughter; that the parent committed a felony assault that resulted
20 in serious bodily injury to the child or another child of the parent; or that the parental
21 rights of the parent to a sibling of the child were terminated involuntarily.

22 *I Liheslaturan Guåhan* duly notes that Guam's Child Protective Act does not
23 specify when reasonable efforts to reunite the family are no longer required nor does
24 the law clearly state when a petition for the termination of parental rights must be
25 filed by Child Protective Services. The federal Adoption and Safe Families Act (U.S.
26 Public Law 105-89) currently requires state welfare agencies to file a petition to

1 terminate parental rights, with certain exceptions, when a child has been in foster
2 care for fifteen (15) of the most recent twenty-two (22) months in order to be eligible
3 for Title IV-E funding. Title IV-E provides reimbursement to states and territories
4 for provision of foster care, adoption assistance, and kinship guardianship assistance
5 to eligible children. Guam's Child Protective Act does not have these requirements.
6 As a result, Guam is currently ineligible for this federal funding despite being
7 considered a state under Title IV-E of the Social Security Act. Guam law also
8 permits a child to remain in foster care beyond two (2) years at the court's discretion.
9 While this judicial discretion allows the court to determine the arrangement that best
10 suits the child's needs based on a number of factors, *I Liheslaturan Guåhan* finds
11 there is legitimate government interest in strengthening protections for children in
12 cases of severe abuse, sexual assault, or violence.

13 In 2020, *I Liheslatura* required the court to presume that termination of
14 parental rights is in the best interest of a child conceived as a result of criminal sexual
15 conduct (Guam Public Law 35-91). The law was predicated on Guam's high number
16 of sexual assaults per capita, the disproportionately low number of sexual assaults
17 resulting in convictions, and the presence of rape-related pregnancies on island, most
18 notably the reporting of a thirty-eight (38) year old man charged in the Superior
19 Court of Guam for raping and impregnating an eleven (11) year old girl (*People of*
20 *Guam v. Rinext Riosen*). These factors, coupled with peer-reviewed research
21 indicating the re-traumatizing experience of raising one's child alongside her
22 attacker, compelled *I Liheslatura* to explicitly recognize an act of criminal sexual
23 conduct resulting in the conception of a child as grounds for the termination of
24 parental rights.

25 *I Liheslaturan Guåhan* finds that family violence and child abuse are similarly
26 enduring issues within the community, remaining high on the list of crimes charged
27 in Guam's family court every year (2020 Judiciary of Guam Annual Report). The

1 demand for more foster homes has also grown with the five hundred (500) children
2 currently in Guam's foster care system. While Child Protective Services works
3 tirelessly to place Guam's children in need, *I Liheslatura* recognizes the traumatizing
4 impact and potential consequences of placement instability and disruption in long-
5 term foster care. According to the American Academy of Pediatrics, children with
6 multiple placements experience a sixty three percent (63%) greater risk of
7 developing behavioral challenges than children in stable placements.

8 Thus, while family life should be strengthened and preserved, *I Liheslatura*
9 maintains that the right of a child to basic nurturing includes the right to a safe,
10 stable, and permanent home. It is therefore the intent of *I Liheslaturan Guåhan* to
11 explicitly define when reasonable efforts to preserve the family are no longer
12 required, to explicitly define the circumstances under which a petition to terminate
13 the parental rights must be filed, to and to revise the deadlines for court hearings on
14 children's permanent placement. In doing so, *I Liheslatura* intends to uphold the
15 child's health and safety as the paramount concern.

16 **Section 2.** A new § 13301.1 and 13301.2 is hereby *added* to Chapter 13, Title
17 19 of the Guam Code Annotated to read:

18 **“§ 13301.1. Reasonable Efforts to Preserve and Reunify Families.**

19 Except as provided in §13301.2, Child Protective Services shall make
20 reasonable efforts to preserve and reunify families prior to the placement of a child
21 in foster care, to prevent or eliminate the need for removing the child from the home
22 of the child, and to make it possible for a child to return safely to the home of the
23 child. In determining the reasonable efforts to be made with respect to a child, and
24 in making these reasonable efforts, the health and safety of the child shall be the
25 paramount concern. Reasonable efforts to finalize an alternate permanency plan may
26 be made concurrently with reasonable efforts to reunify the child and family.

27 **§ 13301.2. Circumstances Negating Requirement for Reasonable Efforts.**

1 (a) Reasonable efforts to reunify a parent or guardian with the child shall not
2 be required or shall cease if one or more of the following circumstances exist:

3 (1) The parent or guardian has subjected the child to aggravated
4 circumstances, including abandonment, torture, chronic abuse, sexual abuse,
5 or chronic and severe neglect.

6 (2) The parent or guardian has been convicted of murder or voluntary
7 manslaughter of another child of the parent; aiding, abetting, attempting,
8 conspiring, or soliciting to commit such crimes; or a felony assault that
9 resulted in serious bodily injury to the child or to another child of the parent.

10 (3) The parental rights of the parent with respect to a sibling of the child
11 have been involuntarily terminated, unless the court determines that providing
12 reasonable efforts would be in the best interests of the child, would not be
13 contrary to the health and safety of the child, and would likely result in the
14 reunification of the parent and the child in the foreseeable future.

15 (4) The child has subsequently been found to be abused or neglected
16 within one (1) year after returning home following placement in foster care.

17 (b) Once a child is in the custody of Child Protective Services, Child
18 Protective Services may petition the court for a judicial determination that efforts to
19 reunify the parent and child are not required under the circumstances specified in
20 subsection (a).

21 (c) If the court finds by clear and convincing evidence that any of the
22 circumstances specified in subsection (a) exists, the court shall waive the
23 requirement that reasonable efforts be made to reunify the child with the child's
24 parent or guardian.

25 (1) A court determination addressing reasonable efforts to prevent
26 removal must be made within sixty (60) days of removal of the child from his
27 or her home.

1 (2) If the court finds that reasonable efforts are not required, it shall
2 document that determination by written findings of fact.

3 (d) A permanency plan hearing as provided in §13324 shall be held for the
4 child within thirty (30) days after the determination.”

5 **Section 3.** § 13320(a)-(f) of Chapter 13, Title 19 of the Guam Code Annotated
6 is hereby *amended* to read:

7 **“§ 13320. Disposition Hearing.**

8 (a) The court may consider any information relevant to disposition which is
9 in the best interests of the child; provided that the court shall determine initially
10 whether the child’s family home is a safe family home. The court shall consider fully
11 all relevant prior and current information including any of the circumstances under
12 § 13301.2 for determining whether the child’s family is willing and able to provide
13 the child with a safe family home, and the report or reports submitted pursuant to §
14 13309, in rendering such a determination. Notwithstanding any other provision
15 under this Section, if the court finds by clear and convincing evidence that any of
16 the circumstances specified in § 13301.2(a) exists, the court shall render a
17 determination pursuant to § 13301.2(c) and hold a permanency plan hearing as
18 provided in §13324 within thirty (30) days after the determination.

19 (b) If the court determines that the child’s family is presently willing and able
20 to provide the child with a safe family home without the supervision of Child
21 Protective Services, the court shall terminate jurisdiction.

22 (c) If the court determines that the child’s family home is a safe family home
23 with the supervision of Child Protective Services, the court shall place the child and
24 the child’s family members who are parties under the supervision of an authorized
25 agency, return the child to the child’s family home and enter further orders, including
26 but not limited to, restrictions upon the rights and duties of the authorized agency,
27 as the court deems to be in the best interests of the child.

1 (d) If the court determines that the child's family home is not a safe family
2 home, even with the supervision of Child Protective Services the court shall vest
3 foster custody of the child in an authorized agency and enter such further orders as
4 the court deems to be in the best interests of the child.

5 (e) If the child's family home is determined not to be safe, even with the
6 supervision of Child Protective Services pursuant to subsection (d), the court may,
7 and if the child has been residing outside the family home for a period of ~~two years~~
8 one (1) year shall, set the case for a permanency plan hearing and order that the
9 authorized agency submit a report pursuant to § 13309.

10 (f) At the disposition hearing, the court may order such terms, conditions and
11 consequences as the court deems to be in the best interests of the child consistent
12 with the requirements under § 13301.2, if applicable."

13 **Section 4.** § 13324 of Chapter 13, Title 19 of the Guam Code Annotated is
14 hereby *amended* to read:

15 **"§ 13324. Permanency Plan Hearing.**

16 (a) The court shall hold a permanency plan hearing to determine the future
17 permanent legal status of the child:

18 (1) Within thirty (30) days after the court finds that reasonable efforts
19 are not required pursuant to § 13301.2.; or

20 (2) In all other cases, within twelve (12) months after the child is
21 removed from the child's home.

22 (b) At the permanency plan hearing, the court shall consider fully all relevant
23 prior and current information for determining whether the child's family is willing
24 and able to provide the child with a safe family home, including but not limited to
25 the report or reports submitted pursuant to § 13309, or any of the circumstances
26 under § 13301.2, and determine whether there exists clear and convincing evidence
27 that:

1 (1) The child's family is not presently willing and able to provide the
2 child with a safe family home, even with the supervision of Child Protective
3 Services;

4 (2) It is not reasonably foreseeable that the child's family will become
5 willing and able to provide the child with a safe family home, even with the
6 supervision of Child Protective Services, within a reasonable period of time,
7 which shall not exceed fifteen (15) of the most recent twenty-two (22) months
8 ~~two years~~ from the date upon which the child was first placed under foster
9 custody by the court;

10 (3) The proposed permanency plan is in the best interests of the child;
11 provided that the court shall presume that:

12 (A) It is in the best interests of a child to be promptly and
13 permanently placed with responsible and competent substitute
14 caretakers and family in a safe and secure home; and

15 (B) Such presumption increases in importance proportionate to
16 the youth of the child upon foster custody by the court; and

17 (4) If the child has reached the age of ~~12~~ fourteen (14), the child is
18 supportive of the permanency plan.

19 ~~(b)~~ (c) If the court determines that the criteria set forth in subsection ~~(a)~~ (b)
20 are established by clear and convincing evidence, the court shall order:

21 (1) That the existing order of disposition be terminated and that the
22 prior award of foster custody be revoked;

23 (2) That permanent custody be awarded to an appropriate authorized
24 agency;

25 (3) That an appropriate permanency plan be implemented concerning
26 the child whereby the child will:

1 (A) Be adopted pursuant to §§ 4201 et seq. of Title 19 GCA;
2 provided, that the court shall presume that it is in the best interests of
3 the child to be adopted, unless the child is in the permanent custody of
4 family or persons who have become as family and who for good cause
5 are unwilling or unable to adopt the child but are committed to and are
6 capable of being the child's permanent custodians; or

7 (B) Remain in permanent custody until the child is subsequently
8 adopted or reaches the age of eighteen (18), and that such status shall
9 not be subject to modification or revocation except upon a showing of
10 extraordinary circumstances to the court.

11 ~~(e)~~ (d) If the court determines that the criteria set forth in subsection ~~(a)~~ (b)
12 are not established by clear and convincing evidence, the court shall order that:

13 (1) The permanency plan hearing be continued for a reasonable period
14 of time not to exceed six (6) months from the date of the continuance;

15 (2) The authorized agency submit a written report pursuant to § 13309;
16 and

17 (3) Such further orders as the court deems to be in the best interests of
18 the child be entered.

19 ~~(d)~~ (e) At the continued permanency plan hearing, the court shall proceed
20 pursuant to subsections ~~(a), (b) and (c)~~ (b), (c) and (d), until such date as the court
21 determines that:

22 (1) There is sufficient evidence to proceed pursuant to subsection (b);
23 or

24 (2) The child's family is willing and able to provide the child with a
25 safe family home, even with the supervision of Child Protective Services,
26 upon which determination the court may:

1 (A) Revoke the prior award of foster custody to the authorized
2 agency and return the child to the family home; and

3 (B) Terminate jurisdiction; or

4 (C) Award supervision to an authorized agency;

5 (D) Order such revisions to the order of disposition as the court,
6 upon such hearing as the court deems to be appropriate, determines to
7 be in the best interests of the child;

8 (E) Set the case for a progress hearing; and

9 (F) Enter such further orders as the court deems to be in the best
10 interests of the child.

11 ~~(e) The court shall order a permanency plan for the child within two~~
12 ~~years of the date upon which the child was first placed under foster custody~~
13 ~~by the court if the child's family is not willing and able to provide the child~~
14 ~~with a safe family home, even with the supervision of Child Protective~~
15 ~~Services."~~

16 **Section 5.** A new § 4303(b)(6) and (7) is hereby *added* to Article 3, Chapter
17 4 of Title 19, Guam Code Annotated to read:

18 "(6) That the parent has been convicted of one or more of the following
19 offenses:

20 (A) Murder, pursuant to 9 GCA Chapter 16, of another child of the
21 parent, a sibling or step-sibling of the child, the child's other parent, or other
22 persons related by consanguinity or affinity, including a minor child who
23 resided with the defendant.

24 (B) Manslaughter, pursuant to 9 GCA Chapter 16, of another child
25 of the parent, a sibling or step-sibling of the child, the child's other parent, or
26 other persons related by consanguinity or affinity, including a minor child
27 who resided with the defendant.

1 (C) Attempt, solicitation, or conspiracy to commit any of the
2 offenses specified in subsections (A) and (B).

3 (D) A felony assault pursuant to 9 GCA Chapter 19, which resulted
4 in injury to the child, a sibling or step-sibling of the child, the child's other
5 parent, or other persons related by consanguinity or affinity, including a minor
6 child who resided with the defendant.

7 (E) A criminal charge relating to the physical or sexual abuse or
8 neglect of any child and that physical or sexual abuse, neglect, or emotional
9 injury to the child named in the present termination action is likely to occur if
10 the parental rights are not terminated.

11 (7) That the child has been in foster care under the responsibility of
12 Child Protective Services for fifteen (15) of the most recent twenty-two (22)
13 months.”

14 **Section 6.** A new § 4303(d) is hereby *added* to Article 3, Chapter 4 of Title
15 19, Guam Code Annotated to read:

16 “(d) Under any of the conditions specified in § 4303(b)(1), (6), and (7), Child
17 Protective Services shall file a petition to terminate the parental rights of the child's
18 parent (or, if such a petition has been filed by another party, seek to be joined as a
19 party to the petition), and concurrently identify, recruit, process, and approve a
20 qualified family for an adoption. Child Protective Services may elect not to terminate
21 the parental rights of the child's parent if:

22 (1) The child is being cared for by a relative approved by Child
23 Protective Services;

24 (2) Child Protective Services has documented a compelling reason,
25 available for court review, for determining that filing a petition to terminate
26 parental rights would not be in the best interests of the child. Compelling

1 reasons for not filing a petition to terminate parental rights include but are not
2 limited to the following:

3 (A) There are insufficient grounds for filing a petition.

4 (B) The parent of the child is actively engaged in services to
5 address the reasons the child entered care (including treatment for
6 substance use disorder, mental health concerns, or parenting skills); or

7 (C) There is adequate documentation that termination of
8 parental rights is not the appropriate plan and not in the best interests
9 of the child; or

10 (3) The family of the child has not been provided, consistent with the
11 time period in the service plan under 19 GCA § 13304, services or treatment
12 that Child Protective Services deemed necessary for the safe return of the child
13 to the child's home, when reasonable efforts to reunify the family are
14 required.”

15 **Section 7. Effective Date.** This Act shall take effect ninety (90) days upon
16 enactment.

17 **Section 8. Severability.** If any provision of this Act or its application to any
18 person or circumstance is found to be invalid or contrary to law, such invalidity shall
19 not affect other provisions or applications of this Act that can be given effect without
20 the invalid provision or application, and to this end the provisions of this Act are
21 severable.