



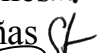








I Mina'trentai Sais Na Liheslaturan Guåhan
BILL STATUS

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES	NOTES
313-36 (COR)	Mary Camacho Torres Tina Rose Muña Barnes Christopher M. Dueñas Jose "Pedro" Terlaje Telena Cruz Nelson James C. Moylan Y. Anthony Ada Frank Blas Jr. Joe S. San Agustin Amanda L. Shelton Sabina F. Perez	AN ACT TO <i>ADD</i> 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.	6/7/22 4:24 p.m.						

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

Bill No. 313-36 (COR)

Introduced by:

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

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

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

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

Section 2. A new Chapter 40A is hereby added to Title 7 of the Guam Code Annotated to read:

“CHAPTER 40A

SEXUAL OFFENSE PROTECTION ORDER

§ 40A101. Definitions.

1 § 40A102. Jurisdiction.

2 § 40A103. Petition for Sexual Offense Protection Order.

3 § 40A104. Fees Not Permitted.

4 § 40A105. Hearing.

5 § 40A106. Inadmissible Evidence.

6 § 40A107. Remedies.

7 § 40A108. Ex Parte Temporary Order for Protection.

8 § 40A109. Court Initiated Issuance of Sexual Offense Protection Orders

9
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 agreement to
16 perform a particular sexual act with the respondent;

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

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

23 (e) *Sexual Offense Protection Order* means an *ex parte* temporary order or
24 a final order granted under this Chapter, which includes a remedy authorized by §
25 40A107;

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

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

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

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

12 **§ 40A102. Jurisdiction.**

13 The Superior Court shall have jurisdiction over all proceedings under this
14 Chapter.

15 **§ 40A103. Petition for Sexual Offense Protection Order.**

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

24 (b) A petition for a sexual offense protection order may be filed by a person
25 on behalf of a victim described in subsection (a) of this Section.

26 (c) Victim advocates, as defined in 6 GCA § 9102(a), shall be allowed to
27 accompany the victim and confer with the victim, unless otherwise directed by the

1 court. The court shall allow victim advocates to assist victims of nonconsensual
2 sexual contact or nonconsensual sexual penetration in the preparation of petitions
3 for sexual offense protection orders. Communications between the petitioner and a
4 victim advocate are protected as provided by 6 GCA § 9102(b).

5 **§ 40A104. Fees Not Permitted.**

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

9 **§ 40A105. Hearing.**

10 Upon receipt of the petition, the court shall order a hearing which shall be held
11 not later than ten (10) days from the date of the order. The court may issue an *ex*
12 *parte* temporary sexual offense order pending the hearing as provided in § 40A108.

13 **§ 40A106. Remedies.**

14 (a) If the court finds by a preponderance of the evidence that the petitioner
15 has been a victim of nonconsensual sexual contact or nonconsensual sexual
16 penetration by the respondent, the court shall issue a sexual offense protection order.
17 The petitioner shall not be denied a sexual offense protection order because the
18 petitioner or the respondent is a minor or because the petitioner did not report the
19 assault to law enforcement. The court, when determining whether or not to issue a
20 sexual offense protection order, may not require proof of physical injury on the
21 person of the victim or proof that the petitioner has reported the sexual assault to law
22 enforcement.

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

24 (1) Restrain the respondent from having any contact, including
25 nonphysical contact, with the petitioner directly, indirectly, or through third
26 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 day care or school of a child, if the victim
3 is a child;

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

7 (4) Order any other injunctive relief as necessary or appropriate for
8 the protection of the petitioner.

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

11 (1) The respondent was voluntarily intoxicated;

12 (2) The petitioner was voluntarily intoxicated; or

13 (3) The petitioner engaged in limited consensual sexual touching.

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

21 (1) The use or threatened use of a dangerous weapon by the
22 respondent or a pattern of prior conduct involving the use or threatened use of
23 violence with a firearm against persons;

24 (2) Threats to seriously injure or kill the petitioner or minor child by
25 the respondent;

26 (3) Threats to commit suicide by the respondent; or

1 (4) Serious injuries inflicted by the respondent upon the petitioner or
2 a minor child.

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

6 (f) A knowing violation of a court order issued under this Section is a
7 misdemeanor punishable by imprisonment of no less than forty-eight (48) hours and
8 not more than one (1) year, and by a fine of not more than One-Thousand Dollars
9 (\$1,000).

10 **§ 40A107. Ex Parte Temporary Order for Protection.**

11 (a) An *ex parte* temporary sexual offense protection order shall issue if the
12 petitioner satisfies the requirements of this subsection by a preponderance of the
13 evidence. The petitioner shall establish that:

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

16 (2) There is good cause to grant the remedy, regardless of the lack
17 of prior service of process or of notice upon the respondent, because the harm
18 which that remedy is intended to prevent would be likely to occur if the
19 respondent were given any prior notice, or greater notice than was actually
20 given, of the petitioner's efforts to obtain judicial relief.

21 (b) Upon issuance of an *ex parte* order, the court may order the respondent
22 to surrender all firearms, ammunition, permits to purchase firearms, permits to carry
23 firearms, and other dangerous weapons that are in the care, custody, possession,
24 ownership, or control of the respondent if the court finds any of the following factors
25 are present and the petitioner requests that the respondent's firearms, ammunition,
26 permits to purchase firearms, permits to carry concealed firearms, and other
27 dangerous weapons be seized:

1 (1) The use or threatened use of a dangerous weapon by the
2 respondent or a pattern of prior conduct involving the use or threatened use of
3 violence with a firearm against persons;

4 (2) Threats to seriously injure or kill the petitioner or minor child by
5 the respondent;

6 (3) Threats to commit suicide by the respondent; or

7 (4) Serious injuries inflicted by the respondent upon the petitioner or
8 a minor child.

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

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

15 **§ 40A108. Court Initiated Issuance of Sexual Offense Protection Orders.**

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

21 (1) A sexual offense protection order issued by the court in
22 conjunction with criminal charges shall terminate if the respondent is
23 acquitted or the charges are dismissed, unless the victim files an independent
24 action for a sexual offense protection order. If the victim files an independent
25 action for a sexual offense protection order, the order may be continued by
26 the court until a full hearing is conducted pursuant to § 40A105.

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

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

10 (b) When a respondent is found guilty of criminal sexual conduct as
11 defined in Title 9 GCA Chapter 25, or any other crime as defined in Title 9 GCA
12 Chapter 25A, Chapter 26, Chapter 28, and Chapter 89 and a condition of the sentence
13 restricts the respondent's ability to have contact with the victim, the condition shall
14 be recorded as a sexual offense protection order.

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

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

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

1 (d) A knowing violation of a court order issued under this Section is a
2 misdemeanor punishable by imprisonment of no less than forty-eight (48) hours and
3 not more than one (1) year, and by a fine of not more than One-Thousand Dollars
4 (\$1,000).”

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

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