












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
314-36 (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 ADD A NEW CHAPTER 40B TO TITLE 7 OF THE GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING A PROTECTION ORDER FOR A PERSON WHO IS A VICTIM OF STALKING CONDUCT.	6/7/22 4:24 p.m.						

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

Bill No. 314-36 (COR)

Introduced by:

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Christopher M. Dueñas 
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**AN ACT TO *ADD* A NEW CHAPTER 40B TO TITLE 7 OF
THE GUAM CODE ANNOTATED, RELATIVE TO
ESTABLISHING A PROTECTION ORDER FOR A
PERSON WHO IS A VICTIM OF STALKING CONDUCT.**

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. *I Liheslaturan Guåhan* finds that stalking impacts 3.4 million people in the United States every year. Of those stalked, almost seventy-five percent (75%) know their stalker. *I Liheslaturan Guåhan* further finds that stalking can escalate to other crimes perpetrated against victims. According to a national study on stalking victimization (Baum, Catalano, Rand & Rose, 2009), over thirty-five percent (35%) of victims reported that they were physically attacked by their stalker, or that a family member, friend, coworker,

1 or pet was attacked by their stalker. Twenty-four percent (24%) had property
2 damaged by the stalker.

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

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

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

16 **“CHAPTER 40B**
17 **STALKING PROTECTION ORDER**

18
19 § 40B101. Definitions.

20 § 40B102. Jurisdiction.

21 § 40B103. Petition for Stalking Protection Order.

22 § 40B104. Fees Not Permitted.

23 § 40B105. Hearing.

24 § 40B106. Remedies.

25 § 40B107. Ex Parte Temporary Order for Protection.

26 § 40B108. Court Initiated Stalking No-Contact Orders.

1 **§ 40B101. Definitions.**

2 The definitions in this Section apply throughout this Chapter unless the
3 context clearly requires otherwise.

4 (a) *Petitioner* means any named petitioner for the stalking protection order
5 or any named victim of stalking conduct on whose behalf the petition is brought;

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

7 (1) Any act of stalking as defined under 9 GCA § 19.70;

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

14 (A) Would cause a reasonable person to feel intimidated,
15 frightened, or threatened;

16 (B) Serves no lawful purpose; and

17 (C) The stalker knows or reasonably should know threatens,
18 frightens, or intimidates the person, even if the stalker did not intend to
19 intimidate, frighten, or threaten the person;

20 (c) *Stalking no-contact order* means a temporary order or a final order
21 granted under this Chapter against a person charged with or arrested for stalking,
22 which includes a remedy authorized under § 40B108;

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

25 **§ 40B102. Jurisdiction.**

26 The Superior Court shall have jurisdiction over all proceedings under this
27 Chapter.

1 **§ 40B103. Petition for Stalking Protection Order.**

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

8 (b) A petition for a stalking protection order may be filed by a person on
9 behalf of a victim described in subsection (a) of this Section.

10 (c) Victim advocates, as defined in 6 GCA § 9102(a), shall be allowed to
11 accompany the victim and confer with the victim, unless otherwise directed by the
12 court. The court shall allow victim advocates to assist victims of stalking in the
13 preparation of petitions for stalking protection orders. Communications between the
14 petitioner and a victim advocate shall be protected as provided by 6 GCA § 9102(b).

15 **§ 40B104. Fees Not Permitted.**

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

19 **§ 40BA105. Hearing.**

20 Upon receipt of the petition, the court shall order a hearing which shall be held
21 not later than ten (10) days from the date of the order. The court may issue an *ex*
22 *parte* temporary order pending the hearing as provided in § 40B107.

23 **§ 40B106. Remedies.**

24 (a) If the court finds by a preponderance of the evidence that the petitioner
25 has been a victim of stalking conduct by the respondent, the court shall issue a
26 stalking protection order. The petitioner shall not be denied a stalking protection
27 order because the petitioner or the respondent is a minor or because the petitioner

1 did not report the stalking conduct to law enforcement. The court, when determining
2 whether or not to issue a stalking protection order, may not require proof of the
3 respondent's intentions regarding the acts alleged by the petitioner.

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

5 (1) Restrain the respondent from having any contact, including
6 nonphysical contact, with the petitioner directly, indirectly, or through third
7 parties regardless of whether those third parties know of the order;

8 (2) Exclude the respondent from the petitioner's residence,
9 workplace, or school, or from the day care or school of the petitioner's minor
10 children;

11 (3) Prohibit the respondent from knowingly coming within, or
12 knowingly remaining within, a specified distance from a specified location;

13 (4) Prohibit the respondent from keeping the petitioner and/or the
14 petitioner's minor children under surveillance, to include electronic
15 surveillance;

16 (5) Order any other injunctive relief as necessary or appropriate for
17 the protection of the petitioner;

18 (6) Order any other injunctive relief as necessary or appropriate for
19 the protection of the petitioner, to include a mental health and/or chemical
20 dependency evaluation; and

21 (7) Require the respondent to pay the administrative court costs and
22 service fees incurred in bringing the action, including reasonable attorneys'
23 fees.

24 (c) The court may order the respondent to surrender all firearms,
25 ammunition, permits to purchase firearms, permits to carry firearms, and other
26 dangerous weapons that are in the care, custody, possession, ownership, or control
27 of the respondent if the court finds any of the following factors are present and the

petitioner requests that the respondent's firearms, ammunition, permits to purchase firearms, permits to carry concealed firearms, and other dangerous weapons be seized:

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

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

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

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

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

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

§ 40B107. Ex Parte Temporary Order for Protection.

(a) Where it appears from the petition and any additional evidence that the respondent has engaged in stalking conduct and that irreparable injury could result if an order is not issued immediately without prior notice, the court may grant an *ex parte* temporary order for protection, pending a full hearing and grant such

1 injunctive relief as it deems proper, including the relief as specified under §
2 40B106(b)(1)-(4).

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

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

13 (1) 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 (2) Threats to seriously injure or kill the petitioner or minor child by
17 the respondent;

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

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

21 (d) If the court declines to issue an *ex parte* temporary stalking protection
22 order, the court shall state the particular reasons for the court's denial.

23 (e) A knowing violation of a court order issued under this Section is a
24 misdemeanor punishable by imprisonment of no less than forty-eight (48) hours and
25 not more than one (1) year, and by a fine of not more than One-Thousand Dollars
26 (\$1,000).

27 **§ 40B108. Court Initiated Stalking No-Contact Orders.**

1 (a)(1) When any person charged with or arrested for stalking as defined in
2 Title 9 GCA Chapter 19, or any other stalking-related offense is released from
3 custody before arraignment or trial on bail or personal recognizance, the court
4 authorizing the release may prohibit that person from having any contact with the
5 victim. If there is no outstanding restraining or protective order prohibiting that
6 person from having contact with the victim, and the victim does not qualify for a
7 protection from abuse under 7 GCA Chapter 40, the court authorizing release may
8 issue a stalking protection order prohibiting the person charged or arrested from
9 having contact with the victim or from knowingly coming within, or knowingly
10 remaining within, a specified distance of a location.

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

18 (A) The use or threatened use of a dangerous weapon by the
19 respondent or a pattern of prior conduct involving the use or threatened
20 use of violence with a firearm against persons;

21 (B) Threats to seriously injure or kill the petitioner or minor
22 child by the respondent;

23 (C) Threats to commit suicide by the respondent; or

24 (D) Serious injuries inflicted by the respondent upon the
25 petitioner or a minor child.

26 (b) A stalking protection order issued by the court in conjunction with
27 criminal charges shall terminate if the respondent is acquitted or the charges are

1 dismissed, unless the victim files an independent action for a stalking protection
2 order. If the victim files an independent action for a stalking protection order, the
3 order may be continued by the court until a full hearing is conducted pursuant to §
4 40B105.

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

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

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

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

24 (g) A final stalking no-contact order entered in conjunction with a criminal
25 prosecution shall remain in effect for a period of at least five (5) years from the date
26 of entry.

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

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

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.