


I Mina'trentai Singko 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
134-35 (COR)	Mary Camacho Torres	AN ACT TO ADD A NEW CHAPTER 39B TO DIVISION 3 OF TITLE 7, GUAM CODE ANNOTATED, RELATIVE TO CUSTODY AND VISITATION OF NONPARENTS; AND TO REPEAL SUBSECTION (G) OF § 8404, CHAPTER 8, DIVISION 1 OF TITLE 19, GUAM CODE ANNOTATED, RELATIVE TO THE CURRENT STATUTE ON GRANDPARENTAL RIGHTS OF VISITATION; AND TO AMEND SUBSECTION (H)(5) OF § 8404, CHAPTER 8, DIVISION 1 OF TITLE 19, GUAM CODE ANNOTATED, RELATIVE TO THE CONSIDERATION OF GRANDPARENTS IN PROVIDING CHILD-CARE FOR THEIR GRANDCHILDREN; AND TO FURTHER CITING THIS ACT AS THE "UNIFORM NONPARENT CUSTODY AND VISITATION ACT OF 2019."	5/9/19 11:28 a.m.						

I MINA'TRENTAI SINGKO NA LIHESLATURAN GUÅHAN
2019 (FIRST) Regular Session

Bill No. 134-35 (COR)

Introduced by:

Mary Camacho Torres 

AN ACT TO *ADD A NEW* CHAPTER 39B TO DIVISION 3 OF TITLE 7, GUAM CODE ANNOTATED, RELATIVE TO CUSTODY AND VISITATION OF NONPARENTS; AND TO REPEAL SUBSECTION (G) OF § 8404, CHAPTER 8, DIVISION 1 OF TITLE 19, GUAM CODE ANNOTATED, RELATIVE TO THE CURRENT STATUTE ON GRANDPARENTAL RIGHTS OF VISITATION; AND TO AMEND SUBSECTION (H)(5) OF § 8404, CHAPTER 8, DIVISION 1 OF TITLE 19, GUAM CODE ANNOTATED, RELATIVE TO THE CONSIDERATION OF GRANDPARENTS IN PROVIDING CHILD-CARE FOR THEIR GRANDCHILDREN; AND TO FURTHER CITING THIS ACT AS THE “UNIFORM NONPARENT CUSTODY AND VISITATION ACT OF 2019.”

2019 MAY -9 AM 11: 28



BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. A new Chapter 39B is *added* to Title 7, Guam Code Annotated to read as follows:

“Chapter 39B

The Uniform Nonparent Custody and Visitation Act of 2019

§ 39B101. Title.

§ 39B102. Definitions.

§ 39B103. Scope.

1 **§ 39B104. Requirements for Order of Custody or Visitation.**

2 **§ 39B105. Presumption for Parental Decision.**

3 **§ 39B106. Commencement of Proceeding; Jurisdiction.**

4 **§ 39B107. Verified Petition.**

5 **§ 39B108. Sufficiency of Petition.**

6 **§ 39B109. Notice.**

7 **§ 39B110. Appointment; Interview of Child; Court Services.**

8 **§ 39B111. Emergency Order.**

9 **§ 39B112. Best Interest of Child.**

10 **§ 39B113. Presumption Arising from Child Abuse, Child Neglect,**
11 **Domestic Violence, Sexual Assault, or Stalking.**

12 **§ 39B114. Order of Custody or Visitation.**

13 **§ 39B115. Modification of Custody or Visitation.**

14 **§ 39B116. Effect of Adoption of Child by Stepparent or Other Relative.**

15 **§ 39B117. Expense of Facilitating Visitation.**

16 **§ 39B118. Law Governing Child Support.**

17 **§ 39B119. Relation to Electronic Signatures in Global and National**
18 **Commerce Act.**

19
20 **§ 39B101. Title.** This Chapter shall be known as the “Uniform Nonparent
21 Custody and Visitation Act of 2019.”

22 **§ 39B102. Definitions.** As used in this Chapter, the term:

23 (a) Child means an unemancipated individual who is less than eighteen
24 years of age;

25 (b) Compensation means wages or other remuneration paid in exchange for
26 care of a child. The term does not include reimbursement of expenses for care of
27 the child, including payment for food, clothing, and medical expenses;

1 (c) *Consistent caretaker* means a nonparent who meets the requirements of
2 7GCA § 39B104(b);

3 (d) *Custody* means physical custody, legal custody, or both. The term
4 includes joint custody or shared custody;

5 (e) *Harm to a child* means significant adverse effect on a child’s physical,
6 emotional, or psychological well-being;

7 (f) *Legal custody* means the right to make significant decisions regarding
8 a child, including decisions regarding a child’s education, health care, and scheduled
9 activity.

10 (g) *Nonparent* means an individual other than a parent of the child. The
11 term includes among others a grandparent, sibling, or stepparent of the child.

12 (h) *Parent* means an individual recognized as a parent under Guam law.

13 (i) *Person* means an individual, estate, business or nonprofit entity, public
14 corporation, government or governmental subdivision, agency, or instrumentality,
15 or other legal entity.

16 (j) *Physical custody* means living with a child and exercising day-to-day
17 care of the child.

18 (k) *Record* means information that is inscribed on a tangible medium or
19 that is stored in an electronic or other medium and is retrievable in perceivable form.

20 (l) *State* means a state of the United States, the District of Columbia,
21 Puerto Rico, the United States Virgin Islands, or any territory or insular possession
22 subject to the jurisdiction of the United States. The term includes a federally
23 recognized Indian tribe.

24 (m) *Substantial relationship* with the child means a relationship between a
25 nonparent and child which meets the requirements of 7GCA § 39B104(c).

26 (n) *Visitation* means the right to spend time, which may include an
27 overnight stay, with a child who is living with another person.

1 **§ 39B103. Scope.**

2 (a) Except as otherwise provided in subsection 7GCA § 39B103(b), this
3 Chapter applies to a proceeding in which a nonparent seeks custody or visitation.

4 (b) This Chapter does not apply to a proceeding:

5 (1) between nonparents, unless a parent is a party to the proceeding;

6 (2) pertaining to custody of or visitation with an Indian child as
7 defined in the *Indian Child Welfare Act of 1978* [25 U.S.C. Section 1903(4)],
8 to the extent the proceeding is governed by the *Indian Child Welfare Act of*
9 *1978* [25 U.S.C. Sections 1901 through 1963]; and

10 (3) pertaining to a child who is the subject of an ongoing proceeding
11 in any state regarding:

12 (A) guardianship of the person; or

13 (B) an allegation by a government entity that the child is
14 abused, neglected, dependent, or otherwise in need of care.

15 (c) A nonparent may not maintain a proceeding under this Chapter for
16 custody of or visitation with a child solely because the nonparent served as a foster
17 parent of the child.

18 (d) An individual whose parental rights concerning a child have been
19 terminated may not maintain a proceeding under this Chapter concerning the child.

20 (e) Relief under this Chapter is not available during the period of a custody
21 or visitation order entered under Chapter 39A of Title 7 Guam Code Annotated or
22 other order dealing with custody of or visitation with a child of a deployed parent.
23 A custody or visitation order entered before a parent was deployed remains in effect
24 unless modified by the court.

25 **§ 39B104. Requirements for Order of Custody or Visitation.**

26 (a) A court may order custody or visitation to a nonparent if the
27 nonparent proves that:

1 (1) the nonparent:

2 (A) is a consistent caretaker; or

3 (B) has a substantial relationship with the child and the denial
4 of custody or visitation would result in harm to the child; and

5 (2) an order of custody or visitation to the nonparent is in the best
6 interest of the child.

7 (b) A nonparent is a consistent caretaker if the nonparent without
8 expectation of compensation:

9 (1) lived with the child for not less than twelve months, unless the
10 court finds good cause to accept a shorter period;

11 (2) regularly exercised care of the child;

12 (3) made day-to-day decisions regarding the child solely or in
13 cooperation with an individual having physical custody of the child; and

14 (4) established a bonded and dependent relationship with the child
15 with the express or implied consent of a parent of the child, or without the
16 consent of a parent if no parent has been able or willing to perform parenting
17 functions.

18 (c) A nonparent has a substantial relationship with the child if:

19 (1) the nonparent:

20 (A) is an individual with a familial relationship with the child
21 by blood or law; or

22 (B) formed a relationship with the child without expectation
23 of compensation; and

24 (2) a significant emotional bond exists between the nonparent and
25 the child.

26 § 39B105. Presumption for Parental Decision.

1 (a) In an initial proceeding under this Chapter, a decision by a parent
2 regarding a request for custody or visitation by a nonparent is presumed to be in the
3 best interest of the child.

4 (b) Subject to 7 GCA § 39B115, a nonparent has the burden to rebut the
5 presumption under § 39B105(a) by clear-and-convincing evidence of the facts
6 required by 7 GCA § 39B104(a). Proof of unfitness of a parent is not required to
7 rebut the presumption under § 39B105 (a).

8 **§ 39B106. Commencement of Proceeding; Jurisdiction.** A nonparent
9 may commence a proceeding by filing a petition under 7GCA § 39B107 in the court
10 having jurisdiction to determine custody or visitation under the *Uniform Child*
11 *Custody Jurisdiction and Enforcement Act* (Chapter 39 of Title 7 Guam Code
12 Annotated).

13 **§ 39B107. Verified Petition.**

14 (a) A nonparent shall verify a petition for custody or visitation under
15 penalty of perjury and allege facts showing that the nonparent:

16 (1) meets the requirements of a consistent caretaker of the child; or

17 (2) has a substantial relationship with the child and denial of custody
18 or visitation would result in harm to the child.

19 (b) A petition under 7GCA § 39B107(a) must state the relief sought and
20 allege specific facts showing:

21 (1) the duration and nature of the relationship between the nonparent
22 and the child, including the period, if any, the nonparent lived with the child and the
23 care provided;

24 (2) the content of any agreement between the parties to the
25 proceeding regarding care of the child and custody of or visitation or other contact
26 with the child;

1 (3) a description of any previous attempt by the nonparent to obtain
2 custody of or visitation or other contact with the child;

3 (4) the extent to which the parent is willing to permit the nonparent
4 to have custody of or visitation or other contact with the child;

5 (5) information about compensation or expectation of compensation
6 provided to the nonparent in exchange for care of the child;

7 (6) information required to establish the jurisdiction of the court
8 under Chapter 39 of Title 7 Guam Code Annotated.

9 (7) the reason the requested custody or visitation is in the best
10 interest of the child, applying the factors in 7 GCA § 39B112; and

11 (8) if the nonparent alleges a substantial relationship with the child,
12 the reason denial of custody or visitation to the nonparent would result in harm to
13 the child.

14 (c) If an agreement described in 7 GCA § 39B107(b)(2) is in a record, the
15 nonparent shall attach a copy of the agreement to the petition.

16 **§ 39B108. Sufficiency of Petition.**

17 (a) The court shall determine based on the petition under 7 GCA § 39B107
18 whether the nonparent has pleaded a prima facie case that the nonparent:

19 (1) is a consistent caretaker; or

20 (2) has a substantial relationship with the child and denial of custody
21 or visitation would result in harm to the child.

22 (b) If the court determines under 7GCA § 39B108(a) that the nonparent has
23 not pleaded a prima facie case, the court shall dismiss the petition.

24 **§ 39B109. Notice.** On commencement of a proceeding, the nonparent
25 shall give notice to each:

26 (a) Parent of the child who is the subject of the proceeding;

27 (b) Person having custody of the child;

1 (c) Individual having court-ordered visitation with the child; and

2 (d) Attorney, guardian ad litem, or similar representative appointed for the
3 child.

4 § 39B110. Appointment; Interview of Child; Court Services. In the
5 manner and to the extent authorized by Guam law in a family law proceeding other
6 than under this Chapter, the court may:

7 (a) Appoint an attorney, guardian ad litem, or similar representative for the
8 child;

9 (b) Interview the child;

10 (c) Require the parties to participate in mediation or another form of
11 alternative dispute resolution, but a party who has been the victim of domestic
12 violence, sexual assault, stalking, or other crime against the individual by another
13 party to the proceeding may not be required to participate unless reasonable
14 procedures are in place to protect the party from a risk of harm, harassment, or
15 intimidation;

16 (d) Order an evaluation, investigation, or other assessment of the child's
17 circumstances and the effect on the child of ordering or denying the requested
18 custody or visitation or modifying a custody or visitation order; and

19 (e) Allocate payment between the parties of a fee for a service ordered
20 under this section.

21 § 39B111. Emergency Order. On finding that a party or a child who
22 is the subject of a proceeding is in danger of imminent harm, the court may expedite
23 the proceeding and issue an emergency order.

24 § 39B112. Best Interest of Child. In determining whether an order of
25 custody or visitation to a nonparent is in the best interest of a child, the court shall
26 consider:

1 (a) The nature and extent of the relationship between the child and the
2 parent;

3 (b) The nature and extent of the relationship between the child and the
4 nonparent;

5 (c) The views of the child, taking into account the age and maturity of the
6 child;

7 (d) Past or present conduct by a party, or individual living with a party,
8 which poses a risk to the physical, emotional, or psychological well-being of the
9 child;

10 (e) the likely impact of the requested order on the relationship between the
11 child and the parent;

12 (f) the applicable factors in § 8404, Chapter 8 of Title 19 Guam Code
13 Annotated; and

14 (g) any other factor affecting the best interest of the child.

15 **§ 39B113. Presumption Arising from Child Abuse, Child Neglect,**
16 **Domestic Violence, Sexual Assault, or Stalking.**

17 (a) The court shall presume that ordering custody or visitation to a
18 nonparent is not in the best interest of the child if the court finds that the nonparent,
19 or an individual living with the nonparent, has committed child abuse, child neglect,
20 domestic violence, sexual assault, stalking, or comparable conduct in violation of
21 law of this state or another state.

22 (b) A finding that conduct specified in 7GCA § 39B113(a) occurred must
23 be based on:

24 (1) evidence of a conviction in a criminal proceeding or final
25 judgment in a civil proceeding; or

26 (2) proof by a preponderance of the evidence.

1 (c) A nonparent may rebut the presumption under 7GCA § 39B113(a) by
2 proving by clear-and-convincing evidence that ordering custody or visitation to the
3 nonparent will not endanger the health, safety, or welfare of the child.

4 **§ 39B114. Order of Custody or Visitation.**

5 (a) If a nonparent seeks custody, the court may order:

6 (1) sole or primary custody to the nonparent;

7 (2) joint custody to the nonparent and a parent or other party; or

8 (3) visitation to the nonparent.

9 (b) If a nonparent seeks visitation only, the court may not order custody to
10 the nonparent seeking visitation.

11 **§ 39B115. Modification of Custody or Visitation.**

12 (a) On motion, and subject to 7GCA § 39B115(c) and (d) the court may
13 modify a final custody or visitation order under 7GCA § 39B114.on a showing by a
14 preponderance of the evidence that:

15 (1) a change in circumstance has occurred relevant to the custody of
16 or visitation with the child; and

17 (2) modification is in the best interest of the child.

18 (b) Except as otherwise provided in 7GCA § 39B115(c) and (d), if a
19 nonparent has rebutted the presumption under 7GCA § 39B105 in an initial
20 proceeding, the presumption remains rebutted.

21 (c) If a motion is filed to modify an order of visitation under this Chapter
22 to obtain an order of custody, the nonparent must rebut the presumption under 7GCA
23 § 39B105.

24 (d) On agreement of the parties, the court may modify a custody or
25 visitation order, unless the court finds that the agreement is not in the best interest
26 of the child.

1 **§ 39B116. Effect of Adoption of Child by Stepparent or Other Relative.**

2 If a child is adopted by a stepparent or other relative of the child, an order of
3 custody or visitation to a nonparent remains in effect and is not changed by the
4 adoption unless modified, after notice to all parties to the custody or visitation
5 proceeding, by the court that entered the order or the court that granted the adoption.

6 **§ 39B117. Expense of Facilitating Visitation.** The court may issue an
7 order allocating responsibility between the parties for payment of the expense of
8 facilitating visitation, including the expense of transportation.

9 **§ 39B118. Law Governing Child Support.** The authority of a court to
10 award child support payable to or by a nonparent is governed by Guam law other
11 than this Act.

12 **§ 39B119. Relation to Electronic Signatures in Global and National**
13 **Commerce Act.** This Chapter modifies, limits, or supersedes the *Electronic*
14 *Signatures in Global and National Commerce Act* [15 U.S.C. Section 7001 et seq.],
15 but does not modify, limit, or supersede Section 101(c) of that act [15 U.S.C. Section
16 7001(c)], or authorize electronic delivery of any of the notices described in Section
17 103(b) of that Act [15 U.S.C. Section 7003(b)].”

18 **Section 2. Repeal.** Subsection (g) of § 8404, Chapter 8 of Title 19 Guam
19 Code Annotated is repealed:

20 ~~“(g) Reasonable visitation rights shall be awarded to parents and grandparents~~
21 ~~and to any other person interested in the welfare of the child in the discretion of the~~
22 ~~court, unless it is shown that such rights of visitation are detrimental to the best~~
23 ~~interests of the child.”~~

24 **Section 3. Conforming Amendments.** Subsection (h)(5) of § 8404,
25 Chapter 8 of Title 19 Guam Code Annotated is amended to read:

26 “(5) Unless the Court finds that it is not in the best interests of the child, non-
27 custodial parents ~~or the children's grandparents~~ shall be given consideration in

1 providing child-care for their minor children ~~or grandchildren~~, when visitation
2 orders are prepared;”

3 **Section 4. Application.** Section 1 of this Act applies to a proceeding
4 commenced before the effective date of this Act in which a final order has not been
5 entered and to a proceeding commenced on or after the effective date of this Act.

6 **Section 5. Effective Date.** This Act *shall* take effect upon enactment.

7 **Section 6. Severability.** If any provision of this Act or its application to any
8 person or circumstance is held invalid, the invalidity does not affect other provisions
9 or applications of this Act which can be given effect without the invalid provision
10 or application, and to this end the provisions of this Act are severable.