

I MINA'TRENTAI SINGKO NA LIHESLATURAN GUÅHAN
2020 (SECOND) Regular Session
LEGISLATIVE SESSION VOTING RECORD

Bill No. 162-35 (COR) As substituted by the Committee on Health, Tourism, Historic Preservation, Land, and Justice; and amended on the Floor.	Speaker Antonio R. Unpingco Legislative Session Hall Guam Congress Building June 15, 2020					
NAME	Aye	Nay	Not Voting/ Abstained	Out During Roll Call	Absent	Excused
Senator William M. CASTRO	✓					
Senator Régine Biscoe LEE	✓					
Senator Kelly G. MARSH (TAITANO), PhD	✓					
Senator James C. MOYLAN	✓					
Senator Louise B. MUÑA	✓					
Speaker Tina Rose MUÑA BARNES	✓					
Vice Speaker Telen 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	✓					
Senator Therese M. TERLAJE	✓					
Senator Mary Camacho TORRES	✓					

TOTAL: 15

Aye

Nay


Not Voting/
Abstained

Out During
Roll Call

Absent

Excused

CERTIFIED TRUE AND CORRECT:



 RENNAE V. C. MENO
 Clerk of the Legislature

I = Pass

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

Bill No. 162-35 (COR)

As substituted by the Committee on Health,
Tourism, Historic Preservation, Land and Justice;
and amended on the Floor.

*

Introduced by:

Mary Camacho Torres
Therese M. Terlaje
Telena Cruz Nelson
Régine Biscoe Lee
Tina Rose Muña Barnes
William M. Castro
Kelly Marsh (Taitano), PhD
James C. Moylan
Louise B. Muña
Sabina Flores Perez
Clynton E. Ridgell
Joe S. San Agustin
Amanda L. Shelton
Telo T. Taitague
Jose "Pedo" Terlaje

**AN ACT TO *ADD* A NEW SUBSECTION (b)(5) TO § 4303
AND A NEW SUBSECTION (e) TO § 4305, AND TO
AMEND § 4308, ALL OF ARTICLE 3, CHAPTER 4, TITLE
19, GUAM CODE ANNOTATED, RELATIVE TO
TERMINATING THE PARENT-CHILD RELATIONSHIP
OF A PARENT WHO IS FOUND BY CLEAR AND
CONVINCING EVIDENCE TO HAVE COMMITTED
THE OFFENSE OF CRIMINAL SEXUAL CONDUCT
AGAINST THE OTHER PARENT RESULTING IN THE
CONCEPTION OF THE CHILD.**

1 BE IT ENACTED BY THE PEOPLE OF GUAM:

1 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds
2 that a significant number of pregnancies result from acts of sexual violence every
3 year (American Congress of Obstetricians and Gynecologists (ACOG)). According
4 to a national study conducted by the Medical University of South Carolina and
5 published in the *American Journal of Obstetrics and Gynecology*, approximately
6 thirty-two thousand one hundred one (32,101) pregnancies occur from the six
7 hundred eighty-three thousand (683,000) estimated annual incidences of rape in the
8 United States alone.

9 *I Liheslaturan Guåhan* further finds that according to the National
10 Organization of Asians and Pacific Islanders Ending Sexual Violence, Guam has the
11 second highest number of sexual assaults per capita with 64.2 reported rapes per
12 100,000 people. While there is no accessible data on the number of pregnancies
13 resulting from rape on Guam, the *American Journal of Obstetrics and Gynecology*
14 estimates a pregnancy rate of five percent (5%) per rape among victims aged twelve
15 (12) to forty-five (45). Local news reports further affirm the presence of rape-related
16 pregnancies on the island—most recently with the reporting of a thirty-eight (38) year
17 old man charged in the Superior Court of Guam for raping and impregnating an
18 eleven (11) year old girl.

19 *I Liheslaturan Guåhan* recognizes that, for various personal reasons, a victim
20 of sexual assault or sexual exploitation may choose to keep and raise the child
21 conceived through rape. In these cases, legal recourse for rape victims is necessary
22 to prevent their attackers from exercising parental rights over the child. Continued
23 interaction with the perpetrator of abuse can have traumatic psychological effects on
24 the victim, making recovery more difficult, and negatively affecting the victim’s
25 ability to parent and to provide for the child based on the best interests of the child.
26 Additionally, *I Liheslaturan Guåhan* recognizes that a perpetrator may use the threat
27 of pursuing parental rights and responsibilities to coerce a victim into not reporting

1 or assisting in the prosecution of the perpetrator for the sexual assault or sexual
2 exploitation, or to harass, intimidate, or manipulate the victim. For example, a
3 perpetrator may state, “don’t testify and I won’t seek visitation.”

4 *I Liheslaturan Guåhan* further finds that forty-five (45) U.S. states and the
5 District of Columbia offer protection for rape victims by limiting the parental rights
6 of their rapists, while approximately thirty-three (33) states require complete
7 termination. Moreover, twenty-five (25) of these states require “clear and convincing
8 evidence” that a person is a rapist, rather than a conviction.

9 *I Liheslaturan Guåhan* further finds that requiring a conviction before
10 termination of parental rights does not offer adequate legal protection for victims
11 due to the disproportionately low number of sexual assaults resulting in convictions.
12 According to the Rape, Abuse, and Incest National Network (RAINN),
13 approximately five (5) rapists are convicted of sexual assault for every one thousand
14 (1,000) rapes. Moreover, a report conducted by the National Institute of Justice
15 found that less than twenty percent (20%) of adult women who were raped report
16 such incidents to law enforcement. Of the thirty-seven percent (37%) of rapes that
17 go on to be prosecuted, less than half have of such prosecutions resulted in a
18 conviction.

19 *I Liheslaturan Guåhan* further finds that laws requiring a conviction may deter
20 victims from pursuing termination of parental rights due to the traumatizing
21 experience of re-living the assault at trial during which victims are often forced to
22 repeatedly face their rapist, recount their assault in excruciating detail, and risk
23 further delay of recovery (“Cultural myths and supports for rape,” *Journal of*
24 *Personality and Social Psychology*, 1980).

25 *I Liheslaturan Guåhan* further finds that the U.S. Supreme Court established
26 that the clear and convincing evidence standard satisfies due process for allegations
27 regarding the termination or restriction of parental rights in *Santosky v. Kramer*, 455

1 U.S. 745 (1982). According to the Supreme Court in *Colorado v. New Mexico*, 467
2 U.S. 310 (1984), “clear and convincing” means that the evidence is highly and
3 substantially more likely to be true than untrue; the fact finder must be convinced
4 that the contention is highly probable. Consequently, the clear and convincing
5 evidence standard is the most common standard for termination of parental rights
6 among the fifty (50) U.S. states, territories, and the District of Columbia. For
7 instance, “clear and convincing evidence” is the standard used on Guam in cases of
8 alleged abandonment and abuse. 19 GCA § 13101.

9 *I Liheslaturan Guåhan* further finds that no statute terminating parental rights
10 of rapists exists under Guam law. Under 19 GCA § 4303(a), “The parent-child
11 relationship may be terminated with respect to the parent by whom or on whose
12 behalf such petition has been filed, where the court finds that such termination is in
13 the best interest of the parent and the child.” Under such vague descriptions, a rapist
14 is permitted to pursue custody or visitation rights of their biological offspring so long
15 as they are not deemed an unfit parent to the child. *I Liheslaturan Guåhan* therefore
16 finds it necessary to add clear statutory language to protect the interest of the child
17 and the victim from the perpetrator of criminal sexual conduct.

18 **Section 2.** A new Subsection (b)(5) is hereby *added* to § 4303 of Article 3,
19 Chapter 4, Title 19, Guam Code Annotated, to read:

20 “(5) that the parent is found by clear and convincing evidence to have
21 committed an act of criminal sexual conduct as defined in 9 GCA § 25.15, 9
22 GCA § 25.20, 9 GCA § 25.25, or 9 GCA § 25.30, or other equivalent offense
23 under the laws of another state, territory, or possession, against the petitioner,
24 which resulted in the conception of the child. A criminal conviction of
25 criminal sexual conduct is not required to terminate parental rights under this
26 Paragraph.

1 (A) It is a rebuttable presumption that termination of parental
2 rights is in the best interest of the child if the child was conceived as a
3 result of criminal sexual conduct; except, that if both parents are at least
4 fourteen (14) years of age but no greater than seventeen (17) years of
5 age, the presumption shall not apply and the court must determine if
6 termination of the parental rights of the biological parent is in the best
7 interest of the child.

8 (B) The court may order the parent to pay child support;
9 termination of parental rights under this Section shall not be a defense
10 to such support order.

11 (C) The court may order that the child's inheritance rights be
12 preserved; termination of parental rights under this Section shall not be
13 a defense to such order."

14 **Section 3.** A new Subsection (e) is hereby *added* to § 4305 of Article 3,
15 Chapter 4, Title 19, Guam Code Annotated, to read:

16 "(e) If the mother of the child files a petition under § 4303(b)(5) with
17 an affidavit representing that the identity or whereabouts of the child's father
18 is unknown to her, or not ascertainable by her, or that other good cause exists
19 why notice cannot or should not be given to the father, the court shall conduct
20 a hearing to determine whether notice is required. If the court finds that good
21 cause exists why notice cannot or should not be given to the child's father,
22 and that the father is neither the legal nor adjudicated nor presumed father of
23 the child, nor has he demonstrated a reasonable degree of interest, concern, or
24 responsibility as to the existence or welfare of the child, then such notice may
25 not be required."

26 **Section 4.** § 4308 of Article 3, Chapter 4, Title 19, Guam Code Annotated,
27 is hereby *amended* to read:

1 **“§ 4308. Hearing.**

2 (a) Cases under this Article shall be heard by the court without a
3 jury. The hearing may be conducted in an informal manner and may be
4 adjourned from time to time. Stenographic notes or mechanical recording of
5 the hearing shall be required as in other civil cases in the court unless all
6 parties waive the right to such record and the court so orders. The general
7 public shall be excluded and only such persons admitted whose presence is
8 requested by any person entitled to notice under § 4305 or as the judge shall
9 find to have a direct interest in the case or in the work of the court; provided
10 that persons so admitted shall not disclose any information secured at the
11 hearing which would identify an individual child or parent. In addition, the
12 court may require the presence of witnesses (including persons making any
13 report, study or examination which is before the court when such persons are
14 reasonably available) deemed necessary to the disposition of the petition;
15 except, that a parent who has executed a waiver pursuant to § 4305(d), or
16 whose identity is unknown under § 4305(e), shall not be required to appear at
17 the hearing.

18 (b) When termination of the parent-child relationship is sought
19 under § 4303(b) the parent or guardian ad litem shall be notified as soon as
20 practicable after the filing of a petition and prior to the start of a hearing of his
21 right to have counsel, and if counsel is requested and the parent is financially
22 unable to employ counsel, counsel shall be provided.

23 (c) The court’s finding with respect to grounds for termination shall
24 be based upon a preponderance of evidence under the rules applicable to the
25 trial of civil causes, provided that relevant and material information of any
26 nature, including that contained in reports, studies or examination, may be
27 admitted and relied upon to the extent of its probative value. When

1 information contained in a report, study or examination is admitted in
2 evidence, the person making such a report, study or examination shall be
3 subject to both direct and cross-examination when he is reasonably available.

4 (d) Where the termination is sought under § 4303(b)(4) to support a
5 decree of termination, evidence of the alleged condition shall be no less than
6 that required to support involuntary hospitalization pursuant to 10 GCA
7 Chapter 82, Article 3.

8 (e) Where the termination is sought under § 4303(b)(5) to support a
9 decree of termination, the standard of proof shall be by clear and convincing
10 evidence.”

11 **Section 5. 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.