

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 |
|--------------|---------------------|---|-----------------------|---------------|---------------|---------------------|-----------------------------|--------------|-------|
| 162-35 (COR) | Mary Camacho Torres | AN ACT TO AMEND § 4303 OF 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 AGAINST THE OTHER PARENT AN ACT OF SEXUAL ASSAULT, AS DEFINED IN 9 GCA §25.10(a)(9), RESULTING IN THE CONCEPTION OF THE CHILD. | 6/10/19 11:13 a.m. | | | | | | |

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

Bill No. **162**-35 (COR)

Introduced by:

Mary Camacho Torres **Wet**

AN ACT TO AMEND § 4303 OF 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 AGAINST THE OTHER PARENT AN ACT OF SEXUAL ASSAULT, AS DEFINED IN 9 GCA §25.10(a)(9), RESULTING IN THE CONCEPTION OF THE CHILD.

2019 JUN 10 AM 11:13KE

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

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

9 *I Liheslaturan Guåhan* further finds that, Guam has the second highest
10 number of sexual assaults per capita with 64.2 reported rapes per 100,000 people
11 (National Organization of Asians and Pacific Islanders Ending Sexual Violence).
12 While there is no accessible data on the number of pregnancies resulting from rape
13 on Guam, the *American Journal of Obstetrics and Gynecology* estimates a

1 pregnancy rate of 5% per rape among victims aged 12-45. Local news reports further
2 affirm the presence of rape-related pregnancies on island—most recently with the
3 reporting of a 38-year old man charged in the Superior Court of Guam for raping
4 and impregnating an 11-year-old girl.

5 *I Liheslaturan Guåhan* recognizes that, for various personal reasons, a victim
6 of sexual assault or sexual exploitation may choose to keep and raise the child
7 conceived through rape. In these cases, legal recourse for rape victims is necessary
8 to prevent their attackers from exercising parental rights over the child. Continued
9 interaction with the perpetrator of abuse can have traumatic psychological effects on
10 the victim, making recovery more difficult, and negatively affecting the victim’s
11 ability to parent and to provide within the best interests of the child. Additionally, *I*
12 *Liheslaturan Guåhan* recognizes that a perpetrator may use the threat of pursuing
13 parental rights and responsibilities to coerce a victim into not reporting or assisting
14 in the prosecution of the perpetrator for the sexual assault or sexual exploitation (e.g.,
15 “don’t testify and I won’t seek visitation”), or to harass, intimidate, or manipulate
16 the victim.

17 *I Liheslaturan Guåhan* further finds that, 45 U.S. states and the District of
18 Columbia offer protection for rape victims by limiting the parental rights of their
19 rapists while approximately 33 require complete termination (National Conference
20 of State Legislatures: Parental Rights and Sexual Assault). Moreover, 25 of these
21 states require “clear and convincing evidence” that a person is a rapist, rather than a
22 conviction.

23 *I Liheslaturan Guåhan* further finds that requiring a conviction before
24 termination of parental rights does not offer adequate legal protection for victims
25 due to the disproportionately low number of sexual assaults resulting in convictions.
26 According to the Rape, Abuse, and Incest National Network (RAINN),
27 approximately five rapists are convicted of sexual assault for every 1,000 rapes.

1 Moreover, a report conducted by the National Institute of Justice found that less than
2 20% of adult women who were raped report such incidents to law enforcement. Of
3 the 37% of rapes that go on to be prosecuted, less than half have resulted in
4 conviction.

5 *I Liheslaturan Guåhan* further finds that laws requiring a conviction may deter
6 victims from pursuing termination of parental rights due to the traumatizing
7 experience of re-living the assault at trial during which victims are often forced to
8 repeatedly face their rapist, recount their assault in excruciating detail, and risk
9 further delay of recovery (*Journal of Personality and Social Psychology*, 1980).

10 *I Liheslaturan Guåhan* further finds that the U.S. Supreme Court established
11 that the clear and convincing evidence standard satisfies due process for allegations
12 regarding the termination or restriction of parental rights in *Santosky v. Kramer*, 455
13 U.S. 745 (1982). According to the Supreme Court in *Colorado v. New Mexico*, 467
14 U.S. 310 (1984), “clear and convincing” means that the evidence is highly and
15 substantially more likely to be true than untrue; the fact finder must be convinced
16 that the contention is highly probable. Consequently, the clear and convincing
17 evidence standard is the most common standard for termination of parental rights
18 among the fifty states, the territories, and the District of Columbia. For instance,
19 “clear and convincing evidence” is the standard used on Guam in cases of alleged
20 abandonment and abuse (§ 13101, 19 GCA).

21 *I Liheslaturan Guåhan* further finds that no statute terminating parental rights
22 of rapists exists under Guam law. Under §4303(a) of Chapter 4, Title 19 Guam Code
23 Annotated, “the parent-child relationship may be terminated with respect to the
24 parent by whom or on whose behalf such petition has been filed, where the court
25 finds that such termination is in the best interest of the parent and the child.” Because
26 this definition only permits terminating a rapist’s parental rights if someone proves
27 that the rapist is an unfit parent—*I Liheslaturan Guåhan* finds it necessary to add

1 clear statutory language to protect the interest of the child and the victim of sexual
2 assault.

3 **Section 2.** § 4303, Chapter 4 of Title 19, Guam Code Annotated is hereby
4 *amended* to read:

5 **“§ 4303. Petition, Grounds.**

6 (a) A petition may be filed by a parent either directly or through the
7 Division. The parent-child relationship may be terminated with respect to the parent
8 by whom or on whose behalf such petition has been filed, where the court finds that
9 such termination is in the best interest of the parent and the child.

10 (b) A petition for termination of the parent-child relationship with respect
11 to a parent who is not the petitioner may be filed by a petitioner designated in
12 Subsection (c). The petition may be granted where the court finds that one or more
13 of the following conditions exists:

14 (1) that the parent has abandoned the child in that the parent has
15 made no effort to maintain a parental relationship with such child;

16 (2) that the parent has substantially and continuously or repeatedly
17 neglected the child;

18 (3) that the presumptive parent is not a natural parent of the child;

19 (4) that the parent is unable to discharge parental responsibilities
20 because of mental illness or mental deficiency, and there are reasonable
21 grounds to believe that such condition will continue for a prolonged
22 indeterminate period.

23 (5) that the parent is found by clear and convincing evidence to have
24 committed against the other parent an act of sexual assault as defined in 9
25 GCA §25.10(a)(9), resulting in the conception of the child. A criminal
26 conviction of the sexual act is not required to terminate parental rights under
27 this paragraph.

1 (A) If the mother of the child files with the petition an affidavit
2 representing that the identity or whereabouts of the child's father is
3 unknown to her or not ascertainable by her or that other good cause
4 exists why notice cannot or should not be given to the father, the court
5 shall conduct a hearing to determine whether notice is required. If the
6 court finds that good cause exists why notice cannot or should not be
7 given to the father, the court may enter an order authorizing the
8 termination of the father's parental rights and/or the subsequent
9 adoption of the child without notice to the father.

10 (B) The court may order the child's natural parent to pay child
11 support.

12 (c) The petition under Subsection (b) may be filed by the following:

13 (1) either parent when termination of the parent-child relationship
14 is sought with respect to the other parent;

15 (2) the guardian of the person or the legal custodian of the child or
16 the person standing in loco parentis to the child;

17 (3) the Division;

18 (4) any other person having a legitimate interest in the matter.”

19 **Section 3. Severability.** If any provision of this Act or its application to any
20 person or circumstance is held invalid, the invalidity shall not affect other provisions
21 or applications of this Act which can be given effect without the invalid provision
22 or application and to this end the provisions of this Act is severable.