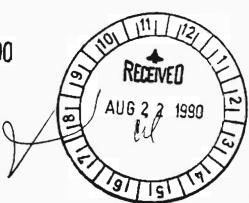


Territory of Suam Teritorion Suam

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The Honorable Joe T. San Agustin Speaker, Twentieth Guam Legislature 155 Herman Cortez Street Agana, Guam 96910

Dear Mr. Speaker:

Transmitted herewith is Bill No. 1141, which I have signed into law this date as Public Law 20-209.

Sincerely, JOSEPH F. ADA Governor

Attachment



## TWENTIETH GUAM LEGISLATURE 1990 (SECOND) Regular Session

## CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

This is to certify that Substitute Bill No. 1141 (LS), "AN ACT TO AMEND SUBSECTION (b) OF §25.30 OF TITLE 9, GUAM CODE ANNOTATED, ON SEXUAL BATTERY; TO ADD NEW §§75.80 AND 75.85 TO TITLE 8, GUAM CODE ANNOTATED, ON SEX OFFENSES; TO REPEAL ARTICLE 5 OF CHAPTER 2 OF TITLE 10, GUAM CODE ANNOTATED, ON CHILD PROTECTION; AND TO ADD A NEW CHAPTER 88 TO TITLE 10, GUAM CODE ANNOTATED, ESTABLISHING A "CHILD PROTECTIVE ACT" AND A "CHILD ABUSE AND NEGLECT REPORTING ACT"," was on the 1st day of August, 1990, duly and regularly passed.

JOE T. SAN AGUŠTIN Speaker

Attested:

Senator and Legislative Secretary

This Act was received by the Governor this <u>1046</u> day of <u>Qualit</u> 1990, at <u>11.30</u> o'clock <u>R</u>.m.

Chinese G. Duenas

Assistant Staff Officer Governor's Office

APPROVED:

JOSEPH F. ADA Governor of Guam

Date: August 22, 1990

Public Law No. 20-209

## TWENTIETH GUAM LEGISLATURE 1989 (FIRST) REGULAR SESSION

Bill No. 1141 (LS) As substituted by the Committee on Judiciary and Criminal Justice

Introduced by:

- P. C. Lujan
- E. P. Arriola
- T. S. Nelson
- H. D. Dierking
- M. Z. Bordallo
- M. C. Ruth
- A. R. Unpingco
- M. D. A. Manibusan
- J. P. Aguon
- C. T. C. Gutierrez
- G. Mailloux
- D. Parkinson
- F. J. A. Quitugua
- E. D. Reyes
- J. T. San Agustin
- F. R. Santos
- J. G. Bamba
- D. F. Brooks
- E. R. Duenas
- E. M. Espaldon
- T. V. C. Tanaka

AN ACT TO AMEND SUBSECTION (b) OF §25.30 OF TITLE 9, GUAM CODE ANNOTATED, ON SEXUAL BATTERY; TO ADD NEW §§75.80 AND 75.85 TO TITLE 8, GUAM CODE ANNOTATED, ON SEX OFFENSES; TO REPEAL ARTICLE 5 OF CHAPTER 2 OF TITLE 10, GUAM CODE ANNOTATED, ON CHILD PROTECTION; AND TO ADD A NEW CHAPTER 88 TO TITLE 10, GUAM CODE ANNOTATED, ESTABLISHING A "CHILD PROTECTIVE ACT" AND A "CHILD ABUSE AND NEGLECT REPORTING ACT".

- BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM: 1 2 Section 1. Subsection (b) of §25.30, Title 9, Guam Code Annotated, is amended to 3 read: Criminal sexual conduct in the fourth degree is "(b) a 4 felony of the third degree, except for first time offenders it is 5 a 6 misdemeanor." Section 2. §75.80 is added to Title 8, Guam Code Annotated, to read: 7 <sup>875.80</sup>. Sex Offense Case, Attendance of Supporting Persons 8 at 9 Testimony of Prosecuting Witness 17 Years of Age or Under. Notwithstanding any other provision of law, a prosecuting 10(a) witness 17 years of age or under in a case involving violation of any 11 sexual offense defined in Chapter 25 of Title 9, Guam Code Annotated, 12 or a violation of §31.30 of said title shall be entitled for support to the 13 attendance of up to two persons of his or her own choosing, one of 14 whom may be a witness, at the Grand Jury proceeding, preliminary 15 hearing and at the trial, during the testimony of the prosecuting 16 Only one of those support persons may accompany the witness 17 witness. to the witness stand although the other person may remain in the 18 courtroom during the witness' testimony. The support persons shall not 19 20 make notes during the hearing or proceeding. In the case of a Grand 21 the prosecuting attorney shall inform the support Jury proceeding, person or persons that Grand Jury proceedings are confidential and may 22 23 not be discussed with anyone not in attendance at the proceedings.
- 24 If the person or persons so chosen are also prosecuting (b) witnesses, the prosecution shall present evidence that the person's 25 26 attendance is both desired by the prosecuting witness for support and 27 will be helpful to the prosecuting witness. Upon that showing, the court 28 shall grant the request unless information presented by the defendant 29 or noticed by the court establishes that the support person's attendance 30 during the testimony of the prosecuting witness would pose a 31 substantial risk of influencing or affecting the content of that testimony. 32 In all cases, the judge shall admonish the support person or persons to 33 not prompt, sway or influence the minor witness in any way.

For purposes of this section, members of a prosecuting witness' 1 shall include the prosecuting witness' parents, legal guardian, 2 family grandparents, uncles, aunts or siblings." 3 Section 3. §75.85 is hereby added to Title 8, Guam Code Annotated, to 4 5 read: "§75.85. Child Witness Comfort, Support and Protection. 6 7 Notwithstanding any other provision of law, at any criminal 8 proceeding in which a minor under the age of 18 is a prosecuting witness, the court shall take special precautions to provide for the 9 comfort and support of the minor and to protect the minor from 10 coercion, intimidation or undue influence as a witness." 11 Section 4. Article 5 of Chapter 2 of Title 10 Guam Code Annotated is 12 repealed in its entirety. 13 Section 5. A new Chapter 88 is added to Title 10, Guam Code Annotated, 14 15 to read: 16 **"CHAPTER 88** CHILD PROTECTIVE ACT 17 18 Article 1. Definitions. 19 §88100. Short title; purpose; construction. 20§88101. Definitions. 21 Article 2. Child Abuse and Neglect Reporting Act. 22 Short title; intent and purpose of article. **§88200**. 23 Persons required to report suspected child abuse §88201. 24 or neglect. 25 **§88202**. Any person permitted to report. 26 Reporting responsibilities. §88203. 27 §88204. Cooperative arrangements for investigations; 28 written findings; report. 29 §88205. Mandatory reporting and post-mortem 30 investigation of deaths. 31 §88206. Immunity from liability. 32 §88207. Penalty for failure to report. 33 §88208. Recordkeeping duties of Child Protective 34 Services.

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1	§88209.	Duties of Child Protective Services concerning
2		reports of abuse.
3	<b>§88210</b> .	Confidentiality.
4	<b>§88211</b> .	Regulations; authority to make.
5	<b>§88212</b> .	Severability clause.
6	Article 3.	Child Protective Services.
7	<b>§88300</b> .	Jurisdiction.
8	<b>§88301</b> .	Authorization for department to act.
9	<b>§88302</b> .	Protective custody by police officer, Child
10		Protective Services social worker or physician
11		without court order.
12	<b>§88303</b> .	Authorization for photographs, x-rays and
13		radiological or other diagnostic examination.
14	§88304.	Service plan.
15	§88305.	Petition.
16	§88306.	Summons.
17	§88307.	Service of summons.
18	§88308.	Guardian ad litem; counsel.
19	§88309.	Reports to be submitted by Child Protective
20		Services; social worker expertise.
21	<b>§88310.</b>	Evidentiary determination; burden of proof.
22	<b>§88311</b> .	Evidence may be inadmissible in other actions or
23		proceedings; testimony by a child.
24	<b>§88312.</b>	Recording a statement or the testimony of a
25		child.
26	§88313.	Admissibility of evidence.
27	<b>§88314</b> .	Required findings concerning notice prior to a
28		hearing in a child protective proceeding.
29	§88315.	Order of protection.
30	<b>§88316</b> .	Temporary foster custody hearing.
31	§88317.	Preliminary hearing.
32	§88318.	Answering date; fact-finding hearing.
33	§88319.	Sustaining or dismissing petition; interim orders.
34	<b>§88320</b> .	Disposition hearing.

1	§88321.	Long-term foster custody.
2	<b>§88322</b> .	Progress hearings.
3	<b>§88323</b> .	Permanency plan.
4	<b>§88324</b> .	Permanency plan hearing.
5	§88325.	Payment for service or treatment provided to a
6		party or for a child's care, support or treatment.
7	<b>§88326</b> .	Failure to comply with terms or conditions of an
8		order of the court.
9	<b>§88327</b> .	Appeal.
10	<b>§88328</b> .	Court records.
11	<b>§88329</b> .	Confidentiality.
12	<b>§88330</b> .	Cooperation.
13	<b>§88331</b> .	Multidisciplinary teams.
14	<b>§88332.</b>	Fiscal responsibility.
15	§88333.	Regulations; authority to make.
16	§88334.	Severability clause.
17	§88335.	Effective date.
18		Article 1
19		Definitions
20	§88100. Short	title; purpose; construction. This Chapter, which
21	shall be called and m	nay be cited as the "Child Protective Act", creates

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treat and provide permanent planning for children who have been 24 harmed or threatened with harm. 25 Legislature finds that children The deserve and require competent, responsible parenting and safe, secure, loving and nurturing 26 27 homes. The Legislature finds that children who have been harmed and 28 threatened with harm are less likely than other children to realize their full educational, vocational and emotional potential, less likely to

within the jurisdiction of the Family Court procedures to safeguard,

full educational, vocational and emotional potential, less likely to become law-abiding, productive, self-sufficient citizens, and are more likely to become involved with the mental health system, the juvenile justice system or the criminal justice system, as well as become an economic burden on the government of Guam. The Legislature finds that prompt identification, reporting, investigation, adjudication, treatment and disposition of cases involving children who are harmed or threatened with harm are in both the children's and society's best interests because such children are exploitable and vulnerable and have limited defenses.

The policy and purpose of this Chapter are to provide children with prompt and ample protection from the harms detailed herein, with an opportunity for timely reconciliation with their families where practical, and with timely and permanent planning so they may develop and mature into responsible, self-sufficient and law-abiding citizens. This permanent planning should effectuate placement with a child's own family when possible and should be conducted in an expeditious fashion so that where return to the child's family is not possible as provided in this Chapter, such children will be promptly and permanently placed with responsible and competent substitute parents and families, with their places in such families secured by adoption or permanent custody orders.

This Chapter shall be liberally construed to serve the best interests of the children and the purposes set out in this Chapter.

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§88101. Definitions. For purposes of this Chapter:

(a) "Abandonment" means the desertion or willful forsaking of a minor by the person responsible for the child's welfare under circumstances in which a reasonable person would continue to provide care or custody;

(b) "Abused or neglected child" means a child whose physical or mental health or welfare is harmed or threatened with harm by the acts or omissions of the person(s) responsible for the child's welfare;

(c) "Authorized agency" means a department or other public or
 private agency, or a person, organization, corporation, or benevolent
 society or association which is licensed or approved by such department
 or agency or the court to receive children for control, care, maintenance
 or placement;

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(d) "Child" means a person under the age of 18 years;

33 (e) "Child protective agency" means the Guam Police Department,
 34 the Office of Special Investigation, Naval Investigative Service, the

Attorney General's Office, or the Department of Public Health and Social Services and its authorized representatives, including but not limited to Child Protective Services;

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(f) "Child protective proceeding" means any action, hearing or other civil proceeding before the court under this Chapter;

(g) "Child Protective Services" means the agency established by §88301 of this Chapter under the Department of Public Health and Social Services;

9 (h) "Clear and convincing evidence" means that measure of 10 degree of proof which will produce in the mind of the trier of fact a firm 11 belief or conviction as to the truth of the allegations sought to be 12 established;

(i) "Criminal history record check" means an examination of an 13 individual's criminal history record through fingerprint analysis or 14 name inquiry into territorial, state and national criminal history record 15 16 files, including but not limited to the files of the Federal Bureau of Investigation, the Guam Police Department, the Prosecution Division of 17 the Attorney General's Office, and the Child Protective Services; 18 provided, that the information obtained shall be used exclusively for 19 purposes under this Chapter and shall be subject to applicable federal 20 and local laws and regulations; 21

(j) "Department" means the Department of Public Health and
Social Services and its authorized representatives, including but not
limited to the Child Protective Services;

25 (k) "Disposition" hearing means a hearing held pursuant to
§88320 of this Chapter;

(1) "Expunge" means to strike out or obliterate entirely so that the expunged information may not be stored, identified or later recovered by any means: mechanical, electronic or otherwise;

30 (m) "Fact-finding hearing" means an adjudicatory hearing held
31 pursuant to §88318 of this Chapter to determine the truth of the
32 allegations contained in the petition filed under this Chapter;

33 (n) "Family" means each legal parent, the grandparents, each
 34 parent's spouse, each sibling or person related by consanguinity up to

the second degree or by marriage, each person residing in the same dwelling unit, and any other person or legal entity which is a child's legal or physical custodian or guardian, or who is otherwise responsible for the child's care;

(o) "Family Court" means the court established pursuant to §5101, Title 9, Guam Code Annotated;

(p) "Family home" means the home of the child's parents or legal custodian where there is the provision of care for the child's physical and psychological health and welfare;

(q) "Foster care" means when a child is placed, pursuant to an order of the court, in a residence which has been designated as suitable by an authorized agency or the court for the appropriate care of a child;

(r) "Foster custody" means the legal status created by an order of the court after the court has determined that the child's family is not presently willing and able to provide the child with a safe family home;

16 (s) "Guardian ad litem" means a person appointed by the court
17 pursuant to §88308 of this Chapter whose role is to protect and promote
18 the needs and interests of the child or ward;

(t) "Harm to a child's physical health or welfare" occurs in a case where there exists evidence of injury, including but not limited to:

(1) Any case where the child exhibits evidence of:

- (A) skin bruising or any other internal bleeding,
  - (B) any injury to skin causing bleeding,
- (C) burn or burns,
  - (D) poisoning,
    - (E) fracture of any bone,
- (F) subdural hematoma
- (G) soft tissue swelling,

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- (H) extreme pain,
  - (I) death or

31(J) disfigurement or impairment of any bodily32organ, and such injury is inflicted by other than33accidental means, by excessive corporal punishment or34where the history given concerning such condition or

death is at variance with the degree or type of such condition or death; or

(2) Any case where the child has been the victim of a sexual offense as defined in the Criminal and Correctional Code; or

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(3) Any case where there exists injury to the psychological capacity of a child such as failure to thrive, extreme mental distress, or gross emotional or verbal degradation as is evidenced by an observable and substantial impairment in the child's ability to function within a normal range of performance with due regard to the child's culture; or

11 (4) Any case where the physical health of the child is 12 adversely affected because the person responsible for the child's 13 welfare has not regularly provided the child, in a timely manner, with adequate food, clothing, shelter, psychological care, physical 14 15 care, health care or supervision, when financially able to do so or if offered financial assistance or health care or other reasonable 16 17 means to do so. "Adequate health care" includes any medical or 18 non-medical health care permitted or authorized under territorial 19 laws; provided, however, that a person responsible for the child's 20 welfare who, while legitimately practicing his or her religious 21 beliefs, does not specify medical treatment for a child should not for that reason alone be considered as harming or threatening 22 23 harm to the child; or

(5) Any case where the child is provided with a controlled
substance as defined by the Criminal and Correctional Code.
However, this paragraph shall not apply to a child's family who
provides such drugs to the child pursuant to the direction or
prescription of a practitioner as defined in §67.12(t) of the
Criminal and Correctional Code of Guam; or

30 (6) Any case where the child is abandoned.
31 (u) "Indicated report" means a report made pursuant to this
32 Article if an investigation by a child protective agency results in a
33 determination by Child Protective Services that substantial evidence of
34 the alleged abuse exists based on available medical evidence and the

investigation or an admission of the acts of harm or threatened harm by the person responsible for the child's welfare;

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(v) "Licensing agency" means any department or agency that licenses child care facilities;

(w) "Long-term foster custody" means the legal status created by order of the court after the court has determined by clear and convincing evidence that it is in the best interests of the child to order an appropriate long-term plan concerning the child;

(x) "Party" means an authorized agency, the child, the child's family member or members who are required to be summoned pursuant to §88306 of this Chapter, any other member of the child's family, or any other person who is alleged in the petition filed under this Chapter or who is subsequently determined at any child protective proceeding to be encouraging, causing or contributing to the acts or condition which bring the child within this Chapter;

16 (y) "Permanency plan" is a specific written plan prepared by
17 Child Protective Services which sets forth the goal of the child's
18 permanent placement as being either adoption, permanent foster
19 custody with subsequent adoption or guardianship, or permanent foster
20 custody until majority.

(z) "Permanency plan hearing" means a hearing held pursuant to
§88324 of this Chapter.

(aa) "Person responsible for the child's welfare" includes the
child's parent, guardian, foster parent, an employee of a public or
private residential home or an institution or authorized agency
responsible for the child's welfare;

(bb) "PINS" means a person in need of services who has been
harmed as defined in this §88101.

(cc) "Police officer" means a person employed by the government
of Guam to enforce the laws and ordinances for preserving the peace,
safety, and good order of the community;

32 (dd) "Preliminary hearing" means a hearing held pursuant to
33 §88317 of this Chapter;

(ee) "Preponderance of evidence" means evidence which as a whole shows that the fact sought to be proved is more probable than not;

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(ff) "Progress hearing" means any hearing held pursuant to §88322 of this Chapter;

(gg) "Protective custody" means the legal status of a child whose physical custody is retained by a police officer, Child Protective Services social worker or physician pursuant to §88302 of this Chapter in order to protect such child from harm or threatened imminent harm;

10 (hh) "Reasonable cause to believe" means evidence which would 11 cause a reasonable person to believe;

(ii) "Service plan" means a specific written plan prepared by Child Protective Services and presented to members of the child's family which indicates the specific services or treatment with which the parties will be provided, the specific actions the parties must take, the specific responsibilities that the parties must assume, and the specific consequences that may be reasonably anticipated to result from the parties' success or failure in complying with the plan;

(jj) "Subject of the report" means any child reported to the central
register of child abuse and the person(s) responsible for the child's
welfare named in the report;

(kk) "Substantiated report" means a report made pursuant to this
Chapter if there has been any judicial adjudication based on a finding
that a child who is a subject of the report is an abused or neglected
child;

26 (11) "Suspected report means" any report that is not indicated,
27 substantiated or unsubstantiated;

(mm) "Temporary foster custody" means a legal status created
under this Chapter pursuant to an order of the court whereby the
Department assumes the duties and rights of a foster custodian over a
child;

32 (nn) "Threatened harm" means any reasonably foreseeable,
33 substantial risk of harm to a child with due consideration being given to
34 the age of the child;

(oo) "Unsubstantiated report" means any report made pursuant to this Chapter if an investigation by a child protective agency results in a determination by Child Protective Services that substantial evidence of the alleged abuse does not exist.
 Article 2
 Child Abuse and Neglect Reporting Act §88200. Short title; intent and purpose of article.

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(a) This article shall be known and may be cited as the Child Abuse and Neglect Reporting Act.

(b) The intent and purpose of this article is to protect children from abuse. In any investigation of suspected child abuse, all persons participating in the investigation of the case shall consider the needs of the child victim and shall do whatever is necessary to prevent psychological harm to the child victim.

15 §88201. Persons required to report suspected child abuse or
16 neglect.

17 Any person who, in the course of his or her employment, (a) 18 occupation or practice of his or her profession, comes into contact with 19 children shall report when he or she has reason to suspect on the basis 20of his medical, professional or other training and experience that a child 21 is an abused or neglected child. No person may claim "privileged 22 communications" as a basis for his or her refusal or failure to report 23 suspected child abuse or neglect or to provide Child Protective Services 24 or the Guam Police Department with required information. Such 25 privileges are specifically abrogated with respect to reporting suspected 26 child abuse or neglect or of providing information to the agency.

27 **(b)** Persons required to report suspected child abuse under 28 subsection (a) include but are not limited to any licensed physician, 29 medical examiner, dentist, osteopath, optometrist, chiropractor, 30 podiatrist, intern, registered nurse, licensed practical nurse, hospital 31 personnel engaged in the admission, examination, care or treatment of 32 persons, Christian Science practitioner, school administrator, school 33 teacher, school nurses, school counselor, social services worker, day care

center worker or any other child care or foster care worker, mental health professional, peace officer or law enforcement official.

(c) Any commercial film and photographic print processor who has knowledge of or observes, within the scope of his or her professional capacity or employment, any film, photograph, video tape, negative or slide depicting a child under the age of 18 engaged in an act of sexual conduct shall report such instances of suspected child abuse to Child Protective Services immediately or as soon as practically possible by telephone and shall prepare and send a written report of it with a copy of the film, photograph, video tape, negative or slide attached within 48 hours of receiving the information concerning the incident. As used in this section, "sexual conduct" means any of the following:

(1) Sexual intercourse, including genital-genital, oralgenital, anal-genital or oral-anal, whether between persons of the same or opposite sex or between humans and animals;

(2) Penetration of the vagina or rectum by any object;

(3) Masturbation, for the purpose of sexual stimulation or the viewer;

(4) Sadomasochistic abuse for the purpose of sexual stimulation of the viewer; or

(5) Exhibition of the genitals, pubic or rectal areas of any person for the purpose of sexual stimulation to the viewer.

\$88202. Any person permitted to report. In addition to those
persons and officials required to report suspected child abuse or
neglect, any person may make such report if that person has reasonable
cause to suspect that a child is an abused or neglected child.

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§88203. Reporting responsibilities.

(a) Reporting procedures. Reports suspected child abuse or
neglect from persons required to report under §88201 shall be made
immediately by telephone and followed up in writing within 48 hours
after the oral report. Oral reports shall be made to Child Protective
Services or to the Guam Police Department.

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(b) Cross reporting among agencies.

(1) Child Protective Services shall immediately or as soon as practically possible report by telephone to the Guam Police Department and to the Attorney General's Office every known or suspected instance of child abuse as defined in §88101, except acts or omissions coming within subsection (t) (4) of §88101. Child Protective Services shall also send a written report thereof within 48 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subsection.

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The Guam Police Department shall immediately or as soon as 10 (2)practically possible report by telephone Child Protective Services and to 11 12 the Attorney General's Office every known or suspected instance of child abuse reported to it, except acts or omissions coming within 13 14 subsection (t) (4) of §88101, which shall only be reported to Child 15 Protective Services. However, the Guam Police Department shall report to Child Protective Services every known or suspected instance of child 16 abuse reported to it which is alleged to have occurred as a result of 17 18 inaction of a person responsible for the child's welfare to adequately protect the minor from abuse when such person knew or reasonably 19 20 should have known that the minor was in danger of abuse. The Guam 21 Police Department shall also send a written report thereof within 48 2.2 hours of receiving the information concerning the incident to any 23 agency to which it is required to make a telephone report under this 24 subsection.

(3) Child Protective Services and the Guam Police
Department shall immediately, or as soon as practically possible,
report by telephone to the appropriate Department of Defense
Family Advocacy Program every known or suspected instance of
child abuse reported to them when such report involves active
duty military personnel or their dependents.

31(c) Contents of report. Reports of child abuse or neglect should32contain the following information:

33 (1) Every report of a known or suspected instance of child
34 abuse should include the name of the person making the report,

the name, age and sex of the child, the present location of the child, the nature and extent of injury, and any other information, including information that led that person to suspect child abuse, that may be requested by the child protective agency receiving the report. Persons who report pursuant to §88202 shall be required to reveal their names;

(2) Other information relevant to the incident of child abuse may also be given to an investigator from a child protective agency who is investigating the known or suspected case of child abuse;

(3) The name of the person or persons responsible for causing the suspected abuse or neglect;

(4) Family composition;

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14(5) The actions taken by the reporting source, including the15taking of photographs and x-rays, removal or keeping of the child16or notification of the medical examiner; and

17(6) Any other information which the child protective18agency may, by regulation, require.

(d) Identity of person reporting. The identity of all persons who
report under this Article shall be confidential and disclosed only among
child protective agencies, to counsel representing a child protective
agency, to the Attorney General's Office in a criminal prosecution or
Family Court action, to a licensing agency when abuse in licensed outof-home care is reasonably suspected, when those persons who report
waive confidentiality, or by court order.

(e) Reporting forms. The reporting forms developed pursuant to
\$88204 shall be made available to all persons required to report under
\$88201.

\$88204. Cooperative arrangements for investigation; written
findings; report. The Guam Police Department and Child Protective
Services shall develop and implement cooperative arrangements to
coordinate existing duties in connection with the investigation of
suspected child abuse. Child Protective Services shall initiate the
development and implementation of these arrangements, including the

development and distribution of reporting forms. The Guam Police Department shall report to Child Protective Services that it is investigating a case within 36 hours after starting its investigation. In cases where a minor is a victim of criminal sexual conduct, Child Protective Services shall evaluate what action or actions would be in the best interests of the child victim in accordance with subsection (b) of §88200 of this Article. Except for acts or omissions coming within subsection (t) (4) of §88201, Child Protective Services shall submit in writing its findings and the reasons for them to the Attorney General's Office on or before the completion of the investigation.

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§88205. Mandatory reporting and post-mortem investigation of deaths. Any person or official required to report suspected child abuse or neglect who has reasonable cause to suspect that a child died as a result of child abuse or neglect shall report that fact to the chief medical examiner. The chief medical examiner shall accept the report for investigation and shall report his or her findings to the Guam Police Department, the Attorney General's Office, Child Protective Services and, if the report is made by hospital personnel to the hospital.

19 Immunity from liability. **§88206**. Any person, hospital, 20 institution, school, facility or agency participating in good faith in the 21 making of a report or testifying in any proceeding arising out of an 22 instance of suspected child abuse or neglect, the taking of photographs 23 or the removal or keeping of a child pursuant to §88302 of the Child 24 Protective Act shall have immunity from any liability, civil or criminal, 25 that might otherwise result by reason of such actions. For the purpose 26 of any proceeding, civil or criminal, the good faith of any person 27 required to report cases of child abuse or neglect pursuant to §88201 28 shall be presumed.

\$88207. Penalty for failure to report. Any person required to
report pursuant to \$88201 who fails to report an instance of child abuse
which he or she knows to exist or reasonably should know to exist is
guilty of a misdemeanor and is punishable by confinement for a term
not to exceed six months, by a fine of not more than \$1,000 or by both.
A second or subsequent conviction shall be a felony in the third degree.

Fines imposed for violations of this Chapter shall be deposited in the Victims Compensation Fund.

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§88208. Recordkeeping duties of Child Protective Services.

(a) There shall be established in Child Protective Services (i) an active file of child abuse or neglect reports under investigation and those where services are being provided; (ii) a central register of child abuse or neglect which shall consist of substantiated and indicated reports of child abuse or neglect; and (iii) a suspected file as provided in subsection (e) below.

(b) Child Protective Services shall establish and maintain a 24hour telephone reporting system that all persons, whether mandated by law or not, may use to report cases of suspected child abuse or neglect.

13 (c) No information shall be released from the central register
14 unless Child Protective Services has positively identified the person
15 requesting the information and Child Protective Services has inquired
16 into and is satisfied that such person has a legitimate need within the
17 scope of §88210 to obtain information from the central register.

18 (d) The central register shall include and shall be limited to the
19 following information:

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(1) the names of the subjects of the report;

(2) the date or dates and the nature and extent of the alleged instances of suspected child abuse or neglect;

(3) the home addresses of subjects of the report;

(4) the age and sex of the children harmed or threatened with harm;

26(5) the locality in which the harm or threatened harm27occurred;

28 (6) whether the report is a substantiated report or an
29 indicated report; and

30(7) the progress of any legal proceedings brought on the31basis of the report of suspected child abuse or neglect.

(e) If an investigation of a report of suspected child abuse or
 neglect does not determine, within 60 days from the date of the report
 of suspected child abuse or neglect, that the report is an indicated

report, substantiated report or an unsubstantiated report, all information identifying the subjects of such report shall be placed in Child Protective Services' suspected file for a period of one year.

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14 15 (f) If an investigation of a report of suspected child abuse or neglect does not determine, within one year of the date of the report of suspected child abuse or neglect, that the report is an indicated report or a substantiated report, such report shall be considered an unsubstantiated report and all information identifying the subjects of such report shall be expunged from Child Protective Services' suspected files.

§88209. Duties of Child Protective Services concerning reports of abuse. Child Protective Services shall:

(1) Receive 7 days a week, 24 hours a day, all reports, both oral and written, of suspected child abuse or neglect in accordance with this Article and the regulations of the Department;

16 (2) Upon receipt of each report of suspected child abuse or neglect, commence within a reasonable time, but not later than 72 17 The investigation shall 18 hours, an appropriate investigation. include a determination of the risk of such child or children if 19 20they continue to remain in the existing home environment, as well 21 as a determination of the nature, extent and cause of any 22 condition enumerated in such report and, after seeing to the 23 safety of the child or children, forthwith notify the subjects of the 24 report orally and in writing of the existence of the report. The 25 investigation shall be completed within 60 days;

(3) The investigation shall determine whether the child is
being harmed by factors beyond the control of the parent or other
person responsible for the child's welfare, and if so determined,
Child Protective Services shall promptly take all available steps to
remedy and correct such conditions, including but not limited to
the coordination of social services for the child and the family;

32(4) Determine within 60 days whether the report is33"indicated," "substantiated" or "unsubstantiated";

(5) Pursuant to the provisions of §88302 of the Child Protective Act take a child into protective custody to protect him or her from further abuse;

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(6) Based on the investigation and evaluation conducted pursuant to this Article, provide or contract with private or public agencies for the protection of the child in his or her home whenever possible or those services necessary for adequate care of the child when placed in protective custody or temporary foster custody. Prior to offering such services to a family, explain that it has no legal authority to compel such family to receive said services but may inform the family of the obligations and authority of Child Protective Services to initiate appropriate court proceedings;

14 (7) In those cases in which an appropriate offer of service is
15 refused and Child Protective Services determines that the best
16 interests of the child require court action, initiate the appropriate
17 court proceeding and request the court to appoint a guardian ad
18 litem for the child;

(8) Assist the court during all stages of the court proceedings in accordance with the purposes of this Article;

(9) Provide or arrange for and monitor rehabilitative services for children and their families on a voluntary basis or under a final or intermediate order of the court; and

24 (10) Child Protective Services shall be as equally vigilant of the status, well-being and conditions under which a child is living 25 26 and being maintained in a facility other than that of his or her 27 parent, custodian or guardian from which he or she has been removed as it is of the conditions in the dwelling of the parent, 28 29 custodian or guardian. Where Child Protective Services finds that the placement for any temporary or permanent custody, care or 30 31 treatment is for any reason inappropriate or harmful in any way to the child's physical or mental well-being, it shall take 32 33 immediate steps to remedy these conditions including petitioning 34 the court.

§88210. Confidentiality.

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(a) Any information received pursuant to this Article which could identify a subject of the report or the person making the report shall be confidential. Any person who will willfully releases or permits the release of any such information to persons or agencies not permitted by this section shall be guilty of a felony of the third degree.

(b) Information received pursuant to this Article may be released, on a need to know basis, and only as necessary to serve and protect the child, to the following, except that release of the identity of persons reporting child abuse is strictly prohibited, unless disclosed pursuant to subsection (d) of §88203:

(1) Multidisciplinary teams established to assist in the disposition of cases pursuant to §88331 of this Chapter;

(2) Courts of competent jurisdiction, upon finding that access to the records may be necessary for determination of an issue before the court. Access shall be limited to inspection by the court only, unless the court determines that disclosure of the records to interested parties is necessary for the resolution of an issue pending before it;

20(3) Grand juries when connected with the prosecution of a21child abuse and neglect case;

(4) Properly constituted authorities or agencies both
military and governmental, investigating a report of known or
suspected child abuse or neglect, or providing services to a child
or family relating to a known or suspected case of child abuse or
neglect, including police departments, prosecutors and attorney
generals;

(5) A physician examining or treating a child, or the
director or a person specifically designated in writing by such
director of any hospital or other medical institution where a child
is being treated, where the physician or the director of his or her
designee suspect the child of being an abused or neglected child;

(6) Any agency or individual authorized, contracted or licensed to diagnose, care or treat a child who is the subject of a report of abuse or neglect;

A person, including but not limited to, a guardian ad (7)litem, attorney for the child, permanent foster or adoptive parent, who is responsible for the welfare of the child named;

A duly authorized official of the Department. (8)

At any time, a victim or alleged victim of child abuse, the (c) parents of a victim or alleged victim of child abuse, or a perpetrator or alleged perpetrator of child abuse, after a court proceeding has been 10 initiated regarding the abuse, may review, upon written request, all information contained in the central register or in any report filed 12 pursuant to §88203, except information which would identify the 13 reporter of the abuse. 14

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Information received pursuant to this Article may be released 15 (d) to sources other than those identified in subsections (b) and (c) only 16 written authorization from an individual designated in 17 when a subsection (c) specifically provides consent to have the record released 18 or reviewed. 19

(e) When information is released under subsection (b) or (d), the 2021 following rules shall apply:

> Medical, psychological or psychiatric information in the (1)department's case record, including diagnosis and past history of disease or disability of a particular individual, shall remain the property of the medical, psychological or psychiatric consultant and an individual requesting this record shall be referred to the original consultant for release of that information;

28 (2) Case records shall be reviewed only in designated areas 29 within Child Protective Services' offices. The records shall not be 30 removed from the premises;

Records shall be released upon an individual's request 31 (3) 32 provided that a signed and dated written request is received 33 stating specifically:

(A) What portion of the record is desired;

Whether the record is desired orally, through **(B)** 1 2 review or by receipt of reproduced copies of the record 3 requested; (C) The name of the individual authorized to receive 4 the record or to review the record, and the individual's 5 agency connection, if any; 6 (D) The purpose for which the record is being sought; 7 The parent's or legal guardian's social security (E) 8 9 number or birthdate and address; and (F) The period of time the authorization is valid, not to 10 exceed ninety days; 11 Reproduced copies of records requested shall be 12 (4)provided at a cost related to the cost of reproduction. Actual 13 14 postage cost shall be charged; Before records are released or reviewed. Child 15 (5)Protective Services shall: 16 (A) Block out the name or other portion of the record 17 identifying the child abuse or neglect complainant; 18 Reproduce a copy of the page from which the 19 **(B)** 20 portion of the record was blocked out; and 21 (C) Allow the individual requesting the information to 22 receive or to review the blocked out page; 23 (6) When the record requested contains or consists of coded 24 or abbreviated material such as computer input or output forms, Child Protective Services shall provide translations of the codes or 25 26 abbreviations, if requested. 27 Regulations; authority to make. The Department shall §88211. 28 adopt regulations necessary to implement this Article pursuant to the 29 Administrative Adjudication Law. Severability clause. If any part of this Article shall be 30 **§88212**. 31 held invalid, such part shall be deemed severable and the invalidity thereof shall not affect the remaining part of this Article. 32 33 Article 3 Child Protective Services 34

§88300. Jurisdiction. The Family Court shall have exclusive original jurisdiction in a child protective proceeding concerning any child who was or is found within Guam at the time such facts and circumstances occurred, are discovered, or are reported to the Department, which facts and circumstances constitute the basis for the finding that the child has been harmed or is subject to threatened harm as defined in §88201.

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§88301. Authorization for Department to act.

The Department shall establish a "Child Protective Services". 9 (a) It shall have a sufficient staff to fulfill the purposes of this Chapter and 10 organized in such a way as to minimize the continuity of responsibility, 11 12 care and services of individual workers toward individual children and 13 families. Child Protective Services and the Guam Police Department 14 shall be the sole agencies responsible for receiving and investigating all 15 reports of child abuse or neglect made pursuant to this Chapter, 16 specifically including but not limited to reports of child abuse or neglect 17 in facilities operated by the Department and other public agencies, for 18 the purpose of providing protective services to prevent further abuses 19 to children and to provide or arrange for and monitor the provision of 20 those services necessary to safeguard and ensure the child's well-being 21 and development and to preserve and stabilize family life wherever 22 appropriate.

23 Upon receiving a report that a child has been harmed or is (b) subject to threatened harm, Child Protective Services shall cause such 24 25 investigation to be made in accordance with this Chapter as it deems to 26 be appropriate. In conducting the investigation Child Protective 27 Services may require the cooperation of police officers or other appropriate law enforcement authorities for phases of the investigation 28 for which they are better equipped and Child Protective Services may 29 30 conduct a criminal history record check concerning an alleged 31 perpetrator of harm or threatened harm to a child.

32 (c) Upon satisfying itself as to the course of action to be pursued,
 33 Child Protective Services shall:

(1) Resolve the matter in such informal fashion as is appropriate under the circumstances;

(2) Seek to enter into a service plan, without filing a petition in court, with such members of the child's family and such other authorized agencies as Child Protective Services deems to be necessary to the success of the service plan, including but not limited to the member or members of the child's family who have legal custody of the child;

9 (3) Assume protective custody of the child pursuant to 10 §88302;

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12 13 (4) File a petition; or(5) Relinquish its protective custody and return the child to

his or her legal custodian.

14 Child Protective Services shall make available among its (d) 15 services for the prevention and treatment of child abuse or neglect multidisciplinary teams, instruction in education for parenthood, 16 17 protective and preventive social counseling, emergency caretaker 18 services and emergency shelter care, emergency medical services and the establishment of group organized by former abusing or neglecting 19 20persons and encourage self-reporting and self-treatment of present 21 abusers.

\$88302. Protective custody by police officer, Child Protective
Services social worker or physician without court order.

24 A police officer, Child Protective Services social worker or (a) physician shall assume protective custody of a child without a court 25 26 order and without the consent of the child's family regardless of 27 whether the child's family is absent if, in the discretion of such police officer, Child Protective Services social worker or physician, the child is 28 in such circumstances or condition that the child's continuing in the 29 30 custody or care of the person responsible for the child's welfare 31 presents a situation of harm or threatened harm to the child.

(b) A police officer or physician who assumes protective custody
 of a child who is harmed or threatened with harm shall immediately
 transfer protective custody to Child Protective Services by presenting

physical custody of the child to Child Protective Services, unless the child is or presently will be admitted to a hospital or similar institution, in which case the police officer or physician shall immediately transfer protective custody to Child Protective Services by so informing Child Protective Services and receiving an acknowledgment from the hospital or similar institution that it has been informed that the child is under the protective custody of Child Protective Services.

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8 (c) When Child Protective Services receives physical custody of a 9 child pursuant to subsection (b) of this section, Child Protective Services 10 shall assume protective custody of a child without an order of the court 11 and without the consent of the child's family regardless of whether the 12 child's family is absent if, in the discretion of Child Protective Services, 13 the child is in such circumstance or condition that the child's continuing in the custody or care of the child's family presents a situation of harm 14 15 or threatened harm to the child.

(d) Upon assuming protective custody of a child under this
Chapter, any authorized individual taking a child into protective custody
shall immediately and within 24 hours, orally and in writing, notify the
person responsible for the child's welfare, the reasons for the need to
take the child into protective custody and shall immediately notify Child
Protective Services.

(e) Upon assuming protective custody of a child under this
Chapter, Child Protective Services shall place the child in a home
approved by Child Protective Services unless the child is admitted to a
hospital or similar institution, and obtain a verbal ex parte order from
the court for temporary custody while Child Protective Services or the
Guam Police Department conducts an appropriate investigation.

(f) Children appearing to suffer any physical or mental trauma
which may constitute harm or threatened harm shall be admitted to
and treated in appropriate facilities of private and public hospitals, with
or without the consent of the child's family, on the basis of medical need
and shall not be refused or deprived in any way of proper medical
treatment and care.

(g) If a child has been taken into protective custody, within one day of Child Protective Services' assumption of protective custody, excluding Saturday, Sunday and holidays, Child Protective Services shall file a declaration with the court in support of an ex parte order and obtain a written order to extend protective custody beyond the one working day.

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(h) In no case shall protective custody be maintained longer than three working days without a preliminary hearing. If at the hearing it is determined that protective custody shall be continued, Child Protective Services shall, within 48 hours of the time of the hearing, file a petition with the Superior Court of Guam pursuant to §88305.

12 A conference between the person responsible for the welfare (i) 13 of a child taken into protective custody pursuant to this section and the social worker designated by Child Protective Services to be responsible 14 15 for such child shall be held within two working days if possible from the time that the child is taken into such custody for the purposes of 16 17 explaining to such person the reasons for the protective custody of the 18 child and the whereabouts of the child is appropriate, and to expedite, 19 wherever possible, the return of the child to the custody of such person 20when protective custody is no longer necessary.

21 §88303. Authorization for photographs, x-rays and radiological or
22 other diagnostic examination.

23 (a) Any health professional or paraprofessional, physician licensed or authorized to practice medicine in Guam, registered nurse or 24 25 licensed practical nurse, hospital or similar institution's personnel engaged in the admission, examination, care or treatment of patients, 26 27 medical examiner, coroner, social worker or police officer, who has a 28 child whom the person reasonably believes has been harmed, shall 29 make every good faith effort to take or cause to be taken color 30 photographs of the areas of trauma visible on the child. If medically 31 indicated, such person may take or cause to be taken x-rays of the child 32 or cause a radiological or other diagnostic examination to be performed 33 on the child.

(b) Color photographs, x-rays, radiological or other diagnostic examination reports which show evidence of imminent harm or threatened harm to a child shall be immediately forwarded to Child Protective Services.

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§88304. Service Plan.

(a) A service plan is a specific written plan prepared by Child Protective Services and presented to such members of the child's family as Child Protective Services deems to be necessary to the success of the plan, including, but not limited to, the member or members of the child's family who have legal custody of the child at the time that the service plan is being formulated or revised under this Chapter.

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(b) The service plan should set forth:

13 (1) The steps that will be necessary to facilitate the return
14 of the child to a safe family home, if the proposed placement of
15 the child is in foster care or in alternate placement outside of the
16 child's home;

17(2) The steps that will be necessary for the child to remain18in a safe family home with the assistance of a service plan, if the19proposed placement of the child is in a family home under Child20Protective Services' supervision; and

(3) The steps that will be necessary to make the family
 home a safe family home and to terminate intervention of Child
 Protective Services into the family and eliminate, if possible, the
 necessity for the filing of a petition with the court under this
 Chapter.

26 (c) The service plan should also include but not necessarily be
27 limited to:

(1) The specific services or treatment that the parties will
be provided and the specific actions the parties must take or
specific responsibilities that the parties must assume; the time
frames during which such services will be provided, such actions
must be completed and such responsibilities must be assumed;

33(2) The specific consequences that may be reasonably34anticipated to result from the parties' success or failure in

complying with, performing and completing, if possible, each and every term and condition of the service plan, including but not limited to the consequence that, unless the family is willing and able to provide the child with a safe family home within the reasonable period of time specified in the service plan, their respective parental and custodial duties and rights shall be subject to termination; and

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(3) Such other terms and conditions as Child Protective Services deems to be necessary to the success of the service plan.

10 (d) After each term and condition of the service plan has been 11 thoroughly explained to and is understood by each member of the 12 child's family whom Child Protective Services deems to be necessary to 13 the success of the service plan, the service plan shall be agreed to and 14 signed by each such family member. Thereafter, a copy of the service 15 plan shall be provided to each family member who signed the service 16 plan.

17 (e) If a member of a child's family whom Child Protective
18 Services deems to be necessary to the success of the service plan cannot
19 or does not understand or agree to the terms and conditions set forth in
20 the service plan, Child Protective Services shall proceed pursuant to
\$88305.

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§88305. Petition.

(a) A petition invoking the jurisdiction of the court under this
Chapter shall be filed in the manner provided in this section:

25 26 27 (1) Petitions shall be entitled "In the Interest of (name of child), A Minor," shall be verified and shall set forth with specificity:

28(A) The facts which bring the child within this29Chapter;

30(B) The name, age, birthdate, sex and residential31address of the child;

32(C) The names and last known residential addresses of33the member or members of the child's family required to be34notified pursuant to §88306, and other persons who are to

be made parties to the child protective proceeding at the time of the filing of the petition; and

(D) Whether the child is under the temporary foster custody of the department and, if so, the type of temporary foster custody, the circumstances necessitating such care and the date the child was placed in such temporary foster custody.

(2) When any of the facts required by this section cannot be determined, the petition shall so state. The petition may be based on information and belief but in such case the petition shall state the basis of such information and belief.

(b) Petitions shall state that unless the family is willing and able
to provide the child with a safe family home, even with the assistance
of a service plan, within a reasonable period of time, their respective
parental custodial duties and rights shall be subject to termination.

16 (c) The court may provide rules concerning the titles, filing,
17 investigation, and the form and content of petitions and other pleadings
18 and proceedings in cases under this Chapter, or any other matter arising
19 in child protective proceedings.

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§88306. Summons.

21 (a) After a petition has been filed, the court shall issue a 2.2 summons requiring a child's family member or members who have 23 legal or physical custody of the child at the time of the filing of the petition to bring the child before the court at the preliminary hearing as 24 25 set forth in the summons. In addition, any legal parent, the natural 26 parents (unless parental rights have been terminated) and other 27 persons who are to be parties to the child protective proceeding at the time of the filing of the petition also shall be summoned, in the manner 28 29 provided in this section.

30 (b) A "stamped filed" copy of the petition shall be attached to
31 each summons.

32 (c) The summons shall notify the parties of their right to retain
33 and be represented by counsel.

(d) The summons shall state: "YOUR PARENTAL AND CUSTODIAL
 DUTIES AND RIGHTS CONCERNING THE CHILD OR CHILDREN WHO ARE
 THE SUBJECT OF THE ATTACHED PETITION MAY BE TERMINATED BY
 AWARD OF PERMANENT CUSTODY IF YOU FAIL TO APPEAR ON THE
 DATE SET FORTH IN THIS SUMMONS."

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**§88307**. Service of summons. (a) Service of summons shall be 6 made personally by delivery of a "stamped filed" copy to the person or 7 legal entity summoned; provided that if the court is satisfied that it is 8 9 impractical to personally serve the summons provided for in the 10 preceding section, the court may order service by registered or certified mail addressed to the last known address, or by publication, or both. 11 Service shall be effected at least 24 hours prior to the time fixed in the 12 13 summons for a preliminary hearing or at least 48 hours prior to the 14 time fixed in the summons for any other hearing under this Chapter, 15 unless such party otherwise was ordered by the court to appear at such 16 hearing. When publication is used the summons shall be published once a week for two consecutive weeks in a newspaper of general circulation 17 18 The newspaper shall be designated by the court in its order in Guam. 19 for publication of the summons and such publication shall have the 20same force and effect as though such person had been personally 21 served with the summons. Personal service of summons required 22 under this Chapter shall be made by the marshal or a licensed process 23 server and a return must be made on the summons showing to whom, 24 the date and time service was made.

25 (b) If any person summoned as provided in this section, without 26 reasonable cause, shall fail to appear, the court may proceed in such 27 person's absence or such person may be proceeded against for contempt 28 of court pursuant to §88326. Where the summons cannot be personally 29 served, or where a person served fails to obey the summons, or in any 30 case when it shall be made to appear to the court that the service will 31 be ineffectual, or that the best interests of the child require that the 32 child be brought before the court, the court may issue either a warrant 33 for such person or an order to show cause why contempt shall not be 34 found for failure to appear pursuant to §88326.

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§88308. Guardian ad litem; counsel.

(a) The court shall appoint a guardian ad litem for the child to serve throughout the pendency of the child protective proceeding under this Chapter, provided, that a guardian ad litem's appointment shall automatically terminate upon an award of permanent custody of the child by the court, unless otherwise ordered by the court. The court may appoint additional counsel for the child pursuant to subsection (c) or independent counsel for any other party if such party is indigent, the child protective proceeding is complex, counsel is necessary to protect the party's interests adequately and the interests are not represented adequately by another party who is represented by counsel.

12 Where the court determines, after such hearing as the court (b) 13 deems to be appropriate, that a party is incapable of comprehending the legal significance of the issues or the nature of the child protective 14 15 proceeding, the court may appoint a guardian ad litem to represent the 16 interests of that party; provided that a guardian ad litem appointed pursuant to this section shall investigate and report to the court in 17 18 writing at six-month intervals, or as is otherwise ordered by the court, 19 regarding the current status of the ward's disability, including but not 20limited to a recommendation as to available treatment, if any, for such 21 disability and a recommendation concerning the manner in which the 22 court should proceed in order to best protect the interests of the ward 23 in conjunction with the court's determination as to the best interests of the child. 24

25 A guardian ad litem appointed pursuant to subsection (a) shall (c) 26 report to the court in writing at six-month intervals, or as is otherwise 27 ordered by the court, regarding such guardian ad litem's activities on 28 behalf of the child and recommendations concerning the manner in 29 which the court should proceed in the best interests of the child, 30 provided that such guardian ad litem shall make face to face contact 31 with the child in the child's family or foster home at least once every 32 three months. Such guardian ad litem shall also inform the court of the 33 child's perceived interests if they differ from those being advocated by 34 the child's guardian ad litem. If the child and the child's guardian ad litem are not in agreement, the court shall evaluate the necessity for appointing special counsel for the child to serve as the child's legal advocate concerning such issues and during such proceedings as the court deems to be in the best interests of the child.

(d) A guardian ad litem or counsel appointed pursuant to this section for the child or other party shall be paid for by the court unless the party for whom counsel is appointed has an independent estate sufficient to pay such costs. The court may order the appropriate parties to pay reimbursement to the court for the costs and fees of the guardian ad litem and other counsel appointed for the child.

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(e) A guardian ad litem shall:

(1) Be allowed access to the child by the caretakers of the child whether the caretakers are individuals, authorized agencies or health care providers;

15 (2) Have the authority to inspect and receive copies of any
16 records, notes and electronic recordings concerning the child that
17 are relevant to the proceedings filed under this Chapter without
18 the consent of the child or individuals and authorized agencies
19 who have control of the child; and

(3) Be given notice of all hearings and proceedings, civil or
criminal, including but not limited to grand juries, involving the
child and shall protect the best interests of the child therein,
unless otherwise ordered by the court.

24 §88309. Reports to be submitted by Child Protective Services;
25 social worker expertise.

(a) Child Protective Services shall make every reasonable effort
 to submit written reports, or a written explanation regarding why a
 report is not being submitted timely, to the court with copies to the
 parties or their counsel or guardian ad litem.

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(b) Report or reports pursuant to subsection (a) specifically shall:

31 (1) Evaluate fully all relevant prior and current information
32 concerning whether the child's family is presently willing and able
33 to provide the child with a safe family home, including, if the
34 family previously entered into a voluntary or court ordered



services or revisions; or

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performing and completing, if possible, each and every term and condition of the service plan; (2) In each proceeding, subsequent to adjudication, recommend (A) A service plan as set forth in §88304 or revisions

to the existing service plan, and, if so, set forth the proposed

service plan, the parties' success or failure in complying with,

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12 13 (B) An award of permanent custody to an appropriate authorized agency, and, if so, set forth the basis for such recommendation which shall include but not be limited to an evaluation of each of the criteria set forth in §88324 (a), including the written permanency plan as set forth in §88323; and

14(3) Set forth recommendations as to such other orders as15are deemed to be appropriate and state the basis for16recommending that such orders be entered.

17 (c) A written report submitted pursuant to subsection (a) shall be 18 admissible and may be relied upon to the extent of its probative value 19 in any proceeding under this Chapter, except in a permanency plan 20 hearing; provided, that the person or persons who prepared the report 21 shall be subject to direct and cross-examination as to any matter in the 22 report, unless such person is unavailable.

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§88310. Evidentiary determination; burden of proof.

(a) In a temporary foster custody hearing, a determination that
there exists reasonable cause to believe that a child is subject to harm
or threatened harm may be based upon any relevant evidence
whatsoever, including but not limited to hearsay evidence when direct
testimony is unavailable or when it is impractical to subpoena witnesses
who will be able to testify to facts from personal knowledge.

30 (b) In a fact-finding hearing, a determination that the child has 31 been harmed or is subject to threatened harm shall be based on a 32 preponderance of the evidence, and, except as otherwise provided 33 under this Chapter, only competent and relevant evidence may be 34 admitted. (c) In subsequent hearings, other than a permanency plan hearing, any determination shall be based on a preponderance of the evidence and any relevant evidence shall be admitted.

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(d) In a permanency plan hearing:

(1) A determination that permanent custody of a child be awarded to Child Protective Services shall be based upon clear and convincing evidence; and

(2) A determination that a child should be the subject of an adoption shall be based upon clear and convincing evidence.

10§88311. Evidence may be inadmissible in other actions or11proceedings; testimony by a child.

(a) Any testimony or other evidence produced by a party in a
child protective proceeding under this Chapter which would otherwise
be unavailable may be ordered by the court to be inadmissible as
evidence in any other territorial civil or criminal action or proceeding, if
the court deems such an order to be in the best interests of the child.

17 (b) The court may direct that a child testify under such 18 circumstances as the court deems to be in the best interests of the child 19 and the furtherance of justice, which may include or be limited to an 20 interview on the record in chambers with only those parties present as 21 the court deems to be in the best interests of the child.

(c) Any statement made by the child to any person relating to any allegation of harm or threatened harm shall be admissible in evidence in a child protective proceeding.

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§88312. Recording a statement or the testimony of a child.

(a) The recording of a statement of a child is admissible into evidence in any proceeding under this Chapter if:

(1) The recording is visual, oral or both and is recorded on film, tape, videotape or by other electronic means;

(2) The recording equipment was capable of making an accurate recording, the operator of the equipment was competent and the recording is accurate and has not been altered; and

(3) Every person in the recording is identified.

§88313. Admissibility of evidence. The physician-patient privilege, psychotherapist-patient privilege, spousal privilege, clergypenitent privilege and lawyer-client privilege shall not be available to exclude evidence of harm or threatened harm in any proceeding under this Chapter.

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§88314. Required findings concerning notice prior to a hearing in a child protective proceeding.

8 No hearing may commence under this Chapter unless the (a) court enters a finding that each of the parties required to be notified 9 10 pursuant to §88306 has been served with a copy of the petition, provided that if a member or members of the child's family required to 11 12 be notified pursuant to §88306 have not been served, the court may 13 proceed to hear any child protective proceeding under this Chapter and 14 enter orders concerning the parties who have been served if the court is satisfied that: 15

16 (1) A reasonable effort has been made to effect personal
17 service;

(2) It would not be in the best interests of the child to postpone the proceeding until service can be effectuated; and

(3) The child is represented by a guardian ad litem or counsel.

(b) The court may set a continued hearing date; provided that:

23 (1) The court may waive the appearance of any party at the
24 continued hearing date; and

(2) If the court orders that service of summons be made by
mail or publication, the court shall set the continued hearing date
not less than 21 days subsequent to the date of service evidenced
by the signature on a return receipt or the date of the last
publication.

(c) Upon the continued hearing date, the court shall:

31 (1) Enter a default concerning a party who was served but
32 failed to appear on the continued hearing date;

33 (2) Order the party who was served to appear on the date
34 of the next scheduled hearing in the case; or

(3) If a member of the child's family required to be notified pursuant to §88306 was served and appears on the continued hearing date and moves the court that a prior order be vacated or modified, the court shall set the oral motion to vacate prior orders for a hearing and order that the moving party file a written motion and serve the other parties with proper written notice of the motion and hearing date.

8 (d) In considering a party's motion to vacate or modify prior 9 orders, the court need not commence a trial or hearing de novo, but 10 rather, after such further hearing as the court deems to be appropriate 11 may proceed to enter such orders as are in the best interests of the 12 child.

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§88315. Order of protection.

(a) Upon submission of the declaration in support of an ex parte
order pursuant to subsection (g) of §88302 or at a temporary foster
custody hearing, the court may make an order of protection. Such an
order may include but need not be limited to a requirement that a
party:

19 (1) Stay away from the family home, a school or any other
20 place or location which is deemed by the court to present an
21 opportunity for contact between the parties, or with other
22 persons which contact would not be in the best interests of the
23 child;

24(2)Abstain from physically or verbally contacting,25threatening or abusing any party or person; and

26 (3) Report any violation of an order of protection to the
 appropriate law enforcement authorities and other authorized
 agencies.

(b) An order of protection granted ex parte pursuant to
subsection (g) of §88302 shall expire in three working days after a child
is taken into protective custody.

32 (c) The parties may release copies of an order of protection to
 33 appropriate law enforcement authorities.

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§88316. Temporary foster custody hearing.

(a) In any case where Child Protective Services has assumed protective custody of a child with an ex parte order of the court, the court shall hold a temporary foster custody hearing within three working days from the date that the child was taken into protective custody.

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(b) At the temporary foster custody hearing, the court on its own motion may order that the child immediately be released from protective custody and returned to the child's family home under such terms and conditions, including, but not limited to, orders which may be entered pursuant to subsection (d) of §88317, as are deemed by the court to be in the best interests of the child; provided that upon such return, the child and the child's family members who are parties shall be under the supervision of Child Protective Services prior to the factfinding hearing.

15 (c) After a temporary foster custody hearing, if the court determines that there is reasonable cause to believe that placement in 16 temporary foster care is necessary to protect the child from harm or 17 18 threatened harm, it shall order that the child remain in the temporary 19 foster custody of Child Protective Services under such terms and 20conditions, including but not limited to orders which may be entered 21 pursuant to subsection (d) of §88317 as are deemed by the court to be 2.2 in the best interests of the child; provided that prior to ordering 23 placement or continued placement in any proceeding under this 24 chapter:

25 (1)The court first shall give due consideration to ordering 26 the removal or continued removal of the alleged perpetrator of 27 the harm or threatened harm from the child's family home prior 28 to placing or continuing to place the child out of the family home. 29 The child's family shall have the burden of establishing that it is 30 not in the best interests of the child that the alleged perpetrator 31 be removed from the family's home rather than the child by order 32 of the court.

33(2) If siblings or psychologically bonded children are34removed from their family home, the court shall order that every

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reasonable effort be made to place them together, unless it is not in the best interests of the children.

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(d) Any party may move for, or the court on its own motion may order, a temporary foster custody hearing or rehearing at any time after the petition is filed under this Chapter to determine whether the best interests of the child require that the child be placed in temporary foster custody prior to a fact-finding hearing.

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§88317. Preliminary hearing.

9 If the child has not been taken into protective custody, a (a) 10 preliminary hearing shall be held within ten working days of the filing of the petition or, if a child has been taken into protective custody, a 11 12 petition shall be filed and a preliminary hearing held within three 13 working days after the child has been taken into protective custody. If a child has been taken into protective custody, the temporary foster 14 custody hearing and the preliminary hearing on the petition shall be 15 16 jointly held.

(b) If the child has not been taken into protective custody, at the preliminary hearing the court shall review the petition and if, in the discretion of the court, the child is in such circumstances or condition that the child's continuing in the custody or care of the child's family presents a situation of harm or threatened harm to the child, the court shall order that Child Protective Services immediately assume temporary foster custody until further order of the court.

24 (c) The preliminary hearing shall be continued for a period not to 25 exceed 15 working days, upon the court's own motion or upon the 26 motion of a party, if the court determines that it would be in the best 27 interests of the child that further investigation be conducted and 28 information concerning whether the child should remain in temporary 29 foster custody be provided to the court by each of the parties, prior to 30 rendering a determination as to whether the child should remain in 31 temporary foster custody prior to a fact-finding hearing.

32 (d) During a continuance period ordered pursuant to subsection
33 (c), or at any other time during the pendency of a child protective
34 proceeding, the court may further order that:

(1) Any party undergo a physical, developmental, psychological or psychiatric evaluation and that a written or oral report be submitted to the court and all parties prior to or upon the date of the continued or next hearing;

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(2) The child's family members who are parties provide Child Protective Services or other appropriate authorized agency with the names and addresses of other family and friends who may be potential visitation supervisors or foster parents for the child and that they arrange for such persons to appear in court upon the date of the continued or next hearing;

(3) The child's family members who are parties be permitted reasonable supervised or unsupervised visitation with the child at the discretion of Child Protective Services or other appropriate authorized agency and the child's guardian ad litem;

(4) The court and the parties view a visual recording or listen to an oral recording of the child's statement at such time and in such manner as the court deems to be appropriate;

(5) The child and the child's family members who are parties arrange and commence participation in such counseling or therapy for themselves and the child as the court deems to be appropriate and consistent with the best interests of the child;

(6) An appropriate order of protection be entered;

(7) A criminal history record check be conducted by Child Protective Services or other appropriate authorized agency concerning a party who is an alleged perpetrator of harm or threatened harm to the child, and that the results be submitted to the court and other parties in such manner as the court deems to be appropriate prior to or upon the date of the continued or next hearing;

30(8)Child Protective Services or other appropriate31authorized agency prepare a written or oral supplemental report32pursuant to §88309 and submit the report to the court, the33guardian ad litem and all parties prior to or upon the date of the34continued or next hearing; or

(9) The child's guardian ad litem visit the child's family home and foster home, be present during a supervised visitation and prepare a written or oral report to be submitted to the court and all parties prior to or upon the date of the continued or next hearing.

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Answering date; fact-finding hearing. **§88318**.

When a petition has been filed, the court shall set an (a) answering date to be held within seven working days after the date of the preliminary hearing.

(b) At the answering, if the parties admit the allegations in the 10 petition, the court may issue such orders which it deems to be in the 12 best interests of the child.

13 (c) If the parties do not admit the allegations in the petition, the 14 case shall be set for a fact-finding hearing within 30 working days of 15 the answering date.

16 The court shall hear child protective proceedings under this (d) 17 Chapter without a jury. The hearing shall be conducted in an informal 18 manner and may be adjourned from time to time. The general public 19 shall be excluded and only such persons shall be admitted as are found 20by the court to have a direct interest in the case. The child may be 21 excluded from the hearing at any time at the discretion of the court. If 22 a party is without counsel or a guardian ad litem, the court shall inform 23 the party of the right to be represented by counsel and to appeal.

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§88319. Sustaining or dismissing petition; interim orders.

(a) If facts sufficient to sustain the petition are established, the 25 26 court shall enter an order finding that the child is a child whose physical or psychological health or welfare has been harmed or is 27 28 subject to threatened harm by the acts or omissions of the child's family 29 and shall state the grounds for the finding; provided that if all parties 30 consent, the grounds for the finding may be based upon the report or 31 reports submitted pursuant to §88309 or other stipulated evidence may 32 be admitted into evidence subject to reservation by the parties of their 33 right to cross-examination subject to subsection (c) of §88309.

(b) If facts sufficient to sustain the petition under this Chapter are not established, the court shall dismiss the petition and shall state the grounds for dismissal.

(c) If the court sustains the petition and does not immediately enter an order regarding the disposition of the child, it shall:

(1) Determine, based upon the facts adduced during the fact-finding hearing and any other additional facts presented to it, whether temporary foster custody should be continued or should be entered pending an order of disposition. The court shall consider all relevant prior and current information for determining whether the child's family is willing and able to provide the child with a safe family home, and the report or reports submitted pursuant to §88309, and proceed pursuant to subsection (c) of §88316 prior to rendering a determination; and

15 (2) Enter such orders regarding visitation and the provision 16 of services to the child and the child's family and the child's and 17 family's acceptance and cooperation with such services as the 18 court deems to be appropriate and consistent with the best 19 interests of the child.

(d) Orders orally stated by the court on the record in a
proceeding under this Chapter shall have full force and effect upon the
date of the hearing until further order of the court; provided that all
oral orders shall be reduced to writing as soon as convenient.

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§88320. Disposition hearing.

25 (a) The court may consider any information relevant to disposition which is in the best interests of the child; provided that the 26 27 court shall determine initially whether the child's family home is a safe 28 family home. The court shall consider fully all relevant prior and 29 current information for determining whether the child's family is 30 willing and able to provide the child with a safe family home, and the 31 report or reports submitted pursuant to §88309, in rendering such a 32 determination.

33 (b) If the court determines that the child's family is presently
34 willing and able to provide the child with a safe family home without

the supervision of Child Protective Services, the court shall terminate jurisdiction.

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> (c) If the court determines that the child's family home is a safe family home with the supervision of Child Protective Services, the court shall place the child and the child's family members who are parties under the supervision of an authorized agency, return the child to the child's family home and enter further orders, including but not limited to, restrictions upon the rights and duties of the authorized agency, as the court deems to be in the best interests of the child.

(d) If the court determines that the child's family home is not a safe family home, even with the supervision of Child Protective Services the court shall vest foster custody of the child in an authorized agency and enter such further orders as the court deems to be in the best interests of the child.

(e) If the child's family home is determined not to be safe, even
with the supervision of Child Protective Services pursuant to subsection
(d), the court may, and if the child has been residing outside the family
home for a period of two years shall, set the case for a permanency plan
hearing and order that the authorized agency submit a report pursuant
to §88309.

(f) At the disposition hearing, the court may order such terms,
 conditions and consequences as the court deems to be in the best
 interests of the child.

(g) The court may order that any party participate in, complete, be liable for, and make every good faith effort to arrange payment for such services or treatment as are authorized by law and are deemed to be in the best interests of the child.

(h) At any stage of the child protective proceeding, the court may
order that a child be examined by a physician, surgeon, psychiatrist or
psychologist, and it may order treatment by any of them of a child as is
deemed to be in the best interests of the child. For either examination
or treatment, the court may place the child in a hospital or other
suitable facility, pursuant to the provisions of §§82101 et seq. of this
Title.

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§88321. Long-term foster custody.

(a) Long-term foster custody divests from each legal custodian and family member who has been summoned pursuant to §88306 and vests in a long-term custodian each of the parental and custodial duties and rights of a legal custodian and family member including but not limited to the following:

(1) To determine where and with whom the child shall live; provided that the child shall not be placed outside Guam without prior approval of the court;

(2) To assure that the child is provided in a timely manner with adequate food, clothing, shelter, psychological care, physical care, medical care, supervision and other necessities;

(3) To monitor the provision of appropriate education to the child;

15 To provide all consents that are required for the child's (4) physical or psychological health or welfare, including but not 16 limited to medical, dental, psychiatric, psychological, educational, 17 18 employment, recreational or social needs and to provide all consents for any other medical care or treatment, including but 19 20 not limited to surgery if such care or treatment is deemed by two 21 physicians licensed or authorized to practice in Guam to be 22 necessary for the child's physical or psychological health or 23 welfare: and

24 (5) To provide the court with information concerning the
25 child that the court may require at any time.

26 Unless otherwise ordered by the court, a child's family (b) 27 member shall retain the following rights and responsibilities after a 28 transfer of long-term foster custody to the extent that such family member possessed such responsibility prior to the transfer of long-term 29 30 foster custody: the right to consent to adoption, marriage, the 31 continuing responsibility for support of the child, including but not 32 limited to repayment for the cost of any and all care, treatment or any 33 other service supplied or provided by the long-term custodian, any subsequent long-term custodian, other authorized agency or the court for the child's benefit.

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8 9 (c) A family member may be permitted visitation with the child at the discretion of the court.

(d) An order of long-term foster custody entered under this Chapter shall not operate to terminate the mutual rights of inheritance of the child and the child's family members or any other benefit to which the child may be entitled, unless and until the child has been legally adopted.

10 (e) The court, in its discretion, may vest long-term foster custody 11 of a child in an authorized legal agency or in subsequent authorized 12 agencies as is deemed to be in the best interests of the child. An 13 authorized agency shall not be liable to third persons for the acts of the 14 child solely by reason of the agency's status as long-term custodian of 15 the child.

16 (f) If Child Protective Services receives a report that the child has 17 been harmed or is subject to threatened harm by the acts or omissions 18 of the long-term custodian or custodians of the child, Child Protective Services may automatically assume physical custody of the child; 19 20provided that, in any event, Child Protective Services shall immediately notify the court and the court shall set the case for a progress hearing 21 22 within ten working days, from the date that Child Protective Services 23 assumed physical custody of the child, unless the court deems a later 24 date to be in the best interests of the child.

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§88322. Progress hearings.

(a) Except for good cause shown, the court shall set each case for
progress hearing not later than six months after the date of an order of
disposition and, thereafter, the court shall set subsequent progress
hearings at interval of no longer than six months until the court's
jurisdiction has been terminated or an order of permanent custody has
been entered. A progress hearing may be set upon the motion of a
party at any time.

(b) Notice of a progress hearing shall be served upon the parties and upon the present foster parent or parents, each of whom shall be entitled to participate in the proceedings.

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(c) Child Protective Services or other appropriate authorized agency shall make every reasonable effort to submit a written report, pursuant to §88309, or a written explanation regarding why the report is not being submitted timely to the court, with copies to the parties or their counsel or guardian ad litem at least three days before the date set for each progress hearing.

10 (d) The report prepared pursuant to subsection (c) specifically 11 shall:

(1) Evaluate whether the parties have complied with, performed and completed, if possible, each and every term and condition of the order of disposition;

15(2) Recommend whether the court should enforce the16consequences set forth in the order of disposition pertaining to17compliance or noncompliance by the parties with the terms and18conditions of the order; and

(3) Recommend whether the court should modify its order of disposition and, if so, set forth the proposed modifications and the basis for recommending such modifications.

(e) Upon each progress hearing the court shall consider fully all
relevant prior and current information for determining whether the
child's family is willing and able to provide the child with a safe family
home, including but not limited to the report or reports submitted
pursuant to §88309, and

27 (1) Make a determination pursuant to the terms of
28 subsections (b) through (e) of §88324;

29 (2) Determine whether the parties have complied with,
 30 performed and completed each and every term and condition of
 31 the previous order of disposition;

32 (3) Enforce the consequences set forth in the order of
33 disposition pertaining to compliance or noncompliance by the
34 parties with any of the terms and conditions of the order; and

(4) Order such modification to the existing order of disposition as the court deems to be appropriate and in the best interests of the child.

(f) In any case that a permanency plan hearing is not deemed to be appropriate, the court shall make a finding that the parties understand that unless the family is willing and able to provide the child with a safe family home, even with the supervision of Child Protective Services, within the reasonable period of time specified in the order, their respective parental and custodial duties and rights shall be subject to termination.

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§88323. Permanency plan. A permanency plan is a specific written plan, prepared by Child Protective Services, which should set forth:

(1) A position as to whether the court should order an adoption of the child and specify:

16(A) A reasonable period of time during which the17adoption may be finalized; provided that the identity of the18proposed adoptive parent or parents shall be provided to19the court in a separate report which shall be sealed and20shall not be released to the parties unless the court deems21such release to be in the best interests of the child; or

(B) The reason why adoption is not the plan;
(2) A specific written plan including:
(A) The goal of the child's permanent plac

(A) The goal of the child's permanent placement as being either adoption, long term foster custody with subsequent adoption or guardianship, or long term foster custody until majority;

(B) The objectives concerning the child, including but not limited to placement, education, health, therapy, counseling, culture, adoption or preparation for majority; and

32(C) The method or methods for achieving the goal and33objectives set forth in subparagraphs (A) and (B) above;

(3) All supporting exhibits and written consents or an explanation as to why such exhibits or consents are not available.
 Upon good cause shown, the court may waive submission of any supporting exhibit or written consent; and

(4) Any other information or materials which are necessary to the expeditious facilitation of the permanency plan.

§88324. Permanency plan hearing.

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8 (a) At the permanency plan hearing, the court shall consider fully 9 all relevant prior and current information for determining whether the 10 child's family is willing and able to provide the child with a safe family 11 home, including but not limited to the report or reports submitted 12 pursuant to §88309, and determine whether there exists clear and 13 convincing evidence that:

14(1) The child's family is not presently willing and able to15provide the child with a safe family home, even with the16supervision of Child Protective Services;

17 (2) It is not reasonably foreseeable that the child's family 18 will become willing and able to provide the child with a safe 19 family home, even with the supervision of Child Protective 20 Services, within a reasonable period of time, which shall not 21 exceed two years from the date upon which the child was first 22 placed under foster custody by the court;

23 (3) The proposed permanency plan is in the best interests
24 of the child; provided that the court shall presume that:

(A) It is in the best interests of a child to be promptly
 and permanently placed with responsible and competent
 substitute caretakers and family in a safe and secure home;
 and

29(B)Such presumption increases in importance30proportionate to the youth of the child upon foster custody31by the court; and

32 (4) If the child has reached the age of 12, the child is
33 supportive of the permanency plan.

1 (b) If the court determines that the criteria set forth in 2 subsection (a) are established by clear and convincing evidence, the court shall order: 3 4 (1)That the existing order of disposition be terminated and that the prior award of foster custody be revoked; 5 6 (2)That permanent custody be awarded to an appropriate authorized agency; 7 That an appropriate permanency plan be implemented 8 (3) 9 concerning the child whereby the child will: 10 (A) Be adopted pursuant to §§221.1 et seq. of the Civil 11 Code of Guam; provided, that the court shall presume that it 12 is in the best interests of the child to be adopted, unless the 13 child is in the permanent custody of family or persons who have become as family and who for good cause are unwilling 14 15 or unable to adopt the child but are committed to and are capable of being the child's permanent custodians; or 16 17 **(B)** Remain in permanent custody until the child is subsequently adopted or reaches the age of 18, and that 18 such status shall not be subject to modification or revocation 19 20 except upon a showing of extraordinary circumstances to the 21 court. 22 If the court determines that the criteria set forth in subsection (c) 23 (a) are not established by clear and convincing evidence, the court shall 24 order that: 25 (1)The permanency plan hearing be continued for a 26 reasonable period of time not to exceed six months from the date 27 of the continuance; 28 The authorized agency submit a written report pursuant (2) 29 to §88309; and 30 (3) Such further orders as the court deems to be in the best 31 interests of the child be entered. 32 At the continued permanency plan hearing, the court shall (d) proceed pursuant to subsections (a), (b) and (c) until such date as the 33 court determines that: 34

(1) There is sufficient evidence to proceed pursuant to subsection (b); or

(2) The child's family is willing and able to provide the child with a safe family home, even with the supervision of Child Protective Services, upon which determination the court may:

(A) Revoke the prior award of foster custody to the authorized agency and return the child to the family home; and

(B) Terminate jurisdiction; or

(C) Award supervision to an authorized agency;

(D) Order such revisions to the order of disposition as the court, upon such hearing as the court deems to be appropriate, determines to be in the best interests of the child;

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(E) Set the case for a progress hearing; and

16(F) Enter such further orders as the court deems to be17in the best interests of the child.

(e) The court shall order a permanency plan for the child within
two years of the date upon which the child was first placed under foster
custody by the court if the child's family is not willing and able to
provide the child with a safe family home, even with the supervision of
Child Protective Services.

Payment for service or treatment provided to a party or 23 §88325. 24 for a child's care, support or treatment. Whenever a service or treatment is provided to a party, or whenever care, support or 25 26 treatment of a child is provided under this Chapter, after due notice to 27 the persons or legal entities legally obligated to pay for such service, 28 treatment, care or support of the child, and after a hearing, the court 29 may order that such a legally obligated person pay, in such a manner as 30 the court may direct, a reasonable sum that will cover in whole or in part the cost of the service or treatment provided to the party, or the 31 32 cost of the care, support or treatment provided for the child. The 33 provisions of §88326 and all other remedies available under the law 34 shall be applicable to enforce such orders.

§88326. Failure to comply with terms or conditions of an order of the court. If a party fails to comply with the terms and conditions of an order issued under this Chapter, the court may apply the provisions of §5120 of Title 19, Guam Code Annotated, and all other provisions available under the law.

§88327. Appeal. An interested party aggrieved by any order or decree of the court may appeal such order or decree to the Appellate Division of the District Court of Guam. The pendency of appeal shall not suspend the orders of the court issued under this Chapter.

Court records. The court shall keep a record of all child 10 §88328. The written reports, protective proceedings under this Chapter. 11 12 photographs, x-rays or other information of any nature which are 13 submitted to the court may be made available to other appropriate persons, who are not parties, only upon an order of the court after the 14 court has determined that such access is in the best interests of the 15 16 child or serves some other legitimate purpose.

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§88329. Confidentiality.

Any information received pursuant to this Chapter which 18 (a) could identify any child reported to the central register of child abuse, 19 20the person(s) responsible for the child's welfare named in the report, or the person making the report shall be confidential. 21 Any person who 22 willfully releases or permits the release of any such information to 23 persons or agencies not permitted by this section shall be guilty of a 24 felony of the third degree.

(b) Information received pursuant to this Chapter may be
released, on a need to know basis, and only as necessary to serve and
protect the child, to the following, except that release of the identity of
persons reporting child abuse is strictly prohibited, unless disclosed
pursuant to subsection (d) of §88203 of the Child Abuse and Neglect
Reporting Act:

31(1)Multidisciplinary items established to assist in the32disposition of cases pursuant to §88331;

33(2)Courts of competent jurisdiction, upon finding that34access to the records may be necessary for determination of an

issue before the court. Access shall be limited to inspection by the court only, unless the court determines that disclosure of the records to interested parties is necessary for the resolution of an issue pending before it;

(3) Grand juries when connected with the prosecution of a child abuse and neglect case;

(4) Properly constituted authorities or agencies both military and governmental, investigating a report of known or suspected child abuse or neglect, or providing services to a child or family relating to a known or suspected case of child abuse or neglect, including police departments, prosecutors and attorney generals;

13 (5) A physician examining or treating a child, or the
14 director or a person specifically designated in writing by such
15 director of any hospital or other medical institution where a child
16 is being treated, where the physician or the director or his or her
17 designee suspect the child of being an abused or neglected child;

18 (6) Any agency or individual authorized, contracted or
19 licensed to diagnose, care or treat a child who is the subject of a
20 report of abuse or neglect;

(7) A person, including but not limited to a guardian ad litem, attorney for the child, permanent foster or adoptive parent, who is responsible for the welfare of the child named;

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(8) A duly authorized official of the department.

(c) At any time, a victim or alleged victim of child abuse, the
parents of a victim or alleged victim of child abuse, or a perpetrator or
alleged perpetrator of child abuse, after a court proceeding has been
initiated regarding the abuse, may review, upon written request, all
information contained in the central register or in any report filed
pursuant to §88203 of this Chapter except information which would
identify the reporter of the abuse.

32 (d) Information received pursuant to this Chapter may be
 33 released to sources other than those identified in subsections (b) and (c)
 34 only when a written authorization from an individual designated in

subsection (c) specifically provides consent to have the record released 1 2 or reviewed. 3 (e) When information is released under subsection (b) or (d), the 4 following rules shall apply: Medical, psychological or psychiatric information in the 5 (1) 6 department's case record, including diagnosis and past history of disease or disability of a particular individual, shall remain the 7 8 property of the medical, psychological or psychiatric consultant and an individual requesting this record shall be referred to the 9 original consultant for release of that information; 10 11 (2) Case records shall be reviewed only in designated areas within Child Protective Services' offices. The records shall not be 12 removed from the premises; 13 14 Records shall be released upon an individual's request (3) provided that a signed and dated written request is received 15 stating specifically: 16 17 (A) What portion of the record is desired; 18 Whether the record is desired orally, through **(B)** 19 review or by receipt of reproduced copies of the record 20 requested; The name of the individual authorized to receive 21 (C) 22 the record or to review the record, and the individual's 23 agency connection, if any; 24 (D) The purpose for which the record is being sought; 25 The parent's or legal guardian's social security **(E)** 26 number or birth date and address; and 27 (F) The period of time the authorization is valid, not to 28 exceed ninety days. 29 Reproduced copies of records requested shall be (4) provided at a cost related to the cost of reproduction. 30 Actual 31 postage cost shall be charged. 32 (5) Before records are released or reviewed, Child 33 Protective Services shall:

(A) Block out the name or other portion of the record identifying the child abuse or neglect complainant;

(B) Reproduce a copy of the page from which the portion of the record was blocked out; and

(C) Allow the individual requesting the information to receive or to review the blocked out page.

7 (6) When the record requested contains or consists of coded
8 or abbreviated material such as computer input and output forms,
9 Child Protective Services shall provide translations of the codes or
10 abbreviations, if requested.

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\$88330. Cooperation. Every public official or department shall
 render all assistance and cooperation within such person's or
 department's jurisdictional power which may further the purpose and
 objectives of this chapter. Child Protective Services and the court may
 seek the cooperation of organizations whose objective is to protect or
 aid children and family life.

17 §88331. Multidisciplinary teams. Child protective agencies are
18 authorized to establish multidisciplinary teams for the prevention,
19 intervention and treatment of child abuse and neglect.

§88332. Fiscal responsibility. The court, the Department or other authorized agency shall provide only the care, service, treatment or support, or the payment for care, service, treatment or support, only as to the amount as is set forth in the budget of the court, the Department or authorized agency and is authorized by law.

\$88333. Regulations; authority to make. Departments and
agencies mentioned in this Chapter shall adopt regulations necessary to
implement this Chapter pursuant to the Administrative Adjudication
Law.

\$88334. Severability clause. If any part of this Chapter shall be
held invalid, such part shall be deemed severable and the invalidity
thereof shall not affect the remaining part of this Chapter.

32 §88335. Effective date. The provisions of this Chapter shall take
 33 effect immediately upon its enactment."

#### TWENTIETH GUAM LEGISLATURE 1989 (FIRST) Regular Session

### ROLL CALL SHEET

Bill No. <u>//4</u>

90 Date: 🔗

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Resolution No.

QUESTION:

	AYE	NAY	NOT VOTING	ABSENT
J. P. Aguon	Leoner			
E. P. Arriola				
J. G. Bamba				
M. Z. Bordallo				
D. F. Brooks				
H. D. Dierking				
E. R. Duenas				
E. M. Espaldon				and the second se
C. T. C. Gutierrez	<b>Income</b> de la			
P. C. Lujan	~			
G. Mailloux				
M. D. A. Manibusan	6			
T. S. Nelson	-			<u> </u>
D. Parkinson				
F. J. A. Quitugua	1 million			
E. D. Reyes	V			· · · · · · · · · · · · · · · · · · ·
M. C. Ruth				
J. T. San Agustin				
F. R. Santos				*********
T. V. C. Tanaka	~			
A. R. Unpingco				
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# TWENTIETH GUAM LEGISLATURE 1989 (FIRST) REGULAR SESSION

Bill No. 1141 As substituted by the Committee on Judiciary and Criminal Justice

Introduced by:

- P. C. Lujan
- E. P. Arriola
- T. S. Nelson
- H. D. Dierking
- M. Z. Bordallo
- M. C. Ruth
- A. R. Unpingco
- M. D. A. Manibusan

P, 8/1/9

- J. P. Aguon
- C. T. C. Gutierrez
- G. Mailloux
- D. Parkinson
- F. J. A. Quitugua
- E. D. Reyes
- J. T. San Agustin
- F. R. Santos
  - + -

AN ACT TO AMEND SUBSECTION (b) OF §25.30 OF TITLE 9, GUAM CODE ANNOTATED, ON SEXUAL BATTERY; TO ADD NEW §§75.80 AND 75.85 TO TITLE 8, GUAM CODE ANNOTATED, ON SEX OFFENSES; TO REPEAL ARTICLE 5 OF CHAPTER 2 OF TITLE 10, GUAM CODE ANNOTATED, ON CHILD PROTECTION; AND TO ADD A NEW CHAPTER 88 TO TITLE 10, GUAM CODE ANNOTATED, ESTABLISHING A "CHILD PROTECTIVE ACT" AND A "CHILD ABUSE AND NEGLECT REPORTING ACT".

## 1 BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

2 Section 1. Subsection (b) of §25.30, Title 9, Guam Code Annotated, is 3 amended to read:

1 "(b) Criminal sexual conduct in the fourth degree is a 2 felony of the third degree, except for first time offenders it is a 3 misdemeanor."

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Section 2. §75.80 is added to Title 8, Guam Code Annotated, to read:

"§75.80. Sex Offense Case, Attendance of Supporting Persons at Testimony of Prosecuting Witness 17 Years of Age or Under.

7 Notwithstanding any other provision of law, a prosecuting (a) 8 witness 17 years of age or under in a case involving violation of any 9 sexual offense defined in Chapter 25 of Title 9, Guam Code Annotated, 10 or a violation of §31.30 of said title shall be entitled for support to the 11 attendance of up to two persons of his or her own choosing, one of 12 whom may be a witness, at the Grand Jury proceeding, preliminary 13 hearing and at the trial, during the testimony of the prosecuting 14 witness. Only one of those support persons may accompany the witness to the witness stand although the other person may remain in the 15 16 courtroom during the witness' testimony. The support persons shall not 17 make notes during the hearing or proceeding. In the case of a Grand 18 Jury proceeding, the prosecuting attorney shall inform the support 19 person or persons that Grand Jury proceedings are confidential and may 20not be discussed with anyone not in attendance at the proceedings.

21 (b) If the person or persons so chosen are also prosecuting 22 witnesses, the prosecution shall present evidence that the person's 23 attendance is both desired by the prosecuting witness for support and 24 will be helpful to the prosecuting witness. Upon that showing, the court 25 shall grant the request unless information presented by the defendant 26 or noticed by the court establishes that the support person's attendance 27 during the testimony of the prosecuting witness would pose a 28substantial risk of influencing or affecting the content of that testimony. 29 In all cases, the judge shall admonish the support person or persons to 30 not prompt, sway or influence the minor witness in any way.

For purposes of this section, members of a prosecuting witness'
family shall include the prosecuting witness' parents, legal guardian,
grandparents, uncles, aunts or siblings."

1	Section 3. §75.85 is	hereby added to Title 8, Guam Code Annotated, to
2	read:	
3	"§75.85. Child	Witness Comfort, Support and Protection.
4	Notwithsta	nding any other provision of law, at any criminal
5	proceeding in v	which a minor under the age of 18 is a prosecuting
6	witness, the cou	rt shall take special precautions to provide for the
7	comfort and sup	port of the minor and to protect the minor from
8	coercion, intimid	ation or undue influence as a witness."
9	Section 4. Article 5	of Chapter 2 of Title 10 Guam Code Annotated is
10	repealed in its entirety.	
11	Section 5. A new Cha	pter 88 is added to Title 10, Guam Code Annotated,
12	to read:	
13		"CHAPTER 88
14	(	CHILD PROTECTIVE ACT
15	Article 1.	Definitions.
16	<b>\$88100</b> .	Short title; purpose; construction.
17	<b>§88101</b> .	Definitions.
18	Article 2.	Child Abuse and Neglect Reporting Act.
19	<b>\$88200</b> .	Short title; intent and purpose of article.
20	<b>§88201</b> .	Persons required to report suspected child abuse
21		or neglect.
22	<b>§88202.</b>	Any person permitted to report.
23	<b>\$88203</b> .	Reporting responsibilities.
24	<b>§88204</b> .	Cooperative arrangements for investigations;
25		written findings; report.
26	<b>§88205</b> .	Mandatory reporting and post-mortem
27		investigation of deaths.
28	<b>§88206</b> .	Immunity from liability.
29	<b>§88207</b> .	Penalty for failure to report.
30	<b>§88208</b> .	Recordkeeping duties of Child Protective
31		Services.
32	<b>§88209</b> .	Duties of Child Protective Services concerning
33		reports of abuse.
34	<b>§88210</b> .	Confidentiality.

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1	§88211.	Regulations; authority to make.
2	§88212.	Severability clause.
3	Article 3.	Child Protective Services.
4	§88300.	Jurisdiction.
5	§88301.	Authorization for department to act.
6	§88302.	Protective custody by police officer, Child
7		Protective Services social worker or physician
8		without court order.
9	§88303.	Authorization for photographs, x-rays and
10		radiological or other diagnostic examination.
11	§88304.	Service plan.
12	§88305.	Petition.
13	§88306.	Summons.
14	§88307.	Service of summons.
15	§88308.	Guardian ad litem; counsel.
16	§88309.	Reports to be submitted by Child Protective
17		Services; social worker expertise.
18	<b>§88310</b> .	Evidentiary determination; burden of proof.
19	§88311.	Evidence may be inadmissible in other actions or
20		proceedings; testimony by a child.
21	§88312.	Recording a statement or the testimony of a
2 2		child.
23	§88313.	Admissibility of evidence.
24	§88314.	Required findings concerning notice prior to a
2 5		hearing in a child protective proceeding.
26	§88315.	Order of protection.
27	<b>§88316</b> .	Temporary foster custody hearing.
28	<b>§88317</b> .	Preliminary hearing.
29	<b>§88318</b> .	Answering date; fact-finding hearing.
30	§88319.	Sustaining or dismissing petition; interim orders.
31	§88320.	Disposition hearing.
32	<b>§88321</b> .	Long-term foster custody.
33	<b>§88322</b> .	Progress hearings.
34	§88323.	Permanency plan.

§88324. Permanency plan hearing.

- §88325. Payment for service or treatment provided to a party or for a child's care, support or treatment.
- §88326. Failure to comply with terms or conditions of an order of the court.
- §88327. Appeal.

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- §88328. Court records.
- §88329. Confidentiality.
  - §88330. Cooperation.
  - §88331. Multidisciplinary teams.
    - §88332. Fiscal responsibility.
  - §88333. Regulations; authority to make.
  - §88334. Severability clause.
  - §88335. Effective date.

Article 1

## Definitions

§88100. Short title; purpose; construction. This Chapter, which shall be called and may be cited as the "Child Protective Act", creates within the jurisdiction of the Family Court procedures to safeguard, treat and provide permanent planning for children who have been harmed or threatened with harm.

22 The Legislature finds that children deserve and require 23 competent, responsible parenting and safe, secure, loving and nurturing 24 The Legislature finds that children who have been harmed and homes. 2.5 threatened with harm are less likely than other children to realize their 26 educational, vocational and emotional potential, less likely to full 27 become law-abiding, productive, self-sufficient citizens, and are more 28 likely to become involved with the mental health system, the juvenile 29 justice system or the criminal justice system, as well as become an 30 economic burden on the government of Guam. The Legislature finds 31 that prompt identification, reporting, investigation, adjudication, 32 treatment and disposition of cases involving children who are harmed or threatened with harm are in both the children's and society's best 33

interests because such children are exploitable and vulnerable and have limited defenses.

The policy and purpose of this Chapter are to provide children with prompt and ample protection from the harms detailed herein, with an opportunity for timely reconciliation with their families where practical, and with timely and permanent planning so they may develop and mature into responsible, self-sufficient and law-abiding citizens. This permanent planning should effectuate placement with a child's own family when possible and should be conducted in an expeditious fashion so that where return to the child's family is not possible as provided in this Chapter, such children will be promptly and permanently placed with responsible and competent substitute parents and families, with their places in such families secured by adoption or permanent custody orders.

This Chapter shall be liberally construed to serve the best interests of the children and the purposes set out in this Chapter.

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§88101. Definitions. For purposes of this Chapter:

(a) "Abandonment" means the desertion or willful forsaking of a
 minor by the person responsible for the child's welfare under
 circumstances in which a reasonable person would continue to provide
 care or custody;

(b) "Abused or neglected child" means a child whose physical or mental health or welfare is harmed or threatened with harm by the acts or omissions of the person(s) responsible for the child's welfare;

(c) "Authorized agency" means a department or other public or
 private agency, or a person, organization, corporation, or benevolent
 society or association which is licensed or approved by such department
 or agency or the court to receive children for control, care, maintenance
 or placement;

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(d) "Child" means a person under the age of 18 years;

31 (e) "Child protective agency" means the Guam Police Department,
32 the Office of Special Investigation, Naval Investigative Service, the
33 Attorney General's Office, or the Department of Public Health and Social

Services and its authorized representatives, including but not limited to Child Protective Services;

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4 5 (f) "Child protective proceeding" means any action, hearing or other civil proceeding before the court under this Chapter;

(g) "Child Protective Services" means the agency established by §88301 of this Chapter under the Department of Public Health and Social Services;

(h) "Clear and convincing evidence" means that measure of degree of proof which will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established;

12 "Criminal history record check" means an examination of an (i) 13 individual's criminal history record through fingerprint analysis or 14 name inquiry into territorial, state and national criminal history record 15 files, including but not limited to the files of the Federal Bureau of Investigation, the Guam Police Department, the Prosecution Division of 16 the Attorney General's Office, and the Child Protective Services; 17 18 provided, that the information obtained shall be used exclusively for 19 purposes under this Chapter and shall be subject to applicable federal 20and local laws and regulations;

21(j) "Department" means the Department of Public Health and22Social Services and its authorized representatives, including but not23limited to the Child Protective Services;

24(k) "Disposition" hearing means a hearing held pursuant to25§88320 of this Chapter;

(1) "Expunge" means to strike out or obliterate entirely so that the expunged information may not be stored, identified or later recovered by any means: mechanical, electronic or otherwise;

(m) "Fact-finding hearing" means an adjudicatory hearing held pursuant to §88318 of this Chapter to determine the truth of the allegations contained in the petition filed under this Chapter;

(n) "Family" means each legal parent, the grandparents, each
 parent's spouse, each sibling or person related by consanguinity up to
 the second degree or by marriage, each person residing in the same

dwelling unit, and any other person or legal entity which is a child's legal or physical custodian or guardian, or who is otherwise responsible for the child's care;

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(o) "Family Court" means the court established pursuant to §5101, Title 9, Guam Code Annotated;

(p) "Family home" means the home of the child's parents or legal custodian where there is the provision of care for the child's physical and psychological health and welfare;

(q) "Foster care" means when a child is placed, pursuant to an order of the court, in a residence which has been designated as suitable by an authorized agency or the court for the appropriate care of a child;

(r) "Foster custody" means the legal status created by an order of the court after the court has determined that the child's family is not presently willing and able to provide the child with a safe family home;

(s) "Guardian ad litem" means a person appointed by the court pursuant to §88308 of this Chapter whose role is to protect and promote the needs and interests of the child or ward;

18 (t) "Harm to a child's physical health or welfare" occurs in a case 19 where there exists evidence of injury, including but not limited to: 20 (1) Any case where the shild exhibits evidence of

20	(1) Any case where the child exhibits evidence of:
21	(A) skin bruising or any other internal bleeding,
22	(B) any injury to skin causing bleeding,
23	(C) burn or burns,
24	(D) poisoning,
2 5	(E) fracture of any bone,
26	(F) subdural hematoma
27	(G) soft tissue swelling,
28	(H) extreme pain,
29	(I) death or
30	(J) disfigurement or impairment of any bodily
31	organ, and such injury is inflicted by other than
32	accidental means, by excessive corporal punishment or
33	where the history given concerning such condition or

death is at variance with the degree or type of such condition or death; or

(2) Any case where the child has been the victim of a sexual offense as defined in the Criminal and Correctional Code; or

(3) Any case where there exists injury to the psychological capacity of a child such as failure to thrive, extreme mental distress, or gross emotional or verbal degradation as is evidenced by an observable and substantial impairment in the child's ability to function within a normal range of performance with due regard to the child's culture; or

Any case where the physical health of the child is (4) 11 adversely affected because the person responsible for the child's 12 welfare has not regularly provided the child, in a timely manner, 13 with adequate food, clothing, shelter, psychological care, physical 14 care, health care or supervision, when financially able to do so or 15 if offered financial assistance or health care or other reasonable 16 means to do so. "Adequate health care" includes any medical or 17 non-medical health care permitted or authorized under territorial 18 laws; provided, however, that a person responsible for the child's 19 welfare who, while legitimately practicing his or her religious 20beliefs, does not specify medical treatment for a child should not 21 for that reason alone be considered as harming or threatening 22 harm to the child; or 23

(5) Any case where the child is provided with a controlled
substance as defined by the Criminal and Correctional Code.
However, this paragraph shall not apply to a child's family who
provides such drugs to the child pursuant to the direction or
prescription of a practitioner as defined in §67.12(t) of the
Criminal and Correctional Code of Guam; or

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(6) Any case where the child is abandoned.

(u) "Indicated report" means a report made pursuant to this
 Article if an investigation by a child protective agency results in a
 determination by Child Protective Services that substantial evidence of
 the alleged abuse exists based on available medical evidence and the

investigation or an admission of the acts of harm or threatened harm by the person responsible for the child's welfare;

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(v) "Licensing agency" means any department or agency that licenses child care facilities;

(w) "Long-term foster custody" means the legal status created by order of the court after the court has determined by clear and convincing evidence that it is in the best interests of the child to order an appropriate long-term plan concerning the child;

9 (x) "Party" means an authorized agency, the child, the child's 10 family member or members who are required to be summoned 11 pursuant to §88306 of this Chapter, any other member of the child's 12 family, or any other person who is alleged in the petition filed under 13 this Chapter or who is subsequently determined at any child protective 14 proceeding to be encouraging, causing or contributing to the acts or 15 condition which bring the child within this Chapter;

16 (y) "Permanency plan" is a specific written plan prepared by
17 Child Protective Services which sets forth the goal of the child's
18 permanent placement as being either adoption, permanent foster
19 custody with subsequent adoption or guardianship, or permanent foster
20 custody until majority.

(z) "Permanency plan hearing" means a hearing held pursuant to
§88324 of this Chapter.

(aa) "Person responsible for the child's welfare" includes the
child's parent, guardian, foster parent, an employee of a public or
private residential home or an institution or authorized agency
responsible for the child's welfare;

(bb) "PINS" means a person in need of services who has been
harmed as defined in this §88101.

(cc) "Police officer" means a person employed by the government
of Guam to enforce the laws and ordinances for preserving the peace,
safety, and good order of the community;

32 (dd) "Preliminary hearing" means a hearing held pursuant to
33 §88317 of this Chapter;

(ee) "Preponderance of evidence" means evidence which as a whole shows that the fact sought to be proved is more probable than not:

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 $(\mathbf{ff})$ "Progress hearing" means any hearing held pursuant to §88322 of this Chapter;

"Protective custody" means the legal status of a child whose (gg)physical custody is retained by a police officer, Child Protective Services social worker or physician pursuant to §88302 of this Chapter in order to protect such child from harm or threatened imminent harm;

"Reasonable cause to believe" means evidence which would 10 (hh)11 cause a reasonable person to believe:

12 (ii) "Service plan" means a specific written plan prepared by Child 13 Protective Services and presented to members of the child's family 14 which indicates the specific services or treatment with which the 15 parties will be provided, the specific actions the parties must take, the 16 specific responsibilities that the parties must assume, and the specific 17 consequences that may be reasonably anticipated to result from the parties' success or failure in complying with the plan; 18

19 (jj) "Subject of the report" means any child reported to the central 20 register of child abuse and the person(s) responsible for the child's 21 welfare named in the report;

"Substantiated report" means a report made pursuant to this  $(\mathbf{k}\mathbf{k})$ 23 Chapter if there has been any judicial adjudication based on a finding that a child who is a subject of the report is an abused or neglected child:

26"Suspected report means" any report that is not indicated, (11)27 substantiated or unsubstantiated;

28 "Temporary foster custody" means a legal status created (mm)29 under this Chapter pursuant to an order of the court whereby the 30 Department assumes the duties and rights of a foster custodian over a 31 child;

32 "Threatened harm" means any reasonably foreseeable, (nn)33 substantial risk of harm to a child with due consideration being given to 34 the age of the child;

1	(00) "Unsubstantiated report" means any report made pursuant to
2	this Chapter if an investigation by a child protective agency results in a
3	determination by Child Protective Services that substantial evidence of
4	the alleged abuse does not exist.
5	Article 2
6	Child Abuse and Neglect Reporting Act
7	§88200. Short title; intent and purpose of article.
8	(a) This article shall be known and may be cited as the Child
9	Abuse and Neglect Reporting Act.
10	(b) The intent and purpose of this article is to protect children
11	from abuse. In any investigation of suspected child abuse, all persons
12	participating in the investigation of the case shall consider the needs of
13	the child victim and shall do whatever is necessary to prevent
14	psychological harm to the child victim.
15	§88201. Persons required to report suspected child abuse or
16	neglect.
17	(a) Any person who, in the course of his or her employment,
18	occupation or practice of his or her profession, comes into contact with
19	children shall report when he or she has reason to suspect on the basis
20	of his medical, professional or other training and experience that a child
21	is an abused or neglected child. No person may claim "privileged
22	communications" as a basis for his or her refusal or failure to report
23	suspected child abuse or neglect or to provide Child Protective Services
24	or the Guam Police Department with required information. Such
25	privileges are specifically abrogated with respect to reporting suspected
26	child abuse or neglect or of providing information to the agency.
27	(b) Persons required to report suspected child abuse under
28	subsection (a) include but are not limited to any licensed physician,
29	medical examiner, dentist, osteopath, optometrist, chiropractor,
30	podiatrist, intern, registered nurse, licensed practical nurse, hospital
31	personnel engaged in the admission, examination, care or treatment of

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personnel engaged in the admission, examination, care of iteatment of
 persons, Christian Science practitioner, school administrator, school
 teacher, school nurses, school counselor, social services worker, day care

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center worker or any other child care or foster care worker, mental health professional, peace officer or law enforcement official.

(c) Any commercial film and photographic print processor who has knowledge of or observes, within the scope of his or her professional capacity or employment, any film, photograph, video tape, negative or slide depicting a child under the age of 18 engaged in an act of sexual conduct shall report such instances of suspected child abuse to Child Protective Services immediately or as soon as practically possible by telephone and shall prepare and send a written report of it with a copy of the film, photograph, video tape, negative or slide attached within 48 hours of receiving the information concerning the incident. As used in this section, "sexual conduct" means any of the following:

(1) Sexual intercourse, including genital-genital, oralgenital, anal-genital or oral-anal, whether between persons of the same or opposite sex or between humans and animals;

(2) Penetration of the vagina or rectum by any object;

(3) Masturbation, for the purpose of sexual stimulation or the viewer;

19(4)Sadomasochistic abuse for the purpose of sexual20stimulation of the viewer; or

(5) Exhibition of the genitals, pubic or rectal areas of any person for the purpose of sexual stimulation to the viewer.

§88202. Any person permitted to report. In addition to those persons and officials required to report suspected child abuse or neglect, any person may make such report if that person has reasonable cause to suspect that a child is an abused or neglected child.

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§88203. Reporting responsibilities.

(a) Reporting procedures. Reports suspected child abuse or
neglect from persons required to report under §88201 shall be made
immediately by telephone and followed up in writing within 48 hours
after the oral report. Oral reports shall be made to Child Protective
Services or to the Guam Police Department.

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(b) Cross reporting among agencies.

(1) Child Protective Services shall immediately or as soon as practically possible report by telephone to the Guam Police Department and to the Attorney General's Office every known or suspected instance of child abuse as defined in §88101, except acts or omissions coming within subsection (t) (4) of §88101. Child Protective Services shall also send a written report thereof within 48 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subsection.

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The Guam Police Department shall immediately or as soon as 10 (2)11 practically possible report by telephone Child Protective Services and to 12 the Attorney General's Office every known or suspected instance of 13 child abuse reported to it, except acts or omissions coming within subsection (t) (4) of §88101, which shall only be reported to Child 14 15 Protective Services. However, the Guam Police Department shall report 16 to Child Protective Services every known or suspected instance of child 17 abuse reported to it which is alleged to have occurred as a result of 18 inaction of a person responsible for the child's welfare to adequately 19 protect the minor from abuse when such person knew or reasonably 20should have known that the minor was in danger of abuse. The Guam 21 Police Department shall also send a written report thereof within 48 2.2 hours of receiving the information concerning the incident to any 23 agency to which it is required to make a telephone report under this 24 subsection.

(3) Child Protective Services and the Guam Police
Department shall immediately, or as soon as practically possible,
report by telephone to the appropriate Department of Defense
Family Advocacy Program every known or suspected instance of
child abuse reported to them when such report involves active
duty military personnel or their dependents.

31 (c) Contents of report. Reports of child abuse or neglect should
32 contain the following information:

33 (1) Every report of a known or suspected instance of child
34 abuse should include the name of the person making the report,

the name, age and sex of the child, the present location of the child, the nature and extent of injury, and any other information, including information that led that person to suspect child abuse, that may be requested by the child protective agency receiving the report. Persons who report pursuant to §88202 shall be required to reveal their names;

7 (2) Other information relevant to the incident of child abuse
8 may also be given to an investigator from a child protective
9 agency who is investigating the known or suspected case of child
10 abuse;

11(3) The name of the person or persons responsible for12causing the suspected abuse or neglect;

(4) Family composition;

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(5) The actions taken by the reporting source, including the taking of photographs and x-rays, removal or keeping of the child or notification of the medical examiner; and

(6) Any other information which the child protective agency may, by regulation, require.

(d) Identity of person reporting. The identity of all persons who
report under this Article shall be confidential and disclosed only among
child protective agencies, to counsel representing a child protective
agency, to the Attorney General's Office in a criminal prosecution or
Family Court action, to a licensing agency when abuse in licensed outof-home care is reasonably suspected, when those persons who report
waive confidentiality, or by court order.

(e) Reporting forms. The reporting forms developed pursuant to
\$88204 shall be made available to all persons required to report under
\$88201.

\$88204. Cooperative arrangements for investigation; written
findings; report. The Guam Police Department and Child Protective
Services shall develop and implement cooperative arrangements to
coordinate existing duties in connection with the investigation of
suspected child abuse. Child Protective Services shall initiate the
development and implementation of these arrangements, including the

development and distribution of reporting forms. The Guam Police Department shall report to Child Protective Services that it is investigating a case within 36 hours after starting its investigation. In cases where a minor is a victim of criminal sexual conduct, Child Protective Services shall evaluate what action or actions would be in the best interests of the child victim in accordance with subsection (b) of §88200 of this Article. Except for acts or omissions coming within subsection (t) (4) of §88201, Child Protective Services shall submit in writing its findings and the reasons for them to the Attorney General's Office on or before the completion of the investigation.

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11 §88205. Mandatory reporting and post-mortem investigation of 12 deaths. Any person or official required to report suspected child abuse 13 or neglect who has reasonable cause to suspect that a child died as a 14 result of child abuse or neglect shall report that fact to the chief medical 1.5 examiner. The chief medical examiner shall accept the report for 16 investigation and shall report his or her findings to the Guam Police Department, the Attorney General's Office, Child Protective Services and, 17 18 if the report is made by hospital personnel to the hospital.

19 **§88206**. Immunity from liability. Any person, hospital, 20 institution, school, facility or agency participating in good faith in the 21 making of a report or testifying in any proceeding arising out of an 22 instance of suspected child abuse or neglect, the taking of photographs 23 or the removal or keeping of a child pursuant to §88302 of the Child 24 Protective Act shall have immunity from any liability, civil or criminal, 25 that might otherwise result by reason of such actions. For the purpose 26 of any proceeding, civil or criminal, the good faith of any person 27 required to report cases of child abuse or neglect pursuant to §88201 28 shall be presumed.

§88207. Penalty for failure to report. Any person required to
report pursuant to §88201 who fails to report an instance of child abuse
which he or she knows to exist or reasonably should know to exist is
guilty of a misdemeanor and is punishable by confinement for a term
not to exceed six months, by a fine of not more than \$1,000 or by both.
A second or subsequent conviction shall be a felony in the third degree.

Fines imposed for violations of this Chapter shall be deposited in the Victim's Compensation Fund.

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§88208. Recordkeeping duties of Child Protective Services.

(a) There shall be established in Child Protective Services (i) an active file of child abuse or neglect reports under investigation and those where services are being provided; (ii) a central register of child abuse or neglect which shall consist of substantiated and indicated reports of child abuse or neglect; and (iii) a suspected file as provided in subsection (e) below.

(b) Child Protective Services shall establish and maintain a 24hour telephone reporting system that all persons, whether mandated by law or not, may use to report cases of suspected child abuse or neglect.

(c) No information shall be released from the central register unless Child Protective Services has positively identified the person requesting the information and Child Protective Services has inquired into and is satisfied that such person has a legitimate need within the scope of §88210 to obtain information from the central register.

18 (d) The central register shall include and shall be limited to the19 following information:

(1) the names of the subjects of the report;

(2) the date or dates and the nature and extent of the alleged instances of suspected child abuse or neglect;

(3) the home addresses of subjects of the report;

24 (4) the age and sex of the children harmed or threatened
25 with harm;

26 (5) the locality in which the harm or threatened harm
27 occurred;

28 (6) whether the report is a substantiated report or an
29 indicated report; and

30(7) the progress of any legal proceedings brought on the31basis of the report of suspected child abuse or neglect.

(e) If an investigation of a report of suspected child abuse or
 neglect does not determine, within 60 days from the date of the report
 of suspected child abuse or neglect, that the report is an indicated

report, substantiated report or an unsubstantiated report, all information identifying the subjects of such report shall be placed in Child Protective Services' suspected file for a period of one year.

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(f) If an investigation of a report of suspected child abuse or neglect does not determine, within one year of the date of the report of suspected child abuse or neglect, that the report is an indicated report or a substantiated report, such report shall be considered an unsubstantiated report and all information identifying the subjects of such report shall be expunged from Child Protective Services' suspected files.

§88209. Duties of Child Protective Services concerning reports of abuse. Child Protective Services shall:

(1) Receive 7 days a week, 24 hours a day, all reports, both oral and written, of suspected child abuse or neglect in accordance with this Article and the regulations of the Department;

16 (2) Upon receipt of each report of suspected child abuse or 17 neglect, commence within a reasonable time, but not later than 72 18 hours, an appropriate investigation. The investigation shall include a determination of the risk of such child or children if 19 20they continue to remain in the existing home environment, as well 21 as a determination of the nature, extent and cause of any 22condition enumerated in such report and, after seeing to the 2.3safety of the child or children, forthwith notify the subjects of the 24report orally and in writing of the existence of the report. The 25 investigation shall be completed within 60 days;

(3) The investigation shall determine whether the child is
being harmed by factors beyond the control of the parent or other
person responsible for the child's welfare, and if so determined,
Child Protective Services shall promptly take all available steps to
remedy and correct such conditions, including but not limited to
the coordination of social services for the child and the family;

32(4)Determine within 60 days whether the report is33"indicated," "substantiated" or "unsubstantiated";

(5) Pursuant to the provisions of §88302 of the Child Protective Act take a child into protective custody to protect him or her from further abuse;

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22 23 (6) Based on the investigation and evaluation conducted pursuant to this Article, provide or contract with private or public agencies for the protection of the child in his or her home whenever possible or those services necessary for adequate care of the child when placed in protective custody or temporary foster custody. Prior to offering such services to a family, explain that it has no legal authority to compel such family to receive said services but may inform the family of the obligations and authority of Child Protective Services to initiate appropriate court proceedings;

14 (7) In those cases in which an appropriate offer of service is
15 refused and Child Protective Services determines that the best
16 interests of the child require court action, initiate the appropriate
17 court proceeding and request the court to appoint a guardian ad
18 litem for the child;

(8) Assist the court during all stages of the court proceedings in accordance with the purposes of this Article;

(9) Provide or arrange for and monitor rehabilitative services for children and their families on a voluntary basis or under a final or intermediate order of the court; and

24(10) Child Protective Services shall be as equally vigilant of 25 the status, well-being and conditions under which a child is living 26 and being maintained in a facility other than that of his or her 27 parent, custodian or guardian from which he or she has been 28 removed as it is of the conditions in the dwelling of the parent, 29 custodian or guardian. Where Child Protective Services finds that 30 the placement for any temporary or permanent custody, care or 31 treatment is for any reason inappropriate or harmful in any way 32 to the child's physical or mental well-being, it shall take 33 immediate steps to remedy these conditions including petitioning 34 the court.

§88210. Confidentiality.

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(a) Any information received pursuant to this Article which could identify a subject of the report or the person making the report shall be confidential. Any person who will willfully releases or permits the release of any such information to persons or agencies not permitted by this section shall be guilty of a felony of the third degree.

(b) Information received pursuant to this Article may be released, on a need to know basis, and only as necessary to serve and protect the child, to the following, except that release of the identity of persons reporting child abuse is strictly prohibited, unless disclosed pursuant to subsection (d) of §88203:

(1) Multidisciplinary teams established to assist in the disposition of cases pursuant to §88331 of this Chapter;

(2) Courts of competent jurisdiction, upon finding that access to the records may be necessary for determination of an issue before the court. Access shall be limited to inspection by the court only, unless the court determines that disclosure of the records to interested parties is necessary for the resolution of an issue pending before it;

20(3) Grand juries when connected with the prosecution of a21child abuse and neglect case;

(4) Properly constituted authorities or agencies both
 military and governmental, investigating a report of known or
 suspected child abuse or neglect, or providing services to a child
 or family relating to a known or suspected case of child abuse or
 neglect, including police departments, prosecutors and attorney
 generals;

(5) A physician examining or treating a child, or the
director or a person specifically designated in writing by such
director of any hospital or other medical institution where a child
is being treated, where the physician or the director of his or her
designee suspect the child of being an abused or neglected child;

(6) Any agency or individual authorized, contracted or licensed to diagnose, care or treat a child who is the subject of a report of abuse or neglect;

(7) A person, including but not limited to, a guardian ad litem, attorney for the child, permanent foster or adoptive parent, who is responsible for the welfare of the child named;

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(8) A duly authorized official of the department.

8 (c) At any time, a victim or alleged victim of child abuse, the 9 parents of a victim or alleged victim of child abuse, or a perpetrator or 10 alleged perpetrator of child abuse, after a court proceeding has been 11 initiated regarding the abuse, may review, upon written request, all 12 information contained in the central register or in any report filed 13 pursuant to §88203, except information which would identify the 14 reporter of the abuse.

15 (d) Information received pursuant to this Article may be released
16 to sources other than those identified in subsections (b) and (c) only
17 when a written authorization from an individual designated in
18 subsection (c) specifically provides consent to have the record released
19 or reviewed.

20 (e) When information is released under subsection (b) or (d), the
21 following rules shall apply:

(1) Medical, psychological or psychiatric information in the
department's case record, including diagnosis and past history of
disease or disability of a particular individual, shall remain the
property of the medical, psychological or psychiatric consultant
and an individual requesting this record shall be referred to the
original consultant for release of that information;

28 (2) Case records shall be reviewed only in designated areas
29 within Child Protective Services' offices. The records shall not be
30 removed from the premises;

31(3) Records shall be released upon an individual's request32provided that a signed and dated written request is received33stating specifically:

(A) What portion of the record is desired;

1 Whether the record is desired orally, through **(B)** 2 review or by receipt of reproduced copies of the record 3 requested; 4 (C) The name of the individual authorized to receive 5 the record or to review the record, and the individual's 6 agency connection, if any; 7 (D) The purpose for which the record is being sought; 8 The parent's or legal guardian's social security (E) 9 number or birthdate and address; and 10 (F) The period of time the authorization is valid, not to 11 exceed ninety days; 12 Reproduced copies of records requested shall be (4) 13 provided at a cost related to the cost of reproduction. Actual 14 postage cost shall be charged; 15 Before records are released or reviewed, Child (5) Protective Services shall: 16 17 (A) Block out the name or other portion of the record 18 identifying the child abuse or neglect complainant; 19 Reproduce a copy of the page from which the **(B)** 20portion of the record was blocked out; and 21 (C) Allow the individual requesting the information to 22 receive or to review the blocked out page; 23 When the record requested contains or consists of coded (6) 2.4 or abbreviated material such as computer input or output forms, 25 Child Protective Services shall provide translations of the codes or 26 abbreviations, if requested. 27 §88211. Regulations; authority to make. The Department of 28 Public Health and Social Services shall adopt regulations necessary to 29 implement this Article pursuant to the Administrative Adjudication 30 Law. Severability clause. If any part of this Article shall be 31 §88212. 32 held invalid, such part shall be deemed severable and the invalidity 33 thereof shall not affect the remaining part of this Article. 34 Article 3

## Child Protective Services

§88300. Jurisdiction. The Family Court shall have exclusive original jurisdiction in a child protective proceeding concerning any child who was or is found within Guam at the time such facts and circumstances occurred, are discovered, or are reported to the Department, which facts and circumstances constitute the basis for the finding that the child has been harmed or is subject to threatened harm as defined in §88201.

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§88301. Authorization for Department to act.

10 The Department shall establish a "Child Protective Services". (a) It shall have a sufficient staff to fulfill the purposes of this Chapter and 11 12 organized in such a way as to minimize the continuity of responsibility, 13 care and services of individual workers toward individual children and Child Protective Services and the Guam Police Department 14 families. 15 shall be the sole agencies responsible for receiving and investigating all 16 reports of child abuse or neglect made pursuant to this Chapter, 17 specifically including but not limited to reports of child abuse or neglect 18 in facilities operated by the Department and other public agencies, for 19 the purpose of providing protective services to prevent further abuses 20to children and to provide or arrange for and monitor the provision of 21 those services necessary to safeguard and ensure the child's well-being 22 and development and to preserve and stabilize family life wherever 23 appropriate.

24 (b) Upon receiving a report that a child has been harmed or is 25 subject to threatened harm, Child Protective Services shall cause such 26 investigation to be made in accordance with this Chapter as it deems to 27 be appropriate. In conducting the investigation Child Protective 28 Services may require the cooperation of police officers or other 29 appropriate law enforcement authorities for phases of the investigation 30 for which they are better equipped and Child Protective Services may 31 conduct a criminal history record check concerning an alleged 32 perpetrator of harm or threatened harm to a child.

33 (c) Upon satisfying itself as to the course of action to be pursued,
34 Child Protective Services shall:

(1) Resolve the matter in such informal fashion as is appropriate under the circumstances;

(2) Seek to enter into a service plan, without filing a petition in court, with such members of the child's family and such other authorized agencies as Child Protective Services deems to be necessary to the success of the service plan, including but not limited to the member or members of the child's family who have legal custody of the child;

9 (3) Assume protective custody of the child pursuant to 10 §88302;

(4) File a petition; or

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(5) Relinquish its protective custody and return the child to his or her legal custodian.

14 (d) Child Protective Services shall make available among its for the prevention and treatment of child abuse or neglect 15 services 16 multidisciplinary teams, instruction in education for parenthood, 17 protective and preventive social counseling, emergency caretaker 18 services and emergency shelter care, emergency medical services and 19 the establishment of group organized by former abusing or neglecting 20persons and encourage self-reporting and self-treatment of present 21 abusers.

§88302. Protective custody by police officer, Child Protective Services social worker or physician without court order.

24(a) A police officer, Child Protective Services social worker or physician shall assume protective custody of a child without a court 25 26 order and without the consent of the child's family regardless of whether the child's family is absent if, in the discretion of such police 27 28officer, Child Protective Services social worker or physician, the child is 29 in such circumstances or condition that the child's continuing in the 30 custody or care of the person responsible for the child's welfare 31 presents a situation of harm or threatened harm to the child.

32 (b) A police officer of physician who assumes protective custody
 33 of a child who is harmed or threatened with harm shall immediately
 34 transfer protective custody to Child Protective Services by presenting

physical custody of the child to Child Protective Services, unless the child is or presently will be admitted to a hospital or similar institution, in which case the police officer or physician shall immediately transfer protective custody to Child Protective Services by so informing Child Protective Services and receiving an acknowledgment from the hospital or similar institution that it has been informed that the child is under the protective custody of Child Protective Services.

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(c) When Child Protective Services receives physical custody of a child pursuant to subsection (b) of this section, Child Protective Services shall assume protective custody of a child without an order of the court and without the consent of the child's family regardless of whether the child's family is absent if, in the discretion of Child Protective Services, the child is in such circumstance or condition that the child's continuing in the custody or care of the child's family presents a situation of harm or threatened harm to the child.

(d) Upon assuming protective custody of a child under this
Chapter, any authorized individual taking a child into protective custody
shall immediately and within 24 hours, orally and in writing, notify the
person responsible for the child's welfare, the reasons for the need to
take the child into protective custody and shall immediately notify Child
Protective Services.

(e) Upon assuming protective custody of a child under this
Chapter, Child Protective Services shall place the child in a home
approved by Child Protective Services unless the child is admitted to a
hospital or similar institution, and obtain a verbal ex parte order from
the court for temporary custody while Child Protective Services or the
Guam Police Department conducts an appropriate investigation.

(f) Children appearing to suffer any physical or mental trauma
which may constitute harm or threatened harm shall be admitted to
and treated in appropriate facilities of private and public hospitals, with
or without the consent of the child's family, on the basis of medical need
and shall not be refused or deprived in any way of proper medical
treatment and care.

(g) If a child has been taken into protective custody, within one day of Child Protective Services' assumption of protective custody, excluding Saturday, Sunday and holidays, Child Protective Services shall file a declaration with the court in support of an ex parte order and obtain a written order to extend protective custody beyond the one working day.

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(h) In no case shall protective custody be maintained longer than three working days without a preliminary hearing. If at the hearing it is determined that protective custody shall be continued, Child Protective Services shall, within 48 hours of the time of the hearing, file a petition with the Superior Court of Guam pursuant to §88305.

12 (i) A conference between the person responsible for the welfare of a child taken into protective custody pursuant to this section and the 13 14 social worker designated by Child Protective Services to be responsible 15 for such child shall be held within two working days if possible from 16 the time that the child is taken into such custody for the purposes of 17 explaining to such person the reasons for the protective custody of the 18 child and the whereabouts of the child is appropriate, and to expedite, 19 wherever possible, the return of the child to the custody of such person 20 when protective custody is no longer necessary.

\$88303. Authorization for photographs, x-rays and radiological or
other diagnostic examination.

23 (a) Any health professional or paraprofessional, physician licensed or authorized to practice medicine in Guam, registered nurse or 24 licensed practical nurse, hospital or similar institution's personnel 25 26 engaged in the admission, examination, care or treatment of patients, medical examiner, coroner, social worker or police officer, who has a 27 28 child whom the person reasonably believes has been harmed, shall 29 make every good faith effort to take or cause to be taken color 30 photographs of the areas of trauma visible on the child. If medically 31 indicated, such person may take or cause to be taken x-rays of the child 32 or cause a radiological or other diagnostic examination to be performed 33 on the child.

(b) Color photographs, x-rays, radiological or other diagnostic examination reports which show evidence of imminent harm or threatened harm to a child shall be immediately forwarded to Child Protective Services.

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§88304. Service Plan.

(a) A service plan is a specific written plan prepared by Child Protective Services and presented to such members of the child's family as Child Protective Services deems to be necessary to the success of the plan, including, but not limited to, the member or members of the child's family who have legal custody of the child at the time that the service plan is being formulated or revised under this Chapter.

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15 16 (b) The service plan should set forth:

(1) The steps that will be necessary to facilitate the return of the child to a safe family home, if the proposed placement of the child is in foster care or in alternate placement outside of the child's home;

17(2) The steps that will be necessary for the child to remain18in a safe family home with the assistance of a service plan, if the19proposed placement of the child is in a family home under Child20Protective Services' supervision; and

(3) The steps that will be necessary to make the family
 home a safe family home and to terminate intervention of Child
 Protective Services into the family and eliminate, if possible, the
 necessity for the filing of a petition with the court under this
 Chapter.

26 (c) The service plan should also include but not necessarily be
27 limited to:

(1) The specific services or treatment that the parties will
be provided and the specific actions the parties must take or
specific responsibilities that the parties must assume; the time
frames during which such services will be provided, such actions
must be completed and such responsibilities must be assumed;

33(2) The specific consequences that may be reasonably34anticipated to result from the parties' success or failure in

complying with, performing and completing, if possible, each and every term and condition of the service plan, including but not limited to the consequence that, unless the family is willing and able to provide the child with a safe family home within the reasonable period of time specified in the service plan, their respective parental and custodial duties and rights shall be subject to termination; and

(3) Such other terms and conditions as Child Protective Services deems to be necessary to the success of the service plan.

10 (d) After each term and condition of the service plan has been 11 thoroughly explained to and is understood by each member of the 12 child's family whom Child Protective Services deems to be necessary to 13 the success of the service plan, the service plan shall be agreed to and 14 signed by each such family member. Thereafter, a copy of the service 15 plan shall be provided to each family member who signed the service 16 plan.

(e) If a member of a child's family whom Child Protective
Services deems to be necessary to the success of the service plan cannot
or does not understand or agree to the terms and conditions set forth in
the service plan, Child Protective Services shall proceed pursuant to
§88305.

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§88305. Petition.

(a) A petition invoking the jurisdiction of the court under this Chapter shall be filed in the manner provided in this section:

(1) Petitions shall be entitled "In the Interest of (name of
child), A Minor," shall be verified and shall set forth with
specificity:

28 (A) The facts which bring the child within this
29 Chapter;

30(B) The name, age, birthdate, sex and residential31address of the child;

32(C) The names and last known residential addresses of33the member or members of the child's family required to be34notified pursuant to §88306, and other persons who are to

be made parties to the child protective proceeding at the time of the filing of the petition; and

(D) Whether the child is under the temporary foster custody of the department and, if so, the type of temporary foster custody, the circumstances necessitating such care and the date the child was placed in such temporary foster custody.

(2) When any of the facts required by this section cannot be determined, the petition shall so state. The petition may be based on information and belief but in such case the petition shall state the basis of such information and belief.

(b) Petitions shall state that unless the family is willing and able to provide the child with a safe family home, even with the assistance of a service plan, within a reasonable period of time, their respective parental custodial duties and rights shall be subject to termination.

(c) The court may provide rules concerning the titles, filing, investigation, and the form and content of petitions and other pleadings and proceedings in cases under this Chapter, or any other matter arising in child protective proceedings.

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§88306. Summons.

21 After a petition has been filed, the court shall issue a (a) 2.2 summons requiring a child's family member or members who have 23 legal or physical custody of the child at the time of the filing of the 24petition to bring the child before the court at the preliminary hearing as 25 set forth in the summons. In addition, any legal parent, the natural 26 parents (unless parental rights have been terminated) and other 27 persons who are to be parties to the child protective proceeding at the 28 time of the filing of the petition also shall be summoned, in the manner 29 provided in this section.

30 (b) A "stamped filed" copy of the petition shall be attached to
31 each summons.

32 (c) The summons shall notify the parties of their right to retain
33 and be represented by counsel.

(d) The summons shall state: "YOUR PARENTAL AND CUSTODIAL DUTIES AND RIGHTS CONCERNING THE CHILD OR CHILDREN WHO ARE THE SUBJECT OF THE ATTACHED PETITION MAY BE TERMINATED BY AWARD OF PERMANENT CUSTODY IF YOU FAIL TO APPEAR ON THE DATE SET FORTH IN THIS SUMMONS."

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6 §88307. Service of summons. (a) Service of summons shall be 7 made personally by delivery of a "stamped filed" copy to the person or 8 legal entity summoned; provided that if the court is satisfied that it is 9 impractical to personally serve the summons provided for in the 10 preceding section, the court may order service by registered or certified mail addressed to the last known address, or by publication, or both. 11 12 Service shall be effected at least 24 hours prior to the time fixed in the summons for a preliminary hearing or at least 48 hours prior to the 13 14 time fixed in the summons for any other hearing under this Chapter, 15 unless such party otherwise was ordered by the court to appear at such 16 hearing. When publication is used the summons shall be published once a week for two consecutive weeks in a newspaper of general circulation 17 18 in Guam. The newspaper shall be designated by the court in its order 19 for publication of the summons and such publication shall have the same force and effect as though such person had been personally 2021 served with the summons. Personal service of summons required 22 under this Chapter shall be made by the marshal or a licensed process 23 server and a return must be made on the summons showing to whom, 24 the date and time service was made.

25 (b) If any person summoned as provided in this section, without 26 reasonable cause, shall fail to appear, the court may proceed in such 27 person's absence or such person may be proceeded against for contempt 28 of court pursuant to §88326. Where the summons cannot be personally 29 served, or where a person served fails to obey the summons, or in any 30 case when it shall be made to appear to the court that the service will 31 be ineffectual, or that the best interests of the child require that the 32 child be brought before the court, the court may issue either a warrant 33 for such person or an order to show cause why contempt shall not be 34 found for failure to appear pursuant to §88326.

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§88308. Guardian ad litem; counsel.

(a) The court shall appoint a guardian ad litem for the child to serve throughout the pendency of the child protective proceeding under this Chapter, provided, that a guardian ad litem's appointment shall automatically terminate upon an award of permanent custody of the child by the court, unless otherwise ordered by the court. The court may appoint additional counsel for the child pursuant to subsection (c) or independent counsel for any other party if such party is indigent, the child protective proceeding is complex, counsel is necessary to protect the party's interests adequately and the interests are not represented adequately by another party who is represented by counsel.

12 Where the court determines, after such hearing as the court (b) 13 deems to be appropriate, that a party is incapable of comprehending the 14 legal significance of the issues or the nature of the child protective 15 proceeding, the court may appoint a guardian ad litem to represent the interests of that party; provided that a guardian ad litem appointed 16 17 pursuant to this section shall investigate and report to the court in 18 writing at six-month intervals, or as is otherwise ordered by the court, regarding the current status of the ward's disability, including but not 19 20limited to a recommendation as to available treatment, if any, for such 21 disability and a recommendation concerning the manner in which the 22 court should proceed in order to best protect the interests of the ward 23 in conjunction with the court's determination as to the best interests of 24 the child.

25 A guardian ad litem appointed pursuant to subsection (a) shall (c) 26 report to the court in writing at six-month intervals, or as is otherwise 27 ordered by the court, regarding such guardian ad litem's activities on 28 behalf of the child and recommendations concerning the manner in 29 which the court should proceed in the best interests of the child, provided that such guardian ad litem shall make face to face contact 30 31 with the child in the child's family or foster home at least once every 32 Such guardian ad litem shall also inform the court of the three months. 33 child's perceived interests if they differ from those being advocated by 34 the child's guardian ad litem. If the child and the child's guardian ad

litem are not in agreement, the court shall evaluate the necessity for appointing special counsel for the child to serve as the child's legal advocate concerning such issues and during such proceedings as the court deems to be in the best interests of the child.

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(d) A guardian ad litem or counsel appointed pursuant to this section for the child or other party shall be paid for by the court unless the party for whom counsel is appointed has an independent estate sufficient to pay such costs. The court may order the appropriate parties to pay reimbursement to the court for the costs and fees of the guardian ad litem and other counsel appointed for the child.

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13 14 (e) A guardian ad litem shall:

(1) Be allowed access to the child by the caretakers of the child whether the caretakers are individuals, authorized agencies or health care providers;

15 (2) Have the authority to inspect and receive copies of any
16 records, notes and electronic recordings concerning the child that
17 are relevant to the proceedings filed under this Chapter without
18 the consent of the child or individuals and authorized agencies
19 who have control of the child; and

(3) Be given notice of all hearings and proceedings, civil or
criminal, including but not limited to grand juries, involving the
child and shall protect the best interests of the child therein,
unless otherwise ordered by the court.

24 §88309. Reports to be submitted by Child Protective Services;
25 social worker expertise.

(a) Child Protective Services shall make every reasonable effort
to submit written reports, or a written explanation regarding why a
report is not being submitted timely, to the court with copies to the
parties or their counsel or guardian ad litem.

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(b) Report or reports pursuant to subsection (a) specifically shall:

31 (1) Evaluate fully all relevant prior and current information
32 concerning whether the child's family is presently willing and able
33 to provide the child with a safe family home, including, if the
34 family previously entered into a voluntary or court ordered

service plan, the parties' success or failure in complying with, performing and completing, if possible, each and every term and condition of the service plan;

(2) In each proceeding, subsequent to adjudication,
 recommend (A) A service plan as set forth in §88304 or revisions
 to the existing service plan, and, if so, set forth the proposed
 services or revisions; or

(B) An award of permanent custody to an appropriate authorized agency, and, if so, set forth the basis for such recommendation which shall include but not be limited to an evaluation of each of the criteria set forth in §88324 (a), including the written permanency plan as set forth in §88323; and

(3) Set forth recommendations as to such other orders as are deemed to be appropriate and state the basis for recommending that such orders be entered.

17 (c) A written report submitted pursuant to subsection (a) shall be 18 admissible and may be relied upon to the extent of its probative value 19 in any proceeding under this Chapter, except in a permanency plan 20 hearing; provided, that the person or persons who prepared the report 21 shall be subject to direct and cross-examination as to any matter in the 22 report, unless such person is unavailable.

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§88310. Evidentiary determination; burden of proof.

(a) In a temporary foster custody hearing, a determination that there exists reasonable cause to believe that a child is subject to harm or threatened harm may be based upon any relevant evidence whatsoever, including but not limited to hearsay evidence when direct testimony is unavailable or when it is impractical to subpoena witnesses who will be able to testify to facts from personal knowledge.

30 (b) In a fact-finding hearing, a determination that the child has
31 been harmed or is subject to threatened harm shall be based on a
32 preponderance of the evidence, and, except as otherwise provided
33 under this Chapter, only competent and relevant evidence may be
34 admitted.

In subsequent hearings, other than a permanency plan (c) hearing, any determination shall be based on a preponderance of the evidence and any relevant evidence shall be admitted.

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(d) In a permanency plan hearing:

(1)A determination that permanent custody of a child be awarded to Child Protective Services shall be based upon clear and convincing evidence; and

(2) A determination that a child should be the subject of an adoption shall be based upon clear and convincing evidence.

10 Evidence may be inadmissible in other actions or §88311. proceedings; testimony by a child.

Any testimony or other evidence produced by a party in a (a) child protective proceeding under this Chapter which would otherwise be unavailable may be ordered by the court to be inadmissible as evidence in any other territorial civil or criminal action or proceeding, if the court deems such an order to be in the best interests of the child.

(b) The court may direct that a child testify under such circumstances as the court deems to be in the best interests of the child and the furtherance of justice, which may include or be limited to an interview on the record in chambers with only those parties present as the court deems to be in the best interests of the child.

(c)Any statement made by the child to any person relating to any allegation of harm or threatened harm shall be admissible in evidence in a child protective proceeding.

§88312. Recording a statement or the testimony of a child.

(a) The recording of a statement of a child is admissible into evidence in any proceeding under this Chapter if:

> (1)The recording is visual, oral or both and is recorded on film, tape, videotape or by other electronic means;

(2)The recording equipment was capable of making an accurate recording, the operator of the equipment was competent and the recording is accurate and has not been altered; and

(3) Every person in the recording is identified.

§88313. Admissibility of evidence. The physician-patient privilege, psychotherapist-patient privilege, spousal privilege, clergypenitent privilege and lawyer-client privilege shall not be available to exclude evidence of harm or threatened harm in any proceeding under this Chapter.

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§88314. Required findings concerning notice prior to a hearing in a child protective proceeding.

8 No hearing may commence under this Chapter unless the (a) 9 court enters a finding that each of the parties required to be notified 10 pursuant to §88306 has been served with a copy of the petition, 11 provided that if a member or members of the child's family required to 12 be notified pursuant to §88306 have not been served, the court may 13 proceed to hear any child protective proceeding under this Chapter and 14 enter orders concerning the parties who have been served if the court is 15 satisfied that:

16(1) A reasonable effort has been made to effect personal17service;

(2) It would not be in the best interests of the child to postpone the proceeding until service can be effectuated; and

20(3) The child is represented by a guardian ad litem or21counsel.

(b) The court may set a continued hearing date; provided that:

(1) The court may waive the appearance of any party at the
continued hearing date; and

(2) If the court orders that service of summons be made by
mail or publication, the court shall set the continued hearing date
not less than 21 days subsequent to the date of service evidenced
by the signature on a return receipt or the date of the last
publication.

(c) Upon the continued hearing date, the court shall:

31(1) Enter a default concerning a party who was served but32failed to appear on the continued hearing date;

33 (2) Order the party who was served to appear on the date
34 of the next scheduled hearing in the case; or

(3) If a member of the child's family required to be notified pursuant to §88306 was served and appears on the continued hearing date and moves the court that a prior order be vacated or modified, the court shall set the oral motion to vacate prior orders for a hearing and order that the moving party file a written motion and serve the other parties with proper written notice of the motion and hearing date.

(d) In considering a party's motion to vacate or modify prior orders, the court need not commence a trial or hearing de novo, but rather, after such further hearing as the court deems to be appropriate may proceed to enter such orders as are in the best interests of the child.

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§88315. Order of protection.

(a) Upon submission of the declaration in support of an ex parte order pursuant to subsection (g) of §88302 or at a temporary foster custody hearing, the court may make an order of protection. Such an order may include but need not be limited to a requirement that a party:

(1) Stay away from the family home, a school or any other place or location which is deemed by the court to present an opportunity for contact between the parties, or with other persons which contact would not be in the best interests of the child;

(2) Abstain from physically or verbally contacting, threatening or abusing any party or person; and

(3) Report any violation of an order of protection to the appropriate law enforcement authorities and other authorized agencies.

(b) An order of protection granted ex parte pursuant to
subsection (g) of §88302 shall expire in three working days after a child
is taken into protective custody.

32 (c) The parties may release copies of an order of protection to
 33 appropriate law enforcement authorities.

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§88316. Temporary foster custody hearing.

(a) In any case where Child Protective Services has assumed protective custody of a child with an ex parte order of the court, the court shall hold a temporary foster custody hearing within three working days from the date that the child was taken into protective custody.

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(b) At the temporary foster custody hearing, the court on its own motion may order that the child immediately be released from protective custody and returned to the child's family home under such terms and conditions, including, but not limited to, orders which may be entered pursuant to subsection (d) of §88317, as are deemed by the court to be in the best interests of the child; provided that upon such return, the child and the child's family members who are parties shall be under the supervision of Child Protective Services prior to the factfinding hearing.

15 (c) After a temporary foster custody hearing, if the court 16 determines that there is reasonable cause to believe that placement in temporary foster care is necessary to protect the child from harm or 17 18 threatened harm, it shall order that the child remain in the temporary 19 foster custody of Child Protective Services under such terms and 20 conditions, including but not limited to orders which may be entered 21 pursuant to subsection (d) of §88317 as are deemed by the court to be 22 in the best interests of the child; provided that prior to ordering placement or continued placement in any proceeding under this 23 24 chapter:

25 The court first shall give due consideration to ordering (1)the removal or continued removal of the alleged perpetrator of 26 27 the harm or threatened harm from the child's family home prior 28 to placing or continuing to place the child out of the family home. 29 The child's family shall have the burden of establishing that it is 30 not in the best interests of the child that the alleged perpetrator 31 be removed from the family's home rather than the child by order 32 of the court.

33 (2) If siblings or psychologically bonded children are
34 removed from their family home, the court shall order that every

reasonable effort be made to place them together, unless it is not in the best interests of the children.

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(d) Any party may move for, or the court on its own motion may order, a temporary foster custody hearing or rehearing at any time after the petition is filed under this Chapter to determine whether the best interests of the child require that the child be placed in temporary foster custody prior to a fact-finding hearing.

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§88317. Preliminary hearing.

(a) If the child has not been taken into protective custody, a preliminary hearing shall be held within ten working days of the filing of the petition or, if a child has been taken into protective custody, a petition shall be filed and a preliminary hearing held within three working days after the child has been taken into protective custody. If a child has been taken into protective custody, the temporary foster custody hearing and the preliminary hearing on the petition shall be jointly held.

17 (b) If the child has not been taken into protective custody, at the 18 preliminary hearing the court shall review the petition and if, in the 19 discretion of the court, the child is in such circumstances or condition 20 that the child's continuing in the custody or care of the child's family 21 presents a situation of harm or threatened harm to the child, the court 22 shall order that Child Protective Services immediately assume 23 temporary foster custody until further order of the court.

24 (c) The preliminary hearing shall be continued for a period not to 25 exceed 15 working days, upon the court's own motion or upon the 26 motion of a party, if the court determines that it would be in the best 27 interests of the child that further investigation be conducted and 28 information concerning whether the child should remain in temporary 29 foster custody be provided to the court by each of the parties, prior to 30 rendering a determination as to whether the child should remain in 31 temporary foster custody prior to a fact-finding hearing.

32 (d) During a continuance period ordered pursuant to subsection
33 (c), or at any other time during the pendency of a child protective
34 proceeding, the court may further order that:

(1) Any party undergo a physical, developmental, psychological or psychiatric evaluation and that a written or oral report be submitted to the court and all parties prior to or upon the date of the continued or next hearing;

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(2) The child's family members who are parties provide Child Protective Services or other appropriate authorized agency with the names and addresses of other family and friends who may be potential visitation supervisors or foster parents for the child and that they arrange for such persons to appear in court upon the date of the continued or next hearing;

(3) The child's family members who are parties be permitted reasonable supervised or unsupervised visitation with the child at the discretion of Child Protective Services or other appropriate authorized agency and the child's guardian ad litem;

(4) The court and the parties view a visual recording or listen to an oral recording of the child's statement at such time and in such manner as the court deems to be appropriate;

(5) The child and the child's family members who are parties arrange and commence participation in such counseling or therapy for themselves and the child as the court deems to be appropriate and consistent with the best interests of the child;

(6) An appropriate order of protection be entered;

(7) A criminal history record check be conducted by Child Protective Services or other appropriate authorized agency concerning a party who is an alleged perpetrator of harm or threatened harm to the child, and that the results be submitted to the court and other parties in such manner as the court deems to be appropriate prior to or upon the date of the continued or next hearing;

30(8)Child Protective Services or other appropriate31authorized agency prepare a written or oral supplemental report32pursuant to §88309 and submit the report to the court, the33guardian ad litem and all parties prior to or upon the date of the34continued or next hearing; or

(9) The child's guardian ad litem visit the child's family home and foster home, be present during a supervised visitation and prepare a written or oral report to be submitted to the court and all parties prior to or upon the date of the continued or next hearing.

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§88318. Answering date; fact-finding hearing.

(a) When a petition has been filed, the court shall set an answering date to be held within seven working days after the date of the preliminary hearing.

10 (b) At the answering, if the parties admit the allegations in the
11 petition, the court may issue such orders which it deems to be in the
12 best interests of the child.

13 (c) If the parties do not admit the allegations in the petition, the
14 case shall be set for a fact-finding hearing within 30 working days of
15 the answering date.

16 (d) The court shall hear child protective proceedings under this 17 Chapter without a jury. The hearing shall be conducted in an informal 18 manner and may be adjourned from time to time. The general public 19 shall be excluded and only such persons shall be admitted as are found 20by the court to have a direct interest in the case. The child may be 21 excluded from the hearing at any time at the discretion of the court. If 22 a party is without counsel or a guardian ad litem, the court shall inform 23 the party of the right to be represented by counsel and to appeal.

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§88319. Sustaining or dismissing petition; interim orders.

25 If facts sufficient to sustain the petition are established, the (a) 26 court shall enter an order finding that the child is a child whose 27 physical or psychological health or welfare has been harmed or is 28 subject to threatened harm by the acts or omissions of the child's family 29 and shall state the grounds for the finding; provided that if all parties 30 consent, the grounds for the finding may be based upon the report or 31 reports submitted pursuant to §88309 or other stipulated evidence may 32 be admitted into evidence subject to reservation by the parties of their 33 right to cross-examination subject to subsection (c) of §88309.

(b) If facts sufficient to sustain the petition under this Chapter are not established, the court shall dismiss the petition and shall state the grounds for dismissal.

(c) If the court sustains the petition and does not immediately enter an order regarding the disposition of the child, it shall:

(1) Determine, based upon the facts adduced during the fact-finding hearing and any other additional facts presented to it, whether temporary foster custody should be continued or should be entered pending an order of disposition. The court shall consider all relevant prior and current information for determining whether the child's family is willing and able to provide the child with a safe family home, and the report or reports submitted pursuant to §88309, and proceed pursuant to subsection (c) of §88316 prior to rendering a determination; and

15 (2) Enter such orders regarding visitation and the provision
16 of services to the child and the child's family and the child's and
17 family's acceptance and cooperation with such services as the
18 court deems to be appropriate and consistent with the best
19 interests of the child.

(d) Orders orally stated by the court on the record in a
proceeding under this Chapter shall have full force and effect upon the
date of the hearing until further order of the court; provided that all
oral orders shall be reduced to writing as soon as convenient.

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§88320. Disposition hearing.

25 The court may consider any information relevant to (a) disposition which is in the best interests of the child; provided that the 26 27 court shall determine initially whether the child's family home is a safe 2.8The court shall consider fully all relevant prior and family home. 29 current information for determining whether the child's family is 30 willing and able to provide the child with a safe family home, and the 31 report or reports submitted pursuant to §88309, in rendering such a 32 determination.

33 (b) If the court determines that the child's family is presently
34 willing and able to provide the child with a safe family home without

the supervision of Child Protective Services, the court shall terminate jurisdiction.

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(c) If the court determines that the child's family home is a safe family home with the supervision of Child Protective Services, the court shall place the child and the child's family members who are parties under the supervision of an authorized agency, return the child to the child's family home and enter further orders, including but not limited to, restrictions upon the rights and duties of the authorized agency, as the court deems to be in the best interests of the child.

(d) If the court determines that the child's family home is not a
safe family home, even with the supervision of Child Protective Services
the court shall vest foster custody of the child in an authorized agency
and enter such further orders as the court deems to be in the best
interests of the child.

(e) If the child's family home is determined not to be safe, even
with the supervision of Child Protective Services pursuant to subsection
(d), the court may, and if the child has been residing outside the family
home for a period of two years shall, set the case for a permanency plan
hearing and order that the authorized agency submit a report pursuant
to §88309.

(f) At the disposition hearing, the court may order such terms,
conditions and consequences as the court deems to be in the best
interests of the child.

(g) The court may order that any party participate in, complete,
be liable for, and make every good faith effort to arrange payment for
such services or treatment as are authorized by law and are deemed to
be in the best interests of the child.

(h) At any stage of the child protective proceeding, the court may
order that a child be examined by a physician, surgeon, psychiatrist or
psychologist, and it may order treatment by any of them of a child as is
deemed to be in the best interests of the child. For either examination
or treatment, the court may place the child in a hospital or other
suitable facility, pursuant to the provisions of §§82101 et seq of this
Title.

<b>§88321</b> .	Long-term	foster	custody.
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(a) Long-term foster custody divests from each legal custodian and family member who has been summoned pursuant to §88306 and vests in a long-term custodian each of the parental and custodial duties and rights of a legal custodian and family member including but not limited to the following:

(1) To determine where and with whom the child shall live; provided that the child shall not be placed outside Guam without prior approval of the court;

(2) To assure that the child is provided in a timely manner with adequate food, clothing, shelter, psychological care, physical care, medical care, supervision and other necessities;

(3) To monitor the provision of appropriate education to the child;

15 (4) To provide all consents that are required for the child's physical or psychological health or welfare, including but not 16 limited to medical, dental, psychiatric, psychological, educational, 17 18 employment, recreational or social needs and to provide all 19 consents for any other medical care or treatment, including but 20not limited to surgery if such care or treatment is deemed by two physicians licensed or authorized to practice in Guam to be 21 22 necessary for the child's physical or psychological health or 23 welfare: and

(5) To provide the court with information concerning the child that the court may require at any time.

26 Unless otherwise ordered by the court, a child's family (b) 27 member shall retain the following rights and responsibilities after a 28 transfer of long-term foster custody to the extent that such family 29 member possessed such responsibility prior to the transfer of long-term 30 foster custody: the right to consent to adoption, marriage, the 31 continuing responsibility for support of the child, including but not 32 limited to repayment for the cost of any and all care, treatment or any 33 other service supplied or provided by the long-term custodian, any

subsequent long-term custodian, other authorized agency or the court for the child's benefit.

(c) A family member may be permitted visitation with the child at the discretion of the court.

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(d) An order of long-term foster custody entered under this Chapter shall not operate to terminate the mutual rights of inheritance of the child and the child's family members or any other benefit to which the child may be entitled, unless and until the child has been legally adopted.

10 (e) The court, in its discretion, may vest long-term foster custody 11 of a child in an authorized legal agency or in subsequent authorized 12 agencies as is deemed to be in the best interests of the child. An 13 authorized agency shall not be liable to third persons for the acts of the 14 child solely by reason of the agency's status as long-term custodian of 15 the child.

16 (f) If Child Protective Services receives a report that the child has been harmed or is subject to threatened harm by the acts or omissions 17 of the long-term custodian or custodians of the child, Child Protective 18 19 Services may automatically assume physical custody of the child; 20provided that, in any event, Child Protective Services shall immediately notify the court and the court shall set the case for a progress hearing 21 within ten working days, from the date that Child Protective Services 22 23 assumed physical custody of the child, unless the court deems a later 24 date to be in the best interests of the child.

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§88322. Progress hearings.

(a) Except for good cause shown, the court shall set each case for
progress hearing not later than six months after the date of an order of
disposition and, thereafter, the court shall set subsequent progress
hearings at interval of no longer than six months until the court's
jurisdiction has been terminated or an order of permanent custody has
been entered. A progress hearing may be set upon the motion of a
party at any time.

(b) Notice of a progress hearing shall be served upon the parties and upon the present foster parent or parents, each of whom shall be entitled to participate in the proceedings.

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(c) Child Protective Services or other appropriate authorized agency shall make every reasonable effort to submit a written report, pursuant to §88309, or a written explanation regarding why the report is not being submitted timely to the court, with copies to the parties or their counsel or guardian ad litem at least three days before the date set for each progress hearing.

(d) The report prepared pursuant to subsection (c) specifically shall:

(1) Evaluate whether the parties have complied with, performed and completed, if possible, each and every term and condition of the order of disposition;

15(2) Recommend whether the court should enforce the16consequences set forth in the order of disposition pertaining to17compliance or noncompliance by the parties with the terms and18conditions of the order; and

(3) Recommend whether the court should modify its order of disposition and, if so, set forth the proposed modifications and the basis for recommending such modifications.

(e) Upon each progress hearing the court shall consider fully all
relevant prior and current information for determining whether the
child's family is willing and able to provide the child with a safe family
home, including but not limited to the report or reports submitted
pursuant to §88309, and

27(1) Make a determination pursuant to the terms of28subsections (b) through (e) of §88324;

(2) Determine whether the parties have complied with, performed and completed each and every term and condition of the previous order of disposition;

32(3) Enforce the consequences set forth in the order of33disposition pertaining to compliance or noncompliance by the34parties with any of the terms and conditions of the order; and

(4)Order such modification to the existing order of disposition as the court deems to be appropriate and in the best interests of the child.

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(f)In any case that a permanency plan hearing is not deemed to be appropriate, the court shall make a finding that the parties understand that unless the family is willing and able to provide the child with a safe family home, even with the supervision of Child Protective Services, within the reasonable period of time specified in the order, their respective parental and custodial duties and rights shall be subject to termination.

§88323. Permanency plan. A permanency plan is a specific 12 written plan, prepared by Child Protective Services, which should set forth:

A position as to whether the court should order an (1)adoption of the child and specify:

> (A) A reasonable period of time during which the adoption may be finalized; provided that the identity of the proposed adoptive parent or parents shall be provided to the court in a separate report which shall be sealed and shall not be released to the parties unless the court deems such release to be in the best interests of the child; or

(B) The reason why adoption is not the plan; (2) A specific written plan including:

> (A) The goal of the child's permanent placement as being either adoption, long term foster custody with subsequent adoption or guardianship, or long term foster custody until majority;

(B) The objectives concerning the child, including but not limited to placement, education, health, therapy, counseling, culture, adoption or preparation for majority; and

32 (C) The method or methods for achieving the goal and 33 objectives set forth in subparagraphs (A) and (B) above;

(3) All supporting exhibits and written consents or an explanation as to why such exhibits or consents are not available.
Upon good cause shown, the court may waive submission of any supporting exhibit or written consent; and

(4) Any other information or materials which are necessary to the expeditious facilitation of the permanency plan.

§88324. Permanency plan hearing.

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8 (a) At the permanency plan hearing, the court shall consider fully 9 all relevant prior and current information for determining whether the 10 child's family is willing and able to provide the child with a safe family 11 home, including but not limited to the report or reports submitted 12 pursuant to §88309, and determine whether there exists clear and 13 convincing evidence that:

(1) The child's family is not presently willing and able to provide the child with a safe family home, even with the supervision of Child Protective Services;

17 (2) It is not reasonably foreseeable that the child's family 18 will become willing and able to provide the child with a safe 19 family home, even with the supervision of Child Protective 20 Services, within a reasonable period of time, which shall not 21 exceed two years from the date upon which the child was first 22 placed under foster custody by the court;

(3) The proposed permanency plan is in the best interests of the child; provided that the court shall presume that:

(A) It is in the best interests of a child to be promptly
and permanently placed with responsible and competent
substitute caretakers and family in a safe and secure home;
and

29(B)Such presumption increases in importance30proportionate to the youth of the child upon foster custody31by the court; and

32 (4) If the child has reached the age of 12, the child is
33 supportive of the permanency plan.

(b) If the court determines that the criteria set forth in subsection (a) are established by clear and convincing evidence, the court shall order:

(1) That the existing order of disposition be terminated and that the prior award of foster custody be revoked;
(2) That permanent custody be awarded to an appropriate authorized agency;
(3) That an appropriate permanency plan be implemented concerning the child whereby the child will:

(A) Be adopted pursuant to §§221.1 et seq. of the Civil Code of Guam; provided, that the court shall presume that it

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Code of Guam; provided, that the court shall presume that it is in the best interests of the child to be adopted, unless the child is in the permanent custody of family or persons who have become as family and who for good cause are unwilling or unable to adopt the child but are committed to and are capable of being the child's permanent custodians; or

17(B) Remain in permanent custody until the child is18subsequently adopted or reaches the age of 18, and that19such status shall not be subject to modification or revocation20except upon a showing of extraordinary circumstances to the21court.22(c) If the court determines that the criteria set forth in subsection

(c) If the court determines that the criteria set forth in subsection(a) are not established by clear and convincing evidence, the court shall order that:

(1) The permanency plan hearing be continued for a
reasonable period of time not to exceed six months from the date
of the continuance;
(2) The authorized agency submit a written report pursuant

(2) The authorized agency submit a written report pursuant to §88309; and

30 (3) Such further orders as the court deems to be in the best
31 interests of the child be entered.

32 (d) At the continued permanency plan hearing, the court shall
33 proceed pursuant to subsections (a), (b) and (c) until such date as the
34 court determines that:

1 There is sufficient evidence to proceed pursuant to (1)subsection (b); or 2 3 (2)The child's family is willing and able to provide the child with a safe family home, even with the supervision of Child 4 Protective Services, upon which determination the court may: 5 6 (A) Revoke the prior award of foster custody to the 7 authorized agency and return the child to the family home; 8 and 9 (B) Terminate jurisdiction; or 10 (C) Award supervision to an authorized agency; 11 (D) Order such revisions to the order of disposition as 12 the court, upon such hearing as the court deems to be 13 appropriate, determines to be in the best interests of the 14 child: 15 (E) Set the case for a progress hearing; and 16 (F) Enter such further orders as the court deems to be 17 in the best interests of the child. 18 The court shall order a permanency plan for the child within (e) 19 two years of the date upon which the child was first placed under foster custody by the court if the child's family is not willing and able to 20provide the child with a safe family home, even with the supervision of 21 22 Child Protective Services. §88325. Payment for service or treatment provided to a party or 23 24for a child's care, support or treatment. Whenever a service or 25 treatment is provided to a party, or, whenever care, support or 26 treatment of a child is provided under this Chapter, after due notice to 27 the persons or legal entities legally obligated to pay for such service, 28 treatment, care or support of the child, and after a hearing, the court 29 may order that such a legally obligated person pay, in such a manner as 30 the court may direct, a reasonable sum that will cover in whole or in 31 part the cost of the service or treatment provided to the party, or the 32 cost of the care, support or treatment provided for the child. The 33 provisions of §88326 and all other remedies available under the law 34 shall be applicable to enforce such orders.

§88326. Failure to comply with terms or conditions of an order of the court. If a party fails to comply with the terms and conditions of an order issued under this Chapter, the court may apply the provisions of §5120 of Title 19, Guam Code Annotated, and all other provisions available under the law.

§88327. Appeal. An interested party aggrieved by any order or decree of the court may appeal such order or decree to the Appellate Division of the District Court of Guam. The pendency of appeal shall not suspend the orders of the court issued under this Chapter.

10 §88328. Court records. The court shall keep a record of all child 11 protective proceedings under this Chapter. The written reports, 12 photographs, x-rays or other information of any nature which are 13 submitted to the court may be made available to other appropriate 14 persons, who are not parties, only upon an order of the court after the 15 court has determined that such access is in the best interests of the 16 child or serves some other legitimate purpose.

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§88329. Confidentiality.

(a) Any information received pursuant to this Chapter which
could identify any child reported to the central register of child abuse,
the person(s) responsible for the child's welfare named in the report, or
the person making the report shall be confidential. Any person who
willfully releases or permits the release of any such information to
persons or agencies not permitted by this section shall be guilty of a
felony of the third degree.

(b) Information received pursuant to this Chapter may be
released, on a need to know basis, and only as necessary to serve and
protect the child, to the following, except that release of the identity of
persons reporting child abuse is strictly prohibited, unless disclosed
pursuant to subsection (d) of §88203 of the Child Abuse and Neglect
Reporting Act:

31 (1) Multidisciplinary items established to assist in the
32 disposition of cases pursuant to §88331;

33(2) Courts of competent jurisdiction, upon finding that34access to the records may be necessary for determination of an

issue before the court. Access shall be limited to inspection by the court only, unless the court determines that disclosure of the records to interested parties is necessary for the resolution of an issue pending before it;

(3) Grand juries when connected with the prosecution of a child abuse and neglect case;

(4) Properly constituted authorities or agencies both military and governmental, investigating a report of known or suspected child abuse or neglect, or providing services to a child or family relating to a known or suspected case of child abuse or neglect, including police departments, prosecutors and attorney generals;

13 (5) A physician examining or treating a child, or the
14 director or a person specifically designated in writing by such
15 director of any hospital or other medical institution where a child
16 is being treated, where the physician or the director or his or her
17 designee suspect the child of being an abused or neglected child;

18(6) Any agency or individual authorized, contracted or19licensed to diagnose, care or treat a child who is the subject of a20report of abuse or neglect;

(7) A person, including but not limited to a guardian ad litem, attorney for the child, permanent foster or adoptive parent, who is responsible for the welfare of the child named;

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(8) A duly authorized official of the department.

(c) At any time, a victim or alleged victim of child abuse, the
parents of a victim or alleged victim of child abuse, or a perpetrator or
alleged perpetrator of child abuse, after a court proceeding has been
initiated regarding the abuse, may review, upon written request, all
information contained in the central register or in any report filed
pursuant to §88203 of this Chapter except information which would
identify the reporter of the abuse.

32 (d) Information received pursuant to this Chapter may be
33 released to sources other than those identified in subsections (b) and (c)
34 only when a written authorization from an individual designated in

subsection (c) specifically provides consent to have the record released or reviewed.

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(e) When information is released under subsection (b) or (d), the following rules shall apply:

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(1) Medical, psychological or psychiatric information in the department's case record, including diagnosis and past history of disease or disability of a particular individual, shall remain the property of the medical, psychological or psychiatric consultant and an individual requesting this record shall be referred to the original consultant for release of that information:

11(2) Case records shall be reviewed only in designated areas12within Child Protective Services' offices. The records shall not be13removed from the premises;

14 (3) Records shall be released upon an individual's request
15 provided that a signed and dated written request is received
16 stating specifically:

(A) What portion of the record is desired;

18(B)Whether the record is desired orally, through19review or by receipt of reproduced copies of the record20requested;

21(C) The name of the individual authorized to receive22the record or to review the record, and the individual's23agency connection, if any;

24 (D) The purpose for which the record is being sought;

(E) The parent's or legal guardian's social security number or birth date and address; and

27(F) The period of time the authorization is valid, not to28exceed ninety days.

29(4) Reproduced copies of records requested shall be30provided at a cost related to the cost of reproduction. Actual31postage cost shall be charged.

32 (5) Before records are released or reviewed, Child
33 Protective Services shall:

(A) Block out the name or other portion of the record identifying the child abuse or neglect complainant;

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(B) Reproduce a copy of the page from which the portion of the record was blocked out; and

(C) Allow the individual requesting the information to receive or to review the blocked out page.

(6) When the record requested contains or consists of coded or abbreviated material such as computer input and output forms, Child Protective Services shall provide translations of the codes or abbreviations, if requested.

11 §88330. Cooperation. Every public official or department shall render all assistance and cooperation within such person's or department's jurisdictional power which may further the purpose and objectives of this chapter. Child Protective Services and the court may seek the cooperation of organizations whose objective is to protect or aid children and family life.

17 §88331. Multidisciplinary teams. Child protective agencies are
18 authorized to establish multidisciplinary teams for the prevention,
19 intervention and treatment of child abuse and neglect.

\$88332. Fiscal responsibility. The court, the department or other
authorized agency shall provide only the care, service, treatment or
support, or the payment for care, service, treatment or support, only as
to the amount as is set forth in the budget of the court, the department
or authorized agency and is authorized by law.

§88333. Regulations; authority to make. Departments and
agencies mentioned in this Chapter shall adopt regulations necessary to
implement this Chapter pursuant to the Administrative Adjudication
Law.

§88334. Severability clause. If any part of this Chapter shall be held invalid, such part shall be deemed severable and the invalidity thereof shall not affect the remaining part of this Chapter.

32 §88335. Effective date. The provisions of this Chapter shall take
 33 effect immediately upon its enactment."

Introduced

JAN 04'90

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TWENTIETH GUAM LEGISLATURE 1989 (FIRST) REGULAR SESSION

BILL NO. 1/4/(LS)

**INTRODUCED BY:** 

P. C. LUJAN PCX

AN ACT TO ADD A NEW SECTION 25.37 TO 9 GUAM CODE ANNOTATED RELATIVE TO SEXUAL BATTERY; TO ADD NEW SECTIONS 75.80 AND 75.85 TO 8 GUAM CODE ANNOTATED; AND FOR OTHER PURPOSES.

1	BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:
2	Section 1. A new section, 9 G.C.A. §25.37, is hereby added to read:
3	"Section 25.37. Sexual Battery.
4	(a) Any person who touches an intimate part of another person for
5	the purpose of sexual arousal or gratification is guilty of sexual battery
6	if the touching is against the will of the person who is touched or if the
7	person who is touched is incapable, by reason of medical, psychological
8	or physical reasons, to give consent.
9	(b) Violation of (a) above is a misdemeanor and the penalty for
10	violation of (a) above shall be incarceration for not more than one year, a
11	fine of \$1,000, or both.
12	(c) Fines imposed for violations of this section shall be paid to the
13	Victim's Compensation Fund."
14	Section 2. Section 75.80 and 75.85 are added to 8 Guam Code Annotated to
15	read:
16	"Section 75.80. Sex Offense Case, Attendance of Supporting Persons at
17	Testimony of Prosecuting Witness 17 Years of Age or Under.
18	(a) Notwithstanding any other provisions of law, a prosecuting
19	witness 16 years of age or under in a case involving violation of any

sexual offense defined in 9 G.C.A. Chapter 25 and/or violation of 9 1 G.C.A. §31.30 shall be entitled for support to the attendance of up to 2 two persons of his or her own choosing, one of whom may be a witness, 3 at the Grand Jury proceeding, preliminary hearing and at the trial, 4 during the testimony of the prosecuting witness. Only one of those 5 6 support persons may accompany the witness to the witness stand although 7 the other may remain in the courtroom during the witness' testimony. The support persons shall not make notes during the hearing or 8 proceeding. In the case of a Grand Jury proceeding, the prosecuting 9 attorney shall inform the support person or persons that Grand Jury 10 proceedings are confidential and may not be discussed with anyone not in 1112 attendance at the proceedings.

(b) If the person or persons so chosen are also prosecuting 13 witnesses, the prosecution shall present evidence that the person's 14attendance is both desired by the prosecuting witness for support and 15 will be helpful to the prosecuting witness. 16 Upon that showing, the court shall grant the request unless information presented by the 17 defendant or noticed by the court establishes that the support person's 18 attendance during the testimony of the prosecuting witness would pose a 19 substantial risk of influencing or affecting the content of that testimony. 20 In all cases, the judge shall admonish the support person or persons to 21 not prompt, sway or influence the minor witness in any way. 22

For purposes of this section, members of a prosecuting witness' family shall include the prosecuting witness' parents, legal guardian, grandparents, uncles, aunts or siblings.

26 Section 75.85. Child Witness Comfort, Support and Protection. 27 Notwithstanding any other provision of the law, any criminal 28 proceeding in which a minor under the age of 12 is a prosecuting

witness, the court shall take special precautions to provide for the comfort and support of the minor and to protect the minor from coercion, intimidation or undue influence as a witness, including but not limited to any of the following:

(1) In the court's discretion, the witness may be allowed reasonable periods of relief from examination and cross-examination during which he or she may retire from the courtroom. The judge may also allow other witnesses in the proceeding to be examined when the child witness retires from the courtroom.

(2) In the court's discretion, the judge may remove his or her robe if the judge believes that this formal attire intimidates the witness.

(3) In the court's discretion, the judge, parties, witnesses, support persons and court personnel may be relocated within the courtroom to facilitate a more comfortable and personal environment for

the child witness.

(4) In the court's discretion, the taking of the child's testimony may be limited to the hours during which the child is normally in school.

(5) The prosecuting attorney shall be allowed to familiarize the child witness with the courtroom and the judge before the hearing or proceeding. Any such contact with the judge shall be ex parte and for the purpose of introducing the child witness to the judge."

**Section 3.** Article 5 of Chapter 2 of Title 10 Guam Code Annotated is repealed and re-enacted to read:

"Article 5. Child Abuse and Neglect Reporting Act.

Section	2500.	Short title; intent and purpose of article.
Section		Definitions.
Section	2502.	Persons required to report suspected child abuse
		or neglect.
Section	2503.	Any person permitted to report.
Section	2504.	Reporting responsibilities.
Section	2505.	Cooperative arrangements for investigation;

1 2 3	Section 2506.	written findings; report. Mandatory reporting and post-mortem investigation of deaths.
4	Section 2507.	Immunity for liability.
5	Section 2508.	Penalty for failure to report.
6		Recordkeeping duties of Child Protective Services.
7	Section 2510.	Duties of Child Protective Services concerning
8		reports of abuse.
9	Section 2511.	Confidentiality.
10	Section 2512.	Regulations; authority to make.
11		Severability clause.

12 Section 2500. Short title; intent and purpose of article.

13 (a) This article shall be known and may be cited as the Child
14 Abuse and Neglect Reporting Act.

(b) The intent and purpose of this article is to protect children from abuse. In any investigation of suspected child abuse, all persons participating in the investigation of the case shall consider the needs of the child victim and shall do whatever is necessary to prevent psychological harm to the child victim.

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Section 2501. Definitions.

(a) Abandonment means the desertion or willful forsaking of a minor
by the person responsible for the child's welfare under circumstances in
which a reasonable person would continue to provide care or custody.

(b) Abused or neglected child means a child whose physical or
 mental health or welfare is harmed or threatened with harm by the acts or
 omissions of the person(s) responsible for the child's welfare.

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(c) Child means a person under the age of 18.

(d) Child protective agency means the Guam Police Department,
Office of Special Investigation, Naval Investigative Service, Attorney
General's Office or Department of Public Health and Social Services and
its authorized representatives, including but not limited to Child
Protective Services.

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(e) Child Protective Services means the agency established by 10

1G. C. A. §2514 under the Department of Public Health and Social2Services.

3 (f) Department means the Department of Public Health and Social 4 Services and its authorized representatives, including but not limited to 5 Child Protective Services.

6 (g) Expunge means to strike out or obliterate entirely so that the 7 expunged information may not be stored, identified or later recovered by 8 any means: mechanical, electronic or otherwise.

9 (h) Harm to a child's physical or psychological health or welfare 10 occurs in a case where there exists evidence of injury, including but not 11 limited to:

12 (1) any case where the child exhibits evidence of:

13 (A) skin bruising or any other internal bleeding,

14 (B) any injury to skin causing bleeding,

(C) burn or burns,

16 (D) poisoning,

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17 (E) fracture of any bone,

18 (F) subdural hematoma,

19 (G) soft tissue swelling,

20 (H) extreme pain,

21 (I) death or

22 (J) disfigurement or impairment of any bodily organ;

and such injury is inflicted by other than accidental means, by excessive corporal punishment or where the history given concerning such condition or death is at variance with the degree or type of such condition or death; or

27 (2) any case where the child has been the victim of a sexual
28 offense as defined in the Criminal and Correctional Code of Guam (9)

1 G. C. A.); or

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(3) any case where there exists injury to the psychological capacity of a child such as failure to thrive, extreme mental distress, or gross emotional or verbal degradation as is evidenced by an observable and substantial impairment in the child's ability to function within a normal range of performance with due regard to the child's culture; or

(4) any case where the physical health of the child is 8 adversely affected because the person responsible for the 9 child's welfare has not regularly provided the child, in a timely 10 manner, with adequate food, clothing, shelter, psychological 11 12 care, physical care, health care or supervision. when financially able to do so or when offered financial assistance or 13 health care or other reasonable means to do so. Adequate 14 15 health care includes includes any medical or nonmedical health 16 care permitted or authorized under territorial laws; provided, however, that a person responsible for the child's welfare who, 17 while legitimately practicing his or her religious beliefs, does 18 not specify medical treatment for a child should not, for that 19 reason alone, be considered as harming or threatening harm to 20 the child; or 21

(5) any case where the child is provided with dangerous,
harmful or detrimental drugs as defined by the Criminal and
Correctional Code of Guam (9 G. C. A.). However, this
paragraph shall not apply to a child's family who provides such
drugs to the child pursuant to the direction or prescription of
a practitioner as defined in 9 G. C. A. §62.21(t); or

(6) any case where the child is abandoned.

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(i) Indicated report means a report made pursuant to this
Article if an investigation by a child protective agency results in a
determination by Child Protective Services that substantial evidence of
the alleged abuse exists based on available medical evidence and the
investigation or an admission of the acts of harm or threatened harm
by the person responsible for the child's welfare.

8 (j) Licensing agency means any department or agency that 9 licenses child care facilities.

(k) Person responsible for the child's welfare includes the child's
parent, guardian, foster parent, an employee of a public or private
residential home or an institution or authorized agency responsible for
the child's welfare.

(1) Subject of the report means any child reported to the central
register of child abuse and the person(s) responsible for the child's
welfare named in the report.

(m) Substantiated report means a report made pursuant to this
Article if there has been any judicial adjudication based on a finding
that a child who is a subject of the report is an abused or neglected
child.

21 (n) Suspected report means any report that is not indicated,
22 substantiated or unsubstantiated.

(o) Threatened harm means any reasonably foreseeable,
substantial risk of harm to a child with due consideration being given
to the age of the child.

(p) Unsubstantiated report means any report made pursuant to
this Article if an investigation by a child protective agency results in
a determination by Child Protective Services that substantial evidence
of the alleged abuse does not exist.

## 30Section 2502.Persons required to report suspected child31abuse or neglect.

(a) Any person who, in the course of his or her employment,
occupation or practice of his or her profession, comes into contact with
children shall report when he or she has reason to suspect on the
basis of his medical, professional or other training and experience that
a child is an abused or neglected child. No person may claim

"privileged communications" as a basis for his or her refusal or failure
 to report suspected child abuse or neglect or to provide Child
 Protective Services or the Guam Police Department with required
 information. Such privileges are specifically abrogated with respect to
 reporting suspected child abuse or neglect or of providing information
 to the agency.

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7 (b) Persons required to report suspected child abuse under 8 subsection (a) include but are not limited to any licensed physician, medical examiner, dentist, osteopath, optometrist, chiropractor, 9 podiatrist, intern, registered nurse, licensed practical nurse, hospital 10 . personnel engaged in the admission, examination, care or treatment of 11 persons, Christian Science practitioner, school administrator, school 12 teacher, school nurse, school counselor, social service worker, day 13 care center worker or any other child care or foster care worker, 14 15 mental health professional, peace officer or law enforcement official.

16 (c) Any commercial film and photographic print processor who has knowledge of or observes, within the scope of his or her 17 18 professional capacity or employment, any film, photograph, video tape, negative or slide depicting a child under the age of 14 years engaged 19 in an act of sexual conduct shall report such instance of suspected 20 21 child abuse to Child Protective Services immediately or as soon as 22 practically possible by telephone and shall prepare and send a written report of it with a copy of the film, photograph, video tape, negative 23 or slide attached within 48 hours of receiving the information 24 concerning the incident. As used in this subdivision, "sexual 25 conduct" means any of the following: 26

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(1) Sexual intercourse, including genital-genital, oral-genital, anal-genital or oral-anal, whether between persons of the same or opposite sex or between humans and animals;

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(2) Penetration of the vagina or rectum by any object;
 (3) Masturbation, for the purpose of sexual stimulation of the viewer;

33 (4) Sadomasochistic abuse for the purpose of sexual
34 stimulation of the viewer; or

(5) Exhibition of the genitals, pubic or rectal areas of any
 person for the purpose of sexual stimulation of the viewer.

1 Section 2503. Any person permitted to report. In addition to 2 those persons and officials required to report suspected child abuse or 3 neglect, any person may make such a report if that person has 4 reasonable cause to suspect that a child is an abused or neglected 5 child.

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Section 2504. Reporting responsibilities.

(a) Reporting procedures. Reports of suspected child abuse or
neglect from persons required to report under Section 2502 shall be
made immediately by telephone and followed up in writing within 48
hours after the oral report. Oral reports shall be made to Child
Protective Services or to the Guam Police Department.

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(b) Cross reporting among agencies.

13 (1)Child Protective Services shall immediately or as soon as practically possible report by telephone to the Guam Police 14 Department and to the Attorney General's Office every known or 15 16 suspected instance of child abuse as defined in Section 2501, 17 except acts or omissions coming within subsection (h)(4) of Section 2501. Child Protective Services shall also send a written 18 19 report thereof within 48 hours of receiving the information 20 concerning the incident to any agency to which it is required to 21 make a telephone report under this subsection.

22 The Guam Police Department shall immediately or as (2) 23 soon as practically possible report by telephone to Child 24 Protective Services and to the Attorney General's Office every 25 known or suspected instance of child abuse reported to it, except acts or omissions coming within subsection (h)(4) of Section 2501, 26 27 which shall only be reported to Child Protective Services. 28 However, the Guam Police Department shall report to Child 29 Protective Services every known or suspected instance of child 30 abuse reported to it which is alleged to have occurred as a result 31 of the inaction of a person responsible for the child's welfare to 32 adequately protect the minor from abuse when such person knew 33 or reasonably should have known that the minor was in danger of abuse. The Guam Police Department shall also send a written 34 35 report thereof within 48 hours of receiving the information

concerning the incident to any agency to which it is required to make a telephone report under this subsection.

(3) Child Protective Services and the Guam Police Department shall immediately, or as soon as practically possible, report by telephone to the appropriate Department of Defense Family Advocacy Program every known or suspected instance of child abuse reported to them when such report involves active duty military personnel or their dependents.

9 (c) Contents of report. Reports of child abuse or neglect 10 should contain the following information:

11 (1)Every report of a known or suspected instance of child 12 abuse should include the name of the person making the report, 13 the name, age and sex of the child, the present location of the 14 child, the nature and extent of the injury, and any other 15 information, including information that led that person to suspect 16 child abuse, that may be requested by the child protective 17 agency receiving the report. Persons who report pursuant to 18 Section 2503 are not required to reveal their names;

(2) Other information relevant to the incident of child abuse
may also be given to an investigator from a child protective
agency who is investigating the known or suspected case of child
abuse;

23 (3) The name of the person or persons responsible for
24 causing the suspected abuse or neglect;

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(4) Family composition;

(5) The actions taken by the reporting source, including
the taking of photographs and x-rays, removal or keeping of the
child or notification of the medical examiner; and

29 (6) 30 may, by

(6) Any other information which the child protective agency may, by regulation, require.

31 (d) Identity of person reporting. The identity of all persons
32 who report under this Article shall be confidential and disclosed only
33 among child protective agencies, to counsel representing a child
34 protective agency, to the Attorney General's Office in a criminal
35 prosecution or Family Court action, to a licensing agency when abuse

1 in licensed out-of-home care is reasonably suspected, when those 2 persons who report waive confidentiality, or by court order.

3 (e) Reporting forms. The reporting forms developed pursuant
4 to Section 2505 shall be made available to all persons required to
5 report under Section 2502.

6 Section 2505. Cooperative arrangements for investigation; written 7 findings; report.

8 The Guam Police Department and Child Protective Services shall 9 develop and implement cooperative arrangements to coordinate existing 10 duties in connection with the investigation of suspected child abuse. 11 Child Protective Services shall initiate the development and implemen-12 tation of these arrangements, including the development and distribu-13 tion of reporting forms. The Guam Police Department shall report to 14 Child Protective Services that it is investigating a case within 36 hours 15 after starting its investigation. In cases where a minor is a victim of 16 criminal sexual conduct. Child Protective Services shall evaluate what 17 action or actions would be in the best interests of the child victim in accordance with subsection (b) of Section 2500 of this Article. Except 18 19 for acts or omissions coming within subsection (h)(4) of Section 2501, 20 Child Protective Services shall submit in writing its findings and the 21 reasons for them to the Attorney General's Office on or before the 22 completion of the investigation.

23 Section 2506. Mandatory reporting and post-mortem investigation 24 of deaths. Any person or official required to report suspected child 25 abuse or neglect who has reasonable cause to suspect that a child died as a result of child abuse or neglect shall report that fact to the chief 26 27 medical examiner. The chief medical examiner shall accept the report for investigation and shall report his or her findings to the Guam 28 Police Department, the Attorney General's Office, Child Protective 29 Services and, if the report is made by hospital personnel, to the 30 31 hospital.

32 Section 2507. Immunity from liability. Any person, hospital, 33 institution, school, facility or agency participating in good faith in the 34 making of a report or testifying in any proceeding arising out of an 35 instance of suspected child abuse or neglect, the taking of photo-36 graphs or the removal or keeping of a child pursuant to Section 5 of

the Child Protective Act shall have immunity from any liability, civil or criminal, that might otherwise result by reason of such actions. For the purpose of any proceeding, civil or criminal, the good faith of any person required to report cases of child abuse or neglect pursuant to Section 2502 shall be presumed.

6 Section 2508. Penalty for failure to report. Any person 7 required to report pursuant to Section 2502 who fails to report an 8 instance of child abuse which he or she knows to exist or reasonably 9 should know to exist is guilty of a misdemeanor and is punishable by 10 confinement for a term not to exceed six months, by a fine of not more 11 than \$1,000 or by both. A second or subsequent conviction shall be a 12 felony in the third degree.

Section 2509. Recordkeeping duties of Child Protective Services.
(a) There shall be established in Child Protective Services
(i) an active file of child abuse or neglect reports under investigation
and those where services are being provided; (ii) a central register
of child abuse or neglect which shall consist of substantiated and
indicated reports of child abuse or neglect; and (iii) a suspected file
as provided in subsection (e) below.

(b) Child Protective Services shall establish and maintain a
21 24-hour telephone reporting system that all persons, whether mandated
22 by law or not, may use to report cases of suspected child abuse or
23 neglect.

(c) No information shall be released from the central register
unless Child Protective Services has positively identified the person
requesting the information and Child Protective Services has inquired
into and is satisfied that such person has a legitimate need within the
scope of Section 2511 to obtain information from the central register.

(d) The central register shall include and shall be limited to thefollowing information:

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(1) the names of the subjects of the report;

32 (2) the date or dates and the nature and extent of the
33 alleged instances of suspected child abuse or neglect;

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(3) the home addresses of subjects of the report;

35 (4) the age and sex of the children harmed or threatened
36 with harm;

1 (5) the locality in which the harm or threatened harm 2 occurred;

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(6) whether the report is a substantiated report or an indicated report; and

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(7) the progress of any legal proceedings brought on the basis of the report of suspected child abuse or neglect.

(e) If an investigation of a report of suspected child abuse or
neglect does not determine, within 60 days from the date of the report
of suspected child abuse or neglect, that the report is an indicated
report, substantiated report or an unsubstantiated report, all
information identifying the subjects of such report shall be placed in
Child Protective Services' suspected file for a period of one year.

(f) If an investigation of a report of suspected child abuse or neglect does not determine, within one year of the date of the report of suspected child abuse or neglect, that the report is an indicated report or a substantiated report, such report shall be considered an unsubstantiated report and all information identifying the subjects of such report shall be expunged from Child Protective Services' suspected files.

20 Section 2510. Duties of Child Protective Services concerning 21 reports of abuse. Child Protective Services shall:

(1) Receive 7 days a week, 24 hours a day, all reports, both
oral and written, of suspected child abuse or neglect in accordance
with this Article and the regulations of the Department;

25 (2) Upon receipt of each report of suspected child abuse or 26 neglect, commence within a reasonable time, but not later than 72 27 hours, an appropriate investigation. The investigation shall include a determination of the risk to such child or children if they continue to 28 29 remain in the existing home environment, as well as a determination of 30 the nature, extent and cause of any condition enumerated in such 31 report and, after seeing to the safety of the child or children, 32 forthwith notify the subjects of the report orally and in writing of the 33 existence of the report. The investigation shall be completed within 60 34 days;

(3) The investigation shall determine whether the child is being
 harmed by factors beyond the control of the parent or other person

responsible for the child's welfare, and if so determined, Child
 Protective Services shall promptly take all available steps to remedy
 and correct such conditions, including but not limited to the coordina tion of social services for the child and the family;

5 (4) Determine within 60 days whether the report is "indicated,"
6 "substantiated" or "unsubstantiated";

7 (5) Pursuant to the provisions of Section 5 of the Child
8 Protective Act take a child into protective custody to protect him or
9 her from further abuse;

10 (6) Based on the investigation and evaluation conducted pursuant to this Article, provide or contract with private or public 11 12 agencies for the protection of the child in his or her home whenever 13 possible or those services necessary for adequate care of the child when placed in protective custody or temporary foster custody. Prior 14 15 to offering such services to a family, explain that it has no legal 16 authority to compel such family to receive said services but may inform the family of the obligations and authority of Child Protective Services 17 18 to initiate appropriate court proceedings:

19 (7) In those cases in which an appropriate offer of service is
20 refused and Child Protective Services determines that the best
21 interests of the child require court action, initiate the appropriate
22 court proceeding and request the court to appoint a guardian ad litem
23 for the child;

(8) Assist the court during all stages of the court proceedings
in accordance the purposes of this Article;

(9) Provide or arrange for and monitor rehabilatative services
for children and their families on a voluntary basis or under a final or
intermediate order of the court; and

(10) Child Protective Services shall be as equally vigilant of the 29 30 status, well-being and conditions under which a child is living and 31 being maintained in a facility other than that of his or her parent, 32 custodian or guardian from which he or she has been removed as it is of the conditions in the dwelling of the parent, custodian or guardian. 33 34 Where Child Protective Service finds that the placement for any temporary or permanent custody, care or treatment is for any reason 35 inappropriate or harmful in any way to the child's physical or mental 36

well-being, it shall take immediate steps to remedy these conditions
 including petitioning the court.

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Section 2511. Confidentiality.

4 (a) Any information received pursuant to this Article which
5 could identify a subject of the report or the person making the report
6 shall be confidential. Any person who will wilfully releases or permits
7 the release of any such information to persons or agencies not
8 permitted by this section shall be guilty of a felony of the third
9 degree.

(b) Information received pursuant to this Article may be
released, on a need to know basis, and only as necessary to serve and
protect the child, to the following, except that release of the identity
of persons reporting child abuse is strictly prohibited, unless
disclosed pursuant to Section 2504(d):

(1) Multidisciplinary teams established to assist in the
disposition of cases pursuant to Section 34 of the Child Protective
Act;

(2) Courts of competent jurisdiction, upon finding that
access to the records may be necessary for determination of an
issue before the court. Access shall be limited to inspection by
the court only, unless the court determines that disclosure of the
records to interested parties is necessary for the resolution of an
issue pending before it;

(3) Grand juries when connected with the prosecution of achild abuse and neglect case;

(4) Properly constituted authorities or agencies both
military and governmental, investigating a report of known or
suspected child abuse or neglect, or providing services to a child
or family relating to a known or suspected case of child abuse or
neglect, including police departments, prosecutors and attorney
generals;

32 (5) A physician examining or treating a child, or the
33 director or a person specifically designated in writing by such
34 director of any hospital or other medical institution where a child
35 is being treated, where the physician or the director or his or

her designee suspect the child of being an abused or neglected child:

Any agency or individual authorized, contracted or (6) licensed to diagnose, care or treat a child who is the subject of a 4 report of abuse or neglect:

(7) A person, including but not limited to, a guardian ad litem, attorney for the child, permanent foster or adoptive parent, who is responsible for the welfare of the child named;

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(8) A duly authorized official of the department.

(c) At any time, a victim or alleged victim of child abuse, the 10 parents of a victim or alleged victim of child abuse, or a perpetrator 11 or alleged perpetrator of child abuse, after a court proceeding has 12 been initiated regarding the abuse, may review, upon written request, 13 . all information contained in the central register or in any report filed 14 pursuant to Section 2504, except information which would identify the 15 16 reporter of the abuse.

17 (d) Information received pursuant to this Article may be released 18 to sources other than those identified in subsections (b) and (c) only when a written authorization from an individual designated in 19 20 subsection (c) specifically provides consent to have the record released or reviewed. 21

(e) When information is released under subsection (b) or (d), 22 23 the following rules shall apply:

Medical, psychological or psychiatric information in the (1)department's case record, including diagnosis and past history of disease or disability of a particular individual, shall remain the property of the medical, psychological or psychiatric consultant and an individual requesting this record shall be referred to the original consultant for release of that information;

30 Case records shall be reviewed only in designated areas (2) 31 within Child Protective Services' offices. The records shall not 32 be removed from the premises;

33 (3) Records shall be released upon an individual's request 34 provided that a signed and dated written request is received 35 stating specifically:

1 (A) What portion of the record is desired; 2 (B) Whether the record is desired orally, through 3 review or by receipt of reproduced copies of the record 4 requested; 5 (C) The name of the individual authorized to receive the record or to review the record, and the individual's 6 7 agency connection, if any; 8 (D) The purpose for which the record is being sought: 9 (E) 'The parent's or legal guardian's social security number or birthdate and address; and 10 11 (F) The period of time the authorization is valid, not 12 to exceed ninety days; 13 (4)Reproduced copies of records requested shall be 14 provided at a cost related to the cost of reproduction. Actual 15 postage cost shall be charged; 16 (5) Before records are released or reviewed, Child 17 Protective Services shall: 18 (A) Block out the name or other portion of the record identifying the child abuse or neglect complainant; 1920 (B) Reproduce a copy of the page from which the 21 portion of the record was blocked out; and 22 (C) Allow the individual requesting the information to 23 receive or to review the blocked out page; 24 (6) When the record requested contains or consists of coded 25 or abbreviated material such as computer input and output forms, Child Protective Services shall provide translations of the codes 26 27 or abbreviations, if requested. 28 Section 2512. Regulations; authority to make. 29 The Department of Public Health and Social Services shall adopt 30 regulations necessary to implement this Article pursuant to the 31 Administrative Adjudication Law (Government Code §§24200 et seq.). 32 Section 2513. Severability clause. If any part of this Article 33 shall be held invalid, such part shall be deemed severable and the 34 invalidity thereof shall not affect the remaining part of this Article.

1	Section 4. A	New Chapter 88 is added to Title 10 Guam Code Annotated to
2	read:	
3		"CHAPTER 88
4		CHILD PROTECTIVE ACT
5	Section 88101.	Short title; purpose; construction.
6	Section 88102.	Definitions.
7	Section 88103.	Jurisdiction.
8	Section 88104.	Authorization for department to act
9	Section 88105.	Protective custody by police officer, Child Protective custody
10		by police officer, Child Protective Services social worker or
11		physicial without court order.
12	Section 88106.	Authorization for photographs, x-rays and radiological or other diagnostic evening tion
13		diagnostic examination.
14	Section 88107.	Service plan.
15	Section 88108.	
16	Section 88109.	
17	Section 88110.	
18	Section 88111.	the intering counsel.
19	Section 88112.	Reports to be submitted by Child Protective Services; social
20	C /: 00110	worker expertise.
21	Section 88113.	Evidentiary determination; burden of proof.
22 23	Section 88114.	Evidence may be inadmissible in other actions or proceedings.
23 24		testimony by a child.
24 25	Section 88115.	Recording a statement or the testimony of a child.
26	Section 88116. Section 88117.	Admissibility of evidence.
27	Section 88117.	Required findings concerning notice prior to a hearing in a child protective preserved
28	Section 88118.	child protective proceeding.
29	Section 88119.	Order of protection.
30	Section 88120.	Temporary foster custody hearing.
31	Section 88121.	Preliminary hearing.
32	Section 88122.	Answering date; fact-finding hearing.
33	Section 88123.	Sustaining or dismissing petition; interim orders. Disposition hearing.
34	Section 88124.	Long-term foster custody.
35	Section 88125.	Progress hearings.
36	Section 88126.	Permanency plan.
37	Section 88127.	Permanency plan hearing.
38	Section 88128.	Payment for service or treatment provided to a party or for a child's approximately plan incaring.
39		child's care, support or treatment.
40	Section 88129.	Failure to comply with terms or conditions of an order of the
41		court.
42	Section 88130.	Appeal.
43	Section 88131.	Court records.
44	Section 88132.	Confidentiality.
45	Section 88133.	Cooperation.
46	Section 88134.	Multidisciplinary teams.
47	Section 88135.	Funding.
48	Section 88136.	Fiscal responsibility.
49	Section 88137.	Short title.
50	Section 88138.	Regulations; authority to make.
51	Section 88139.	Severability clause.
52	Section 88140.	Effective date.

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SECTION 88101. Short title; purpose; construction.

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2 This legislation, which shall be called and may be cited as the "Child Protective Act" (CPA), creates within the jurisdiction of the 3 Family Court procedures to safeguard, treat and provide permanent 4. planning for children who have been harmed or threatened with harm. 5 6 The Guam Legislature finds that children deserve and require 7 competent, responsible parenting and safe, secure, loving and nurturing homes. The Legislature finds that children who have been 8 harmed or threatened with harm are less likely than other children to 9 realize their full educational, vocational and emotional potential, less 10 likely to become law-abiding, productive, self-sufficient citizens, and 11 are more likely to become involved with the mental health system, the 12 juvenile justice system or the criminal justice system, as well as 13 14 become an economic burden on the Territory. The Legislature finds that prompt identification, reporting, investigation, adjudication, 15 treatment and disposition of cases involving children who are harmed 16 or threatened with harm are in both the children's and society's best 17 interests because such children are exploitable and vulnerable and 18 19have limited defenses.

The policy and purpose of this Chapter is to provide children 20 with prompt and ample protection from the harms detailed herein, with 21an opportunity for timely reconciliation with their families where 22 practical, and with timely and permanent planning so they may develop 23 24 and mature into responsible, self-sufficient and law-abiding citizens. This permanent planning should effectuate placement with a child's own 25 family when possible and should be conducted in an expeditious fashion 26 so that where return to the child's family is not possible as provided 27in this chapter, such children will be promptly and permanently placed 28 29with responsible and competent substitute parents and families, with their places in such families secured by adoption or permanent custody 30 31 orders.

This Chapter shall be liberally construed to serve the best
 interests of the children and the purposes set out in this Chapter.
 SECTION 88102. Definitions.

35 (a) Authorized agency means the department or other public or 36 private agency, a person, organization, corporation, or benevolent

society or association which is licensed or approved by the department
 or the court to receive children for control, care, maintenance or
 placement.

4 . (b) Child means a person under the age of 18 years.

5 (c) Child protective proceeding means any action, hearing or 6 other civil proceeding before the court under this Chapter.

7 (d) Child Protective Services means the agency established by8 Section 4.

9 (e) Clear and convincing evidence means that measure of degree 10 of proof which will produce in the mind of the trier of fact a firm 11. belief or conviction as to the truth of the allegations sought to be 12 established. This measure falls between the preponderance standard 13 of typical civil cases and the beyond a reasonable doubt standard of 14 criminal cases.

Criminal history record check means an examination of an 15 (f) individual's criminal history record through fingerprint analysis or 16 name inquiry into territorial, state and national criminal history record 17files, including but not limited to the files of the Federal Bureau of 18 Investigation, Guam Police Department, the Prosecution Division of the 19 Attorney General's Office and Child Protective Services, provided that 20 the information obtained shall be used exclusively for purposes under 21 this Chapter and shall be subject to applicable federal and local laws 22 and regulations. 23

(g) Department means the Department of Public Health and Social
Services and its authorized representatives, including but not limited
to Child Protective Services.

(h) Disposition hearing means a hearing held pursuant to Section
28 23 of this Chapter.

(i) Fact-finding hearing means an adjudicatory hearing held
pursuant to Section 21 of this chapter, to determine the truth of the
allegations contained in the petition filed under this Chapter.

(j) Family means each legal parent, the grandparents, each
parent's spouse, each sibling or person related by consanguinity up to
the second degree or by marriage, each person residing in the same
dwelling unit and any other person or legal entity which is a child's

legal or physical custodian or guardian, or who is otherwise 1 responsible for the child's care. 2 (k) Family Court means the court established pursuant to 19 3 G.C.A. §5101. 4 (1) Family home means the home of the child's parents or legal 5 custodian where there is the provision of care for the child's 6 physical and psychological health and welfare. 7 (m) Foster care means when a child is placed, pursuant to an 8 order of the court, in a residence which has been designated as 9 suitable by an authorized agency or the court for the appropriate care 10 of a child. 11 (n) Foster custody means the legal status created by an order of 12 the court after the court has determined that the child's family is not 13 presently willing and able to provide the child with a safe family home. 14 Foster custody can either be temporary or permanent. 15 Guardian ad litem means a person appointed by the court 16 (0) pursuant to Section 11 whose role is to protect and promote the needs 17 and interests of the child or ward. 18 (p) Harm to a child's physical or psychological health or welfare 19 occurs in a case where there exists evidence of injury, including but 20 not limited to: 21 any case where the child exhibits evidence of: 22 (1)(A) skin bruising or any other internal bleeding, 23 any injury to skin causing bleeding, (B) 24 (C) burn or burns, 25 (D) poisoning, 26 fracture of any bone, (E) 27subdural hematoma, (F) 28 soft tissue swelling, (G) 29 (H) extreme pain, 30 (I) death or 31 disfigurement or impairment of any bodily organ, (J) 32 and such injury is inflicted by other than accidential means, 33 by excessive corporal punishment or where the history given 34 concerning such condition or death is at variance with the 35 degree or type of such condition or death; or 36 21

(2) any case where the child has been the victim of a sexual offense as defined in the Criminal and Correctional Code (9 G.C.A.); or

(3) any case where there exists injury to the psychological capacity of a child such as failure to thrive, extreme mental distress, or gross emotional or verbal degradation as is evidenced by an observable and substantial impairment in the child's ability
to function within a normal range of performance with due regard
to the child's culture; or

(4) any case where the physical health of the child is 10 adversely affected because the person responsible for the child's  $11 \cdot$ welfare has not regularly provided the child, in a timely manner, 12 13 with adequate food, clothing, shelter, psychological care, physical care, health care or supervision, when financially able to do so 14 or if offered financial assistance or health care or other 15 reasonable means to do so. Adequate health care includes any 16 medical or non-medical health care permitted or authorized under 17 territorial laws; provided, however, that a person responsible for 18 the child's welfare who, while legitimately practicing his or her 19 religious beliefs, does not specify medical treatment for a child 20 should not for that reason alone, be considered as harming or 21 threatening harm to the child; or 22

(5) any case where the child is provided with dangerous,
harmful or detrimental drugs as defined by the Criminal and
Correctional Code of Guam (9 G.C.A.). However, this paragraph
shall not apply to a child's family who provide such drugs to the
child pursuant to the direction or prescription of a practitioner as
defined in the Criminal and Correctional Code of Guam (9 G.C.A.)
§67.12(t)); or

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(6) any case where the child is abandoned.

31 (q) Licensing agency means any department or agency that
32 licenses child care facilities.

(r) Long-term foster custody means the legal status created by
 order of the court after the court has determined by clear and
 convincing evidence that it is in the best interests of the child to
 order an appropriate long-term plan concerning the child.

1 (s) Party means an authorized agency, the child, the child's 2 family member or members who are required to be summoned pursuant 3 to Section 9, any other member of the child's family or any other 4 person who is alleged in the petition filed under this chapter or who is 5 subsequently determined at any child protective proceeding to be 6 encouraging, causing or contributing to the acts or condition which 7 bring the child within this Chapter.

Permanency plan is a specific written plan prepared by Child 8 (t) 9 Protective Services which sets forth the goal of the child's permanent 10 placement as being either adoption, permanent foster custody with subsequent adoption or guardianship, or permanent foster custody 11 12 until majority.

(u) Permanency plan hearing means a hearing held pursuant to 13 Section 27. 14

(v) Person responsible for the child's welfare includes the child's 15 parent, guardian, foster parent, an employee of a public or private 16 residential home, residential institution or authorized agency respon-17 sible for the child's welfare. 18

(w) PINS means a person in need of services who has been 19harmed as defined in Section 2. 20

(x) Police officer means a person employed by the Territory to 21 enforce the laws and ordinances for preserving the peace, safety and 22 good order of the community. 23

(y) Preliminary hearing means a hearing held pursuant to Section 24 25 20.

(z) Preponderance of evidence means evidence which as a whole 26 shows that the fact sought to be proved is more probable than not. 27 (aa) Progress hearing means any hearing held pursuant to Section 28 29 25.

(bb) Protective custody means the legal status of a child whose 30 physical custody is retained by a police officer, Child Protective 31 Services social worker or physician pursuant to Section 5 in order to 32 protect such child from harm or threatened imminent harm. 33

(cc) Reasonable cause to believe means evidence which would 34 cause a reasonable person to believe. 35

(dd) Service plan means a specific written plan prepared by
Child Protective Services and presented to members of the child's
family which indicates the specific services or treatment with which the
parties will be provided, the specific actions the parties must take,
the specific responsibilities that the parties must assume, and the
specific consequences that may be reasonably anticipated to result from
the parties' success or failure in complying with the plan.

8 (ee) Temporary foster custody means a legal status created under 9 this chapter pursuant to an order of the court whereby the department 10 assumes the duties and rights of a foster custodian over a child.

(ff) Threatened harm means any reasonably foreseeable substantial risk of harm to a child with due consideration being given to the
age of the child.

SECTION 88103. Jurisdiction. The Family Court shall have exclusive original jurisdiction in a child protective proceeding concerning any child who was or is found within the Territory at the time such facts and circumstances occurred, are discovered, or are reported to the department, which facts and circumstances constitute the basis for the finding that the child has been harmed or is subject to threatened harm as defined in Section 2.

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SECTION 88104. Authorization for department to act.

22 (a) The department shall establish a "Child Protective Services." 23 It shall have a sufficient staff to fulfill the purposes of this Chapter 24 and organized in such a way as to maximize the continuity of responsi-25 bility, care and services of individual workers toward individual 26 children and families. Child Protective Services and the Guam Police 27 Department shall be the sole agencies responsible for receiving and 28 investigating all reports of child abuse or neglect made pursuant to 29 this Chapter, specifically including but not limited to reports of child 30 abuse or neglect in facilities operated by the department and other 31 public agencies, for the purpose of providing protective services to 32 prevent further abuses to children and to provide or arrange for and 33 monitor the provision of those services necessary to safeguard and 34 ensure the child's well-being and development and to preserve and 35 stabilize family life wherever appropriate.

1 (b) Upon receiving a report that a child has been harmed or is 2 subject to threatened harm, Child Protective Services shall cause such 3 investigation to be made in accordance with this Chapter as it deems to 4 be appropriate. In conducting the investigation Child Protective 5 Services may require the cooperation of police officers or other 6 appropriate law enforcement authorities for phases of the investigation 7 for which they are better equipped and Child Protective Services may 8 conduct a criminal history record check concerning an alleged purpe-9 trator of harm or threatened harm to a child.

10 (c) Upon satisfying itself as to the course of action to be 11 pursued, Child Protective Services shall:

12 (1) Resolve the matter in such informal fashion as is appro13 priate under the circumstances;

14 (2) Seek to enter into a service plan, without filing a
15 petition in court, with such members of the child's family and
16 such other authorized agencies as Child Protective Services deems
17 to be necessary to the success of the service plan, including but
18 not limited to the member or members of the child's family who
19 have legal custody of the child;

20 (3) Assume protective custody of the child pursuant to
21 Section 5;

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(4) File a petition; or

(5) Relinquish its protective custody and return the child
to his or her legal custodian.

(d) Child Protective Services shall make available among its
services for the prevention and treatment of child abuse or neglect
multidisciplinary teams, instruction in education for parenthood,
protective and preventive social counseling, emergency caretaker
services and emergency shelter care.

30 SECTION 88105. Protective custody by police officer, Child 31 Protective Services social worker or physician without court order.

(a) A police officer, Child Protective Services social worker or
physician shall assume protective custody of a child without a court
order and without the consent of the child's family regardless of
whether the child's family is absent if, in the discretion of such police
officer, Child Protective Services social worker or physician, the child

is in such circumstance or condition that the child's continuing in the
 custody or care of the person responsible for the child's welfare
 presents a situation of harm or threatened harm to the child.

4 (b) A police officer or physician who assumes protective custody of a child who is harmed or threatened with harm shall immediately 5 transfer protective custody to Child Protective Services by presenting 6 7 physical custody of the child to Child Protective Services, unless the child is or presently will be admitted to a hospital or similar insti-8 tution, in which case the police officer or physician shall immediately 9 transfer protective custody to Child Protective Services by so 10 informing Child Protective Services and receiving an acknowledgment 11. from the hospital or similar institution that it has been informed that 12 the child is under the protective custody of Child Protective Services. 13 (c) When Child Protective Services receives physical custody of 14 a child pursuant to Section 5(b), Child Protective Services shall 15 assume protective custody of a child without an order of the court and 16 without the consent of the child's family regardless of whether the 17 18 child's family is absent if, in the discretion of Child Protective Services, the child is in such circumstance or condition that the 19

20 child's continuing in the custody or care of the child's family presents21 a situation of harm or threatened harm to the child.

(d) Upon assuming protective custody of a child under this
Chapter, any authorized individual taking a child into protective
custody shall immediately and within 24 hours, orally and in writing,
notify the person responsible for the child's welfare, the reasons for
the need to take the child into protective custody and shall immediately
notify Child Protective Services.

(e) Upon assuming protective custody of a child under this
Chapter, Child Protective Services shall place the child in a home
approved by Child Protective Services unless the child is admitted to a
hospital or similar institution, and obtain a verbal ex parte order from
the court for temporary custody while Child Protective Services or the
Guam Police Department conducts an appropriate investigation.

(f) Children appearing to suffer any physical or mental trauma
 which may constitute harm or threatened harm shall be admitted to and
 treated in appropriate facilities of private and public hospitals, with or

without the consent of the child's family, on the basis of medical need
 and shall not be refused or deprived in any way of proper medical
 treatment and care.

(g) If a child has been taken into protective custody, within one
day of Child Protective Services' assumption of protective custody,
excluding Saturday, Sunday and holidays, Child Protective Services
shall file a declaration with the court in support of an ex parte order
and obtain a written order to extend protective custody beyond the
one working day.

10 (h) In no case shall protective custody be maintained longer than three working days without a preliminary hearing. If at the hearing it 11 is determined that protective custody shall be continued, Child 12 Protective Services shall, within 48 hours of the time of the hearing, 13 file a petition with the Superior Court of Guam pursuant to Section 8. 14 15 A conference between the person responsible for the welfare (i) of a child taken into protective custody pursuant to this Section and 16 the social worker designated by Child Protective Services to be 17 responsible for such child shall be held within two working days if 18 possible from the time that the child is taken into such custody for the 1920 purposes of explaining to such person the reasons for the protective 21custody of the child and the whereabouts of the child if appropriate, 22 and to expedite, wherever possible, the return of the child to the 23 custody of such person when protective custody is no longer 24 necessary.

25 SECTION 88106. Authorization for photographs, x-rays and 26 radiological or other diagnostic examination.

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27 (a) Any health professional or paraprofessional, physician licensed or authorized to practice medicine in this Territory, 28 29 registered nurse or licensed practical nurse, hospital or similar insti-30 tution's personnel engaged in the admission, examination, care or treatment of patients, medical examiner, coroner, social worker or 31 police officer, who has a child whom the person reasonably believes 32 has been harmed, shall make every good faith effort to take or cause 33 to be taken color photographs of the areas of trauma visible on the 34 child. If medically indicated, such person may take or cause to be 35

taken x-rays of the child or cause a radiological or other diagnostic
 examination to be performed on the child.

3 (b) Color photographs, x-rays, radiological or other diagnostic
4 examination reports which show evidence of imminent harm or
5 threatened harm to a child shall be immediately forwarded to Child
6 Protective Services.

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SECTION 88107. Service plan.

8 (a) A service plan is a specific written plan prepared by Child 9 Protective Services and presented to such members of the child's 10 family as Child Protective Services deems to be necessary to the 11 success of the plan, including, but not limited to, the member or 12 members of the child's family who have legal custody of the child at 13 the time that the service plan is being formulated or revised under 14 this chapter.

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(b) The service plan should set forth:

16 (1) The steps that will be necessary to facilitate the return 17 of the child to a safe family home, if the proposed placement of 18 the child is in foster care or in alternate placement outside of the 19 child's home;

(2) The steps that will be necessary for the child to remain
in a safe family home with the assistance of a service plan, if the
proposed placement of the child is in a family home under Child
Protective Services' supervision; and

(3) The steps that will be necessary to make the family
home a safe family home and to terminate intervention of Child
Protective Services into the family and eliminate, if possible, the
necessity for the filing of a petition with the court under this
Chapter.

(c) The service plan should also include but not necessarily belimited to:

(1) The specific services or treatment that the parties will
be provided and the specific actions the parties must take or
specific responsibilities that the parties must assume; the time
frames during which such services will be provided, such actions
must be completed and such responsibilities must be assumed;

1 (2) The specific consequences that may be reasonably anticipated to result from the parties' success or failure in 2 complying with, performing and completing, if possible, each and 3 every term and condition of the service plan, including but not 4 5 limited to the consequence that, unless the family is willing and able to provide the child with a safe family home within the reasonable period of time specified in the service plan, their respective parental and custodial duties and rights shall be subject to termination; and

10 (3) Such other terms and conditions as Child Protective Services deems to be necessary to the success of the service 11 12plan.

13 (d) After each term and condition of the service plan has been thoroughly explained to and is understood by each member of the 14 child's family whom Child Protective Services deems to be necessary to 15 the success of the service plan, the service plan shall be agreed to 16 and signed by each such family member. Thereafter, a copy of the 17service plan shall be provided to each family member who signed the 18 19 service plan.

20 (e) If a member of a child's family whom Child Protective 21 Services deems to be necessary to the success of the service plan cannot or does not understand or agree to the terms and conditions 22 23 set forth in the service plan, Child Protective Services shall proceed 24 pursuant to Section 8.

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SECTION 88108. Petition.

26 (a) A petition invoking the jurisdiction of the court under this 27chapter shall be filed in the manner provided in this section:

(1) Petitions shall be entitled "In the Interest of (name of child), A Minor," shall be verified and shall set forth with specificity:

31 (A) The facts which bring the child within this 32 Chapter;

33 (B) The name, age, birthdate, sex and residential 34 address of the child:

35 (C) The names and last known residential addresses of the member or members of the child's family required to be 36

notified pursuant to Section 9, and other persons who are to be made parties to the child protective proceeding at the time of the filing of the petition; and

(D) Whether the child is under the temporary foster custody of the department and, if so, the type of temporary foster custody, the circumstances necessitating such care and the date the child was placed in such temporary foster custody.

9 (2) When any of the facts required by this section cannot 10 be determined, the petition shall so state. The petition may be 11. based on information and belief but in such case the petition shall 12 state the basis of such information and belief.

(b) Petitions shall state that unless the family is willing and able
to provide the child with a safe family home, even with the assistance
of a service plan, within a reasonable period of time, their respective
parental custodial duties and rights shall be subject to termination.

(c) The court may provide rules concerning the titles, filing,
investigation, and the form and content of petitions and other
pleadings and proceedings in cases under this Chapter, or any other
matter arising in child protective proceedings.

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SECTION 88109. Summons.

(a) After a petition has been filed, the court shall issue a 22 summons requiring a child's family member or members who have legal 23 or physical custody of the child at the time of the filing of the petition 24 to bring the child before the court at the preliminary hearing as set 25 forth in the summons. In addition, any legal parent, the natural 26 parents (unless parental rights have been terminated) and other 27persons who are to be parties to the child protective proceeding at the 28 time of the filing of the petition also shall be summoned, in the manner 29 provided in this section. 30

31 (b) A "stamped filed" copy of the petition shall be attached to32 each summons.

33 (c) The summons shall notify the parties of their right to retain34 and be represented by counsel.

(d) The summons shall state: "YOUR PARENTAL AND
 36 CUSTODIAL DUTIES AND RIGHTS CONCERNING THE CHILD OR

CHILDREN WHO ARE THE SUBJECT OF THE ATTACHED PETITION
 MAY BE TERMINATED BY AWARD OF PERMANENT CUSTODY IF YOU
 FAIL TO APPEAR ON THE DATE SET FORTH IN THIS SUMMONS."
 SECTION 88110. Service of summons.

5 (a) Service of summons shall be made personally by delivery of a "stamped filed" copy to the person or legal entity summoned; provided 6 that if the court is satisfied that it is impractical to personally serve 7 8 the summons provided for in the preceding section, the court may 9 order service by registered or certified mail addressed to the last 10 known address, or by publication, or both. Service shall be effected at least 24 hours prior to the time fixed in the summons for a preli-11 12 minary hearing or at least 48 hours prior to the time fixed in the summons for any other hearing under this Chapter, unless such party 13 14 otherwise was ordered by the court to appear at such hearing. When publication is used the summons shall be published once a week for 15 two consecutive weeks in a newspaper of general circulation in the 16 17 Territory. The newspaper shall be designated by the court in its order for publication of the summons and such publication shall have 18 the same force and effect as though such person had been personally 19 served with the summons. Personal service of summons required 20 21 under this Chapter shall be made by the marshal or a licensed process 22 server and a return must be made on the summons showing to whom, 23 the date and time service was made.

24 (b) If any person summoned as provided in this section, without reasonable cause, shall fail to appear, the court may proceed in such 25 person's absence or such person may be proceeded against for 26 27 contempt of court pursuant to Section 29. Where the summons cannot 28 be personally served, or where a person served fails to obey the summons, or in any case when it shall be made to appear to the court 29 30 that the service will be ineffectual, or that the best interests of the 31 child require that the child be brought before the court, the court 32 may issue either a warrant for such person or an order to show cause 33 why contempt shall not be found for failure to appear pursuant to 34 Section 29.

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## SECTION 88111. Guardian ad litem; counsel.

2 (a) The court shall appoint a guardian ad litem for the child to serve throughout the pendency of the child protective proceeding 3 under this Chapter, provided that a guardian ad litem's appointment 4 shall automatically terminate upon an award of permanent custody of 5 the child by the court, unless otherwise ordered by the court. The 6 7 court may appoint additional counsel for the child pursuant to 8 subsection (c) or independent counsel for any other party if such party is indigent, the child protective proceeding is complex, counsel 9 is necessary to protect the party's interests adequately and the 10 interests are not represented adequately by another party who is 11. 12 represented by counsel.

13 (b) Where the court determines, after such hearing as the court 14 deems to be appropriate, that a party is incapable of comprehending the legal significance of the issues or the nature of the child protec-15 tive proceeding, the court may appoint a guardian ad litem to 16 17 represent the interests of that party; provided that a guardian ad 18 litem appointed pursuant to this section shall investigate and report to 19 the court in writing at six- month intervals, or as is otherwise 20 ordered by the court, regarding the current status of the ward's 21 disability, including but not limited to a recommendation as to available 22 treatment, if any, for such disability and a recommendation concerning 23 the manner in which the court should proceed in order to best protect the interests of the ward in conjunction with the court's determination 24 25 as to the best interests of the child.

(c) A guardian ad litem appointed pursuant to subsection (a) 26 shall report to the court in writing at six-month intervals, or as is 27 28 otherwise ordered by the court, regarding such guardian ad litem's activities on behalf of the child and recommendations concerning the 29 manner in which the court should proceed in the best interests of the 30 child, provided that such guardian ad litem shall make face to face 31 contact with the child in the child's family or foster home at least once 32 every three months. Such guardian ad litem shall also inform the 33 court of the child's perceived interests if they differ from those being 34 advocated by the child's guardian ad litem. If the child and the 35 child's guardian ad litem are not in agreement, the court shall evaluate 36

the necessity for appointing special counsel for the child to serve as the child's legal advocate concerning such issues and during such proceedings as the court deems to be in the best interests of the child.

5 (d) A guardian ad litem or counsel appointed pursuant to this 6 section for the child or other party shall be paid for by the court 7 unless the party for whom counsel is appointed has an independent 8 estate sufficient to pay such costs. The court may order the appro-9 priate parties to pay reimbursement to the court for the costs and fees 10 of the guardian ad litem and other counsel appointed for the child. 11 (e) A guardian ad litem shall:

(1) Be allowed access to the child by the caretakers of the
child whether the caretakers are individuals, authorized agencies
or health care providers;

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(2) Have the authority to inspect and receive copies of any
records, notes and electronic recordings concerning the child that
are relevant to the proceedings filed under this Chapter without
the consent of the child or individuals and authorized agencies
who have control of the child; and

(3) Be given notice of all hearings and proceedings, civil
or criminal, including but not limited to grand juries, involving
the child and shall protect the best interests of the child therein,
unless otherwise ordered by the court.

24 SECTION 88112. Reports to be submitted by Child Protective 25 Services; social worker expertise.

(a) Child Protective Services shall make every reasonable effort
to submit written reports, or a written explanation regarding why a
report is not being submitted timely, to the court with copies to the
parties or their counsel or guardian ad litem.

30 (b) Report or reports pursuant to subsection (a) specifically31 shall:

(1) Evaluate fully all relevant prior and current information
concerning whether the child's family is presently willing and able
to provide the child with a safe family home, including, if the
family previously entered into a voluntary or court ordered
service plan, the parties' success or failure in complying with,

1 performing and completing, if possible, each and every term and 2 condition of the service plan; 3 (2)In each proceeding, subsequent to adjudication, 4 recommend whether the court should order: 5 (A) A service plan as set forth in Section 7 or 6 revisions to the existing service plan, and, if so, set forth 7 the proposed services or revisions; or 8 (B) An award of permanent custody to an appropriate 9 authorized agency, and, if so, set forth the basis for such 10 recommendation which shall include but not be limited to an  $11 \cdot$ evaluation of each of the criteria set forth in Section 27(a), 12 including the written permanency plan as set forth in Section 13 26; and 14 (3) Set forth recommendations as to such other orders as 15 are deemed to be appropriate and state the basis for recom-16 mending that such orders be entered. 17(c) A written report submitted pursuant to subsection (a) shall 18 be admissible and may be relied upon to the extent of its probative 19 value in any proceeding under this Chapter, except in a permanency 20 plan hearing, provided that the person or persons who prepared the 21report shall be subject to direct and cross-examination as to any 22 matter in the report, unless such person is unavailable. 23 SECTION 88113. Evidentiary determination; burden of proof. 24 (a) In a temporary foster custody hearing, a determination that 25 there exists reasonable cause to believe that a child is subject to harm 26 or threatened harm may be based upon any relevant evidence 27whatsoever, including but not limited to hearsay evidence when direct 28 testimony is unavailable or when it is impractical to subpoena witnesses 29 who will be able to testify to facts from personal knowledge. 30 (b) In a fact-finding hearing, a determination that the child has 31 been harmed or is subject to threatened harm shall be based on a 32 preponderance of the evidence, and, except as otherwise provided 33 under this Chapter, only competent and relevant evidence may be 34 admitted.

(c) In subsequent hearings, other than a permanency plan
 hearing, any determination shall be based on a preponderance of the
 evidence and any relevant evidence shall be admitted.

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(d) In a permanency plan hearing:

5 (1) A determination that permanent custody of a child be 6 awarded to Child Protective Services shall be based upon clear 7 and convincing evidence; and

8 (2) A determination that a child should be the subject of an 9 adoption shall be based upon clear and convincing evidence. 10 SECTION 88114. Evidence may be inadmissible in other actions or 11 proceedings; testimony by a child.

(a) Any testimony or other evidence produced by a party in a
child protective proceeding under this Chapter which would otherwise
be unavailable may be ordered by the court to be inadmissible as
evidence in any other territorial civil or criminal action or proceeding,
if the court deems such an order to be in the best interests of the
child.

(b) The court may direct that a child testify under such
circumstances as the court deems to be in the best interests of the
child and the furtherance of justice, which may include or be limited
to an interview on the record in chambers with only those parties
present as the court deems to be in the best interests of the child.

(c) Any statement made by the child to any person relating to
any allegation of harm or threatened harm shall be admissible in
evidence in a child protective proceeding.

SECTION 88115. Recording a statement or the testimony of a child. (a) The recording of a statement of a child is admissible into evidence in any proceeding under this Chapter if:

(1) The recording is visual, oral or both and is recorded on film, tape, videotape or by other electronic means;

(2) The recording equipment was capable of making an
accurate recording, the operator of the equipment was competent
and the recording is accurate and has not been altered; and
(3) Every person in the recording is identified.

34 (3) Every person in the recording is identified.
 35 SECTION 88116. Admissibility of evidence. The physician-patient
 36 privilege, psychotherapist-patient privilege, spousal privilege,

clergy-penitent privilege and lawyer-client privilege shall not be
 available to exclude evidence of harm or threatened harm in any
 proceeding under this Chapter.

4 SECTION 88117. Required findings concerning notice prior to a 5 hearing in a child protective proceeding.

6 (a) No hearing may commence under this Chapter unless the 7 court enters a finding that each of the parties required to be notified 8 pursuant to Section 9 has been served with a copy of the petition, 9 provided that if a member or members of the child's family required to 10 be notified pursuant to Section 9 have not been served, the court may 11. proceed to hear any child protective proceeding under this Chapter 12 and enter orders concerning the parties who have been served if the 13 court is satisfied that:

14 (1) A reasonable effort has been made to effect personal 15 service;

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16 (2) It would not be in the best interests of the child to
17 postpone the proceeding until service can be effectuated; and
18 (3) The child is represented by a guardian ad litem or
19 counsel.

(b) The court may set a continued hearing date; provided that:

(1) The court may waive the appearance of any party at the continued hearing date; and

(2) If the court orders that service of summons be made by
mail or publication, the court shall set the continued hearing date
not less than 21 days subsequent to the date of service evidenced
by the signature on a return receipt or the date of the last
publication.

(c) Upon the continued hearing date, the court shall:

(1) Enter a default concerning a party who was served but failed to appear on the continued hearing date;

(2) Order the party who was served to appear on the date of the next scheduled hearing in the case; or

(3) If a member of the child's family required to be notified
pursuant to Section 9 was served and appears on the continued
hearing date and moves the court that a prior order be vacated
or modified, the court shall set the oral motion to vacate prior

orders for a hearing and order that the moving party file a
 written motion and serve the other parties with proper written
 notice of the motion and hearing date.

(d) In considering a party's motion to vacate or modify prior
orders, the court need not commence a trial or hearing de novo, but
rather, after such further hearing as the court deems to be appropriate, may proceed to enter such orders as are in the best interests
of the child.

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SECTION 88118. Order of protection.

(a) Upon submission of the declaration in support of an ex parte
order pursuant to Section 5(g) or at a temporary foster custody
hearing, the court may make an order of protection. Such an order
may include but need not be limited to a requirement that a party:

(1) Stay away from the family home, a school or any other
place or location which is deemed by the court to present an
opportunity for contact between the parties, or with other
persons, which contact would not be in the best interests of the
child;

(2) Abstain from physically or verbally contacting,
threatening or abusing any party or person; and

(3) Report any violation of an order of protection to the
appropriate law enforcement authorities and other authorized
agencies.

(b) An order of protection granted ex parte pursuant to Section
5(g) shall expire in three working days after a child is taken into
protective custody.

27 (c) The parties may release copies of an order of protection to28 appropriate law enforcement authorities.

29 SECTION 88119. Temporary foster custody hearing.

30 (a) In any case where Child Protective Services has assumed
31 protective custody of a child with an ex parte order of the court, the
32 court shall hold a temporary foster custody hearing within three
33 working days from the date that the child was taken into protective
34 custody.

35 (b) At the temporary foster custody hearing, the court on its
36 own motion may order that the child immediately be released from

protective custody and returned to the child's family home under such terms and conditions, including, but not limited to, orders which may be entered pursuant to Section 20(d), as are deemed by the court to be in the best interests of the child; provided that upon such return, the child and the child's family members who are parties shall be under the supervision of Child Protective Services prior to the fact-finding hearing.

8 (c) After a temporary foster custody hearing, if the court determines that there is reasonable cause to believe that placement in 9 temporary foster care is necessary to protect the child from harm or 10 threatened harm, it shall order that the child remain in the temporary  $11 \cdot$ 12 foster custody of Child Protective Services under such terms and conditions, including but not limited to orders which may be entered 13 14 pursuant to Section 20(d) as are deemed by the court to be in the best interests of the child; provided that prior to ordering placement 15 16 or continued placement in any proceeding under this chapter:

17 (1) The court first shall give due consideration to ordering the removal or continued removal of the alleged perpetrator of the 18 19harm or threatened harm from the child's family home prior to 20 placing or continuing to place the child out of the family home. 21The child's family shall have the burden of establishing that it is 22 not in the best interests of the child that the alleged perpetrator be removed from the family's home rather than the child by order 23 24 of the court.

(2) If siblings or psychologically bonded children are
removed from their family home, the court shall order that every
reasonable effort be made to place them together, unless it is not
in the best interests of the children.

(d) Any party may move for, or the court on its own motion may
order, a temporary foster custody hearing or rehearing at any time
after the petition is filed under this Chapter to determine whether the
best interests of the child require that the child be placed in
temporary foster custody prior to a fact-finding hearing.

SECTION 88120. Preliminary hearing.

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(a) If the child has not been taken into protective custody, a
 preliminary hearing shall be held within ten working days of the filing

of the petition or, if a child has been taken into protective custody, a
petition shall be filed and a preliminary hearing held within three
working days after the child has been taken into protective custody.
If a child has been taken into protective custody, the temporary foster
custody hearing and the preliminary hearing on the petition shall be
jointly held.

7 (b) If the child has not been taken into protective custody, at 8 the preliminary hearing the court shall review the petition and if, in 9 the discretion of the court, the child is in such circumstances or 10 condition that the child's continuing in the custody or care of the 11 child's family presents a situation of harm or threatened harm to the 12 child, the court shall order that Child Protective Services immediately 13 assume temporary foster custody until further order of the court. 14 (c) The preliminary hearing shall be continued for a period not 15 to exceed 15 working days, upon the court's own motion or upon the 16 motion of a party, if the court determines that it would be in the best 17interests of the child that further investigation be conducted and 18 information concerning whether the child should remain in temporary 19 foster custody be provided to the court by each of the parties, prior 20 to rendering a determination as to whether the child should remain in 21 temporary foster custody prior to a fact-finding hearing.

(d) During a continuance period ordered pursuant to subsection
(c), or at any other time during the pendency of a child protective
proceeding, the court may further order that:

(1) Any party undergo a physical, developmental, psychological or psychiatric evaluation and that a written or oral report
be submitted to the court and all parties prior to or upon the
date of the continued or next hearing;

(2) The child's family members who are parties provide
Child Protective Services or other appropriate authorized agency
with the names and addresses of other family and friends who
may be potential visitation supervisors or foster parents for the
child and that they arrange for such persons to appear in court
upon the date of the continued or next hearing;

35 (3) The child's family members who are parties be permitted
 36 reasonable supervised or unsupervised visitation with the child at

the discretion of Child Protective Services or other appropriate authorized agency and the child's guardian ad litem;

(4) The court and the parties view a visual recording orlisten to an oral recording of the child's statement at such timeand in such manner as the court deems to be appropriate;

(5) The child and the child's family members who are parties arrange and commence participation in such counseling or therapy for themselves and the child as the court deems to be appropriate and consistent with the best interests of the child;

10 (6) An appropriate order of protection be entered;  $11 \cdot$ (7) A criminal history record check be conducted by Child 12 Protective Services or other appropriate authorized agency 13 concerning a party who is an alleged perpetrator of harm or threatened harm to the child, and that the results be submitted 14 15 to the court and other parties in such manner as the court deems 16 to be appropriate prior to or upon the date of the continued or 17 next hearing;

(3) Child Protective Services or other appropriate
authorized agency prepare a written or oral supplemental report
pursuant to Section 12 and submit the report to the court, the
guardian ad litem and all parties prior to or upon the date of the
continued or next hearing; or

(9) The child's guardian ad litem visit the child's family
home and foster home, be present during a supervised visitation
and prepare a written or oral report to be submitted to the court
and all parties prior to or upon the date of the continued or next
hearing.

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SECTION 88121. Answering date; fact-finding hearing.

(a) When a petition has been filed, the court shall set an
answering date to be held within seven working days after the date of
the preliminary hearing.

(b) At the answering, if the parties admit the allegations in the
petition, the court may issue such orders which it deems to be in the
best interests of the child.

(c) If the parties do not admit the allegations in the petition,
 the case shall be set for a fact-finding hearing within 30 working days
 of the answering date.

4 (d) The court shall hear child protective proceedings under this 5 Chapter without a jury. The hearing shall be conducted in an informal manner and may be adjourned from time to time. The general 6 . 7 public shall be excluded and only such persons shall be admitted as are found by the court to have a direct interest in the case. The 8 child may be excluded from the hearing at any time at the discretion 9 of the court. If a party is without counsel or a guardian ad litem, 10 the court shall inform the party of the right to be represented by 11 12 counsel and to appeal.

SECTION 88122. Sustaining or dismissing petition; interim orders. 13 14 (a) If facts sufficient to sustain the petition are established, the court shall enter an order finding that the child is a child whose 15 physical or psychological health or welfare has been harmed or is 16 17 subject to threatened harm by the acts or omissions of the child's family and shall state the grounds for the finding; provided that if all 18 parties consent, the grounds for the finding may be based upon the 19 report or reports submitted pursuant to Section 12 or other stipulated 20 evidence deemed by the court to constitute an adequate basis for the 21 court's invoking its jurisdiction, which report or reports or stipulated 22 evidence may be admitted into evidence subject to reservation by the 23 parties of their right to cross-examination subject to Section 12(c). 24 (b) If facts sufficient to sustain the petition under this Chapter 25

are not established, the court shall dismiss the petition and shall statethe grounds for dismissal.

(c) If the court sustains the petition and does not immediately
enter an order regarding the disposition of the child, it shall:

(1) Determine, based upon the facts adduced during the
fact-finding hearing and any other additional facts presented to
it, whether temporary foster custody should be continued or
should be entered pending an order of disposition. The court
shall consider all relevant prior and current information for
determining whether the child's family is willing and able to
provide the child with a safe family home, and the report or

reports submitted pursuant to Section 12, and proceed pursuant to Section 19(c) prior to rendering a determination; and

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(2) Enter such orders regarding visitation and the provision of services to the child and the child's family and the child's and family's acceptance and cooperation with such services as the court deems to be appropriate and consistent with the best interests of the child.

8 (d) Orders orally stated by the court on the record in a 9 proceeding under this Chapter shall have full force and effect upon 10 the date of the hearing until further order of the court; provided that 11 all oral orders shall be reduced to writing as soon as convenient. 12 SECTION 88123. Disposition hearing.

13 (a) The court may consider any information relevant to disposi-14 tion which is in the best interests of the child; provided that the 15 court shall determine initially whether the child's family home is a safe 16 family home. The court shall consider fully all relevant prior and 17 current information for determining whether the child's family is willing 18 and able to provide the child with a safe family home, and the report 19 or reports submitted pursuant to Section 12, in rendering such a 20 determination.

(b) If the court determines that the child's family is presently
willing and able to provide the child with a safe family home without
the supervision of Child Protective Services, the court shall terminate
jurisdiction.

25 (c) If the court determines that the child's family home is a safe 26 family home with the supervision of Child Protective Services, the 27court shall place the child and the child's family members who are 28 parties under the supervision of an authorized agency, return the 29 child to the child's family home and enter further orders, including 30 but not limited to, restrictions upon the rights and duties of the 31 authorized agency, as the court deems to be in the best interests of 32 the child.

(d) If the court determines that the child's family home is not a
safe family home, even with the supervision of Child Protective
Services the court shall vest foster custody of the child in an

authorized agency and enter such further orders as the court deems to
 be in the best interests of the child.

(e) If the child's family home is determined not to be safe, even
with the supervision of Child Protective Services pursuant to
subsection (d), the court may, and if the child has been residing
outside the family home for a period of two years shall, set the case
for a permanency plan hearing and order that the authorized agency
submit a report pursuant to Section 12.

9 (f) At the disposition hearing, the court may order such terms,
10 conditions and consequences as the court deems to be in the best
11 interests of the child.

(g) The court may order that any party participate in, complete,
be liable for, and make every good faith effort to arrange payment for
such services or treatment as are authorized by law and are deemed to
be in the best interests of the child.

(h) At any stage of the child protective proceeding, the court
may order that a child be examined by a physician, surgeon,
psychiatrist or psychologist, and it may order treatment by any of
them of a child as is deemed to be in the best interests of the child.
For either the examination or treatment, the court may place the child
in a hospital or other suitable facility, pursuant to the provisions of
10 G.C.A. §§82101 et seq.

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SECTION 88124. Long-term foster custody.

(a) Long-term foster custody divests from each legal custodian
and family member who has been summoned pursuant to Section 9 and
vests in a long-term custodian each of the parental and custodial
duties and rights of a legal custodian and family member including but
not limited to the following:

(1) To determine where and with whom the child shall live;
provided that the child shall not be placed outside the Territory
without prior approval of the court;

32 (2) To assure that the child is provided in a timely manner
33 with adequate food, clothing, shelter, psychological care, physical
34 care, medical care, supervision and other necessities;

35 (3) To monitor the provision of appropriate education to the 36 child:

1 To provide all consents that are required for the child's (4) 2 physical or psychological health or welfare, including but not 3 limited to medical, dental, psychiatric, psychological, educational, 4 employment, recreational or social needs and to provide all 5 consents for any other medical care or treatment, including but 6 not limited to surgery if such care or treatment is deemed by two 7 physicians licensed or authorized to practice in this Territory to 8 be necessary for the child's physical or psychological health or 9 welfare; and

10 (5) To provide the court with information concerning the 11. child that the court may require at any time.

12 (b) Unless otherwise ordered by the court, a child's family 13 member shall retain the following rights and responsibilities after a 14 transfer of long-term foster custody to the extent that such family 15 member possessed such responsibility prior to the transfer of 16 long-term foster custody: the right to consent to adoption, marriage, 17the continuing responsibility for support of the child, including but 18 not limited to repayment for the cost of any and all care, treatment or 19 any other service supplied or provided by the long-term custodian, 20 any subsequent long-term custodian, other authorized agency or the 21 court for the child's benefit.

(c) A family member may be permitted visitation with the child atthe discretion of the court.

(d) An order of long-term foster custody entered under this
Chapter shall not operate to terminate the mutual rights of inheritance
of the child and the child's family members or any other benefit to
which the child may be entitled, unless and until the child has been
legally adopted.

(e) The court, in its discretion, may vest long-term foster
custody of a child in an authorized local agency or in subsequent
authorized agencies as is deemed to be in the best interests of the
child. An authorized agency shall not be liable to third persons for
the acts of the child solely by reason of the agency's status as
long-term custodian of the child.

35 (f) If Child Protective Services receives a report that the child 36 has been harmed or is subject to threatened harm by the acts or

omissions of the long-term custodian or custodians of the child, Child 1 2 Protective Services may automatically assume physical custody of the 3 child; provided that, in any event, Child Protective Services shall 4 immediately notify the court and the court shall set the case for a 5 progress hearing within ten working days, from the date that Child 6 Protective Services assumed physical custody of the child, unless the 7 court deems a later date to be in the best interests of the child. 8

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SECTION 88125. Progress hearings.

9 (a) Except for good cause shown, the court shall set each case 10 for progress hearing not later than six months after the date of an order of disposition and, thereafter, the court shall set subsequent 11 12 progress hearings at intervals of no longer than six months until the 13 court's jurisdiction has been terminated or an order of permanent 14 custody has been entered. A progress hearing may be set upon the 15 motion of a party at any time.

16 (b) Notice of a progress hearings shall be served upon the 17 parties and upon the present foster parent or parents, each of whom 18 shall be entitled to participate in the proceedings.

19 (c) Child Protective Services or other appropriate authorized 20 agency shall make every reasonable effort to submit a written report, pursuant to Section 12, or a written explanation regarding why the 21 22 report is not being submitted timely to the court, with copies to the parties or their counsel or guardian ad litem at least three days before 23 24 the date set for each progress hearing.

25 The report prepared pursuant to subsection (c) specifically (d)26 shall:

(1) Evaluate whether the parties have complied with, performed and completed, if possible, each and every term and condition of the order of disposition;

(2) Recommend whether the court should enforce the 30 consequences set forth in the order of disposition pertaining to 31 compliance or noncompliance by the parties with the terms and 32 conditions of the order; and 33

(3) Recommend whether the court should modify its order of 34 disposition and, if so, set forth the proposed modifications and 35 the basis for recommending such modifications. 36

1 (e) Upon each progress hearing the court shall consider fully all 2 relevant prior and current information for determining whether the 3 child's family is willing and able to provide the child with a safe family 4 home, including but not limited to the report or reports submitted 5 pursuant to Section 12, and

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(1) Make a determination pursuant to the terms of subsections 27(b) through 27(e);

8 (2) Determine whether the parties have complied with,
9 performed and completed each and every term and condition of
10 the previous order of disposition;

(3) Enforce the consequences set forth in the order of
disposition pertaining to compliance or noncompliance by the
parties with any of the terms and conditions of the order; and

(4) Order such modification to the existing order of
disposition as the court deems to be appropriate and in the best
interests of the child.

(f) In any case that a permanency plan hearing is not deemed to
be appropriate, the court shall make a finding that the parties
understand that unless the family is willing and able to provide the
child with a safe family home, even with the supervision of Child
Protective Services, within the reasonable period of time specified in
the order, their respective parental and custodial duties and rights
shall be subject to termination.

SECTION 88126. Permanency plan. A permanency plan is a specific written plan, prepared by Child Protective Services, which should set forth:

(1) A position as to whether the court should order an adoption of the child and specify:

(A) A reasonable period of time during which the
adoption may be finalized; provided that the identity of the
proposed adoptive parent or parents shall be provided to the
court in a separate report which shall be sealed and shall
not be released to the parties unless the court deems such
release to be in the best interests of the child; or
(B) The reason why adoption is not the plan;

1 (2) A specific written plan including: 2 (A) The goal of the child's permanent placement as 3 being either adoption, long term foster custody with 4 subsequent adoption or guardianship, or long term foster 5 custody until majority; 6 (B) The objectives concerning the child, including but 7 not limited to placement, education, health, therapy, 8 counseling, culture, adoption or preparation for majority; 9 and 10 (C) The method or methods for achieving the goal and 11 objectives set forth in subparagraphs (A) and (B) above; 12 All supporting exhibits and written consents or an (3) explanation as to why such exhibits or consents are not available. 13 14 Upon good cause shown, the court may waive submission of any 15 supporting exhibit or written consent; and 16 (4) Any other information or materials which are necessary 17 to the expeditious facilitation of the permanency plan. 18 SECTION 88127. Permanency plan hearing. 19 (a) At the permanency plan hearing, the court shall consider 20 fully all relevant prior and current information for determining whether 21 the child's family is willing and able to provide the child with a safe family home, including but not limited to the report or reports 22 submitted pursuant to Section 12, and determine whether there exists 23 24 clear and convincing evidence that: 25 (1) The child's family is not presently willing and able to provide the child with a safe family home, even with the 26 supervision of Child Protective Services; 27 28 (2) It is not reasonably foreseeable that the child's family will become willing and able to provide the child with a safe 29 30 family home, even with the supervision of Child Protective 31 Services, within a reasonable period of time, which shall not 32 exceed two years from the date upon which the child was first 33 placed under foster custody by the court; :34 The proposed permanency plan is in the best interests (3) of the child; provided that the court shall presume that: 35

(A) It is in the best interests of a child to be 1 2 promptly and permanently placed with responsible and 3 competent substitute caretakers and family in a safe and secure home; and 4 5 (B) Such presumption increases in importance proportionate to the youth of the child upon foster custody 6 7 by the court; and (4) If the child has reached the age of 12, the child is 8 9 supportive of the permanency plan. (b) If the court determines that the criteria set forth in 10 subsection (a) are established by clear and convincing evidence, the  $11 \cdot$ 12 court shall order: That the existing order of disposition be terminated and 13 (1)14 that the prior award of foster custody be revoked; (2) That permanent custody be awarded to an appropriate 15 authorized agency; 16 (3) That an appropriate permanency plan be implemented 17 concerning the child whereby the child will: 18 (A) Be adopted pursuant to Civil Code of Guam §§221.1 19 et seq. (P.L. 13-133); provided that the court shall presume 20 that it is in the best interests of the child to be adopted, 21 unless the child is in the permanent custody of family or 22 persons who have become as family and who for good cause 23 are unwilling or unable to adopt the child but are committed 24 to and are capable of being the child's permanent custo-25 dians; or 26 (B) Remain in permanent custody until the child is 27 subsequently adopted or reaches the age of 18, and that 28 such status shall not be subject to modification or revocation 29 except upon a showing of extraordinary circumstances to the 30 31 court. If the court determines that the criteria set forth in 32 (c) subsection (a) are not established by clear and convincing evidence, 33 34 the court shall order that:

1 The permanency plan hearing be continued for a (1)2 reasonable period of time not to exceed six months from the date 3 of the continuance; 4 (2) The authorized agency submit a written report pursuant 5 to Section 12; and 6 (3) Such further orders as the court deems to be in the 7 best interests of the child be entered. (d) At the continued permanency plan hearing, the court shall 8 proceed pursuant to subsections (a), (b), and (c) until such date as 9 10 the court determines that: 11 There is sufficient evidence to proceed pursuant to (1)12 subsection (b); or 13 (2) The child's family is willing and able to provide the child with a safe family home, even with the supervision of Child 14 Protective Services, upon which determination the court may: 15 16 (A) Revoke the prior award of foster custody to the 17 authorized agency and return the child to the family home; 18 and 19 (B) Terminate jurisdiction; or 20 (C) Award supervision to an authorized agency; 21 (D) Order such revisions to the order of disposition as 22 the court, upon such hearing as the court deems to be 23 appropriate, determines to be in the best interests of the 24 child: 25 (E) Set the case for a progress hearing; and 26 Enter such further orders as the court deems to (F) 27be in the best interests of the child. The court shall order a permanency plan for the child within 28 (e) 29 two years of the date upon which the child was first placed under foster custody by the court if the child's family is not willing and able 30 to provide the child with a safe family home, even with the supervision 31 32 of Child Protective Services. 33 SECTION 88128. Payment for service or treatment provided to 34 a party or for a child's care, support or treatment. Whenever a service or treatment is provided to a party, or whenever care, 35 support or treatment of a child is provided under this Chapter, after 36

due notice to the persons or legal entities legally obligated to pay for 1 such service, treatment, care or support of the child, and after a 2 hearing, the court may order that such a legally obligated person pay, 3 4 in such a manner as the court may direct, a reasonable sum that will cover in whole or in part the cost of the service or treatment provided 5 6 to the party, or the cost of the care, support or treatment provided for the child. The provisions of Section 29 and all other remedies 7 8 available under the law shall be applicable to enforce such orders. 9 SECTION 88129. Failure to comply with terms or conditions of an order of the court. If a party fails to comply with the terms and 10 conditions of an order issued under this Chapter, the court may apply  $11 \cdot$ the provisions of 19 G.C.A. §5120 and all other provisions available 12 13 under the law.

SECTION 88130. Appeal. An interested party aggrieved by any order or decree of the court may appeal such order or decree to the Appellate Division of the District Court of Guam. The pendency of appeal shall not suspend the orders of the court issued under this Chapter.

SECTION 88131. Court records. The court shall keep a record of all child protective proceedings under this Chapter. The written reports, photographs, x-rays or other information of any nature which are submitted to the court may be made available to other appropriate persons, who are not parties, only upon an order of the court after the court has determined that such access is in the best interests of the child or serves some other legitimate purpose.

26 SECTION 88132. Confidentiality.

(a) Any information received pursuant to this Chapter which
could identify any child reported to the central register of child
abuse, the person(s) responsible for the child's welfare named in the
report, or the person making the report shall be confidential. Any
person who wilfully releases or permits the release of any such
information to persons or agencies not permitted by this section shall
be guilty of a felony of the third degree.

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(b) Information received pursuant to this Chapter may be
 released, on a need to know basis, and only as necessary to serve and
 protect the child, to the following, except that release of the identity

1 of persons reporting child abuse is strictly prohibited, unless 2 disclosed pursuant to Section 2504(d) of the Child Abuse and Neglect 3 Reporting Act: 4 (1) Multidisciplinary teams established to assist in the 5 disposition of cases pursuant to Section 34; 6 Courts of competent jurisdiction, upon finding that (2)7 access to the records may be necessary for determination of an 8 issue before the court. Access shall be limited to inspection by 9 the court only, unless the court determines that disclosure of the 10 records to interested parties is necessary for the resolution of an 11 issue pending before it: 12 (3) Grand juries when connected with the prosecution of a 13 child abuse and neglect case; 14 (4) Properly constituted authorities or agencies both 15 military and governmental, investigating a report of known or 16 suspected child abuse or neglect, or providing services to a child or family relating to a known or suspected case of child abuse or 17 neglect, including police departments, prosecutors and attorney 18 19 generals; 20 (5) A physician examining or treating a child, or the 21director or a person specifically designated in writing by such 22 director of any hospital or other medical institution where a child 23 is being treated, where the physician or the director or his or her designee suspect the child of being an abused or neglected 24 25child; 26 (6) Any agency or individual authorized, contracted or 27 licensed to diagnose, care or treat a child who is the subject of a 28 report of abuse or neglect; 29 (7) A person, including but not limited to a guardian ad 30 litem, attorney for the child, permanent foster or adoptive parent, who is responsible for the welfare of the child named; 31 32 (8) A duly authorized official of the department. 33 (c) At any time, a victim or alleged victim of child abuse, the 34 parents of a victim or alleged victim of child abuse, or a perpetrator 35 or alleged perpetrator of child abuse, after a court proceeding has 36 been initiated regarding the abuse, may review, upon written request,

all information contained in the central register or in any report filed 1 pursuant to Section 2504 of the Child Abuse and Neglect Reporting Act 2 except information which would identify the reporter of the abuse. 3 (d) Information received pursuant to this Chapter may be 4 released to sources other than those identified in subsections (b) and 5 (c) only when a written authorization from an individual designated in 6 subsection (c) specifically provides consent to have the record 7 released or reviewed. 8

9 (e) When information is released under subsection (b) or (d), 10 the following rules shall apply:

(1) Medical, psychological or psychiatric information in the
department's case record, including diagnosis and past history of
disease or disability of a particular individual, shall remain the
property of the medical, psychological or psychiatric consultant
and an individual requesting this record shall be referred to the
original consultant for release of that information;

(2) Case records shall be reviewed only in designated areas
within Child Protective Services' offices. The records shall not
be removed from the premises;

(3) Records shall be released upon an individual's request
 provided that a signed and dated written request is received
 stating specifically:

(A) What portion of the record is desired;
(B) Whether the record is desired orally, through
review or by receipt of reproduced copies of the record
requested;
(C) The name of the individual authorized to receive

the record or to review the record, and the individual's agency connection, if any;

30(D) The purpose for which the record is being sought;31(E) The parent's or legal guardian's social security32number or birthdate and address; and

33 (F) The period of time the authorization is valid, not
34 to exceed ninety days.

1 (4) Reproduced copies of records requested shall be 2 provided at a cost related to the cost of reproduction. Actual 3 postage cost shall be charged. (5) Before records are released or reviewed, Child 4 5 Protective Services shall: 6 (A) Block out the name or other portion of the record 7 identifying the child abuse or neglect complainant; 8 (B) Reproduce a copy of the page from which the 9 portion of the record was blocked out; and (C) Allow the individual requesting the information to 10 11 receive or to review the blocked out page. (6) When the record requested contains or consists of coded 12 or abbreviated material such as computer input and output forms, 13 Child Protective Services shall provide translations of the codes 14 15 or abbreviations, if requested. SECTION 88133. Cooperation. Every public official or department 16 shall render all assistance and cooperation within such person's or 17 department's jurisdictional power which may further the purpose and 18 objectives of this chapter. Child Protective Services and the court 19 may seek the cooperation of organizations whose objective is to protect 20 21 or aid children and family life. SECTION 88134. Multidisciplinary teams. Child protective agencies 22 are authorized to establish multidisciplinary teams for the prevention, 23 intervention and treatment of child abuse and neglect. 24 SECTION 88135. Funding. There is appropriated out of the general 25 fund of the Government of Guam the sum of [ 26 ], or so much 27 thereof as may be necessary for fiscal year \_\_\_\_\_, for the implementation of the criminal history record checks required under 28 this Chapter. The sum appropriated shall be expended by the 29 30 Department of Law for the purposes of this Chapter. SECTION 88136. Fiscal responsibility. The court, the department 31 32 or other authorized agency shall provide only the care, service, treatment or support, or the payment for care, service, treatment or 33 34 support, only as to the amount as is set forth in the budget of the court, the department or authorized agency and is authorized by law. 35

SECTION 88137. Short title. This Chapter shall be known and cited as the "Child Protective Act."

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SECTION 88138. Regulations; authority to make. Departments and agencies mentioned in this Chapter shall adopt regulations necessary to implement this Chapter pursuant to the Administrative Adjudication Law (Government Code §§24200 et seq.).

**SECTION 88139.** Severability clause. If any part of this Chapter shall be held invalid, such part shall be deemed severable and the invalidity thereof shall not affect the remaining part of this Chapter.

10SECTION 88140. Effective date. The provisions of this Chapter shall11take effect immediately upon its enactment."