Guam Legislature Clerks <clerks@guamlegislature.org>

Messages and Communications

Speaker's Office <speaker@guamlegislature.org>
To: Clerks Office <clerks@guamlegislature.org>
Cc: Rennae Meno <rennae@guamlegislature.org>

Fri, Jun 26, 2020 at 7:22 PM

06-26-20	6:34 PM	06-26-20	Bill No. 241-35 (COR), signed into law as Public Law 35-87.	Office of the Governor of Guam	35GL-20-1924
06-26-20	6:34 PM	06-26-20	Bill No. 251-35 (COR), signed into law as Public Law 35-88, and Bill No. 252-35 (COR), signed into law as Public Law 35-89.	Office of the Governor of Guam	35GL-20-1925
06-26-20	6:34 PM	06-26-20	Bill No. 323-35 (COR), signed into law as Public Law 35-90.	Office of the Governor of Guam	35GL-20-1926
06-26-20	6:34 PM	06-26-20	Substitute Bill No. 162-35 (COR), signed into law as Public Law 35-91.	Office of the Governor of Guam	35GL-20-1927
06-26-20	6:34 PM	06-26-20	Substitute Bill No. 366-35 (LS), signed into law as Public Law 35-92.	Office of the Governor of Guam	35GL-20-1928
06-26-20	6:34 PM	06-26-20	Substitute Bill No. 214-35 (LS), signed into law as Public Law 35-93.	Office of the Governor of Guam	35GL-20-1929
06-26-20	6:34 PM	06-26-20	Bill No. 367-35 (LS), signed into law as Public Law 35-94.	Office of the Governor of Guam	35GL-20-1930

Sinseru yan Minagåhet,

Office of the Speaker • Tina Rose Muña Barnes
Committee on Public Accountability, Human Resources & the Guam Buildup

35th Guam Legislature
I Mina'trentai Singko na Liheslaturan Guåhan

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Gumai pribilehu yan konfedensia este siha na mensåhi. Solo espesiåtmente para hågu ma entensioña pat ma aturisa para unrisibi. Sen prubidu kumu ti un ma aturisa para manribisa, na'setbe, pat mandespåtcha. Yanggen lachi rinisibu-mu nu este na mensåhi , put fabot ago' guatu gi I numa'huyong gi as speaker@guamlegislature.org yan despues destrosa todu siha I kopian mensåhi. Si Yu'os ma'åse'.

7 attachments

- **Bill No. 241-35 (COR), signed into law as Public Law No. 35-87.pdf**
  1090K
- **Bill No. 251-35 (COR), signed into law as Public Law No. 35-88; Bill No. 252-35 (COR), signed into law as Public Law No. 35-89.pdf**
  1389K
- **Bill No. 323-35 (COR), signed into law as Public Law No. 35-90.pdf**
  1009K
- **Substitute Bill No. 162-35 (COR), signed into law as Public Law No. 35-91.pdf**
  2060K
- **Substitute Bill No. 366-35 (LS), signed into law as Public Law No. 35-92.pdf**
  1184K
- **Substitute Bill No. 214-35 (LS), signed into law as Public Law No. 35-93.pdf**
  1960K
- **Substitute Bill No. 367-35 (LS), signed into law as Public Law No. 35-94.pdf**
  2071K

UFISINAN I MAGA'HÅGA
OFFICE OF THE GOVERNOR

LOURDES A. LEON GUERRERO
MAGA'HÅGA • GOVERNOR

JOSHUA F. TENORIO
SIGUNDO MAGA'LÅHI • LIEUTENANT GOVERNOR

HAND-DELIVERED

June 26, 2020

35GL-20-1927
Speaker Tina Rose Muña Barnes

JUN 26 2020
Time 6:34 ( )AM (X)PM
Received By: MaFX

HONORABLE TINA ROSE MUÑA BARNES
Speaker
I Mina'trentai Singko Na Liheslaturan Guåhan
35th Guam Legislature
Guam Congress Building
163 Chalan Santo Papa
Hagåtña, Guam 96910

Re: Substitute Bill No. 162-35 (COR) – An Act to *Add* a New Subsection (b)(5) to § 4303 and a New Subsection (e) to § 4305, and to *Amend* § 4308, All of Article 3, Chapter 4, Title 19, Guam Code Annotated, Relative to Terminating the Parent-Child Relationship of a Parent Who is Found by Clear and Convincing Evidence to Have Committed the Offense of Criminal Sexual Conduct Against the Other Parent Resulting in the Conception of the Child

Dear Madame Speaker:

In May of 2015, the federal government enacted the Rape Survivor Child Custody Act. This allowed the United States Attorney General to increase the amounts provided to Guam under formula grants provided that Guam had in place a law that allowed the mother of any child that was conceived through rape to seek court-ordered termination of the parental rights of her rapist, which the court would be authorized to grant upon clear and convincing evidence of the rape.

It took cooperation from this 35th Legislature and this Administration to take this issue seriously. Substitute Bill No. 162-35 (COR) is now signed into law as ***Public Law No. 35-91***.

Senseremente,

LOURDES A. LEON GUERRERO
Maga'hågan Guåhan
Governor of Guam

Enclosure(s): Substitute Bill No. 162-35 (COR) *nka Public Law 35-91*
cc via email: *Sigundo Maga'låhen Guåhan*
Compiler of Laws

I MINA'TRENTAI SINGKO NA LIHESLATURAN GUÅHAN
2020 (SECOND) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO *I MAGA'HÅGAN GUÅHAN*

This is to certify that **Substitute Bill No. 162-35 (COR), "AN ACT TO *ADD* A NEW SUBSECTION (b)(5) TO § 4303 AND A NEW SUBSECTION (e) TO § 4305, AND TO *AMEND* § 4308, ALL OF ARTICLE 3, CHAPTER 4, TITLE 19, GUAM CODE ANNOTATED, RELATIVE TO TERMINATING THE PARENT-CHILD RELATIONSHIP OF A PARENT WHO IS FOUND BY CLEAR AND CONVINCING EVIDENCE TO HAVE COMMITTED THE OFFENSE OF CRIMINAL SEXUAL CONDUCT AGAINST THE OTHER PARENT RESULTING IN THE CONCEPTION OF THE CHILD,"** was on the 15th day of June 2020, duly and regularly passed.

Tina Rose Muña Barnes
Speaker

Attested:

Amanda L. Shelton
Legislative Secretary

This Act was received by *I Maga'hågan Guåhan* this 15th day of June, 2020, at 5 o'clock P.M.

Assistant Staff Officer
Maga'håga's Office

APPROVED:

Lourdes A. Leon Guerrero
I Maga'hågan Guåhan

Date: 6/26/2020

Public Law No. 35-91

2020-11021
RCVD AT CENTRAL FILES
JUN 15 '20 PM5:00
Elaine Tajalle

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

Bill No. 162-35 (COR)
As substituted by the Committee on Health,
Tourism, Historic Preservation, Land and Justice;
and amended on the Floor.

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

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

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. *I Liheslaturan Guåhan* finds that a significant number of pregnancies result from acts of sexual violence every

year (American Congress of Obstetricians and Gynecologists (ACOG)). According to a national study conducted by the Medical University of South Carolina and published in the *American Journal of Obstetrics and Gynecology*, approximately thirty-two thousand one hundred one (32,101) pregnancies occur from the six hundred eighty-three thousand (683,000) estimated annual incidences of rape in the United States alone.

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

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

exploitation, or to harass, intimidate, or manipulate the victim. For example, a perpetrator may state, "don't testify and I won't seek visitation."

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

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

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

I Liheslaturan Guåhan further finds that the U.S. Supreme Court established that the clear and convincing evidence standard satisfies due process for allegations regarding the termination or restriction of parental rights in *Santosky v. Kramer*, 455 U.S. 745 (1982). According to the Supreme Court in *Colorado v. New Mexico*, 467

U.S. 310 (1984), "clear and convincing" means that the evidence is highly and substantially more likely to be true than untrue; the fact finder must be convinced that the contention is highly probable. Consequently, the clear and convincing evidence standard is the most common standard for termination of parental rights among the fifty (50) U.S. states, territories, and the District of Columbia. For instance, "clear and convincing evidence" is the standard used on Guam in cases of alleged abandonment and abuse. 19 GCA § 13101.

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

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

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

(A) It is a rebuttable presumption that termination of parental rights is in the best interest of the child if the child was conceived as a

result of criminal sexual conduct; except, that if both parents are at least fourteen (14) years of age but no greater than seventeen (17) years of age, the presumption shall not apply and the court must determine if termination of the parental rights of the biological parent is in the best interest of the child.

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

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

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

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

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

"**§ 4308. Hearing.**

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

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

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

evidence, the person making such a report, study or examination shall be subject to both direct and cross-examination when he is reasonably available.

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

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

Section 5. Severability. If any provision of this Act or its application to any person or circumstance is found to be invalid or contrary to law, such invalidity shall not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.