



Senator
THERESE M. TERLAJE

I Mina'trentai Singko na Liheslaturan Guåhan

35th Guam Legislature

Committee on Health, Tourism, Historic Preservation, Land and Justice

October 16, 2019

Transmitted via Electronic Mail:

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Subject: Assistance with Bill 134-35 (COR) Concerns

Hafa Adai President Terlaje and Guam Bar Association Members,

Transmitted herewith is Bill 134-35 (COR)- Senator Mary Camacho Torres- AN ACT TO ADD A NEW CHAPTER 39B TO DIVISION 3 OF TITLE 7, GUAM CODE ANNOTATED, RELATIVE TO CUSTODY AND VISITATION OF NONPARENTS; AND TO REPEAL SUBSECTION (G) OF § 8404, CHAPTER 8, DIVISION 1 OF TITLE 19, GUAM CODE ANNOTATED, RELATIVE TO THE CURRENT STATUTE ON GRANDPARENTAL RIGHTS OF VISITATION; AND TO AMEND SUBSECTION (H)(5) of § 8404, CHAPTER 8, DIVISION 1 OF TITLE 19, GUAM CODE ANNOTATED, RELATIVE TO THE CONSIDERATION OF GRANDPARENTS IN PROVIDING CHILD-CARE FOR THEIR GRANDCHILDREN; AND TO FURTHER CITING THIS ACT AS THE "UNIFORM NONPARENT CUSTODY AND VISITATION ACT OF 2019," As well as the transcript of the hearing for the bill.

As you can see, Senator Telo Taitague and Senator Amanda Shelton had concerns. I am requesting your assistance to address their concerns.

The sponsor would like bill moved on to the next session agenda which is scheduled for the week of October 28, 2019. I would greatly appreciate your input by Friday, October 18, 2019 at 5:00 p.m.

Si Yu'os Ma'åse',

Therese M. Terlaje

CC: Guam Bar Association Members

SUMMARY OF TESTIMONY & DISCUSSION

The public hearing was Called-to-Order at 9:07 AM.

Chairperson Therese M. Terlaje:

Buenas yan Hafa adai! Thank you all for being here. The Committee on Health, Tourism, Historic Preservation, Land and Justice and the Committee on Higher Education and the Advancement of Women, Youth, and Senior Citizens are having a Joint Public Hearing this morning. We call it to order.

Today is Thursday, July 11, 2019. The time is 9:07 AM.

I like to acknowledge the Chairperson, on the Committee on Higher Education and the Advancement of Women, Youth, and Senior Citizens, Senator Amanda Shelton, our Legislative Secretary and the presence of Senator Telo Taitague and the presence of Senator Mary Camacho Torres.

Notices for this Joint Public Hearing were disseminated via email to all senators and all main media broadcasting outlets on July 2, 2019 and again on July 8, 2019. The notice was also published in the Guam Daily Post on July 3rd & July 9th, 2019.

Agenda items will be. There are three agenda items. Bill No. 134-35 (COR) by Senator Mary C. Torres, Relative to the current statute on grant parental rights of visitation and relative to the consideration of grandparents in providing child-care for their grandchildren; and to further citing this act as the "Uniform Nonparent Custody and Visitation Act of 2019."

We also have Bill No. 135-35 (COR) also by Senator Mary C. Torres, Relative to permitting more than six children per foster home in Guam; and to further add such updated standards reflecting this allowance to the Guam Administrative Rules and Regulations.

And finally, Bill No. 159-35 (COR) sponsored myself, Senator Therese M. Terlaje, which is relative to increasing emergency and temporary shelter capacity for children placed under the protective custody of Child Protective Services.

Again, thank you again to my colleagues for being here this morning and thank you to all of you that are here. We are going to begin with Bill No. 134-35 (COR).

I will ask all those who have signed up to testify on Bill No. 134-35 (COR) if you could please come forward. I have Linda Reyes, I'm sorry Linda Rodriguez from CPS.

I like to acknowledge the presence of the former First Lady, Christine Calvo, thank you for being here.

All right. So, I will ask the sponsor before we hear from the panel, the sponsor would like to introduce the bill. Senator Torres?

Senator Mary C. Torres:

Thank you, Madame Chair.

Bill No. 134-35 (COR) addresses what many of us have come to recognize in today's modern world. Where we have situations where families are truly stressed as a result of drug, and addictions and substance abuse. And many of the children in our families are in fact falling under negligence circumstances. Where their parents can't care for them.

And although they may not be officially under the foster care system these people who generally care for them; the grandparents, the godparents, aunts and uncles, play a vital role in the lives of the children that are displaced as a result of drug use or abuse by the families and neglects the results therefore.

And so, Bill No. 134-35 (COR) which is also known as "Uniform Nonparent Custody and Visitation Act" addresses the issues that are raised. Where courts are asked to grant custody or visitation to these nonparents.

The legal framework for this bill was drafted by the Uniform Law Commission which provides states with nonpartisan well-conceived legislation. That brings clarity and stability to critical areas of statutory laws.

It was adapted to our statutory scheme on Guam and reviewed by local family law practitioners. As introduced, Bill No. 134-35 (COR), recognizes the rights of two categories of nonparents; the first is those who have acted as consistent caregivers of a child without expectation of compensation and the second category of nonparent are those who have a substantial relationship with the child who also formed without expectation of compensation and who can demonstrate that denial of custody or visitation will result in harm of the child.

Right now, under Guam law, a grandparent may seek visitation under certain circumstances which usually involves some disruption of the family to include divorce, separation or death of a parent.

But these broad descriptions of circumstances do not provide a reliable indicator of whether nonparental visitation or custody should be allowed. And so, to remedy this Bill No. 134 provides clear criteria to guide the courts' decision regarding the child's best interests. And these factors include the relationship the child has with parents and nonparents. The opinion and the age and the impact requested rights on the child as well as the behavior of the parents and nonparents.

So, Bill No, 134 makes it easier for Guam's nonparents to seek guidance when they're pursuing custody or visitation. The act nonetheless recognizes the U.S. Supreme Court precedent regarding the rights of parents in a landmark case. So, it provides rebuttable presumption that parent's decision about custody or visitation is in the best interests of the child. And imposes a burden of proof on the nonparent of clear convincing evidence in order to obtain relief.

In closing, Madame Chair, I want to thank many of the people that worked with me, the agencies that are here present to testify as well as those who have worked through this legislation and adapting it to Guam.

What I want to impress is that we have situations where presently people are stepping in. And so, what this bill does it gives the court clear guidelines to determine the appropriateness with the boundaries are for when they can grant visitation or custody to nonparents who play a vital role in managing children who are displaced or harmed or neglected as a result of parents' who are victims of drug abuse or substance abuse.

And with that I welcome your testimony.

Chairperson Therese M. Terlaje:

Thank you very much Senator Torres.

And now I invite Linda Rodriguez to present testimony.

Linda Rodriguez:

Good morning Senator Torres, Senator Terlaje, Senator Shelton and Senator Taitague.

On behalf of my Director, Linda DeNorcey Unpingco or Linda Unpingco I'm sorry. She could not be here today so I am here to represent her. And if I could just read her written testimony. Okay.

(Linda Rodriguez read written testimony submitted by Linda Unpingco DeNorcey into the record. Please see attached testimony.)

Thank you for allowing me to present testimony on this bill.

Chairperson Therese M. Terlaje:

Thank you, Ms. Rodriguez. I want to note for the record that you are also the head of BOSSA at Public Health?

Linda Rodriguez:

Yes, that is correct.

Chairperson Therese M. Terlaje:

And could you just describe your role, BOSSA role in this process?

Linda Rodriguez:

Okay. As the Bureau of Social Services actually oversees three units and within those units are the Child Protective Services Unit, the Home Evaluation and Placement Section and the Family Preservation Sections.

With Child Protective Services, we investigate all referrals of abuse and neglect on the island. And with my Family Preservation Services we provide extensive services to families so that we don't need to remove them from the home or children that are ready to go home. We monitor them to make sure that they are safe in the home with their families before we terminate the case. And then I have also the Home Evaluation and Placement Section and with that section we deal with custody orders, adoptions, guardianships. Not only on island but also

off island. And also license foster care homes on the island and child care facilities. Sorry forgot about that.

Chairperson Therese M. Terlaje:

So, would it be BOSSA that will be implementing these criteria?

Linda Rodriguez:

Pretty much so, yes.

Chairperson Therese M. Terlaje:

All right. So, I'm very glad that you're here. Thank you again for your testimony and thank you to your Director, for her testimony this morning.

And I would like to ask the sponsor of the bill if she has any questions or comments?

Senator Mary C. Torres:

I don't have any questions or comments. But what I appreciate is your reference to the care that is given by extended relatives. And what I think this bill also does is it sets the parameters to people who have a relationship that is significant to the quality of life to the child to have also the opportunity to petition the courts for visitation. You know if there's a disruption and that person may otherwise may have no legal rights to visit the child.

This gives that parameters to the best interest of the child to continue those types of relationships to those significant people. And I welcome and I thank you very much for being here. I think it's important that we address the needs of children who are displaced in our modern day that we also recognize the concept of the village that requires to raise the child. And allowing those people who truly care to continue to have a role.

Si Yu'os ma'ase' for all you do.

Linda Rodriguez:

Thank you.

Chairperson Therese M. Terlaje:

Senator Shelton?

Senator Amanda L. Shelton:

Thank you very much. And I would like to thank the sponsors of the bill. For this bill I think something that we can use. And I appreciate your testimony Ms. Rodriguez.

I was hoping someone from the Judiciary or the Attorney General's Office would be here. Perhaps I can work on my concerns with the Committee and the sponsor of the bill.

I'm just concerned about having the nonparent having the burden of proof to show a significant emotional bond. I would like to know how that is determined in a judicial proceeding and if this is something that would make the process more difficult for a nonparent down the lines. I want to make sure that is an issue that we can work through or clarify in the bill. And also question about the child support on page 11 that says the law governing child support; the authority of a court to award child support payable to or by a nonparent is governed by Guam law. So, I would like to know what situation the nonparent would be paying child support to another party.

So, those are my concerns here and I would like to work with the Committee on that.

Si Yu'os ma'åse'.

Linda Rodriguez:

Yes, Senator Shelton, I do agree with you. I think you do need to console with the either the Attorney General's Office who also represents us, the Family Division. That would be an excellent idea.

Senator Amanda L. Shelton:

Thank you very much, Ms. Rodriguez.

Chairperson Therese M. Terlaje:

Senator Taitague?

Senator Telo T. Taitague:

Thank you, Madame Chair. Thank you, Linda, so much for being here today. I share the same sentiments with my colleague, Senator Shelton.

And first, I want to commend you for the work that you do at Public Health. It becomes very emotional in your situation. And thank you so much for doing this for us, for the children of Guam.

But, Linda, this particular bill that proposed to put into law. Do you know any other states, in the Unites States, that has this law in place?

Linda Rodriguez:

I believe there are a few states but I don't know off hand which states those are. I apologize.

Senator Telo T. Taitague:

Well based on my just some review of it actually there are no states that have this law implemented. In fact, only North Dakota at this time has introduced a bill and enacted it but the bill was dormant at this time.

I intend to do a full review of it but I too was hoping as well the Attorney General's Office would be here. And as you agree should the case as well as the Judiciary. So, well you know it's hard when they're not here and I think maybe a mark- up meeting for something like that considering but if you can too, Linda, look into this because I'm pretty sure there might be a mark- up meeting regarding this bill because the Attorney General's not here, the Judiciary's not here, I'm not finding any states that implementing this law at all.

Linda Rodriguez:

Okay.

Senator Telo T. Taitague:

But it doesn't say that your job is to ensure that whenever a child is displaced that you make sure that the placement of this child's is in the best interest of the child that you're currently already do.

So, for instance, if a child's displaced. Does Public Health search for relatives close to that child in order to take that child?

Linda Rodriguez:

Yes, absolutely. When we do insert temporary custody of the child. Our first option is to always look for relatives because the child is familiar with the relatives and that's a better placement with them.

And then we try to find a licensed foster home. Unfortunately, we don't have a lot of foster homes on Guam. And then if we can't find anybody there, we'll try to put them in a one of our group homes but of course those are full also.

Senator Telo T. Taitague:

As well.

Linda Rodriguez:

But, yes, we always do try to work with the relatives first. And I also just want to say that with this bill, I want to emphasis that our goals reunification of the parents. So, I understand in some cases there are children that have been living with grandparents or other relatives for a while.

And you know, we are concerned about the relationship that is established but we don't also just want to pull the children out of the home when they already bonded and have established a relationship or bonded with that grandparent or aunt or uncle. We need to look at those factors too. That's traumatizing for that child.

Senator Telo T. Taitague:

I can only imagine. You know hard it is. But you too agree as well there needs to be more research to this bill before anything moves forward to ensure that, correct?

Linda Rodriguez:

Yes, absolutely.

Senator Telo T. Taitague:

Okay. Thank you, Madame Chair.

Chairperson Therese M. Terlaje:

Thank you. Senator Torres?

Senator Mary C. Torres:

Madame Chair, I'd like to comment. What we're dealing here with is a piece of legislation that is landmark legislation for many states. It currently the United States they are experiencing an opioid epidemic where they're seeing a surge of children who are grossly neglected as a result of opioid addiction in the United States.

And so, there are these taskforces that have been placed paneled to address the opioid issue not only the opioid epidemic but how to address the consequences of that which is neglects on family or children.

So, this legislation which is a uniform legislation was developed by this Uniform Law Commission which does exactly this. They look at legislation and policy and find the balance not only find the balance in what policy will work across this jurisdiction but what will pass legal muster.

In this case, the Uniform Law Commission, the issue on whether it is needs to be scrubbed, the A.G. has to look at it. On working with this bill, I not only relied on the Uniform Law Commission but I also talked to legal professionals on Guam that practiced family law. And what this bill does and the reason why this bill is a good lawful bill and that will stand mustering any jurisdiction is that the with this law it relies on a standard that was recognized a concern that was recognized in a landmark Supreme Court case of Troxel v. Granville which the U.S, Supreme Court recognized the right of a fit parent to make decisions regarding his or her child. And so, this Uniform Law Commission sought to

balance the constitutional restraints, the interest of the children, parents and certain nonparents.

The reason that this bill and one of our Senator Shelton brought up the idea of you know would it pass in our Supreme Court if they had to look at the rights of one parent and the nonparent had the burden of proof for clear convincing evidence.

What we have to understand in the Supreme Court case in order for it to pass that test you have to have a provision to place a higher burden of proof on the nonparent because if you presume that the fit parent doesn't have more rights than it would pose a problem in the courts.

So, what this bill does it takes that landmark case concern raises by the Supreme Court and it adequately provides all those things that the law requires constitution the rights of the parent over their child. To determine what is the best interest of their child.

So, in terms of legal scrub. I assure you that based on the fact that this Uniform Law that was created to be adaptable across jurisdictions and passed the constitutional test. It is sound. In terms of there was another point that was brought up. The constitutionality and it just slipped my mind but the second point were but other jurisdictions or doesn't there is no law that exists.

As I mentioned it is a new initiative to address the crisis currently over opioid epidemics. So, there are a handful of states that have since started introducing this; North Dakota did pass it. A handful of states since introduced it.

One of the charges of the Commission is to inform other jurisdiction and to provide them with the guidance in the uniform law so other jurisdiction can then follow in pursuit.

So, yes, it is not an old law. It is a new law. That is addressing a new urgent problem. And looking at Guam's statistics with the children in need of foster care on Guam. The fact that we have a raging drug addiction problem on Guam. Child neglect is high.

I took it upon myself to get ahead of the game with that handful of jurisdictions and try to get something like this in place. So, that is the situation where the precedent we're at the top of the wave right now. We're riding the wave right

now. We're cresting the legislation that addresses the national epidemic that has translated in certain regards to Guam.

So, Madame Chair, that is the two points I like to clarify; one that is very this bill is legally sound will pass constitutional test. I have consulted with legal people on this bill before I introduced it. And secondly, you won't find precedent on other jurisdiction because it is so new but that is the other reason why we have to get ahead of the game too because we are dealing with a present problem on Guam and why wait but it in place because it will be for everybody to get on board with it but you know it's always good to be prepared.

In this case for an opioid epidemic that already presented itself across the U.S. and where on Guam where methamphetamine addiction problem. We can't expect opioid may make their way a similar way. And so, we should be ahead of the curve if I believe. But I want to make that absolutely clear Madame Chair.

Si Yu'os ma'ase'.

Chairperson Therese M. Terlaje:

Thank you very much, Senator Torres.

Senator Shelton did you have.

Senator Amanda L. Shelton:

Thank you very much, Madame Chair. I just to thank the sponsor for that background information. I think that helps me better understand it and I've known her to be very thorough with her legislation. So, I'm glad to hear of that kind of research and assurances have been made.

And to hear from you Linda in our past discussions on how well is to try to keep families together. And how relatives are the best fit. So, I think we're just trying to ensure here that these family members these relatives who would like to help these children do not have any further hurdles in trying to do so.

And it is something that is part of our culture right for grandparents to care for our kids that are in need or a relative to care for them. I really appreciate the intent of this legislation. And I would like to note for the record that in the past several weeks I had grandparents who have contacted me requesting help for

some kind of legislation and I have shared with them this has already been introduced and it is something that we are working towards that.

They have had issues in their own families where maybe their child is addicted to drugs and they need help something like this. I think they appreciate this. And thank you again, Linda, for your time.

Linda Rodriguez:

You're welcome.

Chairperson Therese M. Terlaje:

All right. Senator Taitague?

Senator Telo T. Taitague:

Thank you, Madame Speaker for the opportunity again. Linda you mentioned earlier that you have a process currently in place right now not only places your first choice is relatives of the individual child. Is there a background check you have on even if they are relatives that you do a background check on these families before placing the child in their care?

Linda Rodriguez:

Yes, we do a criminal background check and we also do a CPS registry check.

Senator Telo T. Taitague:

Okay.

Linda Rodriguez:

To check if they had prior referrals.

Senator Telo T. Taitague:

So, there is something in place currently right now. What is something different that you do currently now this bill and let me stress this again even though this law that is proposed was through the Uniform Commission it's a nonprofit U.S.

Organization in 2018 although it is fairly new. No states at this time have implemented this bill thus type of law but what is the difference between what you do now on this law what will be the big factor? What will change what you currently do?

Linda Rodriguez:

Well in our agency we're looking at cases that children have been abused or neglected and with Senator Torres's proposed bill these are families that are not involved in the CPS system.

So, the cases that we have there is actually indicated cases of abuse and neglect and that's when we try and work with the parents to get them into services. In most cases if we need to remove them if the allegations are true and we have to place children in a safe home. But our goal is always reunification. We try to work with the parents to get the children back into the home and to make sure it is safe.

Senator Telo T. Taitague:

So, there's nothing really different that you do?

Linda Rodriguez:

Not really. Except maybe that we exert custody over the child and we have involvement with the court and we keep the court abreast. How the family is progressing not only in services but when the children are ready to go home. Just to make sure the home is safe.

Senator Telo T. Taitague:

Okay. Thank you so much.

Chairperson Therese M. Terlaje:

Thank you, senator.

Ms. Rodriguez when I look at the note, I mean the bill it looks to me what you said is correct. The difference to me having this law in places versus what you

are involved in now. CPS currently if they take jurisdiction of a child or custody of a child then they do this.

They would have to prove to the court it is in the best interest of the child and you would have to find a placement. And you would do I think follow some of the standards that are in here. Which is the investigation and I know that is a duty of CPS to do these home investigations, people investigations to make sure the child is going to be placed in a safe environment.

But the bill seems the difference this bill seems to me it's not a CPS led endeavor.

Linda Rodriguez:

Correct.

Chairperson Therese M. Terlaje:

It could be allowing grandparent on their own without CPS involvement to petition the court for visitation or custody. And they would have to prove that it is in the best interest of the child.

So, it sets up the type of standard and they also allow their presumptions here in favor of the parent. A decision by a parent regarding a request of custody or visitation is presumed to be the best interest of the child.

In other words, if a parent says no it's not in the best interest of my child that the grandparents have visitation that's going to be the presumption. And so, it is up to the nonparent such as a grandparent to overcome that presumption. And so, this puts it on the court I suspect the court will look to CPS to these cases also it says the court has to do an investigation and order an assessment. Different things, you might be involved in that way also.

Linda Rodriguez:

Probably, yes.

Chairperson Therese M. Terlaje:

As you are doing regular guardianships or adoptions. Right? It's a CPS involvement as well.

All right. I do appreciate your work in this field and your ability you know the challenges that come with trying to make these types of determinations. So, I do appreciate the caution on everybody's part as to changing you know from a parents' custody or even what a parent wants as far as visitations.

I do appreciate that grandparents really picked up when we really need them in many cases maybe not in all but in many cases. So, I would like to ask the sponsor if she would like to close on the bill. Anything else?

Senator Mary C. Torres:

I just want thank you also and it is with any new policy concept it takes any suggestion. But what we're doing where taking a very broad piece of legislation right now a policy with regard to grandparents. And we're making criteria, that is more specific that takes into account all the courts concern about parental rights. And it gives an opportunity to people who are ordinarily involved with a child's life to continue the care that is custody or visitation when circumstances go bad for the child.

The family their needed to intervene I think in that regard this type of legislation especially in Guam's community we're grandparents, relatives, godparents have active roles in children's lives that we a mechanism in place. The courts to be guided when one of those people petition continue to care or visit in the best interest of the child.

So, I thank you for your support and for your open-mindedness. And I also believe Guam needs to be ahead of the game and anticipate all these things we need to do the best interest of our family and our children.

Si Yu'os ma'ãse' again.

Chairperson Therese M. Terlaje:

The Committee will continue to accept testimony until July 25, 2019. We will try to obtain some input from the Attorney General and in the meantime. But again, thank you all for your testimony and your input on this bill.

The public hearing was adjourned at 9:45 AM.


I Mina'trentai Singko Na Liheslaturan Guåhan
BILL STATUS

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES	NOTES
134-35 (COR)	Mary Camacho Torres	AN ACT TO ADD A NEW CHAPTER 39B TO DIVISION 3 OF TITLE 7, GUAM CODE ANNOTATED, RELATIVE TO CUSTODY AND VISITATION OF NONPARENTS; AND TO REPEAL SUBSECTION (G) OF § 8404, CHAPTER 8, DIVISION 1 OF TITLE 19, GUAM CODE ANNOTATED, RELATIVE TO THE CURRENT STATUTE ON GRANDPARENTAL RIGHTS OF VISITATION; AND TO AMEND SUBSECTION (H)(5) OF § 8404, CHAPTER 8, DIVISION 1 OF TITLE 19, GUAM CODE ANNOTATED, RELATIVE TO THE CONSIDERATION OF GRANDPARENTS IN PROVIDING CHILD-CARE FOR THEIR GRANDCHILDREN; AND TO FURTHER CITING THIS ACT AS THE "UNIFORM NONPARENT CUSTODY AND VISITATION ACT OF 2019."	5/9/19 11:28 a.m.						

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

Bill No. 134-35 (COR)

Introduced by:

Mary Camacho Torres 

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

2019 MAY -9 AM 11: 28



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

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

4 **“Chapter 39B**

5 **The Uniform Nonparent Custody and Visitation Act of 2019**

6 **§ 39B101. Title.**

7 **§ 39B102. Definitions.**

8 **§ 39B103. Scope.**

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

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

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

4 **§ 39B107. Verified Petition.**

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

6 **§ 39B109. Notice.**

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

8 **§ 39B111. Emergency Order.**

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

10 **§ 39B113. Presumption Arising from Child Abuse, Child Neglect,**

11 **Domestic Violence, Sexual Assault, or Stalking.**

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

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

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

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

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

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

18 **Commerce Act.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 **§ 39B103. Scope.**

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

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

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

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

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

12 (A) guardianship of the person; or

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

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

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

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

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

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

1 (1) the nonparent:

2 (A) is a consistent caretaker; or

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

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

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

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

11 (2) regularly exercised care of the child;

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

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

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

19 (1) the nonparent:

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

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

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

26 § 39B105. Presumption for Parental Decision.

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

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

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

13 **§ 39B107. Verified Petition.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (1) is a consistent caretaker; or

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

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

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

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

27 (b) Person having custody of the child;

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

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

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

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

9 (b) Interview the child;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (3) visitation to the nonparent.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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