

7 GCA CIVIL PROCEDURE
CH. 40B STALKING PROTECTION ORDER

CHAPTER 40B
STALKING PROTECTION ORDER

SOURCE: Entire chapter added by P.L. 36-127:2 (Dec. 27, 2022), effective thirty (30) days following the date of enactment, but the Superior Court of Guam may take such anticipatory administrative action thereof as shall be necessary for the implementation of this Act.

- § 40B101. Definitions.
- § 40B102. Jurisdiction
- § 40B103. Petition for Stalking Protection Order.
- § 40B104. Fees Not Permitted.
- § 40B105. Hearing.
- § 40B106. Remedies.
- § 40B107. *Ex Parte* Temporary Order for Protection.
- § 40B108. Court Initiated Stalking No-Contact Orders.
- § 40B109. Notification to Enforce Protection Order.

§ 40B101. Definitions.

The definitions in this Section apply throughout this Chapter unless the context clearly requires otherwise.

(a) *Petitioner* means any named petitioner for the stalking protection order or any named victim of stalking conduct on whose behalf the petition is brought.

(b) *Stalking conduct* means any of the following:

(1) any act of stalking as defined under 9 GCA, Chapter 19, §19.70;

(2) any course of conduct, whether physical, verbal, written, electronic, telephonic, via or by use of a computer, computer network, computer system, telephone network, data network, text message, instant message, or otherwise, involving repeated or continuing contacts, attempts to contact, monitoring, tracking, keeping under observation, or following of another that:

(A) would cause a reasonable person to feel intimidated, frightened, or threatened;

(B) serves no lawful purpose; and

7 GCA CIVIL PROCEDURE
CH. 40B STALKING PROTECTION ORDER

(C) the stalker knows or reasonably should know their conduct threatens, frightens, or intimidates the person, even if the stalker did not intend to intimidate, frighten, or threaten the person.

(c) *Stalking no-contact* order means a temporary order or a final order granted under this Chapter against a person charged with or arrested for stalking, which includes a remedy authorized under § 40B106 of this Chapter.

(d) *Stalking protection order* means an ex parte temporary order or a final order granted under this Chapter, which includes a remedy authorized under § 40B106 of this Chapter.

§ 40B102. Jurisdiction.

The Superior Court of Guam shall have jurisdiction over all proceedings under this Chapter.

§ 40B103. Petition for Stalking Protection Order.

(a) A person who does not qualify for a protection from abuse order under 7 GCA Chapter 40 and who is a victim of stalking conduct may seek relief under this Chapter by filing a petition with the court alleging that the person has been the victim of stalking conduct committed by the respondent. A petition for relief may be made regardless of whether or not there is a pending lawsuit, complaint, petition, or other action between the parties.

(b) A person may seek relief under this Chapter on behalf of another person if they have personal knowledge that such person has been a victim of stalking, or any adult household member may seek relief under this Chapter on behalf of minor children by filing a petition with the court alleging stalking by the defendant.

(c) Victim advocates, as defined in 6 GCA, Chapter 9, § 9102(a), shall be allowed to accompany the victim and confer with the victim, unless otherwise directed by the court. The court shall allow victim advocates to assist victims of stalking in the preparation of petitions for stalking protection orders.

7 GCA CIVIL PROCEDURE
CH. 40B STALKING PROTECTION ORDER

Communications between the petitioner and a victim advocate shall be protected as provided in 6 GCA, Chapter 9, § 9102(b).

(d) Any proceeding under this Chapter shall be in accordance with the Rules of Civil Procedure and shall be in addition to any other available civil or criminal remedies.

§ 40B104. Fees Not Permitted.

No fees for filing or service of process may be charged by a public agency to petitioners seeking relief under this Chapter. Petitioners shall be provided the necessary number of certified copies at no cost.

§ 40B105. Hearing.

Upon receipt of the petition, the court shall order a hearing which shall be held no later than ten (10) days from the date of the order. A plaintiff or witness in a protective order case may request, without the need for a motion, or good cause determination, that the court allow appearance by telephone, videoconference, or by other two (2)-way electronic communication device. The court shall consider whether the safety or welfare of the plaintiff or witness would be threatened if testimony were required to be provided in person at a proceeding. The court may issue an *ex parte* temporary order pending the hearing as provided in § 40B107 of this Chapter.

§ 40B106. Remedies.

(a) If the court finds by a preponderance of the evidence that the petitioner has been a victim of stalking conduct by the respondent, the court shall issue a stalking protection order. The petitioner shall not be denied a stalking protection order because the petitioner or the respondent is a minor or because the petitioner did not report the stalking conduct to law enforcement. The court, when determining whether or not to issue a stalking protection order, may not require proof of the respondent's intentions regarding the acts alleged by the petitioner.

(b) The court may provide relief as follows:

(1) restrain the respondent from having any contact, including nonphysical contact, with the petitioner directly,

7 GCA CIVIL PROCEDURE
CH. 40B STALKING PROTECTION ORDER

indirectly, or through third parties regardless of whether those third parties know of the order;

(2) exclude the respondent from the petitioner's residence, workplace, or school, or from the daycare or school of the petitioner's minor children;

(3) prohibit the respondent from knowingly coming within, or knowingly remaining within, a specified distance from a specified location;

(4) prohibit the respondent from keeping the petitioner and/or the petitioner's minor children under surveillance, to include electronic surveillance;

(5) order any other injunctive relief as necessary or appropriate for the protection of the petitioner;

(6) order any other injunctive relief as necessary or appropriate for the protection of the petitioner, to include a mental health and/or chemical dependency evaluation; and

(7) require the respondent to pay the administrative court costs and service fees incurred in bringing the action, including reasonable attorneys' fees.

(c) The court may order the respondent to surrender all firearms, ammunition, permits to purchase firearms, permits to carry firearms, and other dangerous weapons that are in the care, custody, possession, ownership, or control of the respondent if the court finds any of the following factors are present and the petitioner requests that the respondent's firearms, ammunition, permits to purchase firearms, permits to carry concealed firearms, and other dangerous weapons be seized:

(1) the use or threatened use of a dangerous weapon by the respondent or a pattern of prior conduct involving the use or threatened use of violence with a firearm against persons;

(2) threats to seriously injure or kill the petitioner or minor child by the respondent;

(3) threats to commit suicide by the respondent; or

7 GCA CIVIL PROCEDURE
CH. 40B STALKING PROTECTION ORDER

(4) serious injuries inflicted by the respondent upon the petitioner or a minor child.

(d) Any protection order shall be for a fixed period of time as the court deems appropriate. The court may not terminate or modify an existing stalking protection order unless the respondent proves by a preponderance of the evidence that there has been a substantial change in circumstances such that the respondent will not resume acts of stalking conduct against the petitioner or those persons protected by the protection order if the order is terminated or modified. The petitioner bears no burden of proving that he or she has a current reasonable fear of harm by the respondent.

(e) A knowing violation of a court order issued under this Section is a misdemeanor punishable by imprisonment of no less than forty-eight (48) hours and not more than one (1) year, and by a fine of not more than One Thousand Dollars (\$1,000).

§ 40B107. *Ex Parte* Temporary Order for Protection.

(a) Where it appears from the petition and any additional evidence that the respondent has engaged in stalking conduct and that irreparable injury could result if an order is not issued immediately without prior notice, the court may grant an *ex parte* temporary order for protection, pending a full hearing, and grant such injunctive relief as it deems proper, including the relief as specified under § 40B106(b)(1)-(4) of this Chapter.

(b) Irreparable injury under this Section includes, but is not limited to, situations in which the respondent has recently threatened the petitioner with bodily injury or has engaged in acts of stalking conduct against the petitioner.

(c) Upon issuance of an *ex parte* order, the court may order the respondent to surrender all firearms, ammunition, permits to purchase firearms, permits to carry firearms, and other dangerous weapons that are in the care, custody, possession, ownership, or control of the respondent if the court finds any of the following factors are present and the petitioner requests that the respondent's firearms, ammunition, permits to purchase firearms, permits to carry concealed firearms, and other dangerous weapons be seized:

7 GCA CIVIL PROCEDURE
CH. 40B STALKING PROTECTION ORDER

(1) the use or threatened use of a dangerous weapon by the respondent or a pattern of prior conduct involving the use or threatened use of violence with a firearm against persons;

(2) threats to seriously injure or kill the petitioner or minor child by the respondent;

(3) threats to commit suicide by the respondent; or

(4) serious injuries inflicted by the respondent upon the petitioner or a minor child.

(d) If the court declines to issue an ex parte temporary stalking protection order, the court shall state the particular reasons for the court's denial.

(e) A knowing violation of a court order issued under this Section is a misdemeanor punishable by imprisonment of no less than forty-eight (48) hours and not more than one (1) year, and by a fine of not more than One Thousand Dollars (\$1,000).

§ 40B108. Court Initiated Stalking No-Contact Orders.

(a) (1) When any person charged with or arrested for stalking, as defined in Title 9 GCA, Chapter 19, § 19.70 or any other stalking-related offense, is released from custody before arraignment or trial on bail or personal recognizance, the court authorizing the release may prohibit that person from having any contact with the victim. If there is no outstanding restraining or protective order prohibiting that person from having contact with the victim, and the victim does not qualify for a protection from abuse order under 7 GCA Chapter 40, the court authorizing the release may issue a stalking protection order prohibiting the person charged or arrested from having contact with the victim or from knowingly coming within, or knowingly remaining within, a specified distance of a location.

(2) In issuing the order, the court shall order the respondent to surrender all firearms, ammunition, permits to purchase firearms, permits to carry firearms, and other dangerous weapons that are in the care, custody, possession, ownership, or control of the respondent if the court finds any of the following factors are present and the petitioner

7 GCA CIVIL PROCEDURE
CH. 40B STALKING PROTECTION ORDER

requests that the respondent's firearms, ammunition, permits to purchase firearms, permits to carry concealed firearms, and other dangerous weapons be seized:

(A) the use or threatened use of a dangerous weapon by the respondent or a pattern of prior conduct involving the use or threatened use of violence with a firearm against persons;

(B) threats to seriously injure or kill the petitioner or minor child by the respondent;

(C) threats to commit suicide by the respondent;
or

(D) serious injuries inflicted by the respondent upon the petitioner or a minor child.

(b) A stalking protection order issued by the court in conjunction with criminal charges shall terminate if the respondent is acquitted or the charges are dismissed, unless the victim files an independent action for a stalking protection order. If the victim files an independent action for a stalking protection order, the order may be continued by the court until a full hearing is conducted pursuant to § 40B105 of this Chapter.

(c) The written order releasing the person charged or arrested shall contain the court's directives and shall bear the legend:

"Violation of this Order is a criminal offense and will subject a violator to arrest. You can be arrested even if any person protected by the Order invites or allows you to violate the Order's prohibitions. You have the sole responsibility to avoid or refrain from violating the Order's provisions. Only the Court can change the Order."

(d) A certified copy of the order shall be provided to the victim at no charge.

(e) When a respondent is found guilty of stalking, as defined in Title 9 GCA Chapter 19, § 19.70 or any other stalking-related offense, and a condition of the sentence restricts the respondent's ability to have contact with the victim, and the victim

7 GCA CIVIL PROCEDURE
CH. 40B STALKING PROTECTION ORDER

does not qualify for a protection from abuse order under 7 GCA Chapter 40, the condition shall be recorded as a stalking no-contact order.

(f) The written order entered as a condition of sentencing shall contain the court's directives and shall bear the legend:

“Violation of this Order is a criminal offense and will subject a violator to arrest. You can be arrested even if any person protected by the Order invites or allows you to violate the Order's prohibitions. You have the sole responsibility to avoid or refrain from violating the Order's provisions. Only the Court can change the Order.”

(g) A final stalking no-contact order entered in conjunction with a criminal prosecution shall remain in effect for a period of at least five (5) years following the expiration of the latest sentence of imprisonment and subsequent period of community supervision, conditional release, probation, or parole.

(h) A certified copy of the order shall be provided to the victim at no charge.

(i) A knowing violation of a court order issued under this Section is a misdemeanor punishable by imprisonment of no less than forty-eight (48) hours and not more than one (1) year, and by a fine of not more than One Thousand Dollars (\$1,000).

§ 40B109. Notification to Enforce Protection Order.

A copy of any order under this Chapter shall be issued to the plaintiff, the defendant, and the Guam Police Department with appropriate jurisdiction to enforce the order or agreement.
