

7 GCA CIVIL PROCEDURE  
CH. 40A SEXUAL OFFENSE PROTECTION ORDER

**CHAPTER 40A**  
**SEXUAL OFFENSE PROTECTION ORDER**

**SOURCE:** Entire chapter added by P.L. 36-126:2 (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.

- § 40A101. Definitions.
- § 40A102. Jurisdiction
- § 40A103. Petition for Sexual Offense Protection Order.
- § 40A104. Fees Not Permitted.
- § 40A105. Hearing.
- § 40A106. Remedies.
- § 40A107. *Ex Parte* Temporary Order for Protection.
- § 40A108. Court Initiated Issuance of Sexual Offense Protection Orders
- § 40A109. Notification to Enforce Protection Order.

**§ 40A101. Definitions.**

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

(a) *Intimate parts* means the primary genital area, groin, inner thigh, buttock, or breast of a human being;

(b) *Nonconsensual* means the lack of a freely given present agreement to perform a particular sexual act with the respondent;

(c) *Nonphysical contact* includes, but is not limited to, telephone calls, mail, electronic mail, facsimile, mobile messaging, private messaging, direct messaging, and other written notes;

(d) *Petitioner* means any named petitioner for the sexual offense protection order or any named victim of nonconsensual sexual conduct or nonconsensual sexual penetration on whose behalf the petition is brought;

(e) *Sexual offense protection order* means an ex parte temporary order or a final order granted under this Chapter,

7 GCA CIVIL PROCEDURE  
CH. 40A SEXUAL OFFENSE PROTECTION ORDER

which includes a remedy authorized by § 40A106 of this Chapter;

(f) *Sexual contact* means any of the following:

(1) Any intentional touching of the victim's or respondent's intimate parts or the intentional touching of the clothing covering the immediate area of the victim's or respondent's intimate parts, if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification; or

(2) any intentional display of the victim's or respondent's genitals, anus, or breasts for the purposes of sexual arousal or gratification;

(g) *Sexual penetration* means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, but emission of semen is not required.

**§ 40A102. Jurisdiction.**

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

**§ 40A103. Petition for Sexual Offense Protection Order.**

(a) A person who does not qualify for a protection order under 7 GCA Chapter 40 and who is a victim of nonconsensual sexual contact or nonconsensual sexual penetration, including a single incident of nonconsensual sexual contact or nonconsensual sexual penetration, may seek relief under this Chapter by filing a petition with the court alleging that the person has been the victim of nonconsensual sexual contact or nonconsensual sexual penetration 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 nonconsensual sexual contact or

7 GCA CIVIL PROCEDURE  
CH. 40A SEXUAL OFFENSE PROTECTION ORDER

nonconsensual sexual penetration, or any adult household member may seek relief under this Chapter on behalf of minor children by filing a petition with the court alleging nonconsensual sexual contact or nonconsensual sexual penetration 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 nonconsensual sexual contact or nonconsensual sexual penetration in the preparation of petitions for sexual offense protection orders. Communications between the petitioner and a victim advocate are protected as provided by 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.

**§ 40A104. 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.

**§ 40A105. 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 sexual offense protection order pending the hearing as provided in § 40A108 of this Chapter.

**§ 40A106. Remedies.**

(a) If the court finds by a preponderance of the evidence that the petitioner has been a victim of nonconsensual sexual contact or nonconsensual sexual penetration by the respondent, the court

7 GCA CIVIL PROCEDURE  
CH. 40A SEXUAL OFFENSE PROTECTION ORDER

shall issue a sexual offense protection order. The petitioner shall not be denied a sexual offense protection order because the petitioner or the respondent is a minor or because the petitioner did not report the assault to law enforcement. The court, when determining whether or not to issue a sexual offense protection order, may not require proof of physical injury on the person of the victim or proof that the petitioner has reported the sexual assault to law enforcement.

(b) The court may provide relief as follows:

(1) restrain the respondent from having any contact, including nonphysical contact, with the petitioner directly, 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 day care or school of a child, if the victim is a child;

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

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

(c) Denial of a remedy may not be based, in whole or in part, on evidence that:

(1) the respondent was voluntarily intoxicated;

(2) the petitioner was voluntarily intoxicated; or

(3) the petitioner engaged in limited consensual sexual touching.

(d) 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. 40A SEXUAL OFFENSE 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.

(e) Any protection order shall be for a fixed period of time as the court deems appropriate. The court may amend its order or agreement at any time upon subsequent petition or motion filed by either party.

(f) 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).

**§ 40A106. Remedies.**

(a) If the court finds by a preponderance of the evidence that the petitioner has been a victim of nonconsensual sexual contact or nonconsensual sexual penetration by the respondent, the court shall issue a sexual offense protection order. The petitioner shall not be denied a sexual offense protection order because the petitioner or the respondent is a minor or because the petitioner did not report the assault to law enforcement. The court, when determining whether or not to issue a sexual offense protection order, may not require proof of physical injury on the person of the victim or proof that the petitioner has reported the sexual assault to law enforcement.

(b) The court may provide relief as follows:

(1) restrain the respondent from having any contact, including nonphysical contact, with the petitioner directly, indirectly, or through third parties regardless of whether those third parties know of the order;

7 GCA CIVIL PROCEDURE  
CH. 40A SEXUAL OFFENSE PROTECTION ORDER

(2) exclude the respondent from the petitioner's residence, workplace, or school, or from the day care or school of a child, if the victim is a child;

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

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

(c) Denial of a remedy may not be based, in whole or in part, on evidence that:

(1) the respondent was voluntarily intoxicated;

(2) the petitioner was voluntarily intoxicated; or

(3) the petitioner engaged in limited consensual sexual touching.

(d) 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

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

(e) Any protection order shall be for a fixed period of time as the court deems appropriate. The court may amend its order or agreement at any time upon subsequent petition or motion filed by either party.

7 GCA CIVIL PROCEDURE  
CH. 40A SEXUAL OFFENSE PROTECTION ORDER

(f) A knowing violation of a court 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).

**§ 40A107. *Ex Parte* Temporary Order for Protection.**

(a) An *ex parte* temporary sexual offense protection order shall issue if the petitioner satisfies the requirements of this Subsection by a preponderance of the evidence. The petitioner shall establish that:

(1) the petitioner has been a victim of nonconsensual sexual contact or nonconsensual sexual penetration by the respondent; and

(2) there is good cause to grant the remedy, regardless of the lack of prior service of process or of notice upon the respondent, because the harm which that remedy is intended to prevent would be likely to occur if the respondent were given any prior notice, or greater notice than was actually given, of the petitioner's efforts to obtain judicial relief.

(b) 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:

(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 injury 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.

7 GCA CIVIL PROCEDURE  
CH. 40A SEXUAL OFFENSE PROTECTION ORDER

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

(d) 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).

**§ 40A108. Court Initiated Issuance of Sexual Offense Protection Orders.**

(a) When any person charged with or arrested for criminal sexual conduct as defined in Title 9 GCA Chapter 25, or any other crime as defined in Title 9 GCA Chapter 25A, Chapter 26, Chapter 28, and Chapter 89 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.

(1) A sexual offense 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 sexual offense protection order. If the victim files an independent action for a sexual offense protection order, the order may be continued by the court until a full hearing is conducted pursuant to § 40A105 of this Chapter.

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

(b) When a respondent is found guilty of criminal sexual conduct as defined in Title 9 GCA Chapter 25, or any other crime



7 GCA CIVIL PROCEDURE  
CH. 40A SEXUAL OFFENSE PROTECTION ORDER

as defined in Title 9 GCA Chapter 25A, Chapter 26, Chapter 28, and Chapter 89 and a condition of the sentence restricts the respondent's ability to have contact with the victim, the condition shall be recorded as a sexual offense protection order.

(1) 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."

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

(c) A final sexual offense protection order entered in conjunction with a criminal prosecution shall remain in effect for a period of five (5) years following the expiration of the latest sentence of imprisonment and subsequent period of community supervision, conditional release, probation, or parole.

(d) 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).

**§ 40A109. 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.

-----