

**19 GCA PERSONAL RELATIONS
CH. 13 CHILD PROTECTIVE ACT**

**CHAPTER 13
CHILD PROTECTIVE ACT**

NOTE: This Chapter was added by P.L. 20-209:5. This Chapter was formerly 10 GCA Chapter 88, but the Compiler renumbered and repositioned it to Title 19, Personal Relations, where Chapters having a similar subject are located.

- Article 1. Definitions.
- Article 2. Child Abuse and Neglect Report Act.
- Article 3. Child Protective Services.
- Article 4. The LaniKate *Protehi Y Famagu'on-ta* Act

**ARTICLE 1
DEFINITIONS**

- § 13100. Short Title; Purpose; Construction.
- § 13101. Definitions.

§ 13100. Short Title; Purpose; Construction.

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

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

The policy and purpose of this Chapter are to provide children with prompt and ample protection from the harms detailed herein, with an opportunity for timely reconciliation with their families where practical, and

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with timely and permanent planning so they may develop and mature into responsible, self-sufficient and law-abiding citizens. This permanent planning should effectuate placement with a child's own family when possible and should be conducted in an expeditious fashion so that where return to the child's family is not possible as provided in this Chapter, such children will be promptly and permanently placed with responsible and competent substitute parents and families, with their places in such families secured by adoption or permanent custody orders.

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

§ 13101. Definitions.

For purposes of this Chapter:

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

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

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

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

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

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

(g) *Child Protective Services* means the agency established by § 13301 of this Chapter under the Department of Public Health and Social Services;

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

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

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

(k) *Disposition hearing* means a hearing held pursuant to § 13320 of this Chapter;

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

(m) *Fact-finding hearing* means an adjudicatory hearing held pursuant to § 13318 of this Chapter to determine the truth of the allegations contained in the petition filed under this Chapter;

(n) *Family* means each legal parent, the grandparents, each parent's spouse, each sibling or person related by consanguinity up to the second degree or by marriage, each person residing in the same dwelling unit, and any other person or legal entity which is a child's legal or physical custodian or guardian, or who is otherwise responsible for the child's care;

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

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

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

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

(s) *Guardian ad litem* means a person appointed by the court pursuant to § 13308 of this Chapter whose role is to protect and promote the needs and interests of the child or ward;

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

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

(A) skin bruising or any other internal bleeding,

(B) any injury to skin causing bleeding,

(C) burn or burns,

(D) poisoning,

(E) fracture of any bone,

(F) subdural hematoma

(G) soft tissue swelling,

(H) extreme pain,

(I) death or

(J) disfigurement or impairment of any bodily organ, and such injury is inflicted by other than accidental means, by excessive corporal punishment or where the history given concerning such condition or death is at variance with the degree or type of such condition or death; or

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

(3) Any case where there exists injury to the psychological capacity of a child such as failure to thrive, extreme mental distress, or gross emotional or verbal degradation as is evidenced

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by an observable and substantial impairment in the child's ability to function within a normal range of performance with due regard to the child's culture; or

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

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

(6) Any case where the child is abandoned.

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

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

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

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(x) *Party* means an authorized agency, the child, the child's family member or members who are required to be summoned pursuant to § 13306 of this Chapter, any other member of the child's family, or any other person who is alleged in the petition filed under this Chapter or who is subsequently determined at any child protective proceeding to be encouraging, causing or contributing to the acts or condition which bring the child within this Chapter;

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

(z) *Permanency plan hearing* means a hearing held pursuant to § 13324 of this Chapter.

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

(bb) *PINS* means a person in need of services who has been harmed as defined in this § 13101.

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

(dd) *Preliminary hearing* means a hearing held pursuant to § 13317 of this Chapter;

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

(ff) *Progress hearing* means any hearing held pursuant to § 13322 of this Chapter;

(gg) *Protective custody* means the legal status of a child whose physical custody is retained by a police officer, Child Protective Services social worker or physician pursuant to § 13302 of this Chapter in order to protect such child from harm or threatened imminent harm;

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(hh) *Reasonable cause to believe* means evidence which would cause a reasonable person to believe;

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

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

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

(ll) *Suspected report* means any report that is not indicated, substantiated or unsubstantiated;

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

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

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

**ARTICLE 2
CHILD ABUSE AND NEGLECT REPORTING ACT**

§ 13200. Short Title; Intent and Purpose of Article.

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- § 13201. Persons Required to Report Suspected Child Abuse or Neglect.
- § 13202. Any Person Permitted to Report.
- § 13203. Reporting Responsibilities.
- § 13204. Cooperative Arrangements For Investigations; Written Findings; Report.
- § 13205. Mandatory Reporting and Post-Mortem Investigation of Deaths.
- § 13206. Immunity From Liability.
- § 13207. Penalty for Failure to Report.
- § 13208. Recordkeeping Duties of Child Protective Services.
- § 13209. Duties of Child Protective Services Concerning Reports of Abuse.
- § 13209.1. Duties of Child Protective Services.
- § 13210. Confidentiality.
- § 13211. Regulations; Authority to Make.
- § 13212. Severability Clause.

§ 13200. Short Title; Intent and Purpose of Article.

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

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

§ 13201. Persons Required to Report Suspected Child Abuse or Neglect.

(a) Any person who, in the course of his or her employment, occupation or practice of his or her profession, comes into contact with children shall report when he or she has reason to suspect on the basis of his medical, professional or other training and experience that a child is an abused or neglected child. No person may claim “privileged communications” as a basis for his or her refusal or failure to report suspected child abuse or neglect or to provide Child Protective Services or the Guam Police Department with required information. Such privileges are

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specifically abrogated with respect to reporting suspected child abuse or neglect or of providing information to the agency.

(b) Persons required to report suspected child abuse under Subsection (a) include, *but are not limited to*, any licensed physician, medical examiner, dentist, osteopath, optometrist, chiropractor, podiatrist, intern, registered nurse, licensed practical nurse, hospital personnel engaged in the admission, examination, care or treatment of persons, Christian Science practitioner, clergy member of any religious faith, or other similar functionary or employee of any church, place of worship, or other religious organization whose primary duties consist of teaching, spreading the faith, church governance, supervision of a religious order, or supervision or participation in religious ritual and worship, school administrator, school teacher, school nurse, school counselor, social services worker, day care center worker, or any other child care or foster care worker, mental health professional, peace officer or law enforcement official.

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

- (1) Sexual intercourse, including genital-genital, oral-genital, anal-genital or oral-anal, whether between persons of the same or opposite sex or between humans and animals;
- (2) Penetration of the vagina or rectum by any object;
- (3) Masturbation, for the purpose of sexual stimulation or the viewer;
- (4) Sadomasochistic abuse for the purpose of sexual stimulation of the viewer; or
- (5) Exhibition of the genitals, pubic or rectal areas of any person for the purpose of sexual stimulation to the viewer.

SOURCE: Subsection (b) amended by P.L. 30-218:2 (Dec. 21, 2010).

§ 13202. Any Person Permitted to Report.

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

§ 13203. Reporting Responsibilities.

(a) Reporting procedures. Reports suspected child abuse or neglect from persons required to report under § 13201 shall be made immediately by telephone and followed up in writing within 48 hours after the oral report. Oral reports shall be made to Child Protective Services or to the Guam Police Department.

(b) Cross reporting among agencies.

(1) Child Protective Services shall immediately or as soon as practically possible report by telephone to the Guam Police Department and to the Attorney General's Office every known or suspected instance of child abuse as defined in § 13101, except acts or omissions coming within subsection (t) (4) of § 13101. Child Protective Services shall also send a written report thereof within 48 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subsection.

(2) The Guam Police Department shall immediately or as soon as practically possible report by telephone Child Protective Services and to the Attorney General's Office every known or suspected instance of child abuse reported to it, except acts or omissions coming within subsection (t) (4) of § 13101, which shall only be reported to Child Protective Services. However, the Guam Police Department shall report to Child Protective Services every known or suspected instance of child abuse reported to it which is alleged to have occurred as a result of inaction of a person responsible for the child's welfare to adequately protect the minor from abuse when such person knew or reasonably should have known that the minor was in danger of abuse. The Guam Police Department shall also send a written report thereof within 48 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subsection.

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

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

(1) Every report of a known or suspected instance of child abuse should include the name of the person making the report, the name, age and sex of the child, the present location of the child, the nature and extent of injury, and any other information, including information that led that person to suspect child abuse, that may be requested by the child protective agency receiving the report. Persons who report pursuant to § 13202 shall be required to reveal their names;

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

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

(4) Family composition;

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

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

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

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(e) Reporting forms. The reporting forms developed pursuant to § 13204 shall be made available to all persons required to report under § 13201.

§ 13204. Cooperative Arrangements For Investigation; Written Findings; Report.

The Guam Police Department and Child Protective Services shall develop and implement cooperative arrangements to coordinate existing duties in connection with the investigation of suspected child abuse. Child Protective Services shall initiate the development and implementation of these arrangements, including the development and distribution of reporting forms. The Guam Police Department shall report to Child Protective Services that it is investigating a case within 36 hours after starting its investigation. In cases where a minor is a victim of criminal sexual conduct, Child Protective Services shall evaluate what action or actions would be in the best interests of the child victim in accordance with subsection (b) of § 13200 of this Article. Except for acts or omissions coming within subsection (t) (4) of § 13201, Child Protective Services shall submit in writing its findings and the reasons for them to the Attorney General's Office on or before the completion of the investigation.

§ 13205. Mandatory Reporting and Post-Mortem Investigation of Deaths.

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

§ 13206. Immunity From Liability.

Any person, hospital, institution, school, facility or agency participating in good faith in the making of a report or testifying in any proceeding arising out of an instance of suspected child abuse or neglect, the taking of photographs or the removal or keeping of a child pursuant to § 13302 of the Child Protective Act shall have immunity from any liability, civil or criminal, that might otherwise result by reason of such actions. For the purpose of any proceeding, civil or criminal, the good faith of any

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person required to report cases of child abuse or neglect pursuant to § 13201 shall be presumed.

§ 13207. Penalty for Failure to Report.

Any person required to report pursuant to § 13201 who fails to report an instance of child abuse which he or she knows to exist or reasonably should know to exist is guilty of a misdemeanor and is punishable by confinement for a term not to exceed six months, by a fine of not more than \$1,000 or by both. A second or subsequent conviction shall be a felony in the third degree. Fines imposed for violations of this Chapter shall be deposited in the Victims Compensation Fund.

§ 13208. Recordkeeping Duties of Child Protective Services.

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

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

(c) No information shall be released from the central register unless Child Protective Services has positively identified the person requesting the information and Child Protective Services has inquired into and is satisfied that such person has a legitimate need within the scope of § 13210 to obtain information from the central register.

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

- (1) the names of the subjects of the report;
- (2) the date or dates and the nature and extent of the alleged instances of suspected child abuse or neglect;
- (3) the home addresses of subjects of the report;
- (4) the age and sex of the children harmed or threatened with harm;
- (5) the locality in which the harm or threatened harm occurred;

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- (6) whether the report is a substantiated report or an indicated report; and
- (7) the progress of any legal proceedings brought on the basis of the report of suspected child abuse or neglect.

(e) If an investigation of a report of suspected child abuse or neglect does not determine, within 60 days from the date of the report of suspected child abuse or neglect, that the report is an indicated report, substantiated report or an unsubstantiated report, all information identifying the subjects of such report shall be placed in Child Protective Services' suspected file for a period of one year.

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

§ 13209. Duties of Child Protective Services Concerning Reports of Abuse.

Child Protective Services shall:

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

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

(3) The investigation shall determine whether the child is being harmed by factors beyond the control of the parent or other person responsible for the child's welfare, and if so determined, Child Protective Services shall promptly take all available steps to remedy

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and correct such conditions, including but not limited to the coordination of social services for the child and the family;

(4) Determine within 60 days whether the report is “indicated,” “substantiated” or “unsubstantiated”;

(5) Pursuant to the provisions of § 13302 of the Child Protective Act take a child into protective custody to protect him or her from further abuse;

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

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

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

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

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

§ 13209.1. Duties of Child Protective Services.

(a) Guam's Child Protective Services shall develop written procedures for screening each referral for abuse or neglect of a child to assess whether abuse of another family or household member is also occurring. The assessment must include, but is not limited to:

(1) inquiry concerning the criminal record of the parents, and the alleged abusive or neglectful person and the alleged perpetrator of family violence, if not a parent of the child; and

(2) inquiry concerning the existence of orders for protection issued to either parent.

(b) If it is determined in an investigation of abuse or neglect of a child:

(1) that the child or another family or household member is in danger of family violence and that removal of one (1) of the parties is necessary to prevent the abuse or neglect of the child, Child Protective Services shall seek the removal of the alleged perpetrator of family violence; or

(2) referral to appropriate services must be offered to the child and parent or guardian; the provision of such services must not be contingent upon a finding that either parent or guardian is at fault or has failed to protect the child.

SOURCE: Subsection (a) Added by P.L. 24-239:32 as § 13209(a),. Renumbered by Compiler. Subsection (b) added by P.L. 24-239:33.

§ 13210. Confidentiality.

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

(b) Information received pursuant to this Article may be released, on a need to know basis, and only as necessary to serve and protect the child, to the following, except that release of the identity of persons reporting child abuse is strictly prohibited, unless disclosed pursuant to subsection (d) of § 13203:

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(1) Multidisciplinary teams established to assist in the disposition of cases pursuant to § 13331 of this Chapter;

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

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

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

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

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

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

(8) A duly authorized official of the Department.

(c) At any time, a victim or alleged victim of child abuse, the parents of a victim or alleged victim of child abuse, or a perpetrator or alleged perpetrator of child abuse, after a court proceeding has been initiated regarding the abuse, may review, upon written request, all information contained in the central register or in any report filed pursuant to § 13203, except information which would identify the reporter of the abuse.

(d) Information received pursuant to this Article may be released to sources other than those identified in subsections (b) and (c) only when a

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written authorization from an individual designated in subsection (c) specifically provides consent to have the record released or reviewed.

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

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

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

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

(A) What portion of the record is desired;

(B) Whether the record is desired orally, through review or by receipt of reproduced copies of the record requested;

(C) The name of the individual authorized to receive the record or to review the record, and the individual's agency connection, if any;

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

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

(F) The period of time the authorization is valid, not to exceed ninety days;

(4) Reproduced copies of records requested shall be provided at a cost related to the cost of reproduction. Actual postage cost shall be charged;

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

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

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

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

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

§ 13211. Regulations; Authority to Make.

The Department shall adopt regulations necessary to implement this Article pursuant to the Administrative Adjudication Law.

§ 13212. Severability Clause.

If any part of this Article shall be held invalid, such part shall be deemed severable and the invalidity thereof shall not affect the remaining part of this Article.

**ARTICLE 3
CHILD PROTECTIVE SERVICES**

- § 13300. Jurisdiction.
- § 13301. Authorization for Department to Act.
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§ 13300. Jurisdiction.

The Family Court shall have exclusive original jurisdiction in a child protective proceeding concerning any child who was or is found within Guam at the time such facts and circumstances occurred, are discovered, or are reported to the Department, which facts and circumstances constitute the basis for the finding that the child has been harmed or is subject to threatened harm as defined in § 13201.

§ 13301. Authorization for Department to Act.

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

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

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

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

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

(3) Assume protective custody of the child pursuant to § 13302;

(4) File a petition; or

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

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

§ 13302. Protective Custody by Police Officer, Child Protective Services Social Worker or Physician Without Court Order.

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

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

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

(d) Upon assuming protective custody of a child under this Chapter, any authorized individual taking a child into protective custody shall

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immediately and within 24 hours, orally and in writing, notify the person responsible for the child's welfare, the reasons for the need to take the child into protective custody and shall immediately notify Child Protective Services.

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

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

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

(h) In no case shall protective custody be maintained longer than three working days without a preliminary hearing. If at the hearing it is determined that protective custody shall be continued, Child Protective Services shall, within 48 hours of the time of the hearing, file a petition with the Superior Court of Guam pursuant to § 13305.

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

§ 13303. Authorization for Photographs, X-rays and Radiological or Other Diagnostic Examination.

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

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

§ 13304. Service Plan.

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

(b) The service plan should set forth:

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

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

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

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

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

(2) The specific consequences that may be reasonably anticipated to result from the parties' success or failure in complying with, performing and completing, if possible, each and every term and condition of the service plan, including but not limited to the consequence that, unless the family is willing and able to provide the child with a safe family home within the reasonable period of time specified in the service plan, their respective parental and custodial duties and rights shall be subject to termination; and

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

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

(e) If a member of a child's family whom Child Protective Services deems to be necessary to the success of the service plan cannot or does not understand or agree to the terms and conditions set forth in the service plan, Child Protective Services shall proceed pursuant to § 13305.

§ 13305. Petition.

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

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

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

(B) The name, age, birthdate, sex and residential address of the child;

(C) The names and last known residential addresses of the member or members of the child's family required to be notified

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pursuant to § 13306, and other persons who are to be made parties to the child protective proceeding at the time of the filing of the petition; and

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

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

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

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

§ 13306. Summons.

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

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

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

(d) The summons shall state:

**“YOUR PARENTAL AND CUSTODIAL DUTIES AND
RIGHTS CONCERNING THE CHILD OR CHILDREN**

**WHO ARE THE SUBJECT OF THE ATTACHED
PETITION MAY BE TERMINATED BY AWARD OF
PERMANENT CUSTODY IF YOU FAIL TO APPEAR
ON THE DATE SET FORTH IN THIS SUMMONS.”**

§ 13307. Service of Summons.

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

(b) If any person summoned as provided in this section, without reasonable cause, shall fail to appear, the court may proceed in such person’s absence or such person may be proceeded against for contempt of court pursuant to § 13326. Where the summons cannot be personally served, or where a person served fails to obey the summons, or in any case when it shall be made to appear to the court that the service will be ineffectual, or that the best interests of the child require that the child be brought before the court, the court may issue either a warrant for such person or an order to show cause why contempt shall not be found for failure to appear pursuant to § 13326.

§ 13308. Guardian Ad Litem; Counsel.

(a) The court shall appoint a guardian ad litem for the child to serve throughout the pendency of the child protective proceeding under this Chapter, provided, that a guardian ad litem’s appointment shall

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automatically terminate upon an award of permanent custody of the child by the court, unless otherwise ordered by the court. The court may appoint additional counsel for the child pursuant to subsection (c) or independent counsel for any other party if such party is indigent, the child protective proceeding is complex, counsel is necessary to protect the party's interests adequately and the interests are not represented adequately by another party who is represented by counsel.

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

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

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

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(e) A guardian ad litem shall:

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

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

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

§ 13309. Reports to be Submitted by Child Protective Services; Social Worker Expertise.

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

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

(1) Evaluate fully all relevant prior and current information concerning whether the child's family is presently willing and able to provide the child with a safe family home, including, if the family previously entered into a voluntary or court ordered service plan, the parties' success or failure in complying with, performing and completing, if possible, each and every term and condition of the service plan;

(2) In each proceeding, subsequent to adjudication, recommend

(A) A service plan as set forth in § 13304 or revisions to the existing service plan, and, if so, set forth the proposed services or revisions; or

(B) An award of permanent custody to an appropriate authorized agency, and, if so, set forth the basis for such recommendation which shall include but not be limited to an

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evaluation of each of the criteria set forth in § 13324 (a), including the written permanency plan as set forth in § 13323; and

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

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

§ 13310. Evidentiary Determination; Burden of Proof.

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

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

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

(d) In a permanency plan hearing:

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

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

§ 13311. Evidence May be Inadmissible in Other Actions or Proceedings; Testimony by a Child.

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

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

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

§ 13312. Recording a Statement or the Testimony of a Child.

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

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

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

(3) Every person in the recording is identified.

§ 13313. Admissibility of Evidence.

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

§ 13314. Required Findings Concerning Notice Prior to a Hearing in a Child Protective Proceeding.

(a) No hearing may commence under this Chapter unless the court enters a finding that each of the parties required to be notified pursuant to § 13306 has been served with a copy of the petition, provided that if a member or members of the child's family required to be notified pursuant to § 13306 have not been served, the court may proceed to hear any child

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protective proceeding under this Chapter and enter orders concerning the parties who have been served if the court is satisfied that:

- (1) A reasonable effort has been made to effect personal service;
- (2) It would not be in the best interests of the child to postpone the proceeding until service can be effectuated; and
- (3) The child is represented by a guardian ad litem or counsel.

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

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

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

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

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

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

(3) If a member of the child's family required to be notified pursuant to § 13306 was served and appears on the continued hearing date and moves the court that a prior order be vacated or modified, the court shall set the oral motion to vacate prior orders for a hearing and order that the moving party file a written motion and serve the other parties with proper written notice of the motion and hearing date.

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

§ 13315. Order of Protection.

(a) Upon submission of the declaration in support of an ex parte order pursuant to subsection (g) of § 13302 or at a temporary foster custody hearing, the court may make an order of protection. Such an order may include but need not be limited to a requirement that a party:

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

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

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

(b) An order of protection granted ex parte pursuant to subsection (g) of § 13302 shall expire in three working days after a child is taken into protective custody.

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

§ 13316. Temporary Foster Custody Hearing.

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

(b) At the temporary foster custody hearing, the court on its own motion may order that the child immediately be released from protective custody and returned to the child's family home under such terms and conditions, including, but not limited to, orders which may be entered pursuant to subsection (d) of § 13317, as are deemed by the court to be in the best interests of the child; provided that upon such return, the child and the child's family members who are parties shall be under the supervision of Child Protective Services prior to the fact-finding hearing.

(c) After a temporary foster custody hearing, if the court determines that there is reasonable cause to believe that placement in temporary foster care is necessary to protect the child from harm or threatened harm, it shall order that the child remain in the temporary foster custody of Child Protective Services under such terms and conditions, including but not limited to orders which may be entered pursuant to subsection (d) of § 13317 as are deemed by the court to be in the best interests of the child; provided that prior to ordering placement or continued placement in any proceeding under this chapter:

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

(2) If siblings or psychologically bonded children are removed from their family home, the court shall order that every reasonable effort be made to place them together, unless it is not in the best interests of the children.

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

§ 13317. Preliminary Hearing.

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

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

(c) The preliminary hearing shall be continued for a period not to exceed 15 working days, upon the court's own motion or upon the motion of a party, if the court determines that it would be in the best interests of the child that further investigation be conducted and information concerning whether the child should remain in temporary foster custody be provided to

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the court by each of the parties, prior to rendering a determination as to whether the child should remain in temporary foster custody prior to a fact-finding hearing.

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

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

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

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

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

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

(6) An appropriate order of protection be entered;

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

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(8) Child Protective Services or other appropriate authorized agency prepare a written or oral supplemental report pursuant to § 13309 and submit the report to the court, the guardian ad litem and all parties prior to or upon the date of the continued or next hearing; or

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

§ 13318. Answering Date; Fact-Finding Hearing.

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

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

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

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

§ 13319. Sustaining or Dismissing Petition; Interim Orders.

(a) If facts sufficient to sustain the petition are established, the court shall enter an order finding that the child is a child whose physical or psychological health or welfare has been harmed or is subject to threatened harm by the acts or omissions of the child's family and shall state the grounds for the finding; provided that if all parties consent, the grounds for the finding may be based upon the report or reports submitted pursuant to § 13309 or other stipulated evidence may be admitted into evidence subject to reservation by the parties of their right to cross-examination subject to subsection (c) of § 13309.

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

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

(1) Determine, based upon the facts adduced during the fact-finding hearing and any other additional facts presented to it, whether temporary foster custody should be continued or should be entered pending an order of disposition. The court shall consider all relevant prior and current information for determining whether the child's family is willing and able to provide the child with a safe family home, and the report or reports submitted pursuant to § 13309, and proceed pursuant to subsection (c) of § 13316 prior to rendering a determination; and

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

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

§ 13320. Disposition Hearing.

(a) The court may consider any information relevant to disposition which is in the best interests of the child; provided that the court shall determine initially whether the child's family home is a safe family home. The court shall consider fully all relevant prior and current information for determining whether the child's family is willing and able to provide the child with a safe family home, and the report or reports submitted pursuant to § 13309, in rendering such a determination.

(b) If the court determines that the child's family is presently willing and able to provide the child with a safe family home without the supervision of Child Protective Services, the court shall terminate jurisdiction.

(c) If the court determines that the child's family home is a safe family home with the supervision of Child Protective Services, the court shall place

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the child and the child's family members who are parties under the supervision of an authorized agency, return the child to the child's family home and enter further orders, including but not limited to, restrictions upon the rights and duties of the authorized agency, as the court deems to be in the best interests of the child.

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

(e) If the child's family home is determined not to be safe, even with the supervision of Child Protective Services pursuant to subsection (d), the court may, and if the child has been residing outside the family home for a period of two years shall, set the case for a permanency plan hearing and order that the authorized agency submit a report pursuant to § 13309.

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

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

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

§ 13321. Long-term Foster Custody.

(a) Long-term foster custody divests from each legal custodian and family member who has been summoned pursuant to § 13306 and vests in a long-term custodian each of the parental and custodial duties and rights of a legal custodian and family member including but not limited to the following:

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

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

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

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

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

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

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

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

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

(f) If Child Protective Services receives a report that the child has been harmed or is subject to threatened harm by the acts or omissions of the long-

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term custodian or custodians of the child, Child Protective Services may automatically assume physical custody of the child; provided that, in any event, Child Protective Services shall immediately notify the court and the court shall set the case for a progress hearing within ten working days, from the date that Child Protective Services assumed physical custody of the child, unless the court deems a later date to be in the best interests of the child.

§ 13322. Progress Hearings.

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

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

(c) Child Protective Services or other appropriate authorized agency shall make every reasonable effort to submit a written report, pursuant to § 13309, or a written explanation regarding why the report is not being submitted timely to the court, with copies to the parties or their counsel or guardian ad litem at least three days before the date set for each progress hearing.

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

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

(2) Recommend whether the court should enforce the consequences set forth in the order of disposition pertaining to compliance or noncompliance by the parties with the terms and conditions of the order; and

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

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(e) Upon each progress hearing the court shall consider fully all relevant prior and current information for determining whether the child's family is willing and able to provide the child with a safe family home, including but not limited to the report or reports submitted pursuant to § 13309, and

(1) Make a determination pursuant to the terms of subsections (b) through (e) of § 13324;

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

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

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

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

§ 13323. Permanency Plan.

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

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

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

(B) The reason why adoption is not the plan;

(2) A specific written plan including:

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

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

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

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

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

§ 13324. Permanency Plan Hearing.

(a) At the permanency plan hearing, the court shall consider fully all relevant prior and current information for determining whether the child's family is willing and able to provide the child with a safe family home, including but not limited to the report or reports submitted pursuant to § 13309, and determine whether there exists clear and convincing evidence that:

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

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

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

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

(B) Such presumption increases in importance proportionate to the youth of the child upon foster custody by the court; and

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

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

(1) That the existing order of disposition be terminated and that the prior award of foster custody be revoked;

(2) That permanent custody be awarded to an appropriate authorized agency;

(3) That an appropriate permanency plan be implemented concerning the child whereby the child will:

(A) Be adopted pursuant to §§ 221.1 et seq. of the Civil Code of Guam; provided, that the court shall presume that it is in the best interests of the child to be adopted, unless the child is in the permanent custody of family or persons who have become as family and who for good cause are unwilling or unable to adopt the child but are committed to and are capable of being the child's permanent custodians; or

(B) Remain in permanent custody until the child is subsequently adopted or reaches the age of 18, and that such status shall not be subject to modification or revocation except upon a showing of extraordinary circumstances to the court.

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

(1) The permanency plan hearing be continued for a reasonable period of time not to exceed six months from the date of the continuance;

(2) The authorized agency submit a written report pursuant to § 13309; and

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

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

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

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

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

(B) Terminate jurisdiction; or

(C) Award supervision to an authorized agency;

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

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

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

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

§ 13325. Payment for Service or Treatment Provided to a Party or For a Child's Care, Support or Treatment.

Whenever a service or treatment is provided to a party, or whenever care, support or treatment of a child is provided under this Chapter, after due notice to the persons or legal entities legally obligated to pay for such service, treatment, care or support of the child, and after a hearing, the court may order that such a legally obligated person pay, in such a manner as the court may direct, a reasonable sum that will cover in whole or in part the cost of the service or treatment provided to the party, or the cost of the care,

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support or treatment provided for the child. The provisions of § 13326 and all other remedies available under the law shall be applicable to enforce such orders.

§ 13326. Failure to Comply with Terms or Conditions of an Order of the Court.

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

§ 13327. Appeal.

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

§ 13328. Court Records.

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

§ 13329. Confidentiality.

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

(b) Information received pursuant to this Chapter may be released, on a need to know basis, and only as necessary to serve and protect the child, to the following, except that release of the identity of persons reporting child abuse is strictly prohibited, unless disclosed pursuant to subsection (d) of § 13203 of the Child Abuse and Neglect Reporting Act:

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(1) Multidisciplinary items established to assist in the disposition of cases pursuant to § 13331;

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

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

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

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

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

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

(8) A duly authorized official of the department.

(c) At any time, a victim or alleged victim of child abuse, the parents of a victim or alleged victim of child abuse, or a perpetrator or alleged perpetrator of child abuse, after a court proceeding has been initiated regarding the abuse, may review, upon written request, all information contained in the central register or in any report filed pursuant to § 13203 of this Chapter except information which would identify the reporter of the abuse.

(d) Information received pursuant to this Chapter may be released to sources other than those identified in subsections (b) and (c) only when a

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written authorization from an individual designated in subsection (c) specifically provides consent to have the record released or reviewed.

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

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

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

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

(A) What portion of the record is desired;

(B) Whether the record is desired orally, through review or by receipt of reproduced copies of the record requested;

(C) The name of the individual authorized to receive the record or to review the record, and the individual's agency connection, if any;

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

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

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

(4) Reproduced copies of records requested shall be provided at a cost related to the cost of reproduction. Actual postage cost shall be charged.

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

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

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

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

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

§ 13330. Cooperation.

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

§ 13331. Multidisciplinary Teams.

Child protective agencies are authorized to establish multidisciplinary teams for the prevention, intervention and treatment of child abuse and neglect.

§ 13332. Fiscal Responsibility.

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

§ 13333. Regulations; Authority to Make.

Departments and agencies mentioned in this Chapter shall adopt regulations necessary to implement this Chapter pursuant to the Administrative Adjudication Law.

§ 13334. Severability Clause.

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

§ 13335. Effective Date.

The provisions of this Chapter shall take effect immediately upon its enactment.

ARTICLE 4
THE LANIKATE *PROTEHI Y FAMAGU'ON-TA* ACT

SOURCE: Entire article added by P.L. 31-097:1 (Sept. 30, 2011).

§13400. Title.

§13401. Task Force Composition.

§13402. Duties of the Task Force on the Prevention of Sexual Abuse of Children.

§13403. Task Force Recommendations.

§13404. Policies Addressing Sexual Abuse.

§13400. Title.

This Article *shall* be known, and may be cited as “The LaniKate *Protehi Y Famagu'on-ta* Act.”

§13401. Task Force Composition.

The Task Force *shall* be comprised of the following:

(a) a representative of the Courts of Guam appointed by the Chief Justice;

(b) the Director of the Department of Public Health and Social Services or his designee;

(c) the Director of the Department of Mental Health & Substance Abuse or his designee;

(d) the Attorney General of Guam or his designee;

(e) the Superintendent of the Department of Education or his designee;

(f) the Chief of Police of the Guam Police Department or his designee;

(g) the Director of the Victims Advocates Reaching Out or his

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designee;

(h) the Executive Director of Catholic Social Service or his designee;

(i) the Director of Sanctuary Incorporated or his designee;

(j) the Chairperson of the Association of Individual, Marriage and Family Therapists or his designee;

(k) the President of the University of Guam or his designee;

(l) a representative of the Guam Youth Congress; and

(m) a representative of the Coalition Against Sexual Assault and Family Violence.

The Attorney General *shall* convene the Task Force until a presiding officer is selected by a majority vote of the membership. The members of the Task Force *shall* serve without compensation.

§13402. Duties of the Task Force on the Prevention of Sexual Abuse of Children.

The Task Force *shall* meet at the call of the presiding officer and make recommendations for preventing child sexual abuse in Guam.

In making recommendations, the Task Force *shall*:

(a) gather information concerning child sexual abuse throughout Guam;

(b) receive reports and testimony from individuals, government of Guam agencies, community-based organizations, and any other public and private organizations;

(c) create goals for local policy that would prevent child sexual abuse; and

(d) submit a report with its recommendations to *I Maga'lahen Guåhan* and *I Liheslaturan Guåhan* by April 1, 2012. Any further recommendations *shall* be transmitted annually thereafter.

§13403. Task Force Recommendations.

The Task Force recommendations may include proposals for specific statutory changes and methods to foster cooperation among and improving services of government of Guam agencies, community-based organizations,

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throughout the Department of Education, and other public and private organizations, to prevent and reduce child sexual abuse on Guam.

§13404. Policies Addressing Sexual Abuse.

The Task Force *shall* adopt and recommend policies addressing sexual abuse of children that may include age-appropriate curriculum for students in pre-K through fifth (5th) grade; training for school personnel on child sexual abuse; educational information to parents or guardians provided in the school handbook on the warning signs of a child being sexually abused, along with any needed assistance, referral, or resource information; available counseling and resources for students affected by sexual abuse; and emotional and educational support for a child affected by sexual abuse to continue to be successful in school. Any policy adopted may address without limitation:

- (a) methods for increasing teacher, student, and parent awareness of issues regarding sexual abuse of children, including knowledge of likely warning signs indicating that a child may be a victim of sexual abuse;
- (b) actions that a child who is a victim of sexual abuse should take to obtain assistance and intervention; and
- (c) available counseling options for students affected by sexual abuse.
