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CH. 4 PARENT AND CHILD
CHAPTER 4
PARENT AND CHILD

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§ 4101. Legitimate Children.

All children born in wedlock are presumed to be legitimate.

SOURCE: CC §193.

§ 4102. Same; Out of Wedlock.

All children of a woman who has been married, born within ten (10) months after the dissolution of the marriage, are presumed to be legitimate children of that marriage.

SOURCE: CC §194.

§ 4103. Who May Dispute.

The presumption of legitimacy can be disputed only by the husband or wife, or the descendant of one or both of them. Illegitimacy, in such case, may be proved like any other fact.

SOURCE: CC §195.

§ 4104. Parent's Obligation to Children.

The parent entitled to the custody of a child must give him support and education suitable to his circumstances. If the support and education which the father of a legitimate child is able to give are inadequate, the mother must assist him to the extent of her ability.

SOURCE: CC §196.

§ 4105. Support.

The father as well as the mother of an illegitimate child must give him support and education suitable to his circumstances. A civil suit to enforce such obligations may be maintained in behalf of a minor illegitimate child by his mother or guardian, and in such action the court shall have power to order and enforce performance thereof, the same as under §8403, §8405, and §8406 of this Title, in a suit for divorce by a wife.

SOURCE: CC §196a.

CROSS-REFERENCES: See 5 GCA Chapter 34 for the law relative to enforcing child support through the Office of the Attorney General.

§ 4105.1. Payments for Disabled Children and for Education.

If a child residing on Guam is disabled before the age of eighteen (18), the court may, at any time before the child reaches the age of twenty-one (21) years, find that both parents (or the

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surviving parent if one is deceased) have a mutual obligation to support the child beyond the age of majority, and based upon such findings, order either or both of the parents to pay continuing child support for the benefit of such child directly to the child or his guardian, as is appropriate. Such support may be modified in the same manner as child support may be terminated if no longer needed, shall continue for as long as the child is disabled and requires support, and shall be treated as child support for purposes of this Title. Such support may be enforced by the child, the child's guardian, either parent, or the Attorney General.

The parents may in an acknowledged writing or stipulated court order agree that they have a mutual obligation to provide educational assistance to a minor child after the age of majority, and may agree that support shall continue for a child after the age of eighteen (18) for a time certain for purposes of educational assistance. In any case where the parties stipulate that one or both of the parties have a continuing obligation for the child's education, with the amount of support subject to modification as to the amount according to child support guidelines and the demonstrated needs of the child, the agreement may be enforced by the Attorney General, either parent, or the child if over the age of eighteen (18). In such cases, said support shall be treated as child support for purposes of the Title, **except** that such support shall be paid directly to the child after the age of eighteen (18)."

SOURCE: CC §196b added by P.L. 22-99:12.

NOTE: Section 196b, Title II, Chapter I of the Guam Civil Code has been changed to § 4105.1 and is added to Title 19, Guam Code Annotated. Amended by Compiler in order to reflect correct citation and grammatical errors as reported by the former Chief of Staff of the Committee on Judiciary of the 22nd Guam Legislature. See Internal Memorandum to AG dated 3/24/95 by Asst. AG, Family Div. The error was a misplaced "." in the second to final sentence. The correction reads ". . . needs of the child, the . . ."

§ 4106. Custody.

The father and mother of a legitimate unmarried minor child are equally entitled to its custody, services and earnings. If either the father or mother be dead or unable or refuse to take the

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custody or has abandoned his or her family, the other is entitled to its custody, services and earnings.

SOURCE: CC §197.

§ 4107. Living Separate; Rights Are Equal.

The husband and father, as such, has no rights superior to those of the wife and mother, in regard to the care, custody, education, and control of the children of the marriage, while such husband and wife live separate and apart from each other.

SOURCE: CC §198.

§ 4108. Exclusive Control, Decree Of.

Without application for a divorce, the husband or the wife may bring an action for the exclusive control of the children of the marriage; and the court may, during the pendency of such action, or at the final hearing thereof, or afterwards, make such order or decree in regard to the support, care, custody, education, and control of the children of the marriage, as may be just and in accordance with the natural rights of the parents and the best interests of the children, and may at any time thereafter amend, vary, or modify such order or decree, as the natural rights and the interests of the parties, including the children, may require.

SOURCE: CC §199.

§ 4109. Custody; Illegitimate Child.

The mother of an illegitimate unmarried minor is entitled to its custody, services, and earnings.

SOURCE: CC §200.

§ 4110. Allowance to Parent.

The proper court may direct an allowance to be made to the parent of a child out of its property, for its past or future support and education, on such conditions as may be proper whenever such direction is for its benefit.

SOURCE: CC §201.

CROSS-REFERENCES: See 5 GCA Chapter 34 and Guidelines issued pursuant thereto for specific guidance on the amounts of child support to be awarded and the means of enforcing the award.

§ 4111. Control of Child's Property.

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The parent, as such, has no control over the property of the child.

SOURCE: CC §202.

§ 4112. Remedy; Parental Abuse.

The abuse of parental authority is the subject of judicial cognizance in a civil action brought by the child, or by its relative within the third degree, or by the Attorney General; and when the abuse is established, the child may be freed from the dominion of the parent, and the duty of support and education enforced.

SOURCE: CC §203.

§ 4113. Parental Authority.

The authority of a parent ceases:

- (a) Upon appointment, by a court, of a guardian of the person of a child;
- (b) Upon the marriage of the child; or
- (c) Upon its attaining majority.

SOURCE: CC §204.

§ 4114. Deceased Parent's Estate; Child's Support.

If a parent, chargeable with the support of a child, dies leaving it a public charge and leaving an estate sufficient for its support, the Attorney General or guardian appointed, may claim provision for its support from the parent's estate by civil action and for this purpose may have the same remedies as any creditors against the estate and against the heirs, devisees, and next of kin of the parent.

SOURCE: CC §205.

§ 4115. Reciprocal Duty: Parents and Children.

It is the duty of the father, the mother, and the children of any poor person who is unable to maintain himself by work, to maintain such person to the extent of their ability. The promise of an adult child to pay for necessaries previously furnished to such parent is binding.

SOURCE: CC §206.

§ 4116. Parent's Liability For Necessaries of Child.

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If a parent neglects to provide articles necessary for his child who is under his charge, according to his circumstances, a third person may in good faith supply such necessaries, and recover the reasonable value thereof from the parent.

SOURCE: CC §207.

§ 4117. Same; Non-liability.

A parent is not bound to compensate the other parent, or a relative, for the voluntary support of his child, without an agreement for compensation, nor to compensate a stranger for the support of a child who has abandoned the parent without just cause.

SOURCE: CC §208.

§ 4118. Stepchildren; Husband Not Liable.

A husband is not bound to maintain his wife's children by a former husband; but if he receives them into his family and supports them, it is presumed that he does so as a parent, and, where such is the case, they are not liable to him for their support, nor he to them for their services.

SOURCE: CC §209.

§ 4119. Parents Supporting; Compensation.

Where a child, after attaining majority, continues to serve and to be supported by the parent, neither party is entitled to compensation, in the absence of an agreement therefor.

SOURCE: CC §210.

§ 4120. Relinquishment of Custody and Services to Child.

The parent, whether solvent or insolvent, may relinquish to the child the right of controlling him and receiving his earnings. Abandonment by the parent is presumptive evidence of such relinquishment.

SOURCE: CC §211.

§ 4121. Minor's Wages.

The wages of a minor employed in service may be paid to him, until the parent or guardian entitled thereto gives the employer notice that he claims such wages.

SOURCE: CC §212.

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§ 4122. Child's Residence Follows Parent.

A parent entitled to the custody of a child has a right to change his residence, subject to the power of the proper court to restrain a removal which would prejudice the rights or welfare of the child.

SOURCE: CC §213.

§ 4123. Wife Living Separate; Minor Children.

When a husband and wife live in a state of separation without being divorced, any court of competent jurisdiction, upon application of either if an inhabitant of Guam, may inquire into the custody of any unmarried minor child of the marriage and may award the custody of such child to either, for such time and under such regulations as the case may require. The decision of the court must be guided by the rules prescribed in §9108 of this Title.

SOURCE: CC §214.

§ 4124. Legitimation of Children.

(a) A child is considered legitimate for all purposes if:

(1) The parents of the child were married at the conception of the child or at anytime after the conception of the child, and before the child's eighteenth birthday; or

(2) The child is legitimate on the effective date of this Act; or

(3) The child is legitimate under the laws of the place of his birth; or

(4) If the parents have jointly executed an affidavit before the eighteenth birthday of the child, affirming that the signatories are the natural, biological parents of the child, affirming the paternity of the child, indicating the birthrate of the child, and affirming their desire to legitimate the child. Any such affidavit shall be conclusive as to the legitimacy of the child. The Director of Public Health may make appropriate changes as to parentage, name, and other matters on the child's birth certificate based on such affidavit.

(b) Petition for legitimating children.

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(1) Any natural parent in Guam may petition the court for an order affirming the legitimacy of his or her child, based upon the affidavit as provided for in Subsection (a)(2) of this Section, or based upon the marriage of the parents. The court shall have jurisdiction to make such an order if either parent is a resident of Guam or if the child is a resident of Guam, as residence is defined in §§8318 and 8319 of this Title. Before such an order can be entered, both parents must file affidavits that no other persons have claimed to be parents of said child and file an acknowledged consent to the court's legal name be changed to reflect the natural father's family name.

(2) Upon entry of an order of legitimacy, pursuant to this Section, the court shall transmit a copy of said order to the Director of Public Health or to the office issuing the child's birth certificate, as appropriate, which shall make appropriate changes to the birth certificate to reflect the correct name and parentage of the child.

(3) A child shall be considered legitimate for all purposes if, before the child's eighteenth birthday, a court of competent jurisdiction has determined the paternity of said child, in any divorce action, paternity action, or action for support. The Superior Court shall have the jurisdiction and authority to determine paternity in such actions, notwithstanding other provisions of law, but shall order a complete investigation and home study by court personnel or by personnel from the Department of Public Health before issuing an order determining paternity in such cases, unless both of the parents agree as to the issue of paternity or the lack of it.

Nothing in this Section shall be construed to de-legitimize any person who is legitimate under the laws of the place of his birth or who is legitimate on the effective date of this Act.

SOURCE: CC §215, as repealed and reenacted by P.L. 18-30:67, effective February 24, 1986.

§ 4125. Birth Record.

Every record of a birth shall contain the name of the infant born, and of its parents, grandparents, the place and date of birth, and the name of the attending physician or midwife.

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SOURCE: CC §216.

§ 4126. Same; Duty to Record.

The parents of newly born infants shall report to the Director of Administration the name and the other required details within ten (10) days of the birth, under penalty of a fine of Two Dollars and Fifty Cents (\$2.50).

SOURCE: CC §217.

**ARTICLE 2
CHILDREN BY ADOPTION**

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- § 4218. Invalidation.
- § 4219. Subsequent Adoption.
- § 4220. Decrees of Other Jurisdictions.
- § 4221. Special Provisions.

NOTE: Chapter II of Title II, Part III, Division First of the Civil Code (§§221-230; §222 as amended by P.L. 12-51 and §224 as amended by P.L. 13-66:1) were repealed by P.L. 13-133:1 and a new Chapter II was enacted in its place as §§221.1-221.21. These Sections have been placed in Title 19 by the Compiler and renumbered §§ 4201-4221, 19 GCA.

§ 4201. Purposes.

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The purpose of this Article is to protect and promote the welfare of children, natural parents and adoptive parents and thereby promote the welfare of the territory of Guam. To this end, the following basic safeguards are provided herein:

- (a) that the child is legally free for adoption;
- (b) that the natural parents' consent to the adoption or that the parent-child relationship has been terminated by judicial decree;
- (c) that the child is placed in a proposed adoptive home by the Division of Social Services except in adoptions by close relatives;
- (d) required social studies and consideration of the reports of these studies by the court prior to judgment on adoption petitions;
- (e) a period of time for the child to live within the proposed adoptive home under the guidance of the Division of Social Services;
- (f) new birth certificates following adoption decrees;
- (g) authority of the court to order temporary substitute care for children found in unsuitable homes; and
- (h) confidentiality of records.

SOURCE: CC §221.1 enacted by P.L. 13-133:1.

§ 4202. Definitions.

When used in this Article, unless the text otherwise requires:

- (a) *Court* means the Superior Court of Guam.
- (b) *Child* means a person less than eighteen (18) years of age.
- (c) *Adult* means a person eighteen (18) years of age or older.
- (d) *Legal custody* means a status created by court order embodying the following rights and responsibilities:
 - (1) the right to have the physical possession of the child;

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(2) the right and the duty to protect, train and discipline the child; and

(3) the responsibility to provide the child with food, shelter, education and ordinary medical care, provided that such rights and responsibilities shall be exercised subject to the powers, rights, duties and responsibilities of the guardian of the person and subject to residual parental rights and responsibilities if these have not been terminated by judicial decree.

(e) *Guardianship* of the person with respect to a child means the duty and authority to make important decisions in matters having a permanent effect on the life and development of the child, and to be concerned about the general welfare of the child. It includes but is not necessarily limited either in number or kind to:

(1) the authority to consent to marriage, to enlistment in the Armed Forces of the United States, to major medical, psychiatric and surgical treatment, to represent the minor in legal actions, and to make other decisions concerning the child of substantial legal significance;

(2) the authority and duty of reasonable visitation, except to the extent that such right of visitation has been limited by court order;

(3) the rights and responsibilities of legal custody except where legal custody has been vested in another individual or the Division of Social Services;

(4) when the parent-child relationship has been terminated by judicial decree with respect to the parent, or only living parent, the authority to consent to the adoption of the child and to make any other decision concerning the child which the child's parents could make.

(f) *Guardian ad litem* means a person appointed by the court to protect the interest of a child or an incompetent in a case before the court.

(g) *Parent* means:

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(1) the mother; or

(2) the father as to whom a child is legitimate; or

(3) a person as to whom a child is presumed to be a legitimate child; or

(4) an adoptive parent but such term does not include a parent as to whom the parent-child relationship has been terminated by judicial decree.

(h) *Parent-child* relationship includes all rights, privileges, duties and obligations existing between parent and child, including inheritance rights.

(i) *Residual parental rights and responsibilities* means those rights and responsibilities remaining with the parent (where there has not been termination of the parent-child relationship by judicial decree) after the transfer of legal custody and guardianship of the person, including but not necessarily limited to, the right to reasonable visitation, consent to adoption, the right to determine the child's religious affiliation and the responsibility for support.

(j) *Protective supervision* means a legal status created by court order in proceedings not involving violations of law but where the legal custody of the child is subject to change, whereby the child is permitted to remain in his home under the supervision of the Division of Social Services and is subject to return to the court during the period of protective supervision.

(k) *Relative to the child within the second degree either by blood or affinity* includes stepparents, sisters, brothers, grandparents, aunts and uncles.

(l) *Division* means Division of Social Services.

SOURCE: CC §221.2 enacted by P.L. 13-133:1.

§ 4203. Who May Adopt.

The following persons if they are residents of the territory of Guam are eligible to adopt children:

(a) the husband and wife jointly, or either the husband or wife if the other spouse is a parent of the child;

(b) an unmarried adult;

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(c) a married adult who by judicial decree has been accorded the right to reside separate and apart from his or her spouse.

SOURCE: CC §221.3 enacted by P.L. 13-133:1.

§ 4204. Prerequisite to Petition.

Except when a petition is filed by a relative of the child within the second degree either by blood or affinity, no petition for adoption shall be entertained unless prior to the filing of the petition:

(a) a decree of termination of the parent-child relationship with respect to each living parent of the child sought to be adopted has been entered; and

(b) the child sought to be adopted has been placed for adoption with the petitioner by the Division.

SOURCE: CC §221.4 enacted by P.L. 13-133:1.

§ 4205. Petition.

An adoption proceeding shall be initiated by filing in duplicate with the court, a petition for adoption which is verified by the petitioner, and which specifies:

(a) the full name, age and place of residence of the petitioner, and if he is married, the place and date of the marriage, and his relationship, if any, to the child;

(b) except where the petitioner is a relative of the child within the second degree either by blood or affinity, and allegation that a decree of termination of the parent-child relationship with respect to each living parent of the child sought to be adopted has been entered and that such child was placed for adoption with the petitioner by the Division and the date of said placement;

(c) the date and place of birth of the child;

(d) the name of the child used in the proceeding, and if a change in name is desired, the new name;

(e) that it is the desire of the petitioner that the relationship of parent and child be established between him and the child;

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(f) a full description and statement of value of all property owned or possessed by the child;

(g) that the child is present in the territory of Guam.

SOURCE: CC §221.5 enacted by P.L. 13-133:1.

§ 4206. Consent.

(a) Where a petition is filed by a relative of the child within the second degree either by blood or affinity, no adoption of such child may be ordered unless the written consent to the adoption of the child by the petitioner is given by each parent of the child or if there is no parent, by the guardian of the child's person. A minor parent may consent to an adoption but his consent shall be effective only when concurred by his parents or his guardian of the person.

(b) Where a petition is filed by any other person, no adoption of a child may be ordered unless the written consent to the adoption of such child by the petitioner is given by the child's guardian of the person. Where the consent of a guardian of the child's person is required, the court may dispense with such consent only if it finds that the withholding of such consent is arbitrary and capricious. Consents shall be acknowledged before a notary public and witnessed by a representative of the court.

(c) Where the child is twelve (12) years of age or older, the adoption shall not be granted without his consent. Such consent shall be given in court or shall be in writing in such form as the court may direct.

SOURCE: CC §221.6 enacted by P.L. 13-133:1.

§ 4207. Same: Filing.

Written consent required by § 4206(a) shall be attached to the adoption petition. In the case of a consent by a guardian of the child's person, the guardian shall file directly with the court satisfactory evidence of his authority to consent to adoption of the child. Where the parent-child relationship has been terminated by judicial decree a certified copy of the termination decree shall be filed directly with the court by the guardian of the child's person.

SOURCE: CC §221.7 enacted by P.L. 13-133:1.

§ 4208. Same: Withdrawal.

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Withdrawal of any consent filed in connection with a petition for adoption hereunder shall not be permitted, except that the court after notice and opportunity to be heard is given to the petitioner in the adoption proceeding, to the person seeking to withdraw consent and to the Division may, if it finds that the best interest of the child will be furthered thereby, issue a written order permitting the withdrawal of such consent. The entry of an order of adoption renders any consent irrevocable.

SOURCE: CC §221.8 enacted by P.L. 13-133:1.

§ 4209. Notice: Service.

After a petition has been filed, the court shall set the time and place for a hearing and shall cause notice thereof to be served on the petitioner and on the Division. Notice shall be given by personal service or by registered or certified mail.

SOURCE: CC §221.9 enacted by P.L. 13-133:1.

§ 4210. Social Study.

Upon the filing of a petition, the court shall direct that a social study be made by the Division and that a report in writing of such study be submitted to the court prior to the hearing, except that where the child's guardian or the person whose consent to adoption is required is an officer of the Division, it shall file with the court prior to the hearing a report of its social study. The court may order additional social studies if it deems necessary. The social study shall include the social history, the present condition of the child, the child's placement in the home of the petitioners and his adjustment therein, the suitability of such home and such other information as may be pertinent to the adoption proceeding, and the report submitted shall include a recommendation and the reasons therefore as to whether or not the petition for adoption should be granted and shall be accompanied by a verified transcript of the child's birth certificate. The purpose of the social study is to aid the court in making disposition of the petition and shall be considered by the court prior thereto.

SOURCE: CC §221.10 enacted by P.L. 13-133:1.

§ 4211. Residence Requirement.

The hearing on petition shall not be held until the child has lived twelve (12) months in the home of the petitioner under the

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supervision of the Division. The twelve - month residence requirement or any part thereof may be waived by order of the court on the motion of the petitioner of the Division involved in this proceeding if the court is satisfied that the best interests of the child will be furthered thereby.

SOURCE: CC §221.11 enacted by P.L. 13-133:1.

§ 4212. Hearing Procedure.

Cases under this Article shall be heard by the court without a jury. The hearing may be conducted in an informal manner and may be adjourned from time to time. Stenographic notes or mechanical recording of the hearing shall be required as in other civil cases in the court, unless all parties waive the right to such a record and the court so orders. The petitioner, the parent who is the spouse of a petitioner and the child to be adopted shall attend unless the court orders otherwise. Only such other persons shall be admitted to the hearing as the judge shall find to have a direct interest in the case or the work of the court; provided that persons so admitted shall not disclose any information secured at the hearing which would identify an individual child or parent. In addition, the court may require the presence of witnesses (including persons making any report, study or examination which is before the court when such persons are reasonably available) deemed necessary to the disposition of the petition. The court may appoint a guardian ad litem for the child if it is deemed necessary or desirable.

The court's findings shall be based upon a preponderance of evidence provided that relevant and material information of any nature, including that contained in reports, studies or examinations, may be admitted and relied upon to the extent of its probative value. When information contained in a report, study or examination is admitted in evidence, the person making such a report, study or examination shall be subject to both direct and cross-examination when he is reasonably available.

SOURCE: CC §221.12 enacted by P.L. 13-133:1.

§ 4213. Decree.

If after the hearing and consideration of the report required by § 4210, the court is satisfied that the requirements of this Article have been met and that the adoption is in the best

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interests of the child, the court shall make an order granting the adoption. The order may change the name of the child to that of the petitioner. The order of the court shall be in writing and shall recite the findings upon which such order is based. Such order shall be conclusive and binding on all persons from the date of entry. The clerk of the court shall mail a copy of every adoption decree to the Territory's Office of Vital Statistics. The procedures specified in 10 GCA §§3114 and 3115, shall be adhered to upon receipt of copy of adoption decree.

SOURCE: CC §221.13 enacted by P.L. 13-133:1.

NOTE: Reference to procedures changed by Compiler to reflect GCA numbering system.

§ 4214. Same: Effect.

(a) Upon entry of the decree of adoption, the relationship of parent and child and all the legal rights, privileges, duties, obligations and other legal consequences of the natural relationship of child and parent shall thereafter exist between the adopted child and the adoptive parents the same as though the child were born to the adoptive parents in lawful wedlock. The adopted child shall be entitled to inherit real and personal property from and through the adoptive parents and the adoptive parents shall be entitled to inherit real and personal property from and through the adopted child the same as though the child were born to the adoptive parents in lawful wedlock.

(b) Upon entry of the decree of adoption, the relationship of parent and child between the adopted child and the persons who were his parents just prior to the decree of adoption shall be completely severed and all the legal rights, privileges, duties, obligations and other legal consequences of the relationship shall cease to exist, including the right of inheritance, except that where the adoption is by the spouse of the child's parent, the relationship of the child to such parent shall remain unchanged by the decree of adoption.

SOURCE: CC §221.14 enacted by P.L. 13-133:1.

§ 4215. Withdrawal or Denial of Petition.

(a) In any case in which the petition is withdrawn or denied the court shall order the removal of the child from the proposed adoptive home if the court finds that such removal is in the

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child's best interest. If such removal is ordered, the court shall vest temporary legal custody of the child in the Division with power to remove the child and to plan for the child's welfare and the court shall fix responsibility for temporary child support, provided, however, that where the parent-child relationship has been terminated by judicial decree, the Division or individual granted legal custody of the child by such decree shall, unless the court otherwise orders, continue to act in such capacity, and such individual or the Division shall be similarly empowered to remove the child from the proposed adoptive home. The court shall in addition certify the case to an appropriate court for such further action as may be necessary.

(b) In any cases in which the petition is withdrawn or denied and the court does not order the removal of the child, the court shall certify the case for such further action as may be necessary.

SOURCE: CC §221.15 enacted by P.L. 13-133:1.

§ 4216. Abatement.

In the event of the death of the petitioner, the proceeding shall abate and the petition for adoption shall be dismissed, but where there are two petitioners and one of the petitioners dies, the proceeding shall continue uninterrupted as if the death had not occurred.

SOURCE: CC §221.16 enacted by P.L. 13-133:1.

§ 4217. Records.

The files and records of the court in any proceeding had under this Article shall be kept in a separate locked file and shall be withheld from public inspection. Such files and records may, pursuant to rule of court or special order of the court, be opened for inspection by persons and agencies having a legitimate interest in the case and their attorneys and by other persons and agencies having a legitimate interest in the protection, welfare or treatment of the child or in research studies. As used in this Section, the words *files and records* include the court docket and entries therein, the petitions and other papers filed in any case, transcripts of testimony taken by the court, and findings, orders and decrees, and other writings filed in proceedings before the court, other than social records.

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Social records shall be withheld from public inspection except that information from such records may be furnished to persons and agencies having a legitimate interest in the protection, welfare and treatment of the child or in research studies, in such manner as the court determines. As used in this Section, the words *social records* include the social service records of the court, the social studies and reports of the court, the social studies and reports referred to in § 4210, and related papers, and correspondence, including medical, psychological and psychiatric studies and reports, either in the possession of the court or the Division.

No person shall be entitled to make copies of such files and records or social records or parts thereof unless the court so orders.

It shall be unlawful, except for purposes for which files and records or social records or part thereof or information therefrom have been released pursuant to this Section, or except for purposes permitted by special order of the court, and in accordance with any applicable rules of the court, for any person to disclose, receive or make use of, or authorize, knowingly permit, participate in or acquiesce in the use of any information concerning any person before the court directly or indirectly derived from the files and records or communications of the court, or social records, or acquired in the course of the performance of official duties.

Any person who shall disclose information in violation of the provisions of this Section shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than Five Hundred Dollars (\$500.00) or imprisoned for a period not to exceed six (6) months, or both.

SOURCE: CC §221.17 enacted by P.L. 13-133:1.

§ 4218. Invalidation.

After two (2) years from the date the adoption decree is entered, any irregularity in the proceeding shall be deemed cured and the validity of the decree shall not thereafter be subject to attack on any such ground in any collateral or direct proceeding.

SOURCE: CC §221.18 enacted by P.L. 13-133:1.

§ 4219. Subsequent Adoption.

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The adoption of an adopted person is authorized, and in that case, the references to the parents are to adoptive parents.

SOURCE: CC §221.19 enacted by P.L. 13-133:1.

§ 4220. Decrees of Other Jurisdictions.

Where an adoption has been judicially decreed by a court in the United States, such decree shall have the same force and effect as to matters within the jurisdiction of the territory of Guam as though it had been granted by the court.

SOURCE: CC §221.20 enacted by P.L. 13-133:1.

§ 4221. Special Provisions.

(a) In the case of a child whose admission to the United States (territory of Guam) as an eligible orphan with non-quota immigrant status pursuant to the Federal Immigration and Nationality Act is sought for the purposes of adoption in the territory of Guam, the following pre-adoption requirements shall be observed:

(1) the foster parents or parent must present to the court, a verified written application containing the information set forth in Subsection (b) of this Section, in such form as the court may prescribe for an order of pre-adoption investigation to determine whether the adoption may be in the best interests of the child.

(2) the foster parents must appear for examination before the court.

(3) the application must be accompanied by duly authenticated documentary evidence:

(i) that the child is an alien who is eligible for immigration to the United States under federal laws and regulations, as a non-quota immigrant for purposes of adoption in the Territory of Guam;

(ii) that he is an orphan because of the death or disappearance of both parents, or because of abandonment, or desertion by, or separation or loss from both parents, or who has only one parent due to the death or disappearance of, abandonment, or desertion by, or separation or loss from the other parent, and the remaining parent is incapable of providing care for

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such orphan and has in writing irrevocably released him for immigration and adoption, and has consented to the proposed adoption. In all cases where the orphan has no remaining parent under the circumstances set forth above, documentary evidence must be presented that the person, public authority or duly constituted agency having lawful custody of the orphan at the time of making of the application, hereunder, had in writing irrevocably released him for immigration and adoption and has consented to the proposed adoption; and

(iii) that the foster parents agree to adopt and treat the foster child as their or his own lawful child.

(4) in addition thereto such additional releases and consents as the court may in its sound discretion require.

(b) The verified written application shall contain the following information:

(1) the names and place of residence of the foster parent or parents;

(2) whether they are of full age;

(3) whether they are married or unmarried and, if married, whether they are living together as husband and wife;

(4) the name, date and place of birth of the foster child as nearly as the same can be ascertained;

(5) the religious faith of the foster parent or parents;

(6) the religious faith of the foster child and his parents as nearly as the same can be ascertained;

(7) the occupation and approximate income of the foster parent or parents, and the name by which the foster child is to be known;

(8) that no previous application has been made to any court or judge for the relief sought or if so made, the disposition of it and a statement as to whether the foster child has been previously adopted, if such fact is known to the foster parent or parents;

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(9) the facts which establish that the child is an eligible orphan who would be entitled to enter the United States with non-quota immigrant status for the purpose of adoption in the territory of Guam, pursuant to the Federal law, in such case made;

(10) the circumstances whereby, and the names and addresses of the intermediaries, if any, through whom the foster parent or parents learned of the existence and eligibility of the child and the names and addresses of the person or persons, public authority or duly constituted agency in the land of the child's residence executing the written release of the child for emigration and adoption, and the consent to such adoption, the circumstances under which the release and consent were obtained, insofar as they are known to the foster parent or parents;

(11) a statement that the foster parent or parents have had no more than one petition previously approved by the Attorney General of the United States for non-quota immigration status, on behalf of an alien child who qualified under Federal law as an eligible orphan unless any such petitions have been so approved as necessary to prevent the separation of brothers and sisters or that the instant petition had been previously approved by special act of the Congress.

(c) Upon receiving the verified written application, required documentary evidence, agreement and consents, the court upon finding that the applicable provisions of this Section have been complied with and that it appears that the proposed adoption may be in the best interests of the child, shall issue an order of pre-adoption investigation hereunder. The order of pre-adoption investigation shall require that the report of such investigation be made by the Division. The caseworker shall make a written report of his investigation into the truth and accuracy of the statements in the application and where applicable, into the validity of the documentary evidence, submitted with the application, and he shall ascertain as fully as possible and incorporate in his report the various factors which may bear upon the determination of the application for adoption including, but not limited to, the following information:

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- (1) the marital and family status, and history, of foster parents;
- (2) the physical and mental health of the foster parents;
- (3) the property owned by and the income of the foster parents;
- (4) the compensation paid or agreed upon with respect to the placement of the child for adoption;
- (5) whether either foster parent has ever been respondent in any proceeding concerning allegedly neglected, abandoned or delinquent children;
- (6) the desirability of bringing the child into the territory of Guam for adoption;
- (7) any other facts relating the familial, social, religious, emotional and financial circumstances of the foster parents which may be relevant to a determination of suitability of the adoption.

The written report of pre-adoption investigation shall be submitted to the court within thirty (30) days after the same is directed to be made, unless for good cause shown, the court shall grant a reasonable extension of such period. The report shall be filed before the court shall issue its pre-adoption certificate that it appears that the adoption is in the best interests of the child.

(d) On the return of the pre-adoption investigation order the judge shall take proof of the facts shown by such investigation. If the court is satisfied that the adoption is in the best interests of the child, and that there has been compliance with all requirements hereof, and is satisfied that the moral and temporal interests of the child will be promoted by the adoption, it shall issue an original certificate under seal and two (2) certified copies thereof, setting forth the fact that a pre-adoption investigation has been conducted, and proof duly taken thereon, and reciting the documents and papers submitted therewith and stating that in the opinion of the court it is in compliance with all applicable laws and that it appears from such investigation that the moral and temporal interests of the child will be promoted by

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the proposed adoption. The original certificate shall be filed with the clerk of the court, one (1) certified copy with the Social Services Administrator, and the foster parents shall receive the second certified copy. The fact that the foster child was born out of wedlock shall in no case appear in such certificate. The written report of pre-adoption investigation together with all other papers pertaining to the pre-adoption investigation and the original certificate shall be kept by the court as a permanent record and such papers must be sealed by the court and withheld from inspection. No person shall be allowed access to such sealed records and original certificate and any index thereof except upon an order of the court. No order for access and inspection shall be granted except on due notice to the foster parents and on good cause shown. The court may open, vacate or set aside such certificate for fraud, newly-discovered evidence or other sufficient cause.

(e) The adoption of a child who has been brought in the United States and the Territory for such purpose and placed with the foster parent or parents, shall be effected after issuance of the pre-adoption certificate, in the manner provided by this Title, excepting that:

(1) the petition shall also recite the pre-adoption proceedings; and

(2) the court may in its discretion for good cause shown, waive a subsequent investigation. In such case the order or adoption shall recite the reason for such action.

(f) In any case where there has been a failure to comply with the requirements of this Section, if applicable, no order of adoption shall be made until one (1) year after the court shall have received the petition to adopt. The court may shorten such waiting period for good cause shown, and, in such case, the order of adoption shall recite the reason for such action.

SOURCE: CC §221.21 enacted by P.L. 13-133:1. Subsection (a)(3)(i) as amended by P.L. 18-6:14.

ARTICLE 3
TERMINATION OF THE PARENT-CHILD RELATIONSHIP

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- § 4301. Purpose.
- § 4302. Definitions.
- § 4303. Petition, Grounds.
- § 4304. Same: Contents.
- § 4305. Notice.
- § 4306. Guardian Ad Litem.
- § 4307. Social Study Prior to Disposition.
- § 4308. Hearing.
- § 4309. Decree.
- § 4310. Effect of Decree.
- § 4211. Court Costs.
- § 4312. Records.
- § 4313. Termination Decrees of Other States.

NOTE: Chapter III of Title II, Part III, Division First of the Civil Code (§231) was repealed by P.L. 13-133:2 and a new Chapter III was enacted as §§231.1-231.13. Sections 231.1-231.13 have been renumbered §§ 4301-4313, 19 GCA by the Compiler.

§ 4301. Purpose.

The purpose of this Article is to provide for voluntary severance of the parent-child relationship and for substitution of parental care and supervision by judicial process which will safeguard the rights and interests of all parties concerned and promote their welfare and that of the territory of Guam. Implicit in this Article is the philosophy that wherever possible family life should be strengthened and preserved and that the issue of severing the parent-child relationship is of such vital importance as to require a judicial determination in place of attempts as severance by contractual arrangements, express or implied, for the surrender or relinquishment of children. This judicial action is intended primarily for those situations where other judicial remedies appear inappropriate.

SOURCE: CC §231.1 enacted by P.L. 13-133:2.

§ 4302. Definitions.

When used in this Article, unless the text otherwise requires:

- (a) The words and terms *court*, *child*, *division*, *legal custody*, *guardianship of the person*, *guardian ad litem*,

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parent, parent-child relationship, residual parental rights and responsibilities and *protective supervision* shall have the same meaning as in Article 2 of this Chapter.

(b) *Neglected* used with respect to a child refers to a situation in which the child lacks proper parental care necessary for his health, morals and well-being.

(c) *Parties* includes the child and the petitioners.

SOURCE: CC §231.2 enacted by P.L. 13-133:2.

§ 4303. Petition, Grounds.

(a) A petition may be filed by a parent either directly or through the Division. The parent-child relationship may be terminated with respect to the parent by whom or on whose behalf such petition has been filed, where the court finds that such termination is in the best interest of the parent and the child.

(b) A petition for termination of the parent-child relationship with respect to a parent who is not the petitioner may be filed by a petitioner designated in Subsection (c). The petition may be granted where the court finds that one or more of the following conditions exists:

(1) that the parent has abandoned the child in that the parent has made no effort to maintain a parental relationship with such child;

(2) that the parent has substantially and continuously or repeatedly neglected the child;

(3) that the presumptive parent is not a natural parent of the child;

(4) that the parent is unable to discharge parental responsibilities because of mental illness or mental deficiency, and there are reasonable grounds to believe that such condition will continue for a prolonged indeterminate period.

(5) that the parent is found by clear and convincing evidence to have committed an act of criminal sexual conduct as defined in 9 GCA § 25.15, 9 GCA § 25.20, 9 GCA § 25.25, or 9 GCA § 25.30, or other equivalent offense under the laws of another state, territory, or

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possession, against the petitioner, which resulted in the conception of the child. A criminal conviction of criminal sexual conduct is not required to terminate parental rights under this Paragraph.

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

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

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

(c) The petition under Subsection (b) may be filed by the following:

- (1) either parent when termination of the parent-child relationship is sought with respect to the other parent;
- (2) the guardian of the person or the legal custodian of the child or the person standing in loco parentis to the child;
- (3) the Division;
- (4) any other person having a legitimate interest in the matter.

SOURCE: CC §231.3 enacted by P.L. 13-133:2. Subsection (b)(5) added by P.L. 35-091:2 (June 26, 2020).

§ 4304. Same: Contents.

The petition for the termination of the parent-child relationship shall include, to the best information or belief of the petitioner:

- (a) The name and place of residence of the petitioner;

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- (b) The name, sex, date and place of birth and residence of the child;
- (c) The basis for the court's jurisdiction;
- (d) The relationship of the petitioner to the child, or the fact that no relationship exists;
- (e) The names, addresses and dates of birth of the parents;
- (f) Where the child's parent is a minor, the names and addresses of said minor's parents or guardian of the person;
- (g) The names and addresses of the person having legal custody or guardianship of the person or acting in loco parentis to the child or the organization or authorized agency having legal custody or providing care for the child;
- (h) The grounds on which termination of the parent-child relationship is sought;
- (i) The names and addresses of the persons and authorized agency or officer thereof to whom or to which legal custody of the child might be transferred.

SOURCE: CC §231.4 enacted by P.L. 13-133:2.

§ 4305. Notice.

(a) After a petition has been filed, the court shall set the time and place for a hearing, and shall cause notice thereof to be given to the petitioner, the parents of the child, the guardian of the person of the child, the person having legal custody of the child, any individual standing in loco parentis to the child, and the guardian ad litem of any party.

(b) Where the child's parent is a minor, notice shall also be given to said minor's parents or guardian of the person unless the court is satisfied that such notice is not in the best interest of said minor and that it would serve no useful purpose.

(c) Notice shall be given by personal service. However, where reasonable efforts to effect personal service have been unsuccessful or where it shall appear impracticable to attempt such service the court shall order service by registered or certified mail to the last known address of the person to be notified and by publication once a week for three (3) successive

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weeks in a newspaper of general circulation on Guam. The hearing shall take place no sooner than ten (10) days after service of notice, or where service is by registered or certified mail and publication, the hearing shall take place no sooner than ten (10) days after the date of last publication.

(d) Notice and appearance may be waived by a parent in writing before the court or in the presence of, and witnessed by, a clerk of court or social worker attached to and designated by the court, provided that such parent has been apprised by the court or by such person of the meaning and consequences of the termination action. The parent who has executed such a waiver shall not be required to appear. Where the parent is a minor, the waiver shall be effective only upon approval by the court.

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

SOURCE: CC §231.5 enacted by P.L. 13-133:2. Subsection (e) added by P.L.35-091:3 (June 26, 2020).

§ 4306. Guardian Ad Litem.

When termination of the parent-child relationship is sought under § 4303(b)(4), the court shall appoint a guardian ad litem for the alleged incompetent parent. The court may, in any other case, appoint a guardian ad litem, as may be deemed necessary or desirable, for any party.

SOURCE: CC §231.6 enacted by P.L. 13-133:2.

§ 4307. Social Study Prior to Disposition.

Upon the filing of a petition, the court shall direct that a social study be made either by social service personnel attached to the court or by the Division and that a report in writing of such

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study be submitted to the court prior to the hearing, except that where the Division is a petitioner, either in its own right or on behalf of a parent, a report in writing of the social study made by the Division shall accompany the petition. The court may order such additional social studies as it deems necessary. The social study shall include the circumstances of the petition, the social history, the present condition of the child and parents, proposed plans for the child, and such other facts as may be pertinent to the parent-child relationship. It shall also include a recommendation and the reasons therefore as to whether or not the parent-child relationship should be terminated. Where the parent is a minor, if the report does not include a statement of contact with the parents of said minor, the reasons, therefore, shall be set forth.

SOURCE: CC §231.7 enacted by P.L. 13-133:2.

§ 4308. Hearing.

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

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

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counsel is requested and the parent is financially unable to employ counsel, counsel shall be provided.

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

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

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

SOURCE: CC §231.8 enacted by P.L. 13-133:2. Amended by P.L.35-091:4 (June 26, 2020).

§ 4309. Decree.

Every order of the court terminating the parent-child relationship or transferring legal custody or guardianship of the person of the child or providing for protective supervision of the child shall be in writing and shall recite the findings upon which such order is based. Such order shall be conclusive and binding on all persons from the date of entry.

(a) If the court finds grounds for the termination of the parent-child relationship it shall terminate such relationship and:

(1) appoint an individual as guardian of the child's person; or

(2) appoint an individual as guardian of the child's person and vest legal custody in another individual or in the Division; or

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(3) where it is alleged in the petition that the termination is in contemplation of adoption, appoint an official of the Division as guardian of the child's person and vest legal custody in such agency.

The court shall also make an order fixing responsibility for the child's support. The parent-child relationship may be terminated with respect to one parent without affecting the relationship between the child and the other parent.

(b) Where the court does not order termination of the parent-child relationship, it shall dismiss the petition; provided, however, that where the court finds that the best interest of the child requires substitution or supplementation of parental care and supervision, it shall make an order placing the child under protective supervision, or vesting temporary legal custody in the Division and fixing responsibility for temporary child support, and shall certify the case to an appropriate court for such further action as may be necessary.

SOURCE: CC §231.9 enacted by P.L. 13-133:2.

§ 4310. Effect of Decree.

An order terminating the parent-child relationship shall divest the parent and the child of all legal rights, privileges, duties and obligations, including rights of inheritance, with respect to each other.

SOURCE: CC §231.10 enacted by P.L. 13-133:2.

§ 4311. Court Costs.

All court costs including costs of giving notice and advertising shall be paid by the petitioners. The court, however, may suspend such costs where payment would work a hardship on the petitioner or would be otherwise inappropriate.

SOURCE: CC §231.11 enacted by P.L. 13-133:2.

§ 4312. Records.

(a) The files and records of the court in any proceedings had under this Article shall be kept in a separate locked file and shall be withheld from public inspection, but shall be opened to inspection by persons having a legitimate interest in the case and their attorneys and by an authorized agency to which legal custody of the child has been transferred. Such files and records

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may, pursuant to rule of court or special order of the court, be inspected by other persons and agencies having a legitimate interest in the protection, welfare or treatment of the child or in research studies. As used in this Section, the words *files and records* include the court docket and entries therein, the petitions and other papers filed in any case, transcripts of testimony taken by the court and findings, orders and decrees, and other writings filed in proceedings before the court, other than social records.

(b) Social records shall be withheld from public inspection except that information from such records may be furnished to persons and agencies having a legitimate interest in the protection, welfare and treatment of the child or in research studies, in such manner as the court determines. As used in this Section, the words *social records* include the social service records of the court, the social studies and reports referred to in § 4307, and related papers, and correspondence, including medical, psychological and psychiatric studies and reports, either in the possession of the court or the Division.

(c) No person shall be entitled to make copies of such files and records or social records or parts thereof unless the court so orders.

(d) It shall be unlawful, except for purposes for which files and records or social records or parts thereof or information therefrom have been released pursuant to this Section, or except for purposes permitted by special order of the court, and in accordance with any applicable rules of the court, for any person to disclose, receive or make use of, or authorize, knowingly permit, participate in, or acquiesce in the use of any information concerning any person before the court directly or indirectly derived from the files and records or communications of the court, or social records, or acquired in the course of the performance of official duties. Any person who shall disclose information in violation of the provisions of this Subsection shall be guilty of a misdemeanor and upon conviction thereof shall be fined not to exceed Five Hundred Dollars (\$500.00) or imprisoned for a period not to exceed six (6) months, or both.

SOURCE: CC §231.12 enacted by P.L. 13-133:2.

§ 4313. Termination Decrees of Other States.

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When the relationship of parent and child has been terminated by judicial decree in a state, such decree shall have the same force and effect as to matters within the jurisdiction of this Territory as though it had been granted by a court of this Territory.

SOURCE: CC §231.13 enacted by P.L. 13-133:2.

ARTICLE 4

DECLARATION OF PARENTAL RELATION

§ 4401. Action to Determine Parental Relation.

§ 4401. Action to Determine Parental Relation.

An action may be brought in the Superior Court for the purpose of having declared the existence or non-existence between the parties of the relation of parent and child, by birth or adoption.

SOURCE: CC §235 enacted by P.L. 15-63:1.

NOTE: Chapter III, Title II, Part III of Division First, Civil Code formerly comprised §231, "Declaration of Parental Relation". This Chapter was inadvertently repealed by P.L. 13-133:2 and a new Chapter III enacted in its place. To correct this, §235, which is substantially the same as the original §231, was added to the Civil Code as Chapter IV, same Title, by P.L. 15-63:1. It has now been renumbered by the Compiler.

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