

TWENTY-SECOND NORTHERN MARIANAS COMMONWEALTH

LEGISLATURE

IN THE HOUSE OF REPRESENTATIVES

Regular Session, 2021

H. B. 22-38

A BILL FOR AN ACT

To amend Title 6, Division 5, Chapter 3, Article 2. Protection of Abused Children, to enact a new §5326. Discovery of evidence of child abuse or recordings of child witnesses, and for other purposes.

BE IT ENACTED BY THE 22<sup>ND</sup> NORTHERN MARIANAS  
COMMONWEALTH LEGISLATURE:

- 1           **Section 1. Findings and Purpose.**   The Legislature finds that certain  
2 evidence developed during cases involving children contain sensitive matters that  
3 must be protected from release into the public. Given the ease in which photographs  
4 and video can be uploaded onto the internet and circulated through social media,  
5 special precautions need to be in place to prevent the damage that can come from  
6 sensitive recordings becoming available in public.
- 7           The Legislature also finds that numerous states have addressed this problem  
8 by restricting access to such information. In particular, states have prohibited the  
9 possession, copying or distribution of such materials and limited access to  
10 reasonable viewing during the discovery process of a civil or criminal case. Such

1 restrictions have been found to be constitutionally acceptable. See *Gonzales v.*  
2 *State*, 522 S.W.3d 48 (Tex. App. – Houston [1st Div.] 2017).

3           The Legislature further finds that in the CNMI, for example, the Department  
4 of Youth Services provides forensic interviews of children during investigations  
5 and records those interviews for use by the Office of the Attorney General in civil  
6 and criminal litigation. Without this protection, these recordings could be released  
7 to the public by defense counsel or an accused. The current practice is to provide  
8 defense counsel with reasonable access to the recording in preparing for trial.  
9 However, recently, some defense counsel are demanding copies of the recordings.  
10 Therefore, this Act would protect children from that invasion of privacy and prevent  
11 the release of sensitive materials while providing the accused with reasonable  
12 access.

13           **Section 2. Amendment.** Title 6, Division 5, Chapter 3, Article 2 of the  
14 Commonwealth Code is hereby amended by adding a new section 5326 to read as  
15 follows:

16           “§ 5326. Discovery of evidence of child abuse or recordings of child  
17 witnesses.

18           (a) During the course of a criminal or civil hearing or proceeding, the court  
19 may not make available or allow to be made available, for copying or dissemination  
20 to the public, property or material that:

21                   (1) constitutes child pornography;

1                   (2) is a recording that depicts child abuse; or

2                   (3) is a recording of an interview or statement of a child.

3                   (b) Property or material described by Subsection (a) must remain in the  
4 care, custody, or control of the court or the state.

5                   (c) A court shall deny any request by a defendant to possess, copy,  
6 photograph, duplicate, or otherwise reproduce any property or material described  
7 by Subsection (a), provided that the state makes the property or material reasonably  
8 available to the defendant.

9                   (d) For purposes of Subsection (c), property or material is considered to be  
10 reasonably available to the defendant if, at a facility under the control of the state,  
11 the state provides ample opportunity for the inspection, viewing, and examination  
12 of the property or material by the defendant, the defendant's attorney, and any  
13 individual the defendant seeks to qualify to provide expert testimony at trial.

14                   (e) The court shall place property or material described by Subsection (a)  
15 that has been admitted into evidence under seal of the court on conclusion of the  
16 criminal hearing or proceeding.

17                   (f) A court that places property or material described by Subsection (a)  
18 under seal may issue an order lifting the seal on a finding that the order is in the  
19 best interest of the public and will not cause any harm to the child.”

20                   **Section 3. Severability.** If any provision of this Act or the application of  
21 any such provision to any person or circumstance should be held invalid by a court

1 of competent jurisdiction, the remainder of this Act or the application of its  
2 provisions to persons or circumstances other than those to which it is held invalid  
3 shall not be affected thereby.

4       **Section 4. Savings Clause.** This Act and any repealer contained herein  
5 shall not be construed as affecting any existing right acquired under contract or  
6 acquired under statutes repealed or under any rule, regulation or order adopted  
7 under the statutes. Repealers contained in this Act shall not affect any proceeding  
8 instituted under or pursuant to prior law. The enactment of this Act shall not have  
9 the effect of terminating, or in any way modifying, any liability civil or criminal,  
10 which shall already be in existence at the date this Act becomes effective.

11       **Section 5. Effective Date.** This Act shall take effect upon its approval by  
12 the Governor or upon its becoming law without such approval.


Prefiled: 3/11/2021

Date: 3/11/2021

Introduced by: \_\_\_\_\_

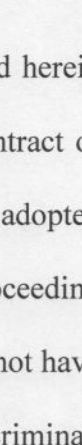


Rep. Celina R. Babauta



Rep. Christina Marie E. Sablan

Reviewed for Legal Sufficiency by:

  
House Legal Counsel