

I Mina'trentai Sais Na Liheslaturan Guåhan
BILL STATUS

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES	NOTES
272-36 (COR)	James C. Moylan	AN ACT TO AMEND CHAPTER 25, TITLE 9, GUAM CODE ANNOTATED, RELATIVE TO INCREASING THE MINIMUM SENTENCE OF FIRST DEGREE CRIMINAL SEXUAL CONDUCT AND ESTABLISHING MINIMUM SENTENCES FOR SECOND, THIRD, AND FOURTH DEGREE CRIMINAL SEXUAL CONDUCT.	3/14/22 8:20 a.m.						

I MINA'TRENTAI SAIS NA LIHESLATURAN GUÅHAN
2022 (SECOND) Regular Session

Bill No. 272-36 (COR)

Introduced by:

James. C. Moylan 

**AN ACT TO AMEND CHAPTER 25, TITLE 9, GUAM
CODE ANNOTATED, RELATIVE TO INCREASING
THE MINIMUM SENTENCE OF FIRST DEGREE
CRIMINAL SEXUAL CONDUCT AND ESTABLISHING
MINIMUM SENTENCES FOR SECOND, THIRD, AND
FOURTH DEGREE CRIMINAL SEXUAL CONDUCT.**

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. *I Liheslaturan Guahan* finds that a stronger message needs to be sent out to offenders when it comes to criminal sexual conduct, specifically with the minimum time served for certain crimes against the most vulnerable. As a community we are seeing an unfortunate increase in criminal sexual conduct cases, specifically with those criminals preying on minors. When an individual becomes a victim of an act of criminal sexual conduct, they are scarred for a lifetime, therefore it is critical that 1). If convicted that the offender shall see the confines of prison for at least 25 years if found guilty of a First-, Second- or Third-Degree charge, and 2). That the government supports and wants to protect the victims of these crimes.

Unfortunately, with plea agreements, an individual can agree to a Fourth-Degree charge of Criminal Sexual Conduct, which presently, if one is a first-time offender, can be a charge of a misdemeanor. It is vital that even at this charge that the minimum prison time be set at 15 years. Amending sentencing laws is just one

1 of several priorities in addressing this problem, and much more must be done by
2 the government and communities in helping the most vulnerable, however this is
3 an important start.

4 **Section 2.** Chapter 25 of Title 9, Guam Code Annotated is hereby *amended*
5 to read as follows:

6 **CHAPTER 25**
7 **SEXUAL OFFENSES**

8 § 25.10 Definitions.

9 § 25.15 First Degree Criminal Sexual Conduct.

10 § 25.20 Second Degree Criminal Sexual Conduct.

11 § 25.25 Third Degree Criminal Sexual Conduct.

12 § 25.30 Fourth Degree Criminal Sexual Conduct.

13 § 25.35 Assault with Intent to Commit Criminal Sexual Conduct.

14 § 25.40 Victim's Testimony Need Not be Corroborated.

15 § 25.45 Resistance Not Required.

16 **§ 25.10. Definitions.**

17 (a) As used in this Chapter:

18 (1) Actor means a person accused of criminal sexual conduct;

19 (2) Force or Coercion includes but is not limited to any of the
20 following circumstances:

21 (A) when the actor overcomes the victim through the
22 actual application of physical force or physical violence;

23 (B) when the actor coerces the victim to submit by
24 threatening to use force or violence on the victim and the victim
25 believes that the actor has the present ability to execute these
26 threats;

1 (C) when the actor coerces the victim to submit by
2 threatening to retaliate in the future against the victim or any
3 other person and the victim believes that the actor has the
4 ability to execute this threat. As used in this Subsection, to
5 retaliate includes threats of physical punishment, kidnapping or
6 extortion;

7 (D) when the actor engages in the medical treatment or
8 examination of the victim in a manner or for purposes which
9 are medically recognized as unethical or unacceptable; or

10 (E) when the actor, through concealment or by the
11 element of surprise, is able to overcome the victim.

12 (3) Intimate Parts includes the primary genital area, groin, inner
13 thigh, buttock, or breast of a human being;

14 (4) Mentally Defective means that a person suffers from a
15 mental disease or defect which renders that person temporary or
16 permanently incapable of appraising the nature of his or her conduct;

17 (5) Mentally Incapacitated means that a person is rendered
18 temporarily incapable of appraising or controlling his or her conduct
19 due to the influence of a narcotic, anesthetic or other substance
20 administered to that person without his or her consent, or due to any
21 other act committed upon that person without his or her consent;

22 (6) Physically Helpless means that a person is unconscious,
23 asleep or for any other reason is physically unable to communicate
24 unwillingness to an act;

25 (7) Personal Injury means bodily injury, disfigurement, mental
26 anguish, chronic pain, pregnancy, disease or loss or impairment of a
27 sexual or reproductive organ;

1 (8) Sexual Contact includes the intentional touching of the
2 victim's or actor's intimate parts or the intentional touching of the
3 clothing covering the immediate area of the victim's or actor's intimate
4 parts, if that intentional touching can reasonably be construed as being
5 for the purpose of sexual arousal or gratification;

6 (9) Sexual Penetration means sexual intercourse, cunnilingus,
7 fellatio, anal intercourse, or any other intrusion, however slight, of any
8 part of a person's body or of any object into the genital or anal
9 openings of another person's body, but emission of semen is not
10 required; and

11 (10) Victim means the person alleging to have been subjected
12 to criminal sexual conduct.

13 (b) Whenever in this Chapter the criminality of conduct depends on a
14 child's being below the age of fourteen (14), it is defense that the defendant
15 reasonably believed the child to be fourteen (14) or older. Whenever in this
16 Chapter the criminality of conduct depends on a child's being below a
17 specified age older than fourteen (14), it is an affirmative defense that the
18 defendant reasonably believed the child to be of that age or above.

19 **§ 25.15. First Degree Criminal Sexual Conduct.**

20 (a) A person is guilty of criminal sexual conduct in the first degree if
21 he or she engages in sexual penetration with the victim and if any of the
22 following circumstances exists:

23 (1) the victim is under fourteen (14) years of age;

24 (2) the victim is at least fourteen (14) but less than sixteen (16)
25 years of age and the actor is a member of the same household as the
26 victim, the actor is related to the victim by blood or affinity to the
27 fourth degree to the victim, or the actor is in a position of authority

1 over the victim and used this authority to coerce the victim to submit,
2 or the actor does not know the victim but coerced the victim to
3 submit;

4 (3) sexual penetration occurs under circumstances involving the
5 commission of any other felony;

6 (4) the actor is aided or abetted by one or more other persons
7 and either of the following circumstances exists:

8 (A) the actor knows or has reason to know that the victim
9 is mentally defective, mentally incapacitated, or physically
10 helpless; or

11 (B) the actor uses force or coercion to accomplish the
12 sexual penetration.

13 (5) the actor is armed with a weapon, or any article used or
14 fashioned in a manner to lead the victim to reasonably believe it to be
15 a weapon;

16 (6) the actor causes personal injury to the victim and force, or
17 coercion is used to accomplish sexual penetration; and

18 (7) the actor causes personal injury to the victim, and the actor
19 knows or has reason to know that the victim is mentally defective,
20 mentally incapacitated, or physically helpless.

21 (b) Criminal sexual conduct in the first degree is a felony in the first
22 degree. Any person convicted of criminal sexual conduct under § 25.15(a)
23 shall be sentenced to a minimum of twenty-five ~~fifteen~~ (25 ~~15~~) years
24 imprisonment, and may be sentenced to a maximum of life imprisonment
25 without the possibility of parole. The term imposed shall not be suspended,
26 as indicated in § 80.60 of Article 4, Chapter 80, Title 9 GCA; nor shall work
27 release or educational programs outside the confines of prison be granted;

1 nor shall the provisions under § 80.31 of Article 2, Chapter 80, Title 9 GCA
2 apply. Any such sentence shall include a special parole term of not less than
3 three (3) years in addition to such time of imprisonment.

4 (c) Any person convicted of criminal sexual conduct under § 25.15(a)
5 subsequent to a first conviction of criminal sexual conduct under Guam law
6 or a conviction of a sex offense from another jurisdiction that has an element
7 that would constitute sexual contact or sexual penetration, as defined in §
8 25.10 of this Chapter shall be sentenced to a minimum of twenty-five (25)
9 years imprisonment and may be sentenced to life imprisonment without the
10 possibility of parole. Said term shall not be suspended as indicated in §
11 80.60 of Article 4, Chapter 80, Title 9 GCA; nor shall parole, work release
12 or educational programs outside the confines of prison be granted.

13 **§ 25.20. Second Degree Criminal Sexual Conduct.**

14 (a) A person is guilty of criminal sexual conduct in the second degree
15 if the person engages in sexual contact with another person and if any of the
16 following circumstances exists:

17 (1) the victim ~~that other person~~ is under fourteen (14) years of
18 age;

19 (2) the victim ~~that other person~~ is at least fourteen (14) but less
20 than sixteen (16) years of age and the actor is a member of the same
21 household as the victim, or is related by blood or affinity to the fourth
22 degree to the victim, ~~or~~ is in a position of authority over the victim
23 and the actor used this authority to coerce the victim to submit, or the
24 actor does not know the victim but coerced them to submit;

25 (3) sexual contact occurs under circumstances involving the
26 commission of any other felony;

1 (4) the actor is aided or abetted by one or more other persons
2 and either of the following circumstances exists:

3 (A) the actor knows or has reason to know that the victim
4 is mentally defective, mentally incapacitated, or physically
5 helpless; or

6 (B) the actor uses force or coercion to accomplish the
7 sexual contact.

8 (5) the actor is armed with a weapon, or any article used or
9 fashioned in a manner to lead a person to reasonably believe it to be a
10 weapon;

11 (6) the actor causes personal injury to the victim and force, or
12 coercion is used to accomplish the sexual contact; and

13 (7) the actor causes personal injury to the victim and the actor
14 knows or has reason to know that the victim is mentally defective,
15 mentally incapacitated, or physically helpless.

16 (b) Criminal sexual conduct in the second degree is a felony in the
17 first degree, Any person convicted of criminal sexual conduct under §
18 25.20(a) shall be sentenced to a minimum of twenty-five (25) years
19 imprisonment and may be sentenced to a maximum of life imprisonment
20 without the possibility of parole. ~~but a~~ A person convicted of criminal
21 sexual conduct in the second degree who receives a sentence of
22 imprisonment *shall not* be eligible for work release or educational programs
23 outside the confines of prison. The term imposed shall not be suspended, as
24 indicated in § 80.60 of Article 4, Chapter 80, Title 9 GCA; nor probation be
25 imposed in lieu of said minimum term; nor shall parole be granted; nor shall
26 the provisions under § 80.31 of Article 2, Chapter 80, Title 9 GCA apply.

1 Any such sentence shall include a special parole term of not less than three
2 (3) years, in addition to such time of imprisonment.

3 (c) Any person convicted of criminal sexual conduct under § 25.20(a)
4 subsequent to a first conviction of criminal sexual conduct under Guam law
5 or a conviction of a sex offense from another jurisdiction that has an element
6 that would constitute sexual contact or sexual penetration as defined in §
7 25.10 shall be sentenced to a minimum of twenty-five ~~fifteen~~ (25 ~~15~~) years
8 imprisonment and may be sentenced to life imprisonment without the
9 possibility of parole. Said term shall not be suspended; nor probation be
10 imposed in lieu of said term, as indicated in § 80.60 of Article 4, Chapter 80,
11 Title 9 GCA; nor shall parole, work release or educational programs outside
12 the confines of prison be granted.

13 **§ 25.25. Third Degree Criminal Sexual Conduct.**

14 (a) A person is guilty of criminal sexual conduct in the third degree if
15 the person engages in sexual penetration with another person and if any of
16 the following circumstances exists:

17 (1) that other person is at least fourteen (14) years of age and
18 under sixteen (16) years of age;

19 (2) force or coercion is used to accomplish the sexual
20 penetration; and

21 (3) the actor knows or has reason to know that the victim is
22 mentally defective, mentally incapacitated, or physically helpless.

23 (b) Criminal sexual conduct in the third degree is a felony of the
24 second degree. Any person convicted of criminal sexual conduct under §
25 25.25(a) shall be sentenced to a minimum of twenty-five (25) years
26 imprisonment, and may be sentenced to a maximum of life imprisonment
27 without the possibility of parole. A person convicted of criminal sexual

1 conduct in the third degree who receives a sentence of imprisonment shall
2 not be eligible for work release or educational programs outside the confines
3 of prison. The term imposed shall not be suspended, as indicated in § 80.60
4 of Article 4, Chapter 80, Title 9 GCA; nor probation be imposed in lieu of
5 said minimum term; nor shall parole be granted; nor shall the provisions
6 under § 80.31 of Article 2, Chapter 80, Title 9 GCA apply. Any such
7 sentence shall include a special parole term of not less than three (3) years,
8 in addition to such time of imprisonment.

9 (c) Any person previously convicted of criminal sexual conduct under
10 § 25.25(a) subsequent to a first conviction of criminal sexual conduct under
11 Guam law or a conviction of a sex offense from another jurisdiction that has
12 an element that would constitute sexual contact or sexual penetration as
13 defined in § 25.10 of this Chapter shall be sentenced to a minimum of
14 twenty-five ten (25 40) years imprisonment without the possibility of parole.
15 Said term shall not be suspended; nor probation be imposed in lieu of said
16 term, as indicated in § 80.60 of Article 4, Chapter 80, Title 9 GCA; nor shall
17 parole, work release or educational programs outside the confines of prison
18 be granted.

19 **§ 25.30. Fourth Degree Criminal Sexual Conduct.**

20 (a) A person is guilty of criminal sexual conduct in the fourth degree
21 if he or she engages in sexual contact with another person and if either of the
22 following circumstances exists:

23 (1) force or coercion is used to accomplish the sexual contact;

24 (2) the actor knows or has reason to know that the victim is
25 mentally defective, mentally incapacitated, or physically helpless.

26 (b) Criminal sexual conduct in the fourth degree is a felony of the
27 third degree, except for first time offenders it is a fourth degree felony

1 ~~misdemeanor.~~ Any person convicted of criminal sexual conduct as a fourth
2 degree felony under § 25.30(a) shall be sentenced to a minimum of fifteen
3 (15) years imprisonment, and may be sentenced to a maximum of twenty-
4 five (25) years imprisonment. A person convicted of criminal sexual
5 conduct in the fourth degree who receives a sentence of imprisonment shall
6 not be eligible for work release or educational programs outside the confines
7 of prison. The term imposed shall not be suspended, as indicated in § 80.60
8 of Article 4, Chapter 80, Title 9 GCA; nor probation be imposed in lieu of
9 said minimum term; nor shall parole be granted; nor shall the provisions
10 under § 80.31 of Article 2, Chapter 80, Title 9 GCA apply. Any such
11 sentence shall include a special parole term of not less than three (3) years,
12 in addition to such time of imprisonment.

13 (c) Any person convicted of criminal sexual conduct under § 25.30(a)
14 subsequent to a first conviction of criminal sexual conduct under Guam law
15 or a conviction of a sex offense from another jurisdiction that has an element
16 that would constitute sexual contact or sexual penetration as defined in §
17 25.10 shall be sentenced to a minimum of fifteen (15) years imprisonment
18 and may be sentenced to a maximum of twenty-five (25) years. Said term
19 shall not be suspended; nor probation be imposed in lieu of said term, as
20 indicated in § 80.60 of Article 4, Chapter 80, Title 9 GCA; nor shall parole,
21 work release or educational programs outside the confines of prison be
22 granted.

23 **§ 25.35. Assault with Intent to Commit Criminal Sexual Conduct.**

24 Assault with intent to commit criminal sexual conduct involving penetration
25 is a felony in a third degree.

26 **§ 25.40. Victim's Testimony Need Not be Corroborated.**

1 The testimony of a victim need not be corroborated in prosecutions under §§
2 25.15 through 25.35.

3 **§ 25.45. Resistance Not Required.**

4 A victim need not resist the actor for a proper prosecution under §§ 25.15
5 through 25.35.

6 **Section 3. Severability.** If any provision of this Act or its application to
7 any person or circumstance is found to be invalid or contrary to law, such
8 invalidity *shall not* affect other provisions or applications of this Act that can be
9 given effect without the invalid provision or application, and to this end the
10 provisions of this Act are severable.

11 **Section 4. Effective Date.** The Act *shall* be effective upon enactment.