

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
243-36 (LS)	Mary Camacho Torres Therese M. Terlaje Tina Rose Muña Barnes Amanda L. Shelton James C. Moylan Jose "Pedro" Terlaje V. Anthony Ada Frank Blas Jr. Clynton E. Ridgell Joe S. San Agustin Christopher M. Dueñas Sabina F. Perez	AN ACT TO AMEND §25.10(a), §25.15(a)(4)-(7), §25.20(a)(4)-(7), §25.25(a)(3), AND §25.30(a)(2), ALL OF CHAPTER 25, TITLE 9, GUAM CODE ANNOTATED, RELATIVE TO DEFINING "CONSENT," REVISING THE LANGUAGE OF "MENTALLY DEFECTIVE" TO "MENTALLY IMPAIRED," AND EXPANDING THE DEFINITION OF "MENTAL INCAPACITATION" AND "PHYSICALLY HELPLESS."	1/26/22 8:00 a.m.						

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

Bill No.243-36 (LS)

Introduced by:

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AN ACT TO AMEND §25.10(a), §25.15(a)(4)-(7), §25.20(a)(4)-(7), §25.25(a)(3), AND §25.30(a)(2), ALL OF CHAPTER 25, TITLE 9, GUAM CODE ANNOTATED, RELATIVE TO DEFINING "CONSENT," REVISING THE LANGUAGE OF "MENTALLY DEFECTIVE" TO "MENTALLY IMPAIRED," AND EXPANDING THE DEFINITION OF "MENTAL INCAPACITATION" AND "PHYSICALLY HELPESS."

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. *I Liheslaturan Guåhan* finds that common law has long prohibited intercourse with victims whose permanent or temporary physical conditions preclude them from consenting to sexual activity. Consequently, the majority of U.S. jurisdictions, including Guam, contemplate

1 physical helplessness, mental impairment, and/or mental incapacitation in
2 determining degrees of criminal sexual conduct.

3 *I Liheslaturan Guåhan* finds however that prevailing standards address only
4 the most extreme cases of inability or incapacitation. Specifically, while Guam law
5 recognizes criminal sexual conduct against a “physically helpless” individual
6 (presently defined as “unconscious,” “asleep,” or “physically unable to
7 communicate” [9 GCA, § 25.10(a)(6)]), the current standard does not adequately
8 address cases in which a) intoxication falls short of complete unconsciousness, or b)
9 the victim drifts in and out of consciousness. Further, Guam’s standard of “mental
10 incapacitation” is restricted to circumstances in which an actor clandestinely or
11 forcefully administers intoxicants to the victim (9 GCA, § 25.10(a)(5)). A victim of
12 sexual assault who voluntarily consumed an intoxicating substance is therefore not
13 considered mentally incapacitated under Guam law, regardless of the inability to
14 meaningfully understand the nature of a sexual act that follows.

15 *I Liheslaturan Guåhan* further finds there is legal and moral justification for
16 clear prohibitions against knowingly assaulting voluntarily intoxicated individuals.
17 As stated in a legal analysis conducted in the *Brooklyn Law Review*, “engaging in
18 sexual penetration with people whose ability to communicate non-consent was
19 significantly impaired due to intoxication exemplifies the exploitation of others by
20 taking advantage of their vulnerability” (2017, p. 1090). The willingness to become
21 temporarily impaired does not equate to consent, nor should an individual be less
22 worthy of protection under the law by choosing to consciously and legally consume
23 intoxicating substances.

24 *I Liheslaturan Guåhan* duly notes that the Minnesota Supreme Court
25 overturned a felony rape conviction earlier this year because the victim was
26 intoxicated by her own will during the alleged assault. The court’s interpretation of
27 the state’s mental incapacitation definition, which bear similar construction to

1 Guam’s present statute, underscored a need to change current language that govern
2 alcohol-facilitated assault. The Minnesota Supreme Court noted, “if the Legislature
3 intended for the definition of mentally incapacitated to include voluntarily
4 intoxicated persons, ‘it is the Legislature’s prerogative to reexamine the...statute and
5 amend it accordingly.’ *State v. Rick*, 835 N.W.2d 478, 486 (Minn. 2013), *abrogated*
6 *on other grounds by State v. Thonesavanh*, 904 N.W.2d 432 (Minn. 2017). It has
7 done so recently to address other perceived gaps in the criminal sexual conduct
8 statutes” (*State v. Khalil*, 956 N.W.2d 627 (2021)). On June 29, 2021, the Minnesota
9 State Legislature passed H.F. No. 63, which expanded the state’s definition of
10 “mentally incapacitated” to include voluntary intoxication. The measure was signed
11 into law by Governor Tim Walz on June 30, 2021.

12 *I Liheslaturan Guåhan* further notes that several other U.S. jurisdictions
13 recognize voluntary intoxication in their criminal sexual assault codes. These
14 include the states of Arizona [§13-1401(A)(7)(b)]; Arkansas [§§5-14-101(5)];
15 California [California Penal Code 261]; Idaho [§18-6101(5)]; Iowa [§709.1A];
16 Kansas [Kansas 21-5503(2)]; Louisiana [§14:43]; Maryland [MD Code, Criminal
17 Law, § 3-301]; Montana [§ 45-2-211(2)(b)]; Oregon [§ 163.305(2)]; South Carolina
18 [§16-3-651(f)], Washington [§9A.44.010(4)], and Wisconsin [940.225(2)(cm)].

19 *I Liheslaturan Guåhan* therefore declares in its considered judgment, the
20 public good, and the general welfare of the people of Guam, that updating language
21 in Guam’s criminal sexual conduct chapter will aid victims by imposing criminal
22 liability on those who know or have reason to know that the victim is impaired,
23 physically helpless, or intoxicated, whether voluntarily or involuntarily.

24 **Section 2.** § 25.10(a) of Chapter 25, Title 9, Guam Code Annotated, is hereby
25 *amended* to read:

26 “(a) As used in this Chapter:

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

1 (2) Consent means words or overt actions by a person indicating a
2 freely given present agreement to perform a particular sexual act with the
3 actor. Consent does not mean the existence of a prior or current social
4 relationship between the actor and the victim or that the victim failed to resist
5 a particular sexual act.

6 (A) A person who is mentally incapacitated or physically
7 helpless as defined by this Chapter cannot consent to a sexual act.

8 (B) Corroboration of the victim's testimony is not required to
9 show lack of consent.

10 ~~(2)~~(3) Force or Coercion includes but is not limited to any of the
11 following circumstances:

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

14 (B) when the actor coerces the victim to submit by threatening to
15 use force or violence on the victim and the victim believes that the actor
16 has the present ability to execute these threats;

17 (C) when the actor coerces the victim to submit by threatening to
18 retaliate in the future against the victim or any other person and the
19 victim believes that the actor has the ability to execute this threat. As
20 used in this Subsection, to retaliate includes threats of physical
21 punishment, kidnapping or extortion;

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

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

1 ~~(3)~~(4) Intimate Parts includes the primary genital area, groin, inner
2 thigh, buttock, or breast of a human being;

3 ~~(4)~~(5) Mentally ~~Defective~~ Impaired means that a person suffers from a
4 mental disease or defect which renders that person ~~temporary~~ temporarily or
5 permanently incapable of appraising the nature of his or her conduct;

6 ~~(5)~~(6) Mentally Incapacitated means

7 (A) that a person is rendered temporarily incapable of appraising
8 or controlling his or her conduct due to the influence of a narcotic,
9 anesthetic or other substance administered to that person without his or
10 her consent, or due to any other act committed upon that person without
11 his or her consent; or

12 (B) that a person is under the influence of any substance or
13 substances to a degree that renders them incapable of consenting or
14 incapable of appreciating, understanding, or controlling the person's
15 conduct.”

16 ~~(6)~~(7) Physically Helpless means that a person is

17 (A) unconscious,

18 (B) asleep,

19 (D) unable to withhold consent or to withdraw consent because
20 of a physical condition, or

21 (E) for any other reason is physically unable to communicate
22 unwillingness to an act;

23 ~~(7)~~(8) Personal Injury means bodily injury, disfigurement, mental
24 anguish, chronic pain, pregnancy, disease or loss or impairment of a sexual or
25 reproductive organ;

26 ~~(8)~~(9) Sexual Contact includes the intentional touching of the victim's
27 or actor's intimate parts or the intentional touching of the clothing covering

1 the immediate area of the victim's or actor's intimate parts, if that intentional
2 touching can reasonably be construed as being for the purpose of sexual
3 arousal or gratification;

4 ~~(9)~~(10) Sexual Penetration means sexual intercourse, cunnilingus,
5 fellatio, anal intercourse or any other intrusion, however slight, of any part of
6 a person's body or of any object into the genital or anal openings of another
7 person's body, but emission of semen is not required; and

8 ~~(10)~~(11) Victim means the person alleging to have been subjected to
9 criminal sexual conduct.”

10 **Section 3.** § 25.15(a)(4)-(7) of Chapter 25, Title 9, Guam Code Annotated,
11 is hereby *amended* to read:

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

14 (A) the actor knows or has reason to know that the victim is
15 mentally ~~defective~~ impaired, mentally incapacitated or physically
16 helpless; or

17 (B) the actor uses force or coercion to accomplish the sexual
18 penetration.

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

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

23 (7) the actor causes personal injury to the victim, and the actor knows
24 or has reason to know that the victim is mentally ~~defective~~ impaired, mentally
25 incapacitated or physically helpless.”

26 **Section 4.** § 25.20(a)(4)-(7) of Chapter 25, Title 9, Guam Code Annotated,
27 is hereby amended to read:

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

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

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

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

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

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

15 **Section 5.** § 25.25(a)(3) of Chapter 25, Title 9, Guam Code Annotated, is
16 hereby amended to read:

17 “(3) the actor knows or has reason to know that the victim is mentally
18 ~~defective~~ impaired, mentally incapacitated or physically helpless.”

19 **Section 6.** § 25.30(a)(2) of Chapter 25, Title 9, Guam Code Annotated, is
20 hereby amended to read:

21 “(2) the actor knows or has reason to know that the victim is mentally
22 ~~defective~~ impaired, mentally incapacitated or physically helpless.”

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