

I Mina'trentai Singko 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
13-35 (COR)	Amanda Shelton Therese M. Terlaje Tina Rose Muña-Barnes Régine Biscoe Lee Jose "Pedro" Terlaje Telena Cruz Nelson	AN ACT TO ADD A NEW CHAPTER 32 TO TITLE 9 OF THE GUAM CODE ANNOTATED, RELATIVE TO PROTECTING ELDERLY ADULTS FROM ABUSE, NEGLECT, AND EXPLOITATION BY PROVIDING CRIMINAL PUNISHMENT FOR THOSE WHO HARM OUR <i>MANÁMKO'</i> AND DISABLED PEOPLE.	1/7/19 12:47 p.m.	1/18/19	Committee on Higher Education and the Advancement of Women, Youth, and Senior Citizens		5/24/19 8:47 a.m. As amended by Committee on Higher Education and the Advancement of Women, Youth, and Senior Citizens	Request: 1/22/19 Fiscal Note Waiver: 2/13/19	Supplemental Document to the Committee Report 5/28/19 12:55 p.m. 11/12/19 As amended by Committee on Higher Education and the Advancement of Women, Youth, and Senior Citizens; as substituted on the Floor.

I MINA' TRENTAI SINGKO NA LIHESLATURAN GUÅHAN
2019 (FIRST) Regular Session

Bill No. 13-35 (COR)

Introduced by:
As amended by the Committee on
Higher Education and the Advancement of
Women, Youth and Senior Citizens; and
substituted on the Floor.

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**AN ACT TO *ADD A NEW* CHAPTER 32 TO TITLE 9 OF THE
GUAM CODE ANNOTATED, RELATIVE TO PROTECTING
ELDERLY PERSONS AND DISABLED ADULTS FROM
~~ABUSE, NEGLECT AND FINANCIAL EXPLOITATION BY~~
PROVIDING CRIMINAL PUNISHMENT FOR THOSE WHO
HARM OUR *MANÅMKO'* AND ~~DISABLED PEOPLE~~
INDIVIDUALS WITH DISABILITIES.**

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1. Short Title.** This act *shall* be cited as the "*Respetu I Manåmko'*
3 *Act.*"

4 **Section 2. ~~Abuse, Neglect, and Exploitation of the Elderly and Disabled~~**
5 **Individuals with Disabilities.** A new Chapter 32 is hereby *added* to Title 9 of the
6 Guam Code Annotated, to read:

"CHAPTER 32

~~ABUSE, NEGLECT AND FINANCIAL EXPLOITATION OF THE~~
9 **ELDERLY AND ~~DISABLED~~ INDIVIDUALS WITH DISABILITIES.**

10

11 **§ 32.10** General Definitions.

1 ~~§ 32.20. Abuse, aggravated abuse, and neglect of an elderly person or~~
2 ~~disabled adult; Defined and punished.~~

3 ~~§ 32.30. Lewd or lascivious offenses committed upon or in the presence~~
4 ~~of an elderly person or disabled person; Defined and punished~~

5 § 32.20. Financial Exploitation of an Elderly Person or Disabled Adult:
6 Defined

7 § 32.30. Permissive Presumption of Exploitation.

8 § 32.40 Financial Exploitation of an Elderly Person or Disabled Adult:
9 Punished.

10 § 32.50. Evidentiary Hearing Required for Custody of Property
11 Determination.

12
13
14 **§ 32.10. General Definitions**

15 As used in this Chapter:

16 (a) 'Business relationship' means a relationship between two or
17 more individuals or entities where there exists an oral or written contract or
18 agreement for goods or services.

19 (b) 'Caregiver' means a person who has been entrusted with or has
20 assumed responsibility for the care or the property of an elderly person or
21 disabled adult.

22 (c) 'Deception' means:

23 (1) the creation or reinforcement of a false impression, including
24 false impressions as to law, value, intention or other state of mind; but
25 deception as to a person's intention to perform a promise shall not be
26 inferred from the fact alone that he did not subsequently perform the
27 promise;

1 (2) the prevention of another from acquiring information which
2 would affect his judgment of a transaction;

3 (3) failure to correct a false impression which the deceiver
4 previously created or reinforced, or which the deceiver knows to be
5 influencing another to whom he stands in a fiduciary or confidential
6 relationship; or

7 (4) the failure to disclose a known lien, adverse claim or other
8 legal impediment to the enjoyment of property which he transfers or
9 encumbers in consideration for the property obtained, whether such
10 impediment is or is not valid, or is not a matter of official record;

11 (5) ‘Deception’ does not include falsity as to matters having no
12 pecuniary significance or puffing by statements unlikely to deceive
13 typical members of the group addressed.

14 (d) ‘Disabled adult’ means a person eighteen (18) years of age or
15 older who suffers from a condition of physical or mental incapacitation due to
16 a developmental disability, organic brain damage, or mental illness, or who
17 has one or more physical or mental limitations that restrict the person's ability
18 to perform the normal activities of daily living.

19 (e) ‘Elderly person’ means a person ~~sixty (60)~~ fifty five (55) years
20 of age or older who is suffering from the infirmities of aging as manifested by
21 advanced age or organic brain damage, or other physical, mental, or emotional
22 dysfunction, to the extent that the ability of the person to provide adequately
23 for the person's own care or protection is impaired.

24 (f) ‘Endeavor’ means to attempt or try.

25 (g) ‘Facility’ means any location providing day or residential care or
26 treatment for elderly persons or disabled adults. The term ‘facility’ may
27 include, but is not limited to, any hospital, training center, nursing home,

1 assisted living facility, adult family-care home, adult day care center, group
2 home, mental health treatment center, or continuing care community.

3 ~~(h) 'Intimidation' means the communication by word or act to an~~
4 ~~elderly person or disabled adult that the elderly person or disabled adult will~~
5 ~~be deprived of food, nutrition, clothing, shelter, supervision, medicine,~~
6 ~~medical services, money, or financial support or will suffer physical violence.~~

7 (i) 'Lacks capacity to consent' means an impairment by reason of
8 mental illness, developmental disability, organic brain disorder, physical
9 illness or disability, chronic use of drugs, chronic intoxication, short-term
10 memory loss, or other cause, that causes an elderly person or disabled adult to
11 lack sufficient understanding or capacity to make or communicate reasonable
12 decisions concerning the elderly person's or disabled adult's person or
13 property.

14 (j) 'Obtains or uses' means any manner of:

15 (1) Taking or exercising control over property; or

16 (2) Making any use, disposition, or transfer of property.

17 (k) 'Position of trust and confidence' with respect to an elderly
18 person or a disabled adult means the position of a person who:

19 (1) Is a parent, spouse, adult child, or other relative by blood
20 or marriage of the elderly person or disabled adult;

21 (2) Is a joint tenant or tenant in common with the elderly
22 person or disabled adult;

23 (3) Has a legal or fiduciary relationship with the elderly
24 person or disabled adult, including, but not limited to, a court-appointed
25 or voluntary guardian, trustee, attorney, or conservator;

26 (4) Is a caregiver of the elderly person or disabled adult; or

1 (5) Is any other person who has been entrusted with or has
2 assumed responsibility for the use or management of the elderly
3 person's or disabled adult's funds, assets, or property.

4 (l) 'Property' means anything of value and includes:

5 (1) Real property, including things growing on, affixed to, and
6 found in land.

7 (2) Tangible or intangible personal property, including
8 money, rights, privileges, interests, and claims.

9 (3) Services.

10 (m) 'Services' means anything of value resulting from a person's
11 physical or mental labor or skill, or from the use, possession, or presence of
12 property, and includes:

13 (1) Repairs or improvements to property.

14 (2) Professional services.

15 (3) Private, public, or governmental communication,
16 transportation, power, water, or sanitation services.

17 (4) Lodging accommodations.

18 (5) Admissions to places of exhibition or entertainment.

19 ~~**§ 35102. Abuse, aggravated abuse, and neglect of an elderly person or**~~
20 ~~**disabled adult; penalties.**~~

21 ~~(a) 'Abuse of an elderly person or disabled adult' means:~~

22 ~~(1) Intentional infliction of physical or psychological injury~~
23 ~~upon an elderly person or disabled adult;~~

24 ~~(2) An intentional act that could reasonably be expected to~~
25 ~~result in physical or psychological injury to an elderly person or~~
26 ~~disabled adult; or~~

1 ~~(3) Active encouragement of any person to commit an act that~~
2 ~~results or could reasonably be expected to result in physical or~~
3 ~~psychological injury to an elderly person or disabled adult.~~

4 ~~(4) A person who knowingly or willfully abuses an elderly~~
5 ~~person or disabled adult without causing great bodily harm, permanent~~
6 ~~disability, or permanent disfigurement to the elderly person or disabled~~
7 ~~adult commits a felony of the third (3rd) degree.~~

8 ~~(b) ‘Aggravated abuse of an elderly person or disabled adult’ occurs~~
9 ~~when a person:~~

10 ~~(1) Commits aggravated battery on an elderly person or~~
11 ~~disabled adult;~~

12 ~~(2) Willfully tortures, maliciously punishes, or willfully and~~
13 ~~unlawfully cages, an elderly person or disabled adult; or~~

14 ~~(3) Knowingly or willfully abuses an elderly person or~~
15 ~~disabled adult and in so doing causes great bodily harm, permanent~~
16 ~~disability, or permanent disfigurement to the elderly person or disabled~~
17 ~~adult.~~

18 ~~(d) A person who commits aggravated abuse of an elderly~~
19 ~~person or disabled adult commits a felony of the first (1st) degree.~~

20 ~~(e) (1) ‘Neglect of an elderly person or disabled adult’ means:~~

21 ~~(A) A caregiver’s failure or omission to provide an~~
22 ~~elderly person or disabled adult with the care, supervision, and~~
23 ~~services necessary to maintain the elderly person’s or disabled~~
24 ~~adult’s physical and mental health, including, but not limited to,~~
25 ~~food, nutrition, clothing, shelter, supervision, medicine, and~~
26 ~~medical services that a prudent person would consider essential~~
27 ~~for the well-being of the elderly person or disabled adult; or~~

1 ~~(B) A caregiver's failure to make a reasonable effort to~~
2 ~~protect an elderly person or disabled adult from abuse, neglect,~~
3 ~~or exploitation by another person.~~

4 ~~(C) Neglect of an elderly person or disabled adult may~~
5 ~~be based on repeated conduct or on a single incident or omission~~
6 ~~that results in, or could reasonably be expected to result in,~~
7 ~~serious physical or psychological injury, or a substantial risk of~~
8 ~~death, to an elderly person or disabled adult.~~

9 ~~(2) A person who willfully or by culpable negligence neglects~~
10 ~~an elderly person or disabled adult and in so doing causes great bodily~~
11 ~~harm, permanent disability, or permanent disfigurement to the elderly~~
12 ~~person or disabled adult commits a felony of the second (2nd) degree.~~

13 ~~(3) A person who willfully or by culpable negligence neglects~~
14 ~~an elderly person or disabled adult without causing great bodily harm,~~
15 ~~permanent disability, or permanent disfigurement to the elderly person~~
16 ~~or disabled adult commits a felony of the third (3rd) degree.~~

17 ~~§ 32103. Lewd or lascivious offenses committed upon or in the~~
18 ~~presence of an elderly person or disabled person.~~

19 ~~(a) As used in this Section, 'sexual activity' means the oral, anal, or~~
20 ~~vaginal penetration by, or union with, the sexual organ of another or the anal~~
21 ~~or vaginal penetration of another by any other object; however, sexual activity~~
22 ~~does not include an act done for a bona fide medical purpose.~~

23 ~~(b) (1) 'Lewd or lascivious battery upon an elderly person or~~
24 ~~disabled person' occurs when a person encourages, forces, or entices an~~
25 ~~elderly person or disabled person to engage in sadomasochistic abuse, sexual~~
26 ~~bestiality, prostitution, or any other act involving sexual activity, when the~~

1 ~~person knows or reasonably should know that the elderly person or disabled~~
2 ~~person either lacks the capacity to consent or fails to give consent.~~

3 ~~(2) A person who commits lewd or lascivious battery upon an~~
4 ~~elderly person or disabled person commits a felony of the second (2nd)~~
5 ~~degree.~~

6 ~~(c) (1) 'Lewd or lascivious molestation of an elderly person or~~
7 ~~disabled person' occurs when a person intentionally touches in a lewd or~~
8 ~~lascivious manner the breasts, genitals, genital area, or buttocks, or the~~
9 ~~clothing covering them, of an elderly person or disabled person when the~~
10 ~~person knows or reasonably should know that the elderly person or disabled~~
11 ~~person either lacks the capacity to consent or fails to give consent.~~

12 ~~(2) A person who commits lewd or lascivious molestation of~~
13 ~~an elderly person or disabled person commits a felony of the third (3rd)~~
14 ~~degree.~~

15 ~~(d) (1) 'Lewd or lascivious exhibition in the presence of an~~
16 ~~elderly person or disabled person' occurs when a person, in the presence of an~~
17 ~~elderly person or disabled person:~~

18 ~~(A) Intentionally masturbates;~~

19 ~~(B) Intentionally exposes his or her genitals in a lewd or~~
20 ~~lascivious manner; or~~

21 ~~(C) Intentionally commits any other lewd or lascivious~~
22 ~~act that does not involve actual physical or sexual contact with~~
23 ~~the elderly person or disabled person, including but not limited~~
24 ~~to, sadomasochistic abuse, sexual bestiality, or the simulation of~~
25 ~~any act involving sexual activity;~~

26 ~~(D) when the person knows or reasonably should know~~
27 ~~that the elderly person or disabled person either lacks the~~

1 capacity to consent or fails to give consent to having such act
2 committed in his or her presence.

3 ~~(2) A person who commits a lewd or lascivious exhibition in~~
4 ~~the presence of an elderly person or disabled person commits a felony~~
5 ~~of the third (3rd) degree.~~

6 **§ ~~32104.~~32.20 Financial Exploitation of an Elderly Person or**
7 **Disabled Adult: Defined.**

8 A person is guilty of financial exploitation of an elderly person or
9 disabled adult if he:

10 (a) Knowingly obtains or uses, or endeavors to obtain or use,
11 an elderly person's or disabled adult's funds, assets, or property with
12 the intent to temporarily or permanently deprive the elderly person or
13 disabled adult of the use, benefit, or possession of the funds, assets, or
14 property, or to benefit someone other than the elderly person or disabled
15 adult, by a person who:

16 (1) Stands in a position of trust and confidence with the
17 elderly person or disabled adult; or

18 (2) Has a business relationship with the elderly person
19 or disabled adult;

20 (b) Obtains or uses, endeavors to obtain or use, or conspires
21 with another to obtain or use an elderly person's or disabled adult's
22 funds, assets, or property with the intent to temporarily or permanently
23 deprive the elderly person or disabled adult of the use, benefit, or
24 possession of the funds, assets, or property, or to benefit someone other
25 than the elderly person or disabled adult, by a person who knows or
26 reasonably should know that the elderly person or disabled adult lacks
27 the capacity to consent;

1 (c) Is a guardian, a trustee who is an individual, or an agent
2 under a power of attorney who breaches a fiduciary duty to the elderly
3 person or disabled adult which results in an unauthorized appropriation,
4 sale, or transfer of property. An unauthorized appropriation, sale, or
5 transfer of property, under this paragraph occurs when the elderly
6 person or disabled adult does not receive the reasonably equivalent
7 financial value in goods or services, or when fiduciary duties are
8 violated:

9 (A) For agents appointed, by:

10 (i) Committing fraud in obtaining their
11 appointments;

12 (ii) Abusing their powers;

13 (iii) Wasting, embezzling, or intentionally
14 mismanaging the assets of the principal or beneficiary; or

15 (iv) Acting contrary to the principal's sole benefit
16 or best interest; or

17 (B) For guardians and trustees, by:

18 (i) Committing fraud in obtaining their
19 appointments;

20 (ii) Abusing their powers; or

21 (iii) Wasting, embezzling, or intentionally
22 mismanaging the assets of the ward or beneficiary of the
23 trust;

24 (d) Misappropriates, misuses, or transfers without
25 authorization, money belonging to an elderly person or disabled adult
26 from an account in which the elderly person or disabled adult placed
27 the funds, owned the funds, and was the sole contributor or payee of the

1 funds before the misappropriation, misuse, or unauthorized transfer
2 occurred. This paragraph only applies to the following types of
3 accounts:

4 (A) Personal accounts;

5 (B) Joint accounts created with the intent that only the
6 elderly person or disabled adult enjoys all rights, interests, and
7 claims to moneys deposited into such account; or

8 (C) Convenience accounts;

9 (e) Is a caregiver or a person who stands in a position of trust
10 and confidence with the elderly person or disabled adult who
11 intentionally or negligently fails to effectively use an elderly person's
12 or disabled adult's income and assets for the necessities required for
13 that person's support and maintenance..

14 **§ ~~32104~~-32.30. Permissive Presumption of Exploitation.**

15 Any inter vivos transfer of money or property valued in excess of Ten
16 Thousand Dollars (\$10,000) at the time of the transfer, whether in a single
17 transaction or multiple transactions, by a person age ~~sixty (60)~~ fifty five (55)
18 or older to a nonrelative whom the transferor knew for fewer than two (2)
19 years before the first (1st) transfer and for which the transferor did not receive
20 the reasonably equivalent financial value in goods or services creates a
21 permissive presumption that the transfer was the result of exploitation.

22 (a) This Subsection applies regardless of whether the transfer or
23 transfers are denoted by the parties as a gift or loan, except that it does not
24 apply to a valid loan evidenced in writing that includes definite repayment
25 dates. However, if repayment of any such loan is in default, in whole or in
26 part, for more than sixty-five (65) days, the presumption of this Subsection
27 applies.

1 **(b) This Subsection does not apply to:**

2 **(1) Persons who are in the business of making loans.**

3 **(2) Bona fide charitable donations to nonprofit**
4 **organizations that qualify for tax exempt status.**

5 **(c) In a criminal case to which this Subsection applies, if the trial is**
6 **by jury, jurors shall be instructed that they may, but are not required to, draw**
7 **an inference of exploitation upon proof beyond a reasonable doubt of the facts**
8 **listed in this Subsection. The presumption of this Subsection imposes no**
9 **burden of proof on the defendant.**

10 **§ 32.40. Financial Exploitation of Elderly Persons or Disable Adults:**
11 **Punished.**

12 **(a) If the funds, assets, or property involved in the exploitation of**
13 **the elderly person or disabled adult is valued at Fifty Thousand Dollars**
14 **(\$50,000) or more, the offender commits a felony of the first (1st) degree.**

15 **(b) If the funds, assets, or property involved in the exploitation of**
16 **the elderly person or disabled adult is valued at Ten Thousand Dollars**
17 **(\$10,000) or more, but less than Fifty Thousand Dollars (\$50,000), the**
18 **offender commits a felony of the second (2nd) degree.**

19 **(c) If the funds, assets, or property involved in the exploitation of an**
20 **elderly person or disabled adult is valued at less than Ten Thousand Dollars**
21 **(\$10,000), the offender commits a felony of the third (3rd) degree.**

22 **(d) It does not constitute a defense to a prosecution for any violation**
23 **of this Chapter that the accused did not know the age of the victim.**

24 **§ 32.50. Evidentiary Hearing Required for Custody of Property**
25 **Determination.**

26 **If a person is charged with financial exploitation of an elderly person or**
27 **disabled adult that involves the taking of or loss of property valued at more than Five**

1 Thousand Dollars (\$5,000) and property belonging to a victim is seized from the
2 defendant pursuant to a search warrant, the court shall hold an evidentiary hearing
3 and determine, by a preponderance of the evidence, whether the defendant
4 unlawfully obtained the victim's property.

5 If the court finds that the property was unlawfully obtained, the court may
6 order it returned to the victim for restitution purposes before trial on the charge.

7 This determination is inadmissible in evidence at trial on the charge and does
8 not give rise to any inference that the defendant has committed an offense under this
9 Chapter.”