

*I Mina'Trentai Singko Na Liheslaturan*  
**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 J. "Pedro" Terlaje Telena Cruz Nelson	AN ACT TO ADD A NEW CHAPTER 32 TO TITLE 9, GCA, RELATIVE TO PROTECTING ELDERLY ADULTS FROM ABUSE, NEGLECT AND EXPLOITATION BY PROVIDING CRIMINAL PUNISHMENT TO THOSE WHO WOULD HARM OUR MANÁMKO' AND DISABLED PEOPLE.	1/7/19 12:47 p.m.						

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

Bill No. 13-35(COR)

Introduced by:

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AN ACT TO ADD A NEW CHAPTER 32 TO TITLE 9, GCA, RELATIVE TO PROTECTING ELDERLY ADULTS FROM ABUSE, NEGLECT AND EXPLOITATION BY PROVIDING CRIMINAL PUNISHMENT TO THOSE WHO WOULD HARM OUR MANÅMKO' AND DISABLED PEOPLE.

2019 JUN - 7 PM 12: 47

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 A new Chapter 32 is hereby added to Title 9, GCA, to read:

6 "CHAPTER 32

7 ABUSE, NEGLECT AND EXPLOITATION OF THE ELDERLY AND  
8 DISABLED

9  
10 § 32101. Definitions.

11 § 35102. Abuse, aggravated abuse, and neglect of an elderly person or  
12 disabled adult; penalties.

13 § 32103. Lewd or lascivious offenses committed upon or in the presence  
14 of an elderly person or disabled person.

15 § 32104. Exploitation of an elderly person or disabled adult; penalties.

1        § 32105. Knowledge of victim's age.

2  
3  
4        **§ 32101. Definitions.**

5            As used in this Chapter:

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

9            (b) 'Caregiver' means a person who has been entrusted with or has  
10 assumed responsibility for the care or the property of an elderly person or  
11 disabled adult. 'Caregiver' includes, but is not limited to, relatives, court-  
12 appointed or voluntary guardians, adult household members, neighbors,  
13 health care providers, and employees and volunteers of facilities as defined in  
14 Subsection (g).

15            (c) 'Deception' means:

16            (1) Misrepresenting or concealing a material fact relating to:

17            (A) Services rendered, disposition of property, or use of  
18 property, when such services or property are intended to benefit  
19 an elderly person or disabled adult;

20            (B) Terms of a contract or agreement entered into with  
21 an elderly person or disabled adult; or

22            (C) An existing or preexisting condition of any property  
23 involved in a contract or agreement entered into with an elderly  
24 person or disabled adult; or

25            (2) Using any misrepresentation, false pretense, or false  
26 promise in order to induce, encourage, or solicit an elderly person or  
27 disabled adult to enter into a contract or agreement.

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

6           (e) ‘Elderly person’ means a person sixty (60) years of age or older  
7 who is suffering from the infirmities of aging as manifested by advanced age  
8 or organic brain damage, or other physical, mental, or emotional dysfunction,  
9 to the extent that the ability of the person to provide adequately for the person's  
10 own care or protection is impaired.

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

12           (g) ‘Facility’ means any location providing day or residential care or  
13 treatment for elderly persons or disabled adults. The term ‘facility’ may  
14 include, but is not limited to, any hospital, training center, nursing home,  
15 assisted living facility, adult family-care home, adult day care center, group  
16 home, mental health treatment center, or continuing care community.

17           (h) ‘Intimidation’ means the communication by word or act to an  
18 elderly person or disabled adult that the elderly person or disabled adult will  
19 be deprived of food, nutrition, clothing, shelter, supervision, medicine,  
20 medical services, money, or financial support or will suffer physical violence.

21           (i) ‘Lacks capacity to consent’ means an impairment by reason of  
22 mental illness, developmental disability, organic brain disorder, physical  
23 illness or disability, chronic use of drugs, chronic intoxication, short-term  
24 memory loss, or other cause, that causes an elderly person or disabled adult to  
25 lack sufficient understanding or capacity to make or communicate reasonable  
26 decisions concerning the elderly person's or disabled adult's person or  
27 property.

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

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

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

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

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

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

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

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

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

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

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

20                   (2) Tangible or intangible personal property, including rights,  
21 privileges, interests, and claims.

22                   (3) Services.

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

26                   (1) Repairs or improvements to property.

27                   (2) Professional services.

1                   (3) Private, public, or governmental communication,  
2                   transportation, power, water, or sanitation services.

3                   (4) Lodging accommodations.

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

5                   **§ 35102. Abuse, aggravated abuse, and neglect of an elderly person or**  
6                   **disabled adult; penalties.**

7                   (a) ‘Abuse of an elderly person or disabled adult’ means:

8                   (1) Intentional infliction of physical or psychological injury  
9                   upon an elderly person or disabled adult;

10                   (2) An intentional act that could reasonably be expected to  
11                   result in physical or psychological injury to an elderly person or  
12                   disabled adult; or

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

16                   (4) A person who knowingly or willfully abuses an elderly  
17                   person or disabled adult without causing great bodily harm, permanent  
18                   disability, or permanent disfigurement to the elderly person or disabled  
19                   adult commits a felony of the third (3<sup>rd</sup>) degree.

20                   (b) ‘Aggravated abuse of an elderly person or disabled adult’ occurs  
21                   when a person:

22                   (1) Commits aggravated battery on an elderly person or  
23                   disabled adult;

24                   (2) Willfully tortures, maliciously punishes, or willfully and  
25                   unlawfully cages, an elderly person or disabled adult; or

1           (3) Knowingly or willfully abuses an elderly person or  
2 disabled adult and in so doing causes great bodily harm, permanent  
3 disability, or permanent disfigurement to the elderly person or disabled  
4 adult.

5           (d) A person who commits aggravated abuse of an elderly  
6 person or disabled adult commits a felony of the first (1<sup>st</sup>) degree.

7           (c) (1) ‘Neglect of an elderly person or disabled adult’ means:

8                   (A) A caregiver’s failure or omission to provide an  
9 elderly person or disabled adult with the care, supervision, and  
10 services necessary to maintain the elderly person’s or disabled  
11 adult’s physical and mental health, including, but not limited to,  
12 food, nutrition, clothing, shelter, supervision, medicine, and  
13 medical services that a prudent person would consider essential  
14 for the well-being of the elderly person or disabled adult; or

15                   (B) A caregiver’s failure to make a reasonable effort to  
16 protect an elderly person or disabled adult from abuse, neglect,  
17 or exploitation by another person.

18                   (C) Neglect of an elderly person or disabled adult may  
19 be based on repeated conduct or on a single incident or omission  
20 that results in, or could reasonably be expected to result in,  
21 serious physical or psychological injury, or a substantial risk of  
22 death, to an elderly person or disabled adult.

23           (2) A person who willfully or by culpable negligence neglects  
24 an elderly person or disabled adult and in so doing causes great bodily  
25 harm, permanent disability, or permanent disfigurement to the elderly  
26 person or disabled adult commits a felony of the second (2<sup>nd</sup>) degree.

1                   (3) A person who willfully or by culpable negligence neglects  
2                   an elderly person or disabled adult without causing great bodily harm,  
3                   permanent disability, or permanent disfigurement to the elderly person  
4                   or disabled adult commits a felony of the third (3<sup>rd</sup>) degree.

5                   **§ 32103. Lewd or lascivious offenses committed upon or in the**  
6                   **presence of an elderly person or disabled person.**

7                   (a) As used in this Section, ‘sexual activity’ means the oral, anal, or  
8                   vaginal penetration by, or union with, the sexual organ of another or the anal  
9                   or vaginal penetration of another by any other object; however, sexual activity  
10                  does not include an act done for a bona fide medical purpose.

11                  (b) (1) ‘Lewd or lascivious battery upon an elderly person or  
12                  disabled person’ occurs when a person encourages, forces, or entices an  
13                  elderly person or disabled person to engage in sadomasochistic abuse, sexual  
14                  bestiality, prostitution, or any other act involving sexual activity, when the  
15                  person knows or reasonably should know that the elderly person or disabled  
16                  person either lacks the capacity to consent or fails to give consent.

17                  (2) A person who commits lewd or lascivious battery upon an  
18                  elderly person or disabled person commits a felony of the second (2<sup>nd</sup>)  
19                  degree.

20                  (c) (1) ‘Lewd or lascivious molestation of an elderly person or  
21                  disabled person’ occurs when a person intentionally touches in a lewd or  
22                  lascivious manner the breasts, genitals, genital area, or buttocks, or the  
23                  clothing covering them, of an elderly person or disabled person when the  
24                  person knows or reasonably should know that the elderly person or disabled  
25                  person either lacks the capacity to consent or fails to give consent.

1                   (2) A person who commits lewd or lascivious molestation of  
2                   an elderly person or disabled person commits a felony of the third (3<sup>rd</sup>)  
3                   degree.

4                   (d) (1) ‘Lewd or lascivious exhibition in the presence of an  
5                   elderly person or disabled person’ occurs when a person, in the presence of an  
6                   elderly person or disabled person:

7                               (A) Intentionally masturbates;

8                               (B) Intentionally exposes his or her genitals in a lewd or  
9                   lascivious manner; or

10                              (C) Intentionally commits any other lewd or lascivious  
11                   act that does not involve actual physical or sexual contact with  
12                   the elderly person or disabled person, including but not limited  
13                   to, sadomasochistic abuse, sexual bestiality, or the simulation of  
14                   any act involving sexual activity,

15                              (D) when the person knows or reasonably should know  
16                   that the elderly person or disabled person either lacks the  
17                   capacity to consent or fails to give consent to having such act  
18                   committed in his or her presence.

19                   (2) A person who commits a lewd or lascivious exhibition in  
20                   the presence of an elderly person or disabled person commits a felony  
21                   of the third (3<sup>rd</sup>) degree.

22                   **§ 32104. Exploitation of an elderly person or disabled adult; penalties.**

23                   (a) ‘Exploitation of an elderly person or disabled adult’ means:

24                              (1) Knowingly obtaining or using, or endeavoring to obtain or  
25                   use, an elderly person’s or disabled adult’s funds, assets, or property  
26                   with the intent to temporarily or permanently deprive the elderly person  
27                   or disabled adult of the use, benefit, or possession of the funds, assets,

1 or property, or to benefit someone other than the elderly person or  
2 disabled adult, by a person who:

3 (A) Stands in a position of trust and confidence with the  
4 elderly person or disabled adult; or

5 (B) Has a business relationship with the elderly person  
6 or disabled adult;

7 (2) Obtaining or using, endeavoring to obtain or use, or  
8 conspiring with another to obtain or use an elderly person's or disabled  
9 adult's funds, assets, or property with the intent to temporarily or  
10 permanently deprive the elderly person or disabled adult of the use,  
11 benefit, or possession of the funds, assets, or property, or to benefit  
12 someone other than the elderly person or disabled adult, by a person  
13 who knows or reasonably should know that the elderly person or  
14 disabled adult lacks the capacity to consent;

15 (3) Breach of a fiduciary duty to an elderly person or disabled  
16 adult by the person's guardian, trustee who is an individual, or agent  
17 under a power of attorney which results in an unauthorized  
18 appropriation, sale, or transfer of property. An unauthorized  
19 appropriation under this paragraph occurs when the elderly person or  
20 disabled adult does not receive the reasonably equivalent financial  
21 value in goods or services, or when the fiduciary violates any of these  
22 duties:

23 (A) For agents appointed:

24 (i) Committing fraud in obtaining their  
25 appointments;

26 (ii) Abusing their powers;

1                    (iii) Wasting, embezzling, or intentionally  
2                    mismanaging the assets of the principal or beneficiary; or

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

5                    (B) For guardians and trustees

6                    (i) Committing fraud in obtaining their  
7                    appointments;

8                    (ii) Abusing their powers; or

9                    (iii) Wasting, embezzling, or intentionally  
10                   mismanaging the assets of the ward or beneficiary of the  
11                   trust;

12                   (4) Misappropriating, misusing, or transferring without  
13                   authorization money belonging to an elderly person or disabled adult  
14                   from an account in which the elderly person or disabled adult placed  
15                   the funds, owned the funds, and was the sole contributor or payee of the  
16                   funds before the misappropriation, misuse, or unauthorized transfer.

17                   This paragraph only applies to the following types of accounts:

18                   (A) Personal accounts;

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

22                   (C) Convenience accounts

23                   (5) Intentionally or negligently failing to effectively use an  
24                   elderly person's or disabled adult's income and assets for the  
25                   necessities required for that person's support and maintenance, by a  
26                   caregiver or a person who stands in a position of trust and confidence  
27                   with the elderly person or disabled adult.

1           (b) Any inter vivos transfer of money or property valued in excess  
2 of Ten Thousand Dollars (\$10,000) at the time of the transfer, whether in a  
3 single transaction or multiple transactions, by a person age sixty (60) or older  
4 to a nonrelative whom the transferor knew for fewer than two (2) years before  
5 the first (1<sup>st</sup>) transfer and for which the transferor did not receive the  
6 reasonably equivalent financial value in goods or services creates a permissive  
7 presumption that the transfer was the result of exploitation.

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

14           (2) This Subsection does not apply to:

15                   (A) Persons who are in the business of making loans.

16                   (B) Bona fide charitable donations to nonprofit  
17 organizations that qualify for tax exempt status.

18           (3) In a criminal case to which this Subsection applies, if the  
19 trial is by jury, jurors shall be instructed that they may, but are not  
20 required to, draw an inference of exploitation upon proof beyond a  
21 reasonable doubt of the facts listed in this Subsection. The presumption  
22 of this Subsection imposes no burden of proof on the defendant.

23           (c) (1) If the funds, assets, or property involved in the exploitation  
24 of the elderly person or disabled adult is valued at Fifty Thousand Dollars  
25 (\$50,000) or more, the offender commits a felony of the first (1<sup>st</sup>) degree.

26                   (2) If the funds, assets, or property involved in the exploitation  
27 of the elderly person or disabled adult is valued at Ten Thousand

1           Dollars (\$10,000) or more, but less than Fifty Thousand Dollars  
2           (\$50,000), the offender commits a felony of the second (2<sup>nd</sup>) degree.

3           (3) If the funds, assets, or property involved in the exploitation  
4           of an elderly person or disabled adult is valued at less than Ten  
5           Thousand Dollars (\$10,000), the offender commits a felony of the third  
6           (3<sup>rd</sup>) degree.

7           (d) If a person is charged with financial exploitation of an elderly  
8           person or disabled adult that involves the taking of or loss of property valued  
9           at more than Five Thousand Dollars (\$5,000) and property belonging to a  
10           victim is seized from the defendant pursuant to a search warrant, the court  
11           shall hold an evidentiary hearing and determine, by a preponderance of the  
12           evidence, whether the defendant unlawfully obtained the victim's property. If  
13           the court finds that the property was unlawfully obtained, the court may order  
14           it returned to the victim for restitution purposes before trial on the charge. This  
15           determination is inadmissible in evidence at trial on the charge and does not  
16           give rise to any inference that the defendant has committed an offense under  
17           this Section.

18           **§ 32105. Knowledge of victim's age.**

19           It does not constitute a defense to a prosecution for any violation of this  
20           Chapter that the accused did not know the age of the victim.”