clerks@guamlegislature.org

From: Committee on Rules 36GL <cor@guamlegislature.org>
Sent: Thursday, June 16, 2022 12:33 PM
To: Clerks; Rennae Meno
Cc: Speaker Therese M. Terlaje; Vice Speaker Tina Rose Muña Barnes
Subject: Messages and Communications for Doc. Nos. 36GL-22-2140 to 36GL-22-2144*.
Attachments: 36GL-22-2140.pdf; 36GL-22-2141.pdf; 36GL-22-2142.pdf; 36GL-22-2143.pdf; 36GL-22-2144.pdf

Håfa Adai Clerks,

Please see attached M&C Doc. No. 36GL-22-2140 to 36GL-22-2144 for processing:

36GL-22-2140	BILL NO. 242-36 (LS) nka P.L. 36-100 AN ACT TO ADD A NEW ARTICLE 2 TO CHAPTER 40 OF TITLE 7, GUAM CODE ANNOTATED, AND A NEW § 30.400 TO CHAPTER 30 OF TITLE 9, GUAM CODE ANNOTATED, RELATIVE TO TRANSFERRING OR RELEASING VICTIMS OF FAMILY VIOLENCE, SEXUAL ASSAULT, AND STALKING FROM SHARED WIRELESS PLANS*.	Office of the Governor of Guam
36GL-22-2141	BILL NO. 243-36 (LS) nka P.L. 36-101 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) 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"*.	Office of the Governor of Guam
36GL-22-2142	BILL NO. 244-36 (LS) nka P.L. 36-102 AN ACT TO ADD A NEW CHAPTER 163 TO TITLE 8, GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING A BILL OF RIGHTS FOR VICTIMS OF SEXUAL ASSAULT; AND TO CITE THIS ACT AS THE "SURVIVOR'S BILL OF RIGHTS ACT OF 2022"*.	Office of the Governor of Guam
36GL-22-2143	BILL NO. 300-36 (LS) nka P.L. 36-103 AN ACT TO REPEAL AND REENACT § 5213 OF SUBARTICLE B, ARTICLE 3, CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO STRENGTHENING THE REQUIREMENTS OF SMALL PURCHASES*.	Office of the Governor of Guam
36GL-22-2144	BILL NO. 301-36 (LS) nka P.L 36-104 AN ACT TO APPROVE THE SECOND AMENDED AND RESTATED LAND LEASE AGREEMENT BETWEEN THE GUAM POWER AUTHORITY AND GUAM UKUDU POWER LLC, AS LENDERS' CONDITION TO FUND THE CONSTRUCTION OF A 198 MW POWER PLANT AND BATTERY ENERGY STORAGE SYSTEM FACILITY LOCATED ON LOT NOS. 5010-1NEW-NEW-1 AND 5010-1NEW-NEW-R1, DEDEDO, AND A RELATED RESERVE FACILITY LOCATED ON LOT NO. 261-2, PITI, GUAM, AND TO AUTHORIZE THE USE OF THOSE PROPERTIES FOR SUCH PURPOSES*.	Office of the Governor of Guam

Electronic and Hard Copies attached.

Si Yu'os Ma'åse',

COMMITTEE ON RULES
Vice Speaker Tina Rose Muña Barnes
36th Guam Legislature
I Mina'trentai Sais Na Liheslaturan Guåhan
163 Chalan Santo Papa Hågatña Guam 96910
Email: cor@guamlegislature.org

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---------- Forwarded message ---------
From: **Speaker Therese M. Terlaje** <speaker@guamlegislature.org>
Date: Wed, Jun 15, 2022 at 5:07 PM
Subject: Messages and Communications for 36GL-22-2140 to 36GL-22-2144
To: Legislative Secretary Amanda Shelton <officeofsenatorshelton@guamlegislature.org>, Committee on Rules 36GL <cor@guamlegislature.org>

Håfa Adai,

Please see attached M&C Doc. No. 36GL-22-2140 to 36GL-22-2144.

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36GL-22-2142	BILL NO. 244-36 (LS) nka P.L. 36-102 AN ACT TO ADD A NEW CHAPTER 163 TO TITLE 8, GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING A BILL OF RIGHTS FOR VICTIMS OF SEXUAL ASSAULT; AND TO CITE THIS ACT AS THE "SURVIVOR'S BILL OF RIGHTS ACT OF 2022".*	Office of the Governor of Guam
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Note: Hard Copies were hand delivered and received June 15, 2022 at 3:54 p.m.

Si Yu'os Ma'åse',

Marie Cruz
Community Relations Liaison

Office of Speaker Therese M. Terlaje
Committee on Health, Land, Justice and Culture

I Mina'trentai Sais na Liheslaturan Guåhan
36th Guam Legislature
Guam Congress Building, 163 Chalan Santo Papa, Hagåtña, Guam 96910
T: (671) 472-3586 F: (671) 989-3590 Email: senatorterlajeguam@gmail.com
website: www.senatorterlaje.com

---------- Forwarded message ---------
From: **Speaker Therese M. Terlaje** <speaker@guamlegislature.org>
Date: Wed, Jun 15, 2022 at 4:48 PM
Subject: Messages and Communications for 36GL-22-2140 to 36GL-22-2144
To: Legislative Secretary Amanda Shelton <officeofsenatorshelton@guamlegislature.org>, Committee on Rules 36GL <cor@guamlegislature.org>

Håfa Adai,

Please see attached M&C Doc. No. 36GL-22-2140 to 36GL-22-2144.*

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Please note that there is one statement for Bill Nos. 242-36 (LS), 243-36 (LS), and 244-36 (LS), see attached.

Si Yu'os Ma'åse',

Marie Cruz
Community Relations Liaison

Office of Speaker Therese M. Terlaje
Committee on Health, Land, Justice and Culture
I Mina'trentai Sais na Liheslaturan Guåhan
36th Guam Legislature
Guam Congress Building, 163 Chalan Santo Papa, Hagåtña, Guam 96910
T: (671) 472-3586 F: (671) 989-3590 Email: senatorterlajeguam@gmail.com
website: www.senatorterlaje.com

---------- Forwarded message ---------
From: **Brianne LG Dunstan** <brianne.dunstan@guam.gov>
Date: Wed, Jun 15, 2022 at 3:18 PM
Subject: Governor Leon Guerrero's Statements regarding Legislative Bills passed on June 2, 2022
To: Speaker Therese M. Terlaje <speaker@guamlegislature.org>
Cc: GOVERNOR Lourdes A. Leon Guerrero <governor@guam.gov>, LT. GOVERNOR Joshua F. Tenorio <lt.governor@guam.gov>, Geraldine A. Cepeda <gcepeda@guamcourts.gov>, Guam Compiler of Laws <guamcompiler@gmail.com>, Lisa C. Ibanez <libanez@guamcourts.gov>, CHIEF OF STAFF Jon Junior Calvo <jon.calvo@guam.gov>, DEPUTY COS Alice Taijeron <alice.taijeron@guam.gov>, Legal <legal@guam.gov>, Leslie Travis <leslie.travis@guam.gov>, Jeffrey Moots <jeffrey.moots@guam.gov>, Cheerful Catunao <cheerful.catunao@guam.gov>, Stephanie G. Flores <stephanie.flores@guam.gov>, Krystal Paco-San Agustin <krystal.paco@guam.gov>, <lester.carlson@bbmr.guam.gov>, BERTHA <bertha.duenas@guam.gov>, Eliza G. Dames (Chamber) <eliza.dames@guam.gov>, Shamra L.A. Chargualaf (Chamber) <shamra.chargualaf@guam.gov>, Josephine C. Cepeda (Chamber) <josephine.cepeda@guam.gov>, Kathleen C. Cepeda (COS) <kathleen.cepeda@guam.gov>, Rhea Chang <rhea.chang@guam.gov>, Jessica Cruz (CF) <jessica.cruz@guam.gov>, BBMR Administrative Staff <admin@bbmr.guam.gov>, Analyn Eustaquio <analyn.eustaquio@bbmr.guam.gov>, Rikki Orsini <rikki.orsini@guam.gov>

Hafa Adai Madame Speaker,

Enclosed are copies of statements from the *Honorable,* Lourdes A. Leon Guerrero, regarding the following five (5) bills. Please note that there is one statement for Bill Nos. 242-36 (LS), 243-36 (LS), and 244-36 (LS).

- **BILL NO. 242-36 (LS) nka P.L. 36-100** AN ACT TO *ADD* A NEW ARTICLE 2 TO CHAPTER 40 OF TITLE 7, GUAM CODE ANNOTATED, AND A NEW § 30.400 TO CHAPTER 30 OF TITLE 9, GUAM CODE ANNOTATED, RELATIVE TO TRANSFERRING OR RELEASING VICTIMS OF FAMILY VIOLENCE, SEXUAL ASSAULT, AND STALKING FROM SHARED WIRELESS PLANS

- **BILL NO. 243-36 (LS) nka P.L. 36-101** 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) 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"

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The original statements and bills will be delivered to your office today.

Thank you.

Respectfully,

--

Brianne LG Dunstan
Unisifan I Maga'hågan Guåhan
Office of the Governor of Guam
Office of Legal Counsel
513 West Marine Corps Drive
Ricardo J. Bordallo Governor's Complex
Hagåtña, Guam 96910
Office: 671.473.1118
brianne.dunstan@guam.gov

Speaker Therese M. Terlaje <speaker@guamlegislature.org>

Governor Leon Guerrero's Statements regarding Legislative Bills passed on June 2, 2022

Time changed to reflect actual time received.

Brianne LG Dunstan <brianne.dunstan@guam.gov> Wed, Jun 15, 2022 at ~~3:11~~ 3:18 PM
To: "Speaker Therese M. Terlaje" <speaker@guamlegislature.org>
Cc: "GOVERNOR Lourdes A. Leon Guerrero" <governor@guam.gov>, "LT. GOVERNOR Joshua F. Tenorio" <lt.governor@guam.gov>, "Geraldine A. Cepeda" <gcepeda@guamcourts.gov>, Guam Compiler of Laws <guamcompiler@gmail.com>, "Lisa C. Ibanez" <libanez@guamcourts.gov>, CHIEF OF STAFF Jon Junior Calvo <jon.calvo@guam.gov>, DEPUTY COS Alice Taijeron <alice.taijeron@guam.gov>, Legal <legal@guam.gov>, Leslie Travis <leslie.travis@guam.gov>, Jeffrey Moots <jeffrey.moots@guam.gov>, Cheerful Catunao <cheerful.catunao@guam.gov>, "Stephanie G. Flores" <stephanie.flores@guam.gov>, Krystal Paco-San Agustin <krystal.paco@guam.gov>, lester.carlson@bbmr.guam.gov, BERTHA <bertha.duenas@guam.gov>, "Eliza G. Dames (Chamber)" <eliza.dames@guam.gov>, "Shamra L.A. Chargualaf (Chamber)" <shamra.chargualaf@guam.gov>, "Josephine C. Cepeda (Chamber)" <josephine.cepeda@guam.gov>, "Kathleen C. Cepeda (COS)" <kathleen.cepeda@guam.gov>, Rhea Chang <rhea.chang@guam.gov>, "Jessica Cruz (CF)" <jessica.cruz@guam.gov>, BBMR Administrative Staff <admin@bbmr.guam.gov>, Analyn Eustaquio <analyn.eustaquio@bbmr.guam.gov>, Rikki Orsini <rikki.orsini@guam.gov>

Hafa Adai Madame Speaker,

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The original statements and bills will be delivered to your office today.

Thank you.

Respectfully,

--

Brianne LG Dunstan
Unisifan I Maga'hågan Guåhan
Office of the Governor of Guam
Office of Legal Counsel
513 West Marine Corps Drive
Ricardo J. Bordallo Governor's Complex
Hagåtña, Guam 96910
Office: 671.473.1118
brianne.dunstan@guam.gov

36GL-22-2140
OFFICE OF THE SPEAKER
THERESE M. TERLAJE
-06- 15 2022
Time: 3:18pm
Received:

36GL-22-2141
36GL-22-2142
36GL-22-2143
36GL-22-2144

3 attachments

Bill Nos. 242-36 (LS), 243-36 (LS), and 244-36 (LS) nka P.L. Nos. 36-100, 36-101, and 36-102 Respectively.pdf
755K

Bill No. 300-36 (LS) nka P.L. 36-103.pdf
219K

Bill No. 301-36 (LS) nka P.L. 36-104.pdf
1493K

COMMITTEE ON RULES
RECEIVED:
June 15, 2022
4:48 P.M.

Doc. No. 36GL-22-2141.*

LOURDES A. LEON GUERRERO
GOVERNOR

JOSHUA F. TENORIO
LT. GOVERNOR

UFISINAN I MAGA'HÅGAN GUÅHAN
OFFICE OF THE GOVERNOR OF GUAM

June 15, 2022

HONORABLE THERESE M. TERLAJE, *Speaker*
I Mina'trentai Sais Na Liheslaturan Guåhan
36th Guam Legislature
Guam Congress Building
163 Chalan Santo Papa
Hagåtña, Guam 96910

Re: **BILL NO. 242-36 (LS) – AN ACT TO *ADD* A NEW ARTICLE 2 TO CHAPTER 40 OF TITLE 7, GUAM CODE ANNOTATED, AND A NEW § 30.400 TO CHAPTER 30 OF TITLE 9, GUAM CODE ANNOTATED, RELATIVE TO TRANSFERRING OR RELEASING VICTIMS OF FAMILY VIOLENCE, SEXUAL ASSAULT, AND STALKING FROM SHARED WIRELESS PLANS**

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Hafa Adai Madame Speaker,

Over time, as society grows to further understand the nature of domestic violence and criminal sexual conduct, and the dynamics between aggressors and victims involved in these crimes, it is imperative that the body of governing law likewise evolves. Bill Nos. 242-36, 243-36, and 244-36 are three such efforts, intended to provide victims of domestic and sexual violence access to greater legal protections and rights. Today, I sign these bills into law as Public Law Nos. 36-100, 36-101, and 36-102, respectively, and I thank Senator Mary Torres, the main sponsor of these bills, for her leadership on these important issues.

Bill No. 242-36, now known as ***Public Law No. 36-100***, requires wireless telecommunications service providers to remove or release complaining witnesses from a shared or family wireless service contract upon submission of a written request, along with documented evidence of family violence, sexual assault or stalking in the form of a court order, a police report, or a declaration from certain care providers for the complaining witnesses. The request may be submitted by the complaining witness

themselves, their attorney, or their advocate. Once the request and documentation is provided, the wireless service provider must act within 48 hours to transfer or remove the complaining witness from the shared family plan without charge, penalty, or fee. The bill emphasizes that a conviction is not necessary to effectuate the release. The intent of Bill No. 242-36 is clear and laudable – often, in cases involving domestic violence, sexual assault or stalking, time is of the essence, and immediate steps must be taken to ensure the safety of the complaining witness, including preventing alleged perpetrators of these crimes from tracking or contacting the complaining witnesses, or worse, confronting them in a manner that endangers all parties involved. By ensuring the confidentiality of the complaining witnesses, they can seek the services and support they need when they are vulnerable, and feel empowered to leave abusive circumstances, without potentially exposing them, their children, and their network to further harm.

Bill No. 243-36, now known as ***Public Law No. 36-101***, is a critical measure updating our laws to reflect, among other things, that individuals who are significantly impaired or intoxicated are mentally incapacitated within the meaning of Guam law, such that they cannot consent to a sexual act, regardless of whether such impairment or intoxication was voluntary or involuntary. For too long, perpetrators of sexual assault, in Guam and in similarly situated U.S. jurisdictions, have relied on the fact that their victims *voluntarily* consumed alcohol or other substances as a defense for sexual misconduct committed while these victims were clearly unable to consent. This loophole allowed predators to prey on victims they knew, or should have known, did not have the mental capacity to freely agree to engage in sexual acts. Closing this gap in our statute more accurately represents our community's understanding about the responsibilities we have to each other when we engage in conduct that involves our bodily agency, more fully protects our right to control our bodies, and restores to us the power to decide when and with whom we want to share our most intimate selves.

Bill No. 244-36, now known as ***Public Law No. 36-102***, enacts the Survivor's Bill of Rights. This bill codifies the rights that victims of sexual assault shall have. It encapsulates key priorities to sexual assault survivors, including being treated with respect, dignity and compassion, and providing access to services and advocacy, including access to timely examinations, testing, protection, and support. It further requires publication of the Survivor's Bill of Rights in hospitals, police stations, and school campuses, ensuring that the necessary information is available and readily accessible to affected persons. This Bill will help raise awareness in our communities, that our island stands with survivors of sexual assault, that we support them, and that we are committed to helping them achieve justice, and, ultimately, peace.

Senseremente,

Lou Leon Guerrero

LOURDES A. LEON GUERRERO
Maga'hågan Guåhan
Governor of Guam

Enclosure: Bill No. 242-36 (LS) *nka P.L. No. 36-100*
Bill No. 243-36 (LS) *nka P.L. No. 36-101*
Bill No. 244-36 (LS) *nka P.L. No. 36-102*

cc via email: *Honorable* Joshua F. Tenorio, *Sigundo Maga'låhen Guåhan*
Compiler of Laws

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

CERTIFICATION OF PASSAGE OF AN ACT TO *I MAGA'HÅGAN GUÅHAN*

This is to certify that **Bill No. 243-36 (LS), "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) 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,"** was on the 2nd day of June 2022, duly and regularly passed.

Therese M. Terlaje

Therese M. Terlaje
Speaker

Attested:

Amanda Shelton

Amanda L. Shelton
Legislative Secretary

This Act was received by *I Maga'hågan Guåhan* this 3rd day of June, 2022, at 3:17 o'clock P .M.

Elie V. Z.

Assistant Staff Officer
Maga'håga's Office

APPROVED:

Lou Leon Guerrero

Lourdes A. Leon Guerrero
I Maga'hågan Guåhan

Date: 6/15/2022

Public Law No. 36-101

2022-16707
RCVD AT CENTRAL FILES
JUN 3 '22 PM3:17

Elaine Tajalle

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

Bill No. 243-36 (LS)
As amended by the Committee on Health,
Land, Justice, and Culture; and further amended on the Floor.

Introduced by:

Mary Camacho Torres
Therese M. Terlaje
Tina Rose Muña Barnes
Amanda L. Shelton
James C. Moylan
Jose "Pedo" Terlaje
V. Anthony Ada
Frank Blas Jr.
Clynton E. Ridgell
Joe S. San Agustin
Christopher M. Dueñas
Sabina Flores Perez
Telena Cruz Nelson
Joanne Brown
Telo T. Taitague

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) 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."

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

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

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

I Liheslaturan Guåhan duly notes that the Minnesota Supreme Court overturned a felony rape conviction earlier this year because the victim was

intoxicated by her own will during the alleged assault. The court's interpretation of the state's mental incapacitation definition, which bear similar construction to Guam's present statute, underscored a need to change current language that govern alcohol-facilitated assault. The Minnesota Supreme Court noted, "if the Legislature intended for the definition of mentally incapacitated to include voluntarily intoxicated persons, 'it is the Legislature's prerogative to reexamine the...statute and amend it accordingly.' *State v. Rick*, 835 N.W.2d 478, 486 (Minn. 2013), *abrogated on other grounds by State v. Thonesavanh*, 904 N.W.2d 432 (Minn. 2017). It has done so recently to address other perceived gaps in the criminal sexual conduct statutes" (*State v. Khalil*, 956 N.W.2d 627 (2021). On June 29, 2021, the Minnesota State Legislature passed H.F. No. 63, which expanded the state's definition of "mentally incapacitated" to include voluntary intoxication. The measure was signed into law by Governor Tim Walz on June 30, 2021.

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

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

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

"(a) As used in this Chapter:

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

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

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

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

(3) Force or Coercion includes, but is not limited to, any of the following circumstances:

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

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

(C) when the actor coerces the victim to submit by threatening to retaliate in the future against the victim or any other person and the victim believes that the actor has the ability to execute this threat.

As used in this Subsection, to retaliate includes threats of physical punishment, kidnapping, or extortion;

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

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

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

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

(6) Mentally Incapacitated means

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

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

(7) Physically Helpless means that a person is

(A) unconscious,

(B) asleep,

(C) unable to withhold consent or to withdraw consent because of a physical condition, or

(D) for any other reason, is physically unable to communicate unwillingness to an act;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

LOURDES A. LEON GUERRERO
GOVERNOR

JOSHUA F. TENORIO
LT. GOVERNOR

UFISINAN I MAGA'HÅGAN GUÅHAN
OFFICE OF THE GOVERNOR OF GUAM

36GL-22-2140 to 36GL-22-2142
Doc Type:
OFFICE OF THE SPEAKER
THERESE M. TERLAJE
06 15 2022
Time: 3:54pm
Received:

June 15, 2022

HONORABLE THERESE M. TERLAJE, *Speaker*
I Mina'trentai Sais Na Liheslaturan Guåhan
36th Guam Legislature
Guam Congress Building
163 Chalan Santo Papa
Hagåtña, Guam 96910

Re: **BILL NO. 242-36 (LS) – AN ACT TO *ADD* A NEW ARTICLE 2 TO CHAPTER 40 OF TITLE 7, GUAM CODE ANNOTATED, AND A NEW § 30.400 TO CHAPTER 30 OF TITLE 9, GUAM CODE ANNOTATED, RELATIVE TO TRANSFERRING OR RELEASING VICTIMS OF FAMILY VIOLENCE, SEXUAL ASSAULT, AND STALKING FROM SHARED WIRELESS PLANS**

BILL NO. 243-36 (LS) – 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) 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"

BILL NO. 244-36 (LS) – AN ACT TO *ADD* A NEW CHAPTER 163 TO TITLE 8, GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING A BILL OF RIGHTS FOR VICTIMS OF SEXUAL ASSAULT; AND TO CITE THIS ACT AS THE "SURVIVOR'S BILL OF RIGHTS ACT OF 2022"

Hafa Adai Madame Speaker,

Over time, as society grows to further understand the nature of domestic violence and criminal sexual conduct, and the dynamics between aggressors and victims involved in these crimes, it is imperative that the body of governing law likewise evolves. Bill Nos. 242-36, 243-36, and 244-36 are three such efforts, intended to provide victims of domestic and sexual violence access to greater legal protections and rights. Today, I sign these bills into law as Public Law Nos. 36-100, 36-101, and 36-102, respectively, and I thank Senator Mary Torres, the main sponsor of these bills, for her leadership on these important issues.

Bill No. 242-36, now known as ***Public Law No. 36-100***, requires wireless telecommunications service providers to remove or release complaining witnesses from a shared or family wireless service contract upon submission of a written request, along with documented evidence of family violence, sexual assault or stalking in the form of a court order, a police report, or a declaration from certain care providers for the complaining witnesses. The request may be submitted by the complaining witness

themselves, their attorney, or their advocate. Once the request and documentation is provided, the wireless service provider must act within 48 hours to transfer or remove the complaining witness from the shared family plan without charge, penalty, or fee. The bill emphasizes that a conviction is not necessary to effectuate the release. The intent of Bill No. 242-36 is clear and laudable – often, in cases involving domestic violence, sexual assault or stalking, time is of the essence, and immediate steps must be taken to ensure the safety of the complaining witness, including preventing alleged perpetrators of these crimes from tracking or contacting the complaining witnesses, or worse, confronting them in a manner that endangers all parties involved. By ensuring the confidentiality of the complaining witnesses, they can seek the services and support they need when they are vulnerable, and feel empowered to leave abusive circumstances, without potentially exposing them, their children, and their network to further harm.

Bill No. 243-36, now known as ***Public Law No. 36-101***, is a critical measure updating our laws to reflect, among other things, that individuals who are significantly impaired or intoxicated are mentally incapacitated within the meaning of Guam law, such that they cannot consent to a sexual act, regardless of whether such impairment or intoxication was voluntary or involuntary. For too long, perpetrators of sexual assault, in Guam and in similarly situated U.S. jurisdictions, have relied on the fact that their victims *voluntarily* consumed alcohol or other substances as a defense for sexual misconduct committed while these victims were clearly unable to consent. This loophole allowed predators to prey on victims they knew, or should have known, did not have the mental capacity to freely agree to engage in sexual acts. Closing this gap in our statute more accurately represents our community's understanding about the responsibilities we have to each other when we engage in conduct that involves our bodily agency, more fully protects our right to control our bodies, and restores to us the power to decide when and with whom we want to share our most intimate selves.

Bill No. 244-36, now known as ***Public Law No. 36-102***, enacts the Survivor's Bill of Rights. This bill codifies the rights that victims of sexual assault shall have. It encapsulates key priorities to sexual assault survivors, including being treated with respect, dignity and compassion, and providing access to services and advocacy, including access to timely examinations, testing, protection, and support. It further requires publication of the Survivor's Bill of Rights in hospitals, police stations, and school campuses, ensuring that the necessary information is available and readily accessible to affected persons. This Bill will help raise awareness in our communities, that our island stands with survivors of sexual assault, that we support them, and that we are committed to helping them achieve justice, and, ultimately, peace.

Senseremente,

Lou Leon Guerrero

LOURDES A. LEON GUERRERO
Maga'hågan Guåhan
Governor of Guam

COMMITTEE ON RULES
RECEIVED:
June 15, 2022
5:07 P.M.

Enclosure: Bill No. 242-36 (LS) *nka P.L. No. 36-100*
Bill No. 243-36 (LS) *nka P.L. No. 36-101*
Bill No. 244-36 (LS) *nka P.L. No. 36-102*

cc via email: *Honorable* Joshua F. Tenorio, *Sigundo Maga'låhen Guåhan*
Compiler of Laws

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

CERTIFICATION OF PASSAGE OF AN ACT TO *I MAGA'HÅGAN GUÅHAN*

This is to certify that **Bill No. 243-36 (LS), "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) 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,"** was on the 2nd day of June 2022, duly and regularly passed.

Therese M. Terlaje

Therese M. Terlaje
Speaker

Attested:

Amanda Shelton

Amanda L. Shelton
Legislative Secretary

This Act was received by *I Maga'hågan Guåhan* this 3rd day of June, 2022, at 3:17 o'clock P .M.

Elie V. Z.

Assistant Staff Officer
Maga'håga's Office

APPROVED:

Lisa Leon Guerrero

Lourdes A. Leon Guerrero
I Maga'hågan Guåhan

Date: 6/15/2022

Public Law No. 36-101

2022-16707
RCVD AT CENTRAL FILES
JUN 3 '22 PM3:17

Elaine Tajalle

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

Bill No. 243-36 (LS)
As amended by the Committee on Health,
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BE IT ENACTED BY THE PEOPLE OF GUAM:

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temporary physical conditions preclude them from consenting to sexual activity. Consequently, the majority of U.S. jurisdictions, including Guam, contemplate physical helplessness, mental impairment, and/or mental incapacitation in determining degrees of criminal sexual conduct.

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

I Liheslaturan Guåhan duly notes that the Minnesota Supreme Court overturned a felony rape conviction earlier this year because the victim was

intoxicated by her own will during the alleged assault. The court's interpretation of the state's mental incapacitation definition, which bear similar construction to Guam's present statute, underscored a need to change current language that govern alcohol-facilitated assault. The Minnesota Supreme Court noted, "if the Legislature intended for the definition of mentally incapacitated to include voluntarily intoxicated persons, 'it is the Legislature's prerogative to reexamine the…statute and amend it accordingly.' *State v. Rick*, 835 N.W.2d 478, 486 (Minn. 2013), *abrogated on other grounds by State v. Thonesavanh*, 904 N.W.2d 432 (Minn. 2017). It has done so recently to address other perceived gaps in the criminal sexual conduct statutes" (*State v. Khalil*, 956 N.W.2d 627 (2021). On June 29, 2021, the Minnesota State Legislature passed H.F. No. 63, which expanded the state's definition of "mentally incapacitated" to include voluntary intoxication. The measure was signed into law by Governor Tim Walz on June 30, 2021.

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

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

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

"(a) As used in this Chapter:

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

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

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

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

(3) Force or Coercion includes, but is not limited to, any of the following circumstances:

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

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

(C) when the actor coerces the victim to submit by threatening to retaliate in the future against the victim or any other person and the victim believes that the actor has the ability to execute this threat.

As used in this Subsection, to retaliate includes threats of physical punishment, kidnapping, or extortion;

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

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

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

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

(6) Mentally Incapacitated means

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

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

(7) Physically Helpless means that a person is

(A) unconscious,

(B) asleep,

(C) unable to withhold consent or to withdraw consent because of a physical condition, or

(D) for any other reason, is physically unable to communicate unwillingness to an act;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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