

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) As amended by the Committee on Health, Land, Justice, and Culture; and further amended on the Floor	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 Telena Cruz Nelson	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.	2/1/22	Committee on Health, Land, Justice, and Culture	4/6/22 10:00 a.m.	5/16/22 4:31 p.m. As amended by the Committee on Health, Land, Justice, and Culture	Request: 2/4/22 Waiver: 2/8/22	
	SESSION DATE	TITLE	DATE PASSED	TRANSMITTED	DUE DATE	PUBLIC LAW NO.	DATE SIGNED	NOTES	
	5/27/22	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."	6/2/22	6/3/22	6/15/22	36-101	6/15/22	Received: 6/15/22 Mess and Comm. 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

36GL-22-2140
Doc Type: to 36GL-22-2142
OFFICE OF THE SPEAKER
THERESE M. TERLAJE

~~06~~ 15 2022

Time: 3:54pm
Received: *[Signature]*

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

To: Speaker Terlaje
Fr: Governor of Guam
Date: June 15, 2022
Re: Bill Nos. 242-36 (LS), 243-36 (LS), and 244-36 (LS)

Page 2 of 2

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.

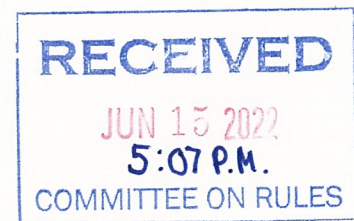
Senseremente,



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

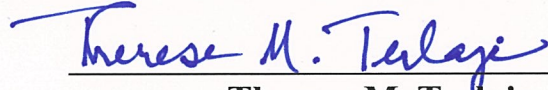
RICARDO J. BORDALLO GOVERNOR'S COMPLEX
513 W. Marine Corps Drive Hagåtña, Guam 96910
governor.guam.gov | (671) 472-8931

Doc. No. 36GL-22-2141.

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

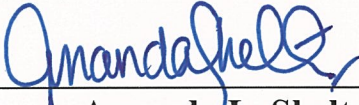
CERTIFICATION OF PASSAGE OF AN ACT TO *I MAGA'HÁGAN GUÁHAN*

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.



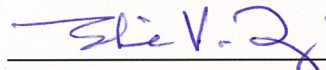
Therese M. Terlaje
Speaker

Attested:



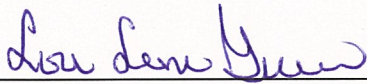
Amanda L. Shelton
Legislative Secretary

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



Assistant Staff Officer
Maga'håga's Office

APPROVED:



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 PM 3:17

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."**

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds
3 that common law has long prohibited intercourse with victims whose permanent or

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

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

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

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

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

14 *I Liheslaturan Guåhan* further notes that several other U.S. jurisdictions
15 recognize voluntary intoxication in their criminal sexual assault codes. These
16 include the states of Arizona [§13-1401(A)(7)(b)]; Arkansas [§§5-14-101(5)];
17 California [California Penal Code 261]; Idaho [§18-6101(5)]; Iowa [§709.1A];
18 Kansas [Kansas 21-5503(2)]; Louisiana [§14:43]; Maryland [MD Code, Criminal
19 Law, § 3-301]; Montana [§ 45-2-211(2)(b)]; Oregon [§ 163.305(2)]; South Carolina
20 [§16-3-651(f)], Washington [§9A.44.010(4)], and Wisconsin [940.225(2)(cm)].

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

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

1 “(a) As used in this Chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (6) Mentally Incapacitated means

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

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

21 (7) Physically Helpless means that a person is

22 (A) unconscious,

23 (B) asleep,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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