

I MINA'TRENTAI SAIS NA LIHESLATURAN GUÅHAN

2022 (SECOND) Regular Session

VOTING RECORD

Bill No. 243-36 (LS) <small>As amended by the Committee on Health, Land, Justice, and Culture; and further amended on the Floor.</small>	Speaker Antonio R. Unpingco Legislative Session Hall Guam Congress Building June 2, 2022					
NAME	Aye	Nay	Not Voting/ Abstained	Out During Roll Call	Absent	Excused
Senator V. Anthony Ada	✓					
Senator Frank Blas Jr.	✓					
Senator Joanne Brown	✓					
Senator Christopher M. Dueñas	✓					
Senator James C. Moylan	✓					
Vice Speaker Tina Rose Muña Barnes	✓					
Senator Telen Cruz Nelson	✓					
Senator Sabina Flores Perez	✓					
Senator Clynton E. Ridgell					✓	✓
Senator Joe S. San Agustin	✓					
Senator Amanda L. Shelton					✓	✓
Senator Telo T. Taitague	✓					
Senator Jose "Pedo" Terlaje					✓	✓
Speaker Therese M. Terlaje	✓					
Senator Mary Camacho Torres					✓	✓

TOTAL

11

0

4

4

Aye

Nay

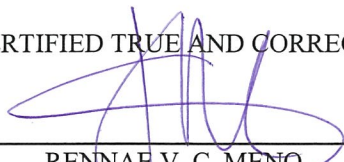
Not Voting/
Abstained

Out During
Roll Call

Absent

Excused

CERTIFIED TRUE AND CORRECT:



RENNAE V. C. MENO
Clerk of the Legislature

I = Pass

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

**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
4 temporary physical conditions preclude them from consenting to sexual activity.

1 Consequently, the majority of U.S. jurisdictions, including Guam, contemplate
2 physical helplessness, mental impairment, and/or mental incapacitation in
3 determining degrees of criminal sexual conduct.

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

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

25 *I Liheslaturan Guåhan* duly notes that the Minnesota Supreme Court
26 overturned a felony rape conviction earlier this year because the victim was
27 intoxicated by her own will during the alleged assault. The court’s interpretation of

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

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

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

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

27 “(a) As used in this Chapter:

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

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

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

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

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

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

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

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

24 As used in this Subsection, to retaliate includes threats of
25 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.