

I MINA' TRENTE NA LIHESLATURAN GUÅHAN  
2008 (FIRST) Regular Session

Bill No. 36 (COR)

Introduced by:

T. R. Muña-Barnes

J. T. Won Pat

J. P. Guthertz

2009 JAN - 7 PM 12:00

*Handwritten signature/initials*

**AN ACT TO ADD A NEW CHAPTER 26 TO GCA TITLE 9,  
RELATIVE TO COMBATING HUMAN TRAFFICKING  
ON GUAM AND TO PROTECT VICTIMS OF HUMAN  
TRAFFICKING FROM SEXUAL AND ECONOMIC  
EXPLOITATION.**

1 BE IT ENACTED BY THE PEOPLE OF GUAM:

2 **Section 1. A new Chapter 26 is added to GCA Title 9 to read:**

3 **CHAPTER 26**

4 **Human Trafficking and Criminal Exploitation Act of 2009**

5 **Section 2. PROSECUTION.**

6 **2.1 DEFINITIONS.**

7 (1) Commercial sex acts means any sex act on account of which anything of value is given,  
8 promised to, or received, or exchanged, directly or indirectly, by any person.

9 (2) Debt coercion means exploitation of the status or condition of a debtor arising from a  
10 pledge by the debtor of his or her personal services or those of a person under his or her  
11 control as a security or payment for debt, if the value of those services as reasonably  
12 assessed is not applied toward the liquidation of the debt or the length and nature of those  
13 services are not respectively limited and defined or if the principal amount of the debt

1 does not reasonably reflect the value of the items or services for which the debt was  
2 incurred.

3 (3) Extortion is to be given its ordinary meaning as defined by existing Guam law.

4 (4) Financial harm includes credit extortion as defined by existing Guam laws and/or  
5 relevant Federal legislation, criminal violation of the usury laws as defined by existing local  
6 and/or federal legislation or legal precedents, or employment contracts that violate relevant  
7 Statutes of Frauds as defined by Guam and Federal regulations.

8 (5) Labor means work of economic or financial value.

9 (6) Minor refers to any natural person under 18 years of age.

10 (7) Person includes an individual, corporation, partnership, association, a government  
11 body, a municipal corporation, or any other legal entity.

12 (8) Services means any act committed at the behest of, under the supervision of, or for the  
13 benefit of another.

14 (9) Sex act means any touching of the sexual or other intimate parts of another person for  
15 the purpose of gratifying sexual desire of any person. It includes touching of the person as  
16 well as touching by the person, whether directly or through clothing.

17 (10) Sexually-explicit performance means an act or show, intended to arouse, satisfy the  
18 sexual desires of, or appeal to the prurient interests of patrons or viewers, whether public  
19 or private, live, photographed, recorded, or videotaped.

20 (11) Victim of trafficking in persons means any person, whether a U.S. citizen or foreign  
21 national, who has been subjected to the crime of trafficking in persons, sexual servitude of  
22 a minor, or involuntary servitude.

## 23 **2.2 CRIMINAL PROVISIONS.**

24 (1) **TRAFFICKING IN PERSONS.** Any person who knowingly:

25 (a) recruits, entices, solicits, isolates, harbors, transports, provides, or obtains, or so  
26 attempts, another person knowing that the person will be subjected to sexual  
27 servitude of a minor or involuntary servitude, or

1 (b) benefits, financially or by receiving anything of value, from participation in a  
2 venture which has engaged in an act described in paragraph (A), commits a Class B  
3 felony.

4 (2) SEXUAL SERVITUDE OF A MINOR. Any person who knowingly:

5 (a) recruits, entices, solicits, isolates, harbors, transports, provides, or obtains, or so  
6 attempts, any minor for the purposes of commercial sex acts or sexually explicit  
7 performance through any means, or

8 (b) benefits, financially or by receiving anything of value, from participation in a  
9 venture which has engaged in an act described in paragraph (A), Commits a Class A  
10 felony.

11 (3) INVOLUNTARY SERVITUDE. Any person who knowingly subjects, or attempts to  
12 subject, another person to:

13 (i) commercial sex acts or sexually explicit performance, or

14 (ii) labor or services through use of any of the following means:

15 (a) causing or threatening to cause serious harm to any person;

16 (b) physically restraining or threatening to physically restrain another person;

17 (c) abusing or threatening to abuse the law or legal process;

18 (d) knowingly destroying, concealing, removing, confiscating or possessing any  
19 actual or purported passport or other immigration document, or any other actual or  
20 purported government identification document, of another person;

21 (e) extortion or blackmail;

22 (f) deception or fraud;

23 (g) debt coercion;

24 (h) causing or threatening to cause financial harm to any person;

25 (i) facilitating or controlling a victim's access to an addictive controlled substance; or

26 (j) using any scheme, plan, or pattern, whether overt or subtle, intended to cause any  
27 person to believe that, if the person did not perform such labor, services, acts or

1 performances, that person or another person would suffer serious harm or physical  
2 restraint, commits a Class A felony.

3 (4) Any person who violates this section shall be guilty of the crime of human trafficking,  
4 which is a second degree felony punishable by imprisonment for not more than five (5)  
5 years or by a fine not to exceed Five Hundred Thousand Dollars (\$500,000), or both, per  
6 instance of such crime.

7 (5) ACCOMPLICE LIABILITY. Any person who knowingly aids, abets, or conspires with  
8 one or more persons to violate the criminal provisions of this subsection shall be  
9 punishable in the same manner as for a completed violation of that section.

### 10 **2.3 RACKETEERING ACTIVITY.**

11 The definition of racketeering activity in relevant territorial Racketeer Influenced and  
12 Corrupt Organizations (RICO) statute is amended to include additionally the criminal  
13 provisions defined in subsection 1.2 of this article.

### 14 **2.4 GUILTY PLEAS.**

15 Any plea of guilty entered under any provision of this chapter by an offender shall  
16 automatically entitle the victim of trafficking in persons to all benefits, rights, and  
17 compensation granted under Guam law to such victims, notwithstanding any existing law.

### 18 **2.5 VICTIM IMMUNITY FROM PROSECUTION.**

19 (a) In any prosecution of a person who is a victim of trafficking in persons, it shall be an  
20 affirmative defense that he or she was under duress or coerced into committing the  
21 offenses for which he or she is being subject to prosecution.

22 (b) A victim of trafficking in persons is not criminally liable for any commercial sex act or  
23 illegal sexually-explicit performance committed as a direct result of, or incident or related  
24 to, being trafficked.

25 (c) The victims of human trafficking shall be eligible, without regard to their  
26 immigration status, for benefits available through the 8GCA: Chapter 16 1.

27 (d) Within Fifteen (15) days, weekends and Government of Guam holidays  
28 excepted, of the first encounter with a victim of human trafficking, law

1 enforcement agents shall provide the victim with a completed Form 1-914  
2 Supplement B, Declaration of Law Enforcement Officer for Victim of  
3 Trafficking in Persons (LEA Declaration) in accordance with 8 C.F.R.  
4 10 52 14.1 l(Q(1). Where Guam law enforcement agencies find the grant of an LEA  
5 Declaration is inappropriate for a trafficking victim, the agency shall within  
6 Fifteen (15) days, weekends and Government of Guam holidays excepted,  
7 provide the victim with a letter explaining the grounds of the denial of the  
8 LEA Declaration. The victim may submit additional evidence to the law  
9 enforcement agency, which must reconsider the denial of the LEA  
10 Declaration within seven days of the receipt of additional evidence.

11 (e) Law Enforcement Officers and agencies, for purposes of this section, shall be those  
12 designated by the Attorney General who may enforce the provisions of this Act.

13 **2.6 NON-DEFENSES TO TRAFFICKING IN PERSONS.**

14 Evidence of the following facts or conditions shall not constitute a defense in a prosecution  
15 for violations of this article, nor shall such evidence preclude a finding of a violation:

- 16 (a) a trafficking victim's sexual history or history of commercial sexual activity;
- 17 (b) a trafficking victim's connection by blood or marriage to a defendant in the case or to  
18 anyone involved in the victim's trafficking;
- 19 (c) consent of or permission by a trafficking victim or anyone else on the trafficking victim's  
20 behalf to any commercial sex act or sexually explicit performance;
- 21 (d) age of consent to sex, legal age of marriage, or other discretionary age;
- 22 (e) mistake as to the victim's age, even if the mistake is reasonable.

23 **2.7 CRIMINAL LIABILITY OF BUSINESS ENTITIES.**

24 (a) Any business entity, including a corporation, partnership, association, government  
25 body, municipal corporation or any other legal entity, that aids or participates in any crime  
26 defined in subsection 1.2 of this article shall be criminally liable for the offense and shall be  
27 subject to a fine or loss of business license in the territory, or both.

1 (b) If a business entity is convicted of violating any section of this article, the court may  
2 when appropriate:

3 (1) order its dissolution or reorganization;

4 (2) order the suspension or revocation of any license, permit, or prior approval  
5 granted to it by local government agencies; or

6 (3) order the surrender of its charter if it is organized under Guam law or the  
7 revocation of its certificate to conduct business on Guam if it is not organized under  
8 Guam law.

9 **2.8 RESTITUTION.**

10 (a) A person convicted of violations of this article shall be ordered to pay mandatory  
11 restitution to the victim as provided in paragraph (c) of this subsection.

12 (b) For restitution purposes alone, victim(s) shall be defined according to existing Guam  
13 statutes defining victim under restitution provisions. If the victim of trafficking dies as a  
14 result of being trafficked, a surviving spouse, or common law or domestic partner of no  
15 less than five (5) years, of the victim of trafficking is eligible for restitution. If no surviving  
16 spouse or domestic or common-law partner exists, restitution shall be paid to the victim's  
17 issue or their descendants per stirpes. If no surviving spouse, issue or descendants exist,  
18 restitution shall be paid to the victim's surviving parent or parents or their estate. Any  
19 person named in this provision may not receive any funds from restitution if he or she  
20 benefited or engaged in conduct described in criminal provisions of subsection 1.2 of this  
21 article.

22 (c) Restitution under this section shall include items covered by existing Guam statutes  
23 governing victim restitution and any of the following if not already included in the  
24 Territory of Guam restitution statute:

25 (1) costs of medical and psychological treatment, including physical and  
26 occupational therapy and rehabilitation, at the court's discretion;

27 (2) costs of necessary transportation, temporary housing, and child care, at the  
28 court's discretion;

1 (3) attorney's fees and other court-related costs such as victim advocate fees;

2 (4) the greater of:

3 (i) the gross income or value to the defendant of the trafficking victim's  
4 commercial sex acts or sexually-explicit performances, or labor or services;

5 (ii) the value of the trafficking victim's labor as guaranteed under the  
6 minimum wage and overtime provisions of the Fair Labor Standards Act  
7 (FLSA); or

8 (iii) the value of the trafficking victim's labor as guaranteed under the  
9 minimum wage and overtime provisions of Guam labor laws.

10 (5) return of property, cost of damage to property, or full value of property if  
11 destroyed or damaged beyond repair;

12 (6) compensation for emotional distress, pain, and suffering;

13 (7) expenses incurred by a victim and any household members or other family  
14 members in relocating away from the defendant or his associates, including, but not  
15 limited to, deposits for utilities and telephone service, deposits for rental housing,  
16 temporary lodging and food expenses, clothing, and personal items. Expenses  
17 incurred pursuant to this section shall be verified by law enforcement to be  
18 necessary for the personal safety of the victim or household or family members, or  
19 by a mental health treatment provider to be necessary for the emotional well-being  
20 of the victim; and

21 (8) any and all other losses suffered by the victim as a result of violations of this  
22 article.

23 (d) Restitution shall be paid to the victim promptly upon the conviction of the defendant,  
24 with the proceeds from property forfeited under this subsection applied first to payment of  
25 restitution. The return of the victim to her or his home country or other absence of the  
26 victim from the jurisdiction shall not prevent the victim from receiving restitution.

27 (e) Nonpayment or delay in payment of restitution shall be governed by Guam restitution  
28 statute(s) governing non-payment or delay in restitution payments.

1 **2.9 ASSET FORFEITURE.**

2 (a) All offenses under this section shall qualify as offenses for forfeiture and thereby subject  
3 to the provisions of statute(s) governing forfeiture according to existing Guam law.

4 (b) Overseas assets of persons convicted of trafficking in persons shall also be subject to  
5 forfeiture to the extent they can be retrieved by the government.

6 (c) Any assets seized shall first be used to pay restitution to trafficking victims and  
7 subsequently to pay any damages awarded to victims in a civil action. Any remaining  
8 assets shall go toward funding services for victims of trafficking, or Guam crime victims'  
9 fund.

10 **2.10 STATUTE OF LIMITATIONS.**

11 (a) An action for trafficking in persons where the victim is not a minor shall be brought  
12 within applicable Guam territorial statutes of limitations for sex offenses or kidnapping  
13 from the date the victim escaped or was freed or arrested by authorities from the  
14 trafficking situation.

15 (b) Any statute of limitations that would otherwise preclude prosecution for an offense  
16 involving the trafficking of a minor, or the physical or sexual abuse of a minor, shall be  
17 tolled until such time as the victim has reached the age of 18 years.

18 (c) The running of the statute of limitations may be suspended where a person entitled to  
19 bring a claim of trafficking in persons could not have reasonably discovered the cause of  
20 action due to circumstances resulting from the trafficking situation, such as psychological  
21 trauma, cultural and linguistic isolation, and the inability to access services.

22 (d) The running of the statute of limitations shall be automatically suspended where  
23 individual(s) who due to mental illness, retardation or other mental defect whether minor  
24 or adult are entitled to bring a claim as a victim of trafficking in persons as defined in  
25 section 1.2.

26 **2.11 SENTENCING ENHANCEMENTS.**

27 (a) Sentencing considerations in cases involving rape, extreme violence, or death. If a  
28 violation of this article involves kidnapping or an attempt to kidnap, aggravated sexual



1 abuse or the attempt to commit aggravated sexual abuse, or an attempt to kill, or if death  
2 results, the defendant commits a Class A felony.

3 (b) Additional sentencing considerations.

4 (1) Bodily injury. If, pursuant to a violation of this article, a victim suffered bodily  
5 injury, the sentence may be enhanced as follows:

6 (i) bodily injury, an additional \_ years of imprisonment;

7 (ii) serious bodily injury, an additional 2 years of imprisonment;

8 (iii) permanent or life-threatening bodily injury, an additional 7 years of  
9 imprisonment;

10 (iv) if death results, defendant shall be sentenced in accordance with the  
11 homicide statute relevant for level of criminal intent.

12 (2) Time in servitude. In determining sentences within statutory maximums, the  
13 sentencing court should take into account the time in which the victim was held in  
14 servitude, with increased penalties for cases in which the victim was held for  
15 between 90 days and one year, and further increased penalties for cases in which the  
16 victim was held for more than one year.

17 (3) Number of victims. In determining sentences within statutory maximums, the  
18 sentencing court should take into account the number of victims, and may provide  
19 for substantially increased sentences in cases involving more than two victims.

## 20 **Section 3. PREVENTION OF TRAFFICKING**

### 21 **3.1 TERRITORIAL TASK FORCE FOR PREVENTION OF TRAFFICKING.**

22 (a) The Governor shall establish an inter-agency task force to develop and implement a  
23 Territorial Plan for the Prevention of Trafficking in Persons. Such a task force shall meet at  
24 least annually and should include all aspects of trafficking, including sex trafficking and  
25 labor trafficking of both U.S. citizens and foreign nationals.

26 (b) "Trafficking" as used in this section refers to the crimes defined in subsection 1.2 of this  
27 article.

1 (c) The Governor shall appoint the members of the task force, which shall include, at a  
2 minimum, representatives from:

3 (1) the Attorney General's Office;

4 (2) the Department of Labor;

5 (3) the Guam Police Department;

6 (4) local Homeland Security Office;

7 (5) the Department of Public Health and Social Services; and

8 (6) representatives from non-governmental organizations, especially those  
9 specializing in trafficking in persons, those representing diverse communities  
10 disproportionately affected by trafficking, agencies devoted to child services and  
11 runaway services, and academic researchers dedicated to the subject of human  
12 trafficking.

13 (d) The Governor shall invite representatives of the U.S. Attorney's office and of federal law  
14 enforcement agencies offices within the territory, including the Federal Bureau of  
15 Investigation and U.S. Immigration and Customs Enforcement, to be members of the task  
16 force.

17 (e) The task force shall carry out the following activities either directly or via one or more of  
18 its constituent agencies:

19 (1) Develop the Territorial Plan.

20 (2) Coordinate the implementation of the Territorial Plan.

21 (3) Coordinate the collection and sharing of trafficking data among government  
22 agencies, which data collection shall respect the privacy of victims of trafficking in  
23 persons.

24 (4) Coordinate the sharing of information between agencies for the purposes of  
25 detecting criminal groups engaged in trafficking.

26 (5) Explore the establishment of territorial policies for time limits for the issuance of  
27 Law Enforcement Agency (LEA) endorsements as described in Section 214.11(f)(1) of  
28 Chapter 8 of the Code of Federal Regulations.

1 (6) Establish policies to enable Territorial government to work with non-  
2 governmental organizations and other elements of civil society to prevent trafficking  
3 and provide assistance to U.S. citizen and foreign national victims.

4 (7) Review the existing services and facilities to meet trafficking victims' needs and  
5 recommend a system that would coordinate such services, including but not limited  
6 to: health services, including mental health; housing; education and job training;  
7 English as a second language classes; interpreting services; legal and immigration  
8 services; and victim compensation.

9 (8) Evaluate various approaches used by Territorial and state governments to  
10 increase public awareness of the trafficking in persons, including U.S. citizen and  
11 foreign national victims of trafficking in persons.

12 (9) Submit an annual report of its findings and recommendations to the Governor,  
13 the Speaker of the Guam Legislature, the Guam Legislature and the Guam Attorney  
14 General's Office on or before December 31 of each calendar year.

### 15 **3.2 DATA COLLECTION AND DISSEMINATION.**

16 (a) The territory shall, in cooperation with other appropriate authorities, collect and  
17 periodically publish statistical data on trafficking.

18 (b) The territory shall elicit the cooperation and assistance of other government agencies,  
19 non-governmental organizations, and other elements of civil society as appropriate to assist  
20 in the data collection required under paragraph (a) of this subsection.

21 (c) The appropriate authorities in each agency that play a vital role in addressing trafficking  
22 shall make best efforts to collect information relevant to tracking progress on trafficking,  
23 including but not limited to:

24 (1) numbers of investigations, arrests, prosecutions, and successful convictions of  
25 traffickers and those committing trafficking-related crimes (pimping, pandering,  
26 procuring, maintaining a brothel, child pornography, visa fraud, document fraud,  
27 and other crimes related to trafficking);

- 1 (2) the estimated number and demographic characteristics of persons engaged in
- 2 violations of the criminal provisions defined in subsection 1.2 of this article as well
- 3 as persons who purchase or receive commercial sex acts or sexually-explicit
- 4 performances, or labor or services, performed by victims of trafficking in persons;
- 5 (3) statistics on the number of victims, including nationality, age, method of
- 6 recruitment, and city, state, territory and country of origin;
- 7 (4) trafficking routes and patterns (states or countries of origin, transit states or
- 8 countries, and destination states or countries);
- 9 (5) methods of transportation (car, boat, plane, foot), if any transportation took
- 10 place; and
- 11 (6) social and economic factors that contribute to and foster the demand for all forms
- 12 of exploitation of persons that lead to trafficking.

### 13 **3.3 TRAINING.**

14 (a) The territory shall provide mandatory training for law enforcement agencies,

15 prosecutors, and other relevant officials in addressing trafficking in persons.

16 (b) Such training shall focus on:

- 17 (1) the new crimes and other provisions created by this article;
- 18 (2) methods used in identifying U.S. citizen and foreign national victims of
- 19 trafficking in persons, including preliminary interview techniques and appropriate
- 20 questioning methods;
- 21 (3) methods for prosecuting traffickers;
- 22 (4) methods of increasing effective collaboration with non-governmental
- 23 organizations and other relevant social service organizations in the course of
- 24 investigating and prosecuting a trafficking case;
- 25 (5) methods for protecting the rights of victims, taking into account the need to
- 26 consider human rights and special needs of women and minors victims, and that victims
- 27 should be treated as victims rather than criminals; and
- 28 (6) methods for promoting the safety of victims.

1 (c) The territory shall seek the input and participation of appropriate non-governmental  
2 organizations and other relevant organizations in the preparation and presentation of  
3 training called for in this subsection.

#### 4 **3.4 PUBLIC AWARENESS.**

5 (a) The territory in cooperation with appropriate non-governmental organizations shall  
6 prepare public awareness programs designed to educate potential victims of trafficking in  
7 persons and their families on the risks of victimization. Such public awareness programs  
8 shall include, but shall not be limited to:

9 (1) information about the risks of becoming a victim, including information about  
10 common recruitment techniques, use of debt bondage, and other coercive tactics,  
11 risk of maltreatment, rape, exposure to HIV/AIDS and other sexually transmitted  
12 diseases, and psychological harm related to victimization in trafficking cases;

13 (2) information about the risks of engaging in commercial sex and possible  
14 punishment; and

15 (3) information about victims' rights on Guam;

16 (4) methods for reporting suspected recruitment activities; and

17 (5) information on hotlines and available victims' services.

18 (b) The territory in cooperation with other appropriate government agencies and  
19 appropriate non-governmental organizations or other elements of civil society shall  
20 prepare and disseminate general public awareness materials to educate the public on the  
21 extent of trafficking in persons, both U.S. citizens and foreign nationals, within Guam and  
22 the Commonwealth of Northern Marianas; and to discourage the demand that fosters the  
23 exploitation of persons and that leads to trafficking.

24 (c) General public awareness materials may include information on the impact of  
25 trafficking on individual victims, whether U.S. citizens or foreign nationals; aggregate  
26 information on trafficking worldwide and domestically; and warnings of the criminal  
27 consequences of engaging in trafficking. Such materials may include pamphlets,  
28 brochures, posters, advertisements in mass media, and any other appropriate media.

1 (d) Materials described in this section may include information on the impact of trafficking  
2 on individual victims. However, any information on the experiences of individual victims  
3 shall preserve the privacy of the victim and the victims' families.

4 (e) All public awareness programs shall be evaluated periodically to ensure their  
5 effectiveness.

## 6 **2.5 ROLE OF NON-GOVERNMENTAL ORGANIZATIONS.**

7 For each territorial initiative for the prevention of trafficking, including but not limited to  
8 those listed above (territorial task force; data collection and dissemination; training; and  
9 public awareness), the territorial shall seek out and enlist the cooperation and assistance of  
10 non-governmental organizations, especially those specializing in trafficking in persons,  
11 those representing diverse communities disproportionately affected by trafficking, agencies  
12 devoted to child services and runaway services, and academic researchers dedicated to the  
13 subject of trafficking.

## 14 **Section 4. VICTIM PROTECTION.**

### 15 **4.1 CIVIL ACTION.**

16 (a) An individual who is a victim of trafficking may bring a civil action in the appropriate  
17 territorial court. The court may award actual damages, compensatory damages, punitive  
18 damages, injunctive relief, and any other appropriate relief. A prevailing plaintiff shall also  
19 be awarded attorney's fees and costs. Treble damages shall be awarded on proof of actual  
20 damages where defendant's acts were willful and malicious.

21 (b) Any statute of limitation imposed for the filing of a civil suit will not start to run until  
22 any minor plaintiff has reached the age of majority, with the exception of persons  
23 determined to have or suffer from mental illness, retardation or other mental defects at the  
24 time of or before their victimization.

25 (c) If a person entitled to sue is under a disability at the time the cause of action accrues, so  
26 that it is impossible or impracticable for him or her to bring an action, then the time of the  
27 disability is not part of the time limited for the commencement of the action. Disability  
28 includes, but is not limited to, insanity, imprisonment, or other incapacity or incompetence.

1 (d) The running of the statute of limitations may be suspended where a person entitled to  
2 sue could not have reasonably discovered the cause of action due to circumstances  
3 resulting from the trafficking situation, such as psychological trauma, cultural and  
4 linguistic isolation, and the inability to access services.

5 (e) A defendant is estopped to assert a defense of the statute of limitations when the  
6 expiration of the statute is due to conduct by the defendant inducing the plaintiff to delay  
7 the filing of the action or placing the plaintiff under duress.

#### 8 **4.2 APPLICABILITY OF LABOR STANDARDS.**

9 (a) Standards for working conditions specified by Guam Code Annotated Labor laws shall  
10 apply equally to persons with or without the legal right to work in the United States.

11 (b) The territory shall investigate complaints of unlawful working conditions without  
12 regard to the immigration status of complainants and without regard to the nature of the  
13 work or services involved.

#### 14 **4.3 PROTECTION OF VICTIMS.**

15 Investigative, prosecutorial, and other appropriate authorities shall interview all persons  
16 arrested on charges of prostitution, and take all other steps necessary to identify victims of  
17 trafficking in persons, including U.S. citizens and foreign nationals. Once victims are  
18 identified, these authorities shall provide reasonable protection to victims of trafficking in  
19 persons to prevent recapture by the traffickers and their associates, secure the victim and  
20 the victim's family from threats, reprisals or intimidation by the traffickers and their  
21 associates, and ensure the victim has an opportunity to consult with a victim advocate or  
22 other appropriate person to develop a safety plan.

#### 23 **4.4 WITNESS PROTECTION.**

24 Victims of trafficking in persons and their family members, whether U.S. citizens or foreign  
25 nationals, who are witnesses or potential witnesses are eligible for applicable witness  
26 relocation and protection programs for victims of organized criminal activity or other  
27 serious offenses, if it is determined that an offense involving a crime of violence directed at  
28 the witness or potential witness is likely to be committed. The programs may include:

- 1 (1) relocation;
- 2 (2) new identity and documents establishing such identity;
- 3 (3) new residence;
- 4 (4) employment and work authorization; and
- 5 (5) protection of confidentiality of identity and location.

#### 6 **4.5 ACCESS TO THE TERRITORIAL CRIME VICTIMS' COMPENSATION FUND.**

7 Victims of trafficking in persons are entitled to forms of compensation under the Guam  
8 Territorial Crime Victims' Compensation Fund.

#### 9 **4.6 PROTECTION OF THE PRIVACY OF VICTIMS.**

10 In a prosecution for violations of the criminal provisions of this article, the identity of the  
11 victim and the victim's family should be kept confidential by ensuring that names and  
12 identifying information of the victim and victim's family are not released to the public,  
13 including by the defendant.

#### 14 **4.7 INFORMATION FOR VICTIMS.**

15 (a) The territory shall inform victims of trafficking in persons, in a language they can  
16 understand, of their legal rights and the progress of relevant court and administrative  
17 proceedings, as appropriate, including but not limited to progress in the prosecution of the  
18 criminal offenders; information on convicted persons' prison release dates; and the  
19 procedure for repatriating a victim to his/her country of citizenship or lawful residence.  
20 The territory shall also provide victims with a directory of local victim service  
21 organizations, including legal services organizations that can assist victims in obtaining or  
22 maintaining the legal immigration status.

23 (b) The agency administering the territorial crime victims' compensation fund created  
24 under relevant Guam statutes shall inform victims of trafficking in persons of benefits they  
25 may receive under federal and local laws, and assist victims in obtaining such benefits.

#### 26 **4.8 OPPORTUNITY FOR PRESENTATION OF VICTIM'S VIEWS AND CONCERNS.**

27 The Territory of Guam shall provide an opportunity to a victim of trafficking in persons, if  
28 the victim desires it, to present the victim's views and concerns at appropriate stages of



1 criminal proceedings against traffickers, in a manner not prejudicial to the rights of the  
2 defendant. An interpreter who speaks a language the victim understands should be made  
3 available to the victim during the course of legal proceedings.

#### 4 **4.9 SUPPORT FOR VICTIMS.**

5 (a) Within 180 days of the enactment of this legislation, the Territory of Guam shall develop  
6 plans, in consultation with non-governmental organizations and other elements of civil  
7 society, for the provision of appropriate services, from governmental and non-  
8 governmental sources, for victims of trafficking in persons, whether U.S. citizens or foreign  
9 nationals, and any dependents accompanying the victims, or parents or guardians of minor  
10 victims, including, but not limited to:

- 11 (1) appropriate housing, taking into account the person's status as a victim of crime  
12 and including safe conditions for sleeping, food and personal hygiene;
- 13 (2) psychological counseling in a language the victim can understand;
- 14 (3) medical assistance in a language the victim can understand;
- 15 (4) childcare;
- 16 (5) other material assistance as appropriate;
- 17 (6) employment, educational, language, and training opportunities; and
- 18 (7) legal assistance in a language the victim understands.

19 (b) Foreign national victims of trafficking in persons and their accompanying dependent  
20 children shall be entitled to receive social benefits in the same manner as refugees.

21 (c) Victims of trafficking in persons shall not be given shelter in prisons or other detention  
22 facilities for accused or convicted criminals. Child victims of trafficking in persons shall not  
23 be housed in prisons or other detention facilities for accused or convicted criminals or  
24 juvenile delinquents under any circumstances.

25 (d) Residence in shelters or other facilities established under this section shall be voluntary,  
26 and victims may decline to stay in shelters or other facilities.

1 (e) Victims in shelter or other facilities shall have the option to communicate with and  
2 receive visits from family, friends, attorneys, and advocates without restrictions or  
3 limitations.

4 (f) The governmental service providers described in paragraph (a) shall take into account  
5 the age, gender, and special needs of victims and accompanying dependent children in  
6 formulating plans to provide services to them and in delivering such services.

7 (g) Plans developed in accordance with paragraph (a) shall be submitted for approval to  
8 appropriate state authorities, which shall also undertake periodic reviews of the plans and  
9 their implementation to ensure compliance with the requirements of this article and to  
10 ensure that all victims are treated with respect for their human rights and dignity.

11 **4.10 APPROPRIATE IMPLEMENTATION FOR CHILD VICTIMS.**

12 The provisions of this article shall be provided to trafficking victims who are minors in a  
13 manner that is in the minor's best interests and appropriate to their situation. Minor  
14 trafficking victims shall be provided with appropriate services, which may include an  
15 explanation of their rights, privacy, housing, care, and age-appropriate support and rights  
16 specified in Section 3. Special programs should be developed to accommodate minor  
17 witnesses including, but not limited to:

- 18 (1) testimony of minor conducted outside court setting or by video;
- 19 (2) all testimony and court proceedings take place with parent, legal guardian or  
20 foster parent present, if it is in the best interests of the minor;
- 21 (3) whenever safe and possible, minors should be reunited with family members,  
22 whether within or outside the United States;
- 23 (4) special mental and physical medical care tailored to the minor's needs; and
- 24 (5) upon resettlement in a new country, minor victims of trafficking in persons  
25 should be guaranteed education that matches or exceeds the general standard of  
26 education in the country.

27 **4.11 HUMAN TRAFFICKING VICTIM-CASEWORKER PRIVILEGE.**

1 (a) A trafficking victim, whether or not a party to the action, has a privilege to refuse to  
2 disclose, and to prevent another from disclosing, a confidential communication between  
3 the victim and a human trafficking caseworker if the privilege is claimed by any of the  
4 following persons:

5 (1) the holder of the privilege;

6 (2) a person who is authorized to claim the privilege by the holder of the privilege;

7 or

8 (3) the person who was the human trafficking caseworker at the time of the  
9 confidential communication. However, that person may not claim the privilege if  
10 there is no holder of the privilege in existence or if he or she is otherwise instructed  
11 by a person authorized to permit disclosure. The human trafficking caseworker who  
12 received or made a communication subject to the privilege granted by this article  
13 shall claim the privilege whenever he or she is present when the communication is  
14 sought to be disclosed and he or she is authorized to claim the privilege under this  
15 section.

16 (b) A human trafficking caseworker shall inform a trafficking victim of any applicable  
17 limitations on confidentiality of communications between the victim and the caseworker.  
18 This information may be given orally.

19 (c) As used in this article, "human trafficking caseworker" means a person who is  
20 employed by any organization whether financially compensated or not, for the purpose of  
21 rendering advice or assistance to victims of human trafficking, who has received  
22 specialized training in the counseling of victims of trafficking in persons, and who meets  
23 one of the following requirements:

24 (i) holds a master's degree or higher in counseling or a related field; or has one year  
25 of counseling experience, at least six months of which is in the counseling of victims  
26 of trafficking in persons; or

27 (ii) has at least 40 hours of training as specified in this paragraph and is supervised  
28 by an individual who qualifies as a counselor under subparagraph (i) or by a

1           psychotherapist. The training, supervised by a person qualified under subparagraph  
2           (i), shall include, but need not be limited to, the following areas: history of human  
3           trafficking, civil and criminal law as it relates to human trafficking, societal attitudes  
4           towards human trafficking, peer counseling techniques, housing, public assistance  
5           and other financial resources available to meet the financial needs of trafficking  
6           victims, and referral services available to trafficking victims. A portion of this  
7           training must include an explanation of privileged communication.

8           (d) As used in this article, “confidential communication” means information transmitted  
9           between the victim and the caseworker in the course of their relationship and in confidence  
10          by a means which, so far as the victim is aware, discloses the information to no third  
11          persons other than those who are present to further the interests of the victim in the  
12          consultation or those to whom disclosures are reasonably necessary for the transmission of  
13          the information or an accomplishment of the purposes for which the human trafficking  
14          counselor is consulted. It includes all information regarding the facts and circumstances  
15          involving all incidences of human trafficking.

16          (e) As used in this article, “holder of the privilege” means the victim when he or she has no  
17          guardian or conservator, or a guardian or conservator of the victim when the victim has a  
18          guardian or conservator.

#### 19           **4.12 PROTECTION OF TRAFFICKING AND DOMESTIC VIOLENCE SHELTERS.**

20          (a) Any person who maliciously or with criminal negligence publishes, disseminates, or  
21          otherwise discloses the location of any trafficking victim, any trafficking shelter or  
22          domestic violence shelter or any place designated as a trafficking shelter or domestic  
23          violence shelter, without the authorization of that trafficking victim, trafficking shelter or  
24          domestic violence shelter, is guilty of a misdemeanor.

25          (b) For purposes of this section, “domestic violence shelter” means a confidential location  
26          which provides emergency housing for victims of sexual assault, spousal abuse, or both,  
27          and their families. For purposes of this section, “trafficking shelter” means a confidential  
28          location, which provides emergency housing for victims of human trafficking.