



Office of the Governor of Guam

P.O. Box 2950 Hagåtña, Guam 96932

TEL: (671) 472-8931 • FAX: (671) 477-4826 • EMAIL: governor@mail.gov.gu

Felix P. Camacho
Governor

Michael W. Cruz, M.D.
Lieutenant Governor

17 JUN 2009

2009 JUN 18 AM 10:42 AM

The Honorable Judith T. Won Pat, Ed.D.
Speaker
Mina' Trenta Na Liheslaturan Guåhan
155 Hessler Street
Hagåtña, Guam 96910

Dear Speaker Won Pat:

Transmitted herewith is Bill No. 36(COR) "AN ACT TO *ADD* A NEW CHAPTER 26 TO TITLE 9, GUAM CODE ANNOTATED, RELATIVE TO COMBATING HUMAN TRAFFICKING ON GUAM AND TO PROTECTING VICTIMS OF HUMAN TRAFFICKING FROM SEXUAL AND ECONOMIC EXPLOITATION" which I signed into law on June 16, 2009 as **Public Law 30-26**.

Sinseru yan Magåhet,

MICHAEL W. CRUZ, M.D.
I Maga'låhen Guåhan para pa'go
Acting Governor of Guam

Attachment: copy of Bill

36-09-0732
Office of the Speaker
Judith T. Won Pat, Ed.D.
Date: 6/17/09
Time: 4:30 PM
Received by: [Signature]

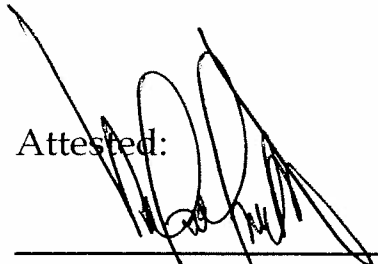
0735

I MINA'TRENTA NA LIHESLATURAN GUÅHAN
2009 (FIRST) Regular Session

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

This is to certify that Substitute Bill No. 36 (COR), "AN ACT TO ADD A NEW CHAPTER 26 TO TITLE 9, GUAM CODE ANNOTATED, RELATIVE TO COMBATING HUMAN TRAFFICKING ON GUAM AND TO PROTECTING VICTIMS OF HUMAN TRAFFICKING FROM SEXUAL AND ECONOMIC EXPLOITATION," was on the 29th day of May 2009, duly and regularly passed.

Attested:



Tina Rose Muña Barnes
Legislative Secretary



Judith T. Won Pat, Ed. D.
Speaker

This Act was received by *I Maga'lahaen Guåhan* this 4 day of June, 2009, at
9:55 o'clock A.M.



Assistant Staff Officer
Maga'lahaen's Office

APPROVED:



MIKE W. CRUZ, MD
GOVERNOR OF GUAM ACTING

Date: 16 JUN 2009

Public Law No. 30-26

I MINA'TRENTA NA LIHESLATURAN GUÅHAN
2009 (FIRST) Regular Session

Bill No. 36 (COR)

As substituted by the Author
and amended on the Floor.

Introduced by:

T. R. Muña Barnes
Ray Tenorio
Judith T. Won Pat, Ed.D.
Judith P. Guthertz, DPA
Telo Taitague
T. C. Ada
F. B. Aguon, Jr.
F. F. Blas, Jr.
E. J.B. Calvo
B. J.F. Cruz
J. V. Espaldon
Adolpho B. Palacios, Sr.
v. c. pangelinan
M. J. Rector
R. J. Respicio

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

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings. *I Liheslaturan Guåhan* finds that throughout history, many regimes of power have used the law to countenance *de jure* slavery, and have thereby denied the rights and inherent dignity of whole classes of people.

As a nation, our founding rests on the principle that all persons are created equal and endowed with certain inalienable rights, and that among these are life,

1 liberty and the pursuit of happiness. We are at our best as a people when we are
2 faithful to that principle and struggle to realize its promise for all persons.

3 The Thirteenth (13th) Amendment is an act to fulfill our founding principle.
4 It mandates that “[n]either slavery nor involuntary servitude...shall exist within the
5 United States or any place subject to their jurisdiction”, and it further obligates
6 Congress to enforce that mandate with “appropriate legislation”. The island of
7 Guam also has an affirmative obligation to eradicate the badges and incidents of
8 slavery.

9 Trafficking in persons is a modern-day manifestation of slavery. It consists
10 of the exploitation of individuals in situations of commercial sex or forced labor
11 for the purpose of financial gain. The highest order of the island is to fulfill the
12 promise of our founding principle. This fulfillment is achieved by restoring the
13 liberty and inherent dignity of an individual subjected to trafficking in persons.

14 Every year traffickers in persons prey on hundreds of thousands of people
15 around the world. Traffickers operate within or across international and state
16 borders and usually target a society’s most vulnerable, most of whom are women
17 and children. They subject their victims to exploitation through labor trafficking or
18 commercial sex trafficking. In this country and island, both U.S. citizens and non-
19 citizens may fall prey to traffickers of persons. Vulnerable people are often
20 trafficked or maintained in trafficking because they do not know their rights or do
21 not know how to assert their rights.

22 Traffickers use various techniques to instill fear in victims and keep them
23 enslaved. Some traffickers keep their victims under lock and key. More
24 frequently, traffickers employ less obvious techniques, including, isolating their
25 victims from family and the public, confiscating passports, visas, driver’s licenses,
26 or other identification documents, inflicting physical violence or the threat thereof
27 against victims or their family, threatening to use legal processes against them or

1 reporting them to law enforcement, immigration or juvenile authorities, fostering
2 addiction, controlling their access to addictive substances, and controlling their
3 funds.

4 Victims of human trafficking typically endure terrible physical and mental
5 trauma. Victims often suffer from traumatic bonding (Stockholm Syndrome), post
6 traumatic stress disorder (PTSD), and other conditions resulting from the
7 psychological harm inflicted upon them. When rescued, the extent of this trauma
8 must be recognized and assessed; victims need to be provided immediate access to
9 stabilization services before they can effectively contribute to the investigation of
10 the crimes that have been perpetrated against them.

11 Due to the fear instilled in them by the traffickers, and to the experience in
12 foreign countries from which they came, victims often have a profound suspicion
13 of law enforcement and will not seek the protection of law enforcement officers
14 and agencies. Due to their fears and psychological harms inflicted upon them, as
15 noted in the U.S. State Department's *2007 Trafficking in Persons Report*,
16 trafficking victims are unlikely to self-identify themselves as victims. Within the
17 context of interactions with authorities, victims of human trafficking must be
18 recognized as the victims of serious crime, and only secondary as a witness to a
19 crime. As stated in the *2007 Trafficking in Persons Report*:

20 *A government should provide efficient access to justice for these*
21 *victims, if they so choose, and access to shelter, medical care, legal*
22 *aid, and psycho-social counseling.*

23 As further stated in the 2007 Report:

24 *By placing the needs of victims front and center, victims of this*
25 *heinous crime are assured of the protection they so desperately need.*
26 *Once given those resources, many victims step forward voluntarily*
27 *and without pressure to become powerful and confident witnesses...*

Jurisprudence concerning the Thirteenth (13th) Amendment of the U.S. Constitution holds that no person can consent to be enslaved, including agreement to debt bondage, nor can a person under the age of eighteen (18) consent to participate in commercial sex. The federal Trafficking Victims Protection Act of 2000 is an act that fulfills the promise of the Thirteenth (13th) Amendment at the national level. This Act seeks to fulfill that promise within Guam.

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

“CHAPTER 26

Human Trafficking and Criminal Exploitation Act of 2009

Article 1. PROSECUTION

§26.01. Definition.

§26.02. Criminal Provisions.

§26.03. Victim Immunity from Prosecution.

§26.04. Non-Defense to Trafficking in Persons.

§26.05. Criminal Liability of Business Entities.

§26.06. Restitution.

§26.07. Asset Forfeiture.

§26.08. Statute of Limitations.

§26.09. Sentencing Enhancements.

Article 2. PREVENTION OF TRAFFICKING

§26.20. Task Force for Prevention of Trafficking.

§26.21. Data Collection and Dissemination.

§26.22. Training.

§26.23. Public Awareness.

§26.24. Role of Non-Governmental Organizations.

Article 3. PROTECTION OF VICTIMS

- 1 **§26.30. Victim’s Rights.**
2 **§26.31. Civil Action.**
3 **§26.32. Applicability of Labor Standards.**
4 **§26.33. Protection of Victims.**
5 **§26.34. Access to the Territorial Crime Victim’s**
6 **Compensation Fund.**
7 **§26.35. Protection of the Privacy of Victims.**
8 **§26.36. Information for Victims.**
9 **§26.37. Opportunity for Presentation of Victims and**
10 **Concerns.**
11 **§26.38. Support for Victims.**
12 **§26.39. Appropriate Implementation for Child Victims.**
13 **§26.40. Human Trafficking Victim-Caseworker Privilege.**
14 **§26.41. Protection of Trafficking and Domestic Violence**
15 **Shelters.**

16 **ARTICLE 1.**

17 **PROSECUTION**

18 **§26.01. Definition.**

19 (a) *Commercial sex acts* means any sex act on account of which
20 anything of value is given, promised to, or received, or exchanged, directly
21 or indirectly, by any person.

22 (b) *Debt coercion* means exploitation of the status or condition of a
23 debtor arising from a pledge by the debtor of his or her personal services or
24 those of a person under his or her control as a security or payment for debt,
25 if the value of those services as reasonably assessed is not applied toward the
26 liquidation of the debt or the length and nature of those services are not
27 respectively limited and defined or if the principal amount of the debt does

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

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

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

10 (e) *Labor* means work of economic or financial value.

11 (f) *Minor* refers to any natural person under eighteen (18) years of
12 age.

13 (g) *Person* includes an individual, corporation, partnership,
14 association, a government body, a municipal corporation, or any other legal
15 entity.

16 (h) *Services* means any act committed at the behest of, under the
17 supervision of, or for the benefit of another.

18 (i) *Sex act* refers to criminal sexual conduct, including sexual
19 penetration and sexual contact, as defined in Title 9 GCA, Chapter 25, and
20 any other crime as defined in Title 9 GCA, Chapter 25.01, Chapter 28, and
21 Chapter 89.

22 (j) *Sexually-explicit performance* means an act or show, intended
23 to arouse, satisfy the sexual desires of, or appeal to the prurient interests of
24 patrons or viewers, whether public or private, live, photographed, recorded,
25 or videotaped.

26 (k) *Victim of trafficking in persons* means any person, whether a
27 U.S. citizen or foreign national, who has been subjected to the crime of

1 trafficking in persons, involuntary servitude, sexual servitude of a minor, or
2 transported in violation of trafficking of persons for forced labor or service
3 as set forth herein.

4 (1) *Assets* shall mean real and personal property, including profits and
5 precedes acquired as a result of a crime charged under this Act, and that the
6 property was used to commit or facilitate the commission of an offense or
7 was involved in the commission of the offenses described in this Act and
8 there was a substantial connection between the property and the offense.

9 **§26.02. Criminal Provisions.**

10 (a) Trafficking in Persons. Any person who knowingly:

11 (1) recruits, entices, solicits, isolates, harbors, transports,
12 provides, or obtains by any means, or attempts to recruit, entice,
13 solicit, isolate, harbor, transport, provide, or obtain by any means,
14 another person, knowing that the person will be subjected to sexual
15 servitude of a minor or involuntary servitude; or

16 (2) benefits, financially or by receiving anything of value, from
17 participation in a venture which has engaged in an act described in
18 Subsection (a)(1) of this Section, commits a second degree felony.

19 (b) Sexual Servitude of a Minor. Any person who knowingly:

20 (1) recruits, entices, solicits, isolates, harbors, transports,
21 provides, or obtains by any means, or attempts to recruit, entice,
22 solicit, isolate, harbor, transport, provide, or obtain by any means, any
23 minor for the purpose of commercial sex acts or sexually explicit
24 performance; or

25 (2) benefits, financially or by receiving anything of value, from
26 participation in a venture which has engaged in an act described in
27 Subsection (b)(1) of this Section, commits a first degree felony.

1 (c) Involuntary Servitude. Any person who knowingly subjects, or
2 attempts to subject, another person to engage in labor, service, or violations
3 of Chapter 28 prostitution or obscenity offenses of Title 9 GCA, through the
4 use of any of the following:

5 (1) causing or threatening to cause serious harm to any
6 person;

7 (2) physically restraining or threatening to physically restrain
8 another person;

9 (3) abusing or threatening to abuse the law or legal process;

10 (4) knowingly destroying, concealing, removing,
11 confiscating or possessing any actual or purported passport or
12 other immigration document, or any other actual or purported
13 government identification document, of another person;

14 (5) extortion or blackmail;

15 (6) deception or fraud;

16 (7) debt coercion;

17 (8) causing or threatening to cause financial harm to any
18 person;

19 (9) facilitating or controlling a victim's access to an
20 addictive controlled substance; or

21 (10) using any scheme, plan, or pattern, whether overt or
22 subtle, for the purpose of causing any person to believe that, if
23 the person did not engage in such labor, service, or the
24 prostitution or obscenity offenses of Chapter 28 of Title 9 GCA,
25 that person or another person would suffer serious harm or
26 physical restraint,

27 commits a first degree felony.

1 (d) Accomplice Liability. Any person who knowingly aids, abets,
2 or conspires with one (1) or more persons to violate the criminal provisions
3 of this Subsection shall be punishable in the same manner as for a completed
4 violation of that Section.

5 **§26.03. Victim Immunity from Prosecution.**

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

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

13 (c) The victims of human trafficking shall be eligible, without
14 regard to their immigration status, for benefits available through Title 8
15 GCA, Chapter 161.

16 (d) Within fifteen (15) days, weekends and government of Guam
17 holidays excepted, of the first encounter with a victim of human trafficking,
18 law enforcement agents shall provide the victim with a completed Form 1-
19 914 Supplement B, Declaration of Law Enforcement Officer for Victim of
20 Trafficking in Persons (LEA Declaration) in accordance with 8 C.F.R. 10 52
21 14.1 l(Q(1)). Where Guam law enforcement agencies find the grant of an
22 LEA Declaration is inappropriate for a trafficking victim, the agency shall,
23 within fifteen (15) days, weekends and government of Guam holidays
24 excepted, provide the victim with a letter explaining the grounds of the
25 denial of the LEA Declaration. The victim may submit additional evidence
26 to the law enforcement agency, which must reconsider the denial of the LEA
27 Declaration within seven (7) days of the receipt of additional evidence.

1 (e) Law enforcement officers and agencies, for purposes of
2 enforcement of this Act, shall be those designated by the Attorney General
3 and by Guam law.

4 **§26.04. Non-Defenses to Trafficking In Persons.** Evidence of the
5 following facts or conditions shall *not* constitute a defense in a prosecution
6 for violations of this Article, nor shall such evidence preclude a finding of a
7 violation:

8 (a) a trafficking victim's sexual history or history of
9 commercial sexual activity, including, any acts that may be covered
10 by the rape shield law;

11 (b) a trafficking victim's connection by blood or marriage to
12 a defendant in the case, or to anyone involved in the victim's
13 trafficking;

14 (c) consent of, or permission by, a trafficking victim, or
15 anyone else on the trafficking victim's behalf, to any commercial sex
16 act or sexually explicit performance;

17 (d) age of consent to sex, legal age of marriage, or other
18 discretionary age; or

19 (e) mistake as to the victim's age, even if the mistake is
20 reasonable.

21 **§26.05. Criminal Liability of Business Entities.**

22 (a) Any business entity, including a corporation, partnership,
23 association, government body, municipal corporation or any other legal
24 entity, that aids or participates in any crime defined in §26.02 of this Article
25 shall be criminally liable for the offense and shall be subject to a fine or loss
26 of business license, or both.

1 (b) If a business entity is convicted of violating any Section of this
2 Article, the court will, when appropriate, order, but is *not* limited to the
3 following:

4 (1) order its dissolution or reorganization;

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

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

10 (c) Any business, or criminally culpable employee, officer, director,
11 owner, co-owner or shareholder of such business, convicted of a violation of
12 this Chapter, or a conviction of a human trafficking crime in another
13 jurisdiction or country, is ineligible for any type of Alcoholic Beverage
14 License. Any business composed of, or employing in any capacity, an
15 employee, officer, director, owner, co-owner or shareholder, who has been
16 convicted of a violation of this Chapter, or a conviction of a human trafficking
17 crime in another jurisdiction or country, is ineligible for any type of Alcoholic
18 Beverage License.

19 **§26.06. Restitution.**

20 (a) A person convicted of violations of this Article shall be ordered
21 to pay mandatory restitution to the victim as provided in Subsection (c) of
22 this Section.

23 (b) Restitution under this Section *shall* include items covered by
24 existing Guam statutes governing victim restitution and any of the following,
25 if *not* already included in Guam's restitution statute:

- 1 (1) costs of medical and psychological treatment, including,
2 physical and occupational therapy and rehabilitation, at the court's
3 discretion;
- 4 (2) costs of necessary transportation, temporary housing, and child
5 care, at the court's discretion;
- 6 (3) the greater of:
 - 7 (A) the gross income or value to the defendant of the
8 trafficking victim's commercial sex acts or sexually-explicit
9 performances, or labor or services;
 - 10 (B) the value of the trafficking victim's labor as guaranteed
11 under the minimum wage and overtime provisions of the Fair
12 Labor Standards Act (FLSA); or
 - 13 (C) the value of the trafficking victim's labor as guaranteed
14 under the minimum wage and overtime provisions of Guam
15 labor laws.
- 16 (4) return of property, cost of repair of damage to property, or full
17 value of property if destroyed or damaged beyond repair;
- 18 (5) expenses incurred by a victim, and any household members or
19 other family members, in relocating away from the defendant or his
20 associates, including, but *not* limited to, deposits for utilities and
21 telephone service, deposits for rental housing, temporary lodging and
22 food expenses, clothing, and personal items. Expenses incurred
23 pursuant to this Section shall be verified by law enforcement to be
24 necessary for the personal safety of the victim or household or family
25 members, or by a mental health treatment provider to be necessary for
26 the emotional well-being of the victim; and

1 (6) any and all other losses suffered by the victim as a result of
2 violations of this Article.

3 (c) Restitution shall be paid to the victim promptly upon the
4 conviction of the defendant, with the proceeds from property forfeited under
5 this Subsection applied first to payment of restitution. The return of the
6 victim to her or his home country or other absence of the victim from the
7 jurisdiction shall *not* prevent the victim from receiving restitution.

8 (d) Nonpayment or delay in payment of restitution shall be
9 governed by Guam restitution statute(s) governing non-payment or delay in
10 restitution payments.

11 **§26.07. Asset Forfeiture.**

12 (a) All offenses under this Section shall qualify as offenses for
13 forfeiture and thereby subject to the provisions of statute(s) governing
14 forfeiture according to existing Guam law.

15 (b) Overseas assets of persons convicted of trafficking in persons
16 *shall* also be subject to criminal forfeiture to the extent they can be retrieved
17 by the government.

18 (c) Any assets seized *shall* first be used to pay restitution to
19 trafficking victims and subsequently to pay any damages awarded to victims
20 in a civil action. Any remaining assets seized *shall* next go toward funding
21 services for victims, to include, but *not* be limited to, the following: suitable
22 housing, psychological counseling, medical assistance, child care, training
23 opportunities for employment, legal assistance and other material assistance,
24 as appropriate. If applicable, any remaining assets seized shall be duly
25 liquidated, in a similar manner prescribed by public law for other crimes
26 allowing for the seizure of assets, and shall be placed in the Human
27 Trafficking Enforcement and Prevention Fund.

1 (d) Human Trafficking Enforcement and Prevention Fund. There is
2 hereby created within the Department of Administration, the Human
3 Trafficking Enforcement and Prevention Fund (the HTEP Fund). The HTEP
4 Fund shall be subject to appropriation by *I Liheslatura* except for the
5 following automatic appropriations: (1) ten percent (10%) to the Department
6 of Labor for training related to investigations of labor violations contained in
7 this Chapter; and (2) ten percent (10%) to the Office of the Attorney General
8 for the purpose of training law enforcement personnel, other emergency first
9 responders, social workers, emergency personnel and other appropriate
10 officials on the procedures necessary for the proper investigation of and
11 preservation of evidence related to violations of this Chapter.

12 **§26.08. Statute of Limitations.**

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

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

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

26 (d) The running of the statute of limitations shall be automatically
27 suspended where individual(s) who due to mental illness, retardation or

1 other mental defect, whether minor or adult, are entitled to bring a claim as a
2 victim of trafficking in persons as defined in this Act.

3 **§26.09. Sentencing Enhancements.**

4 (a) Sentencing Considerations in Cases Involving Criminal Sexual
5 Conduct, Serious Bodily Injury, or Death. If a violation of this Article
6 involves kidnapping or an attempt to kidnap, criminal sexual conduct, or an
7 attempt to commit homicide, or if a homicide results, the defendant commits
8 a first degree felony.

9 (b) Additional sentencing considerations include, but are *not*
10 limited to:

11 (1) Bodily Injury. If, pursuant to a violation of this Article, a
12 victim suffered bodily injury, the sentence may be enhanced as
13 follows:

14 (A) bodily injury, up to an additional three (3) years of
15 imprisonment;

16 (B) serious bodily injury, up to an additional eight (8)
17 years if imprisonment;

18 (C) permanent or life-threatening bodily injury, an
19 additional seven (7) years of imprisonment;

20 (D) if death results, defendant shall be sentenced in
21 accordance with the homicide statute relevant for the level of
22 criminal intent.

23 (2) Time in Servitude. In determining sentences within
24 statutory maximums, the sentencing court should take into account the
25 time in which the victim was held in servitude, with increased
26 penalties for cases in which the victim was held for between ninety

1 (90) days and one (1) year, and further increased penalties for cases in
2 which the victim was held for more than (1) one year.

3 (3) Number of Victims. In determining sentences within
4 statutory maximums, the sentencing court should take into account the
5 number of victims, and may provide for substantially increased
6 sentences in cases involving more than two (2) victims.

7 **ARTICLE 2.**

8 **PREVENTION OF TRAFFICKING**

9 **§26.20. Task Force for Prevention of Trafficking.**

10 (a) Inter-Agency Task Force to Develop and Implement a Guam
11 Plan for the Prevention of Trafficking in Persons. Such Task Force shall
12 meet at least annually and should include all aspects of trafficking,
13 including, sex trafficking and labor trafficking of both U.S. citizens and
14 foreign nationals.

15 (b) The members of the Task Force *shall* include, at a minimum,
16 representatives from:

- 17 (1) the Office of the Attorney General;
- 18 (2) the Guam Police Department;
- 19 (3) the Department of Public Health and Social Services,
20 Child Protective Services and Adult Protective Services;
- 21 (4) the Department of Mental Health and Substance Abuse,
22 Counseling and Healing Hearts Rape Crisis Center;
- 23 (5) the Department of Labor;
- 24 (6) the Guam Homeland Security Office;
- 25 (7) the Judiciary of Guam;
- 26 (8) *I Liheslaturan Guåhan*; and

1 (9) non-governmental organizations, especially those
2 specializing in trafficking in persons, those representing diverse
3 communities disproportionately affected by trafficking, organizations
4 dedicated to child services and runaway services, and academic
5 researchers dedicated to the subject of human trafficking.

6 (c) The Task Force shall be chaired by the Office of the Attorney
7 General and carry out the following activities, either directly or via one (1)
8 or more of its constituent agencies:

9 (1) Develop the Guam Plan.

10 (2) Coordinate the implementation of the Guam Plan.

11 (3) Coordinate the collection and sharing of trafficking data
12 among government agencies, which data collection shall respect the
13 privacy of victims of trafficking in persons.

14 (4) Approve and provide direction for the establishment and
15 operation of an 'onsite inspection team' consistent with the intent of
16 this Act.

17 (5) Coordinate the sharing of information between agencies
18 for the purposes of detecting criminal groups engaged in trafficking.

19 (6) Explore the establishment of Guam policies for time
20 limits for the issuance of Law Enforcement Agency (LEA)
21 endorsements, as described in *Section 214.11(f)(1) of Chapter 8 of the*
22 *Code of Federal Regulations*.

23 (7) Establish policies to enable the government of Guam to
24 work with non-governmental organizations and other elements of civil
25 society to prevent trafficking and provide assistance to U.S. citizen
26 and foreign national victims.

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

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

11 (10) Submit an annual report of its findings and
12 recommendations to *I Maga'lahaen Guåhan*, the Speaker of *I*
13 *Lihseslaturan Guåhan* and the Office of the Attorney General on or
14 before December 31 of each calendar year.

15 **§26.21. Data Collection and Dissemination.**

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

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

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

26 (1) numbers of investigations, arrests, prosecutions, and
27 successful convictions of traffickers and those committing trafficking-

1 related crimes (pimping, pandering, procuring, maintaining a brothel,
2 child pornography, visa fraud, document fraud, and other crimes
3 related to trafficking);

4 (2) the estimated number and demographic characteristics of
5 persons engaged in violations of the criminal provisions defined in
6 §26.02 of this Article, as well as, persons who purchase or receive
7 commercial sex acts or sexually-explicit performances, or labor or
8 services, performed by victims of trafficking in persons;

9 (3) statistics on the number of victims, including nationality,
10 age, method of recruitment, and city, state, and country of origin;

11 (4) trafficking routes and patterns (states or countries of
12 origin, transit states or countries, and destination states or countries);

13 (5) methods of transportation (car, boat, plane, foot), if any
14 transportation took place; and

15 (6) social and economic factors that contribute to and foster
16 the demand for all forms of exploitation of persons that lead to
17 trafficking.

18 **§26.22. Training.**

19 (a) The government of Guam shall provide mandatory training for
20 law enforcement agencies, Guam Department of Labor personnel,
21 prosecutors, and other relevant officials in addressing trafficking in persons.

22 (b) Such training shall focus on:

23 (1) the new crimes and other provisions created by this
24 Article;

25 (2) methods used in identifying U.S. citizen and foreign
26 national victims of trafficking in persons, including, preliminary
27 interview techniques and appropriate questioning methods;

1 (3) methods for prosecuting traffickers;

2 (4) methods of increasing effective collaboration with non-
3 governmental organizations and other relevant social service
4 organizations in the course of investigating and prosecuting a
5 trafficking case;

6 (5) methods for protecting the rights of victims, taking into
7 account the need to consider human rights and special needs of
8 women and minor victims, and that victims should be treated as
9 victims rather than criminals; and

10 (6) methods for promoting the safety of victims.

11 (c) The government of Guam shall seek the input and participation
12 of appropriate non-governmental organizations and other relevant
13 organizations in the preparation and presentation of the training called for in
14 this Subsection.

15 **§26.23. Public Awareness.**

16 (a) The government of Guam, in cooperation with appropriate non-
17 governmental organizations, shall prepare public awareness programs
18 designed to educate potential victims of trafficking in persons, and their
19 families, on the risks of victimization. Such public awareness programs
20 *shall* include, but *not* be limited to:

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

- 1 (2) information about the risks of engaging in commercial
2 sex and possible punishment;
3 (3) information about victims' rights on Guam;
4 (4) methods for reporting suspected recruitment activities;
5 and
6 (5) information on hotlines and available victims' services.

7 (b) The government of Guam, in cooperation with other
8 appropriate government agencies and appropriate non-governmental
9 organizations or other elements of civil society, shall prepare and
10 disseminate general public awareness materials to educate the public on the
11 extent of trafficking in persons, both U.S. citizens and foreign nationals,
12 within Guam and the Commonwealth of the Northern Mariana Islands; and
13 to discourage the demand that fosters the exploitation of persons and that
14 leads to trafficking.

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

21 (d) Materials described in this Section may include information on
22 the impact of trafficking on individual victims. However, any information
23 on the experiences of individual victims shall preserve the privacy of the
24 victim and the victims' families.

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

27 **§26.24. Role of Non-Governmental Organizations.**

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

ARTICLE 3.

PROTECTION OF VICTIMS

§26.30. Victim's Rights.

(a) Victims of human trafficking *shall* have the same rights as other victims of a crime, including, the right to receive victim compensation.

(b) Victims of human trafficking *shall* also be entitled to basic information, including, but *not* limited to, information on their legal rights, human rights, immigration rights, emergency assistance and resources, and any other applicable rights and resources.

(c) Any statement by a putative victim of human trafficking, or the minor child of such victim, to a qualified social worker or case-worker, guardian appointed under this Act, or advocate, is a privileged communication *unless* waived by the victim's attorney, the adult victim, or the advocate or guardian of a child victim.

(d) Department of Public Health and Social Services employees and contractors shall provide information and statements to a person or such person's attorney, guardian, or legal representative for purposes of such person's application for immigration relief or benefits under the federal Trafficking Victims Protection Act of 2000, or other victim assistance law or

1 regulation. Any statement made under this Subsection *shall* be privileged for
2 purposes of any criminal or civil action.

3 (e) Victims of human trafficking shall *not* be required to cooperate
4 with law enforcement in the investigation or prosecution of their traffickers
5 as a condition to receiving any social service or benefit, including, legal
6 services.

7 **§26.31. Civil Action.**

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

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

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

24 (d) The running of the statute of limitations may be suspended
25 where a person entitled to sue could *not* have reasonably discovered the
26 cause of action due to circumstances resulting from the trafficking situation,

1 such as, psychological trauma, cultural and linguistic isolation, and the
2 inability to access services.

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

7 **§26.32. Applicability of Labor Standards.**

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

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

15 **§26.33. Protection of Victims.**

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

26 **§26.34. Access to the Territorial Crime Victims' Compensation**
27 **Fund.**

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

3 **§26.35. Protection of the Privacy of Victims.**

4 In a prosecution for violations of the criminal provisions of this
5 Article, the identity of the victim and the victim's family *shall* be kept
6 confidential by ensuring that names and identifying information of the
7 victim and victim's family are *not* released to the public, including by the
8 defendant.

9 **§26.36. Information for Victims.**

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

20 (b) The agency administering the Territorial Crime Victims'
21 Compensation Fund, created under relevant Guam statutes, *shall* inform
22 victims of trafficking in persons of benefits they may receive under federal
23 and local laws, and assist victims in obtaining such benefits.

24 **§26.37. Opportunity for Presentation of Victim's Views and**
25 **Concerns.**

26 The government of Guam *shall* provide an opportunity to a victim of
27 trafficking in persons, if the victim desires it, to present the victim's views

1 and concerns at appropriate stages of criminal proceedings against
2 traffickers, in a manner *not* prejudicial to the rights of the defendant. An
3 interpreter who speaks a language the victim understands *shall* be made
4 available to the victim during the course of legal proceedings.

5 **§26.38. Support for Victims.**

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

13 (1) appropriate housing, taking into account the person's
14 status as a victim of crime and including safe conditions for
15 sleeping, food and personal hygiene;

16 (2) psychological counseling in a language the victim can
17 understand;

18 (3) medical assistance;

19 (4) child care;

20 (5) other material assistance as appropriate;

21 (6) employment, educational, language, and training
22 opportunities; and

23 (7) legal assistance.

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

1 (c) Victims of trafficking in persons shall *not* be given shelter in
2 prisons or other detention facilities for accused or convicted criminals.
3 Child victims of trafficking in persons shall *not* be housed in prisons or other
4 detention facilities for accused or convicted criminals or juvenile delinquents
5 under any circumstances.

6 (d) Residence in shelters or other facilities established under this
7 Section *shall* be voluntary, and victims may decline to stay in shelters or
8 other facilities.

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

12 (f) The governmental service providers described in Subsection (a)
13 *shall* take into account the age, gender, and special needs of victims and
14 accompanying dependent children in formulating plans to provide services
15 to them and in delivering such services.

16 (g) Plans developed in accordance with Subsection (a) *shall* be
17 submitted for approval to appropriate state authorities, which *shall* also
18 undertake periodic reviews of the plans and their implementation to ensure
19 compliance with the requirements of this Article and to ensure that all
20 victims are treated with respect for their human rights and dignity.

21 **§26.39. Appropriate Implementation for Child Victims.**

22 The provisions of this Article *shall* be provided to trafficking victims
23 who are minors in a manner that is in the minor's best interests and
24 appropriate to their situation. Minor trafficking victims *shall* be provided
25 with appropriate services, which may include an explanation of their rights,
26 privacy, housing, care, and age-appropriate support and rights. Special

1 programs *shall* be developed to accommodate minor witnesses, including,
2 but *not* limited to:

- 3 (1) testimony of minor conducted outside court setting or by
4 video;
- 5 (2) all testimony and court proceedings take place with
6 parent, legal guardian or foster parent present, if it is in the best
7 interests of the minor;
- 8 (3) whenever safe and possible, minors should be reunited
9 with family members, whether within or outside the United
10 States; and
- 11 (4) special mental and physical medical care tailored to the
12 minor's needs.

13 **§26.40. Human Trafficking Victim-Caseworker Privilege.**

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

- 18 (1) the holder of the privilege;
- 19 (2) a person who is authorized to claim the privilege by the
20 holder of the privilege; or
- 21 (3) the person who was the human trafficking caseworker at
22 the time of the confidential communication. However, that
23 person may *not* claim the privilege if there is no holder of the
24 privilege in existence or if he or she is otherwise instructed by a
25 person authorized to permit disclosure. The human trafficking
26 caseworker who received or made a communication subject to
27 the privilege granted by this Article shall claim the privilege

1 whenever he or she is present when the communication is
2 sought to be disclosed and he or she is authorized to claim the
3 privilege under this Section.

4 (b) A human trafficking caseworker *shall* inform a trafficking
5 victim of any applicable limitations on confidentiality of communications
6 between the victim and the caseworker. This information may be given
7 orally.

8 (c) As used in this Article, ‘human trafficking caseworker’ means a
9 person who is employed by any organization whether financially
10 compensated or not, for the purpose of rendering advice or assistance to
11 victims of human trafficking, who has received specialized training in the
12 counseling of victims of trafficking in persons, and who meets one (1) of the
13 following requirements:

14 (1) holds a bachelor’s degree or higher in counseling or a
15 related field; or has one (1) year of counseling experience, at
16 least six (6) months of which is in the counseling of victims of
17 trafficking in persons; or

18 (2) has at least forty (40) hours of training as specified in this
19 paragraph and is supervised by an individual who qualifies as a
20 counselor under §26.40(c)(1) or by a psychotherapist. The
21 training, supervised by a person qualified under §26.40(c)(1) ,
22 *shall* include, but need *not* be limited to, the following areas:
23 history of human trafficking, civil and criminal law as it relates
24 to human trafficking, societal attitudes towards human
25 trafficking, peer counseling techniques, housing, public
26 assistance and other financial resources available to meet the
27 financial needs of trafficking victims, and referral services

1 available to trafficking victims. A portion of this training must
2 include an explanation of privileged communication.

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

12 (e) As used in this Article, ‘holder of the privilege’ means the
13 victim when he or she has no guardian or conservator, or a guardian or
14 conservator of the victim when the victim has a guardian or conservator.

15 **§26.41. Protection of Trafficking and Domestic Violence Shelters.**

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

22 (b) For purposes of this Section, ‘domestic violence shelter’ means
23 a confidential location which provides emergency housing for victims of
24 sexual assault, spousal abuse, or both, and their families. For purposes of
25 this Section, ‘trafficking shelter’ means a confidential location, which
26 provides emergency housing for victims of human trafficking.”

6

I MINA' TRENTA NA LIHESLATURAN GUÅHAN

2009 (FIRST) Regular Session

Date: 5/29/09

VOTING SHEET

SBill No. 36 (COR)

Resolution No. _____


Question: _____

<u>NAME</u>	<u>YEAS</u>	<u>NAYS</u>	<u>NOT VOTING/ ABSTAINED</u>	<u>OUT DURING ROLL CALL</u>	<u>ABSENT</u>
ADA, Thomas C.	✓				
AGUON, Frank B., Jr.	✓				
BLAS, Frank F., Jr.	✓				
CALVO, Edward J.B.	✓				
CRUZ, Benjamin J. F.	✓				
ESPALDON, James V.	✓				
GUTHERTZ, Judith Paulette	✓				
MUNA-BARNES, Tina Rose	✓				
PALACIOS, Adolpho Borja, Sr.	✓				
PANGELINAN, vicente (ben) cabrera	✓				
RECTOR, Matthew	✓				
RESPICIO, Rory J.	✓				
TAITAGUE, Telo	✓				
TENORIO, Ray	✓				
WON PAT, Judith T.	✓				

TOTAL

15

CERTIFIED TRUE AND CORRECT:


Clerk of the Legislature

*** 3 Passes = No vote**
EA = Excused Absence



Thirtieth
Guam Legislature

COMMITTEE ON PUBLIC SAFETY,
LAW ENFORCEMENT & SENIOR CITIZENS

I Mina'Trenta na Liheslaturan Guåhan

SENATOR ADOLPHO B. PALACIOS, SR.

Chairman

Committee on Public Safety,
Law Enforcement &
Senior Citizens
Members:

Senator Adolpho B. Palacios, Sr.
Chairman

Senator Ray Tenorio
Vice Chairman

Speaker Judith T. Won Pat
Member

Senator Thomas C. Ada
Member

Senator Frank B. Aguon, Jr.
Member

Senator Matt Rector
Member

Senator Edward J.B. Calvo
Member

Senator James V. Espaldon
Member

Other Committee Membership:

- Vice Chairman, Committee on Economic Development, Health and Human Services, & Judiciary
- Vice Chairman, Committee on Utilities, Transportation, Public Works, & Veterans Affairs
- Vice Chairman, Committee on Labor, the Public Structure, Public Libraries & Technology
- Member, Committee on Rules
- Member, Committee on Education

May 22, 2009

The Honorable Judith T. Won Pat, Ed.D.

Speaker

I Mina'Trenta na Liheslaturan Guåhan

155 Hesler Place

Hagåtña, Guam 96910

VIA: The Honorable Rory J. Respicio
Chairperson, Committee on Rules

RE: Committee Report – Bill No. 36 (COR)


Dear Speaker Won Pat:

The Committee on Public Safety, Law Enforcement & Senior Citizens, to which was referred **Bill No. 36 (COR) "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,"** hereby reports out with the recommendation to TO REPORT OUT ONLY.

Committee votes are as follows:

<u>4</u>	TO PASS
<u> </u>	NOT TO PASS
<u>4</u>	TO REPORT OUT ONLY
<u> </u>	ABSTAIN
<u> </u>	INACTIVE FILE

Sincerely,


ADOLPHO B. PALACIOS, SR., MPA, BS/CJA
Chairperson

Attachments

2009 MAY 26 PM 12:43
CJW

COR

RECEIVED

DATE 5-22-09



4:05 PM

Office/Mailing Address: 155 Hesler Pl., Hagåtña GU 96910

Telephone No. (671) 472-5047/5048 • Fax No. (671) 472-5022 • Email: SenABPalacios@gmail.com



Thirtieth
Guam Legislature

Committee on Public Safety,
Law Enforcement &
Senior Citizens
Members:

Senator Adolpho B. Palacios, Sr.
Chairman

Senator Ray Tenorio
Vice Chairman

Speaker Judith T. Won Pat
Member

Senator Thomas C. Ada
Member

Senator Frank B. Aguon, Jr.
Member

Senator Matt Rector
Member

Senator Edward J.B. Calvo
Member

Senator James V. Espaldon
Member

Other Committee Membership:

- Vice Chairman, Committee on Economic Development, Health and Human Services, & Judiciary
- Vice Chairman, Committee on Utilities, Transportation, Public Works, & Veterans Affairs
- Vice Chairman, Committee on Labor, the Public Structure, Public Libraries & Technology
- Member, Committee on Rules
- Member, Committee on Education

**COMMITTEE ON PUBLIC SAFETY,
LAW ENFORCEMENT & SENIOR CITIZENS**

I Mina'Trenta na Liheslaturan Guåhan


SENATOR ADOLPHO B. PALACIOS, SR.

Chairman

May 21, 2009

MEMORANDUM

TO: ALL MEMBERS
Committee on Public Safety, Law Enforcement, & Senior Citizens

FROM: Chairman, Committee on Public Safety, Law Enforcement,
& Senior Citizens 

SUBJECT: Voting Sheet.

Transmitted herewith are the voting sheet and the Committee Report on **BILL NO. 36 (COR) "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,"** for your review and vote via signature.

Your attention to this matter is greatly appreciated.

Attachments

Office/Mailing Address: 155 Hesler Pl., Hagatña GU 96910

Telephone No. (671) 472-5047/5048 • Fax No. (671) 472-5022 • Email: SenABPalacios@gmail.com



COMMITTEE ON PUBLIC SAFETY, LAW ENFORCEMENT
& SENIOR CITIZENS

SENATOR ADOLPHO B. PALACIOS, SR.
CHAIRMAN

I Mina'Trenta na Liheslaturan Guåhan

VOTING SHEET ON:

Bill No. 36 (COR) - 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.

SENATOR	SIGNATURE	TO PASS	NOT TO PASS	TO REPORT OUT ONLY	ABSTAIN	INACTIVE FILE
Adolpho B. Palacios, Sr. Chairman				5/21/09		
Ray Tenorio Vice Chairman		5/21/09				
Speaker Judith T. Won Pat Member		✓				
Thomas C. Ada Member						
Frank B. Aguon, Jr. Member		✓				
Matt Rector Member		✓		5/22/09		
Edward J.B. Calvo Member						
James V. Espaldon Member				5/22/09		

Office/Mailing Address: 155 Hesler Place, Hagatña Guam 96910

Telephone No. (671) 472-5047/5048 • Fax No. (671) 472-5022 • Email: SenABPalacios@gmail.com



**COMMITTEE ON PUBLIC SAFETY, LAW ENFORCEMENT
& SENIOR CITIZENS**

**SENATOR ADOLPHO B. PALACIOS, SR.
CHAIRMAN**

I Mina'Trenta na Liheslaturan Guåhan

PUBLIC HEARING

Bill No. 36 (COR) "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."

I. OVERVIEW

The Committee on Public Safety, Law Enforcement, & Senior Citizens convened the public hearing on February 13, 2009. Hearing commenced at 1:30pm on Bill No. 36 (COR). Notices of the hearing were disseminated to all local media outlets via facsimile on February 4 and on February 10, 2009, pursuant to the Open Government Law. Notice of the hearing was also posted on the Guam Legislature's website.

Committee Members and Senators present:

Senator Adolpho B. Palacios, Sr., Chairman
Senator Ray Tenorio, Vice Chairman
Senator Frank B. Aguon Jr., Member
Senator Tina R. Muña-Barnes
Senator Matt Rector

Individual(s) Registered for oral or written testimony:

Mr. Phil Tydingco, Chief Prosecutor, Office of the Attorney General, IN FAVOR of Bill 36
Ms. Christina Sorencio, UOG student, Student work/Alliance IN FAVOR of Bill 36
Dr. Vivian Dames, private citizen, IN FAVOR of Bill 36

II. SUMMARY OF TESTIMONIES

Chairman Adolpho B. Palacios, Sr. called the Committee on Public Safety, Law Enforcement, and Senior Citizens to order at 1:35pm, welcomed and introduced Senators present.

Chairman Palacios recognized the author of the bill, Senator Tina R. Muña-Barnes who gave a brief presentation of the bill. Prior to the hearing, she spoke with Senator Tenorio to seek how they would be able to combine Bills 31 and 36. Senator Muña Barnes was pleased to know that Bill 31 would be synthesized into one comprehensive bill combating Human Trafficking. She mentioned that human trafficking has touched our community and other parts of the Micronesian region. Those who traffic humans take advantage of the indigent, especially women and children. Guam has been affected by this epidemic and it is crucial to ensure the safety of the people of Guam and those who are trafficked to the island.

Chairman Palacios then called on those to testify.

Mr. Phil Tydingco, Chief Prosecutor, Attorney General Office, In Favor of Bill 36

The Attorney General made a general comment on the consolidation on the bills and briefly described local and national trends. Since 2004, the Department of Justice has provided a model for states and territories to help craft their local laws in which Mr. Tydingco inferred that this bill appears to be consistent with that model.

Furthermore, Tydingco stated that the Attorney General is asking to be the chair of the task force that will look into human trafficking as a crime. The Attorney General will be submitting technical items for this bill (i.e. penalties) in her written testimony. Prostitution laws need to be changed and updated in order to effectively combat forms of human trafficking.

Ms. Christina Sorencio, UOG Student, Student Alliance, Oral and Written Testimony, In Favor of Bill 36

Ms. Sorencio was able to do a case study based on the measure. She commends the measure and its comprehensiveness. She gave some recommendations for consideration and will be submitting written testimony at a later date.

Dr. Vivian Dames, Private Citizen, Oral and Written Testimony, In Favor of Bill 36

Dr. Dames testified in favor of the bill. She commented that there must be regional cooperation that will result in stronger policy issue for the region. Dr. Dames will be following up with a written testimony at a later date.

Chairman Palacios then allowed senators to give comments and/or questions.

Senator Ray Tenorio will compose a resolution to APIL and other Pacific Legislatures who are supportive of the measure in order to obtain a comprehensive plan for the region. He asked those who testified to help at the mark up meeting that will include their concerns for the bill.

Senator Tina Muña Barnes extended thanks to those who testified and was working with the Soroptomist group of Guam when she composed this measure.

Senator Matt Rector commended colleagues and commented that human trafficking is cheap labor and asked the Attorney General's Office to help raise the code on enforcement and the inclusion of labor acts with regards to the sex trade.

Dr. Dames commented that one must address Guam's policy with regards to prostitution because there are loop holes. In order to be effective, she asked that the committee or task force look at prostitution work on Guam as a result of the military buildup.

Senator Frank Aguon Jr. commented that a comprehensive legislation include enforcement and education for the public. He asked, "Are there resources to provide for education and prosecution?"

Dr. Dames in responding to the senator's question highlighted the Family Violence Act which mandated a section on education. Because of the mandate, the University was able to provide a course that allowed students to engage in the topic.

Chairman Palacios stated that this measure is the beginning of a comprehensive legislation to combat human trafficking. He requested that those who testified make themselves available to assist at a mark up meeting to be arranged at a later date.

Chairman Palacios concluded the hearing and requested that written testimony be submitted within the next ten (10) days. He adjourned the hearing at 2:25pm.

III. WRITTEN TESTIMONIES

Ms. Christina Thai Serencio, Vice President and Representative of Social Work Student Alliance Organization, University of Guam, In Favor. Received February 13, 2009.

As stated in her Oral Testimony, Ms. Serencio expressed that human trafficking is not acceptable! We must catch it before it becomes a major problem here on Guam. We are advocates for victims such as those being trafficked and we want to ensure that victims are safe and well taken care of.

Alberto E. Tolentino, Chief Attorney General, Office of the Attorney General, In Favor. Received on March 2, 2009.

He states, "The Office of the Attorney General of Guam enthusiastically supports Bill No. 36, introduced by Senators Tina Muna Barnes and Ray Tenorio, which adds a new Chapter 26 of Title 9 of Guam Code Annotated to combat human trafficking on Guam and to protect victims of human trafficking from sexual and economic exploitation. Be informed that this Office has reviewed the Bill and is herewith submitting its proposed amendments to the Bill." He enclosed a clean version of the bill which has been reviewed by personnel at the Attorney General's Office.

The Honorable Alicia G. Limtiaco, Attorney General of Guam, In Favor. Received April 20, 2009.

The Attorney General supports the proposed Human Trafficking legislation. Her office has met and worked with Senator Tina Muna-Barnes, Senator Ray Tenorio and Senator Adolpho Palacios, and provided comment and testimony, both oral and written regarding the proposed legislation. She states that Human Trafficking is a severe crime that deprives and violates victims of their fundamental human dignity. Over 35 states and territories have passed anti-human trafficking laws to fight against forced labor, sexual exploitation, and modern day slavery of children and adults. Human trafficking is a global international issue, and all local and federal law enforcement, social service, medical, victim advocacy, educational, and other related governmental and non-governmental organizations must work together to effectively prevent, investigate, prosecute, and protect victims.

IV. MARK-UP MEETING

The mark up meeting was administered by the Offices of Senator Tina Muna Barnes and Senator Judith WonPat. According to Mr. Mark Duarte and Mr. Ron Taitague, the mark up for Bill 36 took place at the Office of Senator Tina Rose Muna Barnes and at the Attorney General's office. Bill 36, as substituted by the author, incorporates Bill 31 proffered by Senator Ray Tenorio and also incorporates the Attorney General's version of Bill 36.

V. FINDINGS AND RECOMMENDATIONS

The Committee on Public Safety, Law Enforcement, & Senior Citizens finds that Bill No. 36 (COR) intends to combat human trafficking on Guam and protects victims of human trafficking from sexual and economic exploitation. It also intends to establish a mandatory restitution payment, asset forfeiture, statute of limitations, and sentencing enhancements for any person(s) convicted of violations under this article. The bill intends to create a territorial task force for the prevention of human trafficking and allows the collection of data in order to disseminate this data on a periodic basis to all Government of Guam Agencies and Federal officials. Furthermore, the bill intends to establish mandatory training for law enforcement agencies, prosecutors, and other relevant officials in addressing trafficking in person(s) on Guam and creates public awareness programs designed to educate potential victims of trafficking in persons and their families on the risks of victimization.

Accordingly, the Committee on Public Safety, Law Enforcement, & Senior Citizens to which **Bill No. 36(COR)** was referred does hereby submit its findings and recommendations to *I Mina'Trenta na Liheslaturan Guåhan* **TO REPORT OUT ONLY** Bill No. 36 (COR), "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."

Declaration Under Penalty of Perjury of Priscilla T. Cruz

1. I am employed as an Administrative Officer at the Office of Senator Adolpho B. Palacios, Sr.
2. I am assigned the task of disseminating public hearing notices to each newspaper of general circulation, broadcasting stations, all Senators, Clerk of the Legislature, Protocol, and Audio.
3. In such notice I included all information required by the Open Government Law, §8107, Title 5, Guam Code Annotated.
4. I sent a public hearing notice via facsimile (fax) to all local media on February 4, 2009, (5 working days prior to hearing) and on February 10, 2009, (48 hours prior to hearing) in accordance with §8107, Title 5, Guam Code Annotated.
5. Copies of the public hearing notice were placed in boxes of all Senators, the Clerk of the Legislature, Protocol, and Audio, located in the Mail Room of the Guam Legislature, on February 9, 2009.
6. Copies of public hearing notices, email and fax confirmations are on file at the Office of Senator Adolpho B. Palacios, Sr.

**Declaration Under Penalty of Perjury
§4308, Title 6, Guam Code Annotated**

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on May 20, 2009 on Guam by



PRISCILLA T. CRUZ

[illegible]

[illegible]

Testimony Regarding
Bill No. 36 (COR) – Human Trafficking and Criminal Exploitation Act of 2009

Before the 30th Guam Legislature

Public Hearing

13 February 2009

Presented by:

Christina Thai Serencio

Vice President and Representative of
Social Work Student Alliance Organization
Of the University of Guam

a. Introductory Remarks

Good Morning, my name is Christina Thai Serencio, I am the Vice President of the Social Work Student Alliance and I am here on behalf of the Organization from the University of Guam. I as a student have done some work in regards to Human Trafficking. I have done an analysis on Senator Ray Tenorio's Bill 31 along with the CNMI statute and compared the two for my social policy class. I want to thank you all for this opportunity today. It is a grand gesture to find that Senator Ray Tenorio will be working with Senator Tina Muna Barnes on this issue. This effort will make the bill only stronger.

We as a student organization have reviewed bill 36 and are supportive of this bill and its intentions, we also commend on its comprehensiveness and offer whatever support to ensure the passing of this bill. We have also raised a couple of questions.

b. Body

In section 2.10 it speaks of the statute of limitation, we are curiously inquiring about women in cases of drug addiction? If women whom are being trafficked are addicted to drugs, which impairs their judgment and are provided with their "drug" to support their habit from their traffickers, what happens then?

On page 11, Section 3.1, Line 6 we would like to suggest an amendment. "including but not limited to: health and social services..." As social workers we want to be able to do our part in the community.

We support the emphasis on prevention as well as its recognition of the local officials working with the US official's office.

In Section 3.2 on Data Collection pg. 11 Line 16. Who will be responsible for the data collection? When it states who in the territory? Will it be the trained task force? Will the services provided to the victim or victims be tracked so that it can determine what services are in high demand? Do we have enough adequate services and resources pertaining to this?

On page 12 Section 3.3 Line 28 #6 "methods for promoting the safety of victims" We suggest to also include rehabilitation and social integration of the victims.

c. Closing Remarks

Human trafficking is not acceptable! We must catch it before it becomes a major problem here on Guam. We are advocates for victims such as those being trafficked and we want to ensure that victims are safe and well taken care of. I suggest that maybe Guam can take a look at the CNMI statute and compare the two, maybe incorporate some things to ensure that all doors for human trafficking are closed. I am proud to say that I am in full support of this and will do whatever I can to help make it happen.

On behalf of the Social Work Student Alliance we would like to thank you for this opportunity today. I will be available to you if you have any further questions. We will be providing you a more detailed testimony as well as the work that I as well as some other students have done in regards to Human Trafficking. Once again thank you for this grand opportunity.

Running Head: Human Trafficking Prevention Act

Bill No. 135 (EC)
Human Trafficking Prevention Act
Christina Thai Serencio
University of Guam
SW 406 Social Policy
Dr. Dames, Vivian

Locating a Bill

Locating this bill was not at all difficult. It was the matter of choosing which bill to use. While I was researching for a bill to analyze for this assignment, there was so many to choose from. After spending a few hours at the Guam Law Library, I did not find a bill that caught my attention. After I left the library, I gave myself sometime, and from home I decided to try again. I was determined to find a bill that has been introduced here on Guam.

Technology is such a great thing; the Guam Legislature has a website that I was able to access, to find a bill introduced during our current Guam Legislature. Finally, I found a bill that I feel I can advocate for when I get into advocacy. It was the bill on the use of minors for drug operations, but after talking with a classmate, she had informed me that someone has already chosen that bill for their assignment. I wanted to push a little further, so I sent an email to Dr. Dames inquiring about this bill I had chosen, and she strongly recommended that I choose another bill to avoid any type of conflict or problems that may occur in choosing the same bill. So I continued searching.

The challenge I decided to take in was the Bill No. 135 (EC) introduced during the 29th Guam Legislature. This bill is also known as the 'Human Trafficking Prevention Act'. This bill was introduced by Senators Ray Tenorio, Frank Ishizaki, and Judi Wonpat. The intent of this bill is to prevent human trafficking and provide assistance to those who are victims of human trafficking. I decided to go with this bill because it deals with exploitation. One of my many concerns as an aspiring Social Worker has always been the exploitation of Women and Children.

Making use of the Guam Law Library was an educational learning experience for me. I now know how to find Public Laws and Bills that have been passed or introduced on Guam. I also know how to navigate West Law or use the Guam Code Annotated. I was so deep in my researching I actually enjoyed my time that I spent at the Law Library. I have learned to appreciate what I have been given, take that piece of information and tap into my resources to find more information. While I was there I did not realize how much time flew by while I was there. Now that everything is electronic, it is so simple to just type it in and click search, except for the Laws and Bills before the 21st Guam Legislature. It was a fundamental learning experience.

A Brief History

Many women are lured into taking up promising jobs, hoping to find a better means to support their families. What they risk for hope for a better life, they risk everything they have leaving their families behind. Human trafficking is considered to be a modern form of slavery. The main targets are women and children who are often very poor and vulnerable. It is a very cruel crime. They are forced into coercion, sexual intercourse, forced to marry, and the list can continue. However, it is to my knowledge that this bill will not make it on the agenda for the 29th Guam Legislature as it comes to an end. I would like to strongly advocate for this bill to be put on the agenda as soon as the 30th Guam Legislature begins.

There is an incident that had occurred here on Guam within the last year in regards to Human Trafficking. This incident had occurred at the Blue House Lounge in Upper Tumon. The owner of this Lounge had withheld food, passports and any means of escape from Chuukese women who were brought to Guam. These women have been forced to have sexual intercourse with men. If they fought against what they were told to do, their punishment was physical abuse. These are just a few things that the alleged owner and two employees of the Blue House Lounge are guilty of.

According to statistics stated in P.L. 14-88 of the CNMI, internationally there is an estimated 800,000 to 900,000 people trafficked each year across international borders and it continues to grow. Especially with the military buildup soon to hit the island, crimes rates are sure to sky rocket. However, Guam has not had any recent problems, asides from the Blue House Lounge incident. But, Guam does have potential to start having Human Trafficking issues.

In the CNMI, The U.S. Department of Social Justice considers it to be a ‘hotspot’ for human trafficking because the closeness in proximity to many Asian countries and its relaxed immigration system. CNMI has over fifty cases reported in regards to human trafficking. These victims are cared for at the House of Hope facility in Saipan. Vulnerable people all over Asia are lured into CNMI through Human Trafficking; they are promised false jobs or given false hope for a better life. All of this is just for people to make income of these people, withholding food or any means of a promised job or money for their families back home. It is unjust.

P.L. 14-88 of the CNMI was passed into law in 2005 and is known as the ‘Anti-Trafficking Act of 2005. The intent of this law is to “Prohibit involuntary servitude, human

trafficking for involuntary servitude, sexual servitude of a minor and transporting a person for purposes of prostitution; and to establish criminal penalties therefore; and for other purposes.”

Social Work Speaks

In the Social Work Speaks, Human Trafficking walks hand in hand with the Policy statement on International Policy on Human Rights. In the Policy it states, “From the Babylonian Code of the Hammurabi to the present, there is written evidence of humanity’s struggle to protect the rights of vulnerable people from exploitation by more powerful individual, groups, or the state itself.”

According to the Preamble to the NASW code of ethics, “the primary mission of the social work profession is to enhance human needs of all people, with particular attention to the needs and empowerment of people who are vulnerable, oppressed, and living in poverty.” The Declaration of Human Rights and the Social Work Profession are natural allies.

When the Declaration of Human Rights was ratified, human rights concerns had been the core issue in the social work profession. Anything that had to deal with discrimination down to rights for women and children are all issues of social justice. Social workers on every level and in all that they do, advocate for human rights.

As an aspiring social worker I have always done what I can to empower and strengthen those people who I encounter who are vulnerable and very poor. On Guam Human Trafficking may not be a major issue at this point, but I am sure some day it will.

Why Enact the Anti Human Trafficking Bill?

It is to my knowledge that this bill was not put on the agenda for the 29th Guam Legislature. I am confident enough to say that if this bill is put on the agenda for the 30th Guam Legislature, it will pass. I feel very strongly that we should advocate for this bill to pass, because for one CNMI is right next door, if it is a big issue there, who’s to say that it will not be a big issue here on Guam. Human Trafficking is so cruel. It gives people no hope about opportunities outside their comfort zone. Understanding that Guam has no serious issues in regards to Human Trafficking, but as advocates we should be proactive and we should stop any acts of human trafficking before it even starts.

References

Guam Legislature. (2008). 29th Guam Legislature. Retrieved November 20, 2008.

Website: http://www.guamlegislature.com/29th_Guam_Legislature/29th_bills_intro.htm

Human Trafficking: A Web Resource for Combating Human Trafficking. (2008).

Retrieved November 20, 2008

Website: <http://www.humantrafficking.org/updates/799>

National Association of Social Workers. (2006). *International Policy on Human Rights*. Social Work Speaks 7th Edition. Baltimore, Maryland: Port City Press.

National Association of Social Workers. (2008). Code of Ethics of the National Association of Social Workers. Retrieved November 18, 2008

Website: <http://www.socialworkers.org/pubs/Code/code.asp>

Alicia G. Limtiaco
Attorney General



Alberto E. Tolentino
Chief Deputy Attorney General

OFFICE OF THE ATTORNEY GENERAL

March 2, 2009

3/2/09
[Signature]

VIA HAND DELIVERY

The Honorable Adolpho B. Palacios, Sr.
Chairman, Committee on Public Safety,
Law Enforcement and Senior Citizens
I Mina' Trenta Na Liheslaturan Guåhan
155 Hesler St., Ste. 104
Hagåtña, Guam 96910

Re: Bill No. 36; AN ACT TO ADD A NEW CHAPTER 26 TO TITLE 9 GCA,
RELATIVE TO COMBATING HUMAN TRAFFICKING ON GUAM AND TO
PROTECT VICTIMS OF HUMAN TRAFFICKING FROM SEXUAL AND
ECONOMIC EXPLOITATION.

Dear Senator Palacios:

Buenas yan Håfa Adai! The Office of the Attorney General of Guam enthusiastically supports Bill No. 36, introduced by Senators Tina Muña Barnes and Ray Tenorio, which adds a new Chapter 26 of Title 9 of the Guam Code Annotated to combat human trafficking on Guam and to protect victims of human trafficking from sexual and economic exploitation. Be informed that this Office has reviewed the Bill and is herewith submitting its proposed amendments to the Bill. Enclosed find a clean version and a redline version for your information.

Should further proposed amendments be necessary, it will be provided it to you as expeditiously as possible. If you should have any questions or if I might be of any further assistance please do not hesitate to contact me. *Dångkolo na Agradesimiento!*

Sincerely,

ALBERTO E. TOLENTINO
Chief Deputy Attorney General

Encls.

Cc: Senator Tina Muña Barnes
Senator Ray Tenorio

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

Bill No. _____

Introduced by:

T. R. Muña-Barnes

J. T. Won Pat

J. P. Guthertz

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

Deleted: GCA

1 BE IT ENACTED BY THE PEOPLE OF GUAM:

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

Deleted: GCA

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
6 Guam and/or Federal legislation or legal precedents, or employment contracts that violate
7 relevant Statutes of Frauds as defined by Guam and Federal regulations.

Deleted: local

Deleted: federal

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 refers to criminal sexual conduct, including sexual penetration and sexual
15 contact, as defined in Title 9 GCA Chapter 25, and any other crime as defined in Title 9
16 GCA Chapter 25.01, Chapter 28, and Chapter 89.

Deleted: (9) Sex act means any touching of the sexual or other intimate parts of another person for the purpose of gratifying sexual desire of any person. It includes touching of the person as 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, involuntary
22 servitude, sexual servitude of a minor, or transported in violation of trafficking of persons
23 for forced labor or service, as set forth herein.

Deleted: involuntary servitude

24 2.2 CRIMINAL PROVISIONS.

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

26 (a) recruits, entices, solicits, isolates, harbors, transports, provides, or obtains by any
27 means, or attempts to recruit, entice, solicit, isolate, harbor, transport, provide, or

Deleted: so

1 obtain by any means, another person, knowing that the person will be subjected to
2 sexual servitude of a minor or involuntary servitude, or
3 (b) benefits, financially or by receiving anything of value, from participation in a
4 venture which has engaged in an act described in paragraph (1)(a), commits a
5 second degree felony.

Deleted: A

Deleted: Class B

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

7 (a) recruits, entices, solicits, isolates, harbors, transports, provides, or obtains by any
8 means, or attempts to recruit, entice, solicit, isolate, harbor, transport, provide, or
9 obtain by any means, any minor for the purposes of commercial sex acts or sexually
10 explicit performance, or

Deleted: so

Deleted: through any means

11 (b) benefits, financially or by receiving anything of value, from participation in a
12 venture which has engaged in an act described in paragraph (2)(a), commits a first
13 degree felony.

Deleted: A), Commits

Deleted: Class A

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

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

Formatted: Indent: Left: 0"

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

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

Formatted: Indent: Left: 0.5"

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

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

21 (d) knowingly destroying, concealing, removing, confiscating or possessing

Formatted: Indent: Left: 1"

22 any actual or purported passport or other immigration document, or any
23 other actual or purported government identification document, of another
24 person;

25 (e) extortion or blackmail;

Formatted: Indent: Left: 0.5"

26 (f) deception or fraud;

27 (g) debt coercion;

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

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

(j) using any scheme, plan, or pattern, whether overt or subtle, intended to cause any person to believe that, if the person did not perform such labor, services, acts or performances, that person or another person would suffer serious harm or physical restraint,

commits a first degree felony.

Formatted: Indent: Left: 1", First line: 0"

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

Formatted

Formatted: Justified, Indent: First line: 0.5", Adjust space between Latin and Asian text, Adjust space between Asian text and numbers

Deleted: Class A felony. ¶
(4) Any person who violates this section shall be guilty of the crime of human trafficking, which is a second

2.5 VICTIM IMMUNITY FROM PROSECUTION.

Formatted: (Asian) Chinese (PRC)

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

Deleted: punishable by imprisonment for not more than five (5) years or by a fine not to exceed Five Hundred Thousand Dollars (\$500,000), or both, per instance of such crime

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

Formatted: (Asian) Chinese (PRC)

Deleted: 2.3 RACKETEERING ACTIVITY. ¶

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

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

2.4 GUILTY PLEAS. ¶

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

(d) Within fifteen (15) days, weekends and Government of Guam holidays

Deleted: 8GCA:

Deleted: Fifteen

excepted, of the first encounter with a victim of human trafficking, law

enforcement agents shall provide the victim with a completed Form 1-914

Formatted: Font: Not Bold, Not Italic

Supplement B, Declaration of Law Enforcement Officer for Victim of

Trafficking in Persons (LEA Declaration) in accordance with 8 C.F.R.

10 52 14.1 I(Q(1). Where Guam law enforcement agencies find the grant of an LEA

Declaration is inappropriate for a trafficking victim, the agency shall within

fifteen (15) days, weekends and Government of Guam holidays excepted,

Deleted: Fifteen

provide the victim with a letter explaining the grounds of the denial of the

1 LEA Declaration. The victim may submit additional evidence to the law
2 enforcement agency, which must reconsider the denial of the LEA
3 Declaration within seven (7) days of the receipt of additional evidence.

4 (e) Law ~~enforcement officers~~ and agencies, for purposes of ~~enforcement of this Act~~, shall be
5 those designated by the Attorney General ~~and by Guam law~~.

Deleted: Enforcement Officers
Deleted: section
Deleted: who may enforce the provisions of this Act
Formatted: Font: Not Bold, Not Italic

6 2.6 NON-DEFENSES TO TRAFFICKING IN PERSONS.

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

9 (a) a trafficking victim's sexual history or history of commercial sexual activity, ~~including~~
10 ~~any acts that may be covered by the rape shield law;~~

Deleted: ;

11 (b) a trafficking victim's connection by blood or marriage to a defendant in the case or to
12 anyone involved in the victim's trafficking;

13 (c) consent of or permission by a trafficking victim or anyone else on the trafficking victim's
14 behalf to any commercial sex act or sexually explicit performance;

15 (d) age of consent to sex, legal age of marriage, or other discretionary age;

16 (e) mistake as to the victim's age, even if the mistake is reasonable.

17 2.7 CRIMINAL LIABILITY OF BUSINESS ENTITIES.

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

22 (b) If a business entity is convicted of violating any section of this article, the court may
23 when appropriate ~~order, but is not limited to, the following:~~

24 (1) order its dissolution or reorganization;

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

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

2.8 RESTITUTION.

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

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

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

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

(3) ~~the greater of:~~

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

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

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

~~(4) return of property, cost of damage to property, or full value of property if destroyed or damaged beyond repair;~~

~~(5) expenses incurred by a victim and any household members or other family members in relocating away from the defendant or his associates, including, but not limited to, deposits for utilities and telephone service, deposits for rental housing, temporary lodging and food expenses, clothing, and personal items. Expenses incurred pursuant to this section shall be verified by law enforcement to be~~

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

(c)

Deleted: attorney's fees and other court-related costs such as victim advocate fees; ¶

(4)

Deleted: 5

Deleted: 6) compensation for emotional distress, pain, and suffering; ¶

(7)

1 necessary for the personal safety of the victim or household or family members, or
2 by a mental health treatment provider to be necessary for the emotional well-being
3 of the victim; and

4 (6) any and all other losses suffered by the victim as a result of violations of this
5 article.

Deleted: 8

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

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

12 2.9 ASSET FORFEITURE.

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

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

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

21 2.10 STATUTE OF LIMITATIONS.

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

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

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

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

9 2.11 SENTENCING ENHANCEMENTS.

10 (a) Sentencing considerations in cases involving ~~criminal sexual conduct, serious bodily~~
11 ~~injury~~, or death. If a violation of this article involves kidnapping or an attempt to kidnap,
12 ~~criminal sexual conduct~~ or the attempt to commit ~~criminal sexual conduct~~, or an attempt to
13 ~~commit homicide~~, or if a ~~homicide~~ results, the defendant commits a ~~first degree felony~~.

Deleted: rape, extreme violence

Deleted: aggravated sexual abuse

Deleted: aggravated sexual abuse

Deleted: kill

Deleted: death

Deleted: Class A

Deleted: .

14 (b) Additional sentencing considerations ~~include but are not limited to:~~

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

17 (i) bodily injury, ~~up to an additional three (3) years of imprisonment;~~

Deleted: _

18 (ii) serious bodily injury, ~~up to an additional eight (8) years of imprisonment;~~

Deleted: 2

19 (iii) ~~if death results, defendant shall be sentenced in accordance with the~~
20 ~~homicide statute relevant for the level of criminal intent.~~

Deleted: permanent or life-
threatening bodily injury, an
additional 7 years of imprisonment;
(iv)

21 (2) Time in servitude. In determining sentences within statutory maximums, the
22 sentencing court should take into account the time in which the victim was held in
23 servitude, with increased penalties for cases in which the victim was held for
24 between ~~ninety (90) days~~ and one ~~(1) year~~, and further increased penalties for cases
25 in which the victim was held for more than one ~~(1) year~~.

26 (3) Number of victims. In determining sentences within statutory maximums, the
27 sentencing court should take into account the number of victims, and may provide
28 for substantially increased sentences in cases involving more than two ~~(2) victims~~.

Section 3. PREVENTION OF TRAFFICKING

3.1 TERRITORIAL TASK FORCE FOR PREVENTION OF TRAFFICKING.

(a) ~~An inter-agency task force shall be created to develop and implement a Territorial Plan~~ for the Prevention of Trafficking in Persons. Such a task force shall meet at least annually and should include all aspects of trafficking, including sex trafficking and labor trafficking of both U.S. citizens and foreign nationals.

Deleted: The Governor shall establish an

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

(c) The members of the task force shall include, at a minimum, representatives from:

(1) the Office of the Attorney General;

(2) the Guam Police Department;

(3) the Department of Public Health and Social Services, Child Protective Services and Adult Protective Services;

(4) the Department of Mental Health and Substance Abuse, *Counseling* and Healing Hearts Rape Crisis Center;

(5) the Department of Labor;

(6) the Guam Homeland Security Office; and

(7) representatives from non-governmental organizations, especially those

Deleted: Governor shall appoint the

Deleted: , which

Deleted: 's Office;

Deleted: Department of Labor; ¶
(3) the

Deleted:

Deleted: 4) local Homeland Security Office; ¶
(5

Deleted: ;

Formatted: Indent: Left: 0.5", First line: 0"

specializing in trafficking in persons, those representing diverse communities disproportionately affected by trafficking, ~~organizations dedicated to child services and~~ runaway services, and academic researchers dedicated to the subject of human trafficking.

Formatted: Indent: Left: 0", First line: 0.5"

Deleted: agencies devoted to

(d) The task force shall be chaired by the Office of the Attorney General and carry out the following activities either directly or via one or more of its constituent agencies:

(1) Develop the Territorial Plan.

(2) Coordinate the implementation of the Territorial Plan.

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

Deleted: Governor shall invite representatives of the U.S. Attorney's office and of federal law enforcement agencies within the territory, including

Deleted: Federal Bureau of Investigation and U.S. Immigration and Customs Enforcement, to be members

Deleted: task force. ¶
(e) The task force shall

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

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

Formatted: Font: Bold, Italic

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

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

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

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

Deleted: Guam

Deleted: General's Office

(e) Federal agencies, including the U.S. Attorney's Office and federal law enforcement agencies within the territory, including the Federal Bureau of Investigation and U.S. Immigration and Customs Enforcement, may be invited to join the task force.

3.2 DATA COLLECTION AND DISSEMINATION.

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

Deleted: territory

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

Deleted: territory

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

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

(2) the estimated number and demographic characteristics of persons engaged in violations of the criminal provisions defined in subsection 1.2 of this article as well as persons who purchase or receive commercial sex acts or sexually-explicit performances, or labor or services, performed by victims of trafficking in persons;

(3) statistics on the number of victims, including nationality, age, method of recruitment, and city, state, territory and country of origin;

(4) trafficking routes and patterns (states or countries of origin, transit states or countries, and destination states or countries);

(5) methods of transportation (car, boat, plane, foot), if any transportation took place; and

(6) social and economic factors that contribute to and foster the demand for all forms of exploitation of persons that lead to trafficking.

3.3 TRAINING.

(a) The task force shall provide mandatory training for law enforcement agencies, prosecutors, and other relevant officials in addressing trafficking in persons.

Deleted: territory

(b) Such training shall focus on:

(1) the new crimes and other provisions created by this article;

(2) methods used in identifying U.S. citizen and foreign national victims of trafficking in persons, including preliminary interview techniques and appropriate questioning methods;

(3) methods for prosecuting traffickers;

(4) methods of increasing effective collaboration with non-governmental organizations and other relevant social service organizations in the course of investigating and prosecuting a trafficking case;

(5) methods for protecting the rights of victims, taking into account the need to consider human rights and special needs of women and minors victims, and that victims should be treated as victims rather than criminals; and

(6) methods for promoting the safety of victims.

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

3.4 PUBLIC AWARENESS.

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

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

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

(3) information about victims' rights on Guam;

(4) methods for reporting suspected recruitment activities; and

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

(b) The task force in cooperation with other appropriate government agencies and appropriate non-governmental organizations or other elements of civil society shall prepare and disseminate general public awareness materials to educate the public on the extent of trafficking in persons, both U.S. citizens and foreign nationals, within Guam and

Formatted: Indent: First line: 0.5"

Deleted: territory

Deleted: territory

Deleted: territory

the Commonwealth of Northern Marianas; and to discourage the demand that fosters the exploitation of persons and that leads to trafficking.

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

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

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

2.5 ROLE OF NON-GOVERNMENTAL ORGANIZATIONS.

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

Section 4. VICTIM PROTECTION.

4.1 CIVIL ACTION.

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

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

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

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

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

4.2 APPLICABILITY OF LABOR STANDARDS.

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

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

Deleted: territory

4.3 PROTECTION OF VICTIMS.

Investigative, prosecutorial, and other appropriate authorities shall interview all persons arrested on charges of prostitution, and take all other steps necessary to identify victims of trafficking in persons, including U.S. citizens and foreign nationals. Once victims are identified, these authorities shall provide reasonable protection to victims of trafficking in persons to prevent recapture by the traffickers and their associates, secure the victim and the victim's family from threats, reprisals or intimidation by the traffickers and their

1 associates, and ensure the victim has an opportunity to consult with a victim advocate or
2 other appropriate person to develop a safety plan.

3 **4.4 WITNESS PROTECTION.**

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

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

14 **4.5 ACCESS TO THE TERRITORIAL CRIME VICTIMS' COMPENSATION FUND.**

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

17 **4.6 PROTECTION OF THE PRIVACY OF VICTIMS.**

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

22 **4.7 INFORMATION FOR VICTIMS.**

23 (a) The task force shall inform victims of trafficking in persons, in a language they can
24 understand, of their legal rights and the progress of relevant court and administrative
25 proceedings, as appropriate, including but not limited to progress in the prosecution of the
26 criminal offenders; information on convicted persons' prison release dates; and the
27 procedure for repatriating a victim to his/her country of citizenship or lawful residence.

28 The task force shall also provide victims with a directory of local victim service

Deleted: territory

Deleted: territory

1 organizations, including legal services organizations that can assist victims in obtaining or
2 maintaining the legal immigration status.

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

6 **4.8 OPPORTUNITY FOR PRESENTATION OF VICTIM'S VIEWS AND CONCERNS.**

7 The Territory of Guam shall provide an opportunity to a victim of trafficking in persons, if
8 the victim desires it, to present the victim's views and concerns at appropriate stages of
9 criminal proceedings against traffickers, in a manner not prejudicial to the rights of the
10 defendant. An interpreter who speaks a language the victim understands should be made
11 available to the victim during the course of legal proceedings.

12 **4.9 SUPPORT FOR VICTIMS.**

13 (a) Within 180 days of the enactment of this legislation, the Task force of Guam shall
14 develop plans, in consultation with non-governmental organizations and other elements of
15 civil society, for the provision of appropriate services, from governmental and non-
16 governmental sources, for victims of trafficking in persons, whether U.S. citizens or foreign
17 nationals, and any dependents accompanying the victims, or parents or guardians of minor
18 victims, including, but not limited to:

Deleted: Territory

- 19 (1) appropriate housing, taking into account the person's status as a victim of crime
20 and including safe conditions for sleeping, food and personal hygiene;
21 (2) psychological counseling in a language the victim can understand;
22 (3) medical assistance in a language the victim can understand;
23 (4) childcare;
24 (5) other material assistance as appropriate;
25 (6) employment, educational, language, and training opportunities; and
26 (7) legal assistance in a language the victim understands.

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

1 (c) Victims of trafficking in persons shall not be given shelter in prisons or other detention
2 facilities for accused or convicted criminals. Child victims of trafficking in persons shall not
3 be housed in prisons or other detention facilities for accused or convicted criminals or
4 juvenile delinquents under any circumstances.

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

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

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

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

17 **4.10 APPROPRIATE IMPLEMENTATION FOR CHILD VICTIMS.**

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

- 24 (1) testimony of minor conducted outside court setting or by video;
25 (2) all testimony and court proceedings take place with parent, legal guardian or
26 foster parent present, if it is in the best interests of the minor;
27 (3) whenever safe and possible, minors should be reunited with family members,
28 whether within or outside the United States;

(4) special mental and physical medical care tailored to the minor's needs; and
(5) upon resettlement in a new country, minor victims of trafficking in persons should be guaranteed education that matches or exceeds the general standard of education in the country.

4.11 HUMAN TRAFFICKING VICTIM-CASEWORKER PRIVILEGE.

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

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

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

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

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

4 (ii) has at least 40 hours of training as specified in this paragraph and is supervised
5 by an individual who qualifies as a counselor under subparagraph (i) or by a
6 psychotherapist. The training, supervised by a person qualified under subparagraph
7 (i), shall include, but need not be limited to, the following areas: history of human
8 trafficking, civil and criminal law as it relates to human trafficking, societal attitudes
9 towards human trafficking, peer counseling techniques, housing, public assistance
10 and other financial resources available to meet the financial needs of trafficking
11 victims, and referral services available to trafficking victims. A portion of this
12 training must include an explanation of privileged communication.

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

21 (e) As used in this article, "holder of the privilege" means the victim when he or she has no
22 guardian or conservator, or a guardian or conservator of the victim when the victim has a
23 guardian or conservator.

24 **4.12 PROTECTION OF TRAFFICKING AND DOMESTIC VIOLENCE SHELTERS.**

25 (a) Any person who maliciously or with criminal negligence publishes, disseminates, or
26 otherwise discloses the location of any trafficking victim, any trafficking shelter or
27 domestic violence shelter or any place designated as a trafficking shelter or domestic

1 violence shelter, without the authorization of that trafficking victim, trafficking shelter or
2 domestic violence shelter, is guilty of a misdemeanor.

3 (b) For purposes of this section, "domestic violence shelter" means a confidential location
4 which provides emergency housing for victims of sexual assault, spousal abuse, or both,
5 and their families. For purposes of this section, "trafficking shelter" means a confidential
6 location, which provides emergency housing for victims of human trafficking.

(2) Debt coercion means exploitation of the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or those of a person under his or her control as a security or payment for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those 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
6 Guam and/or Federal legislation or legal precedents, or employment contracts that violate
7 relevant 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 refers to criminal sexual conduct, including sexual penetration and sexual
15 contact, as defined in Title 9 GCA Chapter 25, and any other crime as defined in Title 9
16 GCA Chapter 25.01, Chapter 28, and Chapter 89.

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, involuntary
22 servitude, sexual servitude of a minor, or transported in violation of trafficking of persons
23 for forced labor or service, as set forth herein.

24 **2.2 CRIMINAL PROVISIONS.**

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

26 (a) recruits, entices, solicits, isolates, harbors, transports, provides, or obtains by any
27 means, or attempts to recruit, entice, solicit, isolate, harbor, transport, provide, or

1 obtain by any means, another person, knowing that the person will be subjected to
2 sexual servitude of a minor or involuntary servitude, or
3 (b) benefits, financially or by receiving anything of value, from participation in a
4 venture which has engaged in an act described in paragraph (1)(a), commits a
5 second degree felony.

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

7 (a) recruits, entices, solicits, isolates, harbors, transports, provides, or obtains by any
8 means, or attempts to recruit, entice, solicit, isolate, harbor, transport, provide, or
9 obtain by any means, any minor for the purposes of commercial sex acts or sexually
10 explicit performance, or

11 (b) benefits, financially or by receiving anything of value, from participation in a
12 venture which has engaged in an act described in paragraph (2)(a), commits a first
13 degree felony.

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

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

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

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

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

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

21 (d) knowingly destroying, concealing, removing, confiscating or possessing
22 any actual or purported passport or other immigration document, or any
23 other actual or purported government identification document, of another
24 person;

25 (e) extortion or blackmail;

26 (f) deception or fraud;

27 (g) debt coercion;

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

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

(j) using any scheme, plan, or pattern, whether overt or subtle, intended to cause any person to believe that, if the person did not perform such labor, services, acts or performances, that person or another person would suffer serious harm or physical restraint,

commits a first degree felony.

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

2.5 VICTIM IMMUNITY FROM PROSECUTION.

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

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

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

(d) Within fifteen (15) days, weekends and Government of Guam holidays excepted, of the first encounter with a victim of human trafficking, law enforcement agents shall provide the victim with a completed *Form 1-914*

Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons (LEA Declaration) in accordance with 8 C.F.R.

10 52 14.1 l(Q(1). Where Guam law enforcement agencies find the grant of an LEA Declaration is inappropriate for a trafficking victim, the agency shall within fifteen (15) days, weekends and Government of Guam holidays excepted, provide the victim with a letter explaining the grounds of the denial of the

1 LEA Declaration. The victim may submit additional evidence to the law
2 enforcement agency, which must reconsider the denial of the LEA
3 Declaration within seven (7) days of the receipt of additional evidence.

4 (e) Law enforcement officers and agencies, for purposes of enforcement of this Act, shall be
5 those designated by the Attorney General and by Guam law.

6 **2.6 NON-DEFENSES TO TRAFFICKING IN PERSONS.**

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

9 (a) a trafficking victim's sexual history or history of commercial sexual activity, including
10 any acts that may be covered by the rape shield law;

11 (b) a trafficking victim's connection by blood or marriage to a defendant in the case or to
12 anyone involved in the victim's trafficking;

13 (c) consent of or permission by a trafficking victim or anyone else on the trafficking victim's
14 behalf to any commercial sex act or sexually explicit performance;

15 (d) age of consent to sex, legal age of marriage, or other discretionary age;

16 (e) mistake as to the victim's age, even if the mistake is reasonable.

17 **2.7 CRIMINAL LIABILITY OF BUSINESS ENTITIES.**

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

22 (b) If a business entity is convicted of violating any section of this article, the court may
23 when appropriate order, but is not limited to, the following:

24 (1) order its dissolution or reorganization;

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

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

2.8 RESTITUTION.

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

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

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

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

(3) the greater of:

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

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

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

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

(5) expenses incurred by a victim and any household members or other family members in relocating away from the defendant or his associates, including, but not limited to, deposits for utilities and telephone service, deposits for rental housing, temporary lodging and food expenses, clothing, and personal items. Expenses incurred pursuant to this section shall be verified by law enforcement to be

1 necessary for the personal safety of the victim or household or family members, or
2 by a mental health treatment provider to be necessary for the emotional well-being
3 of the victim; and

4 (6) any and all other losses suffered by the victim as a result of violations of this
5 article.

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

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

12 **2.9 ASSET FORFEITURE.**

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

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

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

21 **2.10 STATUTE OF LIMITATIONS.**

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

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

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

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

2.11 SENTENCING ENHANCEMENTS.

(a) Sentencing considerations in cases involving criminal sexual conduct, serious bodily injury, or death. If a violation of this article involves kidnapping or an attempt to kidnap, criminal sexual conduct or the attempt to commit criminal sexual conduct, or an attempt to commit homicide, or if a homicide results, the defendant commits a first degree felony.

(b) Additional sentencing considerations include but are not limited to:

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

(i) bodily injury, up to an additional three (3) years of imprisonment;

(ii) serious bodily injury, up to an additional eight (8) years of imprisonment;

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

(2) Time in servitude. In determining sentences within statutory maximums, the sentencing court should take into account the time in which the victim was held in servitude, with increased penalties for cases in which the victim was held for between ninety (90) days and one (1) year, and further increased penalties for cases in which the victim was held for more than one (1) year.

(3) Number of victims. In determining sentences within statutory maximums, the sentencing court should take into account the number of victims, and may provide for substantially increased sentences in cases involving more than two (2) victims.

1 **Section 3. PREVENTION OF TRAFFICKING**

2 **3.1 TERRITORIAL TASK FORCE FOR PREVENTION OF TRAFFICKING.**

3 (a) An inter-agency task force shall be created to develop and implement a Territorial Plan
4 for the Prevention of Trafficking in Persons. Such a task force shall meet at least annually
5 and should include all aspects of trafficking, including sex trafficking and labor trafficking
6 of both U.S. citizens and foreign nationals.

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

9 (c) The members of the task force shall include, at a minimum, representatives from:

10 (1) the Office of the Attorney General;

11 (2) the Guam Police Department;

12 (3) the Department of Public Health and Social Services, Child Protective Services
13 and Adult Protective Services;

14 (4) the Department of Mental Health and Substance Abuse, *Counseling* and Healing
15 Hearts Rape Crisis Center;

16 (5) the Department of Labor;

17 (6) the Guam Homeland Security Office; and

18 (7) representatives from non-governmental organizations, especially those
19 specializing in trafficking in persons, those representing diverse communities
20 disproportionately affected by trafficking, organizations dedicated to child services and
21 runaway services, and academic researchers dedicated to the subject of human trafficking.

22 (d) The task force shall be chaired by the Office of the Attorney General and carry out the
23 following activities either directly or via one or more of its constituent agencies:

24 (1) Develop the Territorial Plan.

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

26 (3) Coordinate the collection and sharing of trafficking data among government
27 agencies, which data collection shall respect the privacy of victims of trafficking in
28 persons.

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

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

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

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

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

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

(e) Federal agencies, including the U.S. Attorney's Office and federal law enforcement agencies within the territory, including the Federal Bureau of Investigation and U.S. Immigration and Customs Enforcement, may be invited to join the task force.

3.2 DATA COLLECTION AND DISSEMINATION.

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

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

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

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

(2) the estimated number and demographic characteristics of persons engaged in violations of the criminal provisions defined in subsection 1.2 of this article as well as persons who purchase or receive commercial sex acts or sexually-explicit performances, or labor or services, performed by victims of trafficking in persons;

(3) statistics on the number of victims, including nationality, age, method of recruitment, and city, state, territory and country of origin;

(4) trafficking routes and patterns (states or countries of origin, transit states or countries, and destination states or countries);

(5) methods of transportation (car, boat, plane, foot), if any transportation took place; and

(6) social and economic factors that contribute to and foster the demand for all forms of exploitation of persons that lead to trafficking.

3.3 TRAINING.

(a) The task force shall provide mandatory training for law enforcement agencies, prosecutors, and other relevant officials in addressing trafficking in persons.

(b) Such training shall focus on:

(1) the new crimes and other provisions created by this article;

(2) methods used in identifying U.S. citizen and foreign national victims of trafficking in persons, including preliminary interview techniques and appropriate questioning methods;

(3) methods for prosecuting traffickers;

(4) methods of increasing effective collaboration with non-governmental organizations and other relevant social service organizations in the course of investigating and prosecuting a trafficking case;

(5) methods for protecting the rights of victims, taking into account the need to consider human rights and special needs of women and minors victims, and that victims should be treated as victims rather than criminals; and

(6) methods for promoting the safety of victims.

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

3.4 PUBLIC AWARENESS.

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

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

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

(3) information about victims' rights on Guam;

(4) methods for reporting suspected recruitment activities; and

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

(b) The task force in cooperation with other appropriate government agencies and appropriate non-governmental organizations or other elements of civil society shall prepare and disseminate general public awareness materials to educate the public on the extent of trafficking in persons, both U.S. citizens and foreign nationals, within Guam and

the Commonwealth of Northern Marianas; and to discourage the demand that fosters the exploitation of persons and that leads to trafficking.

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

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

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

2.5 ROLE OF NON-GOVERNMENTAL ORGANIZATIONS.

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

Section 4. VICTIM PROTECTION.

4.1 CIVIL ACTION.

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

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

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

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

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

16 **4.2 APPLICABILITY OF LABOR STANDARDS.**

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

19 (b) The task force shall investigate complaints of unlawful working conditions without
20 regard to the immigration status of complainants and without regard to the nature of the
21 work or services involved.

22 **4.3 PROTECTION OF VICTIMS.**

23 Investigative, prosecutorial, and other appropriate authorities shall interview all persons
24 arrested on charges of prostitution, and take all other steps necessary to identify victims of
25 trafficking in persons, including U.S. citizens and foreign nationals. Once victims are
26 identified, these authorities shall provide reasonable protection to victims of trafficking in
27 persons to prevent recapture by the traffickers and their associates, secure the victim and
28 the victim's family from threats, reprisals or intimidation by the traffickers and their

1 associates, and ensure the victim has an opportunity to consult with a victim advocate or
2 other appropriate person to develop a safety plan.

3 **4.4 WITNESS PROTECTION.**

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

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

14 **4.5 ACCESS TO THE TERRITORIAL CRIME VICTIMS' COMPENSATION FUND.**

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

17 **4.6 PROTECTION OF THE PRIVACY OF VICTIMS.**

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

22 **4.7 INFORMATION FOR VICTIMS.**

23 (a) The task force shall inform victims of trafficking in persons, in a language they can
24 understand, of their legal rights and the progress of relevant court and administrative
25 proceedings, as appropriate, including but not limited to progress in the prosecution of the
26 criminal offenders; information on convicted persons' prison release dates; and the
27 procedure for repatriating a victim to his/her country of citizenship or lawful residence.
28 The task force shall also provide victims with a directory of local victim service

1 organizations, including legal services organizations that can assist victims in obtaining or
2 maintaining the legal immigration status.

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

6 **4.8 OPPORTUNITY FOR PRESENTATION OF VICTIM'S VIEWS AND CONCERNS.**

7 The Territory of Guam shall provide an opportunity to a victim of trafficking in persons, if
8 the victim desires it, to present the victim's views and concerns at appropriate stages of
9 criminal proceedings against traffickers, in a manner not prejudicial to the rights of the
10 defendant. An interpreter who speaks a language the victim understands should be made
11 available to the victim during the course of legal proceedings.

12 **4.9 SUPPORT FOR VICTIMS.**

13 (a) Within 180 days of the enactment of this legislation, the Task force of Guam shall
14 develop plans, in consultation with non-governmental organizations and other elements of
15 civil society, for the provision of appropriate services, from governmental and non-
16 governmental sources, for victims of trafficking in persons, whether U.S. citizens or foreign
17 nationals, and any dependents accompanying the victims, or parents or guardians of minor
18 victims, including, but not limited to:

- 19 (1) appropriate housing, taking into account the person's status as a victim of crime
20 and including safe conditions for sleeping, food and personal hygiene;
- 21 (2) psychological counseling in a language the victim can understand;
- 22 (3) medical assistance in a language the victim can understand;
- 23 (4) childcare;
- 24 (5) other material assistance as appropriate;
- 25 (6) employment, educational, language, and training opportunities; and
- 26 (7) legal assistance in a language the victim understands.

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

1 (c) Victims of trafficking in persons shall not be given shelter in prisons or other detention
2 facilities for accused or convicted criminals. Child victims of trafficking in persons shall not
3 be housed in prisons or other detention facilities for accused or convicted criminals or
4 juvenile delinquents under any circumstances.

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

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

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

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

17 **4.10 APPROPRIATE IMPLEMENTATION FOR CHILD VICTIMS.**

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

24 (1) testimony of minor conducted outside court setting or by video;

25 (2) all testimony and court proceedings take place with parent, legal guardian or
26 foster parent present, if it is in the best interests of the minor;

27 (3) whenever safe and possible, minors should be reunited with family members,
28 whether within or outside the United States;

1 (4) special mental and physical medical care tailored to the minor's needs; and

2 (5) upon resettlement in a new country, minor victims of trafficking in persons
3 should be guaranteed education that matches or exceeds the general standard of
4 education in the country.

5 **4.11 HUMAN TRAFFICKING VICTIM-CASEWORKER PRIVILEGE.**

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

10 (1) the holder of the privilege;

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

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

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

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

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

4 (ii) has at least 40 hours of training as specified in this paragraph and is supervised
5 by an individual who qualifies as a counselor under subparagraph (i) or by a
6 psychotherapist. The training, supervised by a person qualified under subparagraph
7 (i), shall include, but need not be limited to, the following areas: history of human
8 trafficking, civil and criminal law as it relates to human trafficking, societal attitudes
9 towards human trafficking, peer counseling techniques, housing, public assistance
10 and other financial resources available to meet the financial needs of trafficking
11 victims, and referral services available to trafficking victims. A portion of this
12 training must include an explanation of privileged communication.

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

21 (e) As used in this article, "holder of the privilege" means the victim when he or she has no
22 guardian or conservator, or a guardian or conservator of the victim when the victim has a
23 guardian or conservator.

24 **4.12 PROTECTION OF TRAFFICKING AND DOMESTIC VIOLENCE SHELTERS.**

25 (a) Any person who maliciously or with criminal negligence publishes, disseminates, or
26 otherwise discloses the location of any trafficking victim, any trafficking shelter or
27 domestic violence shelter or any place designated as a trafficking shelter or domestic

1 violence shelter, without the authorization of that trafficking victim, trafficking shelter or
2 domestic violence shelter, is guilty of a misdemeanor.

3 (b) For purposes of this section, "domestic violence shelter" means a confidential location
4 which provides emergency housing for victims of sexual assault, spousal abuse, or both,
5 and their families. For purposes of this section, "trafficking shelter" means a confidential
6 location, which provides emergency housing for victims of human trafficking.

Alicia G. Limtiaco
Attorney General



Alberto E. Tolentino
Chief Deputy Attorney General

OFFICE OF THE ATTORNEY GENERAL

April 20, 2009

Honorable Adolpho B. Palacios, Sr.
30th Guam Legislature
Suite 104, 155 Hester Street
Hagatna, Guam 96910

Re: Human Trafficking Bills

Dear Senator Palacios:

Human trafficking is a severe crime that deprives and violates victims of their fundamental human dignity. Over 35 states and territories have passed anti-human trafficking laws to fight against forced labor, sexual exploitation, and modern-day slavery of children and adults. Human trafficking is a global international issue, and all local and federal law enforcement, social service, medical, victim advocacy, educational, and other related governmental and non-governmental organizations must work together to effectively prevent, investigate, prosecute, and protect victims.

It is critical for local law enforcement to actively participate in these investigations and cases, as they know their communities inside and out. In light of the impending population increase in Guam, it is important that we pass laws that criminalize human trafficking, provide the resources to local law enforcement and other stakeholders to combat against the abuse and exploitation of children and adults, and ensure proper coordination between our local and federal partners.

The Office of the Attorney General supports the proposed Human Trafficking legislation (Bill Nos. 36 and 31) currently before the Guam Legislature. The Office has met and worked with Senator Tina Muna-Barnes, Senator Ray Tenorio, and Senator Adolpho Palacios, and provided comment and testimony, both oral and written, regarding the proposed legislation.

We wish to inquire as to the status of the Bills as we understand that they will be voted on by the Legislature in April 2009.

Thank you.

Sincerely,

ALICIA G. LIMTIACO
Attorney General of Guam

cc: Senator Tina Muna-Barnes
Senator Ray Tenorio



I MINA' TRENTÉ NA LIHESLATURAN GUÅHAN
2009 (FIRST) Regular Session

Bill No. 36 (COR)

As substituted by the Author

Introduced by:

T. R. Muña-Barnes

Ray Tenorio

J. T. Won Pat, Ed.D.

J. P. Guthertz

**AN ACT TO ADD A NEW CHAPTER 26 TO TITLE
9GCA, 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. Legislative Findings.** *I Liheslaturan Guahan* finds that:

3 Throughout history, many regimes of power have used the law to countenance
4 de jure slavery, and have thereby denied the rights and inherent dignity of whole
5 classes of people.

6 As a nation, our founding rests on the principle that all persons are created equal
7 and endowed with certain unalienable rights that among these are life, liberty and the
8 pursuit of happiness. We are at our best as a people when we are faithful to that
9 principle and struggle to realize its promise for all persons.

10 The Thirteenth (13th) Amendment is an act to fulfill our founding principle. It
11 mandates that “[n]either slavery nor involuntary servitude...shall exist within the
12 United States or any place subject to their jurisdiction”, and it further obligates

1 Congress to enforce that mandate with “appropriate legislation”. The island of Guam
2 also has an affirmative obligation to eradicate the badges and incidents of slavery.

3 Trafficking in persons is a modern-day manifestation of slavery. It consists of the
4 exploitation of individuals in situations of commercial sex or forced labor for the
5 purpose of financial gain. The highest order of the island is to fulfill the promise of our
6 founding principle. This fulfillment is achieved by restoring the liberty and inherent
7 dignity of an individual subjected to trafficking in persons.

8 Every year traffickers in persons prey on hundreds of thousands of people
9 around the world. Traffickers operate within or across international and state borders
10 and usually target a society’s most vulnerable, most of whom are women and children.
11 They subject their victims to exploitation through labor trafficking or commercial sex
12 trafficking. In this country and island, both U.S. citizens and non-citizens may fall
13 prey to traffickers of persons. Vulnerable people are often trafficked or maintained in
14 trafficking because they do not know their rights or do not know how to assert their
15 rights.

16 Traffickers use various techniques to instill fear in victims and keep them
17 enslaved. Some traffickers keep their victims under lock and key. More frequently,
18 traffickers employ less obvious techniques including isolating their victims from family
19 and the public, confiscating passports, visas, driver’s licenses, or other identification
20 documents, inflicting physical violence or the threat thereof against victims or their
21 family, threatening to use legal processes against them or reporting them to law
22 enforcement, immigration or juvenile authorities, fostering addiction, controlling their
23 access to addicted substances, and controlling their funds.

24 Victims of human trafficking typically endure terrible physical and mental
25 trauma. Victims often suffer from traumatic bonding (Stockholm Syndrome), post
26 traumatic stress disorder (PTSD), and other conditions resulting from the psychological
27 harm inflicted upon them. When rescued, the extent of this trauma must be recognized
28 and assessed; victims need to be provided immediate access to stabilization services

1 before they can effectively contribute to the investigation of the crimes that have been
2 perpetrated against them.

3 Due to the fear instilled in them by the traffickers, and to the experience in
4 foreign countries from which they came, victims often have a profound suspicion of law
5 enforcement and will not seek the protection of law enforcement officers and agencies.
6 Due to their fears and psychological harms inflicted upon them, as noted in the U.S.
7 State Department's 2007 *Trafficking in Persons Report*, trafficking victims are unlikely to
8 self-identify themselves as victims. Within the context of interactions with authorities,
9 victims of human trafficking be recognized as the victims of serious crime, and only
10 secondary as a witness to a crime. As stated in the 2007 *Trafficking in Persons Report*:

11 *A government should provide efficient access to justice for these victims, if they so*
12 *choose, and access to shelter, medical care, legal aid, and psycho-social counseling.*

13 As further stated in the 2007 Report:

14 *By placing the needs of victims front and center, victims of this heinous*
15 *crime are assured of the protection they so desperately need. Once give those*
16 *resources, many victims step forward voluntarily and without pressure to become*
17 *powerful and confident witnesses...*

18 Jurisprudence concerning the Thirteenth (13th) Amendment of the U.S.
19 Constitution holds that no person can consent to be enslaved, including
20 agreement to debt bondage, nor can a person under the age of eighteen (18)
21 consent to participate in commercial sex. The federal Trafficking Victims
22 Protection Act of 2000 is an act that fulfills the promise of the Thirteenth (13th)
23 Amendment at the national level. This Act seeks to fulfill that promise within
24 Guam.

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

26 **"CHAPTER 26**

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

28 **Article 1. PROSECUTION**

1 §26.01. Definition

2 §26.02 Criminal Provisions

3 §26.03 Victim Immunity from Prosecution

4 §26.04 Non-Defense to Trafficking in Persons

5 §26.05 Criminal Liability of Business Entities

6 §26.06 Restitution

7 §26.07 Asset Forfeiture

8 §26.08 Statute of Limitations

9 §26.09 Sentencing Enhancements

10 Article 2. PREVENTION OF TRAFFICKING

11 §26.20 Territorial Task Force for Prevention of Trafficking

12 §26.21 Data Collection and Dissemination

13 §26.22 Training

14 §26.23 Public Awareness

15 §26.24 Role on Non-Governmental Organizations

16 Article 3. PROTECTION OF VICTIMS

17 §26.30 Victim's Rights

18 §26.31 Civil Action

19 §26.32 Applicability of Labor Standards

20 §26.33 Protection of Victims

21 §26.34 Access to the Territorial Crime Victim's Compensation Fund.

22 §26.35 Protection of the Privacy of Victims

23 §26.36 Information for Victims

24 §26.37 Opportunity for Presentation of Victims and Concerns

25 §26.38 Support for Victims

26 §26.39 Appropriate Implementation for Child Victims

27 §26.40 Human Trafficking Victim-Caseworker Privilege

28 §26.41 Protection of Trafficking and Domestic Violence Shelters

1 ARTICLE 1

2 PROSECUTION

3 §26.01 Definition

4 (a) Commercial sex acts means any sex act on account of which anything
5 of value is given, promised to, or received, or exchanged, directly or
6 indirectly, by any person.

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

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

17 (d) Financial harm includes credit extortion as defined by existing Guam
18 laws and/or relevant Federal legislation, criminal violation of the usury
19 laws as defined by existing Guam and/or Federal legislation or legal
20 precedents, or employment contracts that violate relevant Statutes of
21 Frauds as defined by Guam and Federal regulations.

22 (e) Labor means work of economic or financial value.

23 (f) Minor refers to any natural person under 18 years of age.

24 (g) Person includes an individual, corporation, partnership, association, a
25 government body, a municipal corporation, or any other legal entity.

26 (h) Services means any act committed at the behest of, under the
27 supervision of, or for the benefit of another.

1 (i) Sex act refers to criminal sexual conduct, including sexual penetration
2 and sexual contact, as defined in Title 9 GCA Chapter 25, and any other
3 crime as defined in Title 9 GCA Chapter 25.01, Chapter 28, and Chapter 89

4 (j) Sexually-explicit performance means an act or show, intended to
5 arouse, satisfy the sexual desires of, or appeal to the prurient interests of
6 patrons or viewers, whether public or private, live, photographed,
7 recorded, or videotaped.

8 (k) Victim of trafficking in persons means any person, whether a U.S.
9 citizen or foreign national, who has been subjected to the crime of
10 trafficking in persons, involuntary servitude, sexual servitude of a minor,
11 or transported in violation of trafficking of persons for forced labor or
12 service as set forth herein.

13 **§26.02 Criminal Provisions**

14 **(a) Trafficking in Persons.** Any person who knowingly:

15 (1) recruits, entices, solicits, isolates, harbors, transports, provides,
16 or obtains by any means or attempts to recruit, entice, solicit,
17 isolate, harbor, transport, provide, or obtain by any means, another
18 person, knowing that the person will be subjected to sexual
19 servitude of a minor or involuntary servitude, or

20 (2) benefits, financially or by receiving anything of value, from
21 participation in a venture which has engaged in an act described in
22 paragraph 1(a), commits a second degree felony.

23 **(b) Sexual Servitude of a Minor.** Any person who knowingly:

24 (1) recruits, entices, solicits, isolates, harbors, transports, provides,
25 or obtains, by any means, or attempts to recruit, entice, solicit,
26 isolate, harbor, transport, provide, or obtain by any means, any
27 minor for the purpose of commercial sex acts or sexually explicit
28 performance, or

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

4 **(c) Involuntary Servitude.** Any person who knowingly subjects, or
5 attempts to subject, another person to:

6 (1) commercial sex acts or sexually explicit performance, or

7 (2) labor or services through the use of any of the following means:

8 (A) causing or threatening to cause serious harm to any
9 person;

10 (B) physically restraining or threatening to physically
11 restrain another person;

12 (C) abusing or threatening to abuse the law or legal process;

13 (D) knowingly destroying, concealing, removing,
14 confiscating or possessing any actual or purported passport
15 or other immigration document, or any other actual or
16 purported government identification document, of another
17 person;

18 (E) extortion or blackmail;

19 (F) deception or fraud;

20 (G) debt coercion;

21 (H) causing or threatening to cause financial harm to any
22 person;

23 (I) facilitating or controlling a victim's access to an addictive
24 controlled substance; or

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

performances, that person or another person would suffer serious harm or physical restraint, commits a first degree felony.

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

§26.03 Victim Immunity from Prosecution.

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

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

(c) The victims of human trafficking shall be eligible, without regard to their immigration status, for benefits available through Title 8 GCA, Chapter 161.

(d) Within Fifteen (15) days, weekends and Government of Guam holidays excepted, of the first encounter with a victim of human trafficking, law enforcement agents shall provide the victim with a completed Form 1-914 Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons (LEA Declaration) in accordance with 8 C.F.R. 10 52 14.1 l(Q(1)). Where Guam law enforcement agencies find the grant of an LEA Declaration is inappropriate for a trafficking victim, the agency shall within Fifteen (15) days, weekends and Government of Guam holidays excepted, provide the victim with a letter explaining the grounds of the denial of the LEA Declaration. The victim

1 may submit additional evidence to the law enforcement agency, which
2 must reconsider the denial of the LEA Declaration within seven (7) days of
3 the receipt of additional evidence.

4 (e) Law enforcement officers and agencies, for purposes of enforcement of
5 this Act, shall be those designated by the Attorney General and by Guam
6 law.

7 **§26.04 Non-Defenses to Trafficking In Persons** Evidence of the
8 following facts or conditions shall not constitute a defense in a
9 prosecution for violations of this article, nor shall such evidence preclude
10 a finding of a violation:

11 (a) a trafficking victim's sexual history or history of commercial sexual
12 activity, including any acts that may be covered by the rape shield law;

13 (b) a trafficking victim's connection by blood or marriage to a defendant in
14 the case or to anyone involved in the victim's trafficking;

15 (c) consent of or permission by a trafficking victim or anyone else on the
16 trafficking victim's behalf to any commercial sex act or sexually explicit
17 performance;

18 (d) age of consent to sex, legal age of marriage, or other discretionary age;

19 (e) mistake as to the victim's age, even if the mistake is reasonable.

20 **§26.05 Criminal Liability of Business Entities.**

21 (a) Any business entity, including a corporation, partnership, association,
22 government body, municipal corporation or any other legal entity, that
23 aids or participates in any crime defined in section 26.02 of this article
24 shall be criminally liable for the offense and shall be subject to a fine or
25 loss of business license, or both.

26 (b) If a business entity is convicted of violating any section of this article,
27 the court may, when appropriate, order, but is not limited to the
28 following:

- (1) order its dissolution or reorganization;
- (2) order the suspension or revocation of any license, permit, or prior approval granted to it by local government agencies; or
- (3) order the surrender of its charter if it is organized under Guam law or the revocation of its certificate to conduct business on Guam if it is not organized under Guam law.

§26.06 Restitution.

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

(b) Restitution under this section shall include items covered by existing Guam statutes governing victim restitution and any of the following if not already included in Guam's restitution statute:

- (1) costs of medical and psychological treatment, including physical and occupational therapy and rehabilitation, at the court's discretion;
- (2) costs of necessary transportation, temporary housing, and child care, at the court's discretion;
- (3) the greater of:
 - (A) the gross income or value to the defendant of the trafficking victim's commercial sex acts or sexually-explicit performances, or labor or services;
 - (B) the value of the trafficking victim's labor as guaranteed under the minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA); or
 - (C) the value of the trafficking victim's labor as guaranteed under the minimum wage and overtime provisions of Guam labor laws.

1 (4) return of property, cost of damage to property, or full value of
2 property if destroyed or damaged beyond repair;

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

12 (6) any and all other losses suffered by the victim as a result of
13 violations of this article.

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

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

22 **§26.07 Asset Forfeiture.**

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

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

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

5 **§26.08 Statute of Limitations.**

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

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

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

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

23 **§26.09 Sentencing Enhancements**

24 (a) Sentencing considerations in cases involving criminal sexual conduct,
25 serious bodily injury, or death. If a violation of this article involves
26 kidnapping or an attempt to kidnap, criminal sexual conduct, or an
27 attempt to commit homicide, or if a homicide results, the defendant
28 commits a first degree felony.]

1 (b) Additional sentencing considerations, include but not limited to;

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

4 (A) bodily injury, up to an additional three (3) years of
5 imprisonment;

6 (B) serious bodily injury, up to an additional eight (8) years
7 if imprisonment;

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

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

13 (2) Time in servitude. In determining sentences within statutory
14 maximums, the sentencing court should take into account the time
15 in which the victim was held in servitude, with increased penalties
16 for cases in which the victim was held for between ninety (90) days
17 and one (1) year, and further increased penalties for cases in which
18 the victim was held for more than (1) one year.

19 (3) Number of victims. In determining sentences within statutory
20 maximums, the sentencing court should take into account the
21 number of victims, and may provide for substantially increased
22 sentences in cases involving more than two (2) victims.

23 **ARTICLE 2.**

24 **PREVENTION OF TRAFFICKING**

25 **§26.20 Task Force for Prevention of Trafficking**

26 (a) An inter-agency task force to develop and implement a Guam Plan for
27 the Prevention of Trafficking in Persons. Such a task force shall meet at

1 least annually and should include all aspects of trafficking, including sex
2 trafficking and labor trafficking of both U.S. citizens and foreign nationals.

3 (b) The members of the task force shall include, at a minimum,
4 representatives from:

5 (1) the Office of the Attorney General;

6 (2) the Guam Police Department;

7 (3) the Department of Public Health and Social Services, Child
8 Protective Services and Adult Protective Services;

9 (4) the Department of Mental Health and Substance Abuse ,
10 Counseling and Healing Hearts Rape Crisis Center;

11 (5) the Department of Labor; and

12 (6) the Guam Homeland Security Office; and

13 (7) representatives from non-governmental organizations,
14 especially those specializing in trafficking in persons, those
15 representing diverse communities disproportionately affected by
16 trafficking, organizations dedicated to child services and runaway
17 services, and academic researchers dedicated to the subject of
18 human trafficking.

19 (d) The task force shall be chaired by the Office of the Attorney General
20 and carry out the following activities either directly or via one or more of
21 its constituent agencies:

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

24 (1) Develop the Guam Plan.

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

26 (3) Coordinate the collection and sharing of trafficking data among
27 government agencies, which data collection shall respect the
28 privacy of victims of trafficking in persons.

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

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

7 (6) Establish policies to enable the government of Guam to work
8 with non-governmental organizations and other elements of civil
9 society to prevent trafficking and provide assistance to U.S. citizen
10 and foreign national victims.

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

17 (8) Evaluate various approaches used by the government of Guam
18 and state governments to increase public awareness of the
19 trafficking in persons, including U.S. citizen and foreign national
20 victims of trafficking in persons.

21 (9) Submit an annual report of its findings and recommendations to
22 the Governor, the Speaker of the Guam Legislature, the Guam
23 Legislature and the Office of the Attorney General on or before
24 December 31 of each calendar year.

25 **§26.21 Date Collection and Dissemination.**

26 (a) The government of Guam shall, in cooperation with other appropriate
27 authorities, collect and periodically publish statistical data on trafficking.

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

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

8 (1) numbers of investigations, arrests, prosecutions, and successful
9 convictions of traffickers and those committing trafficking-related
10 crimes (pimping, pandering, procuring, maintaining a brothel,
11 child pornography, visa fraud, document fraud, and other crimes
12 related to trafficking);

13 (2) the estimated number and demographic characteristics of
14 persons engaged in violations of the criminal provisions defined in
15 section 26.02 of this article as well as persons who purchase or
16 receive commercial sex acts or sexually-explicit performances, or
17 labor or services, performed by victims of trafficking in persons;

18 (3) statistics on the number of victims, including nationality, age,
19 method of recruitment, and city, state, and country of origin;

20 (4) trafficking routes and patterns (states or countries of origin,
21 transit states or countries, and destination states or countries);

22 (5) methods of transportation (car, boat, plane, foot), if any
23 transportation took place; and

24 (6) social and economic factors that contribute to and foster the
25 demand for all forms of exploitation of persons that lead to
26 trafficking.

27 **§26.22 Training**

1 (a) The government of Guam shall provide mandatory training for law
2 enforcement agencies, prosecutors, and other relevant officials in
3 addressing trafficking in persons.

4 (b) Such training shall focus on:

5 (1) the new crimes and other provisions created by this article;

6 (2) methods used in identifying U.S. citizen and foreign national
7 victims of trafficking in persons, including preliminary interview
8 techniques and appropriate questioning methods;

9 (3) methods for prosecuting traffickers;

10 (4) methods of increasing effective collaboration with non-
11 governmental organizations and other relevant social service
12 organizations in the course of investigating and prosecuting a
13 trafficking case;

14 (5) methods for protecting the rights of victims, taking into account
15 the need to consider human rights and special needs of women and
16 minors victims, and that victims should be treated as victims rather
17 than criminals; and

18 (6) methods for promoting the safety of victims.

19 (c) The government of Guam shall seek the input and participation of
20 appropriate non-governmental organizations and other relevant
21 organizations in the preparation and presentation of training called for in
22 this subsection.

23 **§26.23 Public Awareness.**

24 (a) The government of Guam, in cooperation with appropriate non-
25 governmental organizations shall prepare public awareness programs
26 designed to educate potential victims of trafficking in persons and their
27 families on the risks of victimization. Such public awareness programs
28 shall include, but shall not be limited to:

- (1) information about the risks of becoming a victim, including information about common recruitment techniques, use of debt bondage, and other coercive tactics, risk of maltreatment, rape, exposure to HIV/AIDS and other sexually transmitted diseases, and psychological harm related to victimization in trafficking cases;
- (2) information about the risks of engaging in commercial sex and possible punishment; and
- (3) information about victims' rights on Guam;
- (4) methods for reporting suspected recruitment activities; and
- (5) information on hotlines and available victims' services.

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

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

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

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

§26.24 Role of Non-Governmental Organizations.

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

ARTICLE 3.

PROTECTION OF VICTIMS

§26.30 Victim's Rights

(a) Victims of human trafficking shall have the same rights as either victims of a crime, including the right to receive victim compensation.

(b) Victims of human trafficking shall also be entitled to basic information, including but not limited to information on their legal rights, human rights, immigration rights, emergency assistance and resources, and any other applicable right and resources.

(c) Any statement by a putative victim of human trafficking or the minor child of such victim to a qualified social worker or case-worker, guardian appointed under this Act, or advocate is a privileged communication unless waived by the victim's attorney, the adult victim, or the advocate or guardian of a child victim.

(d) Department of Public Health and Social Services employees and contractors shall provide information and statements to a person or such person's attorney, guardian, or legal representative for purposes of such

1 person's application for immigration relief or benefits under the federal
2 Trafficking Victims Protection Act of 2000 or other victim assistance law
3 or regulation. Any statement made under this subsection shall be
4 privileged for purposes of any criminal or civil action.

5 (e) Victims of human trafficking shall not be required to cooperate with
6 law enforcement in the investigation or prosecution of their traffickers as a
7 condition to receiving any social service or benefit, including legal
8 services.

9 **§26.31 Civil Action.**

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

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

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

26 (d) The running of the statute of limitations may be suspended where a
27 person entitled to sue could not have reasonably discovered the cause of
28 action due to circumstances resulting from the trafficking situation, such

1 as psychological trauma, cultural and linguistic isolation, and the inability
2 to access services.

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

7 **§26.32 Applicability of Labor Standards.**

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

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

15 **§26.33 Protection of Victims.**

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

26 **§26.34 Access to the Territorial Crime Victim's Compensation Fund.**

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

1 **§26.35 Protection of the Privacy of Victims.**

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

6 **§26.36 Information for Victims.**

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

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

21 **§26.37 Opportunity for Presentation of Victim's Views and Concerns.**

22 The government of Guam shall provide an opportunity to a victim of
23 trafficking in persons, if the victim desires it, to present the victim's views
24 and concerns at appropriate stages of criminal proceedings against
25 traffickers, in a manner not prejudicial to the rights of the defendant. An
26 interpreter who speaks a language the victim understands should be
27 made available to the victim during the course of legal proceedings.

28 **§26.38 Support for Victims.**

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

8 (1) appropriate housing, taking into account the person's status as a
9 victim of crime and including safe conditions for sleeping, food and
10 personal hygiene;

11 (2) psychological counseling in a language the victim can
12 understand;

13 (3) medical assistance;

14 (4) childcare;

15 (5) other material assistance as appropriate;

16 (6) employment, educational, language, and training opportunities;
17 and

18 (7) legal assistance.

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

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

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

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

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

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

16 **§26.39 Appropriate Implementation for Child Victims.**

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

- 24 (1) testimony of minor conducted outside court setting or by video;
25 (2) all testimony and court proceedings take place with parent,
26 legal guardian or foster parent present, if it is in the best interests of
27 the minor;

1 (3) whenever safe and possible, minors should be reunited with
2 family members, whether within or outside the United States; and
3 (4) special mental and physical medical care tailored to the minor's
4 needs.

5 **§26.40 Human Trafficking Victim-Caseworker Privilege.**

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

10 (1) the holder of the privilege;

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

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

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

25 (c) As used in this article, "human trafficking caseworker" means a person
26 who is employed by any organization whether financially compensated or
27 not, for the purpose of rendering advice or assistance to victims of human
28 trafficking, who has received specialized training in the counseling of

1 victims of trafficking in persons, and who meets one of the following
2 requirements:

3 (1) holds a bachelor's degree or higher in counseling or a related
4 field; or has one year of counseling experience, at least six months
5 of which is in the counseling of victims of trafficking in persons; or
6 (2) has at least 40 hours of training as specified in this paragraph
7 and is supervised by an individual who qualifies as a counselor
8 under subparagraph (1) or by a psychotherapist. The training,
9 supervised by a person qualified under subparagraph (1), shall
10 include, but need not be limited to, the following areas: history of
11 human trafficking, civil and criminal law as it relates to human
12 trafficking, societal attitudes towards human trafficking, peer
13 counseling techniques, housing, public assistance and other
14 financial resources available to meet the financial needs of
15 trafficking victims, and referral services available to trafficking
16 victims. A portion of this training must include an explanation of
17 privileged communication.

18 (d) As used in this article, "confidential communication" means
19 information transmitted between the victim and the caseworker in the
20 course of their relationship and in confidence by a means which, so far as
21 the victim is aware, discloses the information to no third persons other
22 than those who are present to further the interests of the victim in the
23 consultation or those to whom disclosures are reasonably necessary for
24 the transmission of the information or an accomplishment of the purposes
25 for which the human trafficking counselor is consulted. It includes all
26 information regarding the facts and circumstances involving all incidences
27 of human trafficking.

1 (e) As used in this article, "holder of the privilege" means the victim when
2 he or she has no guardian or conservator, or a guardian or conservator of
3 the victim when the victim has a guardian or conservator.

4 **§26.41 Protection of Trafficking and Domestic Violence Shelters.**

5 (a) Any person who maliciously or with criminal negligence publishes,
6 disseminates, or otherwise discloses the location of any trafficking victim,
7 any trafficking shelter or domestic violence shelter or any place
8 designated as a trafficking shelter or domestic violence shelter, without
9 the authorization of that trafficking victim, trafficking shelter or domestic
10 violence shelter, is guilty of a misdemeanor.

11 (b) For purposes of this section, "domestic violence shelter" means a
12 confidential location which provides emergency housing for victims of
13 sexual assault, spousal abuse, or both, and their families. For purposes of
14 this section, "trafficking shelter" means a confidential location, which
15 provides emergency housing for victims of human trafficking."

I MINA' TRENTÉ 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

**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.

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

(1) order its dissolution or reorganization;

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

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

2.8 RESTITUTION.

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

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

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

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

(2) costs of necessary transportation, temporary housing, and child care, at the 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.

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

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

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

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

3.2 DATA COLLECTION AND DISSEMINATION.

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

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

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

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

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

3.3 TRAINING.

(a) The territory shall provide mandatory training for law enforcement agencies, prosecutors, and other relevant officials in addressing trafficking in persons.

(b) Such training shall focus on:

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

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

3.4 PUBLIC AWARENESS.

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

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

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

(3) information about victims' rights on Guam;

(4) methods for reporting suspected recruitment activities; and

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

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

(c) General public awareness materials may include information on the impact of trafficking on individual victims, whether U.S. citizens or foreign nationals; aggregate information on trafficking worldwide and domestically; and warnings of the criminal consequences of engaging in trafficking. Such materials may include pamphlets, 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) relocation;
- (2) new identity and documents establishing such identity;
- (3) new residence;
- (4) employment and work authorization; and
- (5) protection of confidentiality of identity and location.

4.5 ACCESS TO THE TERRITORIAL CRIME VICTIMS' COMPENSATION FUND.

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

4.6 PROTECTION OF THE PRIVACY OF VICTIMS.

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

4.7 INFORMATION FOR VICTIMS.

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

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

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

The Territory of Guam shall provide an opportunity to a victim of trafficking in persons, if 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.



**COMMITTEE ON PUBLIC SAFETY, LAW ENFORCEMENT
& SENIOR CITIZENS**

**SENATOR ADOLPHO B. PALACIOS, SR.
CHAIRMAN**

I Mina'Trenta na Liheslaturan Guåhan

PUBLIC HEARING

Friday, February 13, 2009

9:00 a.m.

Public Hearing Room, *I Liheslaturan Guåhan*

Notices for the public hearing were disseminated to all local media via fax on February 4, 2009 and on February 10, 2009, pursuant to the Open Government Law.

A G E N D A

- **Bill No. 16 (LS)** – “An Act to Add a New Article 2 to Chapter 46 of 9GCA relative to mortgage fraud.” – by Senator Ray Tenorio.
- **Bill No. 17 (LS)** – “An Act to Add a New Paragraph (j) to §18101 and to amend §18102 of 16GCA relative to driving under the influence of sedating substances.” – by Senator Ray Tenorio.
- **Bill No. 31 (COR)** – “An Act to Add a New Chapter 26 to 9GCA, relative to the crime of trafficking in humans.” – by Senator Ray Tenorio.
- **Bill No. 36 (COR)** – “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.” – by Senator Tina R. Muña-Barnes.

The Committee will allow up to ten (10) days after the public hearing date for submission of testimonies written or electronic, to Senator Adolpho B. Palacios, Sr., Chairman, Committee on Public Safety, Law Enforcement, and Senior Citizens. Deadline for submission of testimonies will be February 23, 2009, after which time the Committee will prepare the Committee Report, in preparation for consideration by the legislative body.

Office/Mailing Address: 155 Hesler Place, Hagatña Guam 96910

Telephone No. (671) 472-5047/5048 • Fax No. (671) 472-5022 • Email: SenABPalacios@gmail.com



**COMMITTEE ON PUBLIC SAFETY, LAW ENFORCEMENT
& SENIOR CITIZENS**

**SENATOR ADOLPHO B. PALACIOS, SR.
CHAIRMAN**

I Mina Trenta na Liheslaturan Guåhan

FACSIMILE TRANSMITTAL SHEET

DATE: February 10, 2009

TO: KUAM 637-9865
TV 14 637-8819
PDN 477-3079
Marianas Variety 648-2007
K-57/Power 98 477-3982
Hit Radio 100 472-7663
KStereo/KISH 477-6411

FROM: Office of Senator Adolpho B. Palacios, Sr.

SUBJECT: Public Hearing Notice (2nd notice).

PAGES: 2 (including this sheet)

☐ URGENT ☒ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS:

PLEASE SEE ATTACHED PUBLIC HEARING NOTICE. THANK YOU.



**COMMITTEE ON PUBLIC SAFETY, LAW ENFORCEMENT
& SENIOR CITIZENS**

**SENATOR ADOLPHO B. PALACIOS, SR.
CHAIRMAN**

I Mina'Trenta na Liheslaturan Guåhan

February 10, 2009

(Pursuant to §8107, Title 5 GCA -
48 hours prior to hearing date)

PUBLIC HEARING NOTICE

The Committee on Public Safety, Law Enforcement, and Senior Citizens has scheduled a public hearing at 9:00 am, Friday, February 13, 2009 at *I Liheslaturan Guåhan's* Public Hearing Room in Hagåtña, on the following:

- **Bill No. 16 (LS)** – “An Act to Add a New Article 2 to Chapter 46 of 9GCA relative to mortgage fraud.” – by Senator Ray Tenorio.
- **Bill No. 17 (LS)** – “An Act to Add a New Paragraph (j) to §18101 and to amend §18102 of 16GCA relative to driving under the influence of sedating substances.” – by Senator Ray Tenorio.
- **Bill No. 31 (COR)** – “An Act to Add a New Chapter 26 to 9GCA, relative to the crime of trafficking in humans.” – by Senator Ray Tenorio.
- **Bill No. 36 (COR)** – “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.” – by Senator Tina R. Muña-Barnes.

The Committee requests that, if written testimonies are to be presented at the hearing, copies be submitted one day prior to the public hearing date, to the Office of Senator Adolpho B. Palacios, Sr., or via fax to 472-5022, or via email to SenABPalacios@gmail.com. Copies of the aforementioned Bills may be obtained at *I Liheslaturan Guåhan's* website at www.guamlegislature.com. Individuals requiring special accommodations or services, please contact Jonathan Diaz or Priscilla Cruz at 472-5047/5048.

Office/Mailing Address: 155 Hester Place, Hagåtña Guam 96910

Telephone No. (671) 472-5047/5048 • Fax No. (671) 472-5022 • Email: SenABPalacios@gmail.com

MULTI COMMUNICATION REPORT

FEB-10-2009 01:31 PM TUE

FAX NUMBER :
NAME :REF. NAME :
PAGES : 2

1. SUCCESSFUL

FAX NUMBER

NAME

6379865
6378819
4773079
6482007
4773982
4727663
4776411

2. UNSUCCESSFUL

FAX NUMBER

NAME

3. MULTI COMMUNICATION JOURNAL

NO.	NAME/NUMBER	START TIME	TIME	MODE	PAGE	RESULTS
264	4773079	02-10 01:25PM	00' 46"	ECM BC	002/002	[O.K]
264	6482007	02-10 01:26PM	00' 16"	ECM BC	002/002	[O.K]
264	4773982	02-10 01:27PM	00' 18"	ECM BC	002/002	[O.K]
264	4727663	02-10 01:28PM	00' 18"	ECM BC	002/002	[O.K]
264	4776411	02-10 01:28PM	00' 38"	ECM BC	002/002	[O.K]
264	6379865	02-10 01:30PM	00' 18"	ECM BC	002/002	[O.K]
264	6378819	02-10 01:31PM	00' 18"	ECM BC	002/002	[O.K]



**COMMITTEE ON PUBLIC SAFETY, LAW ENFORCEMENT
& SENIOR CITIZENS**


**SENATOR ADOLPHO B. PALACIOS, SR.
CHAIRMAN**

I Mina'Trenta na Liheslaturan Guåhan

February 9, 2009

MEMORANDUM

**TO: Chairman, Committee on Rules
Members, Committee on Public Safety, Law Enforcement
and Senior Citizens
ALL SENATORS**

**FROM: Chairman, Committee on Public Safety, Law Enforcement
and Senior Citizens** 

SUBJECT: Public Hearing Notice.

The Committee on Public Safety, Law Enforcement, and Senior Citizens has scheduled a public hearing at 9:00 a.m., Friday, February 13, 2009 at *I Liheslaturan Guåhan's* Public Hearing Room in Hagåtña, on the following:

- **Bill No. 16 (LS)** – “An Act to Add a New Article 2 to Chapter 46 of 9GCA relative to mortgage fraud.” – by Senator Ray Tenorio.
- **Bill No. 17 (LS)** – “An Act to Add a New Paragraph (j) to §18101 and to amend §18102 of 16GCA relative to driving under the influence of sedating substances.” – by Senator Ray Tenorio.
- **Bill No. 31 (COR)** – “An Act to Add a New Chapter 26 to 9GCA, relative to the crime of trafficking in humans.” – by Senator Ray Tenorio.
- **Bill No. 36 (COR)** – “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.” – by Senator Tina R. Muña-Barnes.

cc: Protocol
Clerk of the Legislature
Audio



**COMMITTEE ON PUBLIC SAFETY, LAW ENFORCEMENT
& SENIOR CITIZENS**

**SENATOR ADOLPHO B. PALACIOS, SR.
CHAIRMAN**

I Mina'Trenta na Liheslaturan Guåhan

February 4, 2009

(Pursuant to §8107, Title 5 GCA -
5 days prior to hearing date)

PUBLIC HEARING NOTICE

The Committee on Public Safety, Law Enforcement, and Senior Citizens has scheduled a public hearing at 9:00 am, Friday, February 13, 2009 at *I Liheslaturan Guåhan's* Public Hearing Room in Hagåtña, on the following:

- **Bill No. 16 (LS)** – “An Act to Add a New Article 2 to Chapter 46 of 9GCA relative to mortgage fraud.” – by Senator Ray Tenorio.
- **Bill No. 17 (LS)** – “An Act to Add a New Paragraph (j) to §18101 and to amend §18102 of 16GCA relative to driving under the influence of sedating substances.” – by Senator Ray Tenorio.
- **Bill No. 31 (COR)** – “An Act to Add a New Chapter 26 to 9GCA, relative to the crime of trafficking in humans.” – by Senator Ray Tenorio.
- **Bill No. 36 (COR)** – “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.” – by Senator Tina R. Muña-Barnes.

The Committee requests that, if written testimonies are to be presented at the hearing, copies be submitted one day prior to the public hearing date, to the Office of Senator Adolpho B. Palacios, Sr., or via fax to 472-5022, or via email to SenABPalacios@gmail.com. Copies of the aforementioned Bills may be obtained at *I Liheslaturan Guåhan's* website at www.guamlegislature.com. Individuals requiring special accommodations or services, please contact Jonathan Diaz or Priscilla Cruz at 472-5047/5048.

Office/Mailing Address: 155 Hesler Place, Hagåtña Guam 96910

Telephone No. (671) 472-5047/5048 • Fax No. (671) 472-5022 • Email: SenABPalacios@gmail.com



COMMITTEE ON PUBLIC SAFETY, LAW ENFORCEMENT
& SENIOR CITIZENS

SENATOR ADOLPHO B. PALACIOS, SR.
CHAIRMAN

I Mina Trenta na Liheslaturan Guåhan

FACSIMILE TRANSMITTAL SHEET

DATE: February 4, 2009

TO: KUAM 637-9865
TV 14 637-8819
PDN 477-3079
Marianas Variety 648-2007
K-57/Power 98 477-3982
Hit Radio 100 472-7663
KStereo/KISH 477-6411

FROM: Office of Senator Adolpho B. Palacios, Sr.

SUBJECT: Public Hearing Notice.

PAGES: 2 (including this sheet)

☐ URGENT ☒ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS:

PLEASE SEE ATTACHED PUBLIC HEARING NOTICE. THANK YOU.

MULTI COMMUNICATION REPORT

FEB-04-2009 12:28 PM WED

FAX NUMBER :
NAME :

REF. NAME :
PAGES : 2

1. SUCCESSFUL

FAX NUMBER	NAME
6379865	
6378819	
4773079	
6482007	
4773982	
4727663	
4776411	

2. UNSUCCESSFUL

FAX NUMBER	NAME
------------	------

3. MULTI COMMUNICATION JOURNAL

NO.	NAME/NUMBER	START TIME	TIME	MODE	PAGE	RESULTS
258	6379865	02-04 12:21PM	00'18"	ECM BC	002/002	[O.K]
258	4773079	02-04 12:23PM	00'40"	ECM BC	002/002	[O.K]
258	6482007	02-04 12:25PM	00'16"	ECM BC	002/002	[O.K]
258	4773982	02-04 12:25PM	00'18"	ECM BC	002/002	[O.K]
258	4727663	02-04 12:26PM	00'16"	ECM BC	002/002	[O.K]
258	4776411	02-04 12:27PM	00'38"	ECM BC	002/002	[O.K]
258	6378819	02-04 12:28PM	00'18"	ECM BC	002/002	[O.K]

I MINA' TRENTÉ 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

**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.**

BE IT ENACTED BY THE PEOPLE OF GUAM:

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

CHAPTER 26

Human Trafficking and Criminal Exploitation Act of 2009

Section 2. PROSECUTION.

2.1 DEFINITIONS.

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) extortion or blackmail;

(f) deception or fraud;

(g) debt coercion;

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

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

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

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

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

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

2.3 RACKETEERING ACTIVITY.

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

2.4 GUILTY PLEAS.

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

2.5 VICTIM IMMUNITY FROM PROSECUTION.

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

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

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

(d) Within Fifteen (15) days, weekends and Government of Guam holidays 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.

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

(1) order its dissolution or reorganization;

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

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

2.8 RESTITUTION.

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

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

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

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

(2) costs of necessary transportation, temporary housing, and child care, at the 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.

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

- (1) the Attorney General's Office;
- (2) the Department of Labor;
- (3) the Guam Police Department;
- (4) local Homeland Security Office;
- (5) the Department of Public Health and Social Services; and
- (6) representatives from non-governmental organizations, especially those specializing in trafficking in persons, those representing diverse communities disproportionately affected by trafficking, agencies devoted to child services and runaway services, and academic researchers dedicated to the subject of human trafficking.

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

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

- (1) Develop the Territorial Plan.
- (2) Coordinate the implementation of the Territorial Plan.
- (3) Coordinate the collection and sharing of trafficking data among government agencies, which data collection shall respect the privacy of victims of trafficking in persons.
- (4) Coordinate the sharing of information between agencies for the purposes of detecting criminal groups engaged in trafficking.
- (5) Explore the establishment of territorial policies for time limits for the issuance of Law Enforcement Agency (LEA) endorsements as described in Section 214.11(f)(1) of Chapter 8 of the Code of Federal Regulations.

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

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

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

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

3.2 DATA COLLECTION AND DISSEMINATION.

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

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

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

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

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

3.3 TRAINING.

(a) The territory shall provide mandatory training for law enforcement agencies, prosecutors, and other relevant officials in addressing trafficking in persons.

(b) Such training shall focus on:

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

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

3.4 PUBLIC AWARENESS.

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

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

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

(3) information about victims' rights on Guam;

(4) methods for reporting suspected recruitment activities; and

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

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

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

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

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

2.5 ROLE OF NON-GOVERNMENTAL ORGANIZATIONS.

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

Section 4. VICTIM PROTECTION.

4.1 CIVIL ACTION.

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

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

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

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

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

4.2 APPLICABILITY OF LABOR STANDARDS.

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

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

4.3 PROTECTION OF VICTIMS.

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

4.4 WITNESS PROTECTION.

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

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

4.5 ACCESS TO THE TERRITORIAL CRIME VICTIMS' COMPENSATION FUND.

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

4.6 PROTECTION OF THE PRIVACY OF VICTIMS.

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

4.7 INFORMATION FOR VICTIMS.

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

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

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

The Territory of Guam shall provide an opportunity to a victim of trafficking in persons, if 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.

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

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

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

4.10 APPROPRIATE IMPLEMENTATION FOR CHILD VICTIMS.

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

(1) testimony of minor conducted outside court setting or by video;

(2) all testimony and court proceedings take place with parent, legal guardian or foster parent present, if it is in the best interests of the minor;

(3) whenever safe and possible, minors should be reunited with family members, whether within or outside the United States;

(4) special mental and physical medical care tailored to the minor's needs; and

(5) upon resettlement in a new country, minor victims of trafficking in persons should be guaranteed education that matches or exceeds the general standard of education in the country.

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.