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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
085 o'clock A.M.



Assistant Staff Officer
Maga'lahaen's Office

APPROVED:

FELIX P. CAMACHO
I Maga'lahaen Guåhan

Date: _____

Public Law No. _____

I MINA'TRENTA NA LIHESLATURAN GUÁHAN
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.**

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

2 **Section 1. Legislative Findings.** *I Liheslaturan Guáhan* finds that
3 throughout history, many regimes of power have used the law to countenance *de*
4 *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
7 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...*

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 *Liheslaturan 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.**

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.”