

9 GCA CRIMES AND CORRECTIONS
CH. 26 HUMAN TRAFFICKING AND CRIMINAL EXPLOITATION

CHAPTER 26
HUMAN TRAFFICKING AND CRIMINAL EXPLOITATION ACT
OF 2009

SOURCE: Entire chapter added by P.L. 30-026:2 (June 16, 2009).

- Article 1. Prosecution.
- Article 2. Prevention of Trafficking.
- Article 3. Protection of Victims.

ARTICLE 1
PROSECUTION

- § 26.01. Definition.
- § 26.02. Criminal Provisions.
- § 26.03. Victim Immunity from Prosecution.
- § 26.04. Non-Defense to Trafficking in Persons.
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§ 26.01. Definitions.

(a) 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.

(b) 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 does not reasonably reflect the value of the items or services for which the debt was incurred.

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

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

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

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

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

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

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

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

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

2015 NOTE: Reference in subsection (i) to 9 GCA, Ch. 25.01 was altered to reflect the renumbering to 9 GCA, Ch. 25A.

§ 26.02. Criminal Provisions.

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

(1) recruits, entices, solicits, isolates, harbors, transports, provides, or obtains by any means or attempts to recruit, entice, solicit, isolate, harbor, transport, provide, or obtain by any means, another person, knowing that the

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person will be subjected to sexual servitude of a minor or involuntary servitude, or

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

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

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

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

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

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

(2) labor or services through the 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;

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(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 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

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

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

§ 26.04. Non-Defenses to Trafficking In Persons.

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

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

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

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

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

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

§ 26.05. Criminal Liability of Business Entities.

(a) Any business entity, including a corporation, partnership, association, government body, municipal corporation or any other legal entity, that aids or participates in any crime defined in section 26.02 of this article shall be

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criminally liable for the offense and shall be subject to a fine or loss of business license, or both.

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

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

2015 NOTE: Pursuant to the authority of 1 GCA § 1606 to correct manifest errors, subsection (c) has been included in this section, as it was erroneously omitted in past publications of the GCA.

§ 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,

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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.

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

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

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

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prevent the victim from receiving restitution.

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

2023 NOTE: Past print publications inadvertently misnumbered subsections (c) and (d); the Compiler corrected this manifest error pursuant to the authority of 1 GCA § 1606.

§ 26.07. Asset Forfeiture.

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

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

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

§ 26.08. Statute of Limitations.

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

(b) Any statute of limitations that would otherwise preclude prosecution for an offense involving the trafficking of a minor, or the physical or sexual abuse of a minor, shall be 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.

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(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.

§ 26.09. 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 an attempt to commit homicide, or if a homicide results, the defendant commits a first degree felony.]

(b) Additional sentencing considerations, include but 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:

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

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

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

(D) 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 (1) one 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

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for substantially increased sentences in cases involving more than two (2) victims.

ARTICLE 2
PREVENTION OF TRAFFICKING

- § 26.20. Territorial Task Force for Prevention of Trafficking.
- § 26.21. Data Collection and Dissemination.
- § 26.22. Training.
- § 26.23. Public Awareness.
- § 26.24. Role on Non-Governmental Organizations.

§ 26.20. Task Force for Prevention of Trafficking.

(a) An inter-agency task force to develop and implement a Guam 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.

(b) 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 Guam Behavioral Health and Wellness Center, Counseling and Healing Hearts Rape Crisis Center;
- (5) the Department of Labor; and
- (6) the Guam Homeland Security Office; and
- (7) representatives from non-governmental organizations, especially those 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

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trafficking.

(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:

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

(1) Develop the Guam 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 the government of Guam 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 the government of Guam and state governments to increase public awareness of the trafficking in persons, including U.S. citizen and foreign national victims of trafficking in

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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.

2013 NOTE: Pursuant to P.L. 32-024:2 (May 6, 2013) which renamed the Department of Mental Health and Substance Abuse (DMHSA) to the Guam Behavioral Health and Wellness Center, all references to DMHSA were altered to to the Guam Behavioral Health and Wellness Center.

§ 26.21. Date Collection and Dissemination.

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

(b) The government of Guam 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 section 26.02 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

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nationality, age, method of recruitment, and city, state, 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.

§ 26.22. Training.

(a) The government of Guam 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 government of Guam shall seek the input and participation of appropriate non-governmental organizations and

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other relevant organizations in the preparation and presentation of training called for in this subsection.

§ 26.23. Public Awareness.

(a) The government of Guam, 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 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

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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.

§ 26.31. Civil Action.

§ 26.32. Applicability of Labor Standards.

§ 26.33. Protection of Victims.

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

§ 26.35. Protection of the Privacy of Victims.

§ 26.36. Information for Victims.

§ 26.37. Opportunity for Presentation of Victims and Concerns.

§ 26.38. Support for Victims.

§ 26.30. Victim's Rights.

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

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

§ 26.31. Civil Action.

(a) An individual who is a victim of trafficking may bring a civil action in the appropriate 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

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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.

§ 26.32. 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 government of Guam 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.

§ 26.33. 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

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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.

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

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

§ 26.35. 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.

§ 26.36. Information for Victims.

(a) The government of Guam 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 government of Guam 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.

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

The government of Guam shall provide an opportunity to a

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victim of trafficking in persons, if the victim desires it, to present the victim's views and concerns at appropriate stages of criminal proceedings against traffickers, in a manner not prejudicial to the rights of the defendant. An interpreter who speaks a language the victim understands should be made available to the victim during the course of legal proceedings.

§ 26.38. Support for Victims.

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

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

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

(c) Victims of trafficking in persons shall not be given shelter in prisons or other detention facilities for accused or convicted criminals. Child victims of trafficking in persons shall not be housed in prisons or other detention facilities for accused

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or convicted criminals or juvenile delinquents under any circumstances.

(d) Residence in shelters or other facilities established under this section shall be voluntary, 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.

§ 26.39. 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. Special programs should be developed to accommodate minor witnesses including, but not limited to:

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

(b) 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;

(c) whenever safe and possible, minors should be reunited with family members, whether within or outside

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the United States; and

(d) special mental and physical medical care tailored to the minor's needs.

2013 NOTE: Numbers and/or letters were altered to adhere to the Compiler's alpha-numeric scheme in accordance to 1 GCA § 1606.

§ 26.40. 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:

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

(2) has at least 40 hours of training as specified in this paragraph and is supervised by an individual who qualifies as a counselor under subparagraph (1) or by a psychotherapist. The training, supervised by a person qualified under subparagraph (1), shall include, but need not be limited to, the following areas: history of human trafficking, civil and criminal law as it relates to human trafficking, societal attitudes towards human trafficking, peer counseling techniques, housing, public assistance and other financial resources available to meet the financial needs of trafficking victims, and referral services available to trafficking victims. A portion of this training must include an explanation of privileged communication.

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

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

§ 26.41. Protection of Trafficking and Domestic Violence Shelters.

(a) Any person who maliciously or with criminal negligence publishes, disseminates, or otherwise discloses the location of any trafficking victim, any trafficking shelter or domestic

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violence shelter or any place designated as a trafficking shelter or domestic violence shelter, without the authorization of that trafficking victim, trafficking shelter or domestic violence shelter, is guilty of a misdemeanor.

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