



GUAM

Legal System	Constitution	Bill of Rights	Form of Government
Common Law Statutory Law	Written	No	Republic

A. Criminal Statutes

1. Human Trafficking and Related Statutes

a. 9 Guam Code Ann. §§ 26.01–26.09 (2020) – Human Trafficking and Criminal Exploitation Act of 2009, Prosecution

i. Summary

The offense of human trafficking occurs when a person knowingly:

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

9 Guam Code Ann. § 26.02(a)(1). The offense extends to every person who “benefits, financially or by receiving anything of value, from participation in a venture” that has engaged in such an act. Guam Code Ann. § 26.02(a)(2).

A person commits the offense of sexual servitude of a minor if a person knowingly:

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.

9 Guam Code Ann. § 26.02(b)(1). The offense extends to every person who knowingly “benefits, financially or by receiving anything of value, from participation in a venture which has engaged” in such an act. 9 Guam Code Ann. § 26.02(b)(2).

The offense of involuntary servitude applies to a person:

who knowingly subjects, or attempts to subject, another person to:

- (1) commercial sex acts or sexually explicit performance, or
- (2) labor or services [by]:
 - (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.

9 Guam Code Ann. § 26.02(c).

“Any person who knowingly aids, abets, or conspires with one or more persons to violate this” criminal provision also is criminally liable. 9 Guam Code Ann. § 26.02(d).

In any prosecution for any human trafficking offense, evidence of a trafficking victim’s sexual history or history of commercial sexual activity, familial connection to the defendant, consent or permission, age of consent, or mistake as to the victim’s age is not a defense and does not preclude a finding of a violation. 9 Guam Code Ann. § 26.04.

ii. Sentencing

Trafficking in persons is a second degree felony. 9 Guam Code Ann. § 26.02(a).

Sexual servitude of a minor and involuntary servitude are first degree felonies. 9 Guam Code Ann. §§ 26.02(b), (c).

If a violation 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. 9 Guam Code Ann. § 26.09(a).

For a first degree felony, the court generally must impose a sentence of between five and 20 years. 9 Guam Code Ann. § 80.30(a). For a person convicted of a felony for the first time, the minimum sentence is reduced to three years, and the maximum sentence is 15 years. 9 Guam Code Ann. § 80.31(a).

For a second degree felony, the court generally must impose a sentence of between three and 10 years. 9 Guam Code Ann. § 80.30(b). For a person convicted of a felony for the first time, the minimum sentence is reduced to one year, and the maximum sentence is eight years. 9 Guam Code Ann. § 80.31(b).

Additional sentencing considerations include:

- (1) Bodily Injury. If, pursuant to a violation of this article [human trafficking offenses], 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 of 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 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.

9 Guam Code Ann. § 26.09(b).

A person convicted of an offense under the Human Trafficking and Criminal Exploitation Act of 2009 will also be ordered to pay mandatory restitution to the victim. 9 Guam Code Ann. § 26.06(a).

iii. Statute of Limitations

The relevant statute of limitations provisions state:

- (a) An action [lawsuit] 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 [claim] 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) victims 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

9 Guam Code Ann. § 26.08.

b. 9 Guam Code Ann. § 26.03(a) (2020) – Affirmative Defense

Human trafficking victims shall have an affirmative defense to any prosecution that they were under duress or coerced into committing the alleged offenses. 9 Guam Code Ann. § 26.03(a).

c. 9 Guam Code Ann. § 26.03(b) (2020) – Victim Immunity from Prosecution

A victim of trafficking in persons is not criminally liable for any commercial sex act or illegal sexually explicit performance committed as a result of being trafficked. 9 Guam Code Ann. § 26.03(b).

d. 9 Guam Code Ann. § 26.03(c) (2020) – Certain Benefits for Trafficking Victims

Victims of human trafficking shall be eligible, without regard to immigration status, for benefits available through title 18 of the Guam Code, chapter 161. 9 Guam Code Ann. § 26.03(c).

e. 9 Guam Code Ann. § 26.05 (2020) – Criminal Liability of Business Entities

Any business entity, including a corporation, partnership, association, government body, or municipal corporation, or any other legal entity, that aids or participates in any crime defined in section 26.02 of this article [human trafficking offenses] shall be criminally liable for the offense and shall be subject to a fine or loss of business license, or both.

9 Guam Code Ann. § 26.05(a).

If a business entity is convicted of violating any human trafficking offense, the court’s options include to:

- (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.

9 Guam Code Ann. § 26.05(b).

Any business, or criminally culpable employee, officer, director, owner, co-owner or shareholder of such business, convicted of a [human trafficking crime] 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 [human trafficking crime] is ineligible for any type of Alcoholic Beverage License.

9 Guam Code Ann. § 26.05(c).

f. 9 Guam Code Ann. § 26.07 (2020) – Asset Forfeiture

All offenses under Guam’s Human Trafficking and Criminal Exploitation Act of 2009 qualify as offenses for forfeiture. 9 Guam Code Ann. § 26.07(a).

“Overseas assets of persons convicted of trafficking in persons shall also be subject to forfeiture” 9 Guam Code Ann. § 26.07(b).

“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 [lawsuit]. Any remaining assets go toward funding services for victims of trafficking, or [the] Guam crime victims’ fund.” 9 Guam Code Ann. § 26.07(c).

g. 9 Guam Code Ann. § 22.30 (2020) – Felonious Restraint

“A person commits a felony of the third degree if he knowingly: (a) restrains another unlawfully in circumstances exposing him to risk of serious bodily injury; or (b) holds another in a condition of involuntary servitude.” 9 Guam Code Ann. § 22.30.

h. 18 Guam Code Ann. § 4103 (2017) – Involuntary Servitude

No corporation doing business in Guam or receiving any grant, franchise, or concession from the government of Guam shall use, employ or contract for the labor of persons claimed or alleged to be held in involuntary servitude, and any corporation violating the provisions of this section shall forfeit all charters, grants, franchises, and concessions for doing business in Guam, and in addition shall be deemed guilty of an offense and shall be punished by a fine of One Thousand Dollars ([USD] 1,000.00).

18 Guam Code Ann. § 4103.

i. 9 Guam Code Ann. § 26.41 (2020) – Protection of Trafficking and Domestic Violence Shelters

Any person who maliciously or with criminal negligence discloses the location of any trafficking victim, any trafficking shelter, or any domestic violence shelter without authorization is guilty of a misdemeanor. 9 Guam Code Ann. § 26.41(a).

2. Online Child Sexual Exploitation and Child Pornography Offenses

9 Guam Code Ann. § 25A102 – Indecent Electronic Display to a Child

9 Guam Code Ann. § 25A103 – Electronic Enticement of a Child as a Third Degree Felony

9 Guam Code Ann. § 25A104 – Electronic Enticement of a Child as a Second Degree Felony

9 Guam Code Ann. § 25A105 – Electronic Enticement of a Child as a First Degree Felony

9 Guam Code Ann. § 25A201 – Definitions

9 Guam Code Ann. § 25A202 – Possession of Child Pornography

9 Guam Code Ann. § 25A203 – Dissemination of Child Pornography

9 Guam Code Ann. § 28.51 – Obscenity: Employment of a Minor

9 Guam Code Ann. § 28.52 – Use of One’s Child in Obscene Acts

9 Guam Code Ann. § 28.80 – Photography of Minors’ Sexual Acts: Punished

9 Guam Code Ann. § 28.100 – Illegal Use of a Computer or Telecommunications Device to Disseminate Prohibited Materials Involving a Minor-Sexting; Crime Defined and Punished

3. 9 Guam Code Ann. § 89.03 (2020) – Sex Offender Registry

A person is required to register with Guam’s Sex Offender Registry if they have been convicted of: (1) any of the crimes listed in Section A.2. of this chapter other than minor-sexting; or (2) felonious restraint under 9 Guam Ann. § 22.30. 9 Guam Code Ann. § 89.03.

B. Civil Liability Statutes

1. 9 Guam Code Ann. § 26.31 (2020) – Civil Lawsuit

a. Summary

A victim of trafficking may bring a civil lawsuit for damages or other relief. 9 Guam Code Ann. § 26.31(a).

b. Damages and Other Relief

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. Where the defendant’s acts were willful and malicious, the court shall award three times the amount of actual damages.

9 Guam Code Ann. § 26.31(a).

c. Statute of Limitations

Any statute of limitation imposed for the filing of a civil [law]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.

9 Guam Code Ann. § 26.31(b).

The statute of limitations does not run for the time that persons entitled to sue are under a disability that make it impossible or impracticable for them to bring the lawsuit. “Disability includes, but is not limited to, insanity, imprisonment, or other incapacity or incompetence.” 9 Guam Code Ann. § 26.31(c).

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 [right to sue] due to circumstances resulting from the trafficking situation, such as psychological trauma, cultural and linguistic isolation, and the inability to access services.

9 Guam Code Ann. § 26.31(d).

A defendant cannot assert the statute of limitations when the defendant induced the plaintiff to delay the filing of a lawsuit or placed the plaintiff under duress. 9 Guam Code Ann. § 26.31(e).

C. Additional Statutes Specific to Human Trafficking**1. 22 Guam Code Ann. § 3117 (2020) – Minimum Wage and Hour Act**

An employee may recover unpaid minimum or overtime wages in a civil lawsuit. The court will award a prevailing employee costs and attorney’s fees. An employee is also entitled to liquidated damages for willful violations. 22 Guam Code Ann. § 3117. Employers may face additional criminal penalties for willful violations. 22 Guam Code Ann. § 3111.

2. 9 Guam Code Ann. § 26.20 (2020) – Task Force for Prevention of Trafficking

Guam has “[a]n inter-agency task force to develop and implement a Guam Plan for the Prevention of Trafficking in Persons. The task force shall meet at least annually and should include all aspects of trafficking, including sex and labor trafficking of both U.S. citizens and foreign nationals.” 9 Guam Code Ann. § 26.20(a). Section 26.20 also outlines the required members and the responsibilities of the task force.

3. 9 Guam Code Ann. § 26.21 (2020) – Data Collection and Dissemination

The government of Guam is required to collect and disseminate information related to the number of human trafficking crimes and convictions; the number and demographic characteristics of persons engaged in violations; and statistics on the victims, trafficking routes, and patterns.

4. 9 Guam Code Ann. § 26.22 (2020) – Training

The government of Guam is required to “provide mandatory training for law enforcement agencies, prosecutors, and other relevant officials in addressing trafficking in persons.” 9 Guam Code Ann. § 26.22.

5. 9 Guam Code Ann. § 26.23 (2020) – Public Awareness

The government of Guam is required to conduct programs to increase public awareness of human trafficking risks, victim rights, and victim services.

6. 9 Guam Code Ann. § 26.24 (2020) – Role of Non-Governmental Organizations

For each initiative for the prevention of trafficking, 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.

9 Guam Code Ann. § 26.24.

7. 9 Guam Code Ann. § 26.30 (2020) – Victims’ Rights

“Victims of human trafficking shall have the same rights as victims of any crime, including the right to compensation.” 9 Guam Code Ann. § 26.30(a). “Victims of human trafficking shall also be entitled to basic information on their legal rights, human rights, immigration rights, and emergency assistance and resources” 9 Guam Code Ann. § 26.30(b). “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.” 9 Guam Code Ann. § 26.30(e). “Any statement by a putative victim or the minor child of a victim to a qualified social worker ... or advocate is a privileged communication unless waived” 9 Guam Code Ann. § 26.30(c).

8. 9 Guam Code Ann. § 26.32 (2020) – Applicability of Labor Standards

“Standards of working conditions specified by Guam Code Annotated Labor Laws shall apply equally to all persons with or without the legal right to work in the United States.” 9 Guam Code Ann. § 26.32(a). “The government shall investigate complaints about wrongful working conditions without regard to immigration status or the nature of the work” 9 Guam Code Ann. § 26.32(b).

9. 9 Guam Code Ann. § 26.33 (2020) – Protection of Victims

[A]ppropriate authorities shall interview all persons arrested on charges of prostitution, and take all other steps necessary to identify victims of trafficking in persons Once victims are identified, these authorities shall provide reasonable protection to victims of trafficking to prevent recapture ..., secure the victim and the victim’s family from threats, reprisals or intimidation ... and ensure the victim has an opportunity to consult with a victim advocate or other appropriate person to develop a safety plan.

9 Guam Code Ann. § 26.33.

10. 9 Guam Code Ann. § 26.34 (2020) – 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.”

11. 9 Guam Code Ann. § 26.35 (2020) – Protection of the Privacy of Victims

In a prosecution for a trafficking crime, the identity of the victim and the victim’s family should be kept confidential. Identifying information cannot be released to the public.

12. 9 Guam Code Ann. § 26.36 (2020) – Information for Victims

The government of Guam is required to inform trafficking victims “of their legal rights and the progress of relevant court and administrative proceedings, as appropriate,” in a language they can understand. 9 Guam Code Ann. § 26.36. It is also required to provide victims with a directory of local victim service organizations and inform victims of their compensation benefits.

13. 9 Guam Code Ann. § 26.37 (2020) – Opportunity for Presentation of Victim’s Views and Concerns

Victims shall have the opportunity to present “their views and concerns at appropriate stages of criminal proceedings against traffickers, in a manner not prejudicial to the rights of the defendant.” 9 Guam Code Ann. § 26.37. An interpreter should be made available, if necessary.

14. 9 Guam Code Ann. § 26.38 (2020) – Victim Support

The government and other appropriate groups must develop a plan to provide trafficking victims with appropriate services, such as housing, food and water, personal hygiene, counseling, medical assistance, childcare, employment and educational opportunities, and legal assistance.

15. 9 Guam Code Ann. § 26.39 (2020) – Services for Child Victims

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 taking 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 ...; and
- (d) special mental and physical medical care tailored to the minor’s needs.

9 Guam Code Ann. § 26.39.

D. Significant Cases

No significant cases were found regarding Guam’s human trafficking statutes.

E. Academic Research/Papers

Lindsey Posmanick-Cooper and Holly M. Rustick, *An Analysis of Human Trafficking Indicators on Guam*, 6 PAC. ASIA INQUIRY 97 (2015).

F. Resources

Guam Coalition Against Sexual Assault and Family Violence:

<https://guamcoalition.org/information-clearinghouse/faqs-online-resources/human-trafficking>

National Human Trafficking Hotline (Guam):

<https://humantraffickinghotline.org/state/guam>

U.S. Department of Health & Human Services, *Guam: Efforts to Combat Human Trafficking* (2017):

https://www.acf.hhs.gov/sites/default/files/documents/otip/guam_efforts_to_combat_human_trafficking.pdf

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