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Report RL34323

*William Wilberforce Trafficking Victims Protection
Reauthorization Act of 2007 (H.R. 3887 as Passed by the
House): Criminal Law Provisions*

Charles Doyle, American Law Division

January 14, 2008

Abstract. The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2007 (H.R. 3887), passed by the House on December 4, 2007, continues and reenforces the anti-trafficking efforts that began with Trafficking Victims Protection Act of 2000. That legislation sought to protect women and children, the most common victims of both international and domestic trafficking, with a series of diplomatic, immigration, and law enforcement initiatives. H.R. 3887 follows in its path. This report is limited to the bill's law enforcement initiatives or more precisely its proposals to amend federal criminal law.

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William Wilberforce Trafficking Victims Protection Reauthorization Act of 2007 (H.R. 3887 as Passed by the House): Criminal Law Provisions

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January 14, 2008

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Summary

The criminal law proposals found in H.R. 3887 as it passed the House include newly assigned sex trafficking offenses, a sex tourism offense, a coerced services offense, obstruction of justice offenses, an importation of prostitutes offense, a false statement offense, and provisions for civil liability, victim assistance, forfeiture, extraterritorial jurisdiction, Justice Department reorganization, and a model state statute.

H.R. 3887's new sex trafficking offense would expand federal jurisdiction to reach persuasion, inducement, or enticement to engage in unlawful prostitution when it occurs in or affects interstate or foreign commerce, even in the absence of a child victim or of coercion, fraud, or force. Its amended version of 18 U.S.C. 1592 (seizure of documents in aid of trafficking) would outlaw the use of financial coercion to gain control of an individual's labor or sexual services. Its new sex tourism offense would cover arranging or attempt to arrange sex tours even when the underlying travel is not itself a federal crime. The bill also prohibits various obstructions of justice and false statements committed in connection with the employment of foreign workers.

Procedurally, H.R. 3887 would enlarge the civil cause of action available to victims of violations of the involuntary servitude and trafficking provisions under an explicit 10-year statute of limitations. It would expand the availability of Crime Victim Fund programs for the benefit of the victims of sex trafficking. It would rename the Justice Department's Child Exploitation and Obscenity Section and expand the responsibilities of the Innocence Lost Task Forces to include sex trafficking offenses involving sexually exploited adults.

This report is available in an abridged version – stripped of its footnotes, and most of its citations to authority as CRS Report RS22789, *William Wilberforce Trafficking Victims Protection Reauthorization Act of 2007 (H.R. 3887 as Passed by the House): Criminal Provisions in Short*, by Charles Doyle.

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Introduction

The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2007 (H.R. 3887), passed by the House on December 4, 2007,¹ continues and reinforces the anti-trafficking efforts that began with Trafficking Victims Protection Act of 2000.² That legislation sought to protect women and children, the most common victims of both international and domestic trafficking, with a series of diplomatic, immigration, and law enforcement initiatives. H.R. 3887 follows in its path. This report is limited to the bill's law enforcement initiatives or more precisely its proposals to amend federal criminal law.³

Neither the 2000 legislation nor H.R. 3887 write on a complete blank slate. Federal criminal law has long condemned both involuntary servitude as well as interstate and foreign transportation of individuals for illicit sexual purposes. The involuntary servitude offenses, now found in chapter 77 of Title 18 of the United States Code, date from the nineteenth century.⁴ The transportation-for-sexual-purposes offenses, now housed in chapter 117 of that title, originated in the Mann Act in the early twentieth century.⁵ As did its predecessors, H.R. 3887 works in the area where the two overlap.⁶

Representative Lantos introduced H.R. 3887 on October 17, 2007, for himself and several other Members. The House Committee on Foreign Affairs reported an amended version of the bill on

¹ 153 *Cong. Rec.* H14098-122 (daily ed. December 4, 2007).

² P.L. 106-386, 114 Stat. 1464 (2000).

³ For a discussion of the issues associated with other aspects of the bill see CRS Report RL34317, *Trafficking in Persons: U.S. Policy and Issues for Congress*.

⁴ The Thirteenth Amendment abolished slavery and involuntary servitude in 1867, U.S. Const. Amend. XIII. Peonage is a form of involuntary servitude based on indebtedness, *Taylor v. Georgia*, 315 U.S. 25, 29 (1942). Congress enacted the predecessors to the current peonage and involuntary servitude laws in 1867 and 1874, respectively, Act of March 2, 1867, ch. 187, 14 Stat. 546 (1867); Act of June 23, 1874, ch. 464, 18 Stat. 251 (1874), codified today at 18 U.S.C. 1581, 1584.

⁵ Congress enacted the original transportation offenses as the Mann Act in 1910, Act of June 25, 1910, ch. 395, 36 Stat. 825 (1910), codified today at 18 U.S.C. 2421-2425.

⁶ Division A of P.L. 106-396 (the Victims of Trafficking and Violence Protection Act of 2000) is separately entitled the Trafficking Victims Protection Act of 2000. Section 112 of the 2000 Act increased the penalties for peonage under 18 U.S.C. 1581 and established 18 U.S.C. 1589 (force labor), 1590 (human trafficking), 1591 (sex trafficking of children or by force, fraud, or coercion), 1592 (abuse of passports or immigration documents in aid of trafficking), 1593 (mandatory restitution), and 1594 (attempt, forfeiture, and witness protection). Two years later, the PROTECT Act (Prosecutorial Remedies and Tools Against the Exploitation of Children Today Act of 2003), P.L. 108-21 (2003), increased the penalties for Mann Act violations and added the sex tourism proscriptions, 18 U.S.C. 2422, 2423.

The Trafficking Victims Protection Reauthorization Act of 2003, P.L. 108-193 (2003), (1) created a civil cause of action for trafficking violations, 18 U.S.C. 1595, (2) expanded the sex trafficking prohibitions to include those committed within the special maritime and territorial jurisdiction of the United States, and (3) made racketeering (RICO) and thus money laundering predicate offenses of the peonage, involuntary servitude, and sex trafficking crimes, 18 U.S.C. 1961(1).

The Adam Walsh Child Protection and Safety Act of 2006, P.L. 109-248 (2006), (1) established mandatory minimum terms of imprisonment for sex trafficking of children or by force, fraud or coercion, and for various Mann Act violations, 18 U.S.C. 1591, 2422, 2423; (2) eliminated the statute of limitations for offenses under the Mann Act or 18 U.S.C. 1591; and (3) tightened the bail laws applicable to such cases, 18 U.S.C. 3142(c)(1)(B).

November 6, 2007.⁷ A further revised version passed under suspension of the rules on December 4, 2007.⁸

When the bill reached the Senate its criminal law proposals included newly assigned sex trafficking offenses, a sex tourism offense, a coerced services offense, obstruction of justice offenses, an importation of prostitutes offense, a false statement offense, and provisions for civil liability, victim assistance, forfeiture, extraterritorial jurisdiction, Justice Department reorganization, and a model state statute.

Section 221 of H.R. 3887

Sex Trafficking (Subsections 221(a) and 221(f))

Section 221, among other things, offers two new sex trafficking offenses. One, aggravated sex trafficking (proposed 18 U.S.C. 2429), would replace 18 U.S.C. 1591, but without the requirement that the defendant charged with persuasion, enticement, transportation, etc. of a child must be shown to have known that the child was underage. The other, sex trafficking (proposed 18 U.S.C. 2430), expands federal jurisdiction to reach persuasion, inducement, or enticement to engage in unlawful prostitution when it occurs in or affects interstate or foreign commerce, without regard to the age of the beguiled or the absence of coercion, fraud, or force.

Aggravated Sex Trafficking

Proposed 18 U.S.C. 2429 would condemn:

(a) Whoever knowingly—

(1) in or affecting interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States, recruits, entices, harbors, transports, provides, or obtains by any means a person; or

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

knowing that force, fraud, or coercion will be used to cause the person to engage in a commercial sex act, or, in the case of the person has not attained the age of 18 years, that the person will be caused to engage in a commercial sex act, shall be punished as provided in subsection (b).

(b) The punishment for an offense under this section is—

(1) if the offense was effected by force, fraud, or coercion or if the person recruited, enticed, harbored, transported, provided, or obtained had not attained the age of 14 years

⁷ H.Rept. 110-430.

⁸ 153 *Cong. Rec.* H14098-122 (daily ed. December 4, 2007).

at the time of such offense, by a fine under this title and imprisonment for any term of years not less than 15 or for life, or both; or

(2) if the offense was not so effected, and the person recruited, enticed, harbored, transported, provided, or obtained had attained the age of 14 years but had not attained the age of 18 years at the time of such offense, by a fine under this title and imprisonment for not less than 10 years or for life.

The proposal is essentially the same as 18 U.S.C. 1591, but for knowledge of the minority of a juvenile victim upon which Section 1591 insists.⁹ The proposal contains the same definitions of “commercial sex act,” “coercion,” and “venture” as its predecessor.¹⁰ However, it does contain technical amendments relating to a corresponding civil cause of action and mandatory restitution, made necessary by the transfer of the section from the chapter on involuntary servitude 18 U.S.C. ch. 77 to the Mann Act (18 U.S.C. ch. 117).¹¹

Sex Trafficking

Proposed 18 U.S.C. 2430 would represent an expansion of federal authority to punish sex trafficking if the offense occurs in or affected interstate or foreign commerce. It features a more expansive jurisdictional base than 18 U.S.C. 1591, and thus bears some resemblance to 18 U.S.C. 2422.

Today, three federal statutory provisions outlaw inducing another to commit an act of prostitution: 18 U.S.C. 1591, 2422(a), 2422(b).¹² They differ most notably in their jurisdictional elements.

⁹ “(a) Whoever knowingly – (1) in or affecting interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States, recruits, entices, harbors, transports, provides, or obtains by any means a person; or (2) benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of paragraph (1), *knowing* that force, fraud, or coercion described in subsection (c)(2) will be used to cause the person to engage in a commercial sex act, or *that the person has not attained the age of 18 years* and will be caused to engage in a commercial sex act, shall be punished as provided in subsection (b).

“(b) The punishment for an offense under subsection (a) is – (1) if the offense was effected by force, fraud, or coercion or if the person recruited, enticed, harbored, transported, provided, or obtained had not attained the age of 14 years at the time of such offense, by a fine under this title and imprisonment for any term of years not less than 15 or for life, or both; or (2) if the offense was not so effected, and the person recruited, enticed, harbored, transported, provided, or obtained had attained the age of 14 years but had not attained the age of 18 years at the time of such offense, by a fine under this title and imprisonment for not less than 10 years or for life,” 18 U.S.C. 1591(a), (b)(emphasis added).

¹⁰ “In this section – (1) The term ‘commercial sex act’ means any sex act, on account of which anything of value is given to or received by any person. (2) The term ‘coercion’ means – (A) threats of serious harm to or physical restraint against any person; (B) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or (C) the abuse or threatened abuse of law or the legal process. (3) The term ‘venture’ means any group of two or more individuals associated in fact, whether or not a legal entity,” 18 U.S.C. 1591(c). Proposed subsection 2429(e) is identical.

¹¹ Proposed subsection 2429(d) (“(1) Section 1593 (relating to mandatory restitution) applies to an offense under this section to the same extent and in the same manner as it applies to an offense under chapter 77 [relating to involuntary servitude]. (2) Section 1595 (relating to civil remedy) applies with respect to a violation of this section to the same extent and in the same manner as it applies to a violation of a section to which section 1595 is made applicable by section 1595”).

¹² “(a) Whoever knowingly persuades, induces, entices, or coerces any individual to travel in interstate or foreign commerce, or in any Territory or Possession of the United States, to engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be fined under this title or imprisoned not more than 20 years, or both.

(continued...)

Subsection 2422(a) proscribes knowingly persuading, inducing, or enticing another individual of any age to engage in prostitution or other criminal sexual activity – when the persuasion, inducement or the like occurs within any U.S. territory or possession or when the individual is persuaded, induced, etc. to travel in interstate or foreign commerce to so engage.

Subsection 2422(b) proscribes knowingly persuading, inducing, enticing, or coercing a child under 18 years of age to engage in prostitution or some other criminal sexual activity – when the persuasion, inducement or the like occurs within the special maritime or territorial jurisdiction of the U.S. or when the mails or some medium of interstate or foreign commerce are used to persuade, induce, etc.

Section 1591 proscribes knowingly recruiting, enticing, harboring, transporting, providing or obtaining by any means another individual to engage in a commercial sex act with the knowledge that the individual is a child under the age of 18 or that force, fraud or coercion will be used to cause them to engage in the sex act – when the recruitment, enticement, etc. occurs within the special maritime and territorial of the U.S. or when it occurs in or affecting interstate or foreign commerce.

Proposed Section 2430 would provide that:

Whoever, knowingly, in or affecting interstate or foreign commerce, within the special maritime and territorial jurisdiction of the United States, or in any territory or possession of the United States, persuades, induces, or entices any individual to engage in prostitution for which any person can be charged with an offense, or attempts to do so, shall be fined under this title or imprisoned not more than 10 years, or both.

The proposed section would match the jurisdiction reach of Section 1591 and its proposed replacement Section 2429 (in or affecting interstate or foreign commerce, etc.), but unlike those sections, Section 2430 would cover attempted violations. It would also cover persuasion, inducement or enticement to commit consensual acts of prostitution involving only adults (i.e., unlike Section 1591 and proposed Section 2429, it would not require that the offense involve either a child under the age of 18 or the use of fraud, force, or coercion as a means of persuasion, inducement or enticement).

Some of the apparent expansion, however, would merely duplicate the proscriptions of subsections 2422(a) and (b). Both proposed Section 2430 and subsection 2422(a) would cover persuasion, inducement or enticement of another individual regardless of age to engage in unlawful prostitution or attempts to do so. Subsection 2422(a), however, requires persuasion, inducement, enticement or coercion to travel in interstate or foreign commerce. Proposed Section 2430, on the other hand, does not mention coercion and permits prosecution when the persuasion, inducement or enticement occurs in or affects interstate or foreign commerce. Subsection 2422(b) features a jurisdictional element somewhere between the two (i.e., persuasion, inducement, enticement, or coercion, transmitted using the mail or some facility of interstate or foreign

(...continued)

(b) Whoever, using the mail or any facility or means of interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States knowingly persuades, induces, entices, or coerces any individual who has not attained the age of 18 years, to engage in prostitution or any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be fined under this title and imprisoned not less than 10 years or for life,” 18 U.S.C. 2422.

commerce), but it only applies when a child under 18 years of age is so persuaded, induced, enticed, or coerced or when there is an attempt to do so. As a consequence, proposed Section 2430 would prohibit persuasion, inducement or enticement of an adult to engage in a commercial sex act when it would affect interstate commerce. Such conduct is only a federal crime now if actual interstate or foreign travel is involved. The expansion could be significant, since in other contexts the courts have often held that the prosecution need show no more than a *de minimis* impact on interstate or foreign commerce to satisfy the “affects commerce” standard.¹³

Unlawful Compelled Service (Subsection 221(b))

Subsection 221(b) proposes amendments to 18 U.S.C. 1592 (seizure of another’s passport and immigration documents trafficking purposes) that also would duplicate and enlarge without repeal or amendment the coverage of 18 U.S.C. 1589 (forced labor). In its current form, Section 1592 proscribes the knowing destruction, concealment, or possession of another person’s passport or similar documentation, either (1) in the course of a trafficking offense, or (2) with the intent to commit a trafficking offense, or (3) to unlawfully restrict the travel of a trafficking victim.¹⁴ Section 1589 prohibits providing or obtaining labor or services through physical violence, the threat of physical violence, or abuse or threatened abuse of the law.¹⁵

The proposed amendment to Section 1592 recasts its components in three areas. First, it streamlines the document-seizure prohibition:

Whoever knowingly, with intent to obtain or maintain the labor or services of a person or to obtain or maintain a person for use in a commercial sex act (as defined in section 2429)–

(1) destroys, conceals, removes, confiscates, or possesses any actual or purported passport or other immigration document, or any other actual or purported government

¹³ *United States v. Parkes*, 497 F.3d 220, 230 (2d Cir. 2007)(Hobbs Act); *United States v. Nascimento*, 491 F.3d 25, 37-40 (1st Cir. 2007)(RICO (racketeering)); *United States v. Chambers*, 441 F.3d 438, 454-55 (6th Cir. 2006)(child pornography); *see also*, *Gonzales v. Raich*, 545 U.S. 1, 17 (2005)(controlled substances)(“[W]hen a general regulatory statute bears a substantial relation to commerce, the *de minimis* character of individual instances arising under that statute are of no consequence”).

¹⁴ “(a) Whoever knowingly destroys, conceals, removes, confiscates, or possesses any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person – (1) in the course of a violation of section 1581, 1583, 1584, 1589, 1590, 1591, or 1594(a); (2) with intent to violate section 1581, 1583, 1584, 1589, 1590, or 1591; or (3) to prevent or restrict or to attempt to prevent or restrict, without lawful authority, the person’s liberty to move or travel, in order to maintain the labor or services of that person, when the person is or has been a victim of a severe form of trafficking in persons, as defined in section 103 of the Trafficking Victims Protection Act of 2000, shall be fined under this title or imprisoned for not more than 5 years, or both.

“(b) Subsection (a) does not apply to the conduct of a person who is or has been a victim of a severe form of trafficking in persons, as defined in section 103 of the Trafficking Victims Protection Act of 2000, if that conduct is caused by, or incident to, that trafficking,” 18 U.S.C. 1592.

¹⁵ “Whoever knowingly provides or obtains the labor or services of a person – (1) by threats of serious harm to, or physical restraint against, that person or another person; (2) by means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or (3) by means of the abuse or threatened abuse of law or the legal process, shall be fined under this title or imprisoned not more than 20 years, or both. If death results from the violation of this section, or if the violation includes kidnapping or an attempt to kidnap, aggravated sexual abuse or the attempt to commit aggravated sexual abuse, or an attempt to kill, the defendant shall be fined under this title or imprisoned for any term of years or life, or both,” 18 U.S.C. 1589.

identification document, of another person to prevent or restrict or to attempt to prevent or restrict, without authority, the person's ability to move or travel; [or] ...

shall be fined under this title or imprisonment nor more than 5 years, or both.

Second, like Section 1589, it outlaws obtaining labor or services through an abuse of authority or legal process. Unlike Section 1589 which only applies to forced labor, it outlaws such abuse when used to obtain either labor or commercial sex acts:

Whoever knowingly, with intent to obtain or maintain the labor or services of a person or to obtain or maintain a person for use in a commercial sex act (as defined in section 2429) –

* * *

(2) acts or fails to act, or threatens to do so, under color of official right;

(3) blackmails another person; or ...

shall be fined under this title or imprisonment nor more than 5 years, or both.

Third, like Section 1589, it outlaws obtaining labor or services using a threat of harm. Unlike Section 1589, it specifies financial harm rather than physical harm, and it reaches threats to secure either labor or commercial sex acts:

Whoever knowingly, with intent to obtain or maintain the labor or services of a person or to obtain or maintain a person for use in a commercial sex act (as defined in section 2429) –

* * *

(4) causes or exploits financial harm or a fear of financial harm on the part of that person

shall be fined under this title or imprisonment nor more than 5 years, or both.

Arranging Sex Tourism (Subsection 221(g))

Subsection 221(g) would create a new federal offense, arranging sex tourism, proposed 18 U.S.C. 2431. The new section would outlaw knowingly (and for profit) arranging, inducing, or procuring an individual's travel in foreign commerce in order to permit the individual to engage in a commercial sex act, or attempting to so arrange, induce or procure, proposed 18 U.S.C. 2431(a). Violations would be punishable by imprisonment for not more than 10 years, but not more than 30 years if the commercial sex act involved a child under the age of 18, proposed 18 U.S.C. 2432(a), (b).

Under existing law, it is a federal crime for an American to travel in foreign commerce for the purpose of engaging in a commercial sex act with a child, 18 U.S.C. 2423(b), (f). It is also a federal crime to arrange, induce, procure, or facilitate such travel if done for profit, 18 U.S.C. 2423(d). Both offenses are punishable by imprisonment for not more than 30 years, 18 U.S.C. 2423(b),(d). It is not a federal crime for an American to travel in foreign commerce for the purpose of engaging in a commercial sex act with an adult. And it is not a federal crime for an

American to attempt to travel in foreign commerce for the purpose of engaging in a commercial sex act with a child.

Subsection 221(g) would replicate existing law except to the extent that it would prohibit (1) arranging, inducing or procuring – for profit – the foreign travel of an American to engage in a commercial sex act even though the underlying travel for such purpose is not itself a federal crime, (2) attempting to arrange, induce, or procure for profit such travel, or (3) attempting to arrange, induce, or procure – for profit – the foreign travel of an American to engage in a commercial sex act with a child.¹⁶ Criminalizing an attempt to induce others to engage in innocent conduct (e.g., foreign travel for the purpose of engaging in a lawful commercial sex act with an adult) even when done for profit, may raise First Amendment implications.¹⁷

Sentencing Guidelines (Subsection 221(h))

Subsection 221(h) would call upon the Sentencing Commission to consider any appropriate adjustments in the Sentencing Guidelines to reflect the creation of the offenses established in subsections 221(f)(sex trafficking) and 221(g)(sex tourism).

Obstructing Labor Investigations (Subsection 221(e))

Subsection 221(e) would amend the federal witness tampering and retaliation provisions of 18 U.S.C. 1512 and 1513 to prohibit the use of physical force, threats, corrupt persuasion, or deception to prevent another from disclosing information concerning a federal employment-related visa, labor or employment law, relating to aliens,¹⁸ or retaliating against another for his having done so,¹⁹ or attempting to so tamper or retaliate.²⁰ By operation of the existing penalty restructure in Sections 1512 and 1513, offenders would face imprisonment for not more than 20 years for the use or attempted use of physical force to tamper and not more than 10 years in all other instances, 18 U.S.C. 1512(a)(3)(B), (b), 1513(b).

Under existing law, it is a federal crime punishable by imprisonment for not more than 20 years to obstruct enforcement of the peonage prohibition, 18 U.S.C. 1581. The general federal witness tampering statute, among other things, proscribes the use of physical force, threats, intimidation or corrupt persuasion in order to prevent a witness from informing federal law enforcement officials of information relating to the commission of a federal crime, 18 U.S.C. 1512(a)(2)(C), (b)(3). The witness retaliation statute, among other things, proscribes retaliating against a witness for providing information relating to the commission of a federal crime to federal law enforcement officials, 18 U.S.C. 1513(b)(2). Unlike the proposed amendment, 1512 and 1513 do

¹⁶ The House Foreign Affairs Committee version of the offense would have outlawed both travel and arranging foreign travel for purposes of *illicit* sexual activity, H.Rept. 110-430, at 19 (proposed 18 U.S.C. 2423A)(2007).

¹⁷ Compare, *United States v. Edge Broadcasting*, 509 U.S. 418 (1993)(First Amendment permits a gambling advertising ban on broadcasts from a state in which the gambling is illegal), with, *Greater New Orleans Broadcasting Association, Inc. v. United States*, 527 U.S. 173 (1999)(First Amendment does not permit a gambling advertising ban on broadcasts from a state in which the gambling is legal, even if the broadcast reaches a state in which it is illegal).

¹⁸ Proposed 18 U.S.C. 1512(a)(2)(D), 1512(b)(4).

¹⁹ Proposed 18 U.S.C. 1513(b)(3).

²⁰ Proposed 18 U.S.C. 1512(a)(2)(D), 1512(b)(4), 1513(b)(3).

not outlaw obstruction or retaliation relating to the investigation of noncriminal alien employment violations.

Subparagraph 202(g)(6)(D) of Section 202 would establish a cause of action including reasonable attorneys' fees for the victims of the proposed obstruction of justice offenses to be proscribed in 18 U.S.C. 1512(A)(2)(D), 1512(b)(4), or 1513(B)(3).

Forfeiture: Return of Property (Subsection 221(c))

Federal law calls for the confiscation of property derived from, or used to facilitate the commission of, a substantial number of federal crimes.²¹ Confiscation comes in two forms: criminal forfeiture and civil forfeiture. Both are triggered by the commission of an underlying offense. Civil forfeiture involves a civil procedure in which the property is treated as the offender and under which confiscation is ordered if the government establishes the required statutory nexus between the property and the confiscation-trigger offense. Confiscation does not require the conviction of the property owner or anyone else. Subsection 1594(c) calls for the civil forfeiture of property used to facilitate or derived from a violation of the peonage, trafficking chapter, 18 U.S.C. 1581-1595. Criminal forfeiture occurs as a consequence of the property owner's conviction for the confiscation-trigger offense and results only in his interest in the property. Subsection 1594(b) calls for the criminal forfeiture of the facilitating and derivative property of a defendant convicted of an offense proscribed in the peonage and trafficking chapter, 18 U.S.C. 1581-1595.

As a general rule, the proceeds from confiscated property are deposited in the Department of Justice Asset Forfeiture Fund or the Treasury Department Forfeiture Fund and set aside for law enforcement purposes.²² Some statutes permit the Attorney General or the Secretary of the Treasury to grant petitions for remission or restoration of confiscated property or the proceeds from the sale of confiscated property.²³ Relief in civil forfeiture cases is ordinarily confined to property owners innocent of any involvement in the confiscation-trigger offense,²⁴ although Justice Department regulations authorize petitions by innocent victims with no present ownership interest in the forfeited property.²⁵ Relief in criminal forfeiture cases is also available where the claimant has an innocent property interest independent of, and superior to, that of the convicted defendant.²⁶

²¹ *E.g.*, 18 U.S.C. 981-985 (general provisions), 18 U.S.C. 1963 (racketeer influenced and corrupt organizations (RICO)), 21 U.S.C. 853, 881 (controlled substances). For a general discussion see CRS Report 97-139, *Crime and Forfeiture*, by Charles Doyle.

²² 28 U.S.C. 824(c), 31 U.S.C. 9703.

²³ *E.g.*, 18 U.S.C. 981(d), 19 U.S.C. 1613.

²⁴ 28 C.F.R. §9.5.

²⁵ 28 C.F.R. §9.8.

²⁶ 28 C.F.R. §9.5.

Subsection 221(c) would amend 1594²⁷ to require the Attorney General to return to victims property seized or confiscated under the involuntary servitude and trafficking chapter, 18 U.S.C. 1581-1595. It would amend 18 U.S.C. 1594 further to permit the Attorney General to return property confiscated under other laws to trafficking victims.²⁸ The proposal would further amend 18 U.S.C. 1593 in a manner that may contemplate a sort of share-in-the enterprise concept.²⁹ It seems to envision not the *return* of the proceeds from commercial sex acts to the specific exploited victims who earned them, but a *sharing* among the exploited sex workers of the confiscated proceeds of the enterprise.

As a general rule, restoration or remission is only possible where the claimant has or had a legally recognized interest in the confiscated property and where the claimant played no part in the offense which gave rise to the forfeiture. The proposed amendments appear designed to overcome the second limitation; they permit victims to recover notwithstanding their participation in the confiscation-triggering offense. The courts, however, may find in the use of the terms “restoration and remission” an intent to continue in place the ownership requirement. Under the proposals, exploited victims might be thought entitled to no more than the return of property that can be shown to once have been theirs.

It seems possible that rather than permitting victims to recover property confiscated from them because of violations of the peonage and trafficking laws, drafters intended to require or permit

²⁷ “(b) *Subject to remission or restoration, the court, in imposing sentence on any person convicted of a violation of this chapter, shall order, in addition to any other sentence imposed and irrespective of any provision of State law, that such person shall forfeit to the United States – (1) such person’s interest in any property, real or personal, that was used or intended to be used to commit or to facilitate the commission of such violation; and (2) any property, real or personal, constituting or derived from, any proceeds that such person obtained, directly or indirectly, as a result of such violation.*”

“(c)(1) The following shall be subject to forfeiture to the United States and no property right shall exist in them: (A) Any property, real or personal, used or intended to be used to commit or to facilitate the commission of any violation of this chapter. (B) Any property, real or personal, which constitutes or is derived from proceeds traceable to any violation of this chapter. (2) The provisions of chapter 46 of this title relating to civil forfeitures shall extend to any seizure or civil forfeiture under this subsection. (3) *The Attorney General shall grant restoration or remission of property to victims of an offense under this chapter that result in forfeiture under this section or under any other statute that explicitly authorizes restoration or remission of forfeited property....*” 18 U.S.C. 1594(b), (c) (language section 221 would add in italics).

²⁸ “...*(4) In a prosecution brought under any other provision of Federal law, the Attorney General may grant restoration or remission of property to victims of severe forms of trafficking as defined in section 103 of the Trafficking Victims Protection Act of 2000, in accordance with section 1594(b)(4),*” proposed 18 U.S.C. 1594(c)(4). There is no 18 U.S.C. 1594(b)(4); a reference to proposed 1593(b)(4), quoted above, was probably intended. Section 103 of the 2000 Act (22 U.S.C. 7102) defines “victims of severe forms of trafficking” as victims of either commercial sex trafficking involving children or induced by fraud, force, or coercion, or the use of fraud, force, coercion to in relation to involuntary servitude, peonage, debt bondage, or slavery, 22 U.S.C. 7102(13), (8).

²⁹ “(a) Notwithstanding section 3663 or 36623A and in addition to any other civil or criminal penalties authorized by law, the court shall order restitution for any offense under this chapter. (B)(1) The order of restitution under this section shall direct the defendant to pay the victim (through the appropriate court mechanism) the full amount of the victim’s losses, as determine by the court under paragraph (3) of this subsection.... (3) As used in this subsection, the term ‘full amount of the victim’s losses’ has the same meaning as provided in section 2259(b)(3) and shall in addition include the greater of the gross income or value to the defendant of the victim’s services or labor or the value of the victim’s labor as guaranteed under the minimum wage and overtime guarantees of the Fair Labor Standards Act (29 U.S.C. 201 et seq.). (4) *The distribution of proceeds among multiple victims in an order of restitution under this section govern the distribution of forfeited funds through the processes of remission or restoration under this section or any other statute that explicitly authorizes restoration or remission of forfeited property.*”, 18 U.S.C. 1593(b)(language which subsection 221(c) would add in italics).

victim restitution to be paid out of forfeited assets of their oppressors. The proposed amendments might prove inadequate for that purpose.

Civil Cause of Action (Subsection 221(d))

Subsection 221(d) would enlarge the civil cause of action available to victims of violations of the involuntary servitude and trafficking provisions, 18 U.S.C. 1581-1595. It would also provide an explicit 10-year statute of limitations within which such suits would have to be filed, proposed 18 U.S.C. 1595(c).

Under existing law, victims have a cause of action for violations of 18 U.S.C. 1589 (forced labor), 1590 (peonage-related trafficking), 1591 (sex trafficking of children or by force, fraud or coercion), 18 U.S.C. 1595. Subsection 221(d) would amend Section 1595 to include other offenses in chapter 77, i.e.,

- peonage (18 U.S.C. 1581)
- enticement into slavery (18 U.S.C. 1583)
- sale into involuntary servitude (18 U.S.C. 1584)
- unlawful compelled service (proposed 18 U.S.C. 1592)

Existing law supplies no explicit statute of limitations for a cause of action under Section 1595. The statute of limitations for the criminal prosecution of most of the offenses under chapter 77 is 10 years, 18 U.S.C. 3298. The statute of limitations of the civil cause of action established for various federal sex offenses under 18 U.S.C. 2255 is six years, 18 U.S.C. 2255(b). Where Congress has failed to provide a statute of limitations for a federal cause of action, the courts will resort to the most analogous state or federal civil statute of limitations.³⁰

Crime Victims Fund (Subsection 214(b))

Paragraph 214(b)(1) of Section 214 would amend the Victims of Crime Act of 1984 (42 U.S.C. 10601 et seq.) by adding a new Section 1404F (42 U.S.C. 10603f). The Crime Victims Fund finances victim compensation and assistance grants using the fines imposed for violation of federal criminal law, 18 U.S.C. 10601(b), although Congress has capped the amount annually available from the fund.³¹ The new section would trump any coverage limitations based on the characteristics of the victim of the crime to be compensated or assisted. It would define “victim,” “crime victim” and “victim of crime” for purposes of the federal crime victims compensation and assistance grants and related activities to include individuals “exploited or otherwise victimized” by a violation of 8 U.S.C. 1328 (importation of an alien for prostitution or other immoral purposes) or of any of the prohibitions in 18 U.S.C. ch. 117 (transportation of illegal sexual

³⁰ *Graham County Soil & Water Conservation District v. United States ex rel. Wilson*, 545 U.S. 409, 414-15 (2005); *Lampf v. Gilbertson*, 501 U.S. 350, 359 (1991).

³¹ P.L. 109-108, §612, 119 Stat. 2336 (2005), 42 U.S.C. 10601 note (“Notwithstanding any other provision of law, amounts deposited or available in the Fund established under 42 U.S.C. 10601 in any fiscal year in excess of \$625,000,000 shall not be available for obligation until the following fiscal year”). For a general discussion of the Fund and the programs that receive grants under it see CRS Report RL32579, *Victims of Crime Compensation and Assistance: Background and Funding*.

purposes including proposed and enlarged 18 U.S.C. 2430) or comparable offenses under state law – without any expressed regard for the victim’s age, gender, consent, culpability, or participation in commercial sexual activity.

Extraterritorial Jurisdiction for Certain Trafficking Offenses (Section 222)

Section 222 would establish extraterritorial jurisdiction over various peonage and trafficking offenses when the offender or the victim is an American or when the offender is in the United States, proposed 18 U.S.C. 1596. The offenses involved are:

- 18 U.S.C. 1581 (peonage)
- 18 U.S.C. 1583 (enticement into slavery)
- 18 U.S.C. 1584 (sale into involuntary servitude)
- 18 U.S.C. 1589 (force labor)
- 18 U.S.C. 1590 (human trafficking)
- 18 U.S.C. 2429 (aggravated sex trafficking)

Criminal jurisdiction is usually territorial. The law of the place determines what is criminal and how crimes may be punished. There are some circumstances, however, under which extraterritorial jurisdiction exists. In the case of federal law, there are some circumstances under which federal crimes committed overseas may be prosecuted in federal court. In large measure, those circumstances are either found in statute or presumed from the context of the statute, if consistent with related principles of international law.³²

For example, when a statute proscribes the theft of federal property, it is presumed that Congress intends the prohibition to apply regardless of where the property may be stolen.³³ The courts have generally considered overseas application of federal criminal law consistent with international law when either the offender or the victim is American.³⁴ Extraterritorial jurisdiction may also be considered consistent with international law when the overseas conduct has an impact within the United States,³⁵ or when the criminal prohibition is enacted to implement a treaty or similar international obligation or with respect to a crime that is contrary to the law of nations, i.e., that is abhorrent under the laws of all countries.³⁶

³² For a general discussion of federal extraterritorial criminal jurisdiction see CRS Report 94-166, *Extraterritorial Application of American Criminal Law*, by Charles Doyle.

³³ *United States v. Bowman*, 260 U.S. 94, 98 (1922); *United States v. Cotten*, 471 F.2d 744, 749 (9th Cir. 1973).

³⁴ *The Apollon*, 22 U.S. (9 Wheat.) 362, 370 (1824) (“The laws of no nation can justly extend beyond its own territories, except so far as regards its own citizens”)(emphasis added); *United States v. Clark*, 435 F.3d 1100, 1106 (9th Cir. 2006); *United States v. Felix-Gutierrez*, 940 F.2d 1200, 1205-206 (9th Cir. 1991).

³⁵ *Ford v. United States*, 273 U.S. 593, 623 (1927); *United States v. Plummer*, 221 F.3d 1298, 1304-307 (11th Cir. 2000).

³⁶ *United States v. Yousef*, 327 F.3d 56, 97-110 (2d Cir. 2003).

Section 222 provides a statement of extraterritorial jurisdiction in some instances when it seems likely that federal courts would assume it even in the absence of such an explicit provision. For instance, Section 222 (proposed 18 U.S.C. 1596) would permit prosecution of an overseas violation of proposed 18 U.S.C. 2429 (aggravated sex trafficking) when the victim is an American or when the offender is an American or when the offender is later found or brought to the United States. However, the elements of proposed Section 2429 limit the circumstances under which the offense can be committed overseas, because it outlaws misconduct only when committed within the special maritime or territorial jurisdiction of the United States or in or affecting the interstate or foreign commerce of the United States. Offenses committed in or affecting interstate commerce or within the special maritime and territorial jurisdiction of the United States are by definition not committed overseas. Offenses committed in or affect the foreign commerce of the United States may occur overseas, but international law principles have been said to recognize extraterritorial application when a crime has an impact in this country.³⁷

On the other hand, the application of proposed Section 1596 might prove more problematic when the only contact with the United States or its nationals or interests is the fact the offender is found or has been brought to the United States. Federal prosecution under 18 U.S.C. 1589 (forced labor) might be problematic, for example, when the misconduct occurs entirely within another country and neither the offender nor any of the victims of the offense are Americans.

Importing Aliens for Prostitution (Subsection 223(a))

Subsection 223(a) would streamline Section 278 of the Immigration and Nationality Act (8 U.S.C. 1328) with little change in substance. Under the proposed amendment, Section 278 would provide:

(a) Generally – Whoever, for the purpose of prostitution or for any other sexual activity for which any person can be charged with a criminal offense –

(1) knowingly imports or attempts to import any alien; or

(2) knowing or in reckless disregard of the fact that an individual is an alien who lacks lawful authority to come to, enter, or reside in the United States, knowingly holds, keeps, maintains, supports, employs, or harbors the individual in any place in the United States, including any building or any means or transportation, attempts to do so,

shall be fined under title 18, United States Code, or imprisoned not more than 10 years, or both.

(b) Special Evidentiary Rule – In all prosecutions under this section, the testimony of a husband or wife shall be admissible and competent evidence against each other.³⁸

³⁷ *Ford v. United States*, 273 U.S. 593, 623 (1927); *United States v. Plummer*, 221 F.3d 1298, 1304-307 (11th Cir. 2000).

³⁸ The section now reads: “The importation into the United States of any alien for the purpose of prostitution, or for any other immoral purpose, is forbidden. Whoever shall, directly or indirectly, import, or attempt to import into the United States any alien for the purpose of prostitution or for any other immoral purpose, or shall hold or attempt to hold any (continued...)”

The proposal would omit the venue language now found in the section that permits prosecution in any district into which the alien is imported. The existing provision duplicates the otherwise available venue options under which prosecution is possible in any district through or into which an imported person moves.³⁹

Justice Department Enforcement (Subsection 234(a))

Subsection 234(a) renames the Justice Department's Child Exploitation and Obscenity Section and expands the responsibilities of the Innocence Lost Task Forces to include sex trafficking (proposed 18 U.S.C. 2430) offenses involving sexually exploited adults. The Section would become known as the Sexual Exploitation and Obscenity Section.

The Child Exploitation and Obscenity Section now prosecutes offenses involving federal obscenity, child pornography, interstate trafficking for sexual purposes, international sexual child abuse, and international parental kidnapping.⁴⁰ In 2003, the Section together with the Federal Bureau of Investigation (FBI) and the National Center for Missing & Exploited Children started an Innocence Lost Initiative in 2003.⁴¹

The proposed amendment would greatly expand the Section's jurisdiction, given the accompanying expansion of federal jurisdiction occasioned by proposed Section 2430 which would outlaw trafficking in commercial sexual activity occurring in or affecting interstate or foreign commerce regardless of age or willingness of the individual trafficked.

The creation of divisions and sections within the Department of Justice, their jurisdictional assignments, and other matters of internal organization within the Department are ordinarily matters internal to the Department. However, Congress may address, and in the past has addressed, such matters in statute.⁴²

(...continued)

alien for any such purpose in pursuance of such illegal importation, or shall keep, maintain, control, support, employ, or harbor in any house or other place, for the purpose of prostitution or for any other immoral purpose, any alien, in pursuance of such illegal importation, shall be fined under Title 18, or imprisoned not more than 10 years, or both. The trial and punishment of offenses under this section may be in any district to or into which such alien is brought in pursuance of importation by the person or persons accused, or in any district in which a violation of any of the provisions of this section occurs. In all prosecutions under this section, the testimony of a husband or wife shall be admissible and competent evidence against each other," 8 U.S.C. 1328.

³⁹ 18 U.S.C. 3237(a) ("...Any offense involving ... the importation of [a] ... person into the United States ..., except as otherwise expressly provided by enactment of Congress, may be inquired of and prosecuted in any district from, through, or into which such ... imported ... person moves").

⁴⁰ Child Exploitation and Obscenity Section, CEOS Mission, available at <http://www.usdoj.gov/criminal/ceos/mission.html>.

⁴¹ United States Department of Justice, *Innocence Lost Initiative*, Press Release December 15, 2005, available at http://www.usdoj.gov/criminal/ceos/innocencelost%20FACTFINAL_121605.pdf.

⁴² *E.g.*, P.L. 109-177, §506, 120 Stat. 247 (2006)(creating and conveying authority upon the position of Assistant Attorney General for National Security).

False Statements by Foreign Recruiters (Subsection 202(g))

Subsection 202(g) would require those who recruit foreign workers to disclose various specifics regarding the circumstances and conditions of employment to recruits. Paragraph 202(g)(3) would proscribe knowingly making a material false or misleading statement in such disclosures and would declare that, “The disclosure required by this section is a document concerning the proper administration of a matter within the jurisdiction of a department or agency of the United States for the purposes of Section 1519 of title 18, United States Code.”

Section 1519 of Title 18, United States Code, proscribes the knowing falsification of records with the intent to impede, obstruct, or influence the proper administration of any matter within the jurisdiction of any department or agency of the United States. Violations are punishable by imprisonment for not more than 20 years. In the absence of a reference to Section 1519, the proposed offense would instead be subject to the general false statement statute, 18 U.S.C. 1001, which makes violations punishable by imprisonment by not more than 8 years if the offense relates to an offense under 18 U.S.C. 1591 (sex trafficking of children or by force, fraud or coercion); or 18 U.S.C. ch. 109A (sexual abuse), ch. 110 (sexual exploitation of children), or ch. 117 (transportation for illegal sexual activities).

Model State Legislation (Section 224)

The Justice Department drafted a Model State Anti-Trafficking Criminal Statute in 2004. The Model includes suggested language of state criminal laws relating to trafficking in persons, involuntary servitude, sexual servitude of a minor and trafficking in persons for forced labor or services.⁴³ A number of states have adopted comparable statutes.⁴⁴

Section 224 would direct the Attorney General to provide a similar model reflecting the misconduct proscribed in 18 U.S.C. chs. 77 (involuntary servitude) and 117 (Mann Act) as those chapters would be amended by H.R. 3887. It would also instruct the Attorney General to post the model on the Department’s website, distribute it to the states, assist the states in its implementation, and report annually to House and Senate Judiciary Committees and the House Foreign Affairs Committee as well as the Senate Foreign Relations Committee on the results of such efforts.

⁴³ Model State Anti-Trafficking Criminal Statute, available at http://www.usdoj.gov/crt/crim/model_state_law.pdf. See generally, *New Illinois Legislation Combats Modern-Day Slavery: A Comparative Analysis of Illinois Anti-Trafficking Law With Its Federal and State Counterparts*, 38 LOYOLA UNIVERSITY CHICAGO LAW JOURNAL 895 (2007).

⁴⁴ E.g., ALASKA STAT. §§11.41.360 to 11.41.365; ARIZ.REV.STAT.ANN. §§13-1306 to 13-1309; ARK.CODE ANN. §5-11-108; CAL. PENAL CODE §§236.1 to 237; COLO.REV.STAT. §§18-13-127, 18-13-128, 18-6-402; CONN.GEN.STAT.ANN. §53a-192a; FLA.STAT.ANN. §§787.05, 787.06; GA.CODE §16-5-46; IDAHO CODE §§18-5601, 18-5609, 18-5611; ILL.COMP.LAWS ANN. ch.720 ¶5, §§10A-5 to 10A-20; IND.CODE ANN. §§35-42-3.5-1 to 35-42-3.5-4; IOWA CODE ANN. §§710A.1 to 710A.5; Kan.Stat.Ann. §§21-3446, 21-3447; KY.REV.STAT.ANN. §§529.100, 529.110; LA.REV.STAT.ANN. §14:46.2; MD.CODE ANN.CRIM.LAW §11-303; MICH.COMP.LAWS ANN. §§750.462a to 750.462i; MINN.STAT.ANN. §§609.281 to 609.284; Miss.Code Ann. §§97-3-54 to 97-3-54.4; MO.ANN.STAT. §§566.250 to 566.265; MONT.CODE ANN. §45-5-306; N.J.STAT.ANN. §2C:13-8; N.C.GEN.STAT. §§14-43.1 to 14-43.13; OKLA.STAT.ANN. tit.21 §§865, 866, 867; PA.STAT.ANN. tit. 18 §§3001 to 3004; R.I.GEN.LAWS §§11-67-1 to 11-67-5; S.C. CODE ANN. §16-3-930; TEX.PENAL CODE ANN. §§20A.1 to 20A.

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