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

Charles Doyle, American Law Division

January 16, 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 reinforces the anti-trafficking efforts that began with Trafficking Victims Protection Act of 2000. That legislation sought to protect the women and children most often the 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 Provisions in Short

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Summary

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 the women and children most often the 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.

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 November 6, 2007. A further revised version passed under suspension of the rules on December 4, 2007. 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.

This is an abridged version of CRS Report RL34323, *William Wilberforce Trafficking Victims Protection Reauthorization Act of 2007 (H.R. 3887 as Passed by the House): Criminal Law Provisions*, by Charles Doyle without the footnotes, quotations, or citations to authority found in the longer report.

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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 knowingly recruiting, enticing, harboring, transporting, providing or obtaining another individual, in or affecting interstate or foreign commerce or within U.S. special maritime and territorial jurisdiction, with the knowledge that the individual would be used to engage in a commercial sex act either as child or through force, fraud or coercion. The proposed section would condemn profiting from such a venture as well. In either case, offenders would face imprisonment for any term of years not less than 15 years or for life (not less than 10 years if the child were 14 years of age or older). 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.

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. 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). It 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.

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. 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.

The proposed amendment to Section 1592 recasts its components in three areas. First, it streamlines the document-seizure prohibition. 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. 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. Offenders would be punished by imprisonment for not more than 5 years.

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. 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.

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 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, or retaliating against another for his having done so, or attempting to so tamper or retaliate. By operation of the existing penalty restructure, 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.

Under existing law, it is a federal crime punishable by imprisonment for not more than 20 years to obstruct enforcement of the peonage prohibition. 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. 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. Unlike the proposed amendment, present law does 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.

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

Subsection 221(c) would amend 1594 to require the Attorney General to return to victims property seized or confiscated under the involuntary servitude and trafficking chapter. It would permit the Attorney General to return property confiscated under other laws to trafficking victims. 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 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. 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).

Crime Victims Fund (Subsection 214(b))

Paragraph 214(b)(1) of Section 214 would amend the Victims of Crime Act of 1984. 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. 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 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. 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. 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. 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.

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. 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. 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.

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. A number of states have adopted comparable statutes.

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.

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