

January 23, 2008

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Joseph Biden
Chairman
Foreign Relations Committee
United States Senate
Washington, D.C. 20510

The Honorable Arlen Specter
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Richard Lugar
Ranking Member
Foreign Relations Committee
United States Senate
Washington, D.C. 20510

The Honorable Sam Brownback
Ranking Member of the Subcommittee on
the Constitution
Senate Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Leahy, Chairman Biden, Ranking Member Specter, Ranking Member Lugar and Ranking Member Brownback,

The undersigned anti-trafficking service providers, advocates, scholars, civil and human rights lawyers and other individuals are writing in support of your leadership in the development of a strong bill reauthorizing the Trafficking Victims Protection Act of 2000 (TVPA). We are pleased with the majority of the House bill, H.R. 3887, the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2007. However, we are extremely concerned that several provisions will lead to harmful unintended consequences. We urge you to consider these concerns as you craft the Senate reauthorization bill.

The collective expertise and experience of the signatories to this letter is notable. Many of us have assisted trafficked persons with their legal, social, psychological and family issues; worked on issues of violence against women, participated in the development of the TVPA as well as the UN Trafficking Protocol; written extensively about trafficking and related issues; and opposed slavery and forced labor in all forms within the United States and abroad. As such, we share a profound concern about the desperate situation of immigrants and citizens who are trafficked into and within the U.S. We know that you also have the same concerns and so we would like to share the following thoughts about certain provisions in H.R. 3887.

1. Section 221(f)(1) federalizes all prostitution-related crimes as ‘sex trafficking’

Proposed Section 221(f)(1) of H.R. 3887 would amend the Mann Act, which presently criminalizes the transportation of persons across state lines for the purpose of prostitution. The proposed section, 18 U.S.C. § 2430, would create a new crime of “sex trafficking”,¹ which would authorize the Department of Justice (DOJ) to prosecute any individual whose action within a territory or possession, affecting interstate or foreign commerce, induces another to engage in prostitution. In other words, if a person arranges an act of prostitution over the phone, as hundreds of meetings are arranged everyday, DOJ would be pressured by supporters of this new crime to prosecute each of these thousands of cases annually. This proposal is part of an attempt by certain organizations and individuals to make prostitution a federal crime and redefine all prostitution as trafficking, even in the absence of force, fraud, or physical or psychological coercion, the cornerstone of trafficking in persons. Calling all non-trafficking prostitution-related crimes ‘sex trafficking’ would not only lead to confusion but also to the other problems we discuss below.²

We strongly oppose this unnecessary, confusing and resource draining provision and share the concerns raised by DOJ in a letter to the Honorable John Conyers and the Fraternal Order of Police in a letter to Chairman Leahy and Ranking Member Specter.³

The proposed “sex trafficking” provision would drain Department of Justice resources. The attempt to expand federal jurisdiction over all local and in-state prostitution cases would drain the limited financial and staffing resources of the Civil Rights Section of DOJ and take federal prosecutors, as well as investigators from other federal agencies, away from their core mission of investigating violations of crimes stemming from the Thirteenth Amendment and crimes involving children.

According to DOJ, local law enforcement is responsible for 100,000 arrests per year that are related to prostitution.⁴ The DOJ itself contends that “due to the high volume of prostitution-related crimes, the federal government lacks the necessary resources and capacity to prosecute

¹ The proposed new § 2430 provides 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 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.”

² We also object to the proposal in § 224 of the bill for the Attorney General to develop a state ‘model’ trafficking statute that would go beyond trafficking to include prostitution (the new ‘sex trafficking’ provision), thereby confusing slavery and prostitution for state legislators also.

³ See attached Dept. of Justice letter to The Hon. John Conyers at 8-9 (Nov. 9, 1007) (DOJ letter) and Fraternal Order of Police in a letter to Chairman Leahy and Ranking Member Specter at 1 (Dec. 6, 2007) (Fraternal Order letter).

⁴ See attached DOJ document: “H.R. 3887: The William Wilberforce Trafficking in Persons Reauthorization Act of 2007: Comments Reflecting Managers’ Amendment” (DOJ Comments).

these offenses.”⁵ Furthermore, “it is unnecessary and a diversion from Federal law enforcement’s core anti-trafficking mission.”⁶

States are better situated to address local prostitution issues. All 50 states already have laws addressing solicitation, pandering and pimping and they address concerns around prostitution that are most appropriate to each locality. The Fraternal Order of Police, representing local law enforcement officers across the country opposes DOJ involvement, stating “it is not clear, or even advisable, that the Federal government become active on these local issues in the absence of evidence that the offenses were committed as part of or in furtherance of a human trafficking operation. To do so is a waste of resources at all levels of government.”⁷

The proposed “sex trafficking” statute will instantaneously and dramatically increase the estimated and actual number of “trafficking” victims in the U.S. Presently the U.S. government estimates that between 14,500-17,500 foreign-born trafficking victims are brought into the U.S. every year.⁸ However, if the prosecutions under the proposed new prostitution crime called “sex trafficking” are added to the data on real trafficking cases, the statistics for trafficking would be artificially inflated. The estimated number of prostitution-related arrests is around 100,000 a year and the proposed new law would allow DOJ to prosecute most of those cases when, in fact, it may be that no more than 10% of the cases would involve true trafficking crimes, including internal trafficking cases. However, if DOJ were to prosecute all of the potential prostitution-related cases under the proposed new prostitution crime, then the above statistics indicate that those engaged in prostitution would outnumber true trafficking victims nearly six to one and compete for access to funding, resources programs and every other aspect of assistance to the real trafficked individuals as well as fewer true victims being identified. While we welcome better data collection on trafficking of persons within (as well as into) the United States, we do not support artificial inflation of the data. The inflated data would also impact the U.S. ranking in respect to other countries; it would overnight look as though the United States has the highest number of trafficking victims in the developed world.

2. Section 221(a) removes the real crime of sex trafficking from the list of 13th Amendment Crimes

The real crime of sex trafficking is presently found in 18 U.S.C. §1591, which is in the part of the U.S. Code (Chapter 77 on Peonage, Slavery and Trafficking in Persons) reserved for 13th Amendment crimes. It addresses trafficking into commercial sex acts via force, fraud or coercion, or of a person under 18. Inexplicably, section 221(a) of H.R. 3887 relocates this trafficking offense to the Mann Act (Chapter 117), which, as we discussed above, covers only ordinary prostitution offenses and not any real trafficking crimes. Since the proposed section 221(f)(1) would add a new non-trafficking prostitution offense called “sex trafficking” to the

⁵ DOJ letter at 9.

⁶ DOJ letter at 9.

⁷ Fraternal Order letter at 1.

⁸ “America Will Not Tolerate Slave Traders, Bush Says,” <http://usinfo.state.gov/gi/Archive/2004/Jul/19-988082.html>

Mann Act, the authors of H.R. 3887 were forced to rename the real sex trafficking offense in an unsuccessful attempt to reduce confusion. Consequently, section 221(a) proposes renaming the real sex trafficking offense as “aggravated sex trafficking.” Not surprisingly, the use of similar terminology to demarcate completely different types of offenses (a 13th Amendment crime and an ordinary crime) within the Mann Act only adds unnecessary confusion. These stark changes to the statute are unnecessary and could undermine trafficking prosecutions.

Separating the real sex trafficking crime from other 13th Amendment crimes weakens 13th Amendment protections against modern-day slavery. Human trafficking, perhaps the most pernicious form of modern-day slavery, occurs when an individual extracts labor or sexual services from other individuals by depriving them of their free will. Accordingly, federal laws aimed at eradicating trafficking, forced labor, slavery, and involuntary servitude prohibit the use of force, fraud or coercion to compel an individual to perform a commercial sex act or any other form of labor or services.

In passing the TVPA, Congress intended to carry out the mandate of the 13th Amendment and address the evils it targets - slavery in all of its forms and practices.⁹ The 13th Amendment, as the United States Supreme Court has explained, aims to “abolish slavery of whatever name and form and all its badges and incidents; to render impossible any state of bondage; *to make labor free, by prohibiting that control by which personal service of one man is disposed of or coerced for another’s benefit*”.¹⁰ Accordingly, Congress recognized that prostitution *per se* is not trafficking any more than farm labor or domestic work *per se* is trafficking. Thus, moving the real sex trafficking crimes from the TVPA into the Mann Act is an ill-disguised attempt to recast all prostitution as trafficking. Congress should support the integrity of the comprehensive TVPA and not remove the real sex trafficking offense from the TVPA, thereby ensuring that the fight against all 13th Amendment prohibitions on slavery, forced labor, involuntary servitude and human trafficking will be prosecuted equally and with due regard for the heinous nature of these crimes.

Removing sex trafficking from the trafficking section of the criminal code will undermine trafficking prosecutions. This proposed section separates labor and sex trafficking in the criminal code, which prevents victims, advocates and law enforcement from understanding the nuances of human trafficking as a whole. Victims of human trafficking also often experience both labor and sex trafficking and by separating these provisions into two different criminal section laws, law enforcement may not view the crimes in their totality. We are concerned that the following will occur: increased focus solely on cases involving prostitution with a decrease on labor exploitation cases; conferences, trainings, outreach conducted on cases involving prostitution to the detriment of labor exploitation cases; decreased ability of attorneys, social service agencies and good samaritans to identify labor exploitation cases; and fewer labor exploited individuals coming forward to seek assistance as a consequence of the focus on prostitution in prosecutions, training and outreach.

⁹ 22 U.S.C. § 7107(b)(22).

¹⁰ *Bailey v. Alabama*, 219 U.S. 219, 241 (1911) (emphasis added).

3. Section 234 undermines the ability of DOJ to focus on child exploitation cases

The Child Exploitation and Obscenity Section was established to address the problem of child exploitation and its core mission should not be sacrificed. Section 234 renames the “Child Exploitation and Obscenity Section” in the Criminal Division of the DOJ as the “Sexual Exploitation and Obscenity Section” and authorizes this Section to prosecute new federal adult prostitution and adult sex trafficking cases. We are concerned that the proposed redesignation would increase the Section’s workload to include prosecution of adult prostitution and sex-related offenses under the Mann Act and the proposed § 2430. The Section is ill equipped to handle ordinary prostitution related cases, which now number over 100,000 a year.

Congress should respect the ability of state law enforcement officials to continue handling adult prostitution cases and allow the Civil Rights Division to continue prosecuting adult trafficking cases, including adult sex trafficking cases. Congress should support and protect the core mission of the Child Exploitation and Obscenity Section by leaving it unchanged so that it can continue to tackle the extremely difficult child abuse and exploitation (including child sex trafficking) cases.

4. Section 214(b) undermines state’s discretion in using Victims of Crime Act funds.

H.R. 3887 adds a new provision - §1404F “Victims of Commercial Sexual Exploitation and other Crimes” -- relating to state use of Victims of Crime Act funds. Under existing law, states have the right to determine how to spend their limited VOCA funds. The proposed language specifically states that people in prostitution are ‘victims’ covered by VOCA. It categorizes all prostitutes as *per se* victims of a crime, even those working legally in Nevada and individual sex workers who are not alleging victimization. This provision could be interpreted to establish an assumption that this one group has priority over others because people in prostitution would be the *only* category of persons enumerated as victims in the Act. This approach could harm other crime victims (e.g. domestic violence, sexual assault, child abuse, and assault) by providing priority access to limited VOCA funds for *all* prostitutes even if they have not claimed victimization, is eligible while another group is not eligible. States should continue to have discretion to determine how to spend VOCA funds in a way that meets local priorities and conditions.

Conclusion

Trafficking in persons is a form of modern-day slavery where an individual compels another to provide labor or services through force, fraud or coercion. Consistent with our constitutional obligations as well as those under international law, Congress passed the TVPA to eradicate this practice which deprives individuals of their basic humanity and freedom. Legislation that conflates prostitution with trafficking, asserts federal jurisdiction over ordinary prostitution offenses now handled by local jurisdictions and removes the responsibility for prosecuting prostitution-related trafficking cases from the Civil Rights Division would undermine the fundamental purpose of our trafficking efforts within the United States and abroad. This purpose is reflected in statements made by the late Senator Paul Wellstone, “[trafficking] is one of the brutal aspects of this new global economy. It supplements drug trafficking, except quite often it

is more profitable, believe it or not, because the women--girls--are recycled over and over again. We are talking about close to 1 million women and girls, the trafficking of these women and girls for purposes of *forced* prostitution or forced labor.”¹¹

We urge you to ensure that this important legislation is not undermined.

Sincerely,

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¹¹ Congressional Record: July 27, 2000 (Senate), pp. S7788-7789,
<http://www.immigrationweek.com/immigdaily/News/2000,0731-Trafficking.shtm> (emphasis added)

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