

# **JUSTICE FOR VICTIMS OF TRAFFICKING ACT**

## ***SECTION-BY-SECTION ANALYSIS***

### **Major Supporting Organizations**

More than 200 victims' rights and law enforcement organizations, including: Shared Hope International, Rights 4 Girls, Fraternal Order of Police, National Center for Missing and Exploited Children, National Association for the Advancement of Colored People (NAACP), National Children's Alliance, National Criminal Justice Association, End Child Prostitution and Trafficking, PROTECT, Alliance to End Slavery and Trafficking, National Association of Police Organizations, National Conference of State Legislatures, National District Attorneys Association.

### **Section 1. Short Title; Table of Contents.**

"The Justice for Victims of Trafficking Act of 2015."

## ***TITLE I—JUSTICE FOR VICTIMS OF TRAFFICKING***

### **Section 101. Domestic Trafficking Victims' Fund.**

- Under current federal law (18 U.S. 3013), all persons convicted of a felony in federal court are required to pay a special assessment of \$100 in addition to any additional fines ordered by the judge. Funds collected as a result of this special assessment are used to provide services to victims and to ensure that criminals are helping to offset the costs of their offenses.
- Unfortunately, this \$100 special assessment is the only monetary penalty that many human traffickers and predators will pay to help offset the costs and harms they have caused. For instance, according to the latest available data from the United States Sentencing Commission (FY 2012), only 12% of federal child pornography/prostitution offenders and 6% of sexual abuse offenders are ordered to pay any criminal fines at all in federal court.
- To hold predators accountable, the Justice for Victims of Trafficking Act would require certain federal offenders to pay an additional special assessment of \$5,000 upon conviction for one of the following classes of crimes:
  - Human trafficking;
  - Sexual abuse;
  - Child pornography ;
  - Child sexual exploitation;
  - Interstate transportation for illegal sexual activity; and
  - Commercial human smuggling.
- Based upon FY 2012 data from the United States Sentencing Commission (the latest available), this additional special assessment would apply to more than

6,200 offenders per year—accounting for at least \$31 million in obligated assessments, which would not be payable until all outstanding orders of restitution and other criminal fines are paid in full by the offender.

- All penalties collected under the Justice for Victims of Trafficking Act would be collected in the same manner that criminal fines are collected under current law, and would be deposited into a deficit-neutral “Domestic Trafficking Victims’ Fund.” The Attorney General would be authorized to use the balances of this fund to supplement programs that provide victims’ services to domestic human trafficking victims, and provide law enforcement with resources to investigate and combat modern-day slavery.
- At the end of each fiscal year, all unobligated balances contained in the Domestic Trafficking Victims’ Fund would be automatically transferred to the Crime Victims’ Fund.

### **Section 102. Clarifying the Benefits and Protections Offered to Domestic Victims of Human Trafficking.**

- Under current law, U.S. citizen human trafficking victims are placed at a disadvantage when seeking restorative services and protection. Under the Trafficking Victims Protection Act, non-citizen trafficking victims may become eligible for federally funded services and benefits after HHS or the Secretary of Homeland Security issues an official certification to them—but U.S. citizens and Lawful Permanent Residents are not eligible for this certification. This disparity in certification has led to confusion, and often has the effect of categorically excluding domestic human trafficking victim from receiving protective and restorative services.
- This section clarifies that U.S. citizen and Lawful Permanent Resident human trafficking victims should never be denied services due to the fact they have not received a victim certification.

### **Section 103. Victim-centered Child Human Trafficking Deterrence Block Grant Program.**

- This section reauthorizes and reformulates an expired section of the Trafficking Victims Protection Act (42 U.S. 14044b) which relates to services for domestic child trafficking victims.
- More specifically, this section would create a victim-centered model block grant program to help States and local governments develop and implement comprehensive victim-centered programs to train law enforcement, rescue exploited children, prosecute human traffickers, and restore the lives of victims. This program will be paid for entirely through the “Domestic Trafficking Victims’ Fund” created by the bill.
- These block grant funds could be used for specialized training programs, the establishment of anti-trafficking task forces, victims’ services and the establishment or enhancement of problem solving court programs for trafficking

victims all focused on victim rescue and restoration. Collaboration between law enforcement, social services, emergency responders, Children’s Advocacy Centers, victim service providers, and non-profits is encouraged in order to help communities and governments work together to develop a holistic approach to fighting trafficking and serving victims.

- Many of the purpose areas in this block grant program (regarding law enforcement and prosecution assistance) passed the Senate by unanimous consent in 2010, and achieved broad bipartisan support in the House, as part of the “Domestic Minor Sex Trafficking Deterrence and Victims Support Act.”

#### **Section 104. Direct Services for Victims of Child Pornography.**

- Creates a new purpose area under the Victims of Child Abuse Act to allow the more than 900 Children’s Advocacy Centers across the nation to provide restorative services for victims of child pornography. Requires that not less than \$2 million per year from the Domestic Trafficking Victims Fund to be dedicated to this purpose.
- This section also clarifies that Children’s Advocacy Centers may use existing resources to work with child victims of human trafficking.

#### **Section 105. Increasing Compensation and Restitution for Trafficking Victims.**

- Requires law enforcement officials to prioritize the use of proceeds from forfeited assets to satisfy restitution orders in human trafficking cases.
- Current federal law requires convicted human traffickers to forfeit all property “used or intended to be used to commit or facilitate the commission of such violation.” This standard can sometimes be used to shield human traffickers from broad asset forfeiture by requiring prosecutors to make a difficult distinction between the portion of criminal assets traceable to the underlying offense and the portion of the assets that are involved in the offense, but were not used for the actual facilitation of the offense itself.
- The Justice for Victims of Trafficking Act would amend the human trafficking asset forfeiture statute (18 U.S. 1594) to track the asset forfeiture statute for money laundering (18 U.S. 982(a)(1)—eliminating the need for prosecutors to show direct traceability between the underlying crime and the targeted proceeds when they can show that the assets were involved in the crime or used to conceal the source of criminal assets. This provision will make more forfeited criminal assets available for victim restitution and would also incentivize the charging of human trafficking as the principal offense in federal cases.
- This section would also allow the Department of Justice and Department of Homeland Security to use money available in federal asset forfeiture funds to make award payments to victim-witnesses who come forward and provide information or assistance related to a human trafficking case.

### **Section 106. Streamlining Human Trafficking Investigations.**

- Under current law (18 U.S. 2516), state and local law enforcement may obtain a wiretap warrant in their state courts upon a showing that the investigation may provide evidence of “murder, kidnapping, gambling, robbery, bribery, extortion, or dealing in narcotic drugs, marihuana or other dangerous drugs, or other crime dangerous to life, limb, or property, and punishable by imprisonment for more than one year. . .”
- Unfortunately, many state courts have ruled that human trafficking/prostitution investigations do not provide evidence of one of the listed classes of offenses—essentially precluding state human trafficking task forces from obtaining wiretaps in these critical cases. For an example of a State Supreme Court interpreting federal law and holding that the investigation of a prostitution ring did not meet this criteria, see: *State v. Rivers*, 660 So.2d 1360 (Fla. 1995). See also: *People v. Shapiro*, 50 N.Y.2d 747 (N.Y. 1980); and *United States v. Millstone Enterprises, Inc.*, 684 F. Supp. 867 (W.D. Pa. 1988).
- Given the recent growth of state and local human trafficking task forces, and the ability of wiretap evidence to spare victim-witnesses the burden of confronting their exploiters, we must ensure that this powerful investigative tool remains at the disposal of law enforcement officials.
- The Justice for Victims of Trafficking Act would clarify that the principle prosecuting attorney of a State or its political subdivision may obtain a wiretap warrant in a state court pursuant to a showing of probable cause that the wiretap will provide evidence of a crime of human trafficking, child sexual exploitation, or child pornography production.
- The Justice for Victims of Trafficking Act also extends federal wiretap authority to cover all human trafficking offenses, specifically peonage, involuntary servitude, forced labor, child sexual exploitation, child pornography production, slavery and involuntary servitude.

### **Section 107. Enhancing Human Trafficking Reporting.**

- The first point of contact for many human trafficking victims is a Federal, State, or local law enforcement official. However, despite the violent and degrading nature of human trafficking, it is not currently required to be classified as a Part I Violent Crime (the most serious classification) for purposes of the FBI's Uniform Crime Reporting (UCR) Program.
- This section will encourage law enforcement agencies to investigate and report human trafficking activity by classifying this crime as a Part I Violent Crime and requiring it to be included in the calculation of index crime rates.

### **Section 108. Reducing Demand for Sex Trafficking.**

- The Trafficking Victims Protection Act (TVPA) defines a sex trafficker as a person who “knowingly—recruits, entices, harbors, transports, provides, obtains, or maintains by any means a person...knowing, or in reckless disregard of the fact, that means of force, threats of force, fraud, coercion. . . or any combination of such means 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.”
- While use of the word “obtains” in the current statute has been correctly interpreted to encompass those who purchase illicit sexual acts from trafficking victims, some confusion persists.
- In *United States vs. Jungers*, the Eighth Circuit ruled that 18 U.S. 1591 applied to persons who purchase illicit sexual acts with trafficking victims after the United States District Court for the District of South Dakota erroneously granted motions to acquit these buyers in two separate cases.
- The section strengthens the Trafficking Victims Protection Act by adding the words “solicits or patronizes” to the sex trafficking statute— making absolutely clear for judges, juries, prosecutors, and law enforcement officials that criminals who purchase sexual acts from human trafficking victims can and should be arrested, prosecuted, and convicted as sex trafficking offenders.

**Section 109. Sense of Congress.**

- Expresses the Sense of Congress that criminals who purchase sexual acts from human trafficking victims should be arrested, prosecuted, and convicted as sex trafficking offenders when this is merited by the facts of a particular case.

**Section 110. Using Existing task Forces to Target Offenders Who Exploit Children.**

- Leverages existing resources by directing federally funded law enforcement task forces that are part of the Innocence Lost National Initiative to focus on fighting demand for human trafficking through the investigation, arrest, and prosecution of persons who purchase sexual acts with human trafficking victims.
- Requires the Attorney General to direct all components and task forces with jurisdiction to investigate and prosecute child labor trafficking to engage in activities, programs, and operations to increase the capacity of these components to deter and punish child labor trafficking.

**Section 111. Targeting Child Predators.**

- Clarifies that those who knowingly transport a child in interstate or foreign commerce for the purpose of child pornography production have engaged in illicit sexual activity for purposes of 18 U.S. §2423, whether or not the person transporting the child actually had sexual contact with the child. Predators who transport children to produce child pornography are no less culpable than other human traffickers, and should be treated as such.

- Current federal law allows interstate child predators to claim an affirmative defense under the Mann Act (18 U.S. 2423) where they can show, by a preponderance of the evidence (more likely than not), that they believed the person with whom they engaged in a commercial sex act was 18 years of age or older.
- This section would increase the standard for claiming this affirmative defense—requiring these predators to show, by clear and convincing evidence (highly and substantially more probable than not), that they believed the victim to be 18 years of age or older.
- This provision will ensure that child predators responding to prostitution advertisements or internet message boards cannot disclaim knowledge of a child’s age merely because the child is falsely listed as 18 or older.

**Section 112. Monitoring All Human Traffickers as Violent Criminals.**

- Clarifies that all federal crimes of human trafficking should be treated as crimes of violence for purposes of federal pre-trial release and detention. This will ensure that prosecutors, law enforcement, and judges have the tools they need to prevent dangerous human traffickers from targeting victim-witnesses for intimidation and reprisal.

**Section 113. Crime Victims’ Rights.**

- Amends the Crime Victims' Rights Act to provide victims with the right to be informed in a timely manner of any plea agreement or deferred prosecution agreement.
- Clarifies that a victim whose rights under the Crime Victims’ Rights Act have been denied by the district court (e.g., a victim who was not allowed to speak at the defendant’s sentencing) and who seeks relief in the appellate court will have his or her appeal subject to the ordinary appellate standard of review (legal error or abuse of discretion), rather than the higher standard traditionally used to review petitions for writs of mandamus (“clear and indisputable error”). In its four-year review of the effectiveness of the Crime Victim’s Rights Act (CVRA), the Government Accountability Office (GAO) noted that the Courts of Appeals have applied differing standards of review to crime victims’ petitions. Some Courts of Appeals have restricted to review to only “clear and indisputable error.” But a number of Courts of Appeals have given crime victims ordinary appellate review. Ordinary appellate review is what Congress intended, as the legislative history to the CVRA makes clear.
- Clarifies that crime victims should be informed of their rights under the CVRA, notified of the services available to them, and provided with the contact information of the DOJ Office of the Victims’ Rights Ombudsman.

**Section 114. Combat Human Trafficking Act.**

- Encourages the prosecution of buyers of sex acts involving trafficking victims and the seeking and ordering of restitution for trafficking victims by: directing the Department of Justice to ensure that each anti-human trafficking training program it offers includes training on effective methods for investigating and prosecuting the buyers of sex acts involving trafficking victims; and seeking restitution for victims of sex trafficking. This provision responds to an October 2014 study by The Human Trafficking Pro Bono Legal Center that found that federal prosecutors did not seek restitution in 37% of qualifying cases brought between 2009 and 2012. When the prosecutor did not seek restitution, it was granted in only 10% of cases.
- Directs the federal Judiciary to provide training to judges on ordering restitution for the victims of sex trafficking.
- Requires the Bureau of Justice Statistics to prepare an annual report on the number of arrests, prosecutions, convictions and lengths of sentences regarding sex trafficking offenses prosecuted in state courts.
- Establishes a minimum period of five years of supervised release for a person who conspires to violate the commercial sex trafficking statute (§ 1591), thereby making conspirators subject to the same term of supervised release as those convicted of attempting to violate the statute or of violating the statute.

#### **Section 115. Survivors of Human Trafficking Empowerment Act.**

- Establishes a United States Advisory Council on Human Trafficking, comprised of not less than eight survivors of human trafficking. This council will make recommendations to the United States Government regarding anti-trafficking strategies, and will serve as a non-governmental advisory body to the Senior Policy Operating Group (SPOG) in the Department of State's Trafficking in Persons Office (TIP).

#### **Section 116. Brining Missing Children Home Act.**

- Requires law enforcement organizations who file missing children reports with the National Crime Information Center (NCIC) to include a recent photograph of the missing child in their report, where available, and would require the National Center for Missing and Exploited Children (NCMEC) to be notified of each report received relating to a child reported missing from a foster care family home or childcare institution.

#### **Section 117. Grant Accountability.**

- Allows the DOJ Inspector General to conduct audits of grant recipients under the bill in order to prevent waste, fraud, and abuse of funds by grantees.
- Prohibits grantees under the bill with unresolved audit findings from receiving grant funds for a 2-year period.
- Gives grantee priority to eligible entities that have not had an unresolved audit finding for the previous 3-years.

- Ensures that grantees under the bill who have improperly received funds are required to reimburse the Federal Government in an amount equal to the improper award.
- Prohibits non-profit organizations that hold money in offshore accounts from receiving Justice for Victims of Trafficking Act funds.
- Prohibits the use of Justice for Victims of Trafficking Act funds for conference expenditures of more than \$20,000, unless the Deputy Attorney General or appropriate Assistant Attorney General provides written authorization of the expenditure.
- Requires annual reports to the House and Senate Judiciary and Appropriations Committees detailing the use of Justice for Victims of Trafficking Act grant funds, and the results of any relevant audits.

## *TITLE II—COMBATTING HUMAN TRAFFICKING*

### **Section 201. Amendments to the Runaway and Homeless Youth Act**

- Enables the Secretary of Health and Human Services to apply existing grant resources to train relevant staff on the effects of human trafficking in runaway and homeless youth victims, and for developing state-wide strategies to serve such youth.
- Allows the secretary to utilize the Street Outreach Program to provide street-based services for runaway and homeless youth who are victims of trafficking.

### **Section 211. Response to Victims of Child Sex Trafficking**

- Current law does not specifically mention “child sex trafficking” as one of the categories of crimes covered by the National Center for Missing and Exploited Children’s (NCMEC) tipline– even though NCMEC encounters child victims of sex trafficking and currently uses this term on its website in order to encourage the public’s reporting of these types of crimes. Instead, the statute uses the term “child prostitution”, which we know does not fully and accurately capture these types of crimes against children,
- This section would correct this problem by adding the phrase “child sex trafficking, including child prostitution” to the Section b(1)(p) of the Missing Children’s Assistance Act.

### **Section 221. Victim of Trafficking Defined.**

- Incorporates the definition of “victim of trafficking” in Section 103 of the Trafficking Victims Protection Act of 2000 as the definition for that phrase in sections 222-224 of this legislation.

**Section 222. Interagency Task Force Report on Child Trafficking Primary Prevention.**

- Directs the Interagency Task Force to Monitor and Combat Trafficking, established under the Trafficking Victims Protection Act of 2000 (TVPA), to survey Federal and state activities to prevent children from becoming trafficking victims; review academic literature on deterring individuals from committing trafficking offenses and preventing children from becoming victims; and identify best practices and strategies for prevention, as well as identify any current gaps in research and data that would be helpful to develop effective prevention strategies.

**Section 223. GAO Report on Intervention.**

- Requires the Government Accountability Office to submit a report to Congress that includes information on Federal and state law enforcement agencies to combat trafficking in the U.S., including information on each available Federal grant program intended to combat human trafficking or assist victims of trafficking.

**Section 224. Provision of Housing Permitted to Protect and Assist in the Recovery of Victims of Trafficking.**

- Clarifies that an existing Justice Department TVPA grant program may be used to provide housing services to trafficking victims.

*TITLE III—HERO ACT*

**Section 301. Short Title.**

- This title may be cited as the “Human Exploitation Rescue Operations Act of 2015” or the “HERO Act of 2015.”

**Section 302. HERO Act.**

- Provides express statutory authorization for the existing ICE Cyber Crimes Center (“C3”).
- C3 is a powerful tool in the fight against the sexual exploitation of children; the production, advertisement and distribution of child pornography; and child sex tourism.
- This section would authorize C3 to collaborate with the Department of Defense and the National Association to Protect Children for the purpose of recruiting, training, and hiring wounded and transitioning military veterans to serve as law enforcement officials engaged in the investigation of child exploitation cases.

- C3's Child Exploitation Section uses sophisticated investigative techniques to target violators who operate on the Internet, including the use of Web sites, e-mail, chat rooms and file-sharing applications.
- Major initiatives include the following:
  1. Operation Predator, ICE's flagship investigative initiative for targeting sexual predators, child pornographers and child sex;
  2. The National Child Victim Identification System, which was developed to assist law enforcement agencies in identifying victims of child sexual exploitation; and
  3. The Virtual Global Taskforce, an international alliance of law enforcement agencies working together to fight online child exploitation and abuse.
- In addition, ICE has joined in partnership with other agencies (including the Internet Crimes Against Children Task Forces), foreign law enforcement agencies and non-governmental organizations (such as the National Center for Missing and Exploited Children). These partnerships have enabled C3 to successfully investigate leads and assist in identifying violators and associates all over the world.