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Domestic Human Trafficking Legislation in the 113th Congress

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Summary

Legislation aimed at preventing trafficking in persons (TIP) is unambiguously part of the legislative agenda of the 113th Congress. TIP is believed to be one of the most prolific areas of contemporary criminal activity and is of significant interest to the United States as a serious human rights concern. TIP is both an international and domestic crime that involves violations of labor, public health, and human rights standards, as well as criminal law. The Trafficking Victims Protection Act (TVPA) is the primary law that addresses human trafficking. Domestically, anti-TIP efforts provided under the TVPA include protection for victims, the investigation and prosecution of trafficking offenses, and education of the public. Congress reauthorized the TVPA in March 2013 (Trafficking Victims Protection Reauthorization Act; Title XII of P.L. 113-4). While this report covers P.L. 113-4, a more complete treatment of that bill can be found in CRS Report RL34317, *Trafficking in Persons: U.S. Policy and Issues for Congress*. This report discusses TIP issues that have received legislative action or are of significant congressional interest in the 113th Congress.

The House and Senate have acted on other TIP-related bills in the 113th Congress. Since human trafficking issues intersect with many different policy areas (e.g., immigration, child welfare, the criminal justice system, missing and exploited youth), legislation to address human trafficking is varied. For example, the Fraudulent Overseas Recruitment and Trafficking Elimination Act (H.R. 3344) and Title III subsection F of the Border Security, Economic Opportunity, and Immigration Modernization Act (S. 744), as passed by the Senate, would make changes to immigration policy altering how foreign labor contractors operate to help prevent trafficking of noncitizen workers. Two bills that have been reported out of committee—the Preventing Sex Trafficking and Improving Opportunities for Youth in Foster Care Act (H.R. 4058) and the Supporting At-Risk Children Act (S. 1870)—would address trafficking prevention through the child welfare system. In addition to other provisions, the bills would require state child welfare agencies to develop and implement policies to identify, screen, and determine appropriate state actions and services for children believed to be victims of sex trafficking or at risk of being victims.

The Stop Exploitation Through Trafficking Act (H.R. 3610/S. 1733) and the SAVE [Stop Advertising Victims of Exploitation] Act of 2014 (H.R. 4225) would amend criminal justice policy in an attempt to obstruct human trafficking. H.R. 3610, as reported, and S. 1733 would incentivize states to enact safe harbor legislation—legislation providing that children who were found in prostitution would be treated as victims rather than perpetrators—and increase restitution amounts for victims. H.R. 4225 would additionally provide penalties for knowingly advertising or knowingly selling advertising that offers certain commercial sex acts. Other bills adopt a multi-prong approach to anti-TIP efforts. The Justice for Victims of Trafficking Act of 2013 (H.R. 3530, as ordered reported, and S. 1738) would create new grant programs for law enforcement and victims services, and would amend the criminal code (Title 18 of the U.S. Code) to create new crimes and enhance criminal penalties for certain trafficking-related activities. The International Megan’s Law (H.R. 4573), as reported, would create a new center in DHS that would be responsible for possibly notifying the destination country of international travel by child-sex offenders.

The report accompanies CRS Report RL34317, *Trafficking in Persons: U.S. Policy and Issues for Congress*, by Alison Siskin and Liana Rosen and CRS Report R41878, *Sex Trafficking of Children in the United States: Overview and Issues for Congress*, by Kristin Finklea, Adrienne L. Fernandes-Alcantara, and Alison Siskin.

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Overview

The 113th Congress has made fighting trafficking in persons (TIP) within the United States a legislative priority. TIP is believed to be one of the most prolific areas of contemporary criminal activity and is of significant interest to the United States as a serious human rights concern. TIP is both an international and domestic crime that involves violations of labor, public health, and human rights standards, as well as criminal law.

The United States is a source, transit, and destination country for men, women, and children subject to trafficking in persons.¹ In the United States, human trafficking occurs in every state, and it victimizes both U.S. citizens and noncitizens.² As many as 17,500 people are believed to be trafficked *into* the United States each year,³ and some have estimated that 100,000 U.S. citizen (USC) children are victims of trafficking *within* the United States.⁴ The trafficking of individuals within U.S. borders is commonly referred to as domestic or “internal” human trafficking. Domestic human trafficking occurs primarily for labor and most commonly in domestic service, agriculture, manufacturing, janitorial services, hotel services, construction, health and elder care, hair and nail salons, and strip club dancing. However, more investigations and prosecutions have taken place for sex trafficking offenses than for labor trafficking offenses.⁵

Noncitizens are more susceptible than U.S. citizens to labor trafficking,⁶ and more foreign victims⁷ are found in labor trafficking than in sex trafficking. Although labor trafficking can happen to U.S. citizens, significantly more U.S. citizens are found in sex trafficking than in labor trafficking.⁸ Research indicates that most of the victims of sex trafficking into and within the United States are women and children. In addition, migrant labor camps tend to be common settings for labor exploitation and domestic trafficking.⁹ Domestically, anti-TIP efforts include protection for victims, education of the public, and the investigation and prosecution of

¹ U.S. Department of State, *Trafficking in Persons Report, FY2012*, June 2013, p. 381.

² Human Smuggling and Trafficking Center, *Domestic Human Trafficking: An Internal Issue*, Washington, DC, December 2008, p. 2, <http://www.state.gov/documents/organization/113612.pdf>.

³ This is the most recent U.S. government estimate of those who enter the United States and end up in trafficking situations. For more on the estimates see CRS Report RL34317, *Trafficking in Persons: U.S. Policy and Issues for Congress*, by Alison Siskin and Liana Rosen. Department of Justice, Department of Health and Human Services, Department of State, Department of Labor, Department of Homeland Security, and U.S. Agency of International Development, *Assessment of U.S. Government Efforts to Combat Trafficking in Persons*, June 2004, p. 4.

⁴ For a discussion of the estimates of U.S. citizen children who are victims of trafficking, see CRS Report R41878, *Sex Trafficking of Children in the United States: Overview and Issues for Congress*, by Kristin Finklea, Adrienne L. Fernandes-Alcantara, and Alison Siskin.

⁵ U.S. Department of State, *Trafficking in Persons Report, FY2011*, June 2012, p. 360.

⁶ Human Smuggling and Trafficking Center, *Domestic Human Trafficking: An Internal Issue*, Washington, DC, December 2008, pp. 3-6, <http://www.state.gov/documents/organization/113612.pdf>.

⁷ Foreign victims do not include lawful permanent residents (LPRs). LPRs are foreign nationals who live permanently in the United States and are also called immigrants. For the purposes of discussing trafficking victims in the United States, LPRs are grouped with U.S. citizens.

⁸ U.S. Department of State, *Trafficking in Persons Report, FY2009*, June 2010, p. 338.

⁹ Internal human trafficking of migrant labor primarily occurs in the Southeast and Central regions of the United States, although such conduct has been identified in other places. Human Smuggling and Trafficking Center, *Domestic Human Trafficking: An Internal Issue*, Washington, DC, December 2008, pp. 3-6, <http://www.state.gov/documents/organization/113612.pdf>.

trafficking offenses. The Departments of Justice (DOJ), Health and Human Services (HHS), and Labor (DOL) have programs or administer grants to other entities to provide assistance specific to the needs of trafficking victims. This assistance includes temporary housing, independent living skills, cultural orientation, transportation, job training, mental health counseling, and legal assistance. Both HHS and the Department of Homeland Security (DHS) administer public awareness campaigns on recognizing human trafficking victims. In addition, at the federal level, the majority of the cases are investigated by agents in DOJ's Federal Bureau of Investigation (FBI) and DHS's U.S. Immigration and Customs Enforcement (ICE),¹⁰ who coordinate as appropriate; the cases are prosecuted by DOJ.¹¹

For more than a decade, Congress has been actively engaged in anti-human-trafficking efforts within the United States. Through the Trafficking Victims Protection Act of 2000 (TVPA, Division A of P.L. 106-386) and its four reauthorizations (TVPRAs),¹² Congress has aimed to eliminate human trafficking within the United States by creating domestic grant programs for both victims and law enforcement, creating new criminal laws, and conducting oversight on the effectiveness and implications of U.S. anti-TIP policy. Most recently, in March 2013, the TVPA's grant programs were reauthorized through FY2017 in the Violence Against Women Reauthorization Act of 2013 (Title XII, P.L. 113-4).

This report discusses domestic human-trafficking-related issues that have received legislative action or are of significant congressional interest in the 113th Congress. The most recent reauthorization of the TVPA is not reviewed in detail in this report.¹³ This report accompanies CRS Report RL34317, *Trafficking in Persons: U.S. Policy and Issues for Congress*, by Alison Siskin and Liana Rosen and CRS Report R41878, *Sex Trafficking of Children in the United States: Overview and Issues for Congress*, by Kristin Finklea, Adrienne L. Fernandes-Alcantara, and Alison Siskin.

Definition of Human Trafficking

Federal statutes do not formally define human trafficking or trafficking in persons. Instead, the TVPA defines “severe forms of trafficking in persons” to mean,

¹⁰ Both agencies also provide training to federal and state law enforcement on trafficking victim identification. U.S. Department of State, *Trafficking in Persons Report Fiscal Year 2012*.

¹¹ The cases are prosecuted by the U.S. Attorney's Offices, as well as by two specialized units—the Civil Rights Division's Human Trafficking Prosecution Unit (HTPU), which oversees prosecutions involving labor trafficking and sex trafficking of adults, and the Criminal Division's Child Exploitation and Obscenity Section (CEOS), which specializes in prosecuting child sex trafficking and child sex tourism. U.S. Department of State, *Trafficking in Persons Report Fiscal Year 2012*, p. 382.

¹² Prior to the most recent authorization in 2013 (P.L. 113-4), the TVPA was reauthorized in 2003 by the Trafficking Victims Reauthorization Act of 2003 (P.L. 108-193); in 2005 by the Trafficking Victims Reauthorization Act of 2005 (P.L. 109-164); and in 2008 by the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (P.L. 110-547). Other legislation has included anti-trafficking provisions. For a discussion of anti-trafficking legislation, see Appendix A in CRS Report RL34317, *Trafficking in Persons: U.S. Policy and Issues for Congress*, by Alison Siskin and Liana Rosen.

¹³ For a section-by-section analysis of trafficking-related provisions in P.L. 113-4, see the section entitled, “Enacted Legislation in the 113th Congress: The TVPA Reauthorization,” in CRS Report RL34317, *Trafficking in Persons: U.S. Policy and Issues for Congress*, by Alison Siskin and Liana Rosen.

- sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

There appears to be a consensus that prostitution by minors fits the definition of “severe forms of human trafficking” as defined under the TVPA.

Other TVPA Definitions

The TVPA provides other definitions relevant to trafficking. Some of these definitions are referenced in the pending legislation.

- “Sex trafficking”: The term means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.
- “Victim of Trafficking”: The term means a person subjected to an act or practice described under the definitions of “severe forms of trafficking in persons” or “sex trafficking.”
- “Commercial Sex Act”: The term means any sex act on account of which anything of value is given or received by any person.
- “Coercion”: The term means (1) threats of serious harm to or physical restraint against any person; (2) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm or physical restraint against any person; or (3) the abuse or threatened abuse of the legal process.

Select Anti-Trafficking Legislation in the 113th Congress

This report examines the trafficking-related provisions in legislation that has at least been reported out of committee in the 113th Congress. Where applicable, it discusses companion legislation that may not have been considered in committee or other legislation that has received significant Congressional interest. The legislation includes the following:

- The Trafficking Victims Protection Reauthorization Act of 2013 (Title XII of P.L. 113-4) enacted on March 7, 2013. This act was part of the larger The Violence Against Women Reauthorization Act of 2013.
- The E. Clay Shaw, Jr. Missing Children’s Assistance Reauthorization Act (P.L. 113-38), enacted on September 30, 2013.
- The Fraudulent Overseas Recruitment and Trafficking Elimination Act (H.R. 3344).¹⁴
- The Justice for Victims of Trafficking Act of 2013 (H.R. 3530), placed on the House calendar on May 15, 2014. The companion legislation (S. 1738) has not been taken up in committee.

¹⁴ Subtitle F of S. 744 is substantially similar to this bill.

- The Stop Exploitation Through Trafficking Act of 2013 (H.R. 3610), placed on the House calendar on May 13, 2014. The companion legislation (S. 1733) has not been taken up in committee.
- The Preventing Sex Trafficking and Improving Opportunities for Youth in Foster Care Act (H.R. 4058), as ordered reported by the House Ways and Means Committee on April 29, 2014.¹⁵
- The SAVE Act of 2014 (H.R. 4225), placed on the House calendar on May 15, 2014.
- International Megan’s Law to Prevent Demand for Child Sex Trafficking (H.R. 4573), as ordered reported by the House Foreign Affairs Committee on May 9, 2014.
- The Border Security, Economic Opportunity, and Immigration Modernization Act (S. 744), as passed by the Senate on June 27, 2013.
- The Supporting At-Risk Children Act (S. 1870), as ordered reported by the Senate Finance Committee on December 12, 2013.¹⁶

The following sections lay out issues raised in the bills. The issues are grouped under the following themes: (1) restoring victims through services and benefits, (2) unaccompanied minor trafficking victims, (3) protection of foreign national workers, (4) criminal justice, (5) improving data, (6) domestic sex trafficking of children, and (7) other issues that include inter-agency coordination and sex offender registry and notification.

Restoring Victims: Services and Benefits

In general, the trafficking business feeds on continuing demand and conditions of vulnerability, such as youth, gender, poverty, and social exclusion. Actors engaged in human trafficking range from amateur family-run organizations to sophisticated transnational organized crime syndicates. Trafficking victims are often subjected to mental and physical abuse in order to control them. Abuses may include debt bondage, social isolation, removal of identification cards and travel documents, violence, and fear of reprisals against them or their families.¹⁷

A major aspect of U.S. anti-trafficking efforts is victim assistance: providing immediate services when victims are identified and helping the victims recover from the victimization and reclaim their lives. Pending legislation (H.R. 3610/S. 1733 and H.R. 3530/S. 1738) seeks to improve victim services and provide greater access to resources for victims.

¹⁵ The accompanying committee report (H.Rept. 113-441) was filed on May 7, 2014.

¹⁶ The accompanying committee report (S.Rept. 113-137) was filed on February 6, 2014. Title II of S. 1870 is substantively identical to the Protecting Youth At-Risk for Sex Trafficking Act (S. 1878), which was introduced on December 19, 2013.

¹⁷ CRS Report RL34317, *Trafficking in Persons: U.S. Policy and Issues for Congress*, by Alison Siskin and Liana Rosen.

Adequacy of Services for Victims

One issue surrounding U.S. policy to combat human trafficking involves whether the United States provides equal treatment of all victims—foreign nationals and U.S. citizens, as well as victims of labor trafficking and sex trafficking. Related to this is whether current services are adequate to combat sex trafficking of minors in the United States (i.e., the prostitution of children). There is confusion over whether U.S. citizens, as well as noncitizens, are eligible for services under all the anti-trafficking grant programs authorized by the TVPA and whether Congress has provided funding for programs that target U.S. citizen and lawful permanent resident (LPR) victims.¹⁸ Under the TVPA, the Departments of Justice (DOJ), Health and Human Services (HHS), and Labor (DOL) have programs or administer grants to other entities to provide services to trafficking victims.¹⁹ Only the DOJ and HHS programs receive specified funding for trafficking victims services.

A related issue is the overall amount of funding for victims services; especially as the focus on sex trafficking is broadening to include minor sex trafficking victims in the United States who are U.S. citizens. Between FY2002 and FY2013, Congress appropriated approximately \$20 million each year for victim services, and the amount was increased to approximately \$28 million in FY2014. Between FY2009 and FY2013, HHS used all of its appropriated money on services for trafficking victims before the end of the fiscal year—and all of the services were provided to noncitizen victims. Notably, the most recent Department of State’s Trafficking in Persons Report (FY2012) recommends increasing funding for relevant agencies to provide victims services.²⁰ In addition, there is no targeted federal funding to support state child welfare agencies’ anti-trafficking efforts.²¹ Non-governmental organizations (NGOs) report a critical need for an increase in the overall funding for comprehensive services.²²

Recently, Congress has amended certain grant programs so that sex trafficking victims would be eligible for those programs. For example, the 2013 reauthorization of the Violence Against Women Act (P.L. 113-4) clarifies that victims’ services and legal assistance under VAWA²³ include services and assistance to victims of domestic violence, dating violence, sexual assault, or stalking *who are also victims of severe forms of trafficking in persons*.²⁴ In addition, P.L. 113-4 amended the purpose for grants to tribal governments to combat violence against women to include sex trafficking and creates a new purpose to provide services to address the needs of youth who are victims of several crimes including sex trafficking. The act also created a new tribal coalition grant program, administered by DOJ, which, among other purposes, seeks to

¹⁸ Under the TVPA, “noncitizen victims” refers to victims of human trafficking in the United States who are either on temporary visas or are illegally present (i.e., unauthorized aliens). It does not include LPRs (i.e., aliens who are lawfully in the United States on a permanent basis, often referred to as immigrants). References to U.S. citizen trafficking victims include LPR victims.

¹⁹ In addition, the Legal Services Corporation (LSC) has instructed its lawyers to provide legal assistance to trafficking victims. The LSC, established by Congress, is a private, nonprofit, federally funded corporation that helps provide legal assistance to low-income people in civil (i.e., non-criminal) matters.

²⁰ U.S. Department of State, *Trafficking in Persons Report, FY2012*, June 2013, p. 382.

²¹ U.S. Department of State, *Trafficking in Persons Report, FY2010*, June 2011, p. 375.

²² U.S. Department of State, *Trafficking in Persons Report, FY2012t*, June 2013, p. 381.

²³ For more on these grants, see CRS Report R42499, *The Violence Against Women Act: Overview, Legislation, and Federal Funding*, by Lisa N. Sacco.

²⁴ Under these provisions, severe forms of trafficking in persons is defined under Trafficking Victims Protection Act of 2000 (22 U.S.C. 7102).

enhance access to essential services for Indian women victimized by domestic and sexual violence, including sex trafficking; and to assist Indian tribes in developing and promoting state, local, and tribal law and policies that enhance best practices for responding to violent crimes against Indian women, including sex trafficking.²⁵ P.L. 113-4 also amended the grant program for state and local law enforcement's anti-trafficking programs focusing on U.S. citizen victims,²⁶ so these grants can be used for anti-trafficking programs for noncitizen victims as well.²⁷

In the same vein, pending legislation in the 113th Congress would create new programs to enhance services to trafficking victims. The Stop Exploitation Through Trafficking Act of 2013 (H.R. 3610 and S. 1733) would require, beginning in FY2017, that the Secretary of HHS make grants for a national communication system to help victims of severe forms of trafficking communicate with service providers.

The Justice for Victims of Trafficking Act of 2013 (H.R. 3530/ S. 1738) would authorize the Attorney General to make grants to an eligible entity to develop, improve, or expand domestic child human trafficking deterrence programs designed to aid victims while investigating and prosecuting the trafficking offenses. An eligible entity is a state or unit of local government that meets specified criteria.²⁸ The grants could be used to establish or enhance specialized training programs on the prevention of child trafficking for law enforcement, first responders, health care officials, child welfare officials, juvenile justice personnel, prosecutors, and judicial personnel; establish law enforcement and prosecution units dedicated to fighting trafficking of children; and establish or enhance court programs to assist child trafficking victims.²⁹

Funding for Victims Services

As discussed, the Department of State's TIP report recommends increasing funding for relevant agencies to provide victims services.³⁰ S. 1738 would require courts to impose a \$5,000 assessment³¹ on any person or entity convicted of certain criminal offenses, including trafficking,

²⁵ For more on these grants, see CRS Report R42499, *The Violence Against Women Act: Overview, Legislation, and Federal Funding*, by Lisa N. Sacco.

²⁶ This grant program was created in P.L. 109-164, §204 (42 U.S.C. 14044c(d)).

²⁷ The grant program was also modified so that funding is available for victim identification training and prioritizing cases involving minor victims of sex trafficking.

²⁸ The criteria are that the state or unit of local government:

1. has significant criminal activity involving child human trafficking;
2. has demonstrated cooperation between Federal, State, local, and, if applicable, tribal law enforcement agencies, prosecutors, and social service providers in addressing child human trafficking;
3. has developed a workable, multi-disciplinary plan to combat child human trafficking;
4. has a victim certification process for eligibility for State-administered medical care to ensure that minor victims of human trafficking who are not eligible for interim assistance under TVPA §107(b)(1)(F) are granted eligibility for, and have access to, State-administered medical care immediately upon certification; and
5. provides an assurance that, a victim of child human trafficking shall not be required to collaborate with law enforcement officers to have access to any shelter or services.

²⁹ This grant program would replace a pilot program to create residential treatment facilities for juvenile trafficking victims in the United States. The pilot program which was established in the Trafficking Victims Protection Reauthorization Act of 2005 (P.L. 109-164), was never funded.

³⁰ U.S. Department of State, *Trafficking in Persons Report, FY2012*, June 2013, p. 382.

³¹ This would be in addition to any other assessments imposed.

sexual abuse and exploitation of children, transportation of children for illegal sexual activity, and alien smuggling.³² The assessment would be paid after the person paid all court-ordered fines and orders of restitution arising from the criminal conviction on which the assessment was based. S. 1738 would put these assessments into a new “Domestic Trafficking Fund” at the federal treasury. The Attorney General and Secretary of HHS would be directed to use the new fund to award grants or enhance victims programs under the TVPA and its reauthorizations.

Alternatively, H.R. 3530 would steadily increase the cap on the existing Crime Victims Fund (CVF) over several years. The CVF, which collects a wide range of fees and assessments tied to federal crimes, was established in the mid-1980s to provide funding for state victim compensation and assistance programs. The CVF is administered by DOJ, and Congress establishes an annual obligation cap as part of the appropriations process.³³

Certification

Under the TVPA, noncitizen victims of trafficking are certified as victims by HHS and this makes them eligible for services.³⁴ U.S. citizen and LPR trafficking victims are not required to be certified by HHS, and indeed would not meet the criteria to be certified because certification applies only to foreign nationals who need an immigration status (e.g., T status or continued presence)³⁵ to remain in the United States.³⁶ Thus, an issue that has arisen is whether U.S. citizen and LPR victims are eligible for certain victims services (e.g., those funded by HHS and DOL) since they do not need to undergo certification.³⁷

S. 1738 would amend the TVPA to create a process by which the Secretary of HHS would determine that a U.S. citizen or LPR is a victim of severe forms of trafficking. This amendment would be made to the current TVPA section requiring that the Secretary of HHS and the Attorney General establish a program to assist U.S. citizen and LPR victims of severe forms of trafficking.³⁸

³² The assessment would be for the following criminal offenses: 18 U.S.C. chapters 77, 109A, 110, 117, and 8 U.S.C. §274.

³³ For further information on the CVF, see CRS Report R42672, *The Crime Victims Fund: Federal Support for Victims of Crime*, by Lisa N. Sacco.

³⁴ The programs in TVPA for noncitizen victims were created in part because under the law noncitizen victims are statutorily ineligible for many public benefits (e.g., Medicaid, housing assistance). For a discussion of noncitizen eligibility for public benefits, see CRS Report RL33809, *Noncitizen Eligibility for Federal Public Assistance: Policy Overview and Trends*, by Ruth Ellen Wasem.

³⁵ T status or T visas are given to victims of severe forms of trafficking who meet certain requirements. Continued presence is not an immigration status; it refers to the Secretary of DHS’ discretionary authority to use a variety of statutory and administrative mechanisms to ensure the alien’s continued presence in the United States. For more on T status and continued presence, see CRS Report RL34317, *Trafficking in Persons: U.S. Policy and Issues for Congress*, by Alison Siskin and Liana Rosen.

³⁶ Before certification victims are eligible for services that are funded by DOJ.

³⁷ Under the TVPA, certification appears to be required for victims receiving services though HHS and DOL. For an in-depth discussion of this issue, see CRS Report RL34317, *Trafficking in Persons: U.S. Policy and Issues for Congress*, by Alison Siskin and Liana Rosen.

³⁸ TVPA §107(f); 22 U.S.C. 7105(f).

Job Corps Program

Job Corps is an employment and job training program for 16-to-24 year olds that is administered by the Department of Labor.³⁹ H.R. 3610/S. 1733 would amend the Workforce Investment Act of 1998 to specify that victims of a severe form of trafficking (as defined in the TVPA) do not need to meet the income requirement to be eligible for the Job Corps program.⁴⁰

Restitution & Damages

Victims of human trafficking often suffer injuries that can affect them for the rest of their lives. Medical care, psychological treatment, job training, and more may be necessary to assist victims in recovering.⁴¹ Current law allows a victim of peonage, slavery, or trafficking in persons to bring a civil action against his/her perpetrator and obtain civil remedies. S. 1733 would, among other things, triple the amount that such a victim would be eligible to recover. H.R. 3610 and S. 1733 would also require the Attorney General to collect and tabulate data on mandatory restitution orders (the TVPA requires the court to order restitution—paid by the defendant to the victim—for any crime of peonage, slavery, or trafficking in persons). Also with respect to restitution for trafficking victims, S. 1738 would, among other things, increase restitution for human trafficking victims.

Unaccompanied Minor Trafficking Victims⁴²

Congress has expressed concern that unaccompanied minors attempting to enter into the United States may be victims of trafficking or may be at heightened risk of becoming trafficking victims.⁴³ Unaccompanied minors are aliens who are in the United States without a parent or guardian. The 2013 TVPA reauthorization (P.L. 113-4) contains provisions related to the custody and care of unaccompanied minor trafficking victims. P.L. 113-4 requires that the DHS Secretary create a pilot program to provide independent child advocates at immigration detention sites for child trafficking victims and other vulnerable unaccompanied alien children. In addition, P.L. 113-4 specifies that children in the custody of HHS who receive U status⁴⁴ (for crime victims) are

³⁹ For further information about the Job Corps program, see CRS Report R40929, *Vulnerable Youth: Employment and Job Training Programs*, by Adrienne L. Fernandes-Alcantara.

⁴⁰ One of the eligibility requirements for the job corps program is that the individual be a low-income individual. 29 U.S.C. §2884(2).

⁴¹ Polaris Project and the Law Firm of Fulbright & Jaworski L.L.P., *Maximizing Restitution Awards for Labor and Sex Trafficking Victims, A Guide for Federal Prosecutors and Pro Bono Attorneys*, 2013, p. 5, http://www.americanbar.org/content/dam/aba/multimedia/trafficking_task_force/resources/Maximizing_Restitution_Awards2013.authcheckdam.pdf.

⁴² For more details on the provisions discussed in this section, see CRS Report RL34317, *Trafficking in Persons: U.S. Policy and Issues for Congress*, by Alison Siskin and Liana Rosen and CRS Report R43097, *Comprehensive Immigration Reform in the 113th Congress: Major Provisions in Senate-Passed S. 744*, by Ruth Ellen Wasem.

⁴³ For example, see U.S. Congress, House of Representatives, *Department of Homeland Security Appropriations Bill, 2012*, report to accompany H.R. 2017, 112th Cong., 1st sess., May 26, 2011, H.Rept. 112-91.

⁴⁴ U status/visa is for victims of certain crimes who meet established criteria. While the majority of foreign nationals with U status are victims of domestic violence, trafficking victims may be eligible for U status. For more on U status, see CRS Report R42477, *Immigration Provisions of the Violence Against Women Act (VAWA)*, by William A. Kandel and CRS Report RL34317, *Trafficking in Persons: U.S. Policy and Issues for Congress*, by Alison Siskin and Liana Rosen.

eligible for programs and services to the same extent as refugees, and the federal government will reimburse states for foster care provided to these children.

Beyond these newly enacted protections, S. 744 contains additional provisions that seek to protect unaccompanied alien children from becoming victims of human trafficking. The bill would transfer, from HHS to DOJ, the responsibility for ensuring, to the greatest extent possible, that unaccompanied alien children in DHS custody have counsel to represent them and access to child advocates. It would require that the Secretary of DHS, in consultation with child welfare experts, create mandatory training for DHS Customs and Border Protection (CBP) personnel and other personnel who come in contact with unaccompanied alien children. In addition, the bill would direct HHS to hire child welfare professionals to provide assistance in no fewer than seven of the CBP offices or stations with the largest number of unaccompanied minors. Such professionals would be required to have trauma-centered and developmentally appropriate interviewing expertise and, among other duties, would be responsible for screening unaccompanied alien children to ensure that they are not trafficking victims, among other items.

Protecting Foreign National Workers⁴⁵

Some Members of Congress have argued that migrant workers and other foreign workers are especially vulnerable to exploitation at the hands of foreign labor contractors, smugglers, and human traffickers.⁴⁶ Contractors often play a critical role in the labor migration process by matching willing workers with willing employers. Yet because many prospective migrants depend on such “middle men” to help them enter the United States (legally or otherwise) and to connect them with employers, contractors may take advantage of migrant workers to extract unfair payments or other such concessions.

Current law has outlined some protections for foreign workers. The 2013 TVPA reauthorization (P.L. 113-4), requires that a video be shown in consular waiting rooms to provide information on the rights and responsibilities of employees under U.S. immigration, labor, and employment law. Further, P.L. 113-4 made it a criminal offense to knowingly destroy, or for a period of more than 48 hours, conceal, remove, confiscate, or possess another person’s passport, or immigration or personal identification documents in the course of committing or attempting to commit the offense of fraud in foreign labor contracting, alien smuggling, or in order to unlawfully maintain, prevent, or restrict the labor or services of the individual.⁴⁷

S. 744,⁷ as passed by the Senate, and H.R. 3344 would establish new requirements to regulate foreign labor contractors and to combat human trafficking. The bill would require foreign labor contractors to provide workers with written information (in English and the worker’s native language) about the terms and conditions of employment, including information about the worker’s visa, among other items. Employers and contractors would be prohibited from discriminating against workers on the basis of race, sex, national origin, religion, age, disability, or other similar factors; and could not charge workers a fee for contracting activity.

⁴⁵ Parts of this section are adapted from CRS Report R43097, *Comprehensive Immigration Reform in the 113th Congress: Major Provisions in Senate-Passed S. 744*, by Ruth Ellen Wasem, p. 49.

⁴⁶ See for example, U.S. Congress, Senate Committee on Foreign Relations, *The Next Ten Years in the Fight Against Human Trafficking*, 112th Cong., 2nd sess., July 17, 2012.

⁴⁷ 18 U.S.C. §1597.

To facilitate enforcement of these provisions, contractors would be required to register with the Department of Labor (DOL) every two years, to provide annual reports on their activities, and to post a bond ensuring their ability to fulfill their responsibilities. The Secretary of Labor would maintain a list of registered contractors, and the Secretary of State would provide relevant information to certain nonimmigrant visa applicants. DOL would establish procedures to investigate complaints and impose civil fines against noncompliant contractors or employers; and individuals also could sue contractors for civil damages. Employers would be required to use registered contractors.

Criminal Justice

While the United States has a number of statutes that can and have been used to combat human trafficking, law enforcement and policy makers have been interested in ways to enhance investigations and prosecutions of individuals who commit trafficking offenses. In general, federal law enforcement has targeted criminal networks that may involve individuals operating in a number of capacities.

In an effort to help law enforcement combat the advertising side of commercial sexual exploitation, H.R. 4225 aims to permit the prosecution of entities (including websites) that “knowingly” advertise a person, knowing, or in reckless disregard of the fact, that force or fraud has been used to cause the person to engage in a commercial sex act or that the victim is a minor. For entities that have not advertised, but “benefit” from participating in a venture which has engaged in such advertising, reckless disregard of the fact that force or fraud has been used or that a minor was involved would not be enough; they would have to *know* either fact exists. In addition, in order to enhance law enforcement targeting of criminal enterprises engaged in human trafficking, S. 1738 would, among other things, set forth provisions prohibiting “aggravated human trafficking racketeering.” S. 1738 would also expand state and local prosecutors’ ability to obtain wiretap orders from state courts for certain investigations by including human trafficking, child sexual exploitation, and child pornography production as allowable investigations. In addition to expanding law enforcement’s “toolbox” for investigating sex trafficking, S. 1738 would enhance penalties for certain crimes involving human trafficking, child exploitation, and repeat sex offenders. The bills would also revise the statutes related to travel for purposes of engaging in illicit sexual conduct. Such provisions are intended to help law enforcement combat sex tourism.⁴⁸

Reducing Demand

Experts widely agree that any efforts to reduce the prevalence of trafficking should address not only the supply, but also the *demand*.⁴⁹ While statutes exist to allow federal law enforcement to prosecute the buyers of commercial sex, federal legislation has focused more extensively on penalizing the traffickers and has placed less emphasis on the buyers. To increase focus on

⁴⁸ Similar provisions were in the introduced version of H.R. 3530.

⁴⁹ Polaris Project, Why Trafficking Exists, <http://www.polarisproject.org/human-trafficking/overview/why-trafficking-exists>. The Polaris Project is a nonprofit organization that works on human trafficking issues. See also Shared Hope International, DEMAND. A Comparative Examination of Sex Tourism and Trafficking in Jamaica, Japan, the Netherlands, and the United States.

combating the demand for sex trafficking, H.R. 3530 and S. 1738 would, among other things, prohibit the patronizing or soliciting of commercial sex (or benefiting from these activities).⁵⁰ These bills would also require the Attorney General to ensure that working groups and task forces within the Innocence Lost National Initiative work to enhance state and local law enforcement investigative capabilities to detect, investigate, and prosecute individuals who patronize or solicit children for sex. The Innocence Lost National Initiative is a partnership between the FBI, DOJ's Child Exploitation and Obscenity Section and the National Center for Missing and Exploited Children (NCMEC),⁵¹ that develops task forces and working groups to recover children who are prostituted and prosecutes perpetrators of child sex trafficking.⁵²

Improving Data

Due to the nature of human trafficking, it is difficult to estimate the number of trafficking victims in the United States. Despite mandates in the TVPA, data on trafficking crimes or number of victims is not uniformly collected by federal, state, and local law enforcement agencies.⁵³ In 2012, the FBI began developing software to capture all human trafficking cases and to ensure uniform reporting at the federal and state levels.⁵⁴

S. 744, as passed by the Senate, would create new reporting requirements for human trafficking offenses in the FBI's Uniform Crime Reports, and would make human trafficking a Part I crime⁵⁵ for purposes of calculating funding under the Edward Byrne Memorial Justice Assistance Grant Program.⁵⁶

Domestic Sex Trafficking of Children

Domestic sex trafficking of children is trafficking within the United States involving a commercial sex act in which the person induced to perform such act has not attained 18 years of

⁵⁰ The amendment would be made to the criminal code concerning sex trafficking of children. 18 U.S.C. §1591.

⁵¹ NCMEC is a non-profit, federally-funded organization that operates the national clearinghouse on missing and sexually exploited children.

⁵² For more on the Innocence Lost Initiative, see Federal Bureau of Investigation, *Violent Crimes Against Children – Innocence Lost*, http://www.fbi.gov/about-us/investigate/vc_majorthefts/cac/innocencelost.

⁵³ For example, P.L. 109-164 required biennial reporting on human trafficking, using available data from state and local authorities. In response to this requirement, DOJ funded the creation of the Human Trafficking Reporting System (HTRS). The data in the HTRS come from investigations opened by federally funded human trafficking task forces, and do not represent all incidences of human trafficking nationwide. In January 2008, the task forces began entering data into HTRS. However, between FY2007 and FY2013, the number of DOJ funded task forces decreased from 42 to 16. Tracey Kyckelhahn, Allen J. Beck, and Thomas Cohen, *Characteristics of Suspected Human Trafficking Incidents, 2007-08*, Department of Justice, Office of Justice Programs, Bureau of Justice Statistics Special Report, Washington, DC, January 2009, pp. 1-2; and U.S. Department of State, *Trafficking in Persons Report, FY2012*, June 2013, p. 383.

⁵⁴ U.S. Department of State, *Trafficking in Persons Report FY2012*, June 2013, pp. 381-382.

⁵⁵ Part I offenses (on which the FBI collects data on the number of offenses known to police, the number and characteristics of persons arrested, and the number of clearances—cases solved through arrest or exceptional means) include murder and nonnegligent manslaughter, forcible rape, robbery, aggravated assault, burglary, larceny-theft, motor vehicle theft, and arson. For more on the UCR program and Part I crimes, see Federal Bureau of Investigation, *UCR General FAQs*, http://www.fbi.gov/about-us/cjis/ucr/frequently-asked-questions/ucr_faqs.

⁵⁶ S. 744 §1119. For more on the Edward Byrne Memorial Justice Assistance Grant Program, see CRS Report RS22416, *Edward Byrne Memorial Justice Assistance Grant (JAG) Program*, by Nathan James.

age.⁵⁷ Regardless of whether a child is believed to have consented to sex or whether the child represents himself/herself as an adult, the child is considered a trafficking victim under federal law.⁵⁸ The exact number of child victims of sex trafficking in the United States is unknown because of challenges in defining the population and varying methodologies used to arrive at estimates. Most of the victims are U.S. citizens and LPRs.⁵⁹

Commercial sexual exploitation of children appears to be fueled by a variety of individual (e.g., homelessness or history of child abuse), relationship (e.g., family conflict or dysfunction), community (e.g., peer pressure or gang involvement), and societal (e.g., sexualization of children) variables.⁶⁰ These factors may interact in ways that can increase the risk of exploitation. As part of its 2013 report on child sex trafficking, the National Academy of Sciences recommended that multiple stakeholders—such as the federal government, state and local governments, academic and research institutions, foundations and nongovernmental organizations, and the commercial sector—collaborate to address this issue.⁶¹

The 113th Congress has taken up legislation to address sex trafficking of children. The legislation touches on a variety of policy areas (e.g., the child welfare system, juvenile justice, runaway and homeless youth). Congress passed H.R. 3092 (enacted as P.L. 113-38), which requires the federal Missing and Exploited Children’s program to provide assistance to law enforcement on child sex trafficking. Other legislation (H.R. 3530 and S. 1738) would direct funds to provide support to child victims of pornography and human trafficking, and require reporting of children missing from foster care. In addition, two bills under consideration (S. 1870 and H.R. 4058) would require state child welfare agencies and HHS to respond to sex trafficking of children, including those who may or may not be in foster care. Further, another bill (S. 1733 and its companion, H.R. 3610) would, in different ways, incentivize states to enact “safe harbor laws” that would discourage charging minors for prostitution or sex trafficking offenses, and encourage the diversion of these minors to child protective services.

Missing and Exploited Children

The Missing and Exploited Children’s (MEC) program is administered by the Department of Justice, and authorizes supports for children who are missing and/or sexually exploited. This assistance is provided primarily to the National Center for Missing and Exploited Children

⁵⁷ For more information on sex trafficking of children in the United States, see CRS Report R41878, *Sex Trafficking of Children in the United States: Overview and Issues for Congress*, by Kristin Finklea, Adrienne L. Fernandes-Alcantara, and Alison Siskin.

⁵⁸ Under 18 U.S.C. §1591(c), the prosecution is relieved of proving the defendant “knew” the victim was under 18 years old if he had a “reasonable opportunity” to observe the victim. However, the lower courts are split on whether this alternative mental state requirement relieves the government of proving both “knowing” and “reckless disregard” in §1591(a) or just the “knowing” requirement. Compare *United States v. Robinson*, 702 F.3d 22, 31-32 (2d Cir. 2012) (holding that subsection (c) relieves both requirements where the defendant had opportunity to observe) with *United States v. Wilson*, No. 10-60101-CR, 2010 WL 2991561, *7 (S.D. Fl July 27, 2010) (holding that subsection (c) only relieves the knowing, and not the reckless disregard, requirement).

⁵⁹ Linda A. Smith, Samantha Headly Vardaman, and Melissa A. Snow, *The National Report on Domestic Minor Sex Trafficking: America’s Prostituted Children*, Shared Hope International, Arlington, VA, May 2009, http://www.sharedhope.org/files/SHI_National_Report_on_DMST_2009.pdf.

⁶⁰ Ellen Wright Clayton, Richard D. Krugman, and Patti Simon, eds., *Confronting Commercial Sexual Exploitation and Sex Trafficking of Minors in the United States*, National Academy of Sciences, 2013, pp. 42-43.

⁶¹ *Ibid.*, pp. 337-342.

(NCMEC), a non-profit organization that operates the national clearinghouse on missing and sexually exploited children.⁶²

The E. Clay Shaw, Jr. Missing Children’s Assistance Reauthorization Act (P.L. 113-38) reauthorized the MEC program. The law adds a new requirement for NCMEC that pertains to child sex trafficking. Specifically, the law directs NCMEC to provide technical assistance to law enforcement agencies and first responders in identifying, locating, and recovering victims of, and children at risk for, child sex trafficking. Although this responsibility was not specified in the law as it existed before P.L. 113-38 was enacted, generally such activities have been carried out by NCMEC in recent years.

Children’s Advocacy Centers

Subtitle A of the Victims of Child Abuse Act supports the expansion and improvement of Children’s Advocacy Centers (CACs). CACs are intended to coordinate a multi-disciplinary response to child abuse (e.g., law enforcement, child protection/social service, medical, mental health) in a manner that ensures child abuse victims (and any non-offending family members) receive the support services they need and do not experience the investigation of child abuse as an added trauma. CACs are located in all 50 states and the District of Columbia.⁶³ The law also requires the establishment and support of four regional children’s advocacy centers to increase the number of communities with CACs, help improve their practice, and support development of state chapter organizations for CACs. The law funds training and technical assistance to attorneys and others involved in criminal prosecution of child abuse.

H.R. 3530 and S. 1738 would amend Subtitle A of the Victims of Child Abuse Act by expanding the definition of “child abuse” used by CACs—meaning physical or sexual abuse or neglect of a child—to include the production of child pornography⁶⁴ and human trafficking. The bills would enable DOJ to make grants for the development and implementation of specialized programs to identify and provide direct services to victims of child pornography. In addition, H.R. 3530 would direct grantees receiving funding for CACs or training and technical assistance to meet certain oversight and accountability requirements, and to disclose other sources of federal funding. H.R. 3530 would also reauthorize funding for CACs, the regional children’s advocacy centers, and training and technical assistance through FY2019.

Response by the Child Welfare System

State and local child welfare agencies are responsible for carrying out child welfare policies that are intended to promote the safety, well-being, and permanency of all children. Child victims of sex trafficking may come to the attention of the child welfare agency if they are reported to the agency’s child protective services (CPS) hotline. In addition, children in foster care—who are placed out of their homes typically due to abuse or neglect by their parents or caregivers—may be

⁶² The MEC program supports a range of activities authorized under the Missing Children’s Assistance Act and other laws. For further information, see CRS Report RL34050, *Missing and Exploited Children: Background, Policies, and Issues*, by Adrienne L. Fernandes-Alcantara.

⁶³ For further information about Children’s Advocacy Centers, see CRS Report R43458, *Child Welfare: An Overview of Federal Programs and Their Current Funding*, by Emilie Stoltzfus.

⁶⁴ The production of child pornography for profit could be a human trafficking violation.

vulnerable to trafficking. Youth who run away from foster care are perceived to be especially susceptible to this type of victimization. The capacity for state and local child welfare agencies to respond to the needs of sex trafficking victims is believed to be limited. This may be due, in part, to inadequate training, insufficient resources, high caseloads, and the perception that victims should be handled in the juvenile justice system.⁶⁵ In addition, states may not have mechanisms in place to “screen in” cases involving children who are sex trafficked because the perpetrator involved is not the child’s parent or caregiver as these terms are defined under state law.⁶⁶

Both S. 1870⁶⁷ and H.R. 4058,⁶⁸ would specify a role for state child welfare agencies to respond to child sex trafficking. The bills refer to the definition of “sex trafficking” under Section 103(10) of the TVPA, and the definition of “severe forms of trafficking in persons” as it relates to victims of sex trafficking under Section 103(9)(A).⁶⁹ The bills also include other amendments to child welfare provisions that do not touch on sex trafficking.

Identifying and Serving Victims

S. 1870 and H.R. 4058 would amend Title IV-E of the Social Security Act, which authorizes partial federal reimbursement to states for the cost of providing foster care maintenance payments to eligible children in foster care. To be eligible for Title IV-E support, a state, territory, or tribe must have a Title IV-E plan that is approved by HHS. The plan must provide that the state, tribal, or territorial child welfare agency that operates the Title IV-E program adhere to all federal requirements related to providing direct financial assistance to all eligible children, including those related to ensuring the safety, permanence, and well-being of children receiving Title IV-E assistance.⁷⁰

The bills would require state child welfare agencies to develop and implement policies and procedures to identify, screen, and determine appropriate state actions and services for any child believed to be a victim of sex trafficking or at risk of being a sex trafficking victim. Under S. 1870, policies and procedures must apply to any child (individuals up to age 18) regardless of their current or past foster care status and any youth in foster care up to age 19, 20, or 21 (if the state elects to provide Title IV-E foster care up to that age). Under H.R. 4058, the policies would need to apply to any child under the supervision of the state child welfare agency (including a child in foster care, a child who has an open case file but has not been removed from the home, and a youth who is receiving services under the Title IV-E Chafee Foster Care Independence Program for youth who have aged out of foster care or are likely to do so). In either bill, a state could choose to apply these policies to any youth up to age 26, regardless of whether they are or were in foster care.

⁶⁵ Ellen Wright Clayton, Richard D. Krugman, and Patti Simon, eds., *Confronting Commercial Sexual Exploitation and Sex Trafficking of Minors in the United States*, National Academy of Sciences, pp. 186, 237-241.

⁶⁶ For further information, see CRS Report R41878, *Sex Trafficking of Children in the United States: Overview and Issues for Congress*, by Kristin Finklea, Adrienne L. Fernandes-Alcantara, and Alison Siskin.

⁶⁷ The accompanying committee report, S.Rept. 113-137, was filed on February 6, 2014. Title II of S. 1870 is substantively identical to the Protecting Youth At-Risk for Sex Trafficking Act (S. 1878), which was introduced on December 19, 2013.

⁶⁸ The accompanying committee report, H.Rept. 113-441 was filed on May 7, 2014.

⁶⁹ These definitions apply to all provisions of the bill pertaining to child victims of sex trafficking.

⁷⁰ For further information about Title IV-E, see CRS Report R42794, *Child Welfare: State Plan Requirements under the Title IV-E Foster Care, Adoption Assistance, and Kinship Guardianship Assistance Program*, by Emilie Stoltzfus.

S. 1870 and H.R. 4058 would separately add new Title IV-E requirements pertaining to child victims of sex trafficking. First, the bills would direct state child welfare agencies to identify and document in agency records each child identified as a victim of sex trafficking who is in foster care or otherwise under the supervision of the state. Second, S. 1870 and H.R. 4058 would direct each state child welfare agency to report and regularly update description of the specific measures it takes to protect and provide services to children who are victims of sex trafficking, including efforts to coordinate with law enforcement, juvenile justice agencies, and social service agencies, such as runaway and homeless youth shelters. Third, H.R. 4058 would require state welfare agencies to “immediately” report⁷¹ to law enforcement information on children identified as being victims of sex trafficking after having received such information.

Data Collection and Reporting

Under the Social Security Act, HHS was required to establish a data collection system that provides for comprehensive national information with respect to children in foster care and those who are adopted. In response, HHS developed the Adoption and Foster Care Analysis and Reporting System (AFCARS). HHS must annually submit to Congress a report on the performance of each state with regard to achieving specific child welfare outcomes (e.g. ensuring placement stability for children in foster care, finding children adoptive homes as appropriate) and other information. This outcome data must be developed, to the maximum extent practicable, from AFCARS. The annual report is known as *Child Welfare Outcomes*. Both S. 1870 and H.R. 4058 would seek to revise the AFCARS data collection and reporting requirements to incorporate information on sex trafficking, either within the *Child Welfare Outcomes* report (S. 1870) or in a separate report to Congress (H.R. 4058).

Recommendations to Congress for Expanding Housing for Youth Victims of Trafficking

Shelters specifically for child sex trafficking victims/survivors are available on a very limited basis.⁷² Other facilities, such as runaway and homeless youth shelters as well as foster care homes, do not appear to be adequate for meeting the needs of sex trafficking victims or keeping them secure from pimps/traffickers and other abusers.⁷³ S. 1870 would require that within one year of enactment, five agencies—the Departments of Defense, HHS, Housing and Urban Development, Homeland Security, and Justice—submit a report to Congress that contains recommendations for administrative or legislative changes necessary to use programs, properties, or other resources owned, operated, or funded by the federal government to provide safe housing for youth who are victims of trafficking and to provide support to entities that provide housing or other assistance to such victims.

⁷¹ “Immediately” would mean up to 24 hours after receiving a report.

⁷² ECPAT USA and Shared Hope International, *National Colloquium: 2012 Final Report: An Inventory and Evaluation of the Current Shelter and Service Response to Domestic Minor Sex Trafficking*, May 2013.

⁷³ Heather J. Clawson and Lisa Goldblatt Grace, *Finding a Path to Recovery: Residential Facilities for Minor Victims of Domestic Sex Trafficking*, U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, September 2007. (Hereinafter, Clawson and Grace, *Finding a Path to Recovery: Residential Facilities for Minor Victims of Domestic Sex Trafficking*.)

Children Missing From Foster Care

Runaways are particularly vulnerable to becoming victims of sex trafficking,⁷⁴ because they may be perceived as easy targets for pimps/traffickers since they often cannot go home and have few resources.⁷⁵ For example, the Dallas Police Department found a strong correlation between sex trafficking and runaway status: the more times a child runs away, the greater the likelihood that he or she will be victimized.⁷⁶

S. 1870 and H.R. 4058 would amend Title IV-E to require that state child welfare agencies “immediately” report⁷⁷ information on missing or abducted children to law enforcement authorities for entry into the National Crime Information Center (NCIC)⁷⁸ and to the National Center for Missing and Exploited Children (NCMEC). H.R. 3530 and S. 1738 would require that law enforcement agencies notify NCMEC of each report involving a child missing from foster care.

H.R. 4058 would further amend Title IV-E to require state child welfare agencies to develop and implement protocols related to children who run away from foster care. The bill specifies certain conditions that must be addressed including determining what happened to the child while absent from care, including screening the child to determine whether he or she may be a victim of sex trafficking.⁷⁹ The protocols would need to be implemented within one year of the bill’s enactment. Within two years of the bill’s enactment, HHS would be required to submit a report to Congress that summarizes information on children who run from care and their risk of becoming victims of sex trafficking.⁸⁰

⁷⁴ A federally funded study found that approximately 1.7 million youth had run away from home or were forced to leave their homes at some point in 1999. While away from home, an estimated 38,600 (2.2%) of these youth were sexually assaulted, were in the company of someone known to be sexually abusive, or were engaged in sexual activity in exchange for money, drugs, food, or shelter. Heather Hammer, David Finkelhor, and Andrea J. Sedlak, “Runaway/Throwaway Children: National Estimates and Characteristics,” U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, Office of Juvenile Justice and Delinquency Prevention, National Incidence Studies of Missing, Abducted, Runaway, and Throwaway Children (NISMA) Bulletin, October 2002. These are the most recent survey data available.

⁷⁵ For an in-depth discussion of the interaction between missing children and sex trafficking, see the section entitled, “Sex Trafficking of Children: Vulnerable Populations,” in CRS Report R41878, *Sex Trafficking of Children in the United States: Overview and Issues for Congress*, by Kristin Finklea, Adrienne L. Fernandes-Alcantara, and Alison Siskin.

⁷⁶ Smith, Vardaman, and Snow, *The National Report on Domestic Minor Sex Trafficking: America’s Prostituted Children*, p. 34.

⁷⁷ “Immediately” would be defined as within 24 hours of receiving the information.

⁷⁸ NCIC is a computerized index of information on crimes and criminals that is maintained by FBI. The NCIC includes a missing person file. Law enforcement agencies that receive reports of missing children must include profiles of these children in the file.

⁷⁹ Other items included in the protocols are (1) expeditiously locating any child missing from foster care; (2) determining the primary factors that contributed to the child’s running away or otherwise being absent from care, and (to extent appropriate and possible) responding to those factors in current and subsequent placements; and (3) reporting such related information as required by HHS.

⁸⁰ Such information would be based on data reported by states to HHS via AFCARS and data collected by states on the protocols for responding to children who run away, including —characteristics of children who run from foster care, and trends in the number of children reported as runaways in each fiscal year; state efforts to provide specialized services and placements to address the needs of these children.

National Advisory Committee on the Nation’s Response to Domestic Sex Trafficking of Minors

Although there are several established entities responsible for coordinating and overseeing the country’s response to human trafficking generally,⁸¹ there is not a specific entity statutorily responsible for coordinating efforts on sex trafficking of minors. S. 1870 would require HHS to establish the National Advisory Committee on Domestic Sex Trafficking and to appoint all members of the committee (in consultation with the Attorney General) within 180 days after the bill’s enactment. The legislation would require the committee to be composed of up to 21 members “whose diverse experience and background enable them to provide balanced points of view with regard to carrying out the duties of the committee.” The committee would be charged with

- advising the HHS Secretary and the Attorney General on policies concerning improvements to the nation’s response to domestic sex trafficking of minors from the child welfare system;
- advising the HHS Secretary and the Attorney General on policies concerning the cooperation of several entities—various levels of government, child welfare agencies, social service providers, state or local courts with oversight of children and family matters, law enforcement juvenile detention centers, and others—on responding to domestic sex trafficking of minors; and
- developing recommended best practices for states to follow in combating the domestic sex trafficking of minors.

Grant Programs for Domestic Minor Victims of Sex Trafficking

One overriding issue concerning minor victims of sex trafficking is the extent to which federal agencies can and do provide services to U.S. citizen and lawful permanent resident (LPR) minor sex trafficking victims. P.L. 113-4 created a discretionary new grant program for child sex trafficking victims.⁸² The new grant program authorizes DOJ, in consultation with HHS, to award one-year grants to six grantees to combat sex trafficking of children in the United States. Of the grant amounts, at least 67% must be allocated to non-governmental organizations (NGOs) to provide counseling, legal services, shelter, clothing, and other social services to victims, while not

⁸¹ The TVPA, as amended and reauthorized, established two interagency entities to facilitate coordination on anti-trafficking policy across U.S. government offices: the Senior Policy Operating Group (SPOG) and the President’s Interagency Task Force (PITF). TVPA also mandated the establishment of the Office to Monitor and Combat Trafficking in Persons at the State Department as a central policy office to coordinate international anti-trafficking efforts. In addition, the PROTECT Our Children Act of 2008 (S. 1738) directed the Attorney General to create and implement a National Strategy for Child Exploitation Prevention and Interdiction. In 2010, DOJ appointed a National Coordinator to oversee implementation of the strategy, who in turn convened the National Strategy Working Group. The strategy focuses on responding to four types of child sexual exploitation: (1) child pornography, (2) online enticement of children for sexual purposes, (3) commercial sexual exploitation of children (primarily domestic sex trafficking), and (4) child sex tourism.

⁸² This grant program replaced the HHS grant program for states, Indian tribes, units of local government, and nonprofit, non-governmental victims’ service organizations to provide assistance programs for U.S. citizens or LPR trafficking victims created in P.L. 109-164 (§202).

less than 10% has to be allocated to provide services to victims or training for service providers on sex trafficking of children.⁸³

Juvenile Justice

Under the TVPA, the federal government treats individuals under the age of 18 who are involved in commercial sexual activity as victims rather than perpetrators, and victims are eligible for specialized services. The same is not always true at the state level; at times, minors involved in commercial sexual activity may be labeled as child prostitutes or juvenile delinquents and treated as criminals rather than being labeled and treated as victims.⁸⁴

The 2013 TVPA reauthorization (P.L. 113-4) specifies that the model state anti-trafficking laws created by the Attorney General should include safe harbor provisions that treat an individual under 18 years of age who has been arrested for prostitution as a victim of a severe form of trafficking, prohibit the prosecution of such a person, and refer them to the service providers who provide assistance to victims of commercial sexual exploitation.

In addition, S. 1733 and H.R. 3610 would incentivize states to enact “safe harbor laws” that would (1) treat each minor involved in commercial sexual activity as a victim of a severe form of trafficking in persons, (2) discourage the charging and prosecution of these minors for prostitution or sex trafficking offenses, and (3) encourage the diversion of these minors to child protection services. The Senate version of this bill would also link states’ compliance with the proposed safe harbor mandate to the receipt of Edward Byrne Memorial Justice Assistance Grant (JAG)⁸⁵ funds; the bills would authorize the Attorney General to withhold a specified proportion of JAG funding for noncompliance. Instead of linking states’ JAG funds to the adoption of safe harbor laws, the House version would allow the Department of Justice to give community policing grants preference to applicants from states that had adopted safe harbor laws.

Other Issues

Inter-agency Coordination/Efficiency

There have been concerns about possible duplication of efforts and a lack of coordination among the agencies that conduct anti-trafficking activities, and whether the fact that so many agencies are involved with anti-trafficking policy leads to duplication or funds not being used in the most efficient manner.⁸⁶ The TVPA established the Senior Policy Operating Group (SPOG) in part to

⁸³ Funds can also be used for training for law enforcement; investigative and prosecution expenses; case management; salaries for law enforcement officers and state and local prosecutors; and outreach, education, and treatment programs.

⁸⁴ See, for example, Smith, Vardaman, and Snow, *The National Report on Domestic Minor Sex Trafficking: America’s Prostituted Children*, May 2009.

⁸⁵ For more information on the Edward Byrne Memorial Justice Assistance Grant Program, see CRS Report RS22416, *Edward Byrne Memorial Justice Assistance Grant (JAG) Program*, by Nathan James.

⁸⁶ At a 2011 hearing on the TVPA reauthorization, the ranking Member of the Senate Judiciary Committee, Senator Charles Grassley, stated: “[I] feel that the bill ought to be reauthorized. But I make a point of saying that we have a terrible budget situation and it requires that we take a close look at how some of this money is spent...” U.S. Congress, Senate Committee on the Judiciary, *The Trafficking Victims Protection Reauthorization Act: Renewing the Commitment to Victims of Human Trafficking*, 112th Cong., 1st sess., September 14, 2011

facilitate coordination on anti-trafficking policy across U.S. government agencies to ensure that there is not a duplication of efforts.

However, the federal government does not currently have a national strategy broadly directed at combating human trafficking.⁸⁷ S. 1733 would direct the Attorney General to implement and maintain a National Strategy for Combating Human Trafficking. This strategy would be required to include, among other things, (1) integrated efforts (at the federal, state, local, and tribal levels) to investigate and prosecute human trafficking; (2) internal Department of Justice case coordination; (3) federal interagency coordination on the prevention, investigation, and apprehension of persons who target and exploit others for trafficking; and (4) measurable objectives and quantifiable goals for combating human trafficking.

In addition, S. 1733 would require the Attorney General, as part of the annual report to Congress on U.S. government trafficking activities,⁸⁸ to report the number of human trafficking investigations opened by FBI, DHS, DOL or the Human Smuggling and Trafficking Center; and the number of such investigations that were reported to the U.S. attorneys, the DOJ Human Trafficking and Prosecution Division, or the DOJ Child Exploitation and Obscenity Section.

Sex Offender Registry

The Sex Offender Registration and Notification Act (SORNA)⁸⁹ provides a set of minimum standards for sex offender registration and notification in the United States.⁹⁰ SORNA defines sex offenders according to three tiers, Tier III being the highest classification and includes those individuals convicted of the most egregious crimes (predicate offenses for sex offender registration and notification). The SORNA requirements involve Tier III offenders being subject to the strictest registration and notification requirements.

Tier I: Predicate offenses include whatever offenses do not support a higher classification, such as misdemeanor registration offenses and child pornography possession.

Tier II: Predicate offenses include most felonious sexual abuse or sexual exploitation crimes involving victims who are minors, including distribution and production of child pornography.

Tier III: Predicate offenses generally encompass sexual assaults involving sexual acts regardless of victim age, sexual contact offenses against children below the age of 13, nonparental kidnapping of minors, and attempts or conspiracies to commit such offenses.⁹¹

Currently, a Tier II sex offender means, among other things, a sex offender whose offenses are “comparable to or more severe than” offenses including sex trafficking⁹² when committed against

⁸⁷ There is a strategic plan to provide *services* to victims of human trafficking. See the Federal Strategic Action Plan on Services for Victims of Human Trafficking in the United States 2013-2017.

⁸⁸ The report is required under TVPA §105(d)(7).

⁸⁹ Title I of the Adam Walsh Child Protection and Safety Act of 2006; P.L. 109-248.

⁹⁰ For more information about SORNA and how these standards are administered by the federal government, see the website of the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART Office), at <http://www.smart.gov/>.

⁹¹ More information on the tiering system can be found at http://www.smart.gov/faqs/faq_subimplementation.htm#4.

⁹² As defined under 18 U.S.C. §1591.

a minor.⁹³ S. 1733 would, among other things, amend SORNA so that a Tier II sex offender no longer includes sex trafficking, and would instead amend the definition of a Tier III sex offender to mean, among other things, a sex offender whose offenses are “comparable to or more severe than” offenses including sex trafficking when committed against a minor, or an attempt or conspiracy to commit such an offense against a minor.

In addition, H.R. 4573, as reported,⁹⁴ would direct the Secretary of DHS to establish a center in ICE, to be known as the “Angel Watch Center.” The Angel Watch Center would receive information on travel by child-sex offenders,⁹⁵ and would establish procedures for notifying or making the decision not to notify a destination country of current or impending travel by a child-sex offender.⁹⁶ H.R. 4573 would also express a sense of Congress that the President should negotiate bilateral agreements with foreign governments to transmit and receive information on international travel by child-sex offenders, including U.S. citizens who are arrested or convicted for child-sex offenses in a foreign country.

⁹³ Tier II offenses include sex trafficking or an attempt or conspiracy to commit such an offense against a minor.

⁹⁴ Rep. Smith offered an amendment in the nature of a substitute during mark-up.

⁹⁵ Child-sex offenders would be those who were convicted of certain child-sex offenses in the United States.

⁹⁶ If the center has reason to believe that transmission of the notice poses a risk to the life or well-being of the child-sex offender, the center would be required to make every reasonable effort to issue a warning to the child-sex offender. In addition, if the center has reason to believe that the destination country is highly likely to deny entry to the child-sex offender, the center would be required to make a reasonable effort to notify the offender.

Appendix. Table of Pending Bills that Have Received Congressional Action or Are of Significant Congressional Interest

Table A-1. Active Legislation in the 113th Congress that Addresses Human Trafficking

Bill/Law Number and Sponsor(s)	Companion Bill	Brief Overview of the Bill	Latest Action
H.R. 3344, Rep. Royce	S. 744, (Subtitle F) as passed by the Senate	<p>Would make changes to how foreign labor contractors operate. Would require the disclosure of specified information from persons engaged in foreign labor contracting activities. Would prohibit foreign labor contractors and employers that engage in foreign labor contracting activity from knowingly providing false or misleading information to recruited workers. Would prohibit an employer or foreign labor contractor from refusing to hire, discharging, or otherwise discriminating against an individual because of the individual's race, color, creed, sex, national origin, religion, age, or disability. Would prohibit an employer, foreign labor contractor, or agent or employee of such a contractor from assessing any fee to a worker for any foreign labor contracting activity. Would require a foreign labor contractor or any person who performs a foreign labor contracting activity on behalf of such a contractor for money or other valuable consideration to obtain a certificate of registration from the Secretary of Labor. Would require the Secretary to establish a process for the receipt, investigation, and disposition of complaints filed with respect to a foreign labor contractor's compliance and would establish fines for violations of these provisions.</p>	Referred to Committee
H.R. 3530, Rep. Poe	S. 1738, Senator Cornyn	<p>Both bills would authorize the Attorney General to "make block grants to an eligible entity" to develop, improve, or expand domestic child human trafficking deterrence programs. They would also enable the Department of Justice (DOJ) to make grants under Subtitle A of the Victims of Child Abuse Act for the development and implementation of specialized programs to identify and provide direct services to victims of child pornography.</p> <p>To expand services for trafficking victims, S. 1738 would require the courts to impose an assessment on persons convicted of certain criminal offenses. These assessments would go into a new "Domestic Trafficking Fund." H.R. 3530 would increase the cap on the Crime Victims Fund over several years.</p> <p>S. 1738 would require the Secretary of HHS and the Attorney to establish a program to assist U.S. citizen trafficking victims. Would increase restitution for human trafficking victims. S. 1738 would set forth provisions prohibiting "aggravated human trafficking racketeering, and would expand prosecutors' abilities to obtain wiretap warrants. S. 1738 would enhance penalties for certain crimes and revise the statutes related to travel for purposes of engaging in illicit sexual conduct and sex trafficking of children.</p>	Placed on the House calendar on May 15, 2014, H.Rept. 113-450.

Bill/Law Number and Sponsor(s)	Companion Bill	Brief Overview of the Bill	Latest Action
H.R. 3610, Reps. Paulson and Moore	S. 1733, Senator Klobuchar	<p>Both bills would incentivize states to enact safe harbor legislation, and create a system to assist victims in communicating with service providers. H.R. 3610 and S. 1733 would specify that victims of severe forms of TIP are eligible for the Job Corps Program. H.R. 3610 would require a report on restitution amounts.</p> <p>S. 1733 would require implementation of a national anti-TIP strategy, and the collection of new statistics on victims. S. 1733 would amend “tier III” definition on sex offender registry to include including sex trafficking when committed against a minor, or an attempt or conspiracy to commit such an offense against a minor.</p>	Placed on the House calendar on May 13, 2014, H.Rept. 113-447, Part I.
H.R. 4058, Rep. Reichert		<p>Would require state child welfare agencies to develop and implement policies and procedures to identify, screen, and determine appropriate state actions and services for children believed to be a victim of sex trafficking or at risk of being a sex trafficking victim, and who have come into certain contact with the child welfare agency. A state could choose to apply these policies to any youth up to age 26, regardless of whether they are or were in foster care. In addition, state child welfare agencies would be required to document in agency records children who are victims; regularly update a description of services provided to child trafficking victims, including coordinating with other agencies to serve this population; and report to law enforcement information about victims. It would require data collection to include state reporting of the number of victims of sex trafficking before they entered foster care and while in foster care.</p>	Placed on the House calendar on May 7, 2014, H.Rept. 113-441.
H.R. 4225, Rep. Wagner		<p>Would provide penalties for knowingly advertising or knowingly selling advertising for certain commercial sex acts.</p>	Placed on the House calendar on May 15, 2014, H.Rept. 113-451.
H.R. 4573, Rep. Smith		<p>Would create a new Center in DHS that would receive information on travel by child-sex offenders, and, if appropriate, notify a foreign country of travel to that country by a child-sex offender.</p>	Ordered reported by the House Foreign Affairs Committee on May 9, 2014.
S. 744		<p>Would transfer, from HHS to DOJ, the responsibility for ensuring, to the greatest extent possible, that unaccompanied alien children in DHS custody have counsel to represent them and access to child advocates. Would require the Secretary of DHS to create mandatory training for certain DHS and other personnel who come in contact with unaccompanied alien children (UAC). Would direct HHS to hire child welfare professionals to provide assistance in Customs and Border Protection (CBP) stations with the largest number of UAC.</p>	Passed by the Senate on June 27, 2013.

Bill/Law Number and Sponsor(s)	Companion Bill	Brief Overview of the Bill	Latest Action
S. 1870 Senator Baucus	None	<p>Would require state child welfare agencies to develop and implement policies and procedures to identify, screen, and determine appropriate state actions and services for any child believed to be a victim of sex trafficking or at risk of being a sex trafficking victim. The policies and procedures must apply to any child (individuals up to age 18) regardless of their current or past foster care status and any youth in foster care up to age 19, 20, or 21 (if the state elects to provide Title IV-E foster care up to that age). A state could choose to apply these policies to any youth, regardless of past or current foster care status, up to 26 years of age. State child welfare agencies would be required to document in agency records children who are trafficking victims; regularly update a plan for providing these children with services, including coordinating with other agencies to serve this population; and report to law enforcement information about victims. It would require HHS to direct states to report the number of children in their care who are identified as victims of sex trafficking.</p> <p>Would require five agencies—Departments of Defense, HHS, Housing and Urban Development, Homeland Security, and Justice—to submit a report to Congress that contains recommendations about providing safe housing for youth who are victims of trafficking and to provide support to entities that provide housing or other assistance to such victims. In addition, it would direct HHS to establish the National Advisory Committee on Domestic Sex Trafficking to advise the HHS Secretary and the Attorney General on policies concerning improvements to the nation’s response to domestic sex trafficking of minors from the child welfare system and the commercial sexual exploitation of children.</p>	Reported by the Senate Finance Committee on December 19, 2013.

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