

Dear Colleagues,

This e-mail summarizes recently enacted statutory changes to the criminal human trafficking statutes. As many of you know, on December 23, 2008, the President signed into law H.R. 7311, the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, which was passed by Congress on December 10, 2008.

While this far-reaching Act addresses many aspects of human trafficking, including international aid programs, victim benefits, and immigration issues, we wanted to highlight some of the provisions that affect criminal prosecution of trafficking offenses here in the United States.

Section 222 of the Act, available at <http://www.govtrack.us/congress/bill.xpd?bill=h110-7311>, includes several important enhancements to the anti-trafficking criminal statutes, which DOJ has supported since their introduction by the Senate in an earlier version of the legislation. As we noted in DOJ's July 2008 views letter, these enhancements are "helpful additions...that will enable more effective prosecutions and protections for victims." We are pleased to see these additions signed into law. Some of you have asked about the status of earlier legislative proposals that would have federalized commercial sex acts in or affecting interstate commerce with no requirement of force, fraud, or coercion. These proposals were not enacted in the final legislation.

We will be introducing more detailed and technical training materials in the coming weeks. For the moment, however, we wanted to provide a brief overview of some of the enhancements that will most directly affect criminal prosecutions.

### **New Conspiracy Statute**

A new trafficking-specific conspiracy statute prohibits conspiring to commit the Peonage (§ 1581), Enticement into Slavery (§ 1583), Forced Labor (§ 1589), Trafficking (§ 1590), Sex Trafficking (§ 1591), and Document Servitude (§ 1592). In contrast to the general conspiracy statute whose maximum penalty is five years, the penalty for violating this provision is equal to the penalty for the underlying substantive offense, except that there is no minimum mandatory penalty for conspiring to commit Sex Trafficking (§ 1591). This statute therefore enhances the penalty for conspiring to commit trafficking crimes.

### **Expanded Criminalization of Benefitting Financially From Trafficking**

The Act contains new provisions penalizing those who knowingly benefit financially from participating in a venture that engaged in trafficking crimes. Previously, only the sex trafficking statute, 18 U.S.C. § 1591, contained such a provision. The new legislation expands the prohibition against profiting from trafficking ventures to criminalize benefiting financially from a venture engaged in Peonage (§ 1581), Forced Labor (§ 1589), or Document Servitude (§ 1592), knowing or in reckless disregard of the fact that the venture engaged in such a violation.

## **Clarification of Forced Labor Statute**

The Act clarifies the application of the Forced Labor provision, 18 U.S.C. § 1589, by: 1) adding “force” as a fourth prohibited means of violating the statute in addition to serious harm, scheme/plan, and abuse of the law; 2) clarifying that the four prohibited means are alternate means of violating the same statute and that the statute may be violated by any one or any combination of these means; and 3) adding definitions of the terms “serious harm” and “abuse of the law” as discussed below.

## **Expanded Crime of Sex Trafficking by Force, Fraud, or Coercion**

New language inserted into Section 1591 broadens the crime of sex trafficking by force, fraud, or coercion by expanding the *mens rea* requirement to include reckless disregard as well as knowledge. Previously, the government was required to prove that the defendant actually knew that force, fraud, or coercion would be used to cause a person to engage in a commercial sex act; the expanded statute can be satisfied by proof that the defendant acted in reckless disregard of the fact that such means would be used.

## **Expanded Crime of Sex Trafficking of Minors**

The Act broadens the reach of the crime of sex trafficking of minors by eliminating the knowledge-of-age requirement in certain instances. Previously, the government was required to prove that the defendant knew the person engaged in commercial sex was a minor. By contrast, the new legislation provides that where the defendant had a reasonable opportunity to observe the minor, knowledge of minor age need not be proven.

## **Definition of Key Aspects of Coercion**

The Act clarifies the definitions of “serious harm” and “abuse or threatened abuse of the legal process,” which are among the prohibited means of coercion in the Forced Labor (§ 1589) and Sex Trafficking (§ 1591) statutes. While the TVPA of 2000 did not explicitly define these terms, its legislative history called for a broad interpretation of the forms of coercion it proscribed, and the statutory language now codifies the broad definitions of these forms of coercion that had begun to evolve under the TVPA of 2000. Under the newly codified definitions, “serious harm” means any harm, including psychological, financial, or reputational harm, that would compel a reasonable person with the victim’s background and in the victim’s circumstances to perform labor, services, or commercial sex acts to avoid that harm. “Abuse or threatened abuse of the legal process” is defined as the use or threatened use the law or legal process in a manner for which it was not designed to cause a person to take or refrain from taking some action.

## **Expanded Authority for Detention**

The Act expands the Government’s authority to detain pending trial defendants charged with trafficking offenses. Under the new law, the charging of a Chapter 77 offense with a maximum term of imprisonment of 20 years or more raises a rebuttable presumption of pre-trial detention under 18 U.S.C. § 3142(e). These offenses include

Peonage (§ 1581), Enticement into Slavery (§ 1583), Involuntary Servitude (§ 1584), Forced Labor (§ 1589), Trafficking (§ 1590), and Sex Trafficking (§ 1591).

### **New Crimes of Obstructing Human Trafficking Enforcement**

New provisions criminalize and severely penalize the obstruction or attempted obstruction of enforcement of any of the major Chapter 77 statutes, including Enticement into Slavery (§ 1583), Involuntary Servitude (§ 1584), Forced Labor (§ 1589), Trafficking (§ 1590), Sex Trafficking (§ 1591), and Document Servitude (§ 1592). The new obstruction violations are punishable to the same extent as the underlying crime. Previously, a similar obstruction provision applied only to enforcement of the Peonage statute, 18 U.S.C. § 1581.

### **Extra-Territorial Jurisdiction**

The Act expands the reach of criminal anti-trafficking statutes by extending extra-territorial jurisdiction to trafficking crimes committed outside the United States, where the alleged offender is a national or lawful permanent resident of the United States or is present in the United States. The new law provides this extra-territorial jurisdiction for charges of Peonage (§ 1581), Enticement into Slavery (§ 1583), Involuntary Servitude (§ 1584), Forced Labor (§ 1589), Trafficking (§ 1590), and Sex Trafficking (§ 1591).

### **New Fraud in Labor Contracting Crime**

A new crime, codified at 18 U.S.C. Section 1351, prohibits fraud in foreign labor contracting. This provision imposes criminal liability on those who, knowingly and with intent to defraud, recruit workers from outside the United States for employment within the United States by means of materially false or fraudulent representations. The statute provides for a maximum term of 5 years' imprisonment.

We look forward to working with you to implement these new provisions, which we believe will enhance our ability to charge, convict, and punish human traffickers and vindicate the rights and dignity of trafficking victims. The Human Trafficking Prosecution Unit will be issuing more detailed guidance shortly, and please do not hesitate to contact us if we can provide further assistance in your efforts to serve trafficking victims and bring traffickers to justice.

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Department of Justice Human Trafficking Complaint Line 1-888-428-7581  
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