

TRAFFICKING VICTIMS PROTECTION ACT OF 2000

APRIL 13, 2000.—Ordered to be printed

Mr. SMITH of Texas, from the Committee on the Judiciary,
submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 3244]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 3244) to combat trafficking of persons, especially into the sex trade, slavery, and slavery-like conditions, in the United States and countries around the world through prevention, through prosecution and enforcement against traffickers, and through protection and assistance to victims of trafficking, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Trafficking Victims Protection Act of 2000”.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Purposes and findings.
- Sec. 3. Definitions.
- Sec. 4. Annual Country Reports on Human Rights Practices.
- Sec. 5. Interagency task force to monitor and combat trafficking.
- Sec. 6. Prevention of trafficking.
- Sec. 7. Protection and assistance for victims of trafficking.
- Sec. 8. Minimum standards for the elimination of trafficking.
- Sec. 9. Assistance to foreign countries to meet minimum standards.
- Sec. 10. Actions against governments failing to meet minimum standards.
- Sec. 11. Actions against significant traffickers.
- Sec. 12. Strengthening protection and punishment of traffickers.
- Sec. 13. Authorization of appropriations.

SEC. 2. PURPOSES AND FINDINGS.

(a) PURPOSES.—The purposes of this Act are to combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims.

(b) FINDINGS.—The Congress finds that:

(1) Millions of people every year, primarily women or children, are trafficked within or across international borders. Approximately 50,000 women and children are trafficked into the United States each year.

(2) Many of these persons, of whom the overwhelming majority are women and children, are trafficked into the international sex trade, often by means of force, fraud, or coercion. The sex industry has rapidly expanded over the past several decades. It involves sexual exploitation of persons, predominantly women and girls, within activities related to prostitution, pornography, sex tourism, and other commercial sexual services. The rapid expansion of the sex industry and the low status of women in many parts of the world have contributed to a burgeoning of the trafficking industry, of which sex trafficking by force, fraud, and coercion is a major component.

(3) Trafficking in persons is not limited to sex trafficking, but often involves forced labor and other violations of internationally recognized human rights. The worldwide trafficking of persons is a growing transnational crime, migration, economics, labor, public health, and human rights problem that is significant on nearly every continent.

(4) Traffickers primarily target women and girls, who are disproportionately affected by poverty, lack of access to education, chronic unemployment, discrimination, and lack of viable economic opportunities in countries of origin. Traffickers lure women and girls into their networks through false promises of good working conditions at relatively high pay as nannies, maids, dancers, factory workers, restaurant workers, sales clerks, or models. Traffickers also buy girls from poor families and sell them into prostitution or into various types of forced or bonded labor.

(5) Traffickers often facilitate victims’ movement from their home communities to unfamiliar destinations, away from family and friends, religious institutions, and other sources of protection and support, making the victims more vulnerable.

(6) Victims are often forced to engage in sex acts or to perform labor or other services through physical violence, including rape and other forms of sexual abuse, torture, starvation, and imprisonment, through threats of violence, and through other forms of psychological abuse and coercion.

(7) Trafficking is perpetrated increasingly by organized and sophisticated criminal enterprises. Trafficking in persons is the fastest growing source of prof-

its for organized criminal enterprises worldwide. Profits from the trafficking industry contribute to the expansion of organized criminal activity in the United States and around the world. Trafficking often is aided by official corruption in countries of origin, transit, and destination, thereby threatening the rule of law.

(8) Traffickers often make representations to their victims that physical harm may occur to them or to others should the victim escape or attempt to escape. Such representations can have the same coercive effects on victims as specific threats to inflict such harm.

(9) Sex trafficking, when it involves the involuntary participation of another person in sex acts by means of fraud, force, or coercion, includes all the elements of the crime of forcible rape, which is defined by all legal systems as among the most serious of all crimes.

(10) Sex trafficking also involves frequent and serious violations of other laws, including labor and immigration codes and laws against kidnapping, slavery, false imprisonment, assault, battery, pandering, fraud, and extortion.

(11) Women and children trafficked into the sex industry are exposed to deadly diseases, including HIV and AIDS. Trafficking victims are sometimes worked or physically brutalized to death.

(12) Trafficking in persons substantially affects interstate and foreign commerce. The United States must take action to eradicate the substantial burdens on commerce that result from trafficking in persons and to prevent the channels of commerce from being used for immoral and injurious purposes.

(13) Trafficking of persons in all its forms is an evil that calls for concerted and vigorous action by countries of origin, transit countries, receiving countries, and international organizations.

(14) Existing legislation and law enforcement in the United States and in other nations around the world have proved inadequate to deter trafficking and to bring traffickers to justice, principally because such legislation and enforcement do not reflect the gravity of the offenses involved. No comprehensive law exists in the United States that penalizes the range of offenses involved in the trafficking scheme. Instead, even the most brutal instances of forcible sex trafficking are often punished under laws that also apply to far less serious offenses such as consensual sexual activity and illegal immigration, so that traffickers typically escape severe punishment.

(15) In the United States, the seriousness of the crime of trafficking in persons is not reflected in current sentencing guidelines for component crimes of the trafficking scheme, which results in weak penalties for convicted traffickers. Adequate services and facilities do not exist to meet the health care, housing, education, and legal assistance needs for the safe reintegration of domestic trafficking victims.

(16) In some countries, enforcement against traffickers is also hindered by official indifference, by corruption, and sometimes even by active official participation in trafficking.

(17) Because existing laws and law enforcement procedures often fail to make clear distinctions between victims of trafficking and persons who have knowingly and willfully violated laws, and because victims often do not have legal immigration status in the countries into which they are trafficked, the victims are often punished more harshly than the traffickers themselves.

(18) Because victims of trafficking are frequently unfamiliar with the laws, cultures, and languages of the countries into which they have been trafficked, and because they are often subjected to coercion and intimidation including physical detention, debt bondage, fear of retribution, and fear of forcible removal to countries in which they will face retribution or other hardship, these victims often find it difficult or impossible to report the crimes committed against them or to assist in the investigation and prosecution of such crimes.

(19) The United States and the international community are in agreement that trafficking in persons often involves grave violations of human rights and is a matter of pressing international concern. The Universal Declaration of Human Rights; the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery; the International Covenant on Civil and Political Rights; the Convention on the Elimination of All Forms of Discrimination Against Women; the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and other relevant instruments condemn slavery and involuntary servitude, violence against women, and other components of the trafficking scheme.

(20) The Universal Declaration of Human Rights recognizes the right to be free from slavery and involuntary servitude, arbitrary detention, degrading or

inhuman treatment, and arbitrary interference with privacy or the family, as well as the right to protection by law against these abuses.

(21) The United Nations General Assembly has passed three resolutions during the last three years (50/167, 51/66, and 52/98) recognizing that the international traffic in women and girls, particularly for purposes of forced prostitution, is a matter of pressing international concern involving numerous violations of fundamental human rights. The resolutions call upon governments of receiving countries as well as countries of origin to strengthen their laws against such practices, to intensify their efforts to enforce such laws, and to ensure the full protection, treatment, and rehabilitation of women and children who are victims of trafficking.

(22) The Final Report of the World Congress against Sexual Exploitation of Children, held in Stockholm, Sweden in August 1996, recognized that international sex trafficking is a principal cause of increased exploitation and degradation of children.

(23) The Fourth World Conference of Women (Beijing Conference) called on all governments to take measures, including legislative measures, to provide better protection of the rights of women and girls who are victims of trafficking, to address the root factors that put women and girls at risk to traffickers, and to take measures to dismantle the national, regional, and international networks on trafficking.

(24) In the 1991 Moscow Document of the Organization for Security and Cooperation in Europe, participating states including the United States agreed to "seek to eliminate all forms of violence against women, and all forms of traffic in women and exploitation of prostitution of women including by ensuring adequate legal prohibitions against such acts and other appropriate measures."

(25) Numerous treaties to which the United States is a party address government obligations to combat trafficking, including such treaties as the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, which calls for the complete abolition of debt bondage and servile forms of marriage, and the 1957 Abolition of Forced Labor Convention, which undertakes to suppress and requires signatories not to make use of any forced or compulsory labor.

(26) Trafficking in persons is a transnational crime with national implications. In order to deter international trafficking and to bring its perpetrators to justice, nations including the United States must recognize that trafficking is a serious offense and must act on this recognition by prescribing appropriate punishment, by giving the highest priority to investigation and prosecution of trafficking offenses, and by protecting rather than punishing the victims of such offenses. The United States must work bilaterally and multilaterally to abolish the trafficking industry and take steps to promote and facilitate cooperation among countries linked together by international trafficking routes. The United States must also urge the international community to take strong action in multilateral fora to engage recalcitrant countries in serious and sustained efforts to eliminate trafficking and protect trafficking victims.

SEC. 3. DEFINITIONS.

For the purposes of this Act:

(1) The term "sex trafficking" means the purchase, sale, recruitment, harboring, transportation, transfer or receipt of a person for the purpose of a commercial sex act.

(2) The term "severe forms of trafficking in persons" means—

(A) sex trafficking in which either a commercial sex act or any act or event contributing to such act is effected or induced by force, coercion, fraud, or deception, or in which the person induced to perform such act has not attained the age of 18 years; and

(B) the purchase, sale, recruitment, harboring, transportation, transfer or receipt of a person for the purpose of subjection to involuntary servitude, peonage, or slavery or slavery-like practices which is effected by force, coercion, fraud, or deception.

(3) The term "slavery-like practices" means inducement of a person to perform labor or other services by force, by coercion, or by any scheme, plan, or pattern to cause the person to believe that failure to perform the work will result in the infliction of serious harm, debt bondage in which labor or services are pledged for debt on terms calculated never to allow full payment of the debt or otherwise amounting to indentured servitude for life or for an indefinite period, or subjection of the person to conditions so harsh or degrading as to pro-

vide a clear indication that the person has been subjected to them by force, fraud, or coercion.

(4) The term “coercion” means the use of force, violence, physical restraint, or acts or circumstances not necessarily including physical force but calculated to have the same effect, such as the credible threat of force or of the infliction of serious harm.

(5) The term “act of a severe form of trafficking in persons” means any act at any point in the process of a severe form of trafficking in persons, including any act of recruitment, harboring, transport, transfer, purchase, sale or receipt of a victim of such trafficking, or any act of operation, management, or ownership of an enterprise in which a victim of such trafficking engages in a commercial sex act, is subjected to slavery or a slavery-like practice, or is expected or induced to engage in such acts or be subjected to such condition or practice, or sharing in the profits of the process of a severe form of trafficking in persons or any part thereof.

(6) The terms “victim of sex trafficking” and “victim of a severe form of trafficking in persons” mean a person subjected to an act or practice described in paragraphs (1) and (2) respectively.

(7) The term “commercial sex act” means a sex act on account of which anything of value is given to or received by any person.

(8) The term “minimum standards for the elimination of trafficking” means the standards set forth in section 8.

(9) The term “appropriate congressional committees” means the Committee on Foreign Relations of the United States Senate and the Committee on International Relations of the United States House of Representatives.

(10) The term “nonhumanitarian foreign assistance” means—

(A) any assistance under the Foreign Assistance Act of 1961 (including programs under title IV of chapter 2 of part I of that Act, relating to the Overseas Private Investment Corporation), other than—

(i) assistance under chapter 8 of part I of that Act;

(ii) any other narcotics-related assistance under part I of that Act or under chapter 4 or 5 of part II of that Act, but any such assistance provided under this clause shall be subject to the prior notification procedures applicable to reprogrammings pursuant to section 634A of that Act;

(iii) disaster relief assistance, including any assistance under chapter 9 of part I of that Act;

(iv) antiterrorism assistance under chapter 8 of part II of that Act;

(v) assistance which involves the provision of food (including monetization of food) or medicine;

(vi) assistance for refugees; and

(vii) humanitarian and other development assistance in support of programs of nongovernmental organizations under chapters 1 and 10 of that Act;

(B) sales, or financing on any terms, under the Arms Export Control Act, other than sales or financing provided for narcotics-related purposes following notification in accordance with the prior notification procedures applicable to reprogrammings pursuant to section 634A of the Foreign Assistance Act of 1961; and

(C) financing under the Export-Import Bank Act of 1945.

SEC. 4. ANNUAL COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES.

The Secretary of State, with the assistance of the Assistant Secretary of Democracy, Human Rights and Labor, shall, as part of the annual Country Reports on Human Rights Practices, include information to address the status of trafficking in persons, including—

(1) a list of foreign countries that are countries of origin, transit, or destination for a significant number of victims of severe forms of trafficking;

(2) a description of the nature and extent of severe forms of trafficking in persons in each country;

(3) an assessment of the efforts by the governments described in paragraph

(1) to combat severe forms of trafficking. Such an assessment shall address—

(A) whether any governmental authorities tolerate or are involved in such trafficking;

(B) which governmental authorities are involved in activities to combat such trafficking;

(C) what steps the government has taken against its officials who participate in, facilitate, or condone such trafficking;

(D) what steps the government has taken to investigate and prosecute officials who participate in or facilitate such trafficking;

(E) what steps the government has taken to prohibit other individuals from participating in such trafficking, including the investigation, prosecution, and conviction of individuals involved in severe forms of trafficking in persons, the criminal and civil penalties for such trafficking, and the efficacy of those penalties in eliminating or reducing such trafficking;

(F) what steps the government has taken to assist victims of such trafficking, including efforts to prevent victims from being further victimized by traffickers, government officials, or others, grants of stays of deportation, and provision of humanitarian relief, including provision of mental and physical health care and shelter;

(G) whether the government—

(i) is cooperating with governments of other countries to extradite traffickers when requested;

(ii) is assisting in international investigations of transnational trafficking networks and in other co-operative efforts to combat trafficking;

(iii) refrains from prosecuting victims of severe forms of trafficking and from other discriminatory treatment of such victims due to such victims having been trafficked, or due to their having left or entered the country illegally; and

(iv) recognizes the rights of victims and ensures their access to justice.

(4) Information described in paragraph (2) and, where appropriate, in paragraph (3) shall be included in the annual Country Reports on Human Rights Practices on a country-by-country basis.

(5) In addition to the information described in this section, the annual Country Reports on Human Rights Practices may contain such other information relating to trafficking in persons as the Secretary determines to be appropriate.

SEC. 5. INTERAGENCY TASK FORCE TO MONITOR AND COMBAT TRAFFICKING.

(a) **ESTABLISHMENT.**—The President shall establish an Interagency Task Force to Monitor and Combat Trafficking (in this section referred to as the “Task Force”).

(b) **APPOINTMENT.**—The President shall appoint the members of the Task Force, which shall include the Secretary of State, the Director of the Agency for International Development, the Attorney General, the Secretary of Labor, the Secretary of Health and Human Services, the Director of the Central Intelligence Agency, and such other officials as may be designated by the President.

(c) **CHAIRMAN.**—The Task Force shall be chaired by the Secretary of State.

(d) **SUPPORT FOR THE TASK FORCE.**—The Secretary of State is authorized to establish within the Department of State an Office to Monitor and Combat Trafficking, which shall provide assistance to the Task Force. Any such Office shall be administered by a Director. The Director shall have the primary responsibility for assisting the Secretary of State in carrying out the purposes of this Act and may have additional responsibilities as determined by the Secretary. The Director shall consult with domestic, international nongovernmental and intergovernmental organizations, and with trafficking victims or other affected persons. The Director shall have the authority to take evidence in public hearings or by other means. The Office is authorized to retain staff members from agencies represented on the Task Force.

(e) **ACTIVITIES OF THE TASK FORCE.**—In consultation with nongovernmental organizations, the Task Force shall carry out the following activities:

(1) Coordinate the implementation of this Act.

(2) Measure and evaluate progress of the United States and countries around the world in the areas of trafficking prevention, protection and assistance to victims of trafficking, and prosecution and enforcement against traffickers, including the role of public corruption in facilitating trafficking.

(3) Expand interagency procedures to collect and organize data, including significant research and resource information on domestic and international trafficking. Any data collection procedures established under this subsection shall respect the confidentiality of victims of trafficking.

(4) Engage in efforts to facilitate cooperation among countries of origin, transit, and destination. Such efforts shall aim to strengthen local and regional capacities to prevent trafficking, prosecute traffickers and assist trafficking victims, and shall include initiatives to enhance cooperative efforts between destination countries and countries of origin and assist in the appropriate reintegration of stateless victims of trafficking.

(5) Examine the role of the international “sex tourism” industry in the trafficking of women and children and in the sexual exploitation of women and children around the world and make recommendations on appropriate measures to combat this industry.

SEC. 6. PREVENTION OF TRAFFICKING.

(a) ECONOMIC ALTERNATIVES TO PREVENT AND DETER TRAFFICKING.—The President, acting through the Administrator of the United States Agency for International Development and the heads of other appropriate agencies, shall establish and carry out initiatives to enhance economic opportunity for potential victims of trafficking as a method to deter trafficking. Such initiatives may include—

(1) microcredit lending programs, training in business development, skills training, and job counseling;

(2) programs to promote women’s participation in economic decision making;

(3) programs to keep children, especially girls, in elementary and secondary schools;

(4) development of educational curricula regarding the dangers of trafficking; and

(5) grants to nongovernmental organizations to accelerate and advance the political, economic, social, and educational roles and capacities of women in their countries.

(b) PUBLIC AWARENESS AND INFORMATION.—The President, acting through the Secretary of Labor, the Secretary of Health and Human Services, the Attorney General, and the Secretary of State, shall establish and carry out programs to increase public awareness, particularly among potential victims of trafficking, of the dangers of trafficking and the protections that are available for victims of trafficking.

(c) CONSULTATION REQUIREMENT.—The President shall consult with appropriate nongovernmental organizations with respect to the establishment and conduct of initiatives described in subsection (a).

SEC. 7. PROTECTION AND ASSISTANCE FOR VICTIMS OF TRAFFICKING.

(a) ASSISTANCE FOR VICTIMS IN OTHER COUNTRIES.—

(1) IN GENERAL.—The Secretary of State and the Administrator of the United States Agency for International Development, in consultation with appropriate nongovernmental organizations, shall establish and carry out programs and initiatives in foreign countries to assist in the safe integration, reintegration, or resettlement, as appropriate, of victims of trafficking and their children. Such programs and initiatives shall be designed to meet the mental and physical health, housing, legal, and other assistance needs of such victims and their children, as identified by the Inter-Agency Task Force to Monitor and Combat Trafficking established under section 4.

(2) ADDITIONAL REQUIREMENT.—In establishing and conducting programs and initiatives described in paragraph (1), the Secretary of State and the Administrator of the United States Agency for International Development shall take all appropriate steps to enhance cooperative efforts among foreign countries, including countries of origin of victims of trafficking, to assist in the integration, reintegration, or resettlement, as appropriate, of victims of trafficking including stateless victims.

(b) VICTIMS IN THE UNITED STATES.—

(1) ASSISTANCE.—Subject to the availability of appropriations and notwithstanding title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, the Attorney General, the Secretary of Health and Human Services, the Secretary of Labor, and the Board of Directors of the Legal Services Corporation shall expand existing services to provide assistance to victims of severe forms of trafficking in persons within the United States, without regard to the immigration status of such victims.

(2) BENEFITS.—Subject to the availability of appropriations and notwithstanding any other provision of law, victims of severe forms of trafficking in persons in the United States shall be eligible, without regard to their immigration status, for any benefits that are otherwise available under the Crime Victims Fund, established under the Victims of Crime Act of 1984, including victims’ services, compensation, and assistance.

(3) GRANTS.—

(A) Subject to the availability of appropriations, the Attorney General may make grants to States, territories, and possessions of the United States (including the Commonwealths of Puerto Rico and the Northern Mariana Islands), Indian tribes, units of local government, and nonprofit, nongovern-

mental victims' service organizations to develop, expand, or strengthen victim service programs for victims of trafficking.

(B) To receive a grant under this paragraph, an eligible unit of government or organization shall certify that its laws, policies, and practices, as appropriate, do not punish or deny services to victims of severe forms of trafficking in persons on account of the nature of their employment or services performed in connection with such trafficking.

(C) Of amounts made available for grants under this paragraph, there shall be set aside 3 percent for research, evaluation and statistics; 2 percent for training and technical assistance; and 1 percent for management and administration.

(D) The Federal share of a grant made under this paragraph may not exceed 75 percent of the total costs of the projects described in the application submitted.

(4) CIVIL ACTION.—An individual who is a victim of a violation of section 1589 or section 1589A of title 18, United States Code, regarding trafficking may bring a civil action in United States district court. The court may award actual damages, punitive damages, reasonable attorneys' fees, and other litigation costs reasonably incurred.

(c) TRAFFICKING VICTIM REGULATIONS.—Not later than 180 days after the date of enactment of this Act, the Attorney General and the Secretary of State shall promulgate regulations for law enforcement personnel, immigration officials, and Department of State officials to implement the following:

(1) Victims of severe forms of trafficking, while in the custody of the Federal Government and to the extent practicable, shall be housed in appropriate shelter as quickly as possible; receive prompt medical care, food, and other assistance; and be provided protection if a victim's safety is at risk or if there is danger of additional harm by recapture of the victim by a trafficker.

(2) Victims of severe forms of trafficking shall not be jailed, fined, or otherwise penalized due to having been trafficked, but the authority of the Attorney General under the Immigration and Nationality Act to detain aliens shall not be curtailed by any regulation promulgated to implement this paragraph.

(3) Victims of severe forms of trafficking shall have access to legal assistance, information about their rights, and translation services.

(4) Federal law enforcement officials shall act to ensure an alien's continued presence in the United States, if after an assessment, it is determined that such alien is a victim of a severe form of trafficking in persons, or a material witness to such trafficking, in order to effectuate prosecution of those responsible and to further the humanitarian interests of the United States. Such officials, in investigating and prosecuting persons engaging in such trafficking, shall take into consideration the safety and integrity of such victims, but the authority of the Attorney General under the Immigration and Nationality Act to detain aliens shall not be curtailed by any regulation promulgated to implement this paragraph.

(5) Appropriate personnel of the Department of State and the Department of Justice are trained in identifying victims of severe forms of trafficking and providing for the protection of such victims. Training under this paragraph should include methods for achieving antitrafficking objectives through the non-discriminatory application of immigration and other related laws.

(d) CONSTRUCTION.—Nothing in subsection (c) shall be construed as creating any private cause of action against the United States or its offices or employees.

(e) FUNDING.—Funds from asset forfeiture under section 1592 of title 18, United States Code, are authorized to be available in equal amounts for the purposes of subsections (a) and (b) and shall remain available for obligation until expended.

(f) PROTECTION FROM REMOVAL FOR CERTAIN VICTIMS OF TRAFFICKING.—

(1) NONIMMIGRANT CLASSIFICATION FOR CERTAIN VICTIMS OF TRAFFICKING.—Section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)) is amended—

(A) by striking "or" at the end of subparagraph (R);

(B) by striking the period at the end of subparagraph (S) and inserting "; or"; and

(C) by adding at the end the following:

"(T) subject to section 214(n), an alien, and the children of the alien if accompanying or following to join the alien, who the Attorney General determines—

"(i) is or has been a victim of a severe form of trafficking in persons (as defined in section 3 of the Trafficking Victims Protection Act of 2000);

“(ii) is physically present in the United States or at a port of entry into the United States by reason of having been transported to the United States or the port of entry in connection with such severe form of trafficking in persons;

“(iii)(I) has not attained 15 years of age; or

“(II) was induced to participate in the commercial sex act or condition of involuntary servitude, peonage, or slavery or slavery-like practices that is the basis of the determination under clause (i) by force, coercion, fraud, or deception, did not voluntarily agree to any arrangement including such participation, and has complied with any reasonable request for assistance in the investigation or prosecution of severe forms of trafficking in persons; and

“(iv)(I) has a well-founded fear of retribution involving the infliction of severe harm upon removal from the United States; or

“(II) would suffer extreme hardship in connection with the victimization described in clause (i) upon removal from the United States;

and, if the Attorney General considers it to be necessary to avoid extreme hardship, the spouse, and sons and daughters (who are not children), of any such alien (and the parents of any such alien, in the case of an alien under 21 years of age) if accompanying or following to join the alien.”.

(2) CONDITIONS ON NONIMMIGRANT STATUS.—Section 214 of the Immigration and Nationality Act (8 U.S.C. 1184) is amended—

(1) by redesignating the subsection (l) added by section 625(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104–208; 110 Stat. 3009–1820) as subsection (m); and

(2) by adding at the end the following:

“(n)(1) No alien shall be eligible for admission to the United States under section 101(a)(15)(T) if there is substantial reason to believe that the alien has committed an act of a severe form of trafficking in persons (as defined in section 3 of the Trafficking Victims Protection Act of 2000).

“(2) The total number of aliens who may be issued visas or otherwise provided nonimmigrant status during any fiscal year under section 101(a)(15)(T) may not exceed 5,000.

“(3) The numerical limitation of paragraph (2) shall only apply to principal aliens and not to the spouses, sons, daughters, or parents of such aliens.

“(4) Aliens who are subject to the numerical limitation of paragraph (2) shall be issued visas (or otherwise provided nonimmigrant status) in the order in which petitions are filed for such visas or status.”.

(3) WAIVER OF GROUNDS FOR INELIGIBILITY FOR ADMISSION.—Section 212(d) of the Immigration and Nationality Act (8 U.S.C. 1182(d)) is amended by adding at the end the following:

“(13)(A) The Attorney General shall determine whether a ground for inadmissibility exists with respect to a nonimmigrant described in section 101(a)(15)(T).

“(B) In addition to any other waiver that may be available under this section, in the case of a nonimmigrant described in section 101(a)(15)(T), if the Attorney General considers it to be in the national interest to do so, the Attorney General, in the Attorney General’s discretion, may waive the application of—

“(i) paragraphs (1) and (4) of subsection (a); and

“(ii) any other provision of such subsection (excluding paragraphs (3), (10)(C), and (10)(E)) if the activities rendering the alien inadmissible under the provision were caused by, or were incident to, the victimization described in section 101(a)(15)(T)(i).

“(C) Nothing in this paragraph shall be regarded as prohibiting the Attorney General from instituting removal proceedings against an alien admitted as a nonimmigrant under section 101(a)(15)(T) for conduct committed after the alien’s admission into the United States, or for conduct or a condition that was not disclosed to the Attorney General prior to the alien’s admission as a nonimmigrant under section 101(a)(15)(T).”.

(4) ADJUSTMENT TO PERMANENT RESIDENT STATUS.—Section 245 of the Immigration and Nationality Act (8 U.S.C. 1255) is amended by adding at the end the following:

“(l)(1) If, in the opinion of the Attorney General, a nonimmigrant admitted into the United States under section 101(a)(15)(T)—

“(A) has been physically present in the United States for a continuous period of at least 3 years since the date of such admission;

“(B) has, throughout such period, been a person of good moral character;

“(C) has, during such period, complied with any reasonable request for assistance in the investigation or prosecution of severe forms of trafficking in persons; and

“(D)(i) has a well-founded fear of retribution involving the infliction of severe harm upon removal from the United States; or

“(ii) would suffer extreme hardship in connection with the victimization described in section 101(a)(15)(T)(i) upon removal from the United States; the Attorney General may adjust the status of the alien (and the spouse, parents, married and unmarried sons and daughters of the alien if admitted under such section) to that of an alien lawfully admitted for permanent residence.

“(2) Paragraph (1) shall not apply to an alien admitted under section 101(a)(15)(T) who is inadmissible to the United States by reason of a ground that has not been waived under section 212, except that, if the Attorney General considers it to be in the national interest to do so, the Attorney General, in the Attorney General’s discretion, may waive the application of—

“(A) paragraphs (1) and (4) of section 212(a); and

“(B) any other provision of such section (excluding paragraphs (3), (10)(C), and (10)(E)), if the activities rendering the alien inadmissible under the provision were caused by, or were incident to, the victimization described in section 101(a)(15)(T)(i).

“(3) An alien shall be considered to have failed to maintain continuous physical presence in the United States for purposes of paragraph (1)(A) if the alien has departed from the United States for any period in excess of 90 days or for any periods in the aggregate exceeding 180 days.

“(4)(A) The total number of aliens whose status may be adjusted under paragraph (1) during any fiscal year may not exceed 5,000.

“(B) The numerical limitation of subparagraph (A) shall only apply to principal aliens and not to the spouses, sons, daughters, or parents of such aliens.

“(C) Aliens who are subject to the numerical limitation of subparagraph (A) shall have their status adjusted in the order in which applications are filed for such adjustment.

“(D) Upon the approval of adjustment of status under paragraph (1)—

“(i) the Attorney General shall record the alien’s lawful admission for permanent residence as of the date of such approval; and

“(ii) the Secretary of State shall not be required to reduce the number of immigrant visas authorized to be issued under this Act for any fiscal year.”.

SEC. 8. MINIMUM STANDARDS FOR THE ELIMINATION OF TRAFFICKING.

(a) **MINIMUM STANDARDS.**—Minimum standards for the elimination of trafficking for a country that is a country of origin, of transit, or of destination for a significant number of victims are as follows:

(1) The country should prohibit severe forms of trafficking in persons and punish acts of such trafficking.

(2) For the knowing commission of any act of sex trafficking involving fraud, force, or coercion or in which the victim of sex trafficking is a child incapable of giving meaningful consent, or of trafficking which includes rape or kidnapping or which causes a death, the country should prescribe punishment commensurate with that for the most serious crimes, such as forcible sexual assault.

(3) For the knowing commission of any act of a severe form of trafficking in persons, the country should prescribe punishment which is sufficiently stringent to deter and which adequately reflects the heinous nature of the offense.

(4) The country should make serious and sustained efforts to eliminate severe forms of trafficking in persons.

(b) **CRITERIA.**—In determinations under subsection (a)(3) the following factors should be considered:

(1) Whether the country vigorously investigates and prosecutes acts of severe forms of trafficking in persons that take place wholly or partly within the territory of the country.

(2) Whether the country cooperates with other countries in the investigation and prosecution of severe forms of trafficking in persons.

(3) Whether the country extradites persons charged with acts of severe forms of trafficking in persons on the same terms and to the same extent as persons charged with other serious crimes.

(4) Whether the country monitors immigration and emigration patterns for evidence of severe forms of trafficking in persons and whether law enforcement agencies of the country respond to any such evidence in a manner which is consistent with the vigorous investigation and prosecution of acts of such traffick-

ing, as well as with the protection of victims and the internationally recognized human right to travel.

(5) Whether the country protects victims of severe forms of trafficking in persons and encourages their assistance in the investigation and prosecution of such trafficking, including provision for legal alternatives to their removal to countries in which they would face retribution or other hardship.

(6) Whether the country vigorously investigates and prosecutes public officials who participate in or facilitate severe forms of trafficking in persons, and takes all appropriate measures against officials who condone such trafficking.

SEC. 9. ASSISTANCE TO FOREIGN COUNTRIES TO MEET MINIMUM STANDARDS.

The Secretary of State and the Director of the Agency for International Development are authorized to provide assistance to foreign countries for programs and activities designed to meet the minimum international standards for the elimination of trafficking, including drafting of legislation to prohibit and punish acts of trafficking, investigation and prosecution of traffickers, and facilities, programs, and activities for the protection of victims.

SEC. 10. ACTIONS AGAINST GOVERNMENTS FAILING TO MEET MINIMUM STANDARDS.

(a) STATEMENT OF POLICY.—It is the policy of the United States not to provide nonhumanitarian foreign assistance to countries which do not meet minimum standards for the elimination of trafficking.

(b) REPORTS TO CONGRESS.—

(1) ANNUAL REPORT.—Not later than April 30 of each year, the Secretary of State shall submit to the appropriate congressional committees a report with respect to the status of severe forms of trafficking in persons which shall include a list of those countries, if any, to which the minimum standards for the elimination of trafficking under section 8 are applicable and which do not meet such standards, and which may include additional information, including information about efforts to combat trafficking and about countries which have taken appropriate actions to combat trafficking.

(2) INTERIM REPORTS.—The Secretary of State may submit to the appropriate congressional committees in addition to the annual report under subsection (b) one or more interim reports with respect to the status of severe forms of trafficking in persons, including information about countries whose governments have come into or out of compliance with the minimum standards for the elimination of trafficking since the transmission of the last annual report.

(c) NOTIFICATION.—For fiscal year 2002 and each subsequent fiscal year, for each foreign country to which the minimum standards for the elimination of trafficking are applicable and which has failed to meet such standards, as described in an annual or interim report under subsection (b), not less than 45 days and not more than 90 days after the submission of such a report the President shall submit a notification to the appropriate congressional committees of one of the determinations described in subsection (d).

(d) DETERMINATIONS.—The determinations referred to in subsection (c) are as follows:

(1) WITHHOLDING OF NONHUMANITARIAN ASSISTANCE.—The President has determined that—

(A)(i) the United States will not provide nonhumanitarian foreign assistance to the government of the country for the subsequent fiscal year until such government complies with the minimum standards; or

(ii) in the case of a country whose government received no nonhumanitarian foreign assistance from the United States during the previous fiscal year, the United States will not provide funding for participation by officials or employees of such governments in educational and cultural exchange programs for the subsequent fiscal year until such government complies with the minimum standards; and

(B) the President will instruct the United States Executive Director of each multilateral development bank and of the International Monetary Fund to vote against, and to use his or her best efforts to deny, any loan or other utilization of the funds of his or her institution to that country (other than for humanitarian assistance, or for development assistance which directly addresses basic human needs, is not administered by the government of the sanctioned country, and confers no benefit to that country) for the subsequent fiscal year until such government complies with the minimum standards.

(2) SUBSEQUENT COMPLIANCE.—The Secretary of State has determined that the country has come into compliance with the minimum standards.

(3) CONTINUATION OF ASSISTANCE IN THE NATIONAL INTEREST.—Notwithstanding the failure of the country to comply with minimum standards for the elimination of trafficking, the President has determined that the provision of nonhumanitarian foreign assistance to the country is in the national interest of the United States.

(e) CERTIFICATION.—Together with any notification under subsection (c), the President shall provide a certification by the Secretary of State that with respect to assistance described in clause (i), (ii), or (iv) of subparagraph 3(10)(A) or in subparagraph 3(10)(B), no assistance is intended to be received or used by any agency or official who has participated in, facilitated, or condoned a severe form of trafficking in persons.

SEC. 11. ACTIONS AGAINST SIGNIFICANT TRAFFICKERS IN PERSONS.

(a) AUTHORITY TO SANCTION SIGNIFICANT TRAFFICKERS IN PERSONS.—

(1) IN GENERAL.—The President may exercise IEEPA authorities (other than authorities relating to importation) without regard to section 202 of the International Emergency Economic Powers Act (50 U.S.C. 1705) in the case of any foreign person who is on the list described in subsection (b).

(2) PENALTIES.—The penalties set forth in section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705) apply to violations of any license, order, or regulation issued under this clause (i).

(3) IEEPA AUTHORITIES.—For purposes of clause (i), the term “IEEPA authorities” means the authorities set forth in section 203(a) of the International Emergency Economic Powers Act (50 U.S.C. 1702(a)).

(b) LIST OF TRAFFICKERS OF PERSONS.—

(1) COMPILING LIST OF TRAFFICKERS IN PERSONS.—The Secretary of State is authorized to compile a list of the following persons:

(A) any foreign person that plays a significant role in a severe form of trafficking in persons, directly or indirectly in the United States or any of its territories or possessions;

(B) foreign persons who materially assist in, or provide financial or technological support for or to, or providing goods or services in support of, activities of a significant foreign trafficker in persons identified pursuant to subparagraph (A); and

(C) foreign persons that are owned, controlled, or directed by, or acting for or on behalf of, a significant foreign trafficker so identified pursuant to subparagraph (A).

(2) REVISIONS TO LIST.—The Secretary of State shall make additions or deletions to any list published under paragraph (1) on an ongoing basis based on the latest information available.

(3) CONSULTATION.—The Secretary of State shall consult with the following officers in carrying out paragraphs (1) and (2).

(A) the Attorney General;

(B) the Director of Central Intelligence;

(C) the Director of the Federal Bureau of Investigation;

(D) the Secretary of Labor; and

(E) the Secretary of Health and Human Services.

(4) PUBLICATION OF LIST.—Upon compiling the list referred to in paragraph (1) and within 30 days of any revisions to such list, the Secretary of State shall submit the list or revisions to such list to the Committees on the International Relations and Judiciary and the Permanent Select Committee on Intelligence of the House of Representatives; and to the Committees on the Foreign Relations and the Select Committee on Intelligence of the Senate; and publish the list or revisions to such list in the Federal Register.

(c) REPORT TO CONGRESS ON IDENTIFICATION AND SANCTIONING OF SIGNIFICANT TRAFFICKERS IN PERSONS.—Upon exercising the authority of subsection (a), the President shall report to the Committees on the International Relations and Judiciary and the Permanent Select Committee on Intelligence of the House of Representatives; and to the Committees on the Foreign Relations and the Select Committee on Intelligence of the Senate—

(1) identifying publicly the foreign persons that the President determines are appropriate for sanctions pursuant to this section; and

(2) detailing publicly the sanctions imposed pursuant to this section.

(d) EXCLUSION OF CERTAIN INFORMATION.—

(1) INTELLIGENCE.—Notwithstanding any other provision of this section, the list and report described in subsections (b) and (c) shall not disclose the identity of any person, if the Director of Central Intelligence determines that such dis-

closure could compromise an intelligence operation, activity, source, or method of the United States.

(2) **LAW ENFORCEMENT.**—Notwithstanding any other provision of this section, the list and report described in subsections (b) and (c) shall not disclose the name of any person if the Attorney General, in coordination as appropriate with the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, and the Secretary of the Treasury, determines that such disclosure could reasonably be expected to—

(A) compromise the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution that furnished information on a confidential basis;

(B) jeopardize the integrity or success of an ongoing criminal investigation or prosecution;

(C) endanger the life or physical safety of any person; or

(D) cause substantial harm to physical property.

(3) **NOTIFICATION REQUIRED.**—(A) Whenever either the Director of Central Intelligence or the Attorney General makes a determination under this subsection, the Director of Central Intelligence or the Attorney General shall notify the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate, and explain the reasons for such determination.

(B) The notification required under this paragraph shall be submitted to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate not later than July 1, 2000, and on an annual basis thereafter.

(e) **LAW ENFORCEMENT AND INTELLIGENCE ACTIVITIES NOT AFFECTED.**—Nothing in this section prohibits or otherwise limits the authorized law enforcement or intelligence activities of the United States, or the law enforcement activities of any State or subdivision thereof.

(f) **EXCLUSION OF PERSONS WHO HAVE BENEFITED FROM ILLICIT ACTIVITIES OF TRAFFICKERS IN PERSONS.**—Section 212(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(2)) is amended by adding at the end the following:

“(H) **TRAFFICKERS IN PERSONS.**—Any alien who—

“(i) is a foreign person (as defined in section 11(h) of the Trafficking Victims Protection Act of 2000) on the most recent list compiled under section 11(b) of such Act;

“(ii) the consular officer or the Attorney General knows or has reason to believe is or has been a knowing aider, abettor, assister, conspirator, or colluder with an alien described in clause (i) in severe forms of trafficking in persons (as defined in section 3 of such Act); or

“(iii) the consular officer or the Attorney General knows or has reason to believe—

“(I) is the spouse, son, or daughter of an alien inadmissible under clause (i) or (ii);

“(II) has, within the previous 5 years, obtained any financial or other benefit from the illicit activity of such alien that is described in such clause; and

“(III) knew or reasonably should have known that the financial or other benefit was the product of such illicit activity;

is inadmissible.”.

(g) **IMPLEMENTATION.**—The Secretary of State, the Attorney General, and the Secretary of Treasury are authorized to take such actions as may be necessary to carry out this section, including promulgating rules and regulations permitted under this Act.

(h) **DEFINITION OF FOREIGN PERSONS.**—As used in this section, the term “foreign person” means any citizen or national of a foreign state or any entity not organized under the laws of the United States, including a foreign government official, but does not include a foreign state.

SEC. 12. STRENGTHENING PROSECUTION AND PUNISHMENT OF TRAFFICKERS.

(a) **TITLE 18 AMENDMENTS.**—Chapter 77 of title 18, United States Code, is amended—

(1) in each of sections 1581(a), 1583, and 1584—

(A) by striking “10 years” and inserting “20 years”;

(B) by adding at the end the following: “If, in addition to the foregoing elements, death results from a violation of this section, or if such violation includes kidnapping or an attempt to kidnap, aggravated sexual abuse or the attempt to commit aggravated sexual abuse, or an attempt to kill, the

defendant shall be fined under this title or imprisoned for any term of years or life, or both.”;

(2) by inserting at the end the following:

“§ 1589. Trafficking into involuntary servitude, peonage, or slavery-like conditions

“(a) Whoever recruits, harbors, provides, transports, employs, purchases, sells, or secures, by any means, any person, knowing or having reason to know that the person is or will be subjected to involuntary servitude or peonage or to slavery-like conditions as described in subsection (b) of this section, or in any way, financially or otherwise, knowingly benefits from, or makes use of, the labor or services of a person subjected to a condition of involuntary servitude or peonage, shall be fined under this title or imprisoned not more than 20 years, or both; and if, in addition to the foregoing elements, death results from an act committed in violation of this section, or if such act includes kidnapping or an attempt to kidnap, aggravated sexual abuse or the attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title or imprisoned for any term of years or life, or both.

“(b) As used in this section, the term ‘slavery-like conditions’ means that the labor or services of a person are obtained or maintained through any scheme or artifice to defraud, or by means of any plan or pattern, including but not limited to false and fraudulent pretense and misrepresentations, such that the person reasonably believes that if he did not perform the labor or services serious harm would be inflicted on himself or on another person.

“(c) This section does not apply to labor performed as a punishment for a crime whereof the party shall have been duly convicted.

“§ 1589A. Sex trafficking of children or by force, fraud, or coercion

“(a) IN GENERAL.—Whoever—

“(1) recruits, entices, harbors, purchases, sells, transports, or transfers a person, or

“(2) owns, manages, operates, or shares in the proceeds of an enterprise in which a person has been recruited, enticed, harbored, purchased, sold, transported, or transferred,

knowing or having reason to know that the person will be caused by force, fraud, or coercion to engage in a commercial sex act, or that the person has not attained the age of 18 years and will be caused or expected to engage in a commercial sexual act, shall be punished as provided in subsection (b).

“(b) PUNISHMENT.—The punishment for an offense under subsection (a) is—

“(1) if the offense was effected by fraud, force, or coercion, or if the person transported had not attained the age of 14 years at the time of such offense, by a fine under this title or imprisonment for any term of years or for life, or both; or

“(2) if the offense was not effected by fraud, force, or coercion, and the person transported had attained the age of 14 years but had not attained the age of 18 years at the time of such offense, by a fine under this title or imprisonment for not more than 20 years, or both.

“(c) DEFINITION OF COMMERCIAL SEXUAL ACT.—In this section, the term ‘commercial sexual act’ means any sexual act, on account of which anything of value is given to or received by any person, and—

“(1) which takes place in the United States;

“(2) which affects United States foreign commerce; or

“(3) in which either the person caused or expected to participate in the act or the person committing the violation is a United States citizen or an alien admitted for permanent residence in the United States.

“§ 1590. Unlawful possession of documents in furtherance of trafficking, involuntary servitude, or peonage

“(a) Whoever destroys, conceals, removes, confiscates, or possesses any identification, passport, or other immigration documents, or any other documentation of another person—

“(1) in the course of, or under circumstances which facilitate a violation of section 1581, 1583, 1584, 1589, or 1589A or a conspiracy or attempt to commit such a violation; or

“(2) to conceal or impair the investigation or prosecution of a violation of any section described in paragraph (1); or

“(3) to prevent or restrict, without lawful authority, the person’s liberty to move or travel in interstate or foreign commerce, shall be fined under this title or imprisoned for not more than 5 years, or both.

“§ 1591. Mandatory restitution

“(a) Notwithstanding sections 3663 or 3663A, and in addition to any other civil or criminal penalties authorized by law, the court shall order restitution for any offense under this chapter.

“(b)(1) The order of restitution under this section shall direct the defendant to pay the victim (through the appropriate court mechanism) the full amount of the victim’s losses, as determined by the court under paragraph (3) of this subsection.

“(2) An order of restitution under this section shall be issued and enforced in accordance with section 3664 in the same manner as an order under section 3663A.

“(3) As used in this subsection, the term ‘full amount of the victim’s losses’ has the same meaning as provide in section 2259(b)(3) and shall in addition include the greater of the gross income or value to the defendant of the victim’s services or labor or the value of the victim’s labor as guaranteed under the minimum wage and overtime guarantees of the Fair Labor Standards Act (29 U.S.C. 201, et seq.).

“(c) As used in this section, the term ‘victim’ means the individual harmed as a result of a crime under this chapter, including, in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or a representative of the victim’s estate, or another family member, or any other person appointed as suitable by the court, but in no event shall the defendant be named such representative or guardian.

“§ 1592. General provisions

“(a) In a prosecution under sections 1581, 1583, 1584, or 1589, a condition of involuntary servitude or peonage may be established by proof that the defendant obtained or maintained the labor or service of any person—

“(1) by the use, or threatened use, of force, violence, physical restraint, or physical injury, or by extortion or the abuse of threatened abuse of law or the legal process;

“(2) through representations made to any person that physical harm may occur to that person, or to another, in an effort to wrongfully obtain or maintain the labor or services of that person; or

“(3) by the use of fraud, deceit, or misrepresentation toward any person in an effort to wrongfully obtain or maintain the labor or services of that person, where the person is a minor, one who is mentally disabled, or one who is otherwise particularly susceptible to coercion.

“(b) An attempt or conspiracy to violate sections 1581, 1583, 1584, 1589, or 1589A shall be punishable in the same manner as a completed violation of each of these sections, respectively.

“(c)(1) The court, in imposing sentence on any person convicted of a violation of this chapter, shall order, in addition to any other sentence imposed and irrespective of any provision of State law, that such person shall forfeit to the United States—

“(A) such person’s interest in any property, real or personal, that was used or intended to be used to commit or to facilitate the commission of such violation; and

“(B) any property, real or personal, constituting or derived from, any proceeds that such person obtained, directly or indirectly, as a result of such violation.

“(2) The criminal forfeiture of property under this subsection, any seizure and disposition thereof, and any administrative or judicial proceeding in relation thereto, shall be governed by the provisions of section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853), except subsection (d) of that section.

“(d)(1) The following shall be subject to forfeiture to the United States and no property right shall exist in them—

“(A) any property, real or personal, used or intended to be used to commit or to facilitate the commission of any violation of this chapter; and

“(B) any property, real or personal, which constitutes or is derived from proceeds traceable to any violation of this chapter.

“(2) The provisions of chapter 46 of this title relating to civil forfeitures shall extend to any seizure or civil forfeiture under this subsection.

“(e) WITNESS PROTECTION.—Any violation of this chapter shall be considered an organized criminal activity or other serious offense for the purposes of application of chapter 224 (relating to witness protection).”; and

(3) by amending the table of sections at the beginning of chapter 77 by adding at the end the following new items:

“1589. Trafficking into involuntary servitude, peonage, or slavery-like conditions.

“1589A. Sex trafficking of children or by force, fraud, or coercion.

“1590. Unlawful possession of documents in furtherance of trafficking involuntary servitude, or peonage.

“1591. Mandatory restitution.

“1592. General provisions.”.

(b) AMENDMENT TO THE SENTENCING GUIDELINES.—

(1) Pursuant to its authority under section 994 of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and, if appropriate, amend the sentencing guidelines and policy statements applicable to persons convicted of offenses involving the trafficking of persons including component or related crimes of peonage, involuntary servitude, slave trade offenses, and possession, transfer or sale of false immigration documents in furtherance of trafficking, and the Fair Labor Standards Act and the Migrant and Seasonal Agricultural Worker Protection Act.

(2) In carrying out this subsection, the Sentencing Commission shall—

(A) take all appropriate measures to ensure that these sentencing guidelines and policy statements applicable to the offenses described in paragraph (1) of this subsection are sufficiently stringent to deter and adequately reflect the heinous nature of such offenses;

(B) consider conforming the sentencing guidelines applicable to offenses involving trafficking in persons to the guidelines applicable to peonage, involuntary servitude, and slave trade offenses; and

(C) consider providing sentencing enhancements for those convicted of the offenses described in paragraph (1) of this subsection that—

(i) involve a large number of victims;

(ii) involve a pattern of continued and flagrant violations;

(iii) involve the use or threatened use of a dangerous weapon; or

(iv) result in the death or bodily injury of any person.

(3) The Commission may promulgate the guidelines or amendments under this subsection in accordance with the procedures set forth in section 21(a) of the Sentencing Act of 1987, as though the authority under that Act had not expired.

(c) RACKETEERING.—Section 1961(1) of title 18, United States Code, is amended by inserting “section 1589 (relating to trafficking into involuntary servitude, peonage, or slavery-like conditions), section 1589A (relating to sex trafficking of children or by force, fraud, or coercion),” after “murder-for-hire).”.

SEC. 13. AUTHORIZATION OF APPROPRIATIONS.

(a) AUTHORIZATION OF APPROPRIATIONS FOR THE INTERAGENCY TASK FORCE.—To carry out the purposes of section 5, there are authorized to be appropriated to the Secretary of State \$1,500,000 for fiscal year 2000 and \$3,000,000 for fiscal year 2001.

(b) AUTHORIZATION OF APPROPRIATIONS TO THE SECRETARY OF HEALTH AND HUMAN SERVICES.—To carry out the purposes of section 7(b) there are authorized to be appropriated to the Secretary of Health and Human Services \$5,000,000 for fiscal year 2000 and \$10,000,000 for fiscal year 2001.

(c) AUTHORIZATION OF APPROPRIATIONS TO THE SECRETARY OF STATE.—To carry out the purposes of section 7(a) there are authorized to be appropriated to the Secretary of State \$5,000,000 for fiscal year 2000 and \$10,000,000 for fiscal year 2001.

(d) AUTHORIZATION OF APPROPRIATIONS TO ATTORNEY GENERAL.—To carry out the purposes of section 7(b) there are authorized to be appropriated to the Attorney General \$5,000,000 for fiscal year 2000 and \$10,000,000 for fiscal year 2001.

(e) AUTHORIZATION OF APPROPRIATIONS TO PRESIDENT.—

(1) FOREIGN VICTIM ASSISTANCE.—To carry out the purposes of section 6 there are authorized to be appropriated to the President \$5,000,000 for fiscal year 2000 and \$10,000,000 for fiscal year 2001.

(2) ASSISTANCE TO FOREIGN COUNTRIES TO MEET MINIMUM STANDARDS.—To carry out the purposes of section 9 there are authorized to be appropriated to the President \$5,000,000 for fiscal year 2000 and \$10,000,000 for fiscal year 2001.

(f) AUTHORIZATION OF APPROPRIATIONS TO THE SECRETARY OF LABOR.—To carry out the purposes of section 7(b) there are authorized to be appropriated to the Secretary of Labor \$5,000,000 for fiscal year 2000 and \$10,000,000 for fiscal year 2001.

PURPOSE AND SUMMARY

H.R. 3244, the Trafficking Victims Protection Act, is intended to prevent trafficking in persons, to ensure punishment of traffickers, and to protect their victims. It creates an interagency task force to monitor and combat trafficking. It also requires initiatives to en-

hance economic opportunity for potential trafficking victims abroad as a method to deter trafficking. H.R. 3244 provides protection and assistance for trafficking victims both inside the United States and abroad. It sets minimum standards for countries to eliminate trafficking, provides assistance to foreign countries which meet the minimum standards, and sets policy to withhold assistance from governments failing to meet those standards. Finally, it strengthens prosecution and punishment of traffickers.

The immigration provisions and criminal penalty provisions of the bill are the only provisions within the jurisdiction of the Committee on the Judiciary. The immigration provisions, as amended by the committee, are intended to protect certain trafficking victims and their immediate family members in the United States and to effectuate prosecution of the victims' traffickers.

BACKGROUND AND NEED FOR THE LEGISLATION

BACKGROUND

Trafficking of persons has recently become a growing phenomenon within and across international borders, including the United States. Many trafficked persons are forced into the sex industry. The rapid expansion of the sex industry and the low status of women in many parts of the world have contributed to a burgeoning of the trafficking industry.

Trafficking of persons also involves forced labor, involuntary servitude, or slavery. Many trafficked persons are induced to perform labor or other services by force or the threat of force.

TRAFFICKING OF PERSONS AND IMMIGRATION

When trafficked persons are brought to the United States, they are often deportable for having entered illegally. Many are smuggled into the country. Others obtain visas under false pretenses, use fraudulent passports, or overstay their visas. Once placed in the sex trade or forced labor, the victims' traffickers control them through threats. The victims are told that if they escape or go to law enforcement authorities, they will be deported. Of those victims who do give information to the authorities, some claim they cannot return to their home country for fear of retribution at the hands of their traffickers.

THE BILL

Each year, tens of thousands of aliens pay smugglers to be brought to the United States. Once here, they must work long hours to pay off their smuggling debts of tens of thousands of dollars. It is not the committee's intent that such people receive the new nonimmigrant "T" visa created by H.R. 3244 or the permanent residence provided by the bill. Otherwise, this bill would become a general amnesty for aliens who, we must remember, voluntarily sought out smugglers to bring them illegally to the United States. Additionally, the bill would actually encourage alien smuggling by providing the expectation of eventual amnesty.

Accordingly, to be eligible for a "T" visa, H.R. 3244 requires that a trafficking victim show that he or she was induced to participate in the commercial sex act or condition of involuntary servitude, pe-

onage, or slavery or slavery-like practices by force, coercion, fraud or deception. The alien will not be eligible for the visa if the alien knew that, after being voluntarily smuggled here, he or she would be subjected to involuntary servitude, peonage, slavery, or slavery-like practices. In addition, merely being forced to work for a period of time in order to pay off a smuggling fee does not constitute a severe form of trafficking (entitling an alien to a "T" visa and eventual permanent residence) under the bill.

The intent is to provide "T" visas (and eventual permanent residence) to trafficking victims who were trafficked to the United States. Victims who were trafficked between two other countries but who eventually arrive in the United States without being trafficked here do not merit a "T" visa. As such, H.R. 3244 restricts "T" visas to only those trafficking victims who are physically present in the United States or at a port of entry into the United States by reason of having been transported to the United States or the port of entry in connection with a severe form of trafficking in persons.

The most important goal of H.R. 3244 is to prevent trafficking of persons. To achieve this goal, cooperation from trafficking victims with law enforcement authorities is essential to investigate, indict, and prosecute traffickers. Therefore, H.R. 3244 requires that a trafficking victim show that he or she has complied with any reasonable request for assistance in the investigation or prosecution of severe forms of trafficking in persons, or be under the age of 15 years old, to receive a "T" visa.

In hearings held by other committees on trafficking in persons, victims have explained that they are afraid of returning to their home countries—fearing retribution from their traffickers for having gone to United States law enforcement authorities. To combat this intimidation, H.R. 3244 provides relief to aliens who show either a well-founded fear of retribution involving the infliction of severe harm or extreme hardship in connection with having been trafficked. Absent such intimidation, there is no rationale to provide relief.

Any alien who traffics persons or assists in the trafficking of persons, including a victim's family member, does not merit a visa. Therefore, H.R. 3244 bars any alien from a "T" visa if there is substantial reason to believe that the alien has committed an act of a severe form of trafficking in persons. In addition, H.R. 3244 creates a new ground of inadmissibility for an alien who is a trafficker in persons, assisted in trafficking of persons, or is a family member of a trafficker who knowingly benefitted from the trafficking within the previous five years.

In order that this bill never become a general amnesty program for smuggled aliens, H.R. 3244 places an annual cap of 5,000 on visas available to trafficking victims. If that cap is reached in any fiscal year, neither the INS, nor the Executive Office for Immigration Review should permit "T" visa applicants who exceed the 5,000 cap to remain in the United States to await a "T" visa in the next fiscal year.

HEARINGS

The committee's Subcommittee on Immigration and Claims held no hearings on H.R. 3244.

COMMITTEE CONSIDERATION

On March 8, 2000, the Subcommittee on Immigration and Claims met in open session and ordered favorably reported the bill H.R. 3244, as amended, by a voice vote, a quorum being present. On April 4, 2000, the committee met in open session and ordered favorably reported the bill H.R. 3244 with an amendment in the nature of a substitute by voice vote, a quorum being present.

VOTES OF THE COMMITTEE

Subject: Amendment offered by Mr. Conyers to the Smith/Canady amendment to the amendment in the nature of a substitute to H.R. 3244 which would eliminate the 5,000 cap placed on visas and adjustments of status for trafficking victims "if the Attorney General determines that it should be exceeded by a specific number in any year for humanitarian reasons." By a roll call vote of 14 yeas to 16 nays, the amendment was defeated.

ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Sensenbrenner .....	.....	.....	.....
Mr. McCollum .....	.....	X	.....
Mr. Gekas .....	.....	.....	.....
Mr. Coble .....	.....	.....	.....
Mr. Smith (TX) .....	.....	X	.....
Mr. Gallegly .....	.....	X	.....
Mr. Canady .....	.....	X	.....
Mr. Goodlatte .....	.....	X	.....
Mr. Chabot .....	.....	X	.....
Mr. Barr .....	.....	X	.....
Mr. Jenkins .....	.....	X	.....
Mr. Hutchinson .....	.....	X	.....
Mr. Pease .....	.....	X	.....
Mr. Cannon .....	.....	X	.....
Mr. Rogan .....	.....	X	.....
Mr. Graham .....	.....	X	.....
Ms. Bono .....	.....	X	.....
Mr. Bachus .....	.....	.....	.....
Mr. Scarborough .....	.....	.....	.....
Mr. Vitter .....	.....	X	.....
Mr. Conyers	X	.....	.....
Mr. Frank	X	.....	.....
Mr. Berman	X	.....	.....
Mr. Boucher	X	.....	.....
Mr. Nadler	X	.....	.....
Mr. Scott	X	.....	.....
Mr. Watt	X	.....	.....
Ms. Lofgren	X	.....	.....
Ms. Jackson Lee	X	.....	.....
Ms. Waters	X	.....	.....
Mr. Meehan .....	.....	.....	.....
Mr. Delahunt	X	.....	.....
Mr. Wexler	X	.....	.....
Mr. Rothman	X	.....	.....
Ms. Baldwin .....	.....	.....	.....
Mr. Weiner	X	.....	.....

ROLLCALL NO. 1—Continued

	Ayes	Nays	Present
Mr. Hyde, Chairman .....	.....	X	.....
Total	14	16	.....

Subject: Amendment offered by Ms. Jackson Lee to the Smith/Canady amendment to the amendment in the nature of a substitute to H.R. 3244 to permit family members of trafficking victims to receive visas without the family members having to show extreme hardship. By a roll call vote of 14 yeas to 16 nays, the amendment was defeated.

ROLLCALL NO. 2

	Ayes	Nays	Present
Mr. Sensenbrenner .....	.....	.....	.....
Mr. McCollum .....	.....	X	.....
Mr. Gekas .....	.....	X	.....
Mr. Coble .....	.....	.....	.....
Mr. Smith (TX) .....	.....	X	.....
Mr. Gallegly .....	.....	X	.....
Mr. Canady .....	.....	X	.....
Mr. Goodlatte .....	.....	X	.....
Mr. Chabot .....	.....	X	.....
Mr. Barr .....	.....	.....	.....
Mr. Jenkins .....	.....	X	.....
Mr. Hutchinson .....	.....	X	.....
Mr. Pease .....	.....	X	.....
Mr. Cannon .....	.....	X	.....
Mr. Rogan .....	.....	X	.....
Mr. Graham .....	.....	X	.....
Ms. Bono .....	.....	X	.....
Mr. Bachus .....	.....	.....	.....
Mr. Scarborough .....	.....	.....	.....
Mr. Vitter .....	.....	X	.....
Mr. Conyers	X	.....	.....
Mr. Frank	X	.....	.....
Mr. Berman	X	.....	.....
Mr. Boucher	X	.....	.....
Mr. Nadler	X	.....	.....
Mr. Scott	X	.....	.....
Mr. Watt	X	.....	.....
Ms. Lofgren	X	.....	.....
Ms. Jackson Lee	X	.....	.....
Ms. Waters	X	.....	.....
Mr. Meehan .....	.....	.....	.....
Mr. Delahunt	X	.....	.....
Mr. Wexler	X	.....	.....
Mr. Rothman	X	.....	.....
Ms. Baldwin .....	.....	.....	.....
Mr. Weiner	X	.....	.....
Mr. Hyde, Chairman .....	.....	X	.....
Total	14	16	.....

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the committee reports that the findings and recommendations of the committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Rep-

representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM FINDINGS

No findings or recommendations of the Committee on Government Reform were received as referred to in clause 3(c)(4) of rule XIII of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of House Rule XIII is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the committee sets forth, with respect to the bill, H.R. 3244, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 13, 2000.

Hon. HENRY J. HYDE, *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3244, the Trafficking Victims Protection Act of 2000.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact for federal costs is Sunita D'Monte, who can be reached at 226-2840. The CBO staff contacts for intergovernmental and private-sector mandates are Leo Lex (225-3220) and Keith Mattrick (226-2940), respectively.

Sincerely,

DAN L. CRIPPEN, *Director.*

Enclosure

cc: Honorable John Conyers Jr.
Ranking Democratic Member

H.R. 3244—Trafficking Victims Protection Act of 2000.

SUMMARY

H.R. 3244 is aimed at combating trafficking of persons, especially into the sex trade, slavery, and slavery-like conditions. The bill would establish an interagency task force within the State Department to monitor and report such trafficking, prohibit certain forms of assistance to countries that fail to combat trafficking, criminalize certain activities related to trafficking, allow victims of trafficking to enter and remain in the United States, and authorize various programs to assist victims. The bill defines trafficking as the purchase, sale, recruitment, harboring, transportation, transfer, or re-

ceipt of a person for the purpose of a commercial sex act or forced labor. CBO estimates that appropriation of the authorized amounts would result in additional discretionary spending of \$89 million over the 2000–2005 period. Enactment of the legislation would affect direct spending and revenues; thus, pay-as-you-go procedures would apply. We estimate that direct spending would increase by less than \$500,000 in 2000 and by \$20 million over the 2000–2005 period, and that revenues would increase by less than \$500,000 annually.

H.R. 3244 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA); however, CBO estimates that the cost of the mandate would not be significant. Increased spending for Medicaid and Temporary Assistance for Needy Families (TANF) would not be intergovernmental mandates because states have flexibility within those programs to alter their financial or programmatic responsibilities to accommodate the change. Other provisions of the bill would provide grant assistance to state, local, and tribal governments for programs benefitting victims of trafficking crimes.

The bill would impose mandates on entities that engage in certain transactions with foreign persons identified as human traffickers. CBO estimates that the costs of those mandates would fall well below the threshold for private-sector mandates established in UMRA (\$109 million in 2000, adjusted annually for inflation).

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 3244 is shown in the following table. The costs of this legislation fall within budget functions 150 (international affairs), 500 (education, employment, training, and social services), 550 (health), 600 (income security), and 750 (administration of justice).

Spending Subject to Appropriation

For purposes of this estimate, CBO assumes that H.R. 3244 will be enacted and the initial appropriations will be provided by July 1, 2000. The bill would authorize appropriations of \$95 million over the 2000–2001 period. Assuming appropriation of the amounts authorized for each year and based on historical spending patterns for similar programs, CBO estimates that the bill would result in discretionary outlays totaling \$89 million over the 2000–2005 period.

Overseas Assistance.

The bill would authorize appropriations for the President, through the Agency for International Development (AID) and other agencies, to establish and administer programs to increase public awareness of trafficking and to offer microcredit lending, skills training, business development and other initiatives for potential victims of trafficking. It would also require the State Department and AID to initiate programs for the safe integration and resettlement of victims and to assist foreign countries in eliminating trafficking. CBO estimates these provisions would increase spending by \$41 million over the 2000–2005 period.

Domestic Assistance.

Section 13 would authorize appropriations for the Attorney General, the Secretary of Labor, and the Department of Health and Human Services (HHS) to expand existing services to provide assistance for victims of trafficking. CBO estimates that outlays would increase by \$43 million over the 2000–2005 period. In addition to increases in discretionary spending, CBO expects that HHS would expand services in mandatory programs to provide assistance to victims of trafficking.

Interagency Task Force.

Section 13 would authorize appropriations for an interagency task force within the State Department to monitor, combat, and report on trafficking. CBO estimates this section would increase spending by \$5 million over the 2000–2005 period.

Law Enforcement.

Section 12 would make certain activities related to trafficking federal crimes and would increase penalties for existing offenses relating to trafficking. As a result, the federal government could pursue cases that it otherwise would not be able to prosecute. CBO expects that any increase in federal costs for law enforcement, court proceedings, or prison operations would not be significant, however, because of the relatively small number of cases likely to be involved. Any such additional costs would be subject to the availability of appropriated funds.

By fiscal year, in millions of dollars

	2000	2001	2002	2003	2004	2005
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Overseas Assistance						
Authorization Level	15	30	0	0	0	0
Estimated Outlays	1	13	17	6	3	a
Domestic Assistance						
Authorization Level	15	30	0	0	0	0
Estimated Outlays	1	21	12	6	2	1
Interagency Task Force						
Authorization Level	2	3	0	0	0	0
Estimated Outlays	a	3	1	a	a	0
Law Enforcement						
Estimated Authorization Level	a	a	a	a	a	a
Estimated Outlays	a	a	a	a	a	a
Total						
Estimated Authorization Level	32	63	a	a	a	a
Estimated Outlays	3	37	30	13	5	1
CHANGES IN DIRECT SPENDING AND REVENUES						
Medicaid						
Estimated Budget Authority	a	1	1	2	3	4
Estimated Outlays	a	1	1	2	3	4
TANF						
Estimated Budget Authority	0	0	0	0	0	0
Estimated Outlays	a	a	1	2	2	3
Other						
Estimated Budget Authority	a	a	a	a	a	a

By fiscal year, in millions of dollars—Continued

	2000	2001	2002	2003	2004	2005
CHANGES IN DIRECT SPENDING AND REVENUES						
Estimated Outlays	a	a	a	a	a	a
Total						
Estimated Budget Authority	a	1	2	2	3	4
Estimated Outlays	a	1	2	4	5	7
Estimated Penalties (Revenues)	a	a	a	a	a	a

a. Less than \$500,000.

*Direct Spending and Revenues**Medicaid and TANF.*

H.R. 3244 would require the Secretary of HHS to expand existing services to provide assistance to victims of trafficking, regardless of their immigration status. Under current law, aliens who are in the United States illegally or admitted under a nonimmigrant class are ineligible for most federal public benefits. HHS administers several mandatory benefit programs for which victims of trafficking could be newly eligible. Those programs include Medicaid and TANF.

Based on information from the State Department, CBO assumes that about 50,000 women and children are trafficked into the United States every year. Although data on the number of trafficking victims who are able to leave their situations are unavailable, discussions with State Department officials led CBO to assume that only about 2,000 victims would be freed each year and could potentially receive benefits. Of these 2,000 individuals, we anticipate that one-third would be nonelderly adult women and another third would be children, for a total of about 1,300 women and children who could be eligible for Medicaid or TANF each year. In addition, we adjusted the total number of children eligible for benefits to account for births to adult women, based on an estimated 9 percent annual fertility rate among noncitizen women of child-bearing age.

CBO expects that 80 percent of the eligible individuals would participate in Medicaid and 45 percent would participate in TANF. These participation rates are based on the utilization rates of these programs by the most disadvantaged refugees in the United States. CBO estimates that 460 children and 110 women would receive Medicaid benefits in fiscal year 2001, at a federal cost of \$1 million. With the cumulative effects of additional applicants and births each year, participation would grow to about 2,500 children and 900 women in 2005, for a total cost of \$11 million over the 2000–2005 period. Because of the lower participation rate in TANF, the number of women and children receiving TANF benefits would be roughly half the number participating in Medicaid, resulting in insignificant costs in 2001 and a total cost of \$8 million over the period.

In addition, children born to women in the United States would be citizens and could be eligible for other federal means-tested benefits, such as Food Stamps or Supplemental Security Income. CBO

estimates that additional costs for those programs would be insignificant during the next five years.

Other Provisions.

The bill contains other provisions that, in total, would affect direct spending and revenues by less than \$500,000 a year.

Immigration Status for Certain Victims. Section 7(f) would establish a new nonimmigrant category for certain victims of trafficking and would permit certain victims to attain permanent U.S. residence. Costs to the Immigration and Naturalization Service for adjudicating such cases would be funded from fees collected by the agency. CBO estimates that any such costs would not be significant because of the small number of trafficking victims likely to be involved.

Penalties for Trafficking. Section 11 would allow the President to impose penalties on foreign traffickers of persons under the International Emergency Economic Powers Act. CBO estimates that this provision would result in a negligible increase in revenues.

Criminal Fines and Seizure of Assets. Section 12 would allow the federal government to pursue new cases related to trafficking. Because those prosecuted and convicted under H.R. 3244 could be subject to criminal fines, the federal government might collect additional fines if the bill is enacted. Collections of such fines are recorded in the budget as governmental receipts (revenues), which are deposited in the Crime Victims Fund and spent in subsequent years. CBO expects that any additional receipts and direct spending would not be significant.

Persons prosecuted and convicted under the bill also could be subject to the seizure of certain assets by the federal government. Proceeds from the sale of such assets would be deposited into the Assets Forfeiture Fund and spent from that fund, mostly in the same year. Thus, enacting H.R. 3244 could increase both revenues deposited into the fund and direct spending from the fund. However, CBO estimates that any increased revenues or spending would be negligible.

PAY-AS-YOU-GO CONSIDERATIONS

The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. The net changes in direct spending and receipts are shown in the following table. For the purposes of enforcing pay-as-you-go procedures, only the effects in current year, the budget year, and the succeeding four years are counted.

By Fiscal Year, in Millions of Dollars

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Changes in outlays	0	1	2	4	5	7	11	12	15	19	23
Changes in receipts	0	0	0	0	0	0	0	0	0	0	0

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

The bill would require courts to order forfeitures of property against people who are convicted of trafficking persons, irrespective

of state law. By preempting the application of state laws, the bill would impose a mandate on state governments, and the imposition of the mandate could result in the loss of forfeited property under state laws. However, CBO estimates any such loss to state governments would be not significant.

By directing various federal agencies to expand existing services and provide assistance to victims of severe forms of trafficking without regard to immigration status, the bill would increase spending for a number of federal and state public assistance programs, including Medicaid and TANF. The state portion of Medicaid spending for services to trafficking victims would total \$11 million over the fiscal year 2000–2005 period. Spending within the TANF program is estimated to total \$8 million over the same period. Generally, states would be able to use unspent federal TANF funds to cover these additional costs.

The bill would also authorize federal matching grants to state, local, and tribal governments, as well as other organizations, for programs benefitting trafficking victims. The authorizations for such grants would total \$5 million in fiscal year 2000 and \$10 million in fiscal year 2001. State, local, and tribal governments and other organizations would have to spend at least \$1 for every \$3 of federal assistance.

The bill would authorize the President to regulate or prohibit certain transactions involving foreign persons identified as participants in human trafficking. New presidential restrictions could impose costs on U.S. entities engaged in those transactions. Although CBO cannot predict the nature of such measures, information provided by government sources indicates that the new authority is not likely to impose significant costs on the private sector.

PREVIOUS CBO ESTIMATE:

On December 29, 1999, CBO prepared a cost estimate for H.R. 3244 as reported by the House Committee on International Relations. Although both versions of the bill have similar provisions and costs, CBO assumes a later enactment date for H.R. 3244 as ordered reported by the House Committee on the Judiciary.

ESTIMATE PREPARED BY:

Federal Costs: International affairs: Sunita D'Monte (226–2840)
 Immigration and Law Enforcement: Mark Grabowicz (226–2860)
 Education, Employment, Training, and Social Services: Christi Hawley Sadoti (226–2820)
 Income Security: Valerie Baxter and Sheila Dacey (226–2820)
 Health: Eric Rollins (226–9010)
 Impact on State, Local, and Tribal Governments: Leo Lex (225–3220)
 Impact on the Private Sector: Keith Mattrick (226–2940)

ESTIMATE APPROVED BY:

Robert A. Sunshine
 Assistant Director for Budget Analysis

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the committee finds the authority for this legislation in Article I, section 8, clause 4 of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

H.R. 3244 was referred to the Committee on International Relations and, in addition, to the Committee on the Judiciary and the Committee on Banking and Financial Services in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned. The following is a discussion of sections within the jurisdiction of the Committee on the Judiciary.

Sec. 7. Protection and Assistance for Victims of Trafficking

Section 7(c) Trafficking Victim Regulations. Section 7(c) requires the Attorney General to promulgate regulations for law enforcement personnel and immigration officials to: (1) provide protection if a victim's safety is at risk; (2) refrain from imprisoning, fining or penalizing victims due to having been trafficked; (3) provide victims with access to legal assistance and translation services; (4) ensure an alien's continued presence in the United States if a trafficking victim or a material witness to effectuate prosecution of those responsible; and (5) train personnel in identifying victims. Subsections 7(c)(2) and (c)(4) state that the INS' authority to detain aliens shall not be curtailed by such regulations.

Section 7(f) Protection from Removal for Certain Victims of Trafficking. Section 7(f)(1) creates a new nonimmigrant "T" visa for an alien who: (1) is a victim of a severe form of trafficking in persons, as defined in section 3 of the act; (2) is in the United States or at a United States port of entry by reason of having been trafficked here; (3) is no older than 14 years of age or was induced to participate in the sex trade or slavery-like practices by force, coercion, fraud, or deception, did not voluntarily agree to any arrangement including such participation, and has complied with any reasonable request for assistance in the investigation or prosecution of trafficking acts; and (4) has a well-founded fear of retribution involving the infliction of severe harm upon removal from the United States or would suffer extreme hardship in connection with the trafficking upon removal from the United States. It also permits the Attorney General to grant a "T" visa if necessary to avoid extreme hardship to the victim's spouse, sons and daughters (who are not children), and the parents if the victim is under 21 years old. A victim's children who are unmarried and under 21 years old need not establish extreme hardship to receive a "T" visa. It precludes anyone in this section from receiving a "T" visa if there is substantial reason to believe that the person has committed an act of a severe form of trafficking in persons.

Section 7(f)(2) permits the Attorney General to waive grounds of inadmissibility, including health-related grounds, public charge, and, with the exception of security, international child abduction, and former citizens who renounced citizenship to avoid taxation, any other provision of section 212(a) of the INA if the activities rendering the alien inadmissible were caused by the trafficking. It

states that the INS is not prohibited from instituting removal proceedings against an alien admitted with a “T” visa for conduct committed after the alien’s admission into the United States, or for conduct or a condition that was not disclosed to the Attorney General prior to the alien’s admission. This section also places an annual cap of 5,000 on “T” visas for trafficking victims.

Section 7(f)(4) permits the Attorney General to adjust the status of a “T” visa holder to that of a permanent resident if the alien: (1) has been physically present in the United States for a continuous period of at least 3 years since the date of admission; (2) has throughout such period been a person of good moral character; (3) has during such period complied with any reasonable request for assistance in the investigation or prosecution of trafficking acts; and (4) has a well-founded fear of retribution involving the infliction of severe harm upon removal from the United States, or would suffer extreme hardship in connection with the trafficking upon removal from the United States. It also permits the Attorney General to adjust the status of the victim’s spouse, parents, and married and unmarried sons and daughters, if admitted with a “T” visa, to that of an alien lawfully admitted for permanent residence. An annual cap of 5,000 is placed on adjustments of status for victims. It also permits the Attorney General to waive grounds of inadmissibility, including health-related grounds, public charge, and, with the exception of security, international child abduction, and former citizens who renounced citizenship to avoid taxation, any other provision of section 212(a) of the INA if the activities rendering the alien inadmissible were caused by the trafficking. Finally, it explains that an alien has not maintained continuous physical presence in the United States if the alien has departed the United States for any period in excess of 90 days or for any period in the aggregate exceeding 180 days.

Section 11. Actions Against Significant Traffickers in Persons

Section 11(f) Exclusion of Persons Who Have Benefitted from Illicit Activities of Traffickers. Section 11(f) creates a ground of inadmissibility for any alien who is a trafficker in persons, assisted in trafficking of persons, or is a family member of a trafficker who knowingly benefitted from the trafficking within the previous five years.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

IMMIGRATION AND NATIONALITY ACT

* * * * *

TITLE I—GENERAL

DEFINITIONS

SECTION 101. (a) As used in this Act—

(1) * * *

* * * * *

(15) The term “immigrant” means every alien except an alien who is within one of the following classes of nonimmigrant aliens—

(A) * * *

* * * * *

(R) an alien, and the spouse and children of the alien if accompanying or following to join the alien, who—

(i) * * *

(ii) seeks to enter the United States for a period not to exceed 5 years to perform the work described in subclause (I), (II), or (III) of paragraph (27)(C)(ii); **[or]**

(S) subject to section 214(k), an alien—

(i) * * *

* * * * *

(ii) who the Secretary of State and the Attorney General jointly determine—

(I) * * *

* * * * *

(IV) is eligible to receive a reward under section 36(a) of the State Department Basic Authorities Act of 1956,

and, if the Attorney General (or with respect to clause (ii), the Secretary of State and the Attorney General jointly) considers it to be appropriate, the spouse, married and unmarried sons and daughters, and parents of an alien described in clause (i) or (ii) if accompanying, or following to join, the alien~~].~~; or

(T) subject to section 214(n), an alien, and the children of the alien if accompanying or following to join the alien, who the Attorney General determines—

(i) is or has been a victim of a severe form of trafficking in persons (as defined in section 3 of the Trafficking Victims Protection Act of 2000);

(ii) is physically present in the United States or at a port of entry into the United States by reason of having been transported to the United States or the port of entry in connection with such severe form of trafficking in persons;

(iii)(I) has not attained 15 years of age; or

(II) was induced to participate in the commercial sex act or condition of involuntary servitude, peonage, or slavery or slavery-like practices that is the basis of the determination under clause (i) by force, coercion, fraud, or deception, did not voluntarily agree to any arrangement including such participation, and has complied with any reasonable request for assistance in the investigation or prosecution of severe forms of trafficking in persons; and

(iv)(I) has a well-founded fear of retribution involving the infliction of severe harm upon removal from the United States; or

(II) would suffer extreme hardship in connection with the victimization described in clause (i) upon removal from the United States;

and, if the Attorney General considers it to be necessary to avoid extreme hardship, the spouse, and sons and daughters (who are not children), of any such alien (and the parents of any such alien, in the case of an alien under 21 years of age) if accompanying or following to join the alien.

* * * * *

TITLE II—IMMIGRATION

* * * * *

CHAPTER 2—QUALIFICATIONS FOR ADMISSION OF ALIENS; TRAVEL CONTROL OF CITIZENS AND ALIENS

* * * * *

GENERAL CLASSES OF ALIENS INELIGIBLE TO RECEIVE VISAS AND INELIGIBLE FOR ADMISSION; WAIVERS OF INADMISSIBILITY

SEC. 212. (a) CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.—Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

(1) * * *

* * * * *

(2) CRIMINAL AND RELATED GROUNDS.—

(A) * * *

* * * * *

(H) TRAFFICKERS IN PERSONS.—Any alien who—

(i) is a foreign person (as defined in section 11(h) of the Trafficking Victims Protection Act of 2000) on the most recent list compiled under section 11(b) of such Act;

(ii) the consular officer or the Attorney General knows or has reason to believe is or has been a knowing aider, abettor, assister, conspirator, or colluder with an alien described in clause (i) in severe forms of trafficking in persons (as defined in section 3 of such Act); or

(iii) the consular officer or the Attorney General knows or has reason to believe—

(I) is the spouse, son, or daughter of an alien inadmissible under clause (i) or (ii);

(II) has, within the previous 5 years, obtained any financial or other benefit from the illicit activity of such alien that is described in such clause; and

*(III) knew or reasonably should have known that the financial or other benefit was the product of such illicit activity;
is inadmissible.*

* * * * *
(d)(1) * * *
* * * * *

(13)(A) The Attorney General shall determine whether a ground for inadmissibility exists with respect to a nonimmigrant described in section 101(a)(15)(T).

(B) In addition to any other waiver that may be available under this section, in the case of a nonimmigrant described in section 101(a)(15)(T), if the Attorney General considers it to be in the national interest to do so, the Attorney General, in the Attorney General's discretion, may waive the application of—

- (i) paragraphs (1) and (4) of subsection (a); and*
- (ii) any other provision of such subsection (excluding paragraphs (3), (10)(C), and (10)(E)) if the activities rendering the alien inadmissible under the provision were caused by, or were incident to, the victimization described in section 101(a)(15)(T)(i).*

(C) Nothing in this paragraph shall be regarded as prohibiting the Attorney General from instituting removal proceedings against an alien admitted as a nonimmigrant under section 101(a)(15)(T) for conduct committed after the alien's admission into the United States, or for conduct or a condition that was not disclosed to the Attorney General prior to the alien's admission as a nonimmigrant under section 101(a)(15)(T).

* * * * *

ADMISSION OF NONIMMIGRANTS

SEC. 214. (a) * * *

* * * * *

[(1)] *(m)(1) An alien may not be accorded status as a nonimmigrant under section 101(a)(15)(F)(i) in order to pursue a course of study—*

(A) at a public elementary school or in a publicly funded adult education program; or

(B) at a public secondary school unless—

- (i) the aggregate period of such status at such a school does not exceed 12 months with respect to any alien, and*
- (ii) the alien demonstrates that the alien has reimbursed the local educational agency that administers the school for the full, unsubsidized per capita cost of providing education at such school for the period of the alien's attendance.*

(2) An alien who obtains the status of a nonimmigrant under section 101(a)(15)(F)(i) in order to pursue a course of study at a private elementary or secondary school or in a language training program that is not publicly funded shall be considered to have violated such status, and the alien's visa under section 101(a)(15)(F)

shall be void, if the alien terminates or abandons such course of study at such a school and undertakes a course of study at a public elementary school, in a publicly funded adult education program, in a publicly funded adult education language training program, or at a public secondary school (unless the requirements of paragraph (1)(B) are met).

(n)(1) No alien shall be eligible for admission to the United States under section 101(a)(15)(T) if there is substantial reason to believe that the alien has committed an act of a severe form of trafficking in persons (as defined in section 3 of the Trafficking Victims Protection Act of 2000).

(2) The total number of aliens who may be issued visas or otherwise provided nonimmigrant status during any fiscal year under section 101(a)(15)(T) may not exceed 5,000.

(3) The numerical limitation of paragraph (2) shall only apply to principal aliens and not to the spouses, sons, daughters, or parents of such aliens.

(4) Aliens who are subject to the numerical limitation of paragraph (2) shall be issued visas (or otherwise provided nonimmigrant status) in the order in which petitions are filed for such visas or status.

* * * * *

CHAPTER 5—ADJUSTMENT AND CHANGE OF STATUS

ADJUSTMENT OF STATUS OF NONIMMIGRANT TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

SEC. 245. (a) * * *

* * * * *

(l)(1) If, in the opinion of the Attorney General, a nonimmigrant admitted into the United States under section 101(a)(15)(T)—

(A) has been physically present in the United States for a continuous period of at least 3 years since the date of such admission;

(B) has, throughout such period, been a person of good moral character;

(C) has, during such period, complied with any reasonable request for assistance in the investigation or prosecution of severe forms of trafficking in persons; and

(D)(i) has a well-founded fear of retribution involving the infliction of severe harm upon removal from the United States; or

(ii) would suffer extreme hardship in connection with the victimization described in section 101(a)(15)(T)(i) upon removal from the United States;

the Attorney General may adjust the status of the alien (and the spouse, parents, married and unmarried sons and daughters of the alien if admitted under such section) to that of an alien lawfully admitted for permanent residence.

(2) Paragraph (1) shall not apply to an alien admitted under section 101(a)(15)(T) who is inadmissible to the United States by reason of a ground that has not been waived under section 212, except that, if the Attorney General considers it to be in the national

interest to do so, the Attorney General, in the Attorney General's discretion, may waive the application of—

- (A) paragraphs (1) and (4) of section 212(a); and
- (B) any other provision of such section (excluding paragraphs (3), (10)(C), and (10(E))), if the activities rendering the alien inadmissible under the provision were caused by, or were incident to, the victimization described in section 101(a)(15)(T)(i).
- (3) An alien shall be considered to have failed to maintain continuous physical presence in the United States for purposes of paragraph (1)(A) if the alien has departed from the United States for any period in excess of 90 days or for any periods in the aggregate exceeding 180 days.
- (4)(A) The total number of aliens whose status may be adjusted under paragraph (1) during any fiscal year may not exceed 5,000.
- (B) The numerical limitation of subparagraph (A) shall only apply to principal aliens and not to the spouses, sons, daughters, or parents of such aliens.
- (C) Aliens who are subject to the numerical limitation of subparagraph (A) shall have their status adjusted in the order in which applications are filed for such adjustment.
- (D) Upon the approval of adjustment of status under paragraph (1)—
 - (i) the Attorney General shall record the alien's lawful admission for permanent residence as of the date of such approval; and
 - (ii) the Secretary of State shall not be required to reduce the number of immigrant visas authorized to be issued under this Act for any fiscal year.

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TITLE 18, UNITED STATES CODE

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CHAPTER 77—PEONAGE AND SLAVERY

- Sec.
1581. Peonage; obstructing enforcement.
- * * * * *
1589. Trafficking into involuntary servitude, peonage, or slavery-like conditions.
- 1589A. Sex trafficking of children or by force, fraud, or coercion.
1590. Unlawful possession of documents in furtherance of trafficking involuntary servitude, or peonage.
1591. Mandatory restitution.
1592. General provisions.
- * * * * *

§ 1581. Peonage; obstructing enforcement

(a) Whoever holds or returns any person to a condition of peonage, or arrests any person with the intent of placing him in or returning him to a condition of peonage, shall be fined under this title or imprisoned not more than **[10]** 20 years, or both. *If, in ad-*

dition to the foregoing elements, death results from a violation of this section, or if such violation includes kidnaping or an attempt to kidnap, aggravated sexual abuse or the attempt to commit aggravated sexual abuse, or an attempt to kill, the defendant shall be fined under this title or imprisoned for any term of years or life, or both.

* * * * *

§ 1583. Enticement into slavery

Whoever kidnaps or carries away any other person, with the intent that such other person be sold into involuntary servitude, or held as a slave; or

Whoever entices, persuades, or induces any other person to go on board any vessel or to any other place with the intent that he may be made or held as a slave, or sent out of the country to be so made or held—

Shall be fined under this title or imprisoned not more than **[10]** 20 years, or both. *If, in addition to the foregoing elements, death results from a violation of this section, or if such violation includes kidnaping or an attempt to kidnap, aggravated sexual abuse or the attempt to commit aggravated sexual abuse, or an attempt to kill, the defendant shall be fined under this title or imprisoned for any term of years or life, or both.*

§ 1584. Sale into involuntary servitude

Whoever knowingly and willfully holds to involuntary servitude or sells into any condition of involuntary servitude, any other person for any term, or brings within the United States any person so held, shall be fined under this title or imprisoned not more than **[10]** 20 years, or both. *If, in addition to the foregoing elements, death results from a violation of this section, or if such violation includes kidnaping or an attempt to kidnap, aggravated sexual abuse or the attempt to commit aggravated sexual abuse, or an attempt to kill, the defendant shall be fined under this title or imprisoned for any term of years or life, or both.*

* * * * *

§ 1589. Trafficking into involuntary servitude, peonage, or slavery-like conditions

(a) Whoever recruits, harbors, provides, transports, employs, purchases, sells, or secures, by any means, any person, knowing or having reason to know that the person is or will be subjected to involuntary servitude or peonage or to slavery-like conditions as described in subsection (b) of this section, or in any way, financially or otherwise, knowingly benefits from, or makes use of, the labor or services of a person subjected to a condition of involuntary servitude or peonage, shall be fined under this title or imprisoned not more than 20 years, or both; and if, in addition to the foregoing elements, death results from an act committed in violation of this section, or if such act includes kidnapping or an attempt to kidnap, aggravated sexual abuse or the attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title or imprisoned for any term of years or life, or both.

(b) *As used in this section, the term “slavery-like conditions” means that the labor or services of a person are obtained or maintained through any scheme or artifice to defraud, or by means of any plan or pattern, including but not limited to false and fraudulent pretense and misrepresentations, such that the person reasonably believes that if he did not perform the labor or services serious harm would be inflicted on himself or on another person.*

(c) *This section does not apply to labor performed as a punishment for a crime whereof the party shall have been duly convicted.*

§1589A. Sex trafficking of children or by force, fraud, or coercion

(a) *IN GENERAL.—Whoever—*

(1) recruits, entices, harbors, purchases, sells, transports, or transfers a person, or

(2) owns, manages, operates, or shares in the proceeds of an enterprise in which a person has been recruited, enticed, harbored, purchased, sold, transported, or transferred, knowing or having reason to know that the person will be caused by force, fraud, or coercion to engage in a commercial sex act, or that the person has not attained the age of 18 years and will be caused or expected to engage in a commercial sexual act, shall be punished as provided in subsection (b).

(b) *PUNISHMENT.—The punishment for an offense under subsection (a) is—*

(1) if the offense was effected by fraud, force, or coercion, or if the person transported had not attained the age of 14 years at the time of such offense, by a fine under this title or imprisonment for any term of years or for life, or both; or

(2) if the offense was not effected by fraud, force, or coercion, and the person transported had attained the age of 14 years but had not attained the age of 18 years at the time of such offense, by a fine under this title or imprisonment for not more than 20 years, or both.

(c) *DEFINITION OF COMMERCIAL SEXUAL ACT.—In this section, the term “commercial sexual act” means any sexual act, on account of which anything of value is given to or received by any person, and—*

(1) which takes place in the United States;

(2) which affects United States foreign commerce; or

(3) in which either the person caused or expected to participate in the act or the person committing the violation is a United States citizen or an alien admitted for permanent residence in the United States.

§1590. Unlawful possession of documents in furtherance of trafficking, involuntary servitude, or peonage

(a) *Whoever destroys, conceals, removes, confiscates, or possesses any identification, passport, or other immigration documents, or any other documentation of another person—*

(1) in the course of, or under circumstances which facilitate a violation of section 1581, 1583, 1584, 1589, or 1589A or a conspiracy or attempt to commit such a violation; or

(2) to conceal or impair the investigation or prosecution of a violation of any section described in paragraph (1); or

(3) to prevent or restrict, without lawful authority, the person's liberty to move or travel in interstate or foreign commerce, shall be fined under this title or imprisoned for not more than 5 years, or both.

§ 1591. Mandatory restitution

(a) Notwithstanding sections 3663 or 3663A, and in addition to any other civil or criminal penalties authorized by law, the court shall order restitution for any offense under this chapter.

(b)(1) The order of restitution under this section shall direct the defendant to pay the victim (through the appropriate court mechanism) the full amount of the victim's losses, as determined by the court under paragraph (3) of this subsection.

(2) An order of restitution under this section shall be issued and enforced in accordance with section 3664 in the same manner as an order under section 3663A.

(3) As used in this subsection, the term "full amount of the victim's losses" has the same meaning as provide in section 2259(b)(3) and shall in addition include the greater of the gross income or value to the defendant of the victim's services or labor or the value of the victim's labor as guaranteed under the minimum wage and overtime guarantees of the Fair Labor Standards Act (29 U.S.C. 201, et seq.).

(c) As used in this section, the term "victim" means the individual harmed as a result of a crime under this chapter, including, in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or a representative of the victim's estate, or another family member, or any other person appointed as suitable by the court, but in no event shall the defendant be named such representative or guardian.

§ 1592. General provisions

(a) In a prosecution under sections 1581, 1583, 1584, or 1589, a condition of involuntary servitude or peonage may be established by proof that the defendant obtained or maintained the labor or service of any person—

(1) by the use, or threatened use, of force, violence, physical restraint, or physical injury, or by extortion or the abuse of threatened abuse of law or the legal process;

(2) through representations made to any person that physical harm may occur to that person, or to another, in an effort to wrongfully obtain or maintain the labor or services of that person; or

(3) by the use of fraud, deceit, or misrepresentation toward any person in an effort to wrongfully obtain or maintain the labor or services of that person, where the person is a minor, one who is mentally disabled, or one who is otherwise particularly susceptible to coercion.

(b) An attempt or conspiracy to violate sections 1581, 1583, 1584, 1589, or 1589A shall be punishable in the same manner as a completed violation of each of these sections, respectively.

(c)(1) *The court, in imposing sentence on any person convicted of a violation of this chapter, shall order, in addition to any other sentence imposed and irrespective of any provision of State law, that such person shall forfeit to the United States—*

(A) such person's interest in any property, real or personal, that was used or intended to be used to commit or to facilitate the commission of such violation; and

(B) any property, real or personal, constituting or derived from, any proceeds that such person obtained, directly or indirectly, as a result of such violation.

(2) The criminal forfeiture of property under this subsection, any seizure and disposition thereof, and any administrative or judicial proceeding in relation thereto, shall be governed by the provisions of section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853), except subsection (d) of that section.

(d)(1) The following shall be subject to forfeiture to the United States and no property right shall exist in them—

(A) any property, real or personal, used or intended to be used to commit or to facilitate the commission of any violation of this chapter; and

(B) any property, real or personal, which constitutes or is derived from proceeds traceable to any violation of this chapter.

(2) The provisions of chapter 46 of this title relating to civil forfeitures shall extend to any seizure or civil forfeiture under this subsection.

(f) WITNESS PROTECTION.—Any violation of this chapter shall be considered an organized criminal activity or other serious offense for the purposes of application of chapter 224 (relating to witness protection).

* * * * *

CHAPTER 96—RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

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§ 1961. Definitions

As used in this chapter—

(1) “racketeering activity” means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891–894 (relating to extortionate credit transactions), section 1028 (relating to fraud and related activity in connection with identification doc-

uments), section 1029 (relating to fraud and related activity in connection with access devices), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1344 (relating to financial institution fraud), section 1425 (relating to the procurement of citizenship or nationalization unlawfully), section 1426 (relating to the reproduction of naturalization or citizenship papers), section 1427 (relating to the sale of naturalization or citizenship papers), sections 1461–1465 (relating to obscene matter), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1512 (relating to tampering with a witness, victim, or an informant), section 1513 (relating to retaliating against a witness, victim, or an informant), section 1542 (relating to false statement in application and use of passport), section 1543 (relating to forgery or false use of passport), section 1544 (relating to misuse of passport), section 1546 (relating to fraud and misuse of visas, permits, and other documents), sections 1581–1588 (relating to peonage and slavery), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to the prohibition of illegal gambling businesses), section 1956 (relating to the laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), section 1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire), *section 1589 (relating to trafficking into involuntary servitude, peonage, or slavery-like conditions)*, *section 1589A (relating to sex trafficking of children or by force, fraud, or coercion)*, sections 2251, 2251A, 2252, and 2260 (relating to sexual exploitation of children), sections 2312 and 2313 (relating to interstate transportation of stolen motor vehicles), sections 2314 and 2315 (relating to interstate transportation of stolen property), section 2318 (relating to trafficking in counterfeit labels for phonorecords, computer programs or computer program documentation or packaging and copies of motion pictures or other audiovisual works), section 2319 (relating to criminal infringement of a copyright), section 2319A (relating to unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances), section 2320 (relating to trafficking in goods or services bearing counterfeit marks), section 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts), sections 2341–2346 (relating to trafficking in contraband cigarettes), sections 2421–24 (relating to white slave traffic), (C) any act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations) or section 501(c) (relating to embezzlement from union funds), (D) any offense involving fraud connected with a case under title 11 (except a case under section 157 of this title), fraud in the

sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), punishable under any law of the United States, (E) any act which is indictable under the Currency and Foreign Transactions Reporting Act, or (F) any act which is indictable under the Immigration and Nationality Act, section 274 (relating to bringing in and harboring certain aliens), section 277 (relating to aiding or assisting certain aliens to enter the United States), or section 278 (relating to importation of alien for immoral purpose) if the act indictable under such section of such Act was committed for the purpose of financial gain.

* * * * *

MINORITY VIEWS

We believe the *Trafficking Victims Protection Act of 1999*, H.R. 3244 as reported by the Judiciary Committee, represents a modest improvement over current law with regard to the treatment of victims of sex trafficking and forced servitude. However, the committee's product falls well short of the protections it could have provided to the victims of these horrific acts, particularly compared to the version of this legislation originally introduced by Rep. Chris Smith (R-NJ) and Sam Gejdenson (D-CT).

As reported by the Judiciary Committee, the immigration provisions of the legislation create a new nonimmigrant visa for persons who are victims of severe forms of sex trafficking and forced servitude, but severely restrict the availability of that visa. Namely, the trafficking victim must establish that they: (1) are physically present in the United States or at a U.S. port of entry and that such presence is in connection with the severe form of trafficking in persons; (2) are under 15 years old, or that they were forced or coerced to participate in commercial sex or involuntary servitude to which they did not "voluntarily agree"; and (3) have a well-founded fear of retribution upon removal from the United States resulting from the infliction of severe harm, or would suffer extreme hardship in connection with the trafficking upon removal from the United States.¹ In connection with the issuance of such visas, the committee-reported bill also limits the Attorney General's discretion to waive certain grounds of inadmissibility for victims of trafficking unless the ground was caused by, or incident to, the trafficking of the victim.²

To the extent a visa is issued for a victim of trafficking, the committee-reported bill goes on to impose numerous additional restrictions on victims. The Majority requires that "extreme hardship" be shown in order for the victim to be reunited with their spouse, denies non-minor victims any ability to be reunited with their parents and requires victims who are minors to establish "extreme hardship" before they can be reunited with their parents.³ Finally, the committee reported bill only permits 5,000 victims a year to re-

¹ H.R. 3244, 106th Cong. § 7(f)(1) (Apr. 4, 2000). In addition, even if the conditions for the non-immigrant visa are established, the committee-reported bill limits the ability of trafficking victims to adjust their status to lawful permanent resident status to persons who can establish that they: (1) are physically present in the United States for a continuous period of 3 years since the date of admission; (2) are a person of good moral character throughout such period; (3) have complied with any reasonable request for assistance in the investigation of trafficking; and (4) either have a well-founded fear of retribution upon removal from the United States resulting from the infliction of severe harm, or would suffer extreme hardship in connection with the trafficking upon removal from the United States. *Id.* at § 7(f)(4).

² *Id.* at § 7(f)(3). The Attorney General may waive in any case the grounds of inadmissibility for health-related reasons or the likelihood of becoming a public charge. The Attorney General may waive the remaining applicable inadmissibility grounds only if caused by, or incident to, the trafficking of the victim. *Id.* at § 7(f)(3). This restriction is equally true for persons applying for adjustment of status. *Id.* at § 7(f)(4).

³ *Id.* at § 7(f)(1).

ceive nonimmigrant status, even if a greater number meet the applicable criteria.⁴

We offer these Minority views, because we believe that the restrictions imposed under the committee-reported bill are too harsh, and are likely to unfairly and unnecessarily prevent thousands of victims of sex trafficking and involuntary servitude from being able to obtain relief under our immigration laws. This is hardly consistent with our nation's long standing commitment to protecting victims and their families. A summary of our concerns⁵ follows:

I. The Majority Imposed Unfair Criteria on Eligibility of Visas for Victims of Sex Trafficking and Involuntary Servitude

The committee-reported bill incorporated several significant restrictions on the availability of visas for victims of sex trafficking and involuntary servitude. Among other things, the Majority requires that victims establish that their presence is a "direct result of trafficking;" that they did not "voluntarily agree" to such trafficking; that they have a "a well-founded fear of retribution involving the infliction of severe harm upon removal from the United States" or "would suffer extreme hardship in connection with the trafficking upon removal from the United States;" and limits the Attorney General's authority to waive grounds of inadmissibility for trafficking victims. Each one of these requirements represents a marked departure from the spirit and text of the introduced version of the legislation, and each has the potential to prevent real victims of sex trafficking and involuntary servitude from receiving refuge from their tormentors.

Requirement that victims establish that they are in the U.S. as a direct result of trafficking

The requirement that victims may only obtain visas if their presence in the United States is a direct result of trafficking does not provide protection for victims of severe forms of trafficking who are physically present in the United States, but located here subsequent to the initial trafficking event. For example, a child who is sold into sex slavery at a house of prostitution in Mexico or Canada would not be eligible for relief if she escaped and managed to reach a United States border. In our view, the threshold decision of eligibility should depend on whether the victim requires refuge in the United States rather than on the irrelevant fact of whether the person was initially transported here in connection with the trafficking.

⁴*Id.* at § 7(f)(2). The bill also caps at 5,000 the number of victims a year who are eligible to adjust their status to that of a lawful permanent resident. *Id.* at § 7(f)(4).

⁵In addition to the immigration-related concerns described herein, we would also note that the legislation contains certain criminal provisions which may make future enforcement against the perpetrators of trafficking more difficult. More specifically, language related to "slave-like conditions" in Section 1589(a) requires review because the word "slavery" is ill-defined, vague, and could result in an additional element of proof in jury instructions. The term "extortion" in Section 1592(a)(1) could prevent the Department of Justice from bringing separate charges under the extortion statute and create a double jeopardy problem. In addition, Section 11 requires the Secretary of State to publish a list of individuals allegedly involved in trafficking and who will be subject to sanctions. Concerns have been expressed that persons being considered for inclusion on such a list will not have been granted any opportunity to be heard before appearing on the list.

Requirement that victims establish that they did not “voluntarily agree” to the trafficking arrangement

The requirement that the victim not have voluntarily agreed to any trafficking arrangement is also potentially problematic. The problem is that the term “voluntary” could sweep in victims who agreed to a particular improper arrangement, but not to the full extent of sex trafficking or involuntary servitude ultimately imposed upon them. For example, under the committee-reported bill—to cite a real life horror story—consider a case where 5 Latvian women voluntarily agree to serve as exotic dancers in Chicago in exchange for a salary of \$60,000 per year. When they arrive their passports are taken, and their lives and their families’ lives are threatened if they don’t agree to involuntary servitude.⁶ Under the committee-reported bill, we are concerned the voluntary requirement could prevent victims of this type of arrangement from receiving visas.

Requirement that victims establish that they have a “well founded fear of retribution” or that they “would suffer extreme hardship”

We also cannot support the committee’s inclusion of the burdensome requirement that trafficking victims have a “a well-founded fear of retribution involving the infliction of severe harm upon removal from the United States” or “would suffer extreme hardship in connection with the trafficking upon removal from the United States” in order to obtain immigration relief.

With regard to the “fear of retribution” standard, the bill does not make clear what acts constitute a well-founded fear of retribution involving the infliction of severe harm. For example, a trafficker likely would sell a child into sex slavery a second time if given the opportunity.⁷ However, such action would be for commercial gain rather than to punish the child. Under the committee-reported legislation it is not clear that such punishment would fall within the definition of “retribution.”

The alternative to the retribution standard is the requirement that the trafficking victim show that she “would suffer extreme hardship in connection with the trafficking upon removal from the United States.” The Majority repeatedly noted that in immigration law the “extreme hardship” standard is not difficult to meet. Unfortunately, they cited no evidence to support this proposition and the plain meaning of the standard would suggest otherwise. The legislative history of the “extreme hardship” requirement indicates that it is inappropriate in the context of granting relief for trafficking victims. The “extreme hardship” standard previously was an eligibility requirement for “suspension of deportation” available before IIRIRA was enacted in late 1996.⁸ The case law defined the concept

⁶“Man Pleads Guilty to Enslaving Latvian Strippers,” Associated Press (Dec. 4, 1999).

⁷“For the traffickers, it is primarily about high profits and low risk. The trafficking industry is one of the fastest growing and most lucrative criminal enterprises in the world.” Testimony of Theresa Loar, Director, President’s Interagency Council on Women and Senior Coordinator for International Women’s Issues at the U.S. Department of State, *Hearing Before the Subcommittee on Internal Operations and Human Rights of the Committee on International Relations*, Appx. p. 78, Serial No. 106–66, 106th Cong., 1st sess. (Sept. 14, 1999).

⁸8 U.S.C. § 1254(a) (repealed, Pub.L. 104–208, Div. C, Title III, § 308(b)(7), 1996). IIRIRA replaced suspension of deportation with a new form of relief known as “cancellation of removal,” which has the even more difficult standard of “extremely unusual hardship” to cancel a removal order against a foreign national. 8 U.S.C. § 1229b(b)(1)(D).

of “extreme hardship” primarily in terms of the problems that could result from breaking the applicant’s ties to the United States after having lived here for so many years.⁹ Such a standard is inappropriate in this bill because the victim may not have been in the United States for an extended period of time before the police need her assistance in an investigation. Further, in cases where the person is in involuntary servitude or confined against her will, she is unlikely to have established any ties to the United States to enable her to demonstrate extreme hardship.

We believe that the asylum model—as suggested in the original Smith/Gejdenson bill—would be a far more appropriate standard for trafficking victims. The Attorney General may grant asylum when she determines that the person has a well-founded fear of persecution if she returns to her home country.¹⁰ Similarly, we believe it would be more equitable if the victim of a severe form of trafficking could take refuge in the United States based on the possible consequences to the individual if she returns home.

At a bare minimum, we would urge reconsideration of the Jackson Lee (D-TX) amendment to eliminate the requirement that “extreme hardship” be directly related to the trafficking. It would be unconscionable to send a person back to an abusive family member or employer who, while not directly involved in trafficking, was the cause of the person leaving home and eventually being trafficked.

Requirement eliminating Attorney General discretion to waive grounds of inadmissibility for deserving victims

Finally, with regard to the threshold visa requirements, we also have serious concerns with the Majority limiting the Attorney General’s authority to grant a waiver of grounds of inadmissibility for the issuance of a visa. As noted above, under the legislation, the Attorney General’s discretion to grant such relief is limited in most cases to situations when the need is closely associated with the trafficking itself. This restriction could result in grossly unfair results. For example, consider the case where a woman—who was the victim of sex trafficking—had previously sought to obtain an immigration benefit for her child while in the United States by lying about her immigration status. Under the committee-reported legislation, the woman would be inadmissible for making a misrepresentation to procure an immigration benefit.¹¹ In our view, the Attorney General should have broader discretion to provide waivers for humanitarian purposes such as these.

II. The Majority Imposed Unfair Criteria on the Ability of Victims of Sex Trafficking and Involuntary Servitude to be Reunited with their Families

We also oppose the restrictions the Majority imposed on the ability of victims of sex trafficking and involuntary servitude to be reunited with their spouses and parents. As noted above, the committee-reported substitute totally denies non-minor victims any ability to be reunited in the U.S. with their parents, and also requires that “extreme hardship” be established before any victim may be re-

⁹*Matter of Anderson*, 16 I&N Dec. 596 (BIA 1978).

¹⁰ 8 U.S.C. § 1158(b).

¹¹ See 8 U.S.C. § 1182(a)(6)(C).

united with their spouse and before a victim who is a minor may be reunited with his parents.

These restrictions are unduly harsh and unjustified.¹² Given the horrific ordeal of sex trafficking and slavery that such victims have experienced, it is difficult for us to understand why the Majority would prevent them from reuniting with their parents or spouses. Surely a nation of immigrants such as ourselves can find it within our hearts to allow trafficking victims to be reunited with their families.

III. The Annual Cap on Visas for Victims of Sex Trafficking and Involuntary Servitude Imposed by the Majority is Arbitrary and Unfair

We also strongly object to the 5,000 per year cap on trafficking victim visas imposed by the Majority.¹³ The Majority was not able to cite a single shred of evidence—in the hearing or the markup—supporting such a low cap.

It is an unfortunate fact of life that we can never predict how many people will be the victim of trafficking, how serious their plights will be, or how many of them will seek refuge in our country. Congress has granted similar discretion to increase the refugee caps,¹⁴ and there are no caps for asylum candidates. In our view it is beneath this country to suggest that we have room for 5,000 victims of sex trafficking and slavery, but not for the 5001st victim.

As a matter of fact, the only evidence we have been able to find suggests that the cap imposed by the Majority is far too low.¹⁵ This evidence comes in the form of a recent exhaustive report by the Central Intelligence Agency, “International Trafficking in Women to the United States: A Contemporary Manifestation of Slavery,” concluding that as many as 50,000 women and children a year are brought to the United States to work as prostitutes, abused laborers or servants.¹⁶ Even if this report overestimates the number of trafficking victims by a factor of 7 or 8, the Majority will have set the cap too low and denied thousands of victims of trafficking any right to remain in this country.

CONCLUSION

We agree with Gary A. Haugen, the President of the International Justice Mission, who testified:

[T]he coercive nature of the sex trade is powerfully masked behind dark, padlocked doors and hidden corridors. The deprivations of food, the beating with electrical wires, metal rods and leather straps, the cigarette burns, and the brutal rapes are conducted in the hidden rooms and upper

¹²Rep. Jackson Lee’s amendment to remove the extreme hardship standard was rejected by the Majority.

¹³A corollary annual cap applies for victims seeking to adjust their status to lawful permanent residents and creates similar concerns.

¹⁴In cases where an unforeseen emergency refugee situation exists, the President has the discretion, after appropriate consultation, to exceed the designated ceiling on the admission of refugees to assist refugees confronting the emergency. 8 U.S.C. § 1157(b).

¹⁵The Majority rejected an amendment offered by Rep. Conyers (D-MI) which would have given the Attorney General the authority to exceed these caps for humanitarian reasons.

¹⁶*New York Times*, “Vast Trade in Forced Labor Portrayed in CIA Report,” Joel Brinkley (April 2, 2000).

floors where, if you can get to them, you can find women and children locked in literal cages.¹⁷

We also agree with the sponsor of the legislation, Rep. Chris Smith, when he testified that the trafficking of women and children is “one of the modern world’s most serious and most widespread human rights problems.”¹⁸

Unfortunately, the good intentions of Mr. Haugen and Rep. Chris Smith have been severely diluted by the immigration-related provisions reported by the Judiciary Committee. Reps. Lamar Smith (R-TX) and Charles Canady (R-FL) reached a so-called “compromise” on the morning of the mark-up without any input from, or appreciable advance notice to, the Minority. It appears that the bill was weakened due to concerns that some individuals might receive a benefit through fraud. We deem it highly unlikely that anyone would seek relief as a victim of sex trafficking or involuntary servitude unless the facts supported such a claim. Moreover, the immigration laws have a well established framework for punishing those who abuse the system through fraud and there is no reason to superimpose a new set of immigration restrictions with regard to trafficking.

Our committee and our nation can do better than giving the victims of sex trafficking and slavery immigration benefits on the one hand, while denying many of them benefits with the other hand through unnecessarily narrow requirements and conditions. We owe these brave individuals and their families a far more compassionate piece of legislation.

JOHN CONYERS, JR.
BARNEY FRANK.
HOWARD L. BERMAN.
JERROLD NADLER.
ROBERT C. SCOTT.
MELVIN L. WATT.
SHEILA JACKSON LEE.
MAXINE WATERS.
MARTIN T. MEEHAN.
WILLIAM D. DELAHUNT.
STEVEN R. ROTHMAN.
TAMMY BALDWIN.
ANTHONY D. WEINER.



¹⁷Testimony of Gary A. Haugen, President of the International Justice Mission, *Hearing Before the Subcommittee on Internal Operations and Human Rights of the Committee on International Relations*, Appx. p. 92, Serial No. 106-66, 106th Cong., 1st sess. (Sept. 14, 1999).

¹⁸Statement of Rep. Chris Smith, “Trafficking of Women and Children in the International Sex Trade,” *Hearing Before the Subcommittee on Internal Operations and Human Rights of the Committee on International Relations*, Appx. p. 56, Serial No. 106-66, 106th Cong., 1st sess. (Sept. 14, 1999).