



Memorandum

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SUBJECT: Select Differences Between S. 3061 and H.R. 3887**FROM:** Alison Siskin
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The following memorandum analyzes the differences between:

- H.R. 3887, the William Wilberforce Trafficking Victims Protection Act of 2007, as passed by the House on December 4, 2007, and referred to the Senate; and
- S. 3061, the William Wilberforce Trafficking Victims Protection Act of 2008, as introduced in the Senate on May 22, 2008 by Senators Joseph Biden and Sam Brownback.

The bills include many identical provisions which are not addressed in this memorandum. Most of the differences between the two bills come from provisions that exist in only one of the bills rather than substantial differences between similar provisions in both bills. Since H.R. 3887 and S. 3061 are structured similarly, this memorandum is organized by the titles of the bill. If there are only minor differences between the provisions in the title of the bills, the differences are presented in one section. For titles with significant provisions in only one bill, the information is presented as: provisions only in H.R. 3887; provisions only in S. 3061; and provisions that are similar in the bills but have some differences.¹

Title I: Addressing Trafficking in Persons in Foreign Countries

The provisions in the House and Senate bill for this title are similar with small differences. H.R. 3887 would amend the Trafficking Victims Protection Act of 2000 (P.L.

¹ For more information on human trafficking, see CRS Report RL34317, *Trafficking in Persons: U.S. Policy and Issues for Congress*, by Clare Ribando Seelke and Alison Siskin

106-386), to require the President to provide more technical assistance and other support to help foreign governments inspect locations where forced labor occurs, register vulnerable populations, and provide more protection to foreign migrant workers. In comparison, S. 3061 would not include a provision to increase assistance for countries to inspect locations where forced labor occurs. However, it would provide more assistance to refugees, internally displaced persons, and other vulnerable populations.

H.R. 3887 would require specific actions to be taken against governments of countries that have been on the Tier 2 Watch-List for *two* consecutive years, while S. 3061 would require specific actions to be taken against governments of countries that have been on the Tier 2 Watch-List for *three* consecutive years.² Also, only S. 3061 would authorize \$3 million to the Human Smuggling and Trafficking Center to develop and maintain an integrated database on international and domestic trafficking data. H.R. 3887 does not contain a similar provision.

Title II, Subtitles A and B: Ensuring Availability of Possible Witnesses and Informants; Assistance for Trafficking Victims

Provisions Only in H.R. 3887

Disclosure in Foreign Labor Contracting Activities. While both the House bill and S. 3061 would require pamphlets on the rights and responsibilities of the employee to be produced and given to employment-based nonimmigrants (see discussion below), H.R. 3887 would set disclosure requirements for foreign labor contractors. The House bill would require any person engaging in a foreign labor contracting activity to disclose in writing (English and a language understood by the worker), to each worker who is recruited for employment, at the time of the worker's recruitment, information on:

- the location and period of employment, and any travel or transportation expenses;
- the employment compensation and other benefits and any costs to be charged for the benefits;
- employment requirements and activities;
- the existence of any labor organizing efforts, strikes, lockouts, or other labor disputes at the place of employment;

² The Tiers were established under the Trafficking Victims Protection Act of 2000, as amended, and set the minimum standards for the elimination of trafficking that governments must meet. Tier 1 is made up of countries deemed by the State Department to have a serious trafficking problem but fully complying with the minimum standards for eliminating trafficking. Tier 2 includes countries whose governments the State Department views as not fully complying with those standards but which are seen as making "significant efforts to bring themselves into compliance." Tier 2 "Watch List" includes countries that the Secretary of State determines are to receive special scrutiny in the coming year. It is made up of countries that are on the border between Tier 2 and Tier 3. In Tier 3 are those countries whose governments the State Department deems as not fully complying with the standards and not making significant efforts to do so. Some assert that the Tier 2 "Watch List" has become a "catch-all" category that includes countries which should really be placed on Tier 3 since they have not improved their anti-Trafficking in Persons (TIP) efforts over time. For example, India and Russia have been on the Tier 2 Watch List for the last five years.

- the existence of any arrangement with any person involving the receipt of a commission or any other benefit for the provision of items or services to workers;
- the extent to which workers will be compensated through workers' compensation, private insurance, or other means for injuries or death; and
- any provided or required education or training, including the nature and cost of such training, and whether the training is a condition of employment, continued employment, or future employment.

Providing false or misleading information in the pamphlet would be a criminal offense under 18 U.S.C. §1519 (relating to falsification of records in a federal investigation or bankruptcy).

In addition, H.R. 3887 would require that before engaging in any foreign labor contracting activity, a person must register with the Secretary of Labor. The bill would require the Secretary of Labor to issue regulations, not later than 180 days after the date of the enactment, establishing an efficient electronic process for the timely investigation and approval of an application for a certificate of registration of foreign labor contractors. Unless suspended or revoked, a registration certificate would be valid for two years. The Secretary of Labor would also be required to maintain a list of all registered foreign labor contractors, and would have to make the list publicly available, including publishing the list on the Internet. The Secretary of Labor would also be required to establish a procedure by which a foreign labor contractor that has had its registration revoked may seek to re-register by demonstrating that contractor has not had a violation during the previous 5 years.

In addition, under H.R. 3887, the Secretary of Labor would be able to impose fines against any foreign labor contractor, who knowingly or recklessly failed to comply with these requirements. The fine would be not more than \$4,000 per violation; and after the second violation, not more than \$10,000 per violation. Furthermore, the Secretary of Labor would be able to bring a civil action against any foreign labor contractor in any court of competent jurisdiction to: (1) seek remedial action, including injunctive relief; (2) recover damages on behalf of any worker harmed by a violation of the disclosure requirements; and (3) ensure compliance with disclosure requirements. The bill would specify that any sums recovered by the Secretary of Labor on behalf of a worker would be held in a special deposit account and be paid directly to each employee affected. Sums not paid within three years would be credited as an offsetting collection to the appropriations account of the Secretary of Labor for expenses for the administration of the foreign labor contractor disclosure requirements and would remain available until expended.

Beginning 180 days after the regulations are promulgated, an employer who retains the services of a foreign labor contractor would only be able to use registered foreign labor contractors. If an employer were to use a foreign labor contractor who is unregistered, or if the employer knowingly or in reckless disregard of the fact that such a contractor has violated the disclosure requirements, he would be subject to the same fines and imprisonment as the foreign labor contractor who committed the violation. (§202)

Compensation for Victims of Commercial Sexual Exploitation and Other Crimes. H.R. 3887 would amend the Victims of Crime Act³ to allow compensation for

³ For more on the Victims of Crime Act and the Crime Victims Compensation Fund, see CRS Report (continued...)

anyone who is a victim of an offense in Chapter 117 of Title 18, dealing with transportation for illegal sexual activities and related crimes (often referred to as the Mann Act), or of the Immigration and Nationality Act (INA) §1328, the importation of aliens for immoral purposes.⁴ The bill would authorize the President to facilitate communication and coordination between the providers of assistance to persons victimized in these cases, and to provide a means of identifying providers and making referrals to programs for which such victims are eligible.

H.R. 3887 would also require beginning no later than 120 days after the date of enactment, that all applications for grants made by the Attorney General (AG) or the Secretary of Health and Human Services (HHS) to victims' service organizations in the United States to establish or maintain assistance programs for victims of severe forms of trafficking or sex trafficking include a statement of whether the services will be available to both United States citizens and foreign trafficking victims. If the grant applicant intends to specialize in serving a particular victim population, the applicant would be required to specify a mechanism to ensure that all victims, regardless of nationality, receive assistance. (§214)

Provisions Only in S. 3061

Protections for Domestic Employees of Diplomats. §203 of S. 3061 would direct the Secretary of State, in consultation with the Secretaries of the Departments of Homeland Security (DHS) and Labor, the AG, and nongovernmental organizations with expertise in the legal rights of, and services for, human trafficking victims and noncitizen workers, to develop an information pamphlet for applicants seeking A-3 and G-5 visas.⁵ The pamphlet would include information on:

- the visa application process;
- the terms and conditions of the immigration status;
- the rights of A-3 and G-5 visa holders under immigration, labor, and employment laws;
- the laws prohibiting slavery, peonage, trafficking in persons, sexual assault, extortion, blackmail, and worker exploitation;
- the right of the visa holder to retain possession of their passport;

³ (...continued)

RL32579, *Victims of Crime Compensation and Assistance: Background and Funding*, by Celinda Franco

⁴ This provision has been controversial. The National Association of Attorneys General, the Fraternal Order of Police, and the National District Attorneys Association, among others, have expressed their dissatisfaction with this provision, claiming that this provision could make limited crime victims compensation funds available to people charged with simple prostitution at the state or local levels who are not trafficking victims.

⁵ Nonimmigrant visas are commonly referred to by the letter and numeral that denotes their subsection in the Immigration and Nationality Act (INA) §101(a)(15). A-3 visa holders refer to workers admitted under INA §101(a)(15)(A)(iii), who are the attendants, servants or personal employees of Ambassadors, public ministers, career diplomats, consuls, other foreign government officials and employees or the immediate family of such workers. G-5 visa holders (admitted under INA §101(a)(15)(G)(v)) are the attendants, servants, or personal employees and their immediate family of foreign government representatives or foreign employees of international organizations.

- the requirement of an employment contract between the employer and the visa holder and an explanation of the rights and protections included in the contract; and
- information about nongovernmental organizations that provide services to trafficking victims.

The pamphlet would have to be translated into at least 10 languages based upon the languages spoken by the greatest concentration of A-3 and G-5 visa holders, and would be available by mail, at consular interviews, and on the internet.

S. 3061 would also specify that the Secretary of State may not issue an A-3 visa unless the applicant is employed, or has signed a contract to be employed, by the Ambassador, Deputy Chief of Mission, or principal officer or deputy principal officer of a diplomatic mission or consular post.⁶ In addition, the Secretary of State would be prohibited from issuing a G-5 visa unless the applicant is employed, or has signed a contract to be employed by an employee in a senior management position in an international organization. The Secretary of State would be required to suspend, for such period as is deemed necessary, issuing A-3 or G-5 visas to applicants seeking to work for officials of a diplomatic mission, if the Secretary of State finds that such mission, or the employees of such mission, have a record of abusing or exploiting A-3 or G-5 visa holders, or of tolerating such actions.

Furthermore, the bill would prohibit the Secretary of State from issuing or renewing an A-3 or G-5 visa unless the visa applicant has executed a contract with the employer or prospective employer containing specified provisions; and a consular officer has conducted a personal interview with the applicant outside the presence of the employer or any recruitment agent in which the officer reviewed the terms of the contract and the provisions of the pamphlet. The Secretary of State would be required to provide consular officers with training on fair labor standards, trafficking in persons, and the requirements for A-3 and G-5 visa applicants. In addition, S. 3061 would specify that the contract between the employer and domestic worker include:

- an agreement by the employer to abide by all federal, state, and local laws;
- information on the frequency and form of payment, work duties, weekly work hours, holidays, sick days, and vacation days; and
- an agreement by the employer not to withhold the passport, employment contract, or other personal property of the employee.

Under S. 3061, the Secretary of State would have to maintain records on the presence of A-3 and G-5 visa holders in the United States including information regarding any allegations of abuse. In addition, if an A-3 or G-5 visa holder working in the United States files a complaint regarding a violation of any of the terms contained in the contract or violation of any other federal, state, or local laws governing the terms and conditions of employment, the AG and Secretary of Department of Homeland Security (DHS) would have to permit the visa holder to remain legally in the United States, with work authorization, for time sufficient to participate fully in all administrative and legal proceedings related to the complaint. If the A-3 or G-5 visa holder fails to exercise due diligence in pursuing such

⁶ As a matter of practice, visas are issued by consular officers, and their decisions on denials are final.

action, the Secretary of DHS, in consultation with the AG, could revoke the alien's authorization to remain in the United States.

S. 3061 would also require a report, no later than 180 days after the date of the enactment and every 2 years thereafter for the following 10 years, which includes: an assessment of the actions taken by the Departments of State and Justice to investigate allegations of trafficking or abuse of A-3 and G-5 visa holders; and the results of such investigations. The bill would also require a study not later than 180 days after the date of the enactment on the feasibility of establishing a system to monitor the treatment of A-3 and G-5 visa holders; and a range and evaluation of compensation approaches, such as a bond program, compensation fund, or insurance scheme, to ensure that such visa holders receive appropriate compensation if their employers violate the terms of their employment contracts.

Select Differences in Similar Provision in Both Bills

Information for Work-Based Nonimmigrants. Both bills would require the development of an informational pamphlet regarding legal rights and resources for aliens applying for employment-based nonimmigrant visas; however, H.R. 3887 (§202(a)) would specify that aliens applying for education-based visa should also receive the pamphlet.

Crime Victim Visa Extension. While §201 in both bills would allow the Secretary of Homeland Security discretion to provide an extension of the validity of the U visa (for crime victims) for more than four years, S. 3061 would specify that the alien would also be able to extend the validity period if the alien is unable to adjust to legal permanent resident (LPR) status because the regulations on status adjustment have not been issued.

Promulgation of Status Adjustment Regulations. Both H.R. 3887 (§205) and S. 3061 (§206) require the Secretary of Homeland Security, not later than 120 days after enactment, to issue interim regulations regarding the adjustment of T (trafficking victims) visa holders to LPR status. The bills would also specify that if the regulations are not issued within the time frame, the Secretary of Homeland Security must submit a report to the House Judiciary and Foreign Affairs Committees, and the Senate Judiciary and Foreign Relations Committees, explaining in detail why the regulations have not been issued. S. 3061 would also have the same requirements to issue regulations for adjustment to LPR status for U (crime victims) visa holders as it does for T visa holders.

Interim Assistance for Child Victims of Trafficking. Although the provisions in §213 of the House and §212 of the Senate bills are almost identical regarding creating a process to more quickly provide services to child trafficking victims, the bills would establish slightly different time frames for certain notifications. Under H.R. 3887, any federal official who has reason to believe that a person may be a juvenile trafficking victim would be required to notify the Secretary of HHS within 48 hours to facilitate the provision of interim assistance. S. 3061 would have the same requirement but establish the time frame as 24 hours. In addition, S. 3061 would require any state or local official who has reason to believe that a person may be a juvenile trafficking victim to notify the Secretary of HHS within 48 hours to facilitate the provision of interim assistance, while H.R. 3887 would give the state and local officials 72 hours for notification.

In addition, S. 3061 would specify that before the expiration of the period for interim assistance, that the Secretary of HHS would be required to determine if the person who received interim assistance is eligible for ongoing assistance. In making the determination,

the Secretary of HHS would be required to consult with the AG, the Secretary of DHS, and nongovernmental organizations with expertise on victims of severe forms of trafficking. S. 3061 would direct the Secretary of HHS if after receiving information he or she believes indicates that the person was a victim of a severe form of human trafficking, to issue a letter confirming that the person is eligible for trafficking victim assistance. The Secretary would be prohibited from requiring that the victim meet with law enforcement as a condition of receiving an eligibility letter. The House bill does not have a similar provision

Parole for Relatives of Trafficking Victims. Both bills would allow the Secretary of DHS, at the request of law enforcement, to parole the relatives of trafficking victims into the United States.⁷ However, S. 3061 specifies that the Secretary of DHS may not grant parole to the victim’s family member, if the relative was knowingly complicit in the trafficking offense (§205).

Title II, Subtitle C: Penalties Against Traffickers and Other Crimes

Provisions Only in H.R. 3887

Aggravated Sex Trafficking. H.R. 3887 would create a new offense (codified at 18 U.S.C. §2429) known as “aggravated sex trafficking.” Aggravated sex trafficking would be defined as knowingly recruiting, enticing, harboring, transporting, providing, or obtaining by any means a person knowing that force, fraud, or coercion will be used to cause or attempt to cause the person to engage in a commercial sex act, or, in the case of a person who has not attained the age of 18 years, that the person will be caused to engage in a commercial sex act (i.e., for those under the age of 18 years there does not have to be force, fraud or coercion). It would also be a crime to benefit, financially or receive anything of value, from participation in such a venture. For a prosecution under this subsection, if the victim is under the age of 18 years, the Government would need not prove that the defendant knew that the person was under the age of 18. The penalty for this offense would depend on the age of the victim. If the victim was under the age of 14 years, the punishment would be a fine and imprisonment for any term of years not less than 15 years or for life. If the victim was between the ages of 14 years and 17 years the punishment would be a fine and imprisonment for any term of years not less than 10 years or for life. Mandatory restitution and civil remedies under 18 U.S.C. §1593 and §1595 would apply for this offense. Notably, this section is almost identical to 18 U.S.C. §1591. (§221(a)(1))

Unlawful Compelled Service. The House bill would amend 18 U.S.C. §1592 to create a new criminal offense called “unlawful compelled service.” Under the amended section, whoever knowingly, with intent to obtain or maintain the labor or services of a person or to obtain or maintain a person for use in a commercial sex act:

- destroys, conceals, removes, confiscates, or possesses any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person to prevent

⁷ “Parole” is a term in immigration law which means that the alien has been granted temporary permission to enter and be present in the United States. Parole does not constitute formal admission to the United States, and parolees are required to leave when the parole expires, or if eligible, to be admitted in a lawful status.

or restrict or to attempt to prevent or restrict, without lawful authority, the person's ability to move or travel;

- acts or fails to act, or threatens to do so, under color of official right;
- blackmails another person; or
- causes or exploits financial harm or a fear of financial harm on the part of that person;

would be guilty of unlawful compelled service. A person convicted of the crime of unlawful compelled service would be subject to fines or imprisoned for not more than 5 years, or both. Currently, it is an offense under 18 U.S.C. §1592 if the person destroys, conceals, removes, confiscates, or possesses any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person to prevent or restrict or to attempt to prevent or restrict, without lawful authority, the person's ability to move or travel in the course of violating or attempting to violate the laws against peonage, slavery, and trafficking in persons (i.e., 18 U.S.C. Title 77). (§221(b)(1))

Retaliation in Foreign Labor Contracting. H.R. 3887 would amend the statute relating to tampering with witnesses, victims and informants (18 U.S.C. §1512) to make it a crime to kill or attempt to kill, cause bodily harm, intimate, or use force or threats against a person to hinder, delay, or prevent the disclosure of information concerning a violation with respect to aliens of the requirements of employment based visa⁸ or of any federal labor or employment law. (§221(e)(1))

Sex Trafficking. The House bill would create a new crime "sex trafficking" codified in 18 U.S.C. §2430 (§§2421 et seq is often referred to as the Mann Act). A person who knowingly persuades, induces, or entices any individual to engage in prostitution for which any person can be charged with an offense, or attempts to do so, would be in violation of the sex trafficking statute, and would be fined or imprisoned not more than 10 years, or both. (§221(f)(1))⁹

Aliens Entering the United States. H.R. 3887 would rewrite §278 of the Immigration and Nationality Act (INA), changing and expanding the section from criminalizing the importation of aliens for prostitution or other immoral purposes, to criminalizing the importation of aliens for prostitution or any other sexual activity for which any person can be charged with a criminal offense. The bill would also direct the U.S. Sentencing Commission to review and amend, if appropriate, the sentencing guidelines and

⁸ An employment based visa would be defined as a nonimmigrant visa issued for the purpose of employment, student exchange employment, or job training in the United States, including A-3, B-1 (but only for domestic servants), G5, H, J, L, Q, and R visas. Nonimmigrant visas are commonly referred to by the letter and numeral that denotes their subsection in the Immigration and Nationality Act (INA) §101(a)(15). Hence, the principal visa holder for temporary religious workers in §101(a)(15)(R)(i) would be known as an "R-1," while a spouse or dependent of the principal as provided for under §101(a)(15)(R)(ii) would be known as an "R-2," etc.

⁹ This provision has been one of the most controversial in the House bill. The National Association of Attorneys General, the Fraternal Order of Police, and the National District Attorneys Association, among others, have expressed their dissatisfaction with this provision. The groups claim that this provision would give the federal government direct involvement in the investigation and prosecution of simple prostitution cases which are unrelated to human trafficking and handled by state and local law enforcement.

policy statements of this offense to ensure conformity with other similar offenses. (§223(a)(1))

Marriage Broker Amendments. The House bill would amend the Violence Against Women and Department of Justice Reauthorization Act of 2005 (P.L. 109-162) to give the federal government jurisdiction over marriage brokers not present in the United States who violate the statute regulating international marriage brokers (as codified by P.L. 109-162, §833). (Currently, the statute only applies to marriage brokers within the maritime and territorial jurisdiction of the United States.) (§223(c))

New Model Statute. H.R. 3887 would direct the Attorney General (AG) to provide a new model law for State anti-trafficking offenses that reflects all concepts relating to trafficking in persons, as amended by H.R. 3887, including crimes related to forced labor, sex trafficking, and related offenses, with the elements of force, fraud or coercion or age in sex trafficking used as the bases for aggravated crimes or sentencing enhancements. The model law would be posted on the Department of Justice's website and distributed to the States. The bill would require the AG to provide assistance to states and local governments in adopting and applying the model statute. The AG would also be required to submit a report to select committees describing the assistance provided to states and local governments related to the model law, including a list of entities that adopted the law. (§224)

Provisions only in S. 3061

Release Pending Trial. The Senate bill would specify that for a defendant charged with an offense under 18 U.S.C. chapter 77 for which a maximum term of imprisonment is 20 years, there is a refutable presumption that no conditions exist to ensure the safety of the community when determining whether the defendant should be released pending trial. (§222(a))

Preventing Obstruction. The Senate bill would amend the offenses related to enticement into slavery (18 U.S.C. §1583), sale into involuntary servitude (18 U.S.C. §1584), trafficking (18 U.S.C. §1590), and sex trafficking of children (18 U.S.C. §1591), to make it a crime to obstruct, attempt to obstruct, or in any way interfere or prevent the enforcement of these offenses. (§222(b))

Sex Trafficking of Children. S. 3061 would amend 18 U.S.C. §1591. Currently, a person is in violation of this provision if he or she knowingly benefits knowing that force, fraud or coercion will be used to cause the person under the age of 18, to engage in commercial sex acts. The bill would amend this provision so that it would also be an offense if a person was in reckless disregard of the fact that means of force, threats of force, fraud, coercion, or any combination of such means would be used. (§222(b)(4))

Conspiracy. The Senate bill would specify that for conspiring with another individual to violate the laws against peonage, slavery, and trafficking in persons (i.e., 18 U.S.C. Title 77, §§1581, 1583, 1589, 1590, and 1592), the individual shall be punished as if he or she violated the section. (§222(c))

Forced Labor. The Senate bill would rewrite 18 U.S.C. §1589 to add an offense to knowingly provide or obtain the labor or services of a person by means of force, threats of force, physical restraint or threats of physical restraint. The bill would also add that a person who knowingly or in reckless disregard benefits from participation in a venture that has

provided or obtained labor or services by the means outlined in the offense, shall be punished as outlined in the offense. (§222(d))

Benefitting from Financial Gain in Peonage, Slavery, and Trafficking in Persons. S. 3061 would criminalize knowingly benefitting from participation in a venture which has engaged in any violation of the prohibitions against peonage, slavery, and trafficking in persons, knowing or in reckless disregard of the fact that the venture has engaged in such violation. Such a person would be subject to the same fines as a person who actually participated in the venture. (§222(e))

Grounds of Removal. The Senate bill would expand the grounds of removal to make an alien who commits or conspires to commit human trafficking offenses inadmissible and deportable (i.e., removable). Currently, only aliens listed in the report of significant human traffickers (pursuant to P.L. 106-386, §111(b)) are removable. (§222(f))

Select Differences between Similar Provisions

Sex Tourism. Both the House (§221(g)(1)) and Senate bills (§222(g)) would create a new crime of sex tourism, but the House bill would specify that the penalty for the offense should be increased if the victim was under the age of 18 years.

Title II, Subtitle D: Activities of the United States Government

Provisions only in H.R. 3887

Anti-trafficking Survey and Conference. With respect to the study on sex trafficking and unlawful commercial sex acts in the United States, mandated by §201(a)(1)(B)(ii) of the Trafficking Victims Reauthorization Act of 2005 (P.L. 109-164). H.R. 3887 would require the AG to solicit on a biennial basis requests for proposals for such a study from nongovernmental entities with expertise in the field of illegal economic activities. The study would be required to be completed no later than one year after the date of the enactment. (§232)

Activities by DOJ. The House bill would require DOJ's Child Exploitation and Obscenity Section of the Criminal Division to be redesignated as the Sexual Exploitation and Obscenity Section. The bill would also require the AG to expand the responsibilities of the Innocence Lost Task Forces to incorporate situations involving adults who are sexually exploited (for example 18 U.S.C §2430). H.R. 3887 would require the head of the Child Exploitation and Obscenity Section to work with other parts of the DOJ, and state and local law enforcement to ensure effective prosecutions through the task force. (§234(a))

DOL Activities. H.R. 3887 would direct the Secretary of Labor to establish a Coordinator to Combat Human Trafficking, with the following responsibilities:

- ensuring the coordination of policies relating to victims of trafficking, both in the United States and abroad, among the various offices and components of the Department of Labor, including the Office of the Solicitor, the Employment Standards Administration, the Wage and Hour Division, the

Bureau of International Labor Affairs, and the Office of Child Labor, Forced Labor, and Human Trafficking;

- ensuring improved communication and coordination with State labor agencies relating to trafficking in persons;
- representing DOL at inter-agency mechanisms relating to trafficking in persons, including assisting members of the Senior Policy Operating Group;
- serving, in conjunction with DOJ's Coordinator to Combat Human Trafficking as the executive secretariat of the Trafficking in Persons and Worker Exploitation Task.

The bill would also require that the Secretary of Labor ensure that the Coordinator has sufficient staff to carry out the duties and would authorized such sums as necessary to carry out this subsection. (§234(b))

Provisions only in S. 3061

Defense Contract Audits. S. 3061 would require the Defense Contract Audit Agency to conduct an audit of all contractors and subcontractors of the Department of Defense implementing contracts abroad where there is substantial evidence to suggest trafficking in persons. The bill would require the Secretary of Defense, no later than 90 days after the completion of each audit, to notify select Congressional committees of the audit findings; and to certify that the contractor or subcontractor has not engaged in, or is no longer engaged in, trafficking in persons. (§235)

Selected Differences between Similar Provisions

Enhanced Efforts to Combat Trafficking in Children and Unaccompanied Alien Children. Both bills would create new procedures for handling apprehended unaccompanied alien children, including unaccompanied alien children who are victims of trafficking. While both bills would specify that the child victim should be placed in the least restrictive setting, H.R. 3887 (§236(d)(2)) would allow unaccompanied child trafficking victims to be placed with a competent adult victim of the same trafficking scheme. Similarly, S. 3061 would allow the child trafficking victim to be placed in the Unaccompanied Refugee Minor program if a suitable family member is not available (§235(c)(2)).

Also, while both bills would establish certain determinations that must be made before an unaccompanied alien minor from a contiguous territory can be returned to his or her country of nationality, the Senate bill would require the Secretary of DHS to determine that there is no credible evidence that returning the child would endanger the child's life or safety before removing the child (§235(a)(2)(A)(iii)). Before returning an unaccompanied alien minor, S. 3061 would require the Secretary of DHS to assess the country conditions by consulting DOS's Reports on Human Rights Practices and on Trafficking in Persons to determine whether there is a reasonable risk that repatriation will endanger the life or safety of the child (§235(c)(5)(B)). In addition, S. 3061 would require the Secretary of HHS to maintain the privacy and confidentiality of all information gathered in the course of the care, custody, and placement of unaccompanied alien children (§235(c)(7)).

Also, although both bills have similar provisions related to alien children's eligibility for special immigrant status, the Senate bill would specify that such applications must be

processed within 180 days (§235(d)(2)). Finally, the provisions related to unaccompanied children in the Senate bill would specify that they apply to all aliens in the United States in proceedings before the Executive Office of Immigration Review or related administrative or federal appeals on or after the date of enactment (§235(h)(2)).

Title III: Authorization of Appropriations

There are very few differences between the two bills in the authorization amounts for grant programs, task forces, and other anti-trafficking entities. S. 3061 would authorized an additional \$3,000 each year for official receptions of the Office to Monitor and Combat Trafficking. The Senate bill would also authorize \$5.5 million compared to \$5 million in the House bill for the Interagency Taskforce to Monitor Trafficking in Persons and the Senior Policy Group on Trafficking in Persons. Also, H.R. 3887 would authorize \$1 million while S. 3061 would authorize \$3 million for research on domestic and international trafficking in persons.

Title IV: Child Soldiers

Provisions only in H.R. 3887

Findings and Sense of Congress. H.R. 3887 contains a section on findings related to child soldiers and a Sense of the Congress related to the United State’s role in helping and preventing the use of child soldiers. (§404)

Report on Child Soldiers in Burma. H.R. 3887 would require the Secretary of State to submit a report to the appropriate Congressional committees on the recruitment and use of child soldiers by the governmental armed forces or government-supported armed groups of the Government of Burma, including paramilitaries, militias, or civil defense forces. The report would be due no later than 120 days after the date of enactment. (§406(e))

Provisions only in S. 3061

Accountability for the Recruitment and Use of Child Soldiers. S. 3061 would amend the U.S. criminal code (Title 18) to create a crime for the recruitment or use of child soldiers. The Senate bill would make it a criminal offense for any person who knowingly recruits, enlists, or conscripts a person under 15 years of age into an armed force or group, or knowingly uses a person under 15 years of age to participate actively in hostilities, or any person who conspires to do so. The penalty would be a fine or imprisonment of not more than 20 years, or both; or if the death of any person results, a fine and imprisonment for any term of years or for life. The bill would provide jurisdiction over this offense if: (1) the alleged offender is a U.S. national or an alien lawfully admitted for permanent residence; (2) the alleged offender is a stateless person whose habitual residence is in the United States; (3) the alleged offender, irrespective of nationality, is present in the United States; or (4) the offense occurs in whole or in part within the United States. S. 3061 would also specify that a person may not be prosecuted, tried, or punished for a violation unless the indictment or the information is filed no later than 10 years after the commission of the offense.

Furthermore, S. 3061 would make inadmissible and deportable any alien who engaged in the recruitment or use of child soldiers in violation of this section. Such aliens would also be ineligible for asylum or withholding of removal. (§406)

Select Differences between Similar Provisions

Prohibition on Provision of Military Assistance. Both §403 of S. 3061 and §405 of H.R. 3887 would prohibit certain military assistance to foreign governments that recruit or use child soldiers, but the bills do so in different manners. S. 3061 would restrict specified funds for military training, education and financing from countries clearly identified in the Department of State's Country Report on Human Rights Practices as having governmental armed forces or government-supported armed groups, including paramilitaries, militias, or civil defense forces, that recruit and use child soldiers. The restricted funds would include funds appropriated or otherwise made available for international military education and training, foreign military financing, or the transfer of excess defense articles under:

- §116 or §502B of the Foreign Assistance Act of 1961 (22 U.S.C. §2151n(f) and §2304(h));
- the Arms Export Control Act (22 U.S.C. §2751);
- the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2008 (division J of Public Law 110-161);
- or under any other Act making appropriations for foreign operations, export financing, and related programs.

The Senate bill would also prohibit the issuance of licenses for direct commercial sales of military equipment to identified countries.

H.R. 3887 would specify that none of the funds made available to carry out §516 or §541 of the Foreign Assistance Act of 1961 (22 U.S.C. §2321j or 2347) or §23 of the Arms Export Control Act (22 U.S.C. §2763) may be used to provide assistance to a government of a country that the Secretary of State determines has governmental armed forces or government-supported armed groups, including paramilitaries, militias, or civil defense forces, that recruit and use child soldiers. The Secretary of State would be required to publish the list of foreign governments subject to the prohibition in DOS' annual Trafficking in Persons report.

Both the House and Senate bills would require the President to publish a notice in the *Federal Register*, if he chooses to exercise a waiver of the prohibition for a particular country. S. 3061 specifies that the publication must occur within 45 days of the waiver, while H.R. 3887 does not specify a time frame for notification. In addition, H.R. 3887 would require the President to notify the appropriate Congressional committees after granting a waiver. In addition, both bills provide the President with the authority to provide funding otherwise prohibited to countries if the funding will go directly to the professionalism of the military and if: (1) the government is *implementing* effective measures to aid child soldiers (House bill); or (2) the government is *taking reasonable steps to implement* effective measures to aid child soldiers (Senate bill). H.R. 3887 would also allow the President to provide assistance which is otherwise prohibited to governments for the clearance of unexploded ordnance, the destruction of small arms, and related activities; or assistance specifically designed to further cooperation to combat international terrorism