

## DRAFT TRAFFICKING REAUTHORIZATION BILL FAILS TO PROTECT CHILD VICTIMS

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[The Renewal Forum's Senior Fellow Margaret MacDonnell Assesses §213 of HR 3887, the "William Wilberforce Trafficking Victims Protection Reauthorization Act of 2007" and its Impact on Child Victims of Trafficking.]

*[Background: the rate of trafficking victim identification in the United States is unsatisfactory. Between one and two percent of foreign victims are being rescued and assisted each year. Particularly egregious is the rate of juvenile victim identification: only 10 percent of all identified victims in the U.S. are juveniles, whereas internationally, an estimated 50 percent of victims are juveniles.]*

*In a forthcoming report, Renewal Forum Senior Fellow Margaret MacDonnell, identifies factors behind the failure to find juvenile victims. She finds the single biggest factor accounting for our woeful underperformance is the imposition of a de facto requirement that juveniles cooperate with federal law enforcement agencies before they are deemed eligible for federal benefits. MacDonnell explains.]*

Under current practice, if a foreign-born child is identified as a trafficking victim by anyone other than a federal law enforcement agent, the Office of Refugee Resettlement of the U.S. Department of Health and Human Services (hereafter ORR) will not provide the child access to any federal benefits until a federal law enforcement agent confirms that the child has been trafficked. Obtaining such a confirmation is rarely a simple or rapid process. Child victim advocates and service providers contend that the current process contravenes the letter and spirit of the Trafficking Victims Protection Act of 2000 (TVPA), which mandates law enforcement cooperation for adults (in order to qualify for benefits) but specifically does not require law enforcement cooperation for children. Furthermore, there is ample evidence that the current system has had the effect of leaving trafficked children without access to federally-funded benefits if they are unable or unwilling to cooperate with federal law enforcement due to fear or to the effects of trauma, or if they are unable to find a federal law enforcement agent willing to request benefits on their behalf. There is further evidence that the imposition of a *de facto* cooperation standard on child victims has rendered some service providers unwilling to apply for federally-funded benefits on behalf of victims in their care.

It would appear that §213 of HR 3887 is intended to alleviate this problem. The strong wording giving HHS exclusive authority to make determinations of eligibility and the "sense of Congress" language that HHS should make this determination without regard to assessments by other U.S. government

agencies is a positive step in correcting a major flaw in the implementation of the TVPA. However, this language pertains to a newly created “interim” determination which can last for a maximum of 120 days. An interim determination does little or nothing to solve the problems that trafficked children face. What trafficked children need is an immediate, presumptive determination of eligibility for benefits, which will give them an environment of safety and stability, and which does not require cooperation with a law enforcement agency. HR 3887 does not provide this.

Here are some of the reasons this provision is not beneficial to children:

- One of the most valuable benefits available to trafficked children is enrollment in the Unaccompanied Refugee Minor (URM) program. This program provides long-term, culturally and linguistically appropriate foster care to trafficked children, through local non-governmental organizations (NGOs) across the country. In order for these providers to retain their licensure to provide such care, they or the state or county where they operate must bring the child to local family court to obtain legal custody for the child. If benefits were to expire in 90 or 120 days, the federal funding for the child’s care would disappear and the state or NGO which was granted custody of the child would suddenly be confronted with the long term costs of caring for the child. This circumstance could bankrupt local NGOs, were enough children to find themselves in that position, and surely would make states less willing to take on the care for trafficked children with a provisional grant of benefits. In short, it is unlikely that trafficked children would have access to URM programs during this interim eligibility period.
- Access to other federal benefits that are most useful to children are also affected by the clause limiting eligibility to 90-120 days. It can easily take that length of time to receive a social security card and access to Medicaid. And a short-term benefits period for something like Job Corp is meaningless. It would seem that the intent of the provision in HR 3887 is for children to access federal benefits such as food stamps and refugee cash and medical assistance, which are more geared toward an emergency service period. For children who are living on the streets or with a Good Samaritan, these options might indeed be helpful. However, children in child Protective Services (CPS) care or in emergency youth shelters do not need food stamps or refugee cash and medical assistance in the short run (though they may after emancipation).
- The interim service period does little to augment the access to limited funding and services that trafficked children already have before they are determined eligible for federal benefits. ORR has given service providers of trafficked children access to funds through ORR’s national services contract; these funds are available even before eligibility for federal benefits has been established. While these funds provide a very small amount of financial assistance, children will get little added benefit from the current interim service period in HR 3887. In effect, the current legislative language does not improve the services picture for trafficked children.

On a more philosophical level, the provision appears to concede that ORR’s current practice of granting benefits only upon a request from, or confirmation of victimhood by, a federal law enforcement agency, is legitimate so long as there is some short term access to benefits while awaiting law enforcement action. However, this assumes that children should have to cooperate with law enforcement and that a law enforcement request for benefits is relatively

straightforward. It presumes that all that is needed in order to get a law enforcement request is a bit of time. There are several key problems with these assumptions, including:

- While the TVPA explicitly required cooperation with law enforcement for adults, it exempted children from this cooperation. It has only been upon implementation of the TVPA that law enforcement cooperation was imposed upon trafficked children. This cooperation standard places an undue burden on vulnerable children who may have been profoundly traumatized by their trafficking experience.
- A child may not be ready or able to work with law enforcement during the specified time period due to the effects of trauma, continued fear of retaliation by the trafficker, or simple mistrust as a result of the betrayal and exploitation the child has experienced.
- Many service providers report difficulty getting law enforcement to respond to requests for interviews and investigations, particularly if the case involves few people or appears unlikely to result in arrest or prosecution. Federal law enforcement agencies must make difficult decisions about where and how to expend limited resources. A potential trafficking case that may involve little evidence beyond a child's word may not rise to the top of the priority list. If this is the case, even if a child is willing to cooperate with law enforcement she or he may not have the opportunity to do so.
- There may not be someone knowledgeable about child trafficking assisting the child and advocating for the child during this time.

One final, and significant, concern is that the statute is silent on what happens after the 120 days. It could be that ORR is then expected to make a permanent determination of eligibility using their current law enforcement cooperation standard. Another, more ominous interpretation is that benefits eligibility for children would henceforward be limited to a total of 120 days.

The best fix for this section is to eliminate the reference to "interim" assistance and delete the duration language limiting assistance to 90-120 days. The removal of those elements would leave the language giving ORR exclusive authority to determine eligibility (which is merely a clearer restating of the extension of that authority in the TVPA) and the "sense of Congress" language that HHS should be using its exclusive authority without regard to assessments by other government agencies. These two provisions effectively address the current *de facto* law enforcement cooperation standard, the most significant barrier trafficked children face in accessing federal assistance.

*ABOUT THE AUTHOR:*

Margaret MacDonnell has worked on trafficked and refugee children's policy issues for the past five years. She has managed a national training and technical assistance program on child trafficking and has provided guidance on dozens of trafficked children's cases to service providers, law enforcement, and victim advocates. In addition to placing trafficked children with specialized, long-term foster care programs, she has provided technical assistance to those programs, and training on topics related to trafficked and refugee children. She has conducted research on human trafficking, has planned service programs for trafficked children, and has published articles on this topic. Ms. MacDonnell has a Master's degree in social work (Catholic University) and has spoken on the provision of services to refugee and trafficked children at national and international conferences. She can be reached at [macdonnell@renewalforum.org](mailto:macdonnell@renewalforum.org).