

January 20, 2015

The Honorable Bob Goodlatte  
U.S. House of Representatives  
2309 Rayburn House Office Building  
Washington, DC 20515

The Honorable John Conyers  
U.S. House of Representatives  
2426 Rayburn House Office Building  
Washington, DC 20515

RE: H.R. 181, Justice for Victims of Trafficking Act  
H.R. 285, Stop Advertising Victims of Exploitation Act

Dear Chairman Goodlatte and Ranking Member Conyers:

We write to respectfully raise several concerns we have with H.R. 181, the Justice for Victims of Trafficking Act, and H.R. 285, the Stop Advertising Victims of Exploitation Act, which are scheduled for mark-up in the House Judiciary Committee on January 21, 2015.

As you know, the federal criminal code keeps expanding as Congress continues to create new federal crimes, often with mandatory minimum sentences attached. H.R. 181 and H.R. 285 expand the criminal conduct in an existing federal statute, 18 U.S.C. § 1591(a), that triggers the mandatory minimum sentences in 18 U.S.C. §§ 1591(b)(1) and (2). Under the bill, a violation involving the advertising, patronizing, or soliciting of a minor victim now triggers the 10- and 15-year mandatory minimum prison sentences for human trafficking offenses. H.R. 181 also lacks a *mens rea* requirement regarding the victim's age – the very fact that triggers the applicable mandatory minimum term.

Human trafficking is a vile crime and a serious problem, and we share every thinking person's desire to eliminate such conduct. However, introducing new mandatory minimum penalties is not the answer. In our view, mandatory minimum sentences are "one-size-fits-all" justice and inevitably result in punishments that do not fit the unique facts and circumstances of both the crime and the offender. Mandatory minimum sentences deprive judges of the discretion they need to tailor sentences to the crime and the individual in every single case – a bedrock expectation in our American criminal justice system, even when the crime is an unthinkable one. By treating all offenders the same, mandatory minimum sentences often produce irrational disparities in punishments.

As we read it, these bills would punish a person who advertises, solicits, or patronizes a victim – with or without the completion of a commercial sex act and, in the case of patronizing or soliciting, without any knowledge of the victim's age – as harshly as the leaders of a human trafficking ring who intentionally targeted, kidnapped, transported, imprisoned, and forced underage victims into these activities. These new bills create the possibility that offenders whose involvement is comparatively limited will be sentenced as harshly as the masterminds of the crime. Offenders must be held accountable, but the punishment must fit the person's role and the offense. Because mandatory minimum sentences violate this principle, we oppose them in all situations.

Your bill raises other grave concerns:

1. **Evidence-based sentencing.** Is there evidence that current law allows those who advertise, patronize, or solicit the victims in question to escape prosecution or conviction? Is there evidence that those who advertise, patronize, or solicit such victims are equally as culpable or dangerous as those who “recruit,” “transport,” “obtain,” or “maintain” such victims for commercial sex acts? Is there evidence that those advertising, patronizing, or soliciting victims now are being insufficiently punished or deterred? Is there evidence that mandatory minimum terms for these offenders will lead to better deterrence, victim restitution, or offender rehabilitation and reentry?
2. **“Overfederalization.”** Is there a need to make these crimes federal offenses? Do states have their own laws regarding the advertising, solicitation, and patronizing of underage victims engaging in or trafficked for commercial sex acts? Are those laws somehow insufficient? We should know whether states are insufficiently punishing these offenders under their own laws before creating a federal law that could be duplicative, unnecessary, or disruptive to a state’s exercise of its police powers.
3. **Vagueness and lack of *mens rea*.** H.R. 181 does not define “solicit” or “patronize,” and the words alone do not clearly convey what conduct is covered. Additionally, H.R. 181 eliminates any *mens rea* requirement regarding the victim’s age. The automatic application of the harsh sentences in 18 U.S.C. §§ 1591(b)(1) and (2) is troubling when the criminal conduct in question is undefined and can be committed without any intent regarding the key fact that triggers the mandatory minimum sentence: the victim’s status as a minor. The Heritage Foundation and National Association of Criminal Defense Lawyers have written a superb report, *Without Intent*, detailing the many disturbing outcomes that can arise when a *mens rea* standard is missing or insufficient.<sup>1</sup> They urge Congress to include an adequate *mens rea* requirement for each element of the offense, whenever possible.<sup>2</sup> This principle holds true regardless of whether the crime is a regulatory violation, violent act, or sex offense. To avoid unjust results and unintended consequences, crimes lacking a *mens rea* standard should not carry a mandatory minimum sentence, especially when the lack of intent is linked to the specific offense element that triggers the mandatory minimum term.
4. **Cost to taxpayers.** The Congressional Research Service has listed mandatory minimum sentences<sup>3</sup> as the primary driver of growth in a federal prison system that is already overcrowded and consumes a quarter of the Department of Justice budget.<sup>4</sup> How will expanding the scope of 18 U.S.C. § 1591 impact the prison population, overcrowding, the Bureau of Prisons’ budget, and the Justice Department budget overall? How will it impact funding for other law enforcement, crime prevention, and victim services programs? How will the increased costs produced by these sentences be paid, and how will those costs impact the national debt?

We are grateful for and share your desire to end human trafficking, but we do not believe that applying mandatory minimum sentences to more and more federalized criminal conduct, without adequate *mens rea* protections, as these bills do, is in the country’s best interests. For these reasons, we respectfully oppose these bills and urge you and all Committee members to vote against the expanded application of mandatory minimum sentences in H.R. 181 and H.R. 285.

We thank you again for your commitment to addressing human trafficking, though we disagree with and oppose the expansion of mandatory minimum sentences and erosion of *mens rea* to do so. Thank you for considering our views, and please feel free to contact any of the groups listed below if we can assist you or your staffs further with these important issues.

Sincerely,

Families Against Mandatory Minimums  
Human Rights Watch  
National Association of Criminal Defense Lawyers  
United Methodist Church, General Board of Church and Society

cc: Members of the U.S. House Judiciary Committee

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<sup>1</sup> Brian W. Walsh & Tiffany Joslin, Without Intent: How Congress is Eroding the Criminal Intent Requirement in Federal Law, May 5, 2010, available at <http://www.heritage.org/research/reports/2010/05/without-intent>.

<sup>2</sup> *Id.* at 31-32.

<sup>3</sup> Nathan James, Congressional Research Service, The Federal Prison Population Buildup: Overview, Policy Changes, Issues, and Options, at 8, April 15, 2014, available at <http://fas.org/sgp/crs/misc/R42937.pdf>.

<sup>4</sup> Michael Horowitz, Office of the Inspector General, U.S. Dep't of Justice, Top Performance Challenges Facing the Department of Justice – 2014, Nov. 10, 2014, available at <http://www.justice.gov/oig/challenges/2014.htm>.