

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 for

4 **H. B. 4053**

5 (By Delegates Brown, Poore, Fleischauer, Guthrie,
6 Moore, Frazier, Sobonya and L. Phillips)
7

8 [Passed March 10, 2012; in effect ninety days from passage.]
9

10 AN ACT to amend and reenact §30-29-3 the Code of West Virginia,
11 1931, as amended; to amend and reenact §61-2-14a of said code;
12 and to amend said code by adding a new section, designated
13 §61-2-17, all relating to kidnapping and human trafficking;
14 authorizing the Governor's Committee on Crime, Delinquency and
15 Correction to establish standards governing training to
16 effectively investigate human trafficking offenses and
17 procedures for implementation of a course in investigation of
18 human trafficking offenses; amending the elements of the crime
19 of kidnapping and providing certain defenses and exceptions;
20 creating the new criminal offense of human trafficking;
21 defining certain terms; specifying the penalties for the new
22 human trafficking offense; and including human trafficking as
23 a qualifying offense in the prohibition against operating a
24 criminal enterprise.

25 *Be it enacted by the Legislature of West Virginia:*

26 That §30-29-3 of the Code of West Virginia, 1931, as amended,

1 be amended and reenacted; that §61-2-14a of said code be amended
2 and reenacted; and that said code be amended by adding a new
3 section, designated §61-2-17, all to read as follows:

4 **CHAPTER 30. PROFESSIONS AND OCCUPATIONS.**

5 **ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.**

6 **§30-29-3. Duties of the Governor's committee and the subcommittee.**

7 (a) Upon recommendation of the subcommittee, the Governor's
8 committee shall, by or pursuant to rules proposed for legislative
9 approval in accordance with article three, chapter twenty-nine-a of
10 this code:

11 (1) Provide funding for the establishment and support of law-
12 enforcement training academies in the state;

13 (2) Establish standards governing the establishment and
14 operation of the law-enforcement training academies, including
15 regional locations throughout the state, in order to provide access
16 to each law-enforcement agency in the state in accordance with
17 available funds;

18 (3) Establish minimum law-enforcement instructor
19 qualifications;

20 (4) Certify qualified law-enforcement instructors;

21 (5) Maintain a list of approved law-enforcement instructors;

22 (6) Promulgate standards governing the qualification of law-
23 enforcement officers and the entry-level law-enforcement training
24 curricula. These standards shall require satisfactory completion of
25 a minimum of four hundred classroom hours, shall provide for credit

1 to be given for relevant classroom hours earned pursuant to
2 training other than training at an established law-enforcement
3 training academy if earned within five years immediately preceding
4 the date of application for certification, and shall provide that
5 the required classroom hours can be accumulated on the basis of a
6 part-time curricula spanning no more than twelve months, or a full-
7 time curricula;

8 (7) Establish standards governing in-service law-enforcement
9 officer training curricula and in-service supervisory level
10 training curricula;

11 (8) Certify organized criminal enterprise investigation
12 techniques with a qualified anti-racial profiling training course
13 or module;

14 (9) Establish standards governing mandatory training to
15 effectively investigate organized criminal enterprises as defined
16 in article thirteen, chapter sixty-one of this code, while
17 preventing racial profiling, as defined in section ten of this
18 article, for entry level training curricula and for law-enforcement
19 officers who have not received such training as certified by the
20 Governor's committee as required in this section;

21 (10) Establish, no later than July 1, 2011, procedures for
22 implementation of a course in investigation of organized criminal
23 enterprises which includes an anti-racial training module to be
24 available on the Internet or otherwise to all law-enforcement
25 officers. The procedures shall include the frequency with which a

1 law-enforcement officer shall receive training in investigation of
2 organized criminal enterprises and anti-racial profiling, and a
3 time frame for which all law-enforcement officers must receive such
4 training: *Provided*, That all law-enforcement officers in this state
5 shall receive such training no later than July 1, 2012. In order
6 to implement and carry out the intent of this section, the
7 Governor's committee may promulgate emergency rules pursuant to
8 section fifteen, article three, chapter twenty-nine-a of this code;

9 (11) Certify or decertify or reactivate law-enforcement
10 officers, as provided in sections five and eleven of this article;

11 (12) Establish standards and procedures for the reporting of
12 complaints and certain disciplinary matters concerning law-
13 enforcement officers and for reviewing the certification of law-
14 enforcement officers. These standards and procedures shall provide
15 for preservation of records and access to records by law-
16 enforcement agencies and conditions as to how the information in
17 those records is to be used regarding an officer's law-enforcement
18 employment by another law enforcement agency;

19 (A) The subcommittee shall establish and manage a database
20 that is available to all law-enforcement agencies in the state
21 concerning the status of any person's certification.

22 (B) Personnel or personal information not resulting in a
23 criminal conviction is exempt from disclosure pursuant to the
24 provisions of chapter twenty-nine-b of this code.

25 (13) Seek supplemental funding for law-enforcement training

1 academies from sources other than the fees collected pursuant to
2 section four of this article;

3 (14) Any responsibilities and duties as the Legislature may,
4 from time to time, see fit to direct to the committee; and

5 (15) Submit, on or before September 30 of each year, to the
6 Governor, and upon request to individual members of the
7 Legislature, a report on its activities during the previous year
8 and an accounting of funds paid into and disbursed from the special
9 revenue account established pursuant to section four of this
10 article.

11 (b) In addition to the duties authorized and established by
12 this section, the Governor's committee may:

13 (1) Establish training to effectively investigate human
14 trafficking offenses as defined in article two, chapter sixty of
15 this code, for entry level training curricula and for law-
16 enforcement officers who have not received such training as
17 certified by the committee as required by this section; and

18 (2) Establish procedures for the implementation of a course in
19 investigation of human trafficking offenses. The course may include
20 methods of identifying and investigating human trafficking and
21 methods for assisting trafficking victims. In order to implement
22 and carry out the intent of this subdivision, the committee may
23 promulgate emergency rules pursuant to section fifteen, article
24 three, chapter twenty-nine-a of this code.

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CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

1 **ARTICLE 2. CRIMES AGAINST THE PERSON..**

2 **§61-2-14a. Kidnaping; penalty.**

3 (a) Any person who unlawfully restrains another person with
4 the intent:

5 (1) To hold another person for ransom, reward, or concession;

6 (2) To transport another person with the intent to inflict
7 bodily injury or to terrorize the victim or another person; or

8 (3) To use another person as a shield or hostage,

9 shall be guilty of a felony and, upon conviction, shall be punished
10 by confinement by the division of corrections for life, and,
11 notwithstanding the provisions of article twelve, chapter sixty-two
12 of this code, shall not be eligible for parole.

13 (b) The following exceptions shall apply to the penalty
14 contained in subsection (a):

15 (1) A jury may, in their discretion, recommend mercy, and if
16 such recommendation is added to their verdict, such person shall be
17 eligible for parole in accordance with the provisions of said
18 article twelve;

19 (2) if such person pleads guilty, the court may, in its
20 discretion, provide that such person shall be eligible for parole
21 in accordance with the provisions of said article twelve, and, if
22 the court so provides, such person shall be eligible for parole in
23 accordance with the provisions of said article twelve in the same
24 manner and with like effect as if such person had been found guilty
25 by the verdict of a jury and the jury had recommended mercy;

1 (3) in all cases where the person against whom the offense is
2 committed is returned, or is permitted to return, alive, without
3 bodily harm having been inflicted upon him, but after ransom, money
4 or other thing, or any concession or advantage of any sort has been
5 paid or yielded, the punishment shall be confinement by the
6 division of corrections for a definite term of years not less than
7 twenty nor more than fifty; or

8 (4) in all cases where the person against whom the offense is
9 committed is returned, or is permitted to return, alive, without
10 bodily harm having been inflicted upon him or her, but without
11 ransom, money or other thing, or any concession or advantage of any
12 sort having been paid or yielded, the punishment shall be
13 confinement by the division of corrections for a definite term of
14 years not less than ten nor more than thirty.

15 (c) For purposes of this section: "To use another as a
16 hostage" means to seize or detain and threaten to kill or injure
17 another in order to compel, a third person or a governmental
18 organization to do or abstain from doing any legal act as an
19 explicit or implicit condition for the release of the person
20 detained.

21 (d) Notwithstanding any other provision of this section, if a
22 violation of this section is committed by a family member of a
23 minor abducted or held hostage and he or she is not motivated by
24 monetary purposes, but rather intends to conceal, take, remove the
25 child or refuse to return the child to his or her lawful guardian

1 in the belief, mistaken or not, that it is in the child's interest
2 to do so, he or she shall be guilty of a felony and, upon
3 conviction thereof, be confined in a correctional facility for not
4 less than one or more than five years or fined not more than one
5 thousand dollars, or both.

6 (e) Notwithstanding any provision of this code to the
7 contrary, where a law-enforcement agency of this state or a
8 political subdivision thereof receives a complaint that a violation
9 of the provisions of this section has occurred, the receiving
10 law-enforcement agency shall notify any other law-enforcement
11 agency with jurisdiction over the offense, including, but not
12 limited to, the state police and each agency so notified, shall
13 cooperate in the investigation forthwith.

14 (f) It shall be a defense to a violation of subsection (d) of
15 this section, that the accused's action was necessary to preserve
16 the welfare of the minor child and the accused promptly reported
17 his or her actions to a person with lawful custody of the minor, to
18 law-enforcement or to Child Protective Services division of the
19 Department of Health and Human Resources.

20 **§61-2-17. Human Trafficking; Criminal penalties**

21 (a) As used in this section:

22 (1) "Debt bondage" means the status or condition of a debtor
23 arising from a pledge by the debtor of the debtor's personal
24 services or those of a person under the debtor's control as a
25 security for debt, if the value of those services as reasonably

1 assessed is not applied toward the liquidation of the debt or the
2 length and nature of those services are not respectively limited
3 and defined.

4 (2) "Forced labor or services" means labor or services that
5 are performed or provided by another person and are obtained or
6 maintained through a person's:

7 (A) Threat, either implicit or explicit, deception or fraud,
8 scheme, plan, or pattern, or other action intended to cause a
9 person to believe that, if the person did not perform or provide
10 the labor or services that person or another person would suffer
11 serious bodily harm or physical restraint: *Provided*, That, this
12 does not include work or services provided by a minor to the
13 minor's parent or legal guardian so long as the legal guardianship
14 or custody of the minor was not obtained for the purpose compelling
15 the minor to participate in commercial sex acts or sexually
16 explicit performance, or perform forced labor or services.

17 (B) Physically restraining or threatening to physically
18 restrain a person;

19 (C) Abuse or threatened abuse of the legal process; or

20 (D) Knowingly destroying, concealing, removing, confiscating,
21 or possessing any actual or purported passport or other immigration
22 document, or any other actual or purported government
23 identification document, of another person.

24 "Forced labor or services" does not mean labor or services
25 required to be performed by a person in compliance with a court

1 order or as a required condition of probation, parole, or
2 imprisonment.

3 (3) "Human trafficking" means the labor trafficking or sex
4 trafficking involving adults or minors where two or more persons
5 are trafficked within any one year period.

6 (4) "Labor trafficking" means the promotion, recruitment,
7 transportation, transfer, harboring, enticement, provision,
8 obtaining, or receipt of a person by any means, whether a United
9 States citizen or foreign national, for the purpose of:

10 (A) Debt bondage or forced labor or services;

11 (B) Slavery or practices similar to slavery.

12 (5) "Sex trafficking of minors" means the promotion,
13 recruitment, transportation, transfer, harboring, enticement,
14 provision, obtaining, or receipt of a person under the age of
15 eighteen by any means, whether a United States citizen or foreign
16 national, for the purpose of causing the minor to engage in sexual
17 acts, or in sexual conduct violating the provisions of subsection
18 (b), section five, article eight of this chapter or article eight-c
19 of this chapter.

20 (6) "sex trafficking of adults" means the promotion,
21 recruitment, transportation, transfer, harboring, enticement,
22 provision, obtaining, receipt of a person eighteen years of age or
23 older, whether a United States citizen or foreign national for the
24 purposes of engaging in violations of subsection (b), section five,
25 article eight of this chapter by means of force, threat or

1 deception.

2 (b) Any person who knowingly and wilfully engages in human
3 trafficking is guilty of a felony and upon conviction shall be
4 incarcerated in a state correctional facility for an indeterminate
5 sentence of not less than three nor more than fifteen years or
6 fined not more than \$200,000, or both.