

**H. B. 4053**

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

[Introduced January 13, 2012; referred to the  
Committee on the Judiciary then Finance.]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §16-44-1; to amend and reenact §30-29-3 of said code; to amend and reenact §61-2-14 and §61-2-14a of said code; and to amend and reenact §61-8-6 of said code, all relating to abduction, kidnapping and human trafficking; requiring the Department of Health and Human Resources to develop a plan for the delivery of services to victims of human trafficking; setting forth what the plan shall contain; authorizing the Governor's Committee on Crime, Delinquency and Correction to establish standards governing training to effectively investigate human trafficking offenses and procedures for implementation of a course in investigation of human trafficking offenses; making it a felony to take away a child under eighteen for purposes of prostitution; adding instances that constitute the crime of kidnaping; defining terms; providing rule-making authority; and increasing

1 penalties.

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

3 That the Code of West Virginia, 1931, as amended, be amended  
4 by adding thereto a new section, designated §16-44-1; that §30-29-3  
5 of said code be amended and reenacted; that §61-2-14 and §61-2-14a  
6 of said code be amended and reenacted; and that §61-8-6 of said  
7 code be amended and reenacted, all to read as follows:

8 **CHAPTER 16. PUBLIC HEALTH.**

9 **ARTICLE 44. HUMAN TRAFFICKING VICTIM SERVICES PLAN.**

10 **§16-44-1. Human trafficking victim services plan; requirements;**  
11 **approval.**

12 (a) The Department of Health and Human Resources shall develop  
13 a plan for the delivery of services to victims of human  
14 trafficking. The plan shall include provisions for: (1) Identifying  
15 victims of human trafficking in West Virginia; (2) assisting  
16 victims of human trafficking with applying for federal and state  
17 benefits and services to which they may be entitled; (3)  
18 coordinating the delivery of health, mental health, housing,  
19 education, job training, victims' compensation, legal and other  
20 services for victims of human trafficking; (4) preparing and  
21 disseminating educational and training programs and materials to  
22 increase awareness of human trafficking and services available to  
23 victims of human trafficking among local departments of social

1 services, public and private agencies and service providers, and  
 2 the public; (5) developing and maintaining community-based services  
 3 for victims of human trafficking; and (6) assisting victims of  
 4 human trafficking with family reunification or return to their  
 5 place of origin if the person so desires. In developing its plan,  
 6 the department shall work with such other state and federal  
 7 agencies, public and private entities, and other stakeholders as  
 8 the department deems appropriate.

9 (b) Plans developed in accordance with subsection (a) of this  
 10 section shall be submitted for approval to appropriate state  
 11 authorities, which shall also undertake periodic reviews of the  
 12 plans and their implementation to ensure compliance with the  
 13 requirements of this section and to ensure that all victims are  
 14 treated with respect for their human rights and dignity.

15 **CHAPTER 30. PROFESSIONS AND OCCUPATIONS.**

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

17 **§30-29-3. Duties of the Governor's committee and the subcommittee.**

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

22 ~~(a)~~ (1) Provide funding for the establishment and support of  
 23 law-enforcement training academies in the state;

24 ~~(b)~~ (2) Establish standards governing the establishment and

1 operation of the law-enforcement training academies, including  
2 regional locations throughout the state, in order to provide access  
3 to each law-enforcement agency in the state in accordance with  
4 available funds;

5       ⊕ (3) Establish minimum law-enforcement instructor  
6 qualifications;

7       ~~(d)~~ (4) Certify qualified law-enforcement instructors;

8       ~~(e)~~ (5) Maintain a list of approved law-enforcement instructors;

9       ~~(f)~~ (6) Promulgate standards governing the qualification of  
10 law-enforcement officers and the entry-level law-enforcement  
11 training curricula. These standards shall require satisfactory  
12 completion of a minimum of four hundred classroom hours, shall  
13 provide for credit to be given for relevant classroom hours earned  
14 pursuant to training other than training at an established law-  
15 enforcement training academy if earned within five years  
16 immediately preceding the date of application for certification,  
17 and shall provide that the required classroom hours can be  
18 accumulated on the basis of a part-time curricula spanning no more  
19 than twelve months, or a full-time curricula;

20       ~~(g)~~ (7) Establish standards governing in-service law-  
21 enforcement officer training curricula and in-service supervisory  
22 level training curricula;

23       ~~(h)~~ (8) Certify organized criminal enterprise investigation  
24 techniques with a qualified anti-racial profiling training course

1 or module;

2       ~~(i)~~ (9) Establish standards governing mandatory training to  
3 effectively investigate organized criminal enterprises as defined  
4 in article thirteen, chapter sixty-one of this code, while  
5 preventing racial profiling, as defined in section ten of this  
6 article, for entry level training curricula and for law-enforcement  
7 officers who have not received such training as certified by the  
8 Governor's committee as required in this section;

9       ~~(j)~~ (10) Establish, no later than July 1, 2011, procedures for  
10 implementation of a course in investigation of organized criminal  
11 enterprises which includes an anti-racial training module to be  
12 available on the Internet or otherwise to all law-enforcement  
13 officers. The procedures shall include the frequency with which a  
14 law-enforcement officer shall receive training in investigation of  
15 organized criminal enterprises and anti-racial profiling, and a  
16 time frame for which all law-enforcement officers must receive such  
17 training: *Provided*, That all law-enforcement officers in this state  
18 shall receive such training no later than July 1, 2012. In order  
19 to implement and carry out the intent of this section, the  
20 Governor's committee may promulgate emergency rules pursuant to  
21 section fifteen, article three, chapter twenty-nine-a of this code;

22       ~~(k)~~ (11) Certify or decertify or reactivate law-enforcement  
23 officers, as provided in sections five and eleven of this article;

24       ~~(l)~~ (12) Establish standards and procedures for the reporting

1 of complaints and certain disciplinary matters concerning law-  
2 enforcement officers and for reviewing the certification of law-  
3 enforcement officers. These standards and procedures shall provide  
4 for preservation of records and access to records by law-  
5 enforcement agencies and conditions as to how the information in  
6 those records is to be used regarding an officer's law-enforcement  
7 employment by another law enforcement agency;

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

11       ~~(2)~~ (B) Personnel or personal information not resulting in a  
12 criminal conviction is exempt from disclosure pursuant to the  
13 provisions of chapter twenty-nine-b of this code.

14       ~~(m)~~ (13) Seek supplemental funding for law-enforcement  
15 training academies from sources other than the fees collected  
16 pursuant to section four of this article;

17       ~~(n)~~ (14) Any responsibilities and duties as the Legislature  
18 may, from time to time, see fit to direct to the committee; and

19       ~~(o)~~ (15) Submit, on or before September 30 of each year, to  
20 the Governor, and upon request to individual members of the  
21 Legislature, a report on its activities during the previous year  
22 and an accounting of funds paid into and disbursed from the special  
23 revenue account established pursuant to section four of this  
24 article.

1       (b) In addition to the duties authorized and established by  
2 this section, the Governor's committee may, in accordance with  
3 article three, chapter twenty-nine-a of this code, promulgate rules  
4 to:

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

10       (2) Establish procedures for the implementation of a course in  
11 investigation of human trafficking offenses. The course may include  
12 methods of identifying and investigating human trafficking and  
13 methods for assisting trafficking victims. In order to implement  
14 and carry out the intent of this subdivision, the committee may  
15 promulgate emergency rules pursuant to section fifteen, article  
16 three, chapter twenty-nine-a of this code;

17                   **CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

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

19 **§61-2-14. Abduction of person; kidnapping or concealing child;**  
20                   **penalties.**

21       (a) Any person who takes away another person, or detains  
22 another person against such person's will, with intent to marry or  
23 defile the person, or to cause the person to be married or defiled

1 by another person; or takes away a child under the age of ~~sixteen~~  
2 eighteen years from any person having lawful charge of such child,  
3 for the purpose of prostitution or concubinage, shall be guilty of  
4 a felony, and, upon conviction thereof, shall be confined in ~~the~~  
5 ~~penitentiary~~ a correctional facility not less than three nor more  
6 than ten years.

7 (b) Any person, other than the father or mother, who  
8 illegally, or for any unlawful, improper or immoral purpose other  
9 than the purposes stated in subsection (a) of this section or  
10 section fourteen-a or fourteen-c of this article, seizes, take or  
11 secretes a child under sixteen years of age, from the person or  
12 persons having lawful charge of such child, shall be guilty of a  
13 felony, and, upon conviction thereof, shall be confined in ~~the~~  
14 ~~penitentiary~~ a correctional facility not less than one nor more  
15 than ten years.

16 **§61-2-14a. Penalty for enticing away, kidnapping, human**

17 **trafficking or holding hostage any person.**

18 (a) Any person who, by force, threat, duress, fraud or  
19 enticement take, confine, conceal, or decoy, inveigle or entice  
20 away, harbor, solicit, provide, obtain, or transport into or out of  
21 this state or within this state, or otherwise kidnap any other  
22 person, or hold hostage any other person for the purpose or with  
23 the intent of taking, receiving, demanding or extorting from such  
24 person, or from any other person or persons, any ransom, money or



1 other thing, or any concession or advantage of any sort, or for the  
2 purposes of labor or services, commercial sex acts, pornography or  
3 sexually explicit performance, or for the purpose or with the  
4 intent of shielding or protecting himself or herself, or others  
5 from bodily harm or of evading capture or arrest after he or she or  
6 they have committed a crime shall be guilty of a felony and, upon  
7 conviction, shall be punished by confinement by the Division of  
8 Corrections for life, and, notwithstanding ~~the provisions of~~  
9 article twelve, chapter sixty-two of this code, shall not be  
10 eligible for parole: *Provided*, That the following exceptions shall  
11 apply: (1) A jury may, in their discretion, recommend mercy, and  
12 if such recommendation is added to their verdict, such person shall  
13 be eligible for parole in accordance with the provisions of ~~said~~  
14 ~~article twelve~~ that article; (2) if such person pleads guilty, the  
15 court may, in its discretion, provide that such person shall be  
16 eligible for parole in accordance with the provisions of ~~said~~  
17 ~~article twelve~~ that article, and, if the court so provides, such  
18 person shall be eligible for parole in accordance with the  
19 provisions of ~~said article twelve~~ that article in the same manner  
20 and with like effect as if such person had been found guilty by the  
21 verdict of a jury and the jury had recommended mercy; (3) in all  
22 cases where the person against whom the offense is committed is  
23 returned, or is permitted to return, alive, without bodily harm  
24 having been inflicted upon him or her, but after ransom, money or

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

12 ~~(b) For purposes of this section, the terms "to hold hostage"~~  
13 ~~means to seize or detain and threaten to kill or injure another in~~  
14 ~~order to compel, a third person or a governmental organization to~~  
15 ~~do or abstain from doing any legal act as an explicit or implicit~~  
16 ~~condition for the release of the person detained.~~

17 (b) For purposes of this section, the following definitions  
18 apply:

19 (1) "To hold hostage" means to seize or detain and threaten to  
20 kill or injure another in order to compel, a third person or a  
21 governmental organization to do or abstain from doing any legal act  
22 as an explicit or implicit condition for the release of the person  
23 detained.

24 (2) "Labor" means work of economic or financial value.

1       (3) "Services" means any act committed at the behest of, under  
2 the supervision of, or for the benefit of another.

3       (4) "Commercial sex act" means any sex act on account of which  
4 anything of value is given, promised to, or received, directly or  
5 indirectly, by any person.

6       (5) "Sex act" means any touching of the sexual or other  
7 intimate parts of another person for the purpose of gratifying  
8 sexual desire of any person. It includes touching of the person as  
9 well as touching by the person, whether directly or through  
10 clothing.

11       (6) "Sexually explicit performance" means an act or show,  
12 whether public or private, live, photographed, recorded or  
13 videotaped that is intended: (A) To appeal to the prurient  
14 interest; (B) to depict, in a patently offensive way, sexual  
15 conduct; and © to do so in a way that lacks literary, artistic,  
16 political, or scientific value. Sexually explicit performance also  
17 includes any performance that depicts sexual conduct by a minor or  
18 violates section two, article eight-c of this chapter.

19       © Notwithstanding any other provision of this section, if a  
20 violation of this section is committed by a family member of a  
21 minor abducted or held hostage and he or she is not motivated by  
22 monetary purposes, but rather intends to conceal, take, remove the  
23 child or refuse to return the child to his or her lawful guardian  
24 in the belief, mistaken or not, that it is in the child's interest

1 to do so, he or she shall be guilty of a felony and, upon  
2 conviction thereof, be confined in a correctional facility for not  
3 less than one or more than five years or fined not more than  
4 \$1,000, or both fined and confined.

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

13 **ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.**

14 **§61-8-6. Detention of person in place of prostitution; penalty.**

15 Whoever shall by any means keep, hold, detain or restrain any  
16 person in a house of prostitution or other place where prostitution  
17 is practiced or allowed; or whoever shall, directly or indirectly,  
18 keep, hold, detain or restrain, or attempt to keep, hold, detain or  
19 restrain, in any house of prostitution or other place where  
20 prostitution is practiced or allowed, any person by any means, for  
21 the purpose of compelling such person, directly or indirectly, to  
22 pay, liquidate or cancel any debt, dues or obligations incurred or  
23 said to have been incurred by such person shall, upon conviction,  
24 ~~for the first offense under this section, be punished by~~

1 ~~imprisonment in the county jail for a period of not less than six~~  
2 ~~months nor more than one year, and by a fine of not less than \$100~~  
3 ~~nor more than \$500, and upon conviction for any subsequent offense~~  
4 ~~under this section shall be punished by imprisonment in the~~  
5 ~~penitentiary for not less than one nor more than three years be~~  
6 ~~confined in a correctional facility for not more than twenty years~~  
7 ~~and fined not less than \$1,000 nor more than \$5,000: Provided, That~~  
8 ~~in any offense under this section where the person so kept, held,~~  
9 ~~detained or restrained is a minor, any person violating ~~the~~~~  
10 ~~provisions of this section shall be guilty of a felony, and, upon~~  
11 ~~conviction, shall be confined in ~~the penitentiary~~ a correctional~~  
12 ~~facility for not less than ~~two~~ twenty years nor more than ~~five~~~~  
13 ~~fifty years ~~or~~ and fined not more than ~~\$5,000~~ \$50,000. ~~or both.~~~~

NOTE: The purpose of this bill is to require the Department of Health and Human Resources to develop a plan for the delivery of services to victims of human trafficking. The bill sets forth what the plan shall contain. The bill authorizes the Governor's Committee on Crime, Delinquency and Correction to establish standards governing training to effectively investigate human trafficking offenses and procedures for implementation of a course in investigation of human trafficking offenses. The bill makes it a felony to take away a child under eighteen for purposes of prostitution. The bill adds instances that constitute the crime of kidnaping. The bill defines terms, provides rule-making authority and increases penalties.

§16-44-1 is new; therefore, it has been completely underscored.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.