

# WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2012



# ENROLLED

COMMITTEE SUBSTITUTE

FOR

**House Bill No. 4053**

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



Passed March 10, 2012

To Take Effect Ninety Days From Passage

# **E N R O L L E D**

COMMITTEE SUBSTITUTE

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## **H. B. 4053**

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(BY DELEGATES BROWN, POORE, FLEISCHAUER, GUTHRIE,  
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[Passed March 10, 2012; to take effect ninety days from passage.]

AN ACT to amend and reenact §30-29-3 of the Code of West Virginia, 1931, as amended; to amend and reenact §61-2-14a of said code; and to amend said code by adding a new section, designated §61-2-17, all relating to kidnapping and human trafficking; 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; amending the elements of the crime of kidnapping and providing certain defenses and exceptions; creating the new criminal offense of human trafficking; defining certain terms; specifying the penalties for the new human trafficking offense; and including human trafficking as a qualifying offense in the prohibition against operating a criminal enterprise.

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

That §30-29-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §61-2-14a of said code be amended and reenacted; and that said code be amended by adding a new section, designated §61-2-17, all to read as follows:

**CHAPTER 30. PROFESSIONS AND OCCUPATIONS.**

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

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

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

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

7 (2) Establish standards governing the establishment and  
8 operation of the law-enforcement training academies,  
9 including regional locations throughout the state, in order to  
10 provide access to each law-enforcement agency in the state  
11 in accordance with available funds;

12 (3) Establish minimum law-enforcement instructor  
13 qualifications;

14 (4) Certify qualified law-enforcement instructors;

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

17 (6) Promulgate standards governing the qualification of  
18 law-enforcement officers and the entry-level law-enforcement  
19 training curricula. These standards shall require satisfactory  
20 completion of a minimum of four hundred classroom hours,  
21 shall provide for credit to be given for relevant classroom  
22 hours earned pursuant to training other than training at an  
23 established law-enforcement training academy if earned  
24 within five years immediately preceding the date of  
25 application for certification, and shall provide that the  
26 required classroom hours can be accumulated on the basis of  
27 a part-time curricula spanning no more than twelve months,  
28 or a full-time curricula;

29 (7) Establish standards governing in-service law-  
30 enforcement officer training curricula and in-service  
31 supervisory level training curricula;

32 (8) Certify organized criminal enterprise investigation  
33 techniques with a qualified anti-racial profiling training  
34 course or module;

35 (9) Establish standards governing mandatory training to  
36 effectively investigate organized criminal enterprises as  
37 defined in article thirteen, chapter sixty-one of this code,  
38 while preventing racial profiling, as defined in section ten of  
39 this article, for entry level training curricula and for law-  
40 enforcement officers who have not received such training as  
41 certified by the Governor's committee as required in this  
42 section;

43 (10) Establish, no later than July 1, 2011, procedures for  
44 implementation of a course in investigation of organized  
45 criminal enterprises which includes an anti-racial training  
46 module to be available on the Internet or otherwise to all law-  
47 enforcement officers. The procedures shall include the  
48 frequency with which a law-enforcement officer shall receive

49 training in investigation of organized criminal enterprises and  
50 anti-racial profiling, and a time frame for which all law-  
51 enforcement officers must receive such training: *Provided,*  
52 That all law-enforcement officers in this state shall receive  
53 such training no later than July 1, 2012. In order to  
54 implement and carry out the intent of this section, the  
55 Governor's committee may promulgate emergency rules  
56 pursuant to section fifteen, article three, chapter twenty-nine-  
57 a of this code;

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

61 (12) Establish standards and procedures for the reporting  
62 of complaints and certain disciplinary matters concerning  
63 law-enforcement officers and for reviewing the certification  
64 of law-enforcement officers. These standards and procedures  
65 shall provide for preservation of records and access to records  
66 by law-enforcement agencies and conditions as to how the  
67 information in those records is to be used regarding an  
68 officer's law-enforcement employment by another law-  
69 enforcement agency;

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

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

76 (13) Seek supplemental funding for law-enforcement  
77 training academies from sources other than the fees collected  
78 pursuant to section four of this article;

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

81 (15) Submit, on or before September 30 of each year, to  
82 the Governor, and upon request to individual members of the  
83 Legislature, a report on its activities during the previous year  
84 and an accounting of funds paid into and disbursed from the  
85 special revenue account established pursuant to section four  
86 of this article.

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

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

94 (2) Establish procedures for the implementation of a  
95 course in investigation of human trafficking offenses. The  
96 course may include methods of identifying and investigating  
97 human trafficking and methods for assisting trafficking  
98 victims. In order to implement and carry out the intent of this  
99 subdivision, the committee may promulgate emergency rules  
100 pursuant to section fifteen, article three, chapter twenty-nine-  
101 a of this code.

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

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

#### **§61-2-14a. Kidnapping; penalty.**

1 (a) Any person who unlawfully restrains another person  
2 with the intent:

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

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

7 (3) To use another person as a shield or hostage, shall be  
8 guilty of a felony and, upon conviction, shall be punished by  
9 confinement by the division of corrections for life, and,  
10 notwithstanding the provisions of article twelve, chapter  
11 sixty-two of this code, shall not be eligible for parole.

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

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

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

26 (3) In all cases where the person against whom the  
27 offense is committed is returned, or is permitted to return,  
28 alive, without bodily harm having been inflicted upon him or  
29 her, but after ransom, money or other thing, or any  
30 concession or advantage of any sort has been paid or yielded,  
31 the punishment shall be confinement by the division of  
32 corrections for a definite term of years not less than twenty  
33 nor more than fifty; or

34 (4) In all cases where the person against whom the  
35 offense is committed is returned, or is permitted to return,  
36 alive, without bodily harm having been inflicted upon him or  
37 her, but without ransom, money or other thing, or any  
38 concession or advantage of any sort having been paid or  
39 yielded, the punishment shall be confinement by the division  
40 of corrections for a definite term of years not less than ten nor  
41 more than thirty.

42 (c) For purposes of this section: “To use another as a  
43 hostage” means to seize or detain and threaten to kill or injure  
44 another in order to compel a third person or a governmental  
45 organization to do or abstain from doing any legal act as an  
46 explicit or implicit condition for the release of the person  
47 detained.

48 (d) Notwithstanding any other provision of this section,  
49 if a violation of this section is committed by a family member  
50 of a minor abducted or held hostage and he or she is not  
51 motivated by monetary purposes, but rather intends to  
52 conceal, take, remove the child or refuse to return the child to  
53 his or her lawful guardian in the belief, mistaken or not, that  
54 it is in the child’s interest to do so, he or she shall be guilty of  
55 a felony and, upon conviction thereof, be confined in a  
56 correctional facility for not less than one or more than five  
57 years or fined not more than one thousand dollars, or both.

58 (e) Notwithstanding any provision of this code to the  
59 contrary, where a law-enforcement agency of this state or a  
60 political subdivision thereof receives a complaint that a  
61 violation of the provisions of this section has occurred, the  
62 receiving law-enforcement agency shall notify any other  
63 law-enforcement agency with jurisdiction over the offense,  
64 including, but not limited to, the state police and each agency  
65 so notified, shall cooperate in the investigation forthwith.



66 (f) It shall be a defense to a violation of subsection (d) of  
67 this section, that the accused's action was necessary to  
68 preserve the welfare of the minor child and the accused  
69 promptly reported his or her actions to a person with lawful  
70 custody of the minor, to law-enforcement or to Child  
71 Protective Services division of the Department of Health and  
72 Human Resources.

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

1 (a) As used in this section:

2 (1) "Debt bondage" means the status or condition of a  
3 debtor arising from a pledge by the debtor of the debtor's  
4 personal services or those of a person under the debtor's  
5 control as a security for debt, if the value of those services as  
6 reasonably assessed is not applied toward the liquidation of  
7 the debt or the length and nature of those services are not  
8 respectively limited and defined.

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

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

23 (B) Physically restraining or threatening to physically  
24 restrain a person;

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

26 (D) Knowingly destroying, concealing, removing,  
27 confiscating, or possessing any actual or purported passport  
28 or other immigration document, or any other actual or  
29 purported government identification document, of another  
30 person.

31 “Forced labor or services” does not mean labor or  
32 services required to be performed by a person in compliance  
33 with a court order or as a required condition of probation,  
34 parole, or imprisonment.

35 (3) “Human trafficking” means the labor trafficking or  
36 sex trafficking involving adults or minors where two or more  
37 persons are trafficked within any one year period.

38 (4) “Labor trafficking” means the promotion, recruitment,  
39 transportation, transfer, harboring, enticement, provision,  
40 obtaining or receipt of a person by any means, whether a  
41 United States citizen or foreign national, for the purpose of:

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

43 (B) Slavery or practices similar to slavery.

44 (5) “Sex trafficking of minors” means the promotion,  
45 recruitment, transportation, transfer, harboring, enticement,  
46 provision, obtaining or receipt of a person under the age of  
47 eighteen by any means, whether a United States citizen or  
48 foreign national, for the purpose of causing the minor to  
49 engage in sexual acts, or in sexual conduct violating the  
50 provisions of subsection (b), section five, article eight of this  
51 chapter or article eight-c of this chapter.

52 (6) “Sex trafficking of adults” means the promotion,  
53 recruitment, transportation, transfer, harboring, enticement,  
54 provision, obtaining or receipt of a person eighteen years of  
55 age or older, whether a United States citizen or foreign  
56 national, for the purposes of engaging in violations of  
57 subsection (b), section five, article eight of this chapter by  
58 means of force, threat or deception.

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

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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*Chairman, House Committee*

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*Chairman, Senate Committee*

Originating in the House.

To take effect ninety days from passage.

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*Clerk of the House of Delegates*

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*Clerk of the Senate*

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*Speaker of the House of Delegates*

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*President of the Senate*

The within \_\_\_\_\_ this the \_\_\_\_\_  
day of \_\_\_\_\_, 2012.

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*Governor*