

1 **SECOND ENGROSSMENT**

2 **H. B. 2161**

3
4 (By Delegates Fleischauer, Pasdon, Storch, Guthrie, Border,
5 L. Phillips, Moore, Hamilton, Sobonya, Miller and Manchin)
6

7 [Introduced January 20, 2015; referred to the
8 Committee on the Judiciary then Finance.]
9

10 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
11 designated §15-14-1, §15-14-2, §15-14-3, §15-14-4, §15-14-5 and §15-14-6; to amend and
12 reenact §62-1D-8 and §61-2-17 of said code; to amend said code by adding thereto two new
13 sections, designated §61-2-17a and §61-2-17b, all relating to adopting the Uniform Act on
14 Prevention of and Remedies for Human Trafficking; providing legislative findings; setting
15 forth definitions; creating a Commission on the Prevention of Human Trafficking; requiring
16 public posting of hotline information in certain locations; making services available to
17 victims of human trafficking; providing victims immunity from criminal prosecution for
18 certain crimes directly resulting from human trafficking; changing the definition of human
19 trafficking; expanding criminal remedies and enforcement tools; and allowing victims to
20 expunge conviction for certain crimes directly resulting from human trafficking.

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

22 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
23 article, designated §15-14-1, §15-14-2, §15-14-3, §15-14-4, §15-14-5 and §15-14-6; to amend and

1 reenact §62-1D-8 and §61-2-17 of said code; and, to amend said code by adding thereto two new
2 sections, designated §61-2-17a and §61-2-17b, all to read as follows:

3 **CHAPTER 15. PUBLIC SAFETY.**

4 **ARTICLE 14. UNIFORM ACT ON PREVENTION OF AND REMEDIES FOR HUMAN**
5 **TRAFFICKING.**

6 **§15-14-1. Short Title.**

7 This article may be cited as the "Uniform Act on Prevention of and Remedies for Human
8 Trafficking."

9 **§15-14-2. Legislative findings.**

10 (a) The Legislature hereby finds and declares that:

11 (1) Human trafficking constitutes a serious problem in West Virginia and across the nation;

12 (2) Human trafficking is abhorrent to a civilized society and deserving of the most diligent
13 response from the state;

14 (3) Human trafficking often involves minors who have been forced into involuntary servitude
15 and commercial sexual activity;

16 (4) Human trafficking can take many forms but generally includes the use of physical abuse,
17 threats of harm, or fear of other consequences to prevent victims from reporting the activity; and

18 (5) Human trafficking creates a cycle of violence, impacting victims, families, and
19 communities.

20 (b) The Legislature further finds and declares that:

21 (1) Legislation is required to combat this despicable practice, to make it easier to prosecute
22 and punish persons who engage in human trafficking, and to protect and support the victims; and

1 (2) The Legislature supports a comprehensive approach to combating human trafficking,
2 which approach includes prevention, protection, prosecution, and partnerships.

3 (3) Now, therefore, the Legislature joins the federal government and other states around the
4 nation in passing legislation in order to combat human trafficking and protect the victims.

5 **§15-14-3. Definitions.**

6 Unless otherwise specified herein, the terms used in this article have same meaning ascribed
7 to them by section seventeen, article two, chapter sixty-one of this code. "Commission" means the
8 Commission on the Prevention of Human Trafficking.

9 **§15-14-4. Commission on the Prevention of Human Trafficking.**

10 (a) The Commission on Human Trafficking is hereby created. Membership on the
11 commission consists of the following:

12 (1) The Director of the Division of Justice and Community Service, who shall serve as chair;

13 (2) The Attorney General, or a designee;

14 (3) The Secretary of the Department of Health and Human Resources, or a designee;

15 (4) The Superintendent of the State Police, or a designee;

16 (5) The Commissioner of Labor, or a designee;

17 (6) The Commissioner of the Division of Highways, or a designee;

18 (7) The Director of Juvenile Services, or a designee;

19 (8) A representative of the West Virginia Sheriff's Association, selected by the membership
20 of the Association;

21 (9) A representative from the membership of the West Virginia Chiefs of Police Association,
22 selected by the membership of the Association;

1 (10) A representative of the West Virginia Prosecuting Attorneys Association, selected by
2 the leadership of the Association;

3 (11) A representative from the membership of the West Virginia Foundation for Rape and
4 Information Services, selected by the membership of the Foundation;

5 (12) A representative from the membership of the West Virginia Child Advocacy Network,
6 selected by the membership of the Network;

7 (13) A representative from the membership of the West Virginia Coalition Against Domestic
8 Violence, selected by the membership of the Coalition;

9 (b) The state agencies represented on the commission created under this section shall provide
10 staff to the commission.

11 (c) The first meeting of the commission shall be held no later than September 1, 2015.
12 Thereafter, the commission shall meet at least twice each calendar year. Meetings may be held via
13 teleconference or other electronic means. A majority of the members of the council constitute a
14 quorum.

15 (d) The commission created under this section shall:

16 (1) Develop a coordinated and comprehensive plan to provide victims with services;

17 (2) Promote public awareness about human trafficking, victim remedies and services, and
18 trafficking prevention;

19 (3) Create a public-awareness poster that contains the National Human Trafficking Resource
20 Center hotline information;

21 (4) Develop a concise card or brochure for victims, concerning their rights to any state,
22 federal, or privately funded services.

1 (5) Coordinate training on human-trafficking prevention and victim services for state and
2 local employees who may have recurring contact with victims or perpetrators.

3 (6) Submit a report to the Governor and the Joint Committee on Government and Finance
4 summarizing the accomplishments of the commission during the preceding fiscal year and making
5 recommendations regarding the development and coordination of the state's responses to fight human
6 trafficking and support victims.

7 **§15-14-5. Display of Public-Awareness Poster; Penalty for Failure to Display.**

8 (a) The Division of Highways shall display a public-awareness poster that contains the
9 National Human Trafficking Resource Center hotline information in every rest area and welcome
10 center in the state which is open to the public.

11 (b) An employer shall display the public-awareness poster described in subsection (a) in a
12 place that is clearly conspicuous and visible to employees and the public at each of the following
13 locations in this state at which the employer has employees:

14 (1) A strip club or other sexually-oriented business;

15 (2) A business entity that has been found to be in violation of section five, article eight,
16 chapter sixty-one;

17 (3) A job-recruitment center;

18 (4) A hospital; or

19 (5) An emergency-care provider.

20 **§15-14-6. Eligibility for services.**

21 (a) A victim is eligible for benefits or services available through the state or identified in the
22 plan developed under subsection (d), section four of this article, including, but not limited to, the

1 advocacy and shelter services required by article twenty-six, chapter forty-eight of this code.

2 (b) A victim is eligible for compensation under the Crime Victim's Compensation Fund
3 established in article two-a, chapter fourteen of this code.

4 (c) A minor who has engaged in commercial sexual activity is eligible for benefits or services
5 available through the state and identified in the plan developed under subsection (d), section four of
6 this article , including, but not limited to, the children's protective services required by article six,
7 chapter forty-nine of this code.

8 (d) As soon as practicable after a first encounter with an individual who reasonably appears
9 to a law-enforcement officer to be a victim or minor who has engaged in commercial sexual activity,
10 the law enforcement officer shall notify the appropriate agencies identified in the co-ordinated and
11 comprehensive plan developed under subsection (d), section four of this article, that the individual
12 may be eligible for a benefit or service under this code. Nothing in this article is intended to prevent
13 individuals from reporting suspected commercial sexual activity of a victim or minor to law
14 enforcement, or any other appropriate agency or entity.

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

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

17 **§61-2-17. Human trafficking; criminal penalties.**

18 (a) As used in this section:

19 (1) "Coercion" means:

20 (A) The use or threat of force against, abduction of, serious harm to, or physical restraint of,
21 an individual;

22 (B) The use of a plan, pattern, or statement with intent to cause an individual to believe that

1 failure to perform an act will result in the use of force against, abduction of, serious harm to, or
2 physical restraint of, an individual;

3 (C) The abuse or threatened abuse of law or legal process;

4 (D) Controlling or threatening to control an individual's access to a controlled substance as
5 defined in article two, chapter sixty-a.

6 (E) The destruction or taking of or the threatened destruction or taking of an individual's
7 identification document or other property;

8 (F) The use of debt bondage;

9 (G) The use of an individual's physical or mental impairment when the impairment has a
10 substantial adverse effect on the individual's cognitive or volitional function; or

11 (H) The commission of civil or criminal fraud.

12 ~~(+)~~ (2) "Debt bondage" means inducing an individual to provide:

13 (A) Commercial sexual activity in payment toward or satisfaction of a real or purported debt;

14 or

15 (B) Labor or services in payment toward or satisfaction of a real or purported debt if the

16 status or condition of a debtor arising from a pledge by the debtor of the debtor's personal services,

17 or those of a person under the debtor's control as a security for debt, if the value of those services as

18 reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those

19 services are not respectively limited and defined.

20 ~~(2)~~ (3) "Forced labor or services" means labor or services that are performed or provided by

21 ~~another~~ one person and are obtained or maintained through a another person's:

22 (A) Threat, either implicit or explicit, deception or fraud, scheme, plan, or pattern, or other

1 action intended to cause a person to believe that, if the person did not perform or provide the labor
 2 or services that person or another person would suffer serious bodily harm or physical restraint:
 3 *Provided*, That, this does not include work or services provided by a minor to the minor's parent or
 4 legal guardian so long as the legal guardianship or custody of the minor was not obtained for the
 5 purpose compelling the minor to participate in commercial sex acts or sexually explicit performance,
 6 or perform forced labor or services.

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

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

9 (D) Knowingly destroying, concealing, removing, confiscating, or possessing any actual or
 10 purported passport or other immigration document, or any other actual or purported government
 11 identification document, of another person.

12 "Forced labor ~~or services~~" does not mean labor or services required to be performed by a
 13 person in compliance with a court order or as a required condition of probation, parole, or
 14 imprisonment.

15 ~~(3) (4)~~ "Human trafficking" means the labor trafficking or sex trafficking involving adults
 16 or minors where two or more persons are trafficked within any one year period the commission of
 17 an offense created by subsection (b) of this section.

18 (5)"Identification document" means a passport, driver's license, immigration document, travel
 19 document or other government-issued identification document, including a document issued by a
 20 foreign government.

21 (6) "Labor or services" means activity having economic value.

22 (7) "Person" means an individual, estate, business or nonprofit entity, or other legal entity.

1 The term does not include a public corporation or government or governmental subdivision agency
 2 or instrumentality.

3 (8) "Sexual activity" shall include sexual contact, sexual intercourse, and sexual intrusion as
 4 defined by section one, article eight-b, chapter sixty-one of this code. The term also includes a
 5 sexually explicit performance.

6 (9) "Sexually explicit performance" means an act or show, whether public or private, live,
 7 or photographed, recorded, or videotaped, intended to appeal to the prurient interest or to depict in
 8 a patently offensive way, sexual conduct, and to do so in a way that lacks artistic or scientific value.

9 (10) "Victim" means an individual who is subjected to human trafficking or to conduct that
 10 would have constituted human trafficking had this section been in effect when the conduct occurred,
 11 regardless of whether a perpetrator is identified, apprehended, prosecuted, or convicted.

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

15 ~~(A) Debt bondage or forced labor or services; or~~

16 ~~(B) Slavery or practices similar to slavery.~~

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

22 ~~(6) "Sex trafficking of adults" means the promotion, recruitment, transportation, transfer,~~

1 ~~harboring, enticement, provision, obtaining, receipt of a person eighteen years of age or older,~~
 2 ~~whether a United States citizen or foreign national for the purposes of engaging in violations of~~
 3 ~~subsection (b), section five, article eight of this chapter by means of force, threat, coercion,~~
 4 ~~deception, abuse or threatened abuse of the legal process, or any scheme, plan, pattern, or other~~
 5 ~~action intended to cause a person to believe that, if the person did not engage in a violation of~~
 6 ~~subsection (b), section five, article eight of this chapter, that person or another person would suffer~~
 7 ~~serious bodily harm or physical restraint.~~

8 (b) A person commits the offense of human trafficking if the person:

9 (1) Knowingly recruits, transports, transfers, harbors, receives, provides, obtains, isolates,
 10 maintains, or entices an individual in furtherance of forced labor or to coerce an individual to engage
 11 in commercial sexual activity.

12 (2) Knowingly uses coercion to compel an individual to provide labor or services, except
 13 when such conduct is permissible under federal law or state law.

14 (3) Knowingly maintains or makes available a minor for the purpose of engaging the minor
 15 in commercial sexual activity; or

16 (4) Uses coercion or deception to compel an adult to engage in commercial sexual activity.

17 (c) A business entity may be prosecuted for human trafficking under this section if:

18 (1) The entity knowingly engaged in conduct that constitutes human trafficking; or

19 (2) An employee or agent of the entity engaged in conduct that constitutes human trafficking
 20 and the commission of the offense was part of a pattern of illegal activity under this section for the
 21 benefit of the entity, which the entity knew was occurring and failed to take effective action to stop.

22 (b)(d) Any person who knowingly and willfully engages in human trafficking is guilty of a

1 felony and, upon conviction shall be incarcerated in a state correctional facility for an indeterminate
2 sentence of not less than three nor more than fifteen years or fined not more than \$200,000, or both.
3 Any business entity that engages in human trafficking may be fined not more than \$500,000 for each
4 offense, be required to disgorge profit from activity in violation of this section pursuant to section
5 five, article thirteen of this chapter, and be debarred from state and local government contracts.

6 ~~(e)~~ (e) A victim may bring a civil action against a person that commits an offense of human
7 trafficking for compensatory damages, punitive damages, injunctive relief, and any other appropriate
8 relief. The court may award compensatory damages, punitive damages, injunctive relief and any
9 other appropriate relief. A prevailing victim is also entitled to attorney's fees and costs. Treble
10 damages shall be awarded on proof of actual damages where defendant's acts were willful and
11 malicious. An action under this section must be commenced not later than ten (10) years after the
12 later date on which the victim was freed from the human trafficking situation, or attained 18 years
13 of age. Damages awarded to the victim under this section must be offset by any other restitution paid
14 to the victim. This section does not preclude any other remedy available to the victim under federal
15 law or the law of this state other than the Uniform Act on Prevention of and Remedies for Human
16 Trafficking.

17 ~~(d)~~ (f) Notwithstanding the definition of victim in subsection (k), section three, article two-a,
18 chapter fourteen of this code, a person who is a victim of human trafficking is a victim for all
19 purposes of article two-a, chapter fourteen of this code.

20 ~~(e)~~ (g) This article and the rights and remedies provided in this article are cumulative and in
21 addition to other existing rights.

22 (f) ~~Notwithstanding the age and criminal history limitations set forth in section twenty-six,~~

1 ~~article eleven of this chapter, any person convicted of prostitution in violation of subsection (b),~~
 2 ~~section five, article eight of this chapter where the conviction was a result of the person being a~~
 3 ~~victim of human trafficking as defined in this section, may petition the circuit court of the county of~~
 4 ~~conviction for an order of expungement pursuant to section twenty-six, article eleven of this chapter.~~

5 No victim of human trafficking seeking relief under this subsection shall be required to prove
 6 her or she has rehabilitated himself or herself in order to obtain expungement.

7 **§61-2-17a. Immunity of a minor victim of sex trafficking.**

8 (a) The terms used in this section have the same meaning ascribed to them by subsection (a),
 9 section seventeen of this article.

10 (b) An individual is not criminally liable or subject to juvenile-delinquency proceedings for
 11 prostitution, in violation of subsection (b), section five, article eight of this chapter, if the individual
 12 was a minor at the time of the offense and committed the offense as a direct result of being a victim.

13 (c) A minor who under subsection (a) or (b) is not subject to criminal liability or a
 14 juvenile-delinquency proceeding is presumed to be a neglected or abused child, in need of services
 15 under section nine, article six, chapter forty-nine of this code.

16 (d) This section does not apply in a prosecution or a juvenile-delinquency proceeding for
 17 soliciting, inducing, enticing or procuring a prostitute in violation of subsection (b), section five,
 18 article eight of this chapter.

19 **§61-2-17b. Petition to vacate and expunge conviction of sex trafficking victim.**

20 (a) The terms used in this section have the same meaning ascribed to them by subsection (a),
 21 section seventeen of this article.

22 (b) Notwithstanding the age and criminal history limitations set forth in section twenty-six,

1 article eleven of this chapter, an individual convicted of prostitution in violation of subsection (b),
 2 section five, article eight of this chapter as a direct result of being a victim of human trafficking may
 3 apply by petition to the circuit court in the county of conviction to vacate the conviction and expunge
 4 the record of conviction. The court may grant the petition on a finding that the individual's
 5 participation in the offense was a direct result of being a victim of human trafficking.

6 (c) No victim of human trafficking seeking relief under this section shall be required to prove
 7 he or she has rehabilitated himself or herself in order to obtain expungement.

8 (d) A petition filed under subsection (b), any hearing conducted on the petition, and any relief
 9 granted shall meet the procedural requirements of section twenty-six, article eleven, chapter sixty-
 10 one of this code: *Provided*, That a victim of human trafficking is not subject to the age and criminal
 11 history limitations set forth in that section.

12 **CHAPTER 62. CRIMINAL PROCEDURE.**

13 **ARTICLE 1D. WIRETAPPING AND ELECTRONIC SURVEILLANCE ACT.**

14 **§62-1D-8. County prosecuting attorney or duly appointed special prosecutor may apply for** 15 **order authorizing interception.**

16 The prosecuting attorney of any county or duly appointed special prosecutor may apply to
 17 one of the designated circuit judges referred to in section seven of this article and such judge, in
 18 accordance with the provisions of this article, may grant an order authorizing the interception of
 19 wire, oral or electronic communications by an officer of the investigative or law-enforcement agency
 20 when the prosecuting attorney or special prosecutor has shown reasonable cause to believe the
 21 interception would provide evidence of the commission of: (i) Kidnaping or abduction as defined
 22 and prohibited by the provisions of sections fourteen and fourteen-a, article two, chapter sixty-one

1 of this code and including threats to kidnap or demand ransom as defined and prohibited by the
2 provisions of section fourteen-c of said article two; or (ii) of any offense included and prohibited by
3 section eleven, article four, chapter twenty-five of said code, sections eight, nine and ten, article five,
4 chapter sixty-one of said code or section one, article eight, chapter sixty-two of said code to the
5 extent that any of said sections provide for offenses punishable as a felony; or (iii) dealing,
6 transferring or trafficking in any controlled substance or substances in the felonious violation of
7 chapter sixty-a of this code; or (iv) human trafficking as defined and prohibited by section seventeen,
8 article two, chapter sixty-one of this code; or ~~(iv)~~(v) any aider or abettor to any of the foregoing
9 offenses or any conspiracy to commit any of the foregoing offenses if any aider, abettor or
10 conspirator is a party to the communication to be intercepted.

NOTE: The purpose of this bill is to adopt the Uniform Act on Prevention of and Remedies for Human Trafficking by creating a Commission on the Prevention of Human Trafficking; requiring the public posting of hotline information in certain business and public locations; making services available to victims of human trafficking; providing victims immunity from criminal prosecution for certain crimes directly resulting from human trafficking; changing the definition of human trafficking; expanding criminal remedies and enforcement tools to combat human trafficking and allowing victims to petition the circuit court to vacate and expunge a conviction for certain crimes directly resulting from human trafficking.

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