

**E N G R O S S E D**

**H. B. 2161**

---

(BY DELEGATE(S) FLEISCHAUER, PASDON,  
STORCH, GUTHRIE, BORDER, L. PHILLIPS, MOORE, HAMILTON,  
SOBONYA, MILLER AND MANCHIN)

---

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

---

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §15-14-1, §15-14-2, §15-14-3, §15-14-4, §15-14-5 and §15-14-6; to amend and reenact §61-2-17 of said code; to amend said code by adding thereto a new section, designated §61-2-17a; to amend said code by adding thereto a new section, designated §61-2-17b; and to amend and reenact §62-1D-8 of said code, all relating to adopting the Uniform

Act on Prevention of and Remedies for Human Trafficking; 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.

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

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §15-14-1, §15-14-2, §15-14-3, §15-14-4, §15-14-5 and §15-14-6; that §61-2-17 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §61-2-17a; that said code be amended by adding thereto a new section, designated §61-2-17b; and that §62-1D-8 of said code be amended and reenacted, all to read as follows:

**CHAPTER 15. PUBLIC SAFETY.****ARTICLE 14. UNIFORM ACT ON PREVENTION OF AND REMEDIES FOR HUMAN TRAFFICKING.****§15-14-1. Short Title.**

- 1        This article may be cited as the “Uniform Act on Prevention  
2 of and Remedies for Human Trafficking.”

**§15-14-2. Legislative findings.**

- 1        (a) The Legislature hereby finds and declares that:  
2        (1) Human trafficking constitutes a serious problem in West  
3 Virginia and across the nation;  
4        (2) Human trafficking is abhorrent to a civilized society and  
5 deserving of the most diligent response from the state;  
6        (3) Human trafficking often involves minors who have been  
7 forced into involuntary servitude and commercial sexual  
8 activity;  
9        (4) Human trafficking can take many forms but generally  
10 includes the use of physical abuse, threats of harm, or fear of  
11 other consequences to prevent victims from reporting the  
12 activity; and  
13        (5) Human trafficking creates a cycle of violence, impacting  
14 victims, families, and communities.

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

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

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

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

**§15-14-3. Definitions.**

1        Unless otherwise specified herein, the terms used in this  
2 article have same meaning ascribed to them by section  
3 seventeen, article two, chapter sixty-one of this code.  
4 “Commission” means the Commission on the Prevention of  
5 Human Trafficking.

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

1        (a) The Commission on Human Trafficking is hereby  
2 created. Membership on the commission consists of the  
3 following:

- 4       (1) The Director of the Division of Justice and Community  
5       Service, who shall serve as chair;
- 6       (2) The Attorney General, or a designee;
- 7       (3) The Secretary of the Department of Health and Human  
8       Resources, or a designee;
- 9       (4) The Superintendent of the State Police, or a designee;
- 10       (5) The Commissioner of Labor, or a designee;
- 11       (6) The Commissioner of the Division of Highways, or a  
12       designee;
- 13       (7) The Director of Juvenile Services, or a designee;
- 14       (8) A representative of the West Virginia Sheriff's  
15       Association, selected by the membership of the Association;
- 16       (9) A representative from the membership of the West  
17       Virginia Chiefs of Police Association, selected by the  
18       membership of the Association;
- 19       (10) A representative of the West Virginia Prosecuting  
20       Attorneys Association, selected by the leadership of the  
21       Association;
- 22       (11) A representative from the membership of the West  
23       Virginia Foundation for Rape and Information Services, selected  
24       by the membership of the Foundation;

25       (12) A representative from the membership of the West  
26 Virginia Child Advocacy Network, selected by the membership  
27 of the Network;

28       (13) A representative from the membership of the West  
29 Virginia Coalition Against Domestic Violence, selected by the  
30 membership of the Coalition;

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

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

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

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

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

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

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

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

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

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

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

5       (b) An employer shall display the public-awareness poster  
6 described in subsection (a) in a place that is clearly conspicuous

7 and visible to employees and the public at each of the following

8 locations in this state at which the employer has employees:

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

10 (2) A business entity that has been found to be in violation

11 of section five, article eight, chapter sixty-one;

12 (3) A job-recruitment center;

13 (4) A hospital; or

14 (5) An emergency-care provider.

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

1 (a) A victim is eligible for benefits or services available

2 through the state or identified in the plan developed under

3 subsection (d), section four of this article, including, but not

4 limited to, the advocacy and shelter services required by article

5 twenty-six, chapter forty-eight of this code.

6 (b) A victim is eligible for compensation under the Crime

7 Victim's Compensation Fund established in article two-a,

8 chapter fourteen of this code.

9 (c) A minor who has engaged in commercial sexual activity

10 is eligible for benefits or services available through the state and

11 identified in the plan developed under subsection (d), section

12 four of this article, including, but not limited to, the children's



13 protective services required by article six, chapter forty-nine of  
14 this code.

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

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

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

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

- 1 (a) As used in this section:
- 2 (1) “Coercion” means:
- 3 (A) The use or threat of force against, abduction of, serious
- 4 harm to, or physical restraint of, an individual;

5        (B) The use of a plan, pattern, or statement with intent to  
6 cause an individual to believe that failure to perform an act will  
7 result in the use of force against, abduction of, serious harm to,  
8 or physical restraint of, an individual;

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

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

13       (E) The destruction or taking of or the threatened destruction  
14 or taking of an individual's identification document or other  
15 property;

16       (F) The use of debt bondage;

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

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

21       (†) (2) "Debt bondage" means inducing an individual to  
22 provide:

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

25        (B) Labor or services in payment toward or satisfaction of a  
26 real or purported debt if the status or condition of a debtor  
27 arising from a pledge by the debtor of the debtor's personal  
28 services, or those of a person under the debtor's control as a  
29 security for debt, if the value of those services as reasonably  
30 assessed is not applied toward the liquidation of the debt or the  
31 length and nature of those services are not respectively limited  
32 and defined.

33        ~~(2)~~ (3) "Forced labor ~~or services~~" means labor or services  
34 that are performed or provided by ~~another~~ one person and are  
35 obtained or maintained through ~~a~~ another person's:

36        (A) Threat, either implicit or explicit, deception or fraud,  
37 scheme, plan, or pattern, or other action intended to cause a  
38 person to believe that, if the person did not perform or provide  
39 the labor or services that person or another person would suffer  
40 serious bodily harm or physical restraint: *Provided*, That, this  
41 does not include work or services provided by a minor to the  
42 minor's parent or legal guardian so long as the legal  
43 guardianship or custody of the minor was not obtained for the  
44 purpose compelling the minor to participate in commercial sex

45 acts or sexually explicit performance, or perform forced labor or  
46 services.

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

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

50 (D) Knowingly destroying, concealing, removing,  
51 confiscating, or possessing any actual or purported passport or  
52 other immigration document, or any other actual or purported  
53 government identification document, of another person.

54 “Forced labor ~~or services~~” does not mean labor or services  
55 required to be performed by a person in compliance with a court  
56 order or as a required condition of probation, parole, or  
57 imprisonment.

58 ~~(3)~~ (4) “Human trafficking” means the labor trafficking or  
59 sex trafficking involving adults or minors where two or more  
60 persons are trafficked within any one year period the  
61 commission of an offense created by subsection (b) of this  
62 section.

63 (5) “Identification document” means a passport, driver’s  
64 license, immigration document, travel document or other

65 government-issued identification document, including a  
66 document issued by a foreign government.

67 (6) “Labor or services” means activity having economic  
68 value.

69 (7) “Person” means an individual, estate, business or  
70 nonprofit entity, or other legal entity. The term does not include  
71 a public corporation or government or governmental subdivision  
72 agency or instrumentality.

73 (8) “Sexual activity” shall include sexual contact, sexual  
74 intercourse, and sexual intrusion as defined by section one,  
75 article eight-b, chapter sixty-one of this code. The term also  
76 includes a sexually explicit performance.

77 (9) “Sexually explicit performance” means an act or show,  
78 whether public or private, live, or photographed, recorded, or  
79 videotaped, intended to appeal to the prurient interest or to depict  
80 in a patently offensive way, sexual conduct, and to do so in a  
81 way that lacks artistic or scientific value.

82 (10) “Victim” means an individual who is subjected to  
83 human trafficking or to conduct that would have constituted  
84 human trafficking had this section been in effect when the

85 conduct occurred, regardless of whether a perpetrator is  
86 identified, apprehended, prosecuted, or convicted.

87 ~~(4) “Labor trafficking” means the promotion, recruitment,~~  
88 ~~transportation, transfer, harboring, enticement, provision,~~  
89 ~~obtaining or receipt of a person by any means, whether a United~~  
90 ~~States citizen or foreign national, for the purpose of:~~

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

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

93 ~~(5) “Sex trafficking of minors” means the promotion,~~  
94 ~~recruitment, transportation, transfer, harboring, enticement,~~  
95 ~~provision, obtaining or receipt of a person under the age of~~  
96 ~~eighteen by any means, whether a United States citizen or~~  
97 ~~foreign national, for the purpose of causing the minor to engage~~  
98 ~~in sexual acts, or in sexual conduct violating the provisions of~~  
99 ~~subsection (b), section five, article eight of this chapter or article~~  
100 ~~eight-c of this chapter.~~

101 ~~(6) “Sex trafficking of adults” means the promotion,~~  
102 ~~recruitment, transportation, transfer, harboring, enticement,~~  
103 ~~provision, obtaining, receipt of a person eighteen years of age or~~  
104 ~~older, whether a United States citizen or foreign national for the~~

105 ~~purposes of engaging in violations of subsection (b), section five,~~  
106 ~~article eight of this chapter by means of force, threat, coercion,~~  
107 ~~deception, abuse or threatened abuse of the legal process, or any~~  
108 ~~scheme, plan, pattern, or other action intended to cause a person~~  
109 ~~to believe that, if the person did not engage in a violation of~~  
110 ~~subsection (b), section five, article eight of this chapter, that~~  
111 ~~person or another person would suffer serious bodily harm or~~  
112 ~~physical restraint.~~

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

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

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

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

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

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

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

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

135        ~~(b)~~(d) Any person who knowingly and willfully engages in  
136 human trafficking is guilty of a felony and, upon conviction shall  
137 be incarcerated in a state correctional facility for an  
138 indeterminate sentence of not less than three nor more than  
139 fifteen years or fined not more than \$200,000, or both. Any  
140 business entity that engages in human trafficking may be fined  
141 not more than \$500,000 for each offense, be required to disgorge  
142 profit from activity in violation of this section pursuant to  
143 section five, article thirteen of this chapter, and be debarred from  
144 state and local government contracts.



145       (ⓔ) (e) A victim may bring a civil action against a person that  
146 commits an offense of human trafficking for compensatory  
147 damages, punitive damages, injunctive relief, and any other  
148 appropriate relief. The court may award compensatory damages,  
149 punitive damages, injunctive relief and any other appropriate  
150 relief. A prevailing victim is also entitled to attorney's fees and  
151 costs. Treble damages shall be awarded on proof of actual  
152 damages where defendant's acts were willful and malicious. An  
153 action under this section must be commenced not later than ten  
154 (10) years after the later date on which the victim was freed from  
155 the human trafficking situation, or attained 18 years of age.  
156 Damages awarded to the victim under this section must be offset  
157 by any other restitution paid to the victim. This section does not  
158 preclude any other remedy available to the victim under federal  
159 law or the law of this state other than the Uniform Act on  
160 Prevention of and Remedies for Human Trafficking.

161       (ⓕ) (f) Notwithstanding the definition of victim in subsection  
162 (k), section three, article two-a, chapter fourteen of this code, a  
163 person who is a victim of human trafficking is a victim for all  
164 purposes of article two-a, chapter fourteen of this code.

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

168        ~~(f)~~ ~~Notwithstanding the age and criminal history limitations~~  
169 ~~set forth in section twenty-six, article eleven of this chapter, any~~  
170 ~~person convicted of prostitution in violation of subsection (b),~~  
171 ~~section five, article eight of this chapter where the conviction~~  
172 ~~was a result of the person being a victim of human trafficking as~~  
173 ~~defined in this section, may petition the circuit court of the~~  
174 ~~county of conviction for an order of expungement pursuant to~~  
175 ~~section twenty-six, article eleven of this chapter.~~

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

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

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

4        (b) An individual is not criminally liable or subject to  
5 juvenile-delinquency proceedings for prostitution, in violation of

6 subsection (b), section five, article eight of this chapter, if the  
7 individual was a minor at the time of the offense and committed  
8 the offense as a direct result of being a victim.

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

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

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

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

4 (b) Notwithstanding the age and criminal history limitations  
5 set forth in section twenty-six, article eleven of this chapter, an  
6 individual convicted of prostitution in violation of subsection  
7 (b), section five, article eight of this chapter as a direct result of  
8 being a victim of human trafficking may apply by petition to the

9 circuit court in the county of conviction to vacate the conviction  
10 and expunge the record of conviction. The court may grant the  
11 petition on a finding that the individual's participation in the  
12 offense was a direct result of being a victim of human  
13 trafficking.

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

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

## CHAPTER 62. CRIMINAL PROCEDURE.

### ARTICLE 1D. WIRETAPPING AND ELECTRONIC SURVEILLANCE ACT.

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

1 The prosecuting attorney of any county or duly appointed  
2 special prosecutor may apply to one of the designated circuit  
3 judges referred to in section seven of this article and such judge,

4 in accordance with the provisions of this article, may grant an  
5 order authorizing the interception of wire, oral or electronic  
6 communications by an officer of the investigative or  
7 law-enforcement agency when the prosecuting attorney or  
8 special prosecutor has shown reasonable cause to believe the  
9 interception would provide evidence of the commission of: (i)  
10 Kidnaping or abduction as defined and prohibited by the  
11 provisions of sections fourteen and fourteen-a, article two,  
12 chapter sixty-one of this code and including threats to kidnap or  
13 demand ransom as defined and prohibited by the provisions of  
14 section fourteen-c of said article two; or (ii) of any offense  
15 included and prohibited by section eleven, article four, chapter  
16 twenty-five of said code, sections eight, nine and ten, article five,  
17 chapter sixty-one of said code or section one, article eight,  
18 chapter sixty-two of said code to the extent that any of said  
19 sections provide for offenses punishable as a felony; or (iii)  
20 dealing, transferring or trafficking in any controlled substance or  
21 substances in the felonious violation of chapter sixty-a of this  
22 code; or (iv) human trafficking as defined and prohibited by  
23 section seventeen, article two, chapter sixty-one of this code; or  
24 ~~(iv)~~(v) any aider or abettor to any of the foregoing offenses or

- 25 any conspiracy to commit any of the foregoing offenses if any  
26 aider, abettor or conspirator is a party to the communication to  
27 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.



