

E N R O L L E D

H. B. 2161

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[Passed March 14, 2015;
in effect ninety days from passage.]

AN ACT 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 two new sections, designated §61-2-17a and §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 two new sections, designated §61-2-17a and §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 (c) 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 in this article, the terms used in
2 this 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 or a designee;

- 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; and
- 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, where the members of the commission
35 shall elect a chairperson. Thereafter, the commission shall meet
36 at least twice each calendar year. Meetings may be held via
37 teleconference or other electronic means. A majority of the
38 members of the council constitute a quorum.

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

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

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

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

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

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

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

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 of this code;

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 (3) "Forced labor" means labor or services that are
34 performed or provided by one person and are obtained or
35 maintained through 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, confiscat-
51 ing, or possessing any actual or purported passport or other
52 immigration document, or any other actual or purported govern-
53 ment identification document, of another person.

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

57 (4) "Human trafficking" means the commission of an
58 offense created by subsection (b) of this section.

59 (5) "Identification document" means a passport, driver's
60 license, immigration document, travel document or other
61 government-issued identification document, including a
62 document issued by a foreign government.

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

65 (7) "Person" means an individual, estate, business or
66 nonprofit entity, or other legal entity. The term does not include

67 a public corporation or government or governmental subdivision
68 agency or instrumentality.

69 (8) “Sexual activity” includes sexual contact, sexual
70 intercourse, and sexual intrusion as defined by section one,
71 article eight-b, chapter sixty-one of this code. The term also
72 includes a sexually explicit performance.

73 (9) “Sexually explicit performance” means an act or show,
74 whether public or private, live, or photographed, recorded, or
75 videotaped, intended to appeal to an individual’s prurient interest
76 or to depict in a patently offensive way, sexual conduct, and to
77 do so in a way that lacks artistic or scientific value.

78 (10) “Victim” means an individual who is subjected to
79 human trafficking or to conduct that would have constituted
80 human trafficking had this section been in effect when the
81 conduct occurred, regardless of whether a perpetrator is
82 identified, apprehended, prosecuted, or convicted.

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

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

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

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

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

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

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

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

105 (d) Any person who knowingly and willfully engages in
106 human trafficking is guilty of a felony and, upon conviction shall
107 be incarcerated in a state correctional facility for an
108 indeterminate sentence of not less than three nor more than
109 fifteen years or fined not more than \$200,000, or both. Any
110 business entity that engages in human trafficking may be fined
111 not more than \$500,000 for each offense, be required to disgorge
112 profit from activity in violation of this section pursuant to
113 section five, article thirteen of this chapter, and be debarred from
114 state and local government contracts.

115 (e) A victim may bring a civil action against a person that
116 commits an offense of human trafficking for compensatory
117 damages, punitive damages, injunctive relief, and any other
118 appropriate relief. The court may award compensatory damages,
119 punitive damages, injunctive relief and any other appropriate
120 relief. A prevailing victim is also entitled to attorney's fees and
121 costs. Treble damages shall be awarded on proof of actual
122 damages where defendant's acts were willful and malicious. An
123 action under this section must be commenced not later than ten
124 (10) years after the later date on which the victim was freed from
125 the human trafficking situation, or attained 18 years of age.
126 Damages awarded to the victim under this section must be offset
127 by any other restitution paid to the victim. This section does not
128 preclude any other remedy available to the victim under federal

129 law or the law of this state other than the Uniform Act on
130 Prevention of and Remedies for Human Trafficking.

131 (f) Notwithstanding the definition of victim in subsection
132 (k), section three, article two-a, chapter fourteen of this code, a
133 person who is a victim of human trafficking is a victim for all
134 purposes of article two-a, chapter fourteen of this code.

135 (g) This article and the rights and remedies provided in this
136 article are cumulative and in addition to other existing rights.

§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;
24 or(v) any aider or abettor to any of the foregoing offenses or any
25 conspiracy to commit any of the foregoing offenses if any aider,
26 abettor or conspirator is a party to the communication to be
27 intercepted.

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

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within _____ this the _____
day of _____, 2015.

Governor

