

# WEST VIRGINIA LEGISLATURE

## 2022 REGULAR SESSION

Introduced

### House Bill 4519

FISCAL  
NOTE

BY DELEGATES STEELE, FOSTER, KESSINGER AND

HOLSTEIN

[Introduced February 02, 2022; Referred to the Committee  
on the Judiciary]

1 A BILL to amend and reenact §61-14-2, §61-14-3, §61-14-4, §61-14-5, §61-14-6, §61-14-7, and  
 2 §61-14-8 of the Code of West Virginia, all relating to increasing criminal penalties for  
 3 human trafficking; establishing limitations on parole; and providing immunity from criminal  
 4 liability for juvenile victims.

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

**ARTICLE 14. HUMAN TRAFFICKING.**

**§61-14-2. Human trafficking of an individual; aiding and abetting human trafficking; penalties.**

1 (a) Any person who knowingly and willfully traffics an adult, or who knowingly and willfully  
 2 aids, assists, or abets in any manner in the trafficking of an adult, is guilty of a felony and, upon  
 3 conviction, shall be confined in a state correctional facility for a determinate sentence of not less  
 4 than ~~three~~ 15 years nor more than ~~45~~ 40 years. ~~fin~~ ~~ed not more than \$200,000, or both imprisoned~~  
 5 ~~and fined~~

6 (b) Any person who knowingly and willfully traffics a minor, or who knowingly and willfully  
 7 aids, assists, or abets in any manner in the trafficking of a minor, is guilty of a felony and, upon  
 8 conviction, shall be confined in a state correctional facility for a determinate sentence of not less  
 9 than ~~five~~ 25 years nor more than ~~twenty~~ 100 years. ~~fin~~ ~~ed not more than \$300,000, or both~~  
 10 ~~imprisoned and fined~~

**§61-14-3. Use of forced labor; penalties.**

1 (a) Any person who knowingly uses an adult in forced labor is guilty of a felony and, upon  
 2 conviction thereof, shall be imprisoned in a state correctional facility for a determinate sentence  
 3 of not less than ~~one~~ 15 nor more than ~~five~~ 40 years. ~~fin~~ ~~ed not more than \$100,000, or both~~  
 4 ~~imprisoned and fined~~

5 (b) Any person who knowingly uses a minor in forced labor is guilty of a felony and, upon  
 6 conviction thereof, shall be imprisoned in a state correctional facility for a determinate sentence

7 ~~of not less than three 25 years or more than fifteen 100 years. fined not more than \$300,000, or~~  
8 ~~both imprisoned and fined~~

**§61-14-4. Use of persons in debt bondage; penalties.**

1 (a) Any person who knowingly uses an adult in debt bondage is guilty of a felony and,  
2 upon conviction thereof, shall be imprisoned in a state correctional facility for a determinate  
3 sentence of not less than one 15 nor more than five 40 years. fined not more than \$100,000, or  
4 ~~both imprisoned and fined~~

5 (b) Any person who knowingly uses a minor in debt bondage is guilty of a felony and, upon  
6 conviction thereof, shall be imprisoned in a state correctional facility for a determinate sentence  
7 of not less than one 15 years nor more than five 40 years. fined not more than \$100,000, or both  
8 ~~imprisoned and fined~~

**§61-14-5. Sexual servitude; penalties.**

1 (a) Any person who knowingly uses coercion to compel an adult to engage in commercial  
2 sexual activity is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state  
3 correctional facility for a determinate sentence of not less than three 25 years with no maximum  
4 penalty. nor more than fifteen years, fined not more than \$200,000, or both imprisoned and fined

5 (b) Any person who knowingly maintains or makes available a minor for the purpose of  
6 engaging the minor in commercial sexual activity is guilty of a class 1 felony and, upon conviction  
7 thereof, shall be imprisoned in a state correctional facility for a determinate sentence of not less  
8 ~~than ten nor more than twenty years fined not more than \$300,000, or both imprisoned and fined~~  
9 50 years determinate with no maximum penalty.

10 (c) It is not a defense in a prosecution under subsection (b) of this section that the minor  
11 consented to engage in commercial sexual activity, or that the defendant believed the minor was  
12 an adult.

**§61-14-6. Patronizing a victim of sexual servitude; penalties.**

1 (a) Any person who knowingly patronizes another in commercial sexual activity and who  
2 knows that such person patronized is a victim of sexual servitude, is guilty of a felony and, upon  
3 conviction thereof, shall be imprisoned in a state correctional facility for a determinate sentence  
4 of not less than one 25 years nor more than five 100 years. ~~fined not more than \$100,000, or both~~  
5 ~~imprisoned and fined~~

6 (b) Notwithstanding the provisions of subsection (a) of this section, any person who  
7 knowingly patronizes a minor to engage in commercial sexual activity and who knows or has  
8 reason to know that said minor is a victim of sexual servitude, is guilty of a felony and, upon  
9 conviction thereof, shall be imprisoned in a state correctional facility for a determinate sentence  
10 of not less than three nor more than fifteen years, fined not more than \$300,000, or both  
11 ~~imprisoned and fined~~ 50 years with no maximum penalty.

**§61-14-7. General provisions and other penalties.**

1 (a) *Separate violations.* — For purposes of this article, each adult or minor victim  
2 constitutes a separate offense.

3 (b) *Aggravating circumstance.* —

4 (1) Notwithstanding any provision of this code to the contrary, if an individual is convicted  
5 of an offense under this article and the trier of fact makes a finding that the offense involved an  
6 aggravating circumstance, the individual shall not be eligible for parole before serving ~~three years~~  
7 one-half of the individual's sentence in a state correctional facility.

8 (2) Notwithstanding any provision of this code to the contrary, if an individual is convicted  
9 of an offense under this article in which the victim is a minor, that individual is not eligible for  
10 parole.

11 ~~(2)~~ (3) For purposes of this subsection, “aggravating circumstance” means the individual  
12 recruited, enticed or obtained the victim of the offense from a shelter or facility that serves runaway  
13 youths, children in foster care, the homeless or victims of human trafficking, domestic violence or  
14 sexual assault.

15 (c) *Restitution.* —

16 (1) The court shall order a person convicted of an offense under this article to pay  
17 restitution to the victim of the offense.

18 (2) A judgment order for restitution may be enforced by the state or a victim named in the  
19 order to receive the restitution in the same manner as a judgment in a civil action in accordance  
20 with section four, article eleven-a of this chapter, including filing a lien against the person, firm or  
21 corporation against whom restitution is ordered.

22 (3) The court shall order restitution under subdivision (1) of this subsection even if the  
23 victim is unavailable to accept payment of restitution.

24 (4) If the victim does not claim restitution ordered under subdivision (1) of this subsection  
25 within five years of the entry of the order, the restitution shall be paid to the Crime Victims  
26 Compensation Fund created under §14-2A-4 of this code.

27 (d) *Eligibility for Compensation Fund.* — Notwithstanding the definition of victim in §14-  
28 2A-3 of this code, a victim of any offense under this article is a victim for all purposes of §14-2A-  
29 3 of this code: *Provided*, That for purposes of §14-2A-14(b) of this code, if otherwise qualified, a  
30 victim of any offense under this article may not be denied eligibility solely for the failure to report  
31 to law enforcement within the designated time frame.

32 (e) *Law Enforcement Notification.* — ~~Should~~ If a law-enforcement officer ~~encounter~~  
33 encounters a child who reasonably appears to be a victim of an offense under this article, the  
34 officer shall notify the Department of Health and Human Resources. If available, the Department  
35 of Health and Human Resources may notify the Domestic Violence Program serving the area  
36 where the child is found.

37 (f) *Forfeiture; Debarment.* —

38 (1) The following are declared to be contraband and no person shall have a property  
39 interest in them:

40 (A) All property which is directly or indirectly used or intended for use in any manner to  
41 facilitate a violation of this article; and

42 (B) Any property constituting or derived from gross profits or other proceeds obtained from  
43 a violation of this article.

44 (2) In any action under this section, the court may enter such restraining orders or take  
45 other appropriate action, including acceptance of performance bonds, in connection with any  
46 interest that is subject to forfeiture.

47 (3) Forfeiture actions under this section shall use the procedure set forth in article seven,  
48 chapter sixty-a of this code.

49 (4) Any person or business entity convicted of a violation of this article shall be debarred  
50 from state or local government contracts.

**§61-14-8. Immunity for minor victim of sex trafficking.**

1 (a) In a prosecution or a juvenile ~~prosecution~~ proceeding for an offense of prostitution in  
2 violation of §61-8-5(b) of this code, a minor ~~shall~~ may not be held criminally liable if the court  
3 determines that the minor is a victim of an offense under this article: *Provided*, That subject to  
4 proof, a minor so charged shall be rebuttably presumed to be a victim under the provisions of this  
5 article.

6 (b) This section does not apply in a prosecution or a juvenile proceeding for any of the  
7 other offenses under §61-8-5(b) of this code, including specifically soliciting, inducing, enticing,  
8 or procuring another to commit an act or offense of prostitution, unless it is determined by the  
9 court that the minor was coerced into the criminal behavior.

10 (c) A minor who, under subsection (a) or (b) of this section, is not subject to criminal liability  
11 or adjudication as a juvenile delinquent is presumed to be an abused child, as defined in §49-1-  
12 201 of this code, and may be eligible for services under Chapter 49 of this code including, but not  
13 limited to, appropriate child welfare services including, but not limited to, comprehensive trauma-  
14 informed services that are specialized to the needs of child victims of sexual abuse and

15 exploitation or child sex trafficking victims.

NOTE: The purpose of this bill is to increase penalties for human trafficking.

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