

# **WEST VIRGINIA LEGISLATURE**

## **2023 REGULAR SESSION**

**Introduced**

### **House Bill 3137**

By Delegates Ridenour, Steele, Foster, Kirby, Kimble,  
Honaker, Warner, Martin, Phillips, Kump, and  
Zatezalo

[Introduced January 30, 2023; Referred to the  
Committee on the Judiciary]

1 A BILL to amend and reenact §61-14-1 and §61-14-7 of the Code of West Virginia, 1931, as  
2 amended, all relating to human trafficking, adding a definition for "illegal alien"; general  
3 provisions and penalties; and providing that illegal aliens are not eligible for restitution.

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

**ARTICLE 14. HUMAN TRAFFICKING.**

**§61-14-1. Definitions.**

1 When used in this article, the following words and terms shall have meaning specified  
2 unless the context clearly indicates a different meaning:

3 ~~(1)~~ "Adult" means an individual 18 years of age or older.

4 ~~(2)~~ "Coercion" means:

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

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

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

11 (D) The destruction or taking of, or the threatened destruction or taking of, an individual's  
12 identification document or other property; or

13 (E) The use of an individual's physical or mental impairment when the impairment has a  
14 substantial adverse effect on the individual's cognitive or volitional function.

15 As used in this article, "coercion" does not include statements or actions made by a duly  
16 authorized state or federal law-enforcement officer as part of a lawful law enforcement  
17 investigation or undercover action.

18 ~~(3)~~ "Commercial sexual activity" means sexual activity for which anything of value is given  
19 to, promised to or received by a person.

20 ~~(4)~~ "Debt bondage" means inducing an individual to provide:

21 (A) Commercial ~~sexual~~ activity, including sexual activity, in payment toward or satisfaction  
22 of a real or purported debt; or

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

24 (i) The reasonable value of the labor or services is not applied toward the liquidation of the  
25 debt; or

26 (ii) The length of the labor or services is not limited, and the nature of the labor or services  
27 is not defined.

28 ~~(5)~~ "Forced labor" means labor or services that are performed or provided by another  
29 person and are obtained or maintained through the following:

30 (A) Threat, either implicit or explicit, deception or fraud, scheme, plan, or pattern or other  
31 action intended to cause a person to believe that, if the person did not perform or provide the labor  
32 or services, that person or another person would suffer serious bodily harm, physical restraint or  
33 deportation;

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

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

36 (D) Destroying, concealing, removing, confiscating or possessing any actual or purported  
37 passport or other immigration document, or any other actual or purported government  
38 identification document of another person: *Provided*, That "forced labor" does not mean labor or  
39 services required to be performed by a person in compliance with a court order or as a required  
40 condition of probation, parole, or imprisonment.

41 As applied in this article, forced labor shall not include labor, work or services provided by a  
42 minor to the minor's parent, legal custodian or legal guardian, so long as the legal guardianship or  
43 custody of the minor was not obtained for the purpose of compelling the minor to participate in  
44 commercial sex acts or sexually explicit performance, or perform forced labor or services; nor shall  
45 it include physical restraint of a minor, or the threat of physical restraint to a minor, by his or her

46 parents, legal custodian or legal guardian if conducted in an otherwise lawful manner and for the  
47 purpose of discipline, supervision or teaching.

48 (6) "Human trafficking", "trafficking", or "traffics" means knowingly recruiting, transporting,  
49 transferring, harboring, receiving, providing, obtaining, isolating, maintaining or enticing an  
50 individual to travel to a location, including actions intended to engage in debt bondage, forced  
51 labor or sexual servitude.

52 (7) "Identification document" means a passport, driver's license, immigration document,  
53 travel document or other government-issued identification document, including a document issued  
54 by a foreign government.

55 "Illegal alien" means an alien who has entered the United States illegally and is deportable  
56 if apprehended, or an alien who entered the United States legally but who has fallen "out of status"  
57 and is deportable.

58 (8) "Labor or services" means activity having economic value.

59 (9) "Minor" means an individual less than 18 years of age.

60 (10) "Patronize" means giving, agreeing to give or offering to give anything of value to  
61 another person in exchange for commercial sexual activity.

62 (11) "Person" means an individual, estate, business or nonprofit entity, or other legal entity.  
63 The term does not include a public corporation or government or governmental subdivision,  
64 agency or instrumentality.

65 (12) "Serious harm" means harm, whether physical or nonphysical, including  
66 psychological, economic or reputational, to an individual which would compel a reasonable  
67 individual of the same background and in the same circumstances to perform or continue to  
68 perform labor or services or sexual activity to avoid incurring the harm.

69 (13) "Sexual activity" means sexual contact, sexual intercourse or sexual intrusion, as  
70 defined in §61-8B-1 of this code, or sexually explicit conduct, as defined in §61-8C-1 of this code.

71 (14) "Sexual servitude" means:

72 (A) Maintaining or making available a minor for the purpose of engaging the minor in  
73 commercial sexual activity; or

74 (B) Using coercion to compel an adult to engage in commercial sexual activity.

75 ~~(15)~~ "Victim" means an individual who is subjected to human trafficking, regardless of  
76 whether a perpetrator is prosecuted or convicted.

**§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) Any individual entity, including those entities contracted by the federal government, that  
4 transports illegal aliens into West Virginia is engaged in human trafficking.

5 ~~(b)~~ (c) *Aggravating circumstance.* —

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

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

14 ~~(e)~~ (d) *Restitution.* —

15 (1) The court shall order a person convicted of an offense under this article to pay  
16 restitution to the victim of the offense or to the State of West Virginia.

17 (2) A judgment order for restitution may be enforced by the state or a victim named in the  
18 order to receive the restitution in the same manner as a judgment in a civil action in accordance  
19 with §11A-4-1 *et seq.* of this code, including filing a lien against the person, firm or corporation  
20 against whom restitution is ordered.

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

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

26 (5) Notwithstanding any provision of this code to the contrary, illegal aliens are not eligible  
27 for restitution. Restitution shall be provided by offenders to the State of West Virginia.

28 (d) *Eligibility for Compensation Fund.* — Notwithstanding the definition of victim in §14-2A-  
29 3 of this code, a victim of any offense under this article is a victim for all purposes of §14-2A-1 *et*  
30 *seq.* of this code: *Provided*, That for purposes of §14-2A-14(b) of this code, if otherwise qualified, a  
31 victim of any offense under this article may not be denied eligibility solely for the failure to report to  
32 law enforcement within the designated time frame.

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

38 (f) *Forfeiture; Debarment.* —

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

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

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

45 (2) In any action under this section, the court may enter such restraining orders or take  
46 other appropriate action, including acceptance of performance bonds, in connection with any

47 interest that is subject to forfeiture.

48 (3) Forfeiture actions under this section shall use the procedure set forth in §60A-7-1 *et*  
49 *seq.* of this code.

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

52 (5) Nothing in this article may be construed or applied in a manner that violates or conflicts  
53 with superseding federal law.

NOTE: The purpose of this bill is to add a definition for "illegal alien" under human trafficking and provide that illegal aliens are not eligible for restitution.

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