

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5031

By Delegates Ridenour, Kirby, Phillips, Steele, Foster,
Kimble, Hillenbrand, Householder, Gearheart, Mallow,
and Martin

[Introduced January 23, 2024; 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 the 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
42 a minor to the minor's parent, legal custodian, or legal guardian, so long as the legal guardianship
43 or 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 a person younger than 18 years of age or a person representing himself
60 or herself to be a minor. Any prosecution, pursuant to this article, relating to a person that is
61 representing himself or herself to be a minor shall be limited to investigations being conducted or
62 overseen by law enforcement officers.

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

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

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

72 ~~(13)~~ "Sexual activity" means sexual contact, sexual intercourse, or sexual intrusion, as

73 defined in §61-8b-1 of this code, or sexually explicit conduct, as defined in §61-8-1 of this code.

74 (14) "Sexual servitude" means:

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

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

78 (15) "Victim" means an individual who is subjected to human trafficking, regardless of
79 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 or entity that transports illegal aliens into West Virginia is engaged in
4 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:

11 ~~(A) the~~ The individual recruited, enticed or obtained the victim of the offense from a shelter
12 or facility that serves runaway youths, children in foster care, the homeless or victims of human
13 trafficking, domestic violence or sexual assault; and or

14 (B) The human smuggling:

15 (i) Was committed using a deadly weapon or by the threat of use of a deadly weapon;

16 (ii) Caused bodily harm or disfigurement to individuals being smuggled; or

17 (iii) Caused individuals being smuggled to become a victim of a sex offense, or

18 (iv) Caused individuals to commit to sexual servitude.

19 ~~(e)~~ (d) *Restitution.* —

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

22 (2) A judgment order for restitution may be enforced by the state or a victim named in the
23 order to receive the restitution in the same manner as a judgment in a civil action in accordance
24 with §61-11-4 of this code, including filing a lien against the person, firm or corporation against
25 whom restitution is ordered.

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

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

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

33 ~~(d)~~ (e) *Eligibility for Compensation Fund.* — Notwithstanding the definition of victim in §14-
34 2A-3 of this code, a victim of any offense under this article is a victim for all purposes of §14-2A-1
35 *et seq.* of this code: *Provided,* That for purposes of §14-2A-14(b) of this code, if otherwise
36 qualified, a victim of any offense under this article may not be denied eligibility solely for the failure
37 to report to law enforcement within the designated time frame.

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

43 ~~(f)~~ (g) *Forfeiture; Debarment.* —

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

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

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

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

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

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

57 (5) Nothing in this article may be construed or applied in a manner that violates or conflicts
58 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.