

1 COMMITTEE SUBSTITUTE

2 for

3 **H. B. 4053**

4 (By Delegates Brown, Poore, Fleischauer, Guthrie,
5 Moore, Frazier, Sobonya and L. Phillips)
6

7 (Originating in the Committee on the Judiciary)

8 [February 16, 2012]
9

10 A BILL to amend and reenact §30-29-3 the Code of West Virginia,
11 1931, as amended; to amend and reenact §61-2-14a of said code;
12 and to amend said code by adding a new section, designated
13 §61-2-14h, all relating to kidnapping and human trafficking;
14 authorizing the Governor's Committee on Crime, Delinquency and
15 Correction to establish standards governing training to
16 effectively investigate human trafficking offenses and
17 procedures for implementation of a course in investigation of
18 human trafficking offenses; amending the elements of the crime
19 of kidnapping; creating new criminal offenses of human
20 trafficking, involuntary servitude, sexual servitude of a
21 minor, unlawful conduct with respect to documents and
22 obstruction of the enforcement of human trafficking
23 provisions; and specifying the penalties for the new human
24 trafficking-related criminal offenses.

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

26 That §30-29-3 of the Code of West Virginia, 1931, as amended,

1 be amended and reenacted; that §61-2-14a of said code be amended
2 and reenacted; and that said code be amended by adding a new
3 section, designated §61-2-14h, all to read as follows:

4 **CHAPTER 30. PROFESSIONS AND OCCUPATIONS.**

5 **ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.**

6 **§30-29-3. Duties of the Governor's committee and the subcommittee.**

7 (a) Upon recommendation of the subcommittee, the Governor's
8 committee shall, by or pursuant to rules proposed for legislative
9 approval in accordance with article three, chapter twenty-nine-a of
10 this code:

11 ~~(a)~~ (1) Provide funding for the establishment and support of
12 law-enforcement training academies in the state;

13 ~~(b)~~ (2) Establish standards governing the establishment and
14 operation of the law-enforcement training academies, including
15 regional locations throughout the state, in order to provide access
16 to each law-enforcement agency in the state in accordance with
17 available funds;

18 ~~(c)~~ (3) Establish minimum law-enforcement instructor
19 qualifications;

20 ~~(d)~~ (4) Certify qualified law-enforcement instructors;

21 ~~(e)~~ (5) Maintain a list of approved law-enforcement instructors;

22 ~~(f)~~ (6) Promulgate standards governing the qualification of
23 law-enforcement officers and the entry-level law-enforcement
24 training curricula. These standards shall require satisfactory
25 completion of a minimum of four hundred classroom hours, shall

1 provide for credit to be given for relevant classroom hours earned
2 pursuant to training other than training at an established law-
3 enforcement training academy if earned within five years
4 immediately preceding the date of application for certification,
5 and shall provide that the required classroom hours can be
6 accumulated on the basis of a part-time curricula spanning no more
7 than twelve months, or a full-time curricula;

8 ~~(g)~~ (7) Establish standards governing in-service law-
9 enforcement officer training curricula and in-service supervisory
10 level training curricula;

11 ~~(h)~~ (8) Certify organized criminal enterprise investigation
12 techniques with a qualified anti-racial profiling training course
13 or module;

14 ~~(i)~~ (9) Establish standards governing mandatory training to
15 effectively investigate organized criminal enterprises as defined
16 in article thirteen, chapter sixty-one of this code, while
17 preventing racial profiling, as defined in section ten of this
18 article, for entry level training curricula and for law-enforcement
19 officers who have not received such training as certified by the
20 Governor's committee as required in this section;

21 ~~(j)~~ (10) Establish, no later than July 1, 2011, procedures for
22 implementation of a course in investigation of organized criminal
23 enterprises which includes an anti-racial training module to be
24 available on the Internet or otherwise to all law-enforcement
25 officers. The procedures shall include the frequency with which a

1 law-enforcement officer shall receive training in investigation of
2 organized criminal enterprises and anti-racial profiling, and a
3 time frame for which all law-enforcement officers must receive such
4 training: *Provided*, That all law-enforcement officers in this state
5 shall receive such training no later than July 1, 2012. In order
6 to implement and carry out the intent of this section, the
7 Governor's committee may promulgate emergency rules pursuant to
8 section fifteen, article three, chapter twenty-nine-a of this code;

9 ~~(k)~~ (11) Certify or decertify or reactivate law-enforcement
10 officers, as provided in sections five and eleven of this article;

11 ~~(l)~~ (12) Establish standards and procedures for the reporting
12 of complaints and certain disciplinary matters concerning law-
13 enforcement officers and for reviewing the certification of law-
14 enforcement officers. These standards and procedures shall provide
15 for preservation of records and access to records by law-
16 enforcement agencies and conditions as to how the information in
17 those records is to be used regarding an officer's law-enforcement
18 employment by another law enforcement agency;

19 ~~(1)~~ (A) The subcommittee shall establish and manage a database
20 that is available to all law-enforcement agencies in the state
21 concerning the status of any person's certification.

22 ~~(2)~~ (B) Personnel or personal information not resulting in a
23 criminal conviction is exempt from disclosure pursuant to the
24 provisions of chapter twenty-nine-b of this code.

25 ~~(m)~~ (13) Seek supplemental funding for law-enforcement

1 training academies from sources other than the fees collected
2 pursuant to section four of this article;

3 ~~(n)~~ (14) Any responsibilities and duties as the Legislature
4 may, from time to time, see fit to direct to the committee; and

5 ~~(o)~~ (15) Submit, on or before September 30 of each year, to
6 the Governor, and upon request to individual members of the
7 Legislature, a report on its activities during the previous year
8 and an accounting of funds paid into and disbursed from the special
9 revenue account established pursuant to section four of this
10 article.

11 (b) In addition to the duties authorized and established by
12 this section, the Governor's committee may:

13 (1) Establish training to effectively investigate human
14 trafficking offenses as defined in article two, chapter sixty of
15 this code, for entry level training curricula and for law-
16 enforcement officers who have not received such training as
17 certified by the committee as required by this section; and

18 (2) Establish procedures for the implementation of a course in
19 investigation of human trafficking offenses. The course may include
20 methods of identifying and investigating human trafficking and
21 methods for assisting trafficking victims. In order to implement
22 and carry out the intent of this subdivision, the committee may
23 promulgate emergency rules pursuant to section fifteen, article
24 three, chapter twenty-nine-a of this code.

25

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

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

2 ~~§61-2-14a. Penalty for enticing away, kidnapping or holding hostage~~
3 ~~any person~~ Kidnapping; penalty.

4 (a) Any person who, ~~by force, threat, duress, fraud or~~
5 ~~enticement take, confine, conceal, or decoy, inveigle or entice~~
6 ~~away, or transport into or out of this state or within this state,~~
7 ~~or otherwise kidnap any other person, or hold hostage any other~~
8 ~~person for the purpose or with the intent of taking, receiving,~~
9 ~~demanding or extorting from such person, or from any other person~~
10 ~~or persons, any ransom, money or other thing, or any concession or~~
11 ~~advantage of any sort, or for the purpose or with the intent of~~
12 ~~shielding or protecting himself, herself or others from bodily harm~~
13 ~~or of evading capture or arrest after he or she or they have~~
14 ~~committed a crime~~ unlawfully restrains another person with the
15 intent:

- 16 (1) To hold another person for ransom, reward, or concession;
17 (2) To transport another person with the intent to inflict
18 bodily injury or to terrorize the victim or another person;
19 (3) To use another person as a shield or hostage; or
20 (4) To deprive a person of the lawful physical custody of a
21 minor,

22 shall be guilty of a felony and, upon conviction, shall be punished
23 by confinement by the division of corrections for life, and,
24 notwithstanding the provisions of article twelve, chapter sixty-two
25 of this code, shall not be eligible for parole. ~~Provided, That the~~

1 (b) The following exceptions shall apply to the penalty
2 contained in subsection (a):

3 (1) A jury may, in their discretion, recommend mercy, and if
4 such recommendation is added to their verdict, such person shall be
5 eligible for parole in accordance with the provisions of said
6 article twelve;

7 (2) if such person pleads guilty, the court may, in its
8 discretion, provide that such person shall be eligible for parole
9 in accordance with the provisions of said article twelve, and, if
10 the court so provides, such person shall be eligible for parole in
11 accordance with the provisions of said article twelve in the same
12 manner and with like effect as if such person had been found guilty
13 by the verdict of a jury and the jury had recommended mercy;

14 (3) in all cases where the person against whom the offense is
15 committed is returned, or is permitted to return, alive, without
16 bodily harm having been inflicted upon him, but after ransom, money
17 or other thing, or any concession or advantage of any sort has been
18 paid or yielded, the punishment shall be confinement by the
19 division of corrections for a definite term of years not less than
20 twenty nor more than fifty; or

21 (4) in all cases where the person against whom the offense is
22 committed is returned, or is permitted to return, alive, without
23 bodily harm having been inflicted upon him or her, but without
24 ransom, money or other thing, or any concession or advantage of any
25 sort having been paid or yielded, the punishment shall be

1 confinement by the division of corrections for a definite term of
2 years not less than ten nor more than thirty.

3 ~~(b) (c)~~ For purposes of this section, ~~the terms:~~ "To hold use
4 another as a hostage" means to seize or detain and threaten to kill
5 or injure another in order to compel, a third person or a
6 governmental organization to do or abstain from doing any legal act
7 as an explicit or implicit condition for the release of the person
8 detained.

9 ~~(c) Notwithstanding any other provision of this section, if a~~
10 ~~violation of this section is committed by a family member of a~~
11 ~~minor abducted or held hostage and he or she is not motivated by~~
12 ~~monetary purposes, but rather intends to conceal, take, remove the~~
13 ~~child or refuse to return the child to his or her lawful guardian~~
14 ~~in the belief, mistaken or not, that it is in the child's interest~~
15 ~~to do so, he or she shall be guilty of a felony and, upon~~
16 ~~conviction thereof, be confined in a correctional facility for not~~
17 ~~less than one or more than five years or fined not more than one~~
18 ~~thousand dollars, or both.~~

19 (d) Notwithstanding any provision of this code to the
20 contrary, where a law-enforcement agency of this state or a
21 political subdivision thereof receives a complaint that a violation
22 of the provisions of this section has occurred, the receiving
23 law-enforcement agency shall notify any other law-enforcement
24 agency with jurisdiction over the offense, including, but not
25 limited to, the state police and each agency so notified, shall

1 cooperate in the investigation forthwith.

2 (e) It shall be a defense to a violation of subdivision (4),
3 subsection (a), that the accused's action was necessary to preserve
4 the welfare of the minor child and the accused promptly reported
5 his or her actions to a person with lawful custody of the minor, to
6 law-enforcement or to Child Protective Services division of the
7 Department of Health and Human Resources.

8 **§61-2-14h. Human trafficking; involuntary servitude; sexual**
9 **servitude of a minor; unlawful conduct with respect to**
10 **documents; obstruction.**

11 (a) DEFINITIONS. For the purposes of this section:

12 (1) "Commercial sex act" means any sex act on account of which
13 anything of value is given, promised to, or received, directly or
14 indirectly, by any person.

15 (2) "Debt coercion" means exploitation of the status or
16 condition of a debtor arising from a pledge by the debtor of his or
17 her personal services or those of a person under his or her control
18 as a security or payment for debt, if the value of those services
19 as reasonably assessed is not applied toward the liquidation of the
20 debt or the length and nature of those services are not
21 respectively limited and defined or if the principal amount of the
22 debt does not reasonably reflect the value of the items or services
23 for which the debt was incurred.

24 (3) "Extortion" means the obtaining of property, labor or
25 services, commercial sex acts, or sexually explicit performances

1 from another, or of an official act of a public officer, through a
2 wrongful use of force or fear, or under color of official right.

3 (4) "Financial harm" includes credit extortion as defined by
4 section one hundred twenty, article two, chapter forty-six-a of
5 this code, criminal violation of the usury laws as defined by
6 section six, article six, chapter forty-seven of this code, or
7 employment contracts that violate the Statute of Frauds as defined
8 by section one, article one, chapter fifty-five of this code.

9 (5) "Labor" means work of economic or financial value:
10 Provided, That "labor" does not include work or services provided
11 by a minor to the minor's parent or legal guardian so long as the
12 legal guardianship or custody of the minor was not obtained for the
13 purpose compelling the minor to participate in commercial sex acts
14 or sexually explicit performance, or perform forced labor or
15 services.

16 (6) "Minor" refers to any person less than 18 years of age.

17 (7) "Serious harm" means any harm, whether physical or
18 nonphysical, including, but not limited to, psychological,
19 financial, or reputational harm, that is sufficiently serious,
20 under all the surrounding circumstances, to compel a reasonable
21 person of the same background and in the same circumstances as the
22 victim to perform or to continue performing labor or a service, a
23 commercial sex act, or a sexually explicit performance in order to
24 avoid incurring that harm.

25 (8) "Services" means any act committed at the behest of, under

1 the supervision of, or for the benefit of another.

2 (9) "Sex act" means any touching of the sexual or other
3 intimate parts of another person for the purpose of gratifying
4 sexual desire of any person. It includes touching of the person as
5 well as touching by the person, whether directly or through
6 clothing.

7 (10) "Sexually explicit performance" means an act or show,
8 whether public or private, live, photographed, recorded, or
9 videotaped intended (A) to appeal to the prurient interest, (B) to
10 depict, in a patently offensive way, sexual conduct, and (C) to do
11 so in a way that lacks literary, artistic, political, or scientific
12 value. Sexually explicit performance also includes any performance
13 that depicts sexual conduct by a minor or that would create
14 criminal liability under article eight-C of this chapter.

15 (11) "Victim of human trafficking" means any person, whether a
16 U.S. citizen or foreign national, who has been a victim of conduct
17 which is the subject of this section.

18 (b) INVOLUNTARY SERVITUDE. Any person who knowingly compels,
19 or attempts to compel, another person to participate in commercial
20 sex acts or sexually explicit performance, or perform labor or
21 services through use of any of the following means, or any
22 combination of such means:

23 (1) causing or threatening to cause serious harm to any
24 person;

25 (2) physically restraining or threatening to physically

1 restrain another person;
2 (3) abusing or threatening to abuse the law or legal process;
3 (4) taking another's personal property or real property;
4 (5) knowingly destroying, concealing, removing, confiscating
5 or possessing any actual or purported passport or other immigration
6 document, or any other actual or purported government
7 identification document, of another person;
8 (6) extortion;
9 (7) deception or fraud;
10 (8) coercion or duress or menace;
11 (9) debt coercion;
12 (10) causing or threatening to cause financial harm to, or
13 exerting or threatening to exert financial control over, any
14 person;
15 (11) facilitating or controlling a victim's access to an
16 addictive controlled substance; or
17 (12) using any scheme, plan, or pattern, whether overt or
18 subtle, intended to cause any person to believe that, if the person
19 did not perform such labor, services, acts or performances, that
20 person or another person would suffer serious harm or physical
21 restraint,
22 is guilty of a felony and, upon conviction thereof, shall be fined
23 not more than \$50,000 and imprisoned in a state correctional
24 facility for a determinate term of not less than ten years nor more
25 than fifty years.

1 (c) SEXUAL SERVITUDE OF A MINOR. Any person who knowingly (1)
2 recruits, entices, solicits, isolates, harbors, transports,
3 provides, obtains, or maintains, or so attempts, any minor for the
4 purposes of commercial sex acts or sexually explicit performance
5 through any means, or (2) benefits, financially or by receiving
6 anything of value, from participation in a venture which has
7 engaged in an act described in subdivision (1) of this subsection
8 is guilty of a felony and, upon conviction thereof, shall be fined
9 not more than \$50,000 and imprisoned in a state correctional
10 facility for a determinate term of not less than ten years nor
11 more than fifty years. For purposes of this subsection, it is not
12 required that the defendant have knowledge of the victim's age, nor
13 is reasonable mistake of age a defense to liability under this
14 provision.

15 (d) HUMAN TRAFFICKING. Any person who knowingly (1) recruits,
16 entices, solicits, isolates, harbors, transports, provides,
17 obtains, or maintains, or so attempts, another person knowing that
18 the person will be subjected to involuntary servitude, or (2)
19 benefits, financially or by receiving anything of value, from
20 participation in a venture which has engaged in an act described in
21 subdivision (1) of this subsection, is guilty of a felony and, upon
22 conviction thereof, shall be fined not more than \$25,000 and
23 imprisoned in a state correctional facility for a determinate term
24 of not less than ten years nor more than thirty years.

25 (e) UNLAWFUL CONDUCT WITH RESPECT TO DOCUMENTS. Any person who

1 knowingly destroys, conceals, removes, confiscates, or possesses
2 any actual or purported government identification document of
3 another person,

4 (1) in the course of a violation of or with intent to violate
5 the provisions of this section, or

6 (2) to prevent or restrict or to attempt to prevent or
7 restrict, without lawful authority, the ability of the person to
8 move or travel, in order to maintain the labor or services or
9 commercial sex acts of that person, when the person is or has been
10 a victim of conduct which is the subject of this section, is guilty
11 of a felony and, upon conviction thereof, shall be fined not more
12 than \$10,000 and imprisoned in a state correctional facility for a
13 determinate term of not more than ten years.

14 (f) OBSTRUCTION. Any person who obstructs, or attempts to
15 obstruct, or in any way interferes with or prevents the enforcement
16 of the provisions of this section, shall be fined and/or imprisoned
17 to the same extent as the underlying crime.