

H. B. 4100

(By Delegates Walker, Perry, Ellem, D. Poling and Hamilton)

[Introduced January 17, 2012; referred to the Committee on the Judiciary.]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §61-2A-1, §61-2A-2, §61-2A-3, §61-2A-4, §61-2A-5 and §61-2A-6, all relating to creation of new criminal offenses for the trafficking of persons, illegal aliens and involuntary servitude; creating definitions; establishing involuntary servitude offenses; establishing offenses involving sexual servitude of a minor; establishing offenses for trafficking of persons for forced labor or services; and requiring restitution.

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 §61-2A-1, §61-2A-2, §61-2A-3, §61-2A-4, §61-2A-5 and §61-2A-6, all to read as follows:

**ARTICLE 2A. TRAFFICKING OF PERSONS AND INVOLUNTARY SERVITUDE.**

**§61-2A-1. Definitions.**

In this article:

(1) "Blackmail" is to be given its ordinary meaning and

1 includes, but is not limited to, a threat to expose any secret  
2 tending to subject any person to hatred, contempt or ridicule.

3 (2) "Commercial sexual activity" means any sex act on account  
4 of which anything of value is given, promised to or received by any  
5 person.

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

12 (4) "Forced labor or services" means labor, as defined by  
13 subdivision (6) of this section, or services, as defined by  
14 subdivision (10) of this section, that are performed or provided by  
15 another person and are obtained or maintained through an actor's:

16 (A) Causing or threatening to cause serious harm to any  
17 person;

18 (B) Physically restraining or threatening to physically  
19 restrain another person;

20 (C) Abusing or threatening to abuse the law or legal process;

21 (D) Knowingly destroying, concealing, removing, confiscating  
22 or possessing any actual or purported passport or other immigration  
23 document, or any other actual or purported government  
24 identification document, of another person;

25 (E) Blackmail; or

1       (F) Causing or threatening to cause financial harm to any  
2 person.

3       (5) "Illegal alien" means any person who is not a citizen and  
4 who is present in the United States unlawfully or without the  
5 country's authorization, including, but not limited to, a person  
6 who has entered the country at a place other than a designated  
7 port-of-entry or as result of the expiration of a nonimmigrant  
8 visa.

9       (6) "Labor" means work of economic or financial value.

10       (7) "Maintain" means, in relation to labor or services, to  
11 secure continued performance thereof, regardless of any initial  
12 agreement on the part of the victim to perform such type of  
13 service.

14       (8) "Obtain" means, in relation to labor or services, to  
15 secure performance thereof.

16       (9) "Serious bodily injury" means bodily injury which creates  
17 a substantial risk of death, causes serious or prolonged  
18 disfigurement, causes prolonged impairment of health or prolonged  
19 loss or impairment of the function of any bodily organ.

20       (10) "Services" means an ongoing relationship between a person  
21 and the actor in which the person performs activities under the  
22 supervision of or for the benefit of the actor. Commercial sexual  
23 activity and sexually-explicit performances are forms of services  
24 under this section. Nothing in this provision legitimizes or  
25 legalizes prostitution.

1 (11) "Sexually-explicit performance" means a live or public  
2 act or show intended to arouse or satisfy the sexual desires or  
3 appeal to the prurient interests of patrons.

4 (12) "Trafficking victim" means a person subjected to the  
5 practices set forth in sections two or three of this article, or  
6 transported in violation of section four of this article.

7 **§61-2A-2. Involuntary servitude offenses.**

8 (a) Involuntary servitude. -- Any person who knowingly  
9 subjects, or attempts to subject, another person to forced labor or  
10 services by causing or threatening to cause physical harm to any  
11 person is guilty of a felony and, upon conviction thereof, shall be  
12 imprisoned in a state correctional facility for not more than  
13 twenty years.

14 (b) Unlawful restraint for forced labor. -- Any person who  
15 knowingly subjects, or attempts to subject, another person to  
16 forced labor or services by physically restraining or threatening  
17 to physically restrain another person, is guilty of a felony and,  
18 upon conviction thereof, shall be imprisoned in a state  
19 correctional facility for not more than fifteen years.

20 (c) Legal coercion for forced labor. -- Any person who  
21 knowingly subjects, or attempts to subject, another person to  
22 forced labor or services by abusing or threatening to abuse the law  
23 or legal process is guilty of a felony and, upon conviction  
24 thereof, shall be imprisoned in a state correctional facility for  
25 not more than ten years.

1       (d) Document servitude. -- Any person who knowingly subjects,  
2 or attempts to subject, another person to forced labor or services  
3 by knowingly destroying, concealing, removing, confiscating or  
4 possessing any actual or purported passport or other immigration  
5 document, or any other actual or purported government  
6 identification document, of another person, is guilty of a felony  
7 and, upon conviction thereof, shall be imprisoned in a state  
8 correctional facility for not more than five years.

9       (e) Debt bondage. -- Any person who knowingly subjects, or  
10 attempts to subject, another person to forced labor or services by  
11 blackmail, or by using or threatening to cause financial harm to  
12 any person, is guilty of a felony and, upon conviction thereof,  
13 shall be imprisoned in a state correctional facility for not more  
14 than three years.

15 **§61-2A-3. Sexual servitude of a minor.**

16       Any person who knowingly recruits, entices, harbors,  
17 transports, provides or obtains by any means, or attempts to  
18 recruit, entice, harbor, provide or obtain by any means, another  
19 person under eighteen years of age, knowing that the minor will  
20 engage in commercial sexual activity, sexually-explicit performance  
21 or the production of obscene matter as that phrase is defined by  
22 subsection (j), section one, article eight-a, chapter sixty-one of  
23 this code, or causes or attempts to cause a minor to engage in  
24 commercial sexual activity, sexually-explicit performance or the  
25 production of obscene matter as that phrase is defined by

1 subsection (j), section one, article eight-a, chapter sixty-one of  
2 this code, is guilty of a felony and, upon conviction thereof,  
3 shall be imprisoned in a state correctional facility as follows:

4 (1) In cases involving a minor between the ages of sixteen and  
5 eighteen years, not involving overt force or threat, for not less  
6 than five years nor more than fifteen years;

7 (2) In cases in which the minor had not attained the age of  
8 sixteen years, not involving overt force or threat, for not less  
9 than ten years nor more than twenty-five years; or

10 (3) In cases in which the violation involved overt force or  
11 threat, for not less than fifteen years nor more than thirty-five  
12 years.

13 **§61-2A-4. Trafficking of persons for forced labor or services.**

14 Any person who knowingly:

15 (1) Recruits, entices, harbors, transports, provides or  
16 obtains by any means, or attempts to recruit, entice, harbor,  
17 transport, provide or obtain by any means, another person,  
18 intending or knowing that the person will be subjected to forced  
19 labor or services; or

20 (2) Benefits, financially or by receiving anything of value,  
21 from participation in a venture which has engaged in an act  
22 described in violation of sections two or three of this article, is  
23 guilty of a felony and, upon conviction thereof, shall be  
24 imprisoned in a state correctional facility for not more than  
25 fifteen years.

1 **§61-2A-5. Trafficking of illegal aliens.**

2 Any person who knowingly harbors or transports, by any means,  
3 or attempts to harbor or transport, by any means, an illegal alien  
4 in deliberate violation of federal immigration laws is guilty of a  
5 felony and, upon conviction thereof, shall be imprisoned in a state  
6 correctional facility for not more than fifteen years.

7 **§61-2A-6. Restitution.**

8 Restitution is mandatory under this article. In addition to  
9 any other amount of loss identified, the court shall order  
10 restitution including the greater of: (1) The gross income or value  
11 to the defendant of the victim's labor or services; or (2) the  
12 value of the victim's labor as guaranteed under the federal minimum  
13 wage and overtime provisions of the Fair Labor Standards Act (FLSA)  
14 or article five-c, chapter twenty-one of the West Virginia Code.

NOTE: The purpose of this bill is to establish the crimes of human trafficking and involuntary servitude and to provide criminal penalties for persons convicted of human trafficking and involuntary servitude offenses.

This article is new; therefore, it has been completely underscored.