

COMMITTEE SUBSTITUTE

FOR

H. B. 4053

(BY DELEGATES BROWN, POORE, FLEISCHAUER, GUTHRIE,
MOORE, FRAZIER, SOBONYA AND L. PHILLIPS)

(Originating in the Committee on the Judiciary)
[February 16, 2012]

A BILL to amend and reenact §30-29-3 of the Code of West Virginia, 1931, as amended; to amend and reenact §61-2-14a of said code; and to amend said code by adding a new section, designated §61-2-14h, all relating to kidnapping and human trafficking; authorizing the Governor's Committee on Crime, Delinquency and Correction to establish standards governing training to effectively investigate human trafficking offenses and procedures for implementation of a course in investigation of human trafficking offenses; amending the elements of the crime of kidnapping; creating new criminal offenses of human trafficking, involuntary servitude, sexual servitude of a minor,

unlawful conduct with respect to documents and obstruction of the enforcement of human trafficking provisions; and specifying the penalties for the new human trafficking-related criminal offenses.

Be it enacted by the Legislature of West Virginia:

That §30-29-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §61-2-14a of said code be amended and reenacted; and that said code be amended by adding a new section, designated §61-2-14h, all to read as follows:

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.

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

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

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

7 ~~(b)~~ (2) Establish standards governing the establishment
8 and operation of the law-enforcement training academies,
9 including regional locations throughout the state, in order to
10 provide access to each law-enforcement agency in the state
11 in accordance with available funds;

12 ~~(c)~~ (3) Establish minimum law-enforcement instructor
13 qualifications;

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

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

17 ~~(f)~~ (6) Promulgate standards governing the qualification
18 of law-enforcement officers and the entry-level law-
19 enforcement training curricula. These standards shall require
20 satisfactory completion of a minimum of four hundred
21 classroom hours, shall provide for credit to be given for
22 relevant classroom hours earned pursuant to training other
23 than training at an established law-enforcement training
24 academy if earned within five years immediately preceding
25 the date of application for certification, and shall provide that

26 the required classroom hours can be accumulated on the basis
27 of a part-time curricula spanning no more than twelve
28 months, or a full-time curricula;

29 ~~(g)~~ (7) Establish standards governing in-service law-
30 enforcement officer training curricula and in-service
31 supervisory level training curricula;

32 ~~(h)~~ (8) Certify organized criminal enterprise investigation
33 techniques with a qualified anti-racial profiling training
34 course or module;

35 ~~(i)~~ (9) Establish standards governing mandatory training
36 to effectively investigate organized criminal enterprises as
37 defined in article thirteen, chapter sixty-one of this code,
38 while preventing racial profiling, as defined in section ten of
39 this article, for entry level training curricula and for law-
40 enforcement officers who have not received such training as
41 certified by the Governor's committee as required in this
42 section;

43 ~~(j)~~ (10) Establish, no later than July 1, 2012, procedures
44 for implementation of a course in investigation of organized

45 criminal enterprises which includes an anti-racial training
46 module to be available on the Internet or otherwise to all law-
47 enforcement officers. The procedures shall include the
48 frequency with which a law-enforcement officer shall receive
49 training in investigation of organized criminal enterprises and
50 anti-racial profiling, and a time frame for which all law-
51 enforcement officers must receive such training: *Provided,*
52 That all law-enforcement officers in this state shall receive
53 such training no later than July 1, 2012. In order to
54 implement and carry out the intent of this section, the
55 Governor's committee may promulgate emergency rules
56 pursuant to section fifteen, article three, chapter twenty-nine-
57 a of this code;

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

61 ~~(h)~~ (12) Establish standards and procedures for the
62 reporting of complaints and certain disciplinary matters
63 concerning law-enforcement officers and for reviewing the

64 certification of law-enforcement officers. These standards
65 and procedures shall provide for preservation of records and
66 access to records by law-enforcement agencies and
67 conditions as to how the information in those records is to be
68 used regarding an officer's law-enforcement employment by
69 another law enforcement agency;

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

73 ~~(‡)~~ (B) Personnel or personal information not resulting in
74 a criminal conviction is exempt from disclosure pursuant to
75 the provisions of chapter twenty-nine-b of this code.

76 ~~(m)~~ (13) Seek supplemental funding for law-enforcement
77 training academies from sources other than the fees collected
78 pursuant to section four of this article;

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

81 ~~(o)~~ (15) Submit, on or before September 30 of each year,
82 to the Governor, and upon request to individual members of

83 the Legislature, a report on its activities during the previous
84 year and an accounting of funds paid into and disbursed from
85 the special revenue account established pursuant to section
86 four of this article.

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

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

94 (2) Establish procedures for the implementation of a
95 course in investigation of human trafficking offenses. The
96 course may include methods of identifying and investigating
97 human trafficking and methods for assisting trafficking
98 victims. In order to implement and carry out the intent of this
99 subdivision, the committee may promulgate emergency rules
100 pursuant to section fifteen, article three, chapter twenty-nine-
101 a of this code.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 2. CRIMES AGAINST THE PERSON.

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

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

13 (1) To hold another person for ransom, reward, or
14 concession;

15 (2) To transport another person with the intent to inflict
16 bodily injury or to terrorize the victim or another person;

17 (3) To use another person as a shield or hostage; or

18 (4) To deprive a person of the lawful physical custody of

19 a minor, shall be guilty of a felony and, upon conviction,

20 shall be punished by confinement by the division of

21 corrections for life, and, notwithstanding the provisions of

22 article twelve, chapter sixty-two of this code, shall not be

23 eligible for parole. ~~Provided, That the~~

24 (b) The following exceptions shall apply to the penalty

25 contained in subsection (a):

26 (1) A jury may, in their discretion, recommend mercy,

27 and if such recommendation is added to their verdict, such

28 person shall be eligible for parole in accordance with the

29 provisions of said article twelve;

30 (2) if such person pleads guilty, the court may, in its

31 discretion, provide that such person shall be eligible for

32 parole in accordance with the provisions of said article

33 twelve, and, if the court so provides, such person shall be

34 eligible for parole in accordance with the provisions of said

35 article twelve in the same manner and with like effect as if

36 such person had been found guilty by the verdict of a jury
37 and the jury had recommended mercy;

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

46 (4) in all cases where the person against whom the
47 offense is committed is returned, or is permitted to return,
48 alive, without bodily harm having been inflicted upon him or
49 her, but without ransom, money or other thing, or any
50 concession or advantage of any sort having been paid or
51 yielded, the punishment shall be confinement by the division
52 of corrections for a definite term of years not less than ten nor
53 more than thirty.

54 ~~(b)~~ (c) For purposes of this section, ~~the terms:~~ “To hold
55 use another as a hostage” means to seize or detain and
56 threaten to kill or injure another in order to compel, a third
57 person or a governmental organization to do or abstain from
58 doing any legal act as an explicit or implicit condition for the
59 release of the person detained.

60 ~~(c)~~ Notwithstanding any other provision of this section,
61 ~~if a violation of this section is committed by a family member~~
62 ~~of a minor abducted or held hostage and he or she is not~~
63 ~~motivated by monetary purposes, but rather intends to~~
64 ~~conceal, take, remove the child or refuse to return the child to~~
65 ~~his or her lawful guardian in the belief, mistaken or not, that~~
66 ~~it is in the child’s interest to do so, he or she shall be guilty of~~
67 ~~a felony and, upon conviction thereof, be confined in a~~
68 ~~correctional facility for not less than one or more than five~~
69 ~~years or fined not more than one thousand dollars, or both.~~

70 (d) Notwithstanding any provision of this code to the
71 contrary, where a law-enforcement agency of this state or a
72 political subdivision thereof receives a complaint that a

73 violation of the provisions of this section has occurred, the
74 receiving law-enforcement agency shall notify any other
75 law-enforcement agency with jurisdiction over the offense,
76 including, but not limited to, the state police and each agency
77 so notified, shall cooperate in the investigation forthwith.

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

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

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

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

5 (2) "Debt coercion" means exploitation of the status or
6 condition of a debtor arising from a pledge by the debtor of his

7 or her personal services or those of a person under his or her
8 control as a security or payment for debt, if the value of those
9 services as reasonably assessed is not applied toward the
10 liquidation of the debt or the length and nature of those services
11 are not respectively limited and defined or if the principal
12 amount of the debt does not reasonably reflect the value of the
13 items or services for which the debt was incurred.

14 (3) “Extortion” means the obtaining of property, labor or
15 services, commercial sex acts, or sexually explicit
16 performances from another, or of an official act of a public
17 officer, through a wrongful use of force or fear, or under
18 color of official right.

19 (4) “Financial harm” includes credit extortion as defined
20 by section one hundred twenty, article two, chapter
21 forty-six-a of this code, criminal violation of the usury laws
22 as defined by section six, article six, chapter forty-seven of
23 this code, or employment contracts that violate the Statute of
24 Frauds as defined by section one, article one, chapter
25 fifty-five of this code.

26 (5) “Labor” means work of economic or financial value:
27 Provided, That “labor” does not include work or services
28 provided by a minor to the minor’s parent or legal guardian
29 so long as the legal guardianship or custody of the minor was
30 not obtained for the purpose compelling the minor to
31 participate in commercial sex acts or sexually explicit
32 performance, or perform forced labor or services.

33 (6) “Minor” refers to any person less than 18 years of age.

34 (7) “Serious harm” means any harm, whether physical or
35 nonphysical, including, but not limited to, psychological,
36 financial, or reputational harm, that is sufficiently serious,
37 under all the surrounding circumstances, to compel a
38 reasonable person of the same background and in the same
39 circumstances as the victim to perform or to continue
40 performing labor or a service, a commercial sex act, or a
41 sexually explicit performance in order to avoid incurring that
42 harm.

43 (8) “Services” means any act committed at the behest of,
44 under the supervision of, or for the benefit of another.

45 (9) “Sex act” means any touching of the sexual or other
46 intimate parts of another person for the purpose of gratifying
47 sexual desire of any person. It includes touching of the
48 person as well as touching by the person, whether directly or
49 through clothing.

50 (10) “Sexually explicit performance” means an act or
51 show, whether public or private, live, photographed,
52 recorded, or videotaped intended (A) to appeal to the prurient
53 interest, (B) to depict, in a patently offensive way, sexual
54 conduct, and (C) to do so in a way that lacks literary, artistic,
55 political, or scientific value. Sexually explicit performance
56 also includes any performance that depicts sexual conduct by
57 a minor or that would create criminal liability under article
58 eight-C of this chapter.

59 (11) “Victim of human trafficking” means any person,
60 whether a U.S. citizen or foreign national, who has been a
61 victim of conduct which is the subject of this section.

62 (b) INVOLUNTARY SERVITUDE. Any person who
63 knowingly compels, or attempts to compel, another person to

64 participate in commercial sex acts or sexually explicit
65 performance, or perform labor or services through use of any
66 of the following means, or any combination of such means:

67 (1) causing or threatening to cause serious harm to any
68 person;

69 (2) physically restraining or threatening to physically
70 restrain another person;

71 (3) abusing or threatening to abuse the law or legal
72 process;

73 (4) taking another's personal property or real property;

74 (5) knowingly destroying, concealing, removing,
75 confiscating or possessing any actual or purported passport
76 or other immigration document, or any other actual or
77 purported government identification document, of another
78 person;

79 (6) extortion;

80 (7) deception or fraud;

81 (8) coercion or duress or menace;

82 (9) debt coercion;

83 (10) causing or threatening to cause financial harm to, or
84 exerting or threatening to exert financial control over, any
85 person;

86 (11) facilitating or controlling a victim's access to an
87 addictive controlled substance; or

88 (12) using any scheme, plan, or pattern, whether overt or
89 subtle, intended to cause any person to believe that, if the
90 person did not perform such labor, services, acts or
91 performances, that person or another person would suffer
92 serious harm or physical restraint, is guilty of a felony and,
93 upon conviction thereof, shall be fined not more than \$50,000
94 and imprisoned in a state correctional facility for a
95 determinate term of not less than ten years nor more than
96 fifty years.

97 (c) SEXUAL SERVITUDE OF A MINOR. Any person
98 who knowingly (1) recruits, entices, solicits, isolates, harbors,
99 transports, provides, obtains, or maintains, or so attempts,
100 any minor for the purposes of commercial sex acts or
101 sexually explicit performance through any means, or (2)

102 benefits, financially or by receiving anything of value, from
103 participation in a venture which has engaged in an act
104 described in subdivision (1) of this subsection is guilty of a
105 felony and, upon conviction thereof, shall be fined not more
106 than \$50,000 and imprisoned in a state correctional facility
107 for a determinate term of not less than ten years nor more
108 than fifty years. For purposes of this subsection, it is not
109 required that the defendant have knowledge of the victim's
110 age, nor is reasonable mistake of age a defense to liability
111 under this provision.

112 (d) HUMAN TRAFFICKING. Any person who
113 knowingly (1) recruits, entices, solicits, isolates, harbors,
114 transports, provides, obtains, or maintains, or so attempts,
115 another person knowing that the person will be subjected to
116 involuntary servitude, or (2) benefits, financially or by
117 receiving anything of value, from participation in a venture
118 which has engaged in an act described in subdivision (1) of
119 this subsection, is guilty of a felony and, upon conviction
120 thereof, shall be fined not more than \$25,000 and imprisoned

121 in a state correctional facility for a determinate term of not
122 less than ten years nor more than thirty years.

123 (e) UNLAWFUL CONDUCT WITH RESPECT TO
124 DOCUMENTS. Any person who knowingly destroys,
125 conceals, removes, confiscates, or possesses any actual or
126 purported government identification document of another
127 person.

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

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

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