

H. B. 2161

(BY DELEGATE(S) FLEISCHAUER, PASDON,
STORCH, GUTHRIE, BORDER, L. PHILLIPS, MOORE, HAMILTON,
SOBONYA, MILLER AND MANCHIN)

[Introduced January 20, 2015; referred to the
Committee on the Judiciary; and then
to the Committee on Finance.]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §15-14-1, §15-14-2, §15-14-3, §15-14-4, §15-14-5 and §15-14-6; to amend and reenact §61-2-17 of said code; to amend said code by adding thereto a new section, designated §61-2-17a; to amend said code by adding thereto a new section, designated §61-2-17b; and to amend and reenact §62-1D-8 of said code, all relating to adopting the Uniform

Act on Prevention of and Remedies for Human Trafficking; creating a Commission on the Prevention of Human Trafficking; requiring the public posting of hotline information in certain business and public locations; making services available to victims of human trafficking; providing victims immunity from criminal prosecution for certain crimes directly resulting from human trafficking; changing the definition of human trafficking; expanding criminal remedies and enforcement tools to combat human trafficking and allowing victims to petition the circuit court to vacate and expunge a conviction for certain crimes directly resulting from human trafficking.

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 §15-14-1, §15-14-2, §15-14-3, §15-14-4, §15-14-5 and §15-14-6; that §61-2-17 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §61-2-17a; that said code be amended by adding thereto a new section, designated §61-2-17b; and that §62-1D-8 of said code be amended and reenacted, all to read as follows:

CHAPTER 15. PUBLIC SAFETY.**ARTICLE 14. UNIFORM ACT ON PREVENTION OF AND REMEDIES FOR HUMAN TRAFFICKING.****§15-14-1. Short Title.**

1 This article may be cited as the “Uniform Act on Prevention
2 of and Remedies for Human Trafficking.”

§15-14-2. Legislative findings.

1 (a) The Legislature hereby finds and declares that:

2 (1) Human trafficking constitutes a serious problem in West
3 Virginia and across the nation;

4 (2) Human trafficking is abhorrent to a civilized society and
5 deserving of the most diligent response from the state;

6 (3) Human trafficking often involves minors who have been
7 forced into involuntary servitude and commercial sexual
8 activity;

9 (4) Human trafficking can take many forms but generally
10 includes the use of physical abuse, threats of harm, or fear of
11 other consequences to prevent victims from reporting the
12 activity; and

13 (5) Human trafficking creates a cycle of violence, impacting
14 victims, families, and communities.

15 (b) The Legislature further finds and declares that:

16 (1) Legislation is required to combat this despicable practice,
17 to make it easier to prosecute and punish persons who engage
18 in human trafficking, and to protect and support the victims; and

19 (2) The Legislature supports a comprehensive approach to
20 combating human trafficking, which approach includes
21 prevention, protection, prosecution, and partnerships.

22 (3) Now, therefore, the Legislature joins the federal
23 government and other states around the nation in passing
24 legislation in order to combat human trafficking and protect the
25 victims.

§15-14-3. Definitions.

1 Unless otherwise specified herein, the terms used in this
2 article have same meaning ascribed to them by section
3 seventeen, article two, chapter sixty-one of this code.
4 “Commission” means the Commission on the Prevention of
5 Human Trafficking.

§15-14-4. Commission on the Prevention of Human Trafficking.

1 (a) The Commission on Human Trafficking is hereby
2 created. Membership on the commission consists of the
3 following:

- 4 (1) The Director of the Division of Justice and Community
5 Service, who shall serve as chair;
- 6 (2) The Attorney General, or a designee;
- 7 (3) The Secretary of the Department of Health and Human
8 Resources, or a designee;
- 9 (4) The Superintendent of the State Police, or a designee;
- 10 (5) The Commissioner of Labor, or a designee;
- 11 (6) The Commissioner of the Division of Highways, or a
12 designee;
- 13 (7) The Director of Juvenile Services, or a designee;
- 14 (8) A representative of the West Virginia Sheriff's
15 Association, selected by the membership of the Association;
- 16 (9) A representative from the membership of the West
17 Virginia Chiefs of Police Association, selected by the
18 membership of the Association;
- 19 (10) A representative of the West Virginia Prosecuting
20 Attorneys Association, selected by the leadership of the
21 Association;
- 22 (11) A representative from the membership of the West
23 Virginia Foundation for Rape and Information Services, selected
24 by the membership of the Foundation;

25 (12) A representative from the membership of the West
26 Virginia Child Advocacy Network, selected by the membership
27 of the Network;

28 (13) A representative from the membership of the West
29 Virginia Coalition Against Domestic Violence, selected by the
30 membership of the Coalition;

31 (b) The state agencies represented on the commission
32 created under this section shall provide staff to the commission.

33 (c) The first meeting of the commission shall be held no later
34 than September 1, 2015. Thereafter, the commission shall meet
35 at least twice each calendar year. Meetings may be held via
36 teleconference or other electronic means. A majority of the
37 members of the council constitute a quorum.

38 (d) The commission created under this section shall:

39 (1) Develop a coordinated and comprehensive plan to
40 provide victims with services;

41 (2) Promote public awareness about human trafficking,
42 victim remedies and services, and trafficking prevention;

43 (3) Create a public-awareness poster that contains the
44 National Human Trafficking Resource Center hotline
45 information;

46 (4) Develop a concise card or brochure for victims,
47 concerning their rights to any state, federal, or privately funded
48 services.

49 (5) Coordinate training on human-trafficking prevention and
50 victim services for state and local employees who may have
51 recurring contact with victims or perpetrators.

52 (6) Submit a report to the Governor and the Joint Committee
53 on Government and Finance summarizing the accomplishments
54 of the commission during the preceding fiscal year and making
55 recommendations regarding the development and coordination
56 of the state's responses to fight human trafficking and support
57 victims.

§15-14-5. Display of Public-Awareness Poster; Penalty for Failure to Display.

1 (a) The Division of Highways shall display a
2 public-awareness poster that contains the National Human
3 Trafficking Resource Center hotline information in every rest
4 area and welcome center in the state which is open to the public.

5 (b) An employer shall display the public-awareness poster
6 described in subsection (a) in a place that is clearly conspicuous

7 and visible to employees and the public at each of the following
8 locations in this state at which the employer has employees:

9 (1) A strip club or other sexually-oriented business;

10 (2) A business entity that has been found to be in violation
11 of section five, article eight, chapter sixty-one;

12 (3) A job-recruitment center;

13 (4) A hospital; or

14 (5) An emergency-care provider.

15 (c) The Division of Labor shall impose a fine of \$300 per
16 violation on an employer that knowingly fails to comply with
17 subsection (b). This fine is the exclusive remedy for failure to
18 comply.

§15-14-6. Eligibility for services.

1 (a) A victim is eligible for benefits or services available
2 through the state or identified in the plan developed under
3 subsection (d), section four of this article, including, but not
4 limited to, the advocacy and shelter services required by article
5 twenty-six, chapter forty-eight of this code.

6 (b) A victim is eligible for compensation under the Crime
7 Victim's Compensation Fund established in article two-a,
8 chapter fourteen of this code.

9 (c) A minor who has engaged in commercial sexual activity
10 is eligible for benefits or services available through the state and
11 identified in the plan developed under subsection (d), section
12 four of this article, including, but not limited to, the children’s
13 protective services required by article six, chapter forty-nine of
14 this code.

15 (d) As soon as practicable after a first encounter with an
16 individual who reasonably appears to a law-enforcement officer
17 or representative of any other state agency to be a victim or
18 minor who has engaged in commercial sexual activity, the
19 officer or representative shall notify the appropriate agencies
20 providing the services described in subsections (a), (b) and (c) of
21 this section that the individual may be eligible for benefits or
22 services and shall provide to the victim the brochure or card
23 created pursuant to subsection (d), section four of this article.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-17. Human trafficking; criminal penalties.

1 (a) As used in this section:

2 (1) “Coercion” means:

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

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

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

10 (D) Controlling or threatening to control an individual's
11 access to a controlled substance as defined in article two, chapter
12 sixty-a.

13 (E) The destruction or taking of or the threatened destruction
14 or taking of an individual's identification document or other
15 property;

16 (F) The use of debt bondage;

17 (G) The use of an individual's physical or mental
18 impairment when the impairment has a substantial adverse effect
19 on the individual's cognitive or volitional function; or

20 (H) The commission of civil or criminal fraud.

21 (†) (2) "Debt bondage" means inducing an individual to
22 provide:

23 (A) Commercial sexual activity in payment toward or
24 satisfaction of a real or purported debt; or

25 (B) Labor or services in payment toward or satisfaction of a
26 real or purported debt if the status or condition of a debtor
27 arising from a pledge by the debtor of the debtor's personal
28 services, or those of a person under the debtor's control as a
29 security for debt, if the value of those services as reasonably
30 assessed is not applied toward the liquidation of the debt or the
31 length and nature of those services are not respectively limited
32 and defined.

33 ~~(2)~~ (3) "Forced labor ~~or services~~" means labor or services
34 that are performed or provided by ~~another~~ one person and are
35 obtained or maintained through a another person's:

36 (A) Threat, either implicit or explicit, deception or fraud,
37 scheme, plan, or pattern, or other action intended to cause a
38 person to believe that, if the person did not perform or provide
39 the labor or services that person or another person would suffer
40 serious bodily harm or physical restraint: *Provided*, That, this
41 does not include work or services provided by a minor to the
42 minor's parent or legal guardian so long as the legal

43 guardianship or custody of the minor was not obtained for the
44 purpose compelling the minor to participate in commercial sex
45 acts or sexually explicit performance, or perform forced labor or
46 services.

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

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

50 (D) Knowingly destroying, concealing, removing,
51 confiscating, or possessing any actual or purported passport or
52 other immigration document, or any other actual or purported
53 government identification document, of another person.

54 “Forced labor ~~or services~~” does not mean labor or services
55 required to be performed by a person in compliance with a court
56 order or as a required condition of probation, parole, or
57 imprisonment.

58 (3) (4) “Human trafficking” means ~~the labor trafficking or~~
59 ~~sex trafficking involving adults or minors where two or more~~
60 ~~persons are trafficked within any one year period~~ the
61 commission of an offense created by subsection (b) of this
62 section.

63 (5) "Identification document" means a passport, driver's
64 license, immigration document, travel document or other
65 government-issued identification document, including a
66 document issued by a foreign government.

67 (6) "Labor or services" means activity having economic
68 value.

69 (7) "Person" means an individual, estate, business or
70 nonprofit entity, or other legal entity. The term does not include
71 a public corporation or government or governmental subdivision
72 agency or instrumentality.

73 (8) "Sexual activity" shall include sexual contact, sexual
74 intercourse, and sexual intrusion as defined by section one,
75 article eight-b, chapter sixty-one of this code. The term also
76 includes a sexually explicit performance.

77 (9) "Sexually explicit performance" means an act or show,
78 whether public or private, live, or photographed, recorded, or
79 videotaped, intended to appeal to the prurient interest or to depict
80 in a patently offensive way, sexual conduct, and to do so in a
81 way that lacks artistic, political or scientific value.

82 (10) “Victim” means an individual who is subjected to
83 human trafficking or to conduct that would have constituted
84 human trafficking had this section been in effect when the
85 conduct occurred, regardless of whether a perpetrator is
86 identified, apprehended, prosecuted, or convicted.

87 ~~(4) “Labor trafficking” means the promotion, recruitment,~~
88 ~~transportation, transfer, harboring, enticement, provision,~~
89 ~~obtaining or receipt of a person by any means, whether a United~~
90 ~~States citizen or foreign national, for the purpose of:~~

91 ~~(A) Debt bondage or forced labor or services; or~~

92 ~~(B) Slavery or practices similar to slavery.~~

93 ~~(5) “Sex trafficking of minors” means the promotion,~~
94 ~~recruitment, transportation, transfer, harboring, enticement,~~
95 ~~provision, obtaining or receipt of a person under the age of~~
96 ~~eighteen by any means, whether a United States citizen or~~
97 ~~foreign national, for the purpose of causing the minor to engage~~
98 ~~in sexual acts, or in sexual conduct violating the provisions of~~
99 ~~subsection (b), section five, article eight of this chapter or article~~
100 ~~eight-c of this chapter.~~

101 ~~(6) “Sex trafficking of adults” means the promotion,~~
102 ~~recruitment, transportation, transfer, harboring, enticement,~~
103 ~~provision, obtaining, receipt of a person eighteen years of age or~~
104 ~~older, whether a United States citizen or foreign national for the~~
105 ~~purposes of engaging in violations of subsection (b), section five,~~
106 ~~article eight of this chapter by means of force, threat, coercion,~~
107 ~~deception, abuse or threatened abuse of the legal process, or any~~
108 ~~scheme, plan, pattern, or other action intended to cause a person~~
109 ~~to believe that, if the person did not engage in a violation of~~
110 ~~subsection (b), section five, article eight of this chapter, that~~
111 ~~person or another person would suffer serious bodily harm or~~
112 ~~physical restraint.~~

113 (b) A person commits the offense of human trafficking if the
114 person:

115 (1) Knowingly recruits, transports, transfers, harbors,
116 receives, provides, obtains, isolates, maintains, or entices an
117 individual in furtherance of forced labor or to coerce an
118 individual to engage in commercial sexual activity.

119 (2) Knowingly uses coercion to compel an individual to
120 provide labor or services, except when such conduct is
121 permissible under federal law or state law.

122 (3) Knowingly maintains or makes available a minor for the
123 purpose of engaging the minor in commercial sexual activity; or

124 (4) Uses coercion or deception to compel an adult to engage
125 in commercial sexual activity.

126 (c) A business entity may be prosecuted for human
127 trafficking under this section if:

128 (1) The entity knowingly engaged in conduct that constitutes
129 human trafficking; or

130 (2) An employee or agent of the entity engaged in conduct
131 that constitutes human trafficking and the commission of the
132 offense was part of a pattern of illegal activity under this section
133 for the benefit of the entity, which the entity knew was occurring
134 and failed to take effective action to stop.

135 ~~(b)~~(d) Any person who knowingly and willfully engages in
136 human trafficking is guilty of a felony and, upon conviction shall
137 be incarcerated in a state correctional facility for an
138 indeterminate sentence of not less than three nor more than
139 fifteen years or fined not more than \$200,000, or both. Any
140 business entity that engages in human trafficking may be fined
141 not more than \$500,000 for each offense, be required to disgorge

142 profit from activity in violation of this section pursuant to
143 section five, article thirteen of this chapter, and be debarred from
144 state and local government contracts.

145 (⊖) (e) Any person who is a victim of human trafficking may
146 bring a civil action in circuit court. The court may award actual
147 damages, compensatory damages, punitive damages, restitution,
148 injunctive relief and any other appropriate relief. A prevailing
149 plaintiff is also entitled to attorney's fees and costs. Treble
150 damages shall be awarded on proof of actual damages where
151 defendant's acts were willful and malicious.

152 (⊕) (f) Notwithstanding the definition of victim in subsection
153 (k), section three, article two-a, chapter fourteen of this code, a
154 person who is a victim of human trafficking is a victim for all
155 purposes of article two-a, chapter fourteen of this code.

156 (⊖) (g) This article and the rights and remedies provided in
157 this article are cumulative and in addition to other existing
158 rights.

159 ~~(f) Notwithstanding the age and criminal history limitations~~
160 ~~set forth in section twenty-six, article eleven of this chapter, any~~
161 ~~person convicted of prostitution in violation of subsection (b),~~

162 ~~section five, article eight of this chapter where the conviction~~
163 ~~was a result of the person being a victim of human trafficking as~~
164 ~~defined in this section, may petition the circuit court of the~~
165 ~~county of conviction for an order of expungement pursuant to~~
166 ~~section twenty-six, article eleven of this chapter.~~

167 ~~No victim of human trafficking seeking relief under this~~
168 ~~subsection shall be required to prove her or she has rehabilitated~~
169 ~~himself or herself in order to obtain expungement.~~

§61-2-17a. Immunity of a minor victim of sex trafficking.

1 (a) The terms used in this section have the same meaning
2 ascribed to them by subsection (a), section seventeen of this
3 article.

4 (b) An individual is not criminally liable or subject to
5 juvenile-delinquency proceedings for prostitution, in violation of
6 subsection (b), section five, article eight of this chapter, if the
7 individual was a minor at the time of the offense and committed
8 the offense as a direct result of being a victim.

9 (c) A minor who under subsection (a) or (b) is not subject to
10 criminal liability or a juvenile-delinquency proceeding is

11 presumed to be a neglected or abused child, in need of services
12 under section nine, article six, chapter forty-nine of this code.

13 (d) This section does not apply in a prosecution or a
14 juvenile-delinquency proceeding for soliciting, inducing,
15 enticing or procuring a prostitute in violation of subsection (b),
16 section five, article eight of this chapter.

**§61-2-17b. Petition to vacate and expunge conviction of sex
trafficking victim.**

1 (a) The terms used in this section have the same meaning
2 ascribed to them by subsection (a), section seventeen of this
3 article.

4 (b) Notwithstanding the age and criminal history limitations
5 set forth in section twenty-six, article eleven of this chapter, an
6 individual convicted of prostitution in violation of subsection
7 (b), section five, article eight of this chapter as a direct result of
8 being a victim of human trafficking may apply by petition to the
9 circuit court in the county of conviction to vacate the conviction
10 and expunge the record of conviction. The court may grant the
11 petition on a finding that the individual's participation in the
12 offense was a direct result of being a victim of human
13 trafficking.

14 (c) No victim of human trafficking seeking relief under this
15 section shall be required to prove he or she has rehabilitated
16 himself or herself in order to obtain expungement.

17 (d) A petition filed under subsection (b), any hearing
18 conducted on the petition, and any relief granted shall meet the
19 procedural requirements of section twenty-six, article eleven,
20 chapter sixty-one of this code; *Provided*, That a victim of human
21 trafficking is not subject to the age and criminal history
22 limitations set forth in that section.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 1D. WIRETAPPING AND ELECTRONIC SURVEILLANCE ACT.

§62-1D-8. County prosecuting attorney or duly appointed special prosecutor may apply for order authorizing interception.

1 The prosecuting attorney of any county or duly appointed
2 special prosecutor may apply to one of the designated circuit
3 judges referred to in section seven of this article and such judge,
4 in accordance with the provisions of this article, may grant an
5 order authorizing the interception of wire, oral or electronic
6 communications by an officer of the investigative or
7 law-enforcement agency when the prosecuting attorney or

8 special prosecutor has shown reasonable cause to believe the
9 interception would provide evidence of the commission of: (i)
10 Kidnaping or abduction as defined and prohibited by the
11 provisions of sections fourteen and fourteen-a, article two,
12 chapter sixty-one of this code and including threats to kidnap or
13 demand ransom as defined and prohibited by the provisions of
14 section fourteen-c of said article two; or (ii) of any offense
15 included and prohibited by section eleven, article four, chapter
16 twenty-five of said code, sections eight, nine and ten, article five,
17 chapter sixty-one of said code or section one, article eight,
18 chapter sixty-two of said code to the extent that any of said
19 sections provide for offenses punishable as a felony; or (iii)
20 dealing, transferring or trafficking in any controlled substance or
21 substances in the felonious violation of chapter sixty-a of this
22 code; or (iv) human trafficking as defined and prohibited by
23 section seventeen, article two, chapter sixty-one of this code; or
24 ~~(iv)~~(v) any aider or abettor to any of the foregoing offenses or
25 any conspiracy to commit any of the foregoing offenses if any
26 aider, abettor or conspirator is a party to the communication to
27 be intercepted.

NOTE: The purpose of this bill is to adopt the Uniform Act on Prevention of and Remedies for Human Trafficking by creating a Commission on the Prevention of Human Trafficking; requiring the public posting of hotline information in certain business and public locations; making services available to victims of human trafficking; providing victims immunity from criminal prosecution for certain crimes directly resulting from human trafficking; changing the definition of human trafficking; expanding criminal remedies and enforcement tools to combat human trafficking and allowing victims to petition the circuit court to vacate and expunge a conviction for certain crimes directly resulting from human trafficking.

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

