

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **House Bill 2203**

**2015 Carryover**

(BY DELEGATES ROWAN, MILLER, SOBONYA, P. SMITH,  
BORDER, ARVON AND STORCH)

[Introduced January 13, 2016; referred to the  
Committee on the Judiciary.]

1 A BILL to amend and reenact §61-2-17 of the Code of West Virginia, 1931, as amended, relating  
 2 to human trafficking; redefining the parameters for the offense of human trafficking; civil  
 3 remedies; and penalties.

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

1 That §61-2-17 of the Code of West Virginia, 1931, as amended, be amended and  
 2 reenacted to read as follows:

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

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

1 (a) As used in this section:

2 (1) "Debt bondage" means the status or condition of a debtor arising from a pledge by the  
 3 debtor of the debtor's personal services or those of a person under the debtor's control as a  
 4 security for debt, if the value of those services as reasonably assessed is not applied toward the  
 5 liquidation of the debt or the length and nature of those services are not respectively limited and  
 6 defined.

7 (2) "Forced labor or services" means labor or services that are performed or provided by  
 8 another person and are obtained or maintained through a person's:

9 (A) Threat, either implicit or explicit, deception or fraud, scheme, plan, or pattern, or other  
 10 action intended to cause a person to believe that, if the person did not perform or provide the  
 11 labor or services that person or another person would suffer serious bodily harm or physical  
 12 restraint: *Provided*, That, this does not include work or services provided by a minor to the minor's  
 13 parent or legal guardian so long as the legal guardianship or custody of the minor was not  
 14 obtained for the purpose compelling the minor to participate in commercial sex acts or sexually  
 15 explicit performance, or perform forced labor or services.

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

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

18 (D) Knowingly destroying, concealing, removing, confiscating, or possessing any actual or  
19 purported passport or other immigration document, or any other actual or purported government  
20 identification document, of another person.

21 “Forced labor or services” does not mean labor or services required to be performed by a  
22 person in compliance with a court order or as a required condition of probation, parole, or  
23 imprisonment.

24 (3) “Human trafficking” means the labor trafficking or sex trafficking involving adults or  
25 minors. ~~where two or more persons are trafficked within any one year period.~~

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

29 (A) Debt bondage or forced labor or services; or

30 (B) Slavery or practices similar to slavery.

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

36 (6) “Sex trafficking of adults” means the promotion, recruitment, transportation, transfer,  
37 harboring, enticement, provision, obtaining, receipt of a person eighteen years of age or older,  
38 whether a United States citizen or foreign national for the purposes of engaging in violations of  
39 subsection (b), section five, article eight of this chapter by means of force, threat, coercion,  
40 deception, abuse or threatened abuse of the legal process, or any scheme, plan, pattern, or other

41 action intended to cause a person to believe that, if the person did not engage in a violation of  
42 subsection (b), section five, article eight of this chapter, that person or another person would suffer  
43 serious bodily harm or physical restraint.

44 (b) Any person who knowingly and wilfully engages in human trafficking is guilty of a felony  
45 and upon conviction shall be incarcerated in a state correctional facility for an indeterminate  
46 sentence of not less than three nor more than fifteen years or fined not more than \$200,000, or  
47 both.

48 (c) Any person who is a victim of human trafficking may bring a civil action in circuit court.  
49 The court may award actual damages, compensatory damages, punitive damages, injunctive  
50 relief and any other appropriate relief. A prevailing plaintiff is also entitled to attorneys fees and  
51 costs. Treble damages shall be awarded on proof of actual damages where defendant's acts were  
52 willful and malicious.

53 (d) Notwithstanding the definition of victim in subsection (k), section three, article two-a,  
54 chapter fourteen of this code, a person who is a victim of human trafficking is a victim for all  
55 purposes of article two-a, chapter fourteen of this code.

56 (e) This article and the rights and remedies provided in this article are cumulative and in  
57 addition to other existing rights.

58 (f) Notwithstanding the age and criminal history limitations set forth in section twenty-six,  
59 article eleven of this chapter, any person convicted of prostitution in violation of subsection (b),  
60 section five, article eight of this chapter where the conviction was a result of the person being a  
61 victim of human trafficking as defined in this section, may petition the circuit court of the county of  
62 conviction for an order of expungement pursuant to section twenty-six, article eleven of this  
63 chapter.

64 No victim of human trafficking seeking relief under this subsection shall be required to

65 prove he or she has rehabilitated himself or herself in order to obtain expungement.

NOTE: The purpose of this bill is to amend the provisions of the current Code to human trafficking to allow for the charges to be brought and associated remedies are available when even a single individual is exploited and victimized by sex trafficking or labor trafficking.

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

This bill was recommended for passage during the 2015 Legislative Session by the House Select Committee on Crimes Against Children.