

# **WEST VIRGINIA LEGISLATURE**

## **2017 REGULAR SESSION**

### **Committee Substitute**

**for**

### **House Bill 2318**

BY DELEGATES SHOTT, FLEISCHAUER, HANSHAW,  
SUMMERS, SOBONYA, MILLER, KESSINGER, CANESTRARO,  
LONGSTRETH, PUSHKIN AND STORCH

[Originating in the Committee on the Judiciary]

1 A BILL to repeal §61-2-17 of the Code of West Virginia, 1931, as amended; to amend and reenact  
2 §15-9A-2 of said code; to amend and reenact §15-12-2 of said code; to amend and reenact  
3 §49-1-201 of said code; to amend said code by adding thereto a new article, designated  
4 §61-14-1, §61-14-2, §61-14-3, §61-14-4, §61-14-5, §61-14-6, §61-14-7, §61-14-8 and  
5 §61-14-9; and to amend and reenact §62-1D-8 of said code, all relating generally to  
6 human trafficking; designating the Division of Justice and Community Services to be the  
7 state administrative agency responsible for criminal justice and juvenile justice systems  
8 for the planning and development of state programs and grants relating to human  
9 trafficking; adding offenses that require registration under the sex offender registration act;  
10 defining terms; repealing existing civil remedies, criminal offense and penalties for human  
11 trafficking; creating criminal felony offenses and penalties for trafficking an individual;  
12 creating criminal felony offenses and penalties for using an individual in forced labor;  
13 creating criminal felony offenses and penalties for using an individual in debt bondage;  
14 creating criminal felony offenses and penalties for compelling an adult through coercion  
15 to engage in commercial sexual activity; creating a criminal felony offense for maintaining  
16 or making available a minor for the purpose of engaging in commercial sexual activity;  
17 clarifying that consent of minor and misbelief as to age are not defenses to prosecution  
18 for sexual servitude offense; creating a criminal felony offense of patronizing an individual  
19 to engage in commercial sexual activity; clarifying that each victim shall be considered a  
20 separate offense; limiting ability for parole in circumstances where the court makes a  
21 finding of aggravated circumstances; defining aggravated circumstances; providing for  
22 restitution to victims and the enforcement of a judgment order for restitution; directing  
23 unclaimed restitution to be paid to the Crime Victims Compensation Fund; providing for  
24 disgorgement of profits and debarment from state and local government contracts;  
25 making victims eligible for compensation under the Crime Victims Compensation Fund;  
26 specifying the notification procedure to be followed by a law-enforcement officer upon

27 encountering a child who appears to be a victim of an offense under this article; providing  
28 for immunity for offense of prostitution for minors; defining a minor victim of sex trafficking  
29 as an abused child and establishing a child's eligibility for services therefor; providing for  
30 expungement of prostitution conviction for victims of trafficking; and authorizing the use of  
31 wiretaps to conduct investigations.

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

1 That §61-2-17 of the Code of West Virginia, 1931, as amended, be repealed; that §15-9A-  
2 2 of said code be amended and reenacted; that §15-12-2 of said code be amended and  
3 reenacted; that §49-1-201 of said code be amended and reenacted; that said code be amended  
4 by adding thereto a new article, designated §61-14-1, §61-14-2, §61-14-3, §61-14-4, §61-14-5,  
5 §61-14-6, §61-14-7, §61-14-8 and §61-14-9; and that §62-1D-8 of said code be amended and  
6 reenacted, all to read as follows:

## **CHAPTER 15. PUBLIC SAFETY.**

### **ARTICLE 9A. DIVISION OF JUSTICE AND COMMUNITY SERVICES.**

#### **§15-9A-2. Division established; appointment of director.**

1 (a) The Division of Justice and Community Services is created. The purpose of the division  
2 is to provide executive and administrative support to the Governor's Committee on Crime  
3 Delinquency and Correction in the coordination of planning for the criminal justice system, to  
4 administer federal and state grant programs assigned to it by the actions of the Governor or  
5 Legislature and to perform such other duties as the Legislature may from time to time assign to  
6 the division. The division is the designated staffing agency for the Governor's Committee on  
7 Crime, Delinquency and Correction, and all of its subcommittees. The division may apply for  
8 grants and other funding from federal or state programs, foundations, corporations and  
9 organizations which funding is consistent with its responsibilities and the purposes assigned to it  
10 or the subcommittees it staffs. The Division of Justice and Community Services is hereby

11 designated as the state administrative agency responsible for criminal justice and juvenile justice  
12 systems, and various component agencies of state and local government, for the planning and  
13 development of state programs and grants which may be funded by federal, state or other  
14 allocations in the areas of community corrections, law-enforcement training and compliance,  
15 sexual assault forensic examinations, victim services, human trafficking and juvenile justice.

16 (b) The director of the division shall be named by the Governor to serve at his will and  
17 pleasure.

18 (c) The director of the division shall take and subscribe to an oath of office in conformity  
19 with article IV, section five of the Constitution of the State of West Virginia.

**ARTICLE 12. SEX OFFENDER REGISTRATION ACT.**

**§15-12-2. Registration.**

1 (a) The provisions of this article apply both retroactively and prospectively.

2 (b) Any person who has been convicted of an offense or an attempted offense or has been  
3 found not guilty by reason of mental illness, mental retardation or addiction of an offense under  
4 any of the following provisions of chapter sixty-one of this code or under a statutory provision of  
5 another state, the United States Code or the Uniform Code of Military Justice which requires proof  
6 of the same essential elements shall register as set forth in subsection (d) of this section and  
7 according to the internal management rules promulgated by the superintendent under authority  
8 of section twenty-five, article two of this chapter:

9 (1) Article eight-a;

10 (2) Article eight-b, including the provisions of former section six of said article, relating to  
11 the offense of sexual assault of a spouse, which was repealed by an Act of the Legislature during  
12 the year 2000 legislative session;

13 (3) Article eight-c;

14 (4) Sections five and six, article eight-d;

15 (5) Section fourteen, article two;

16 (6) Sections six, seven, twelve and thirteen, article eight; ~~or~~

17 (7) Section fourteen-b, article three-c, as it relates to violations of those provisions of  
18 chapter sixty-one listed in this subsection; or

19 (8) Sections two, only if violation relates to trafficking for the purpose of sexual servitude,  
20 five and six, article fourteen.

21 (c) Any person who has been convicted of a criminal offense and the sentencing judge  
22 made a written finding that the offense was sexually motivated shall also register as set forth in  
23 this article.

24 (d) Persons required to register under the provisions of this article shall register in person  
25 at the West Virginia State Police detachment responsible for covering the county of his or her  
26 residence, and in doing so, provide or cooperate in providing, at a minimum, the following when  
27 registering:

28 (1) The full name of the registrant, including any aliases, nicknames or other names used  
29 by the registrant;

30 (2) The address where the registrant intends to reside or resides at the time of registration,  
31 the address of any habitable real property owned or leased by the registrant that he or she  
32 regularly visits: *Provided*, That a post office box may not be provided in lieu of a physical  
33 residential address, the name and address of the registrant's employer or place of occupation at  
34 the time of registration, the names and addresses of any anticipated future employers or places  
35 of occupation, the name and address of any school or training facility the registrant is attending  
36 at the time of registration and the names and addresses of any schools or training facilities the  
37 registrant expects to attend;

38 (3) The registrant's Social Security number;

39 (4) A full-face photograph of the registrant at the time of registration;

40 (5) A brief description of the crime or crimes for which the registrant was convicted;

41 (6) Fingerprints and palm prints;

42 (7) Information related to any motor vehicle, trailer or motor home owned or regularly  
43 operated by a registrant, including vehicle make, model, color and license plate number: *Provided*,  
44 That for the purposes of this article, the term "trailer" shall mean travel trailer, fold-down camping  
45 trailer and house trailer as those terms are defined in section one, article one, chapter  
46 seventeen-a of this code;

47 (8) Information relating to any Internet accounts the registrant has and the screen names,  
48 user names or aliases the registrant uses on the Internet; and

49 (9) Information related to any telephone or electronic paging device numbers that the  
50 registrant has or uses, including, but not limited to, residential, work and mobile telephone  
51 numbers.

52 (e) (1) On the date that any person convicted or found not guilty by reason of mental  
53 illness, mental retardation or addiction of any of the crimes listed in subsection (b) of this section,  
54 hereinafter referred to as a "qualifying offense", including those persons who are continuing under  
55 some post-conviction supervisory status, are released, granted probation or a suspended  
56 sentence, released on parole, probation, home detention, work release, conditional release or  
57 any other release from confinement, the Commissioner of Corrections, regional jail administrator,  
58 city official or sheriff operating a jail or Secretary of the Department of Health and Human  
59 Resources who releases the person and any parole or probation officer who releases the person  
60 or supervises the person following the release, shall obtain all information required by subsection  
61 (d) of this section prior to the release of the person, inform the person of his or her duty to register  
62 and send written notice of the release of the person to the State Police within three business days  
63 of receiving the information. The notice must include the information required by said subsection.  
64 Any person having a duty to register for a qualifying offense shall register upon conviction, unless  
65 that person is confined or incarcerated, in which case he or she shall register within three business  
66 days of release, transfer or other change in disposition status. Any person currently registered  
67 who is incarcerated for any offense shall re-register within three business days of his or her

68 release.

69 (2) Notwithstanding any provision of this article to the contrary, a court of this state shall,  
70 upon presiding over a criminal matter resulting in conviction or a finding of not guilty by reason of  
71 mental illness, mental retardation or addiction of a qualifying offense, cause, within seventy-two  
72 hours of entry of the commitment or sentencing order, the transmittal to the sex offender registry  
73 for inclusion in the registry all information required for registration by a registrant as well as the  
74 following nonidentifying information regarding the victim or victims:

75 (A) His or her sex;

76 (B) His or her age at the time of the offense; and

77 (C) The relationship between the victim and the perpetrator.

78 The provisions of this paragraph do not relieve a person required to register pursuant to  
79 this section from complying with any provision of this article.

80 (f) For any person determined to be a sexually violent predator, the notice required by  
81 subsection (d) of this section must also include:

82 (1) Identifying factors, including physical characteristics;

83 (2) History of the offense; and

84 (3) Documentation of any treatment received for the mental abnormality or personality  
85 disorder.

86 (g) At the time the person is convicted or found not guilty by reason of mental illness,  
87 mental retardation or addiction in a court of this state of the crimes set forth in subsection (b) of  
88 this section, the person shall sign in open court a statement acknowledging that he or she  
89 understands the requirements imposed by this article. The court shall inform the person so  
90 convicted of the requirements to register imposed by this article and shall further satisfy itself by  
91 interrogation of the defendant or his or her counsel that the defendant has received notice of the  
92 provisions of this article and that the defendant understands the provisions. The statement, when  
93 signed and witnessed, constitutes prima facie evidence that the person had knowledge of the

94 requirements of this article. Upon completion of the statement, the court shall provide a copy to  
95 the registry. Persons who have not signed a statement under the provisions of this subsection  
96 and who are subject to the registration requirements of this article must be informed of the  
97 requirement by the State Police whenever the State Police obtain information that the person is  
98 subject to registration requirements.

99 (h) The State Police shall maintain a central registry of all persons who register under this  
100 article and shall release information only as provided in this article. The information required to  
101 be made public by the State Police by subdivision (2), subsection (b), section five of this article is  
102 to be accessible through the Internet. No information relating to telephone or electronic paging  
103 device numbers a registrant has or uses may be released through the Internet.

104 (i) For the purpose of this article, "sexually violent offense" means:

105 (1) Sexual assault in the first degree as set forth in section three, article eight-b, chapter  
106 sixty-one of this code or of a similar provision in another state, federal or military jurisdiction;

107 (2) Sexual assault in the second degree as set forth in section four, article eight-b, chapter  
108 sixty-one of this code or of a similar provision in another state, federal or military jurisdiction;

109 (3) Sexual assault of a spouse as set forth in the former provisions of section six, article  
110 eight-b, chapter sixty-one of this code, which was repealed by an Act of the Legislature during the  
111 2000 legislative session, or of a similar provision in another state, federal or military jurisdiction;

112 (4) Sexual abuse in the first degree as set forth in section seven, article eight-b, chapter  
113 sixty-one of this code or of a similar provision in another state, federal or military jurisdiction.

114 (j) For purposes of this article, the term "sexually motivated" means that one of the  
115 purposes for which a person committed the crime was for any person's sexual gratification.

116 (k) For purposes of this article, the term "sexually violent predator" means a person who  
117 has been convicted or found not guilty by reason of mental illness, mental retardation or addiction  
118 of a sexually violent offense and who suffers from a mental abnormality or personality disorder  
119 that makes the person likely to engage in predatory sexually violent offenses.



120 (l) For purposes of this article, the term "mental abnormality" means a congenital or  
121 acquired condition of a person, that affects the emotional or volitional capacity of the person in a  
122 manner that predisposes that person to the commission of criminal sexual acts to a degree that  
123 makes the person a menace to the health and safety of other persons.

124 (m) For purposes of this article, the term "predatory act" means an act directed at a  
125 stranger or at a person with whom a relationship has been established or promoted for the primary  
126 purpose of victimization.

127 (n) For the purposes of this article, the term "business days" means days exclusive of  
128 Saturdays, Sundays and legal holidays as defined in section one, article two, chapter two of this  
129 code.

## **CHAPTER 49. CHILD WELFARE.**

### **ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.**

#### **PART II. DEFINITIONS.**

##### **§49-1-201. Definitions related, but not limited, to child abuse and neglect.**

1 When used in this chapter, terms defined in this section have the meanings ascribed to  
2 them that relate to, but are not limited to, child abuse and neglect, except in those instances where  
3 a different meaning is provided or the context in which the word is used clearly indicates that a  
4 different meaning is intended.

5 "Abandonment" means any conduct that demonstrates the settled purpose to forego the  
6 duties and parental responsibilities to the child;

7 "Abused child" means a child whose health or welfare is being harmed or threatened by:

8 (A) A parent, guardian or custodian who knowingly or intentionally inflicts, attempts to  
9 inflict or knowingly allows another person to inflict, physical injury or mental or emotional injury,  
10 upon the child or another child in the home. Physical injury may include an injury to the child as a  
11 result of excessive corporal punishment;

12 (B) Sexual abuse or sexual exploitation;

13 (C) The sale or attempted sale of a child by a parent, guardian or custodian in violation of  
14 section fourteen-h, article two, chapter sixty-one of this code; ~~or~~

15 (D) Domestic violence as defined in section two hundred two, article twenty-seven, chapter  
16 forty-eight of this code; or

17 (E) Trafficking of a child, or attempt to traffic a child, in violation of section two, article  
18 fourteen, chapter sixty-one of this code.

19 “Abusing parent” means a parent, guardian or other custodian, regardless of his or her  
20 age, whose conduct has been adjudicated by the court to constitute child abuse or neglect as  
21 alleged in the petition charging child abuse or neglect.

22 “Battered parent,” for the purposes of part six, article four of this chapter, means a  
23 respondent parent, guardian, or other custodian who has been adjudicated by the court to have  
24 not condoned the abuse or neglect and has not been able to stop the abuse or neglect of the child  
25 or children due to being the victim of domestic violence as defined by section two hundred two,  
26 article twenty-seven, chapter forty-eight of this code which was perpetrated by the same person  
27 or persons determined to have abused or neglected the child or children.

28 “Child abuse and neglect services” means social services which are directed toward:

29 (A) Protecting and promoting the welfare of children who are abused or neglected;

30 (B) Identifying, preventing and remedying conditions which cause child abuse and neglect;

31 (C) Preventing the unnecessary removal of children from their families by identifying family  
32 problems and assisting families in resolving problems which could lead to a removal of children  
33 and a breakup of the family;

34 (D) In cases where children have been removed from their families, providing time-limited  
35 reunification services to the children and the families so as to reunify those children with their  
36 families or some portion thereof;

37 (E) Placing children in suitable adoptive homes when reunifying the children with their

38 families, or some portion thereof, is not possible or appropriate; and

39 (F) Assuring the adequate care of children or juveniles who have been placed in the  
40 custody of the department or third parties.

41 "Condition requiring emergency medical treatment" means a condition which, if left  
42 untreated for a period of a few hours, may result in permanent physical damage; that condition  
43 includes, but is not limited to, profuse or arterial bleeding, dislocation or fracture, unconsciousness  
44 and evidence of ingestion of significant amounts of a poisonous substance.

45 "Imminent danger to the physical well-being of the child" means an emergency situation  
46 in which the welfare or the life of the child is threatened. These conditions may include an  
47 emergency situation when there is reasonable cause to believe that any child in the home is or  
48 has been sexually abused or sexually exploited, or reasonable cause to believe that the following  
49 conditions threaten the health, life, or safety of any child in the home:

50 (A) Nonaccidental trauma inflicted by a parent, guardian, custodian, sibling or a babysitter  
51 or other caretaker;

52 (B) A combination of physical and other signs indicating a pattern of abuse which may be  
53 medically diagnosed as battered child syndrome;

54 (C) Nutritional deprivation;

55 (D) Abandonment by the parent, guardian or custodian;

56 (E) Inadequate treatment of serious illness or disease;

57 (F) Substantial emotional injury inflicted by a parent, guardian or custodian;

58 (G) Sale or attempted sale of the child by the parent, guardian or custodian;

59 (H) The parent, guardian or custodian's abuse of alcohol or drugs or other controlled  
60 substance as defined in section one hundred one, article one, chapter sixty-a of this code, has  
61 impaired his or her parenting skills to a degree as to pose an imminent risk to a child's health or  
62 safety; or

63 (I) Any other condition that threatens the health, life, or safety of any child in the home.

64 "Neglected child" means a child:

65 (A) Whose physical or mental health is harmed or threatened by a present refusal, failure  
66 or inability of the child's parent, guardian or custodian to supply the child with necessary food,  
67 clothing, shelter, supervision, medical care or education, when that refusal, failure or inability is  
68 not due primarily to a lack of financial means on the part of the parent, guardian or custodian; or

69 (B) Who is presently without necessary food, clothing, shelter, medical care, education or  
70 supervision because of the disappearance or absence of the child's parent or custodian;

71 (C) "Neglected child" does not mean a child whose education is conducted within the  
72 provisions of section one, article eight, chapter eighteen of this code.

73 "Petitioner or copetitioner" means the department or any reputable person who files a child  
74 abuse or neglect petition pursuant to section six hundred one, article four, of this chapter.

75 "Permanency plan" means the part of the case plan which is designed to achieve a  
76 permanent home for the child in the least restrictive setting available.

77 "Respondent" means all parents, guardians, and custodians identified in the child abuse  
78 and neglect petition who are not petitioners or copetitioners.

79 "Sexual abuse" means:

80 (A) Sexual intercourse, sexual intrusion, sexual contact, or conduct proscribed by section  
81 three, article eight-c, chapter sixty-one, which a parent, guardian or custodian engages in,  
82 attempts to engage in, or knowingly procures another person to engage in with a child  
83 notwithstanding the fact that for a child who is less than sixteen years of age the child may have  
84 willingly participated in that conduct or the child may have suffered no apparent physical injury or  
85 mental or emotional injury as a result of that conduct or, for a child sixteen years of age or older  
86 the child may have consented to that conduct or the child may have suffered no apparent physical  
87 injury or mental or emotional injury as a result of that conduct;

88 (B) Any conduct where a parent, guardian or custodian displays his or her sex organs to  
89 a child, or procures another person to display his or her sex organs to a child, for the purpose of

90 gratifying the sexual desire of the parent, guardian or custodian, of the person making that display,  
91 or of the child, or for the purpose of affronting or alarming the child; or

92 (C) Any of the offenses proscribed in sections seven, eight or nine of article eight-b,  
93 chapter sixty-one of this code.

94 "Sexual assault" means any of the offenses proscribed in sections three, four or five of  
95 article eight-b, chapter sixty-one of this code.

96 "Sexual contact" means sexual contact as that term is defined in section one, article eight-  
97 b, chapter sixty-one of this code.

98 "Sexual exploitation" means an act where:

99 (A) A parent, custodian or guardian, whether for financial gain or not, persuades, induces,  
100 entices or coerces a child to engage in sexually explicit conduct as that term is defined in section  
101 one, article eight-c, chapter sixty-one of this code; or

102 (B) A parent, guardian or custodian persuades, induces, entices or coerces a child to  
103 display his or her sex organs for the sexual gratification of the parent, guardian, custodian or a  
104 third person, or to display his or her sex organs under circumstances in which the parent, guardian  
105 or custodian knows that the display is likely to be observed by others who would be affronted or  
106 alarmed;

107 (C) A parent, guardian or custodian knowingly maintains or makes available a child for the  
108 purpose of engaging the minor in commercial sexual activity in violation of section five, article  
109 fourteen, chapter sixty-one of this code.

110 "Sexual intercourse" means sexual intercourse as that term is defined in section one,  
111 article eight-b, chapter sixty-one of this code.

112 "Sexual intrusion" means sexual intrusion as that term is defined in section one, article  
113 eight-b, chapter sixty-one of this code.

114 "Serious physical abuse" means bodily injury which creates a substantial risk of death,  
115 which causes serious or prolonged disfigurement, prolonged impairment of health or prolonged

116 loss or impairment of the function of any bodily organ

## 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) ~~"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 her or she has rehabilitated himself or herself in order to obtain expungement.~~

## **ARTICLE 14. HUMAN TRAFFICKING.**

### **§61-14-1. Definitions.**

1 When used in this article, the following words and terms shall have meaning specified  
2 unless the context clearly indicates a different meaning:

3 “Adult” means an individual eighteen years of age or older.

4 “Coercion” means:

5 (a)(1) The use or threat of force against, abduction of, serious harm to or physical restraint  
6 of an individual;



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

10 (3) The abuse or threatened abuse of law or legal process;

11 (4) The destruction or taking of, or the threatened destruction or taking of, an individual's  
12 identification document or other property; or

13 (5) The use of an individual's physical or mental impairment when the impairment has a  
14 substantial adverse effect on the individual's cognitive or volitional function.

15 (b) As used in this article, "coercion" does not include statements or actions made by a  
16 duly authorized state or federal law-enforcement officer as part of a lawful law enforcement  
17 investigation or undercover action.

18 "Commercial sexual activity" means sexual activity for which anything of value is given to,  
19 promised to or received by a person.

20 "Debt bondage" means inducing an individual to provide:

21 (1) Commercial sexual activity in payment toward or satisfaction of a real or purported  
22 debt; or

23 (2) Labor or services in payment toward or satisfaction of a real or purported debt if:

24 (A) The reasonable value of the labor or services is not applied toward the liquidation of  
25 the debt; or

26 (B) The length of the labor or services is not limited, and the nature of the labor or services  
27 is not defined.

28 "Forced labor" (a) means labor or services that are performed or provided by another  
29 person and are obtained or maintained through the following:

30 (1) Threat, either implicit or explicit, deception or fraud, scheme, plan, or pattern or other  
31 action intended to cause a person to believe that, if the person did not perform or provide the  
32 labor or services that person or another person would suffer serious bodily harm, physical restraint

33 or deportation;

34 (2) Physically restraining or threatening to physically restrain a person;

35 (3) Abuse or threatened abuse of the legal process; or

36 (4) Destroying, concealing, removing, confiscating or possessing any actual or purported

37 passport or other immigration document, or any other actual or purported government

38 identification document of another person: *Provided*, That “forced labor” does not mean labor or

39 services required to be performed by a person in compliance with a court order or as a required

40 condition of probation, parole, or imprisonment.

41 (b) As applied in this article, forced labor shall not include labor, work or services, provided

42 by a minor to the minor's parent, legal custodian or legal guardian so long as the legal

43 guardianship or custody of the minor was not obtained for the purpose of compelling the minor to

44 participate in commercial sex acts or sexually explicit performance, or perform forced labor or

45 services; nor shall it include physical restraint of a minor, or the threat of physical restraint to a

46 minor, by his or her parents, legal custodian or legal guardian if conducted in an otherwise lawful

47 manner and for the purpose of discipline, supervision or teaching.

48 “Identification document” means a passport, driver’s license, immigration document, travel

49 document or other government-issued identification document, including a document issued by a

50 foreign government.

51 “Labor or services” means activity having economic value.

52 “Minor” means an individual less than eighteen years of age.

53 “Patronize” means giving, agreeing to give or offering to give anything of value to another

54 person in exchange for commercial sexual activity.

55 “Person” means an individual, estate, business or nonprofit entity, or other legal entity.

56 The term does not include a public corporation or government or governmental subdivision,

57 agency or instrumentality.

58 “Serious harm” means harm, whether physical or nonphysical, including psychological,

59 economic or reputational, to an individual which would compel a reasonable individual of the same  
60 background and in the same circumstances to perform or continue to perform labor or services  
61 or sexual activity to avoid incurring the harm.

62 “Sexual activity” means sexual contact, sexual intercourse or sexual intrusion, as defined  
63 in section one, article eight-b of this chapter, or sexually explicit conduct, as defined in section  
64 one, article eight-c of this chapter.

65 “Sexual servitude” means:

66 (1) Maintaining or making available a minor for the purpose of engaging the minor in  
67 commercial sexual activity; or

68 (2) Using coercion to compel an adult to engage in commercial sexual activity.

69 “Traffics” or “trafficking” means to knowingly recruit, transport, transfer, harbor, receive,  
70 provide, obtain, isolate, maintain or entice an individual in furtherance of forced labor or sexual  
71 servitude.

72 “Victim” means an individual who is subjected to trafficking, regardless of whether a  
73 perpetrator is prosecuted or convicted.

**§61-14-2. Trafficking an individual; penalties.**

1 (a) Any person who knowingly and willfully traffics an adult is guilty of a felony and, upon  
2 conviction, shall be confined in a state correctional facility for not less than three nor more than  
3 fifteen years, fined not more than \$200,000, or both confined and fined.

4 (b) Any person who knowingly and willfully traffics a minor is guilty of a felony and, upon  
5 conviction, shall be confined in a state correctional facility for not less than five nor more than  
6 twenty years, fined not more than \$300,000, or both confined and fined.

**§61-14-3. Forced labor; penalties.**

1 (a) Any person who knowingly uses an adult in forced labor to provide labor or services,  
2 is guilty of a felony and, upon conviction, shall be confined in a state correctional facility for not  
3 less than one nor more than five years, fined not more than \$100,000, or both confined and fined.

4           (b) Any person who knowingly uses a minor in forced labor to provide labor or services, is  
5 guilty of a felony and, upon conviction, shall be confined in a state correctional facility for not less  
6 than three nor more than fifteen years, fined not more than \$300,000, or both confined and fined.

**§61-14-4. Debt bondage; penalties.**

1           (a) Any person who knowingly uses an adult in debt bondage is guilty of a felony and,  
2 upon conviction, shall be confined in a state correctional facility for not less than one nor more  
3 than five years, fined not more than \$100,000, or both confined and fined.

4           (b) Any person who knowingly uses a minor in debt bondage is guilty of a felony and, upon  
5 conviction, shall be confined in a state correctional facility for not less than three nor more than  
6 fifteen years, fined not more than \$300,000, or both confined and fined.

**§61-14-5. Sexual servitude; penalties.**

1           (a) Any person who knowingly uses coercion to compel an adult to engage in commercial  
2 sexual activity is guilty of a felony and, upon conviction, shall be confined in a state correctional  
3 facility for not less than three nor more than fifteen years, fined not more than \$200,000, or both  
4 confined and fined.

5           (b) Any person who knowingly maintains or makes available a minor for the purpose of  
6 engaging the minor in commercial sexual activity is guilty of a felony and, upon conviction, shall  
7 be confined in a state correctional facility for not less than ten nor more than twenty years, fined  
8 not more than \$300,000, or both confined and fined.

9           (c) It is not a defense in a prosecution under subsection (b) of this section that the minor  
10 consented to engage in the commercial sexual activity, or that the defendant believed the minor  
11 was an adult.

**§61-14-6. Patronizing a victim of sexual servitude; penalties.**

1           (a) Any person who knowingly patronizes an individual to engage in commercial sexual  
2 activity with a third party who is an adult, and who knows that such adult is a victim of sexual  
3 servitude, is guilty of a felony and, upon conviction thereof, shall be confined in a state correctional

4 facility for not less than one nor more than five years, fined not more than \$100,000, or both  
5 confined and fined.

6 (b) Any person who knowingly patronizes an individual to engage in commercial sexual  
7 activity with a third party who is a minor is guilty of a felony and, upon conviction, shall be confined  
8 in a state correctional facility for not less than three nor more than fifteen years, fined not more  
9 than \$300,000, or both confined and fined.

**§61-14-7. General provisions and other penalties.**

1 (a) Separate violations — For purposes of this article, each adult or minor victim is a  
2 separate offense.

3 (b) Aggravating circumstance. —

4 (1) If an individual is convicted of an offense under this article and the court makes a  
5 finding that the offense involved an aggravating circumstance, the individual may not be eligible  
6 for parole before serving three years in a state correctional facility.

7 (2) For purposes of this subsection, “aggravating circumstance” means the individual  
8 recruited, enticed or obtained the victim of the offense from a shelter or facility that serves runaway  
9 youths, children in foster care, the homeless or individuals subjected to human trafficking,  
10 domestic violence or sexual assault.

11 (c) Restitution. —

12 (1) The court shall order a person convicted of an offense under this article to pay  
13 restitution to the victim of the offense.

14 (2) A judgment order for restitution may be enforced by the state or a victim named in the  
15 order to receive the restitution in the same manner as a judgment in a civil action in accordance  
16 with section four, article eleven-a of this chapter, including filing a lien against the person, firm or  
17 corporation against whom restitution is ordered.

18 (3) The court shall order restitution under subdivision (1) of this subsection even if the  
19 victim is unavailable to accept payment of restitution.

20 (4) If the victim does not claim restitution ordered under subdivision (1) of this subsection  
21 for five years after entry of the order, the restitution shall be paid to the Crime Victims  
22 Compensation Fund created under section four, article two-a, chapter fourteen of this code.

23 (d) Disgorgement. — In addition to the fine and penalties set forth in this article, any  
24 business entity that engages in the offenses established in this article may be fined not more than  
25 \$500,000 for each violation, be required to disgorge profit from activity in violation of this article  
26 pursuant to section five, article thirteen of this chapter and be debarred from state and local  
27 government contracts.

28 (e) Eligibility for Compensation Fund. — Notwithstanding the definition of victim in section  
29 three, article two-a, chapter fourteen of this code a victim of any offense under this article is a  
30 victim for all purposes of article two-a, chapter fourteen of this code: *Provided*, That for purposes  
31 of subsection (b), section fourteen, article two-a, chapter fourteen of this code, if otherwise  
32 qualified, a victim of any offense under this article may not be denied eligibility solely for the failure  
33 to report to law enforcement within the designated time frame.

34 (f) Law Enforcement Notification. — Should a law-enforcement officer encounter a child  
35 who reasonably appears to be a victim of an offense under this article, the officer shall notify the  
36 Department of Health and Human Resources. If available, the Department of Health and Human  
37 Resources may notify the Domestic Violence Program serving the area where the child is found.

**§61-14-8. Immunity for minor victim of sex trafficking.**

1 (a) In a prosecution or a juvenile prosecution for an offense of prostitution in violation of  
2 subsection (b), section five, article eight of this chapter, a minor shall not be held criminally liable  
3 if the Court determines that the minor is a victim of an offense under this article: *Provided*, That  
4 in making such a determination the Court shall initially presume that the minor is a victim of an  
5 offense under this article and committed the offense of prostitution as a direct result of being a  
6 victim.

7 (b) This section does not apply in a prosecution or a juvenile proceeding for any of the

8 other offenses under subsection (b), section five, article eight of this chapter, including specifically  
9 soliciting, inducing, enticing or procuring another to commit an act or offense of prostitution, unless  
10 it is determined by the court that the minor was coerced into the criminal behavior.

11 (c) A minor who, under subsection (a) or (b) of this section, is not subject to criminal liability  
12 or a juvenile delinquency proceeding is presumed to be an abused child, and may be eligible for  
13 services under chapter forty-nine of this code including, but not limited to, appropriate child  
14 welfare services.

**§61-14-9. Petition to vacate and expunge conviction of sex trafficking victim.**

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

7 (b) A victim of trafficking seeking relief under this section is not required to complete any  
8 type of rehabilitation in order to obtain expungement.

9 (c) A petition filed under subsection (a) of this section, any hearing conducted on the  
10 petition, and any relief granted shall meet the procedural requirements of section twenty-six,  
11 article eleven of this chapter: *Provided*, That a victim of trafficking is not subject to the age or  
12 criminal history limitations 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 special prosecutor may apply to

2 one of the designated circuit judges referred to in section seven of this article and such judge, in  
3 accordance with the provisions of this article, may grant an order authorizing the interception of  
4 wire, oral or electronic communications by an officer of the investigative or law-enforcement  
5 agency when the prosecuting attorney or special prosecutor has shown reasonable cause to  
6 believe the interception would provide evidence of the commission of: (i) Kidnapping or abduction  
7 as defined and prohibited by the provisions of sections fourteen and fourteen-a, article two,  
8 chapter sixty-one of this code and including threats to kidnap or demand ransom as defined and  
9 prohibited by the provisions of section fourteen-c of said article two ~~or~~; (ii) of any offense included  
10 and prohibited by section eleven, article four, chapter twenty-five of said code, sections eight, nine  
11 and ten, article five, chapter sixty-one of said code or section one, article eight, chapter sixty-two  
12 of said code to the extent that any of said sections provide for offenses punishable as a felony ~~or~~;  
13 (iii) dealing, transferring or trafficking in any controlled substance or substances in the felonious  
14 violation of chapter sixty-a of this code; ~~or~~ (iv) of any offense included and prohibited by article  
15 fourteen, chapter sixty-one of this code; or (v) any aider or abettor to any of the foregoing offenses  
16 or any conspiracy to commit any of the foregoing offenses if any aider, abettor or conspirator is a  
17 party to the communication to be intercepted.

NOTE: The purpose of this bill is to strengthen and establish criminal offenses relating to human trafficking. The bill eliminates an existing criminal offense and penalty for human trafficking, and establishes a new article with multiple offenses and penalties. In addition to human trafficking, the bill creates felony offenses and penalties for using an individual in forced labor, debt bondage, and commercial sexual activity. The bill also creates a felony offense of patronizing an individual to engage in commercial sexual activity. The bill clarifies that each victim shall be considered a separate offense, and limits ability for parole in circumstances where the court makes a finding of aggravated circumstances. The bill provides for restitution to victims and the enforcement of a judgment order for restitution. The bill provides for disgorgement of profits and debarment from state and local government contracts. The bill provides for criminal immunity for offense of prostitution if individual was a minor at time of offense and was a victim at time of offense. The bill provides for expungement of prostitution conviction for victims of trafficking. The bill authorizes law enforcement to use wiretaps to conduct investigations. The bill also designates the Division of Justice and Community Services to be the state administrative agency responsible for criminal justice and juvenile justice systems for the planning and development of state programs and grants relating to human trafficking.

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