WEST virginia legislature

2023 regular session

Committee Substitute

for

Senate Bill 484

By Senators Rucker, Deeds, Barrett, Woodrum, Martin, and Hamilton

[Originating in the Committee on the Judiciary; reported on February 7, 2023]

A Bill to amend the Code of West Virginia, 1931, as amended; and by adding thereto a new section designated §61-10-35, relating to creating the criminal offense of human smuggling; defining terms; clarifying that each person smuggled constitutes a separate offense; acknowledging prohibition against police action based on race or ethnic origin; and establishing criminal penalties.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. CRIMES AGAINST PUBLIC POLICY.

**§61-10-35. Human smuggling; definitions; penalties.**

(a) Any person, who for a commercial purpose, knowingly and willfully transports or facilitates the transport of persons in this state, whom he or she knows or has reason to know is not lawfully present in the United States, is guilty of human smuggling.

(b) Any person who commits human smuggling where the person smuggled is 18 years of age or older is guilty of a felony and upon conviction thereof, shall be imprisoned in a state corrections facility, for not less than one nor more than five years, or fined not more than $200,000 or both imprisoned and fined.

(c) Any person who commits human smuggling where the persons smuggled are younger than 18 years of age is guilty of a felony and upon conviction thereof shall be imprisoned in a state correctional facility, for not less than two nor more than 10 years, or fined not more than $300,000, or both imprisoned and fined.

(d) Each person smuggled as defined in this section constitutes a separate, and distinct offense.

(e) Nothing in this section may be construed to authorize or warrant persons being stopped or detained pursuant to this section based solely upon race or ethnic origin.

(f) As used in this section:

(1) “Commercial purpose” means the charging or receiving a monetary fee or other thing of value.

(2) “Facilitating” means aiding and abetting human smuggling by such means as providing travel and lodging arrangement services, the means of transportation, or false identification documents.

(3)“Human smuggling” means the provision of a service including providing transportation, false identification documents, or transient housing to a person who voluntarily seeks to gain illegal entry into the United States.