

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Committee Substitute

for

House Bill 5031

By Delegates Ridenour, Kirby, Phillips, Steele, Foster,
Kimble, Hillenbrand, Householder, Gearheart, Mallow,
and Martin

[Originating in the Committee on the Judiciary;

Reported on February 19, 2024]

1 A BILL to amend and reenact §61-14-1, §61-14-2, and §61-14-7 of the Code of West Virginia,
2 1931, as amended, all relating to human trafficking, adding a definition for "illegal alien";
3 general provisions and penalties; and providing that illegal aliens are not eligible for
4 restitution.

Be it enacted by the Legislature of West Virginia:

ARTICLE 14. HUMAN TRAFFICKING AND HUMAN SMUGGLING.

§61-14-1. Definitions.

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

3 ~~(1)~~ "Adult" means an individual 18 years of age or older.

4 ~~(2)~~ "Coercion" means:

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

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

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

13 (E) 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 As used in this article, "coercion" does not include statements or actions made by a duly
16 authorized state or federal law-enforcement officer as part of a lawful law enforcement
17 investigation or undercover action, nor does it mean the physical restraint of a minor, or the threat
18 of physical restraint to a minor, by his or her parents, legal custodian or legal guardian if conducted
19 in an otherwise lawful manner and for the purpose of discipline, supervision, or teaching.

20 ~~(3)~~ "Commercial sexual activity" means sexual activity for which anything of value is given
21 to, promised to, or received by a person.

22 (4) "Debt bondage" means inducing an individual to provide:

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

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

26 (i) The reasonable value of the labor or services is not applied toward the liquidation of the
27 debt; or

28 (ii) The length of the labor or services is not limited, and the nature of the labor or services
29 is not defined.

30 ~~(5)~~ "Forced labor" means labor or services that are performed or provided by another
31 person and are obtained or maintained through the following:

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

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

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

38 (D) Destroying, concealing, removing, confiscating, or possessing any actual or purported
39 passport or other immigration document, or any other actual or purported government
40 identification document of another person: *Provided*, That "forced labor" does not mean labor or
41 services required to be performed by a person in compliance with a court order or as a required
42 condition of probation, parole, or imprisonment.

43 As applied in this article, forced labor shall not include labor, work, or services provided by
44 a minor to the minor's parent, legal custodian, or legal guardian, so long as the legal guardianship
45 or custody of the minor was not obtained for the purpose of compelling the minor to participate in

46 commercial sex acts or sexually explicit performance, or perform forced labor or services; nor shall
47 it include physical restraint of a minor, or the threat of physical restraint to a minor, by his or her
48 parents, legal custodian or legal guardian if conducted in an otherwise lawful manner and for the
49 purpose of discipline, supervision, or teaching.

50 "Human Smuggling", "smuggling", or "smuggles" means, with actual knowledge that the
51 persons being transported or harbored are illegal aliens, either knowingly transporting illegal
52 aliens into the State of West Virginia or transporting and harboring illegal aliens already in the
53 State of West Virginia. Human smuggling does not include any person hired by another state who
54 transports an illegal alien through West Virginia, so long as the illegal alien will not remain in West
55 Virginia.

56 ~~(6)~~ "Human trafficking", "trafficking", or "traffics" means knowingly recruiting, transporting,
57 transferring, harboring, receiving, providing, obtaining, isolating, maintaining, or enticing an
58 individual to engage in debt bondage, forced labor, or sexual servitude.

59 ~~(7)~~ "Identification document" means a passport, driver's license, immigration document,
60 travel document or other government-issued identification document, including a document issued
61 by a foreign government.

62 "Illegal alien" means an alien who has entered the United States illegally and is deportable
63 if apprehended, or an alien who entered the United States legally but who has fallen "out of status"
64 and is deportable.

65 ~~(8)~~ "Labor or services" means activity having economic value.

66 ~~(9)~~ "Minor" means a person younger than 18 years of age or a person representing himself
67 or herself to be a minor. Any prosecution, pursuant to this article, relating to a person that is
68 representing himself or herself to be a minor shall be limited to investigations being conducted or
69 overseen by law enforcement officers.

70 ~~(10)~~ "Patronize" means giving, agreeing to give, or offering to give anything of value to
71 another person in exchange for commercial sexual activity.

72 ~~(11)~~ "Person" means an individual, estate, business or nonprofit entity, or other legal entity.
73 The term does not include a public corporation or government or governmental subdivision,
74 agency, or instrumentality.

75 ~~(12)~~ "Serious harm" means harm, whether physical or nonphysical, including
76 psychological, economic or reputational, to an individual which would compel a reasonable
77 individual of the same background and in the same circumstances to perform or continue to
78 perform labor or services or sexual activity to avoid incurring the harm.

79 ~~(13)~~ "Sexual activity" means sexual contact, sexual intercourse, or sexual intrusion, as
80 defined in §61-8b-1 of this code, or sexually explicit conduct, as defined in §61-8-1 of this code.

81 ~~(14)~~ "Sexual servitude" means:

82 (A) Maintaining or making available a minor for the purpose of engaging the minor in
83 commercial sexual activity; or

84 (B) Using coercion to compel an adult to engage in commercial sexual activity.

85 ~~(15)~~ "Victim" means an individual who is subjected to human trafficking, regardless of
86 whether a perpetrator is prosecuted or convicted.

**§61-14-2. Human trafficking or smuggling of an individual; aiding and abetting human
trafficking or smuggling; penalties.**

1 (a) Any person who knowingly and willfully traffics or smuggles an adult, or who knowingly
2 and willfully aids, assists, or abets in any manner in the trafficking or smuggling of an adult, is guilty
3 of a felony and, upon conviction, shall be confined in a state correctional facility for not less than
4 three nor more than 15 years, fined not more than \$200,000, or both confined and fined.

5 (b) Any person who knowingly and willfully traffics or smuggles a minor, or who knowingly
6 and willfully aids, assists, or abets in any manner in the trafficking or smuggling of a minor, is guilty
7 of a felony and, upon conviction, shall be confined in a state correctional facility for not less than
8 five nor more than 20 years, fined not more 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
2 constitutes a separate offense.

3 (b) Aggravating circumstance. —

4 (1) Notwithstanding any provision of this code to the contrary, if an individual is convicted of
5 an offense under this article and the trier of fact makes a finding that the offense involved an
6 aggravating circumstance, the individual shall not be eligible for parole before serving three years
7 in a state correctional facility.

8 (2) For purposes of this subsection, "aggravating circumstance" means: ~~the individual~~
9 ~~recruited, enticed or obtained the victim of the offense from a shelter or facility that serves runaway~~
10 ~~youths, children in foster care, the homeless or victims of human trafficking, domestic violence or~~
11 ~~sexual assault.~~

12 (A) The individual recruited, enticed or obtained the victim of the offense from a shelter or
13 facility that serves runaway youths, children in foster care, the homeless or victims of human
14 trafficking, domestic violence or sexual assault; or

15 (B) The human trafficking or smuggling:

16 (i) Was committed using a deadly weapon or the threat of use of a deadly weapon;

17 (ii) Caused bodily harm or disfigurement to individuals being trafficked or smuggled;

18 (iii) Caused individuals being trafficked or smuggled to become a victim of a sex offense; or

19 (iv) Caused individuals to commit to sexual servitude.

20 (c) *Restitution.* —

21 (1) The court shall order a person convicted of an offense under this article to pay
22 restitution to the victim of the offense, or if the victim of the offense is an illegal alien, to the state.

23 (2) A judgment order for restitution may be enforced by the state or a victim named in the
24 order to receive the restitution in the same manner as a judgment in a civil action in accordance
25 with §61-11-4 of this code, including filing a lien against the person, firm or corporation against
26 whom restitution is ordered.

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

29 (4) If the victim does not claim restitution ordered under subdivision (1) of this subsection
30 within five years of the entry of the order, the restitution shall be paid to the Crime Victims
31 Compensation Fund created under §14-2A-4 of this code.

32 (5) Notwithstanding any provision of this code to the contrary, illegal aliens are not eligible
33 for restitution. Restitution shall be provided by illegal alien offenders to the State of West Virginia.

34 (d) *Eligibility for Compensation Fund.* — Notwithstanding the definition of victim in §14-2A-
35 3 of this code, a victim of any offense under this article is a victim for all purposes of §14-2A-1 *et*
36 *seq.* of this code: *Provided*, That for purposes of §14-2A-14(b) of this code, if otherwise qualified, a
37 victim of any offense under this article may not be denied eligibility solely for the failure to report to
38 law enforcement within the designated time frame.

39 (e) *Law Enforcement Notification.* — ~~Should~~ If a law-enforcement officer ~~encounter~~
40 ~~encounters~~ a child who reasonably appears to be a victim of an offense under this article, the
41 officer shall notify the Department of Human Services. If available, the Department of Human
42 Services may notify the Domestic Violence Program serving the area where the child is found.

43 (f) ~~(g)~~ *Forfeiture; Debarment.* —

44 (1) The following are declared to be contraband and no person shall have a property
45 interest in them:

46 (A) All property which is directly or indirectly used or intended for use in any manner to
47 facilitate a violation of this article; and

48 (B) Any property constituting or derived from gross profits or other proceeds obtained from
49 a violation of this article.

50 (2) In any action under this section, the court may enter such restraining orders or take
51 other appropriate action, including acceptance of performance bonds, in connection with any
52 interest that is subject to forfeiture.

53 (3) Forfeiture actions under this section shall use the procedure set forth in §60A-7-1 *et*
54 *seq.* of this code.

55 (4) Any person or business entity convicted of a violation of this article shall be debarred
56 from state or local government contracts.

57 (5) Nothing in this article may be construed or applied in a manner that violates or conflicts
58 with superseding federal law.

NOTE: The purpose of this bill is to add a definition for "illegal alien" under human trafficking and provide that illegal aliens are not eligible for restitution.

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