

# WEST VIRGINIA LEGISLATURE

## 2016 REGULAR SESSION

Introduced

### House Bill 4489

FISCAL  
NOTE

BY DELEGATES FLEISCHAUER, SHOTT, STORCH,  
GUTHRIE, BORDER, MOORE, HAMILTON, SOBONYA,  
MILLER, MANCHIN AND SHAFFER

[Introduced February 11, 2016; Referred  
to 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 said code by adding thereto a new article, designated  
3 §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  
4 §61-14-9; and to amend and reenact §62-1D-8 of said code, all relating generally to  
5 human trafficking; designating the Division of Justice and Community Services to be the  
6 state administrative agency responsible for criminal justice and juvenile justice systems  
7 for the planning and development of state programs and grants relating to human  
8 trafficking; eliminating existing criminal offense and penalties for human trafficking;  
9 creating felony offenses and penalties for trafficking an individual; defining terms; creating  
10 felony offenses and penalties for using an individual in forced labor; creating felony  
11 offenses and penalties for using an individual in debt bondage; creating felony offenses  
12 and penalties for compelling an adult through coercion to engage in commercial sexual  
13 activity; creating a felony offense for maintaining or making available a minor for the  
14 purpose of engaging in commercial sexual activity; clarifying that consent of minor and  
15 misbelief as to age are not defenses to prosecution for sexual servitude offense; creating  
16 a felony offense of patronizing an individual to engage in commercial sexual activity;  
17 clarifying that each victim shall be considered a separate offense; limiting ability for parole  
18 in circumstances where the court makes a finding of aggravated circumstances; defining  
19 aggravated circumstances; providing for restitution to victims and the enforcement of a  
20 judgment order for restitution; directing unclaimed restitution to be paid to the Crime  
21 Victims Compensation Fund; providing for disgorgement of profits and debarment from  
22 state and local government contracts; making victims eligible for compensation under the  
23 Crime Victims Compensation Fund; providing for criminal immunity for offense of  
24 prostitution if individual was a minor at time of offense and was a victim at time of offense;  
25 providing for expungement of prostitution conviction for victims of trafficking; and  
26 authorizing law enforcement to use 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 said code be amended by adding thereto a new  
3 article, designated §61-14-1, §61-14-2, §61-14-3, §61-14-4, §61-14-5, §61-14-6, §61-14-7, §61-  
4 14-8 and §61-14-9; and that §62-1D-8 of said code be amended and reenacted, all to read as  
5 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.

## **CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

### **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 (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  
8 that 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 “Commercial sexual activity” means sexual activity for which anything of value is given to,  
16 promised to, or received by a person.

17 “Debt bondage” means inducing an individual to provide:

18 (1) Commercial sexual activity in payment toward or satisfaction of a real or purported

19 debt; or

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

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

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

25 “Forced labor” means labor or services that are performed or provided by another person  
26 and are obtained or maintained through the following:

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

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.

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

41 “Identification document” means a passport, driver’s license, immigration document, travel  
42 document, or other government-issued identification document, including a document issued by

43 a foreign government.

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

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

46 “Patronize” means giving, agreeing to give, or offering to give anything of value to another  
47 person in exchange for commercial sexual activity.

48 “Person” means an individual, estate, business or nonprofit entity, or other legal entity.  
49 The term does not include a public corporation or government or governmental subdivision,  
50 agency, or instrumentality.

51 “Serious harm” means harm, whether physical or nonphysical, including psychological,  
52 economic, or reputational, to an individual which would compel a reasonable individual of the  
53 same background and in the same circumstances to perform or continue to perform labor or  
54 services or sexual activity to avoid incurring the harm.

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

58 “Sexual servitude” means:

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

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

62 “Traffics” or “trafficking” means recruiting, transporting, transferring, harboring, receiving,  
63 providing, obtaining, isolating, maintaining, or enticing an individual in furtherance of forced labor  
64 or sexual servitude.

65 “Victim” means an individual who is subjected to trafficking or to conduct that would have  
66 constituted trafficking had this article been in effect when the conduct occurred, regardless of

67 whether a perpetrator is identified, apprehended, 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 except when such conduct is permissible under federal law or law of this state, is guilty of a felony  
3 and, upon conviction, shall be confined in a state correctional facility for not less than one nor  
4 more than five years, fined not more than \$100,000, or both confined and fined.

5 (b) Any person who knowingly uses a minor in forced labor to provide labor or services,  
6 except when such conduct is permissible under federal law or law of this state, is guilty of a felony  
7 and, upon conviction shall be confined in a state correctional facility for not less than three nor  
8 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 five 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 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  
9 runaway youths, children in foster care, the homeless, or individuals subjected to human  
10 trafficking, 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 business  
24 entity that engages in the offenses established in this article may be fined not more than \$500,000  
25 for each violation, be required to disgorge profit from activity in violation of this article pursuant to

26 section five, article thirteen of this chapter, and be debarred from state and local government  
27 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 subsection (b), section fourteen, article two-a, chapter fourteen of this code, if otherwise qualified,  
32 a victim of any offense under this article may not be denied eligibility solely for the failure to report  
33 to law enforcement within the designated time frame.

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

1 (a) Subject to the limitation in subsection (b) of this section, an individual is not criminally  
2 liable or subject to juvenile proceedings for an offense of prostitution in violation of subsection (b),  
3 section five, article eight of this chapter if the individual was a minor at the time of the offense and  
4 committed the offense as a direct result of being a victim.

5 (b) This section does not apply in a prosecution or a juvenile proceeding for soliciting,  
6 inducing, enticing or procuring a prostitute in violation of subsection (b), section five, article eight  
7 of this chapter.

**§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 shall not be required to complete

8 any 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 ~~(iv)~~ (v) any aider or abettor to any of the foregoing

- 16 offenses or any conspiracy to commit any of the foregoing offenses if any aider, abettor or  
17 conspirator is a party to the communication to be intercepted.

NOTE: The purpose of this bill is to eliminating existing criminal offense and penalties for human trafficking. The bill creates felony offenses and penalties for trafficking an individual. The bill defines terms. The bill creates felony offenses and penalties for using an individual in forced labor. The bill creates felony offenses and penalties for using an individual in debt bondage. The bill creates felony offenses and penalties for compelling an adult through coercion to engage in commercial sexual activity. The bill creates a felony offense for maintaining or making available a minor for the purpose of engaging in commercial sexual activity. The bill clarifies that consent of minor and misbelief as to age are not defenses to prosecution for sexual servitude offense. The bill 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. The bill limits ability for parole in circumstances where the court makes a finding of aggravated circumstances. The bill defines aggravated circumstances. The bill provides for restitution to victims and the enforcement of a judgment order for restitution. The bill directs unclaimed restitution to be paid to the Crime Victims Compensation Fund. The bill provides for disgorgement of profits and debarment from state and local government contracts. The bill makes victims eligible for compensation under the Crime Victims Compensation Fund. 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.