

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 2318

BY DELEGATES SHOTT, FLEISCHAUER, HANSHAW,

SUMMERS, SOBONYA, C. MILLER, KESSINGER,

CANESTRARO, LONGSTRETH, PUSHKIN AND STORCH

[Passed March 17, 2017; in effect ninety days from passage.]

HB 2318

OFFICE WEST VIRGINIA
SECRETARY OF STATE

2017 MAR 31 P 4: 08

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1 AN ACT to repeal §61-2-17 of the Code of West Virginia, 1931, as amended; to amend and
2 reenact §15-9A-2 of said code; to amend and reenact §15-12-2 of said code; to amend
3 and reenact §49-1-201 of said code; to amend said code by adding thereto a new article,
4 designated §61-14-1, §61-14-2, §61-14-3, §61-14-4, §61-14-5, §61-14-6, §61-14-7, §61-
5 14-8 and §61-14-9; and to amend and reenact §62-1D-8 of said code, all relating generally
6 to human trafficking; designating the Division of Justice and Community Services to be
7 the state administrative agency responsible for criminal justice and juvenile justice
8 systems 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
10 Act; adding human trafficking within the definition of an abused child; adding under the
11 definition of sexual exploitation an act where a parent, guardian, or custodian knowingly
12 maintains or makes available a child for the purpose of engaging the child in commercial
13 sexual activity; defining terms; creating criminal felony offenses and penalties for human
14 trafficking of an individual; creating criminal felony offenses and penalties for using victim
15 of human trafficking in forced labor; creating criminal felony offenses and penalties for
16 using victim of human trafficking in debt bondage; creating criminal felony offenses and
17 penalties for compelling a victim of human trafficking through coercion to engage in
18 commercial sexual activity; creating a criminal felony offense and penalty for maintaining
19 or making available a minor victim of human trafficking for the purpose of engaging in
20 commercial sexual activity; clarifying that consent of minor and misbelief as to age are not
21 defenses to prosecution for sexual servitude offenses; creating a criminal felony offense
22 and penalty for knowingly patronizing an individual to engage in commercial sexual activity
23 with knowledge that the individual is a victim of sexual servitude; creating a criminal felony
24 offense and penalty for knowingly patronizing a minor to engage in commercial sexual
25 activity with knowledge or having reason to know that the minor is a victim of sexual
26 servitude; clarifying that each victim constitutes a separate offense; limiting ability for

27 parole in circumstances where the court makes a finding of aggravated circumstances;
 28 defining aggravated circumstances; providing for restitution to victims and the
 29 enforcement of a judgment order for restitution; directing unclaimed restitution to be paid
 30 to the Crime Victims Compensation Fund; making victims of certain offenses eligible for
 31 compensation under the Crime Victims Compensation Fund; specifying the notification
 32 procedure to be followed by a law-enforcement officer upon encountering a child who
 33 appears to be a victim; providing for forfeiture of certain property; providing for debarment
 34 from state and local government contracts for persons or entities convicted of certain
 35 offenses; providing for immunity for offense of prostitution for minors; defining a minor
 36 victim of sex trafficking as an abused child and establishing a child's eligibility for services
 37 therefor; providing for expungement of prostitution conviction for victims of trafficking; and
 38 authorizing the use of 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;

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, five and six, article fourteen; *Provided*, That as to section two of said
20 article only those violations involving human trafficking for purposes of sexual servitude require
21 registration pursuant to this subdivision.

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

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

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

31 (2) The address where the registrant intends to reside or resides at the time of registration,
32 the address of any habitable real property owned or leased by the registrant that he or she
33 regularly visits: *Provided*, That a post office box may not be provided in lieu of a physical
34 residential address, the name and address of the registrant's employer or place of occupation at

35 the time of registration, the names and addresses of any anticipated future employers or places
36 of occupation, the name and address of any school or training facility the registrant is attending
37 at the time of registration and the names and addresses of any schools or training facilities the
38 registrant expects to attend;

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

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

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

42 (6) Fingerprints and palm prints;

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

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

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

53 (e) (1) On the date that any person convicted or found not guilty by reason of mental
54 illness, mental retardation or addiction of any of the crimes listed in subsection (b) of this section,
55 hereinafter referred to as a "qualifying offense", including those persons who are continuing under
56 some post-conviction supervisory status, are released, granted probation or a suspended
57 sentence, released on parole, probation, home detention, work release, conditional release or
58 any other release from confinement, the Commissioner of Corrections, regional jail administrator,
59 city official or sheriff operating a jail or Secretary of the Department of Health and Human
60 Resources who releases the person and any parole or probation officer who releases the person

61 or supervises the person following the release, shall obtain all information required by subsection
62 (d) of this section prior to the release of the person, inform the person of his or her duty to register
63 and send written notice of the release of the person to the State Police within three business days
64 of receiving the information. The notice must include the information required by said subsection.
65 Any person having a duty to register for a qualifying offense shall register upon conviction, unless
66 that person is confined or incarcerated, in which case he or she shall register within three business
67 days of release, transfer or other change in disposition status. Any person currently registered
68 who is incarcerated for any offense shall re-register within three business days of his or her
69 release.

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

- 76 (A) His or her sex;
- 77 (B) His or her age at the time of the offense; and
- 78 (C) The relationship between the victim and the perpetrator.

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

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

- 83 (1) Identifying factors, including physical characteristics;
- 84 (2) History of the offense; and
- 85 (3) Documentation of any treatment received for the mental abnormality or personality
86 disorder.

87 (g) At the time the person is convicted or found not guilty by reason of mental illness,
88 mental retardation or addiction in a court of this state of the crimes set forth in subsection (b) of
89 this section, the person shall sign in open court a statement acknowledging that he or she
90 understands the requirements imposed by this article. The court shall inform the person so
91 convicted of the requirements to register imposed by this article and shall further satisfy itself by
92 interrogation of the defendant or his or her counsel that the defendant has received notice of the
93 provisions of this article and that the defendant understands the provisions. The statement, when
94 signed and witnessed, constitutes prima facie evidence that the person had knowledge of the
95 requirements of this article. Upon completion of the statement, the court shall provide a copy to
96 the registry. Persons who have not signed a statement under the provisions of this subsection
97 and who are subject to the registration requirements of this article must be informed of the
98 requirement by the State Police whenever the State Police obtain information that the person is
99 subject to registration requirements.

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

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

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

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

110 (3) Sexual assault of a spouse as set forth in the former provisions of section six, article
111 eight-b, chapter sixty-one of this code, which was repealed by an Act of the Legislature during the
112 2000 legislative session, or of a similar provision in another state, federal or military jurisdiction;

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

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

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

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

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

128 (n) For the purposes of this article, the term "business days" means days exclusive of
129 Saturdays, Sundays and legal holidays as defined in section one, article two, chapter two of this
130 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;

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

17 (E) Human trafficking of a child, or attempting to traffic a child, in violation of section two,
18 article 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 co-petitioner" means the Department or any reputable person who files a
74 child 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 co-petitioners.

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;

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 child 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 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 (1) "Adult" means an individual eighteen 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
6 of an individual;

7 (B) 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 (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.

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

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

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

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

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

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

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

30 (A) 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
33 restraint or deportation;

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

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

36 (D) 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 As applied in this article, forced labor shall not include labor, work or services provided by
42 a minor to the minor's parent, legal custodian or legal guardian, so long as the legal guardianship
43 or custody of the minor was not obtained for the purpose of compelling the minor to participate in
44 commercial sex acts or sexually explicit performance, or perform forced labor or services; nor
45 shall it include physical restraint of a minor, or the threat of physical restraint to a minor, by his or
46 her parents, legal custodian or legal guardian if conducted in an otherwise lawful manner and for
47 the purpose of discipline, supervision or teaching.

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

51 (7) "Identification document" means a passport, driver's license, immigration document,
52 travel document or other government-issued identification document, including a document
53 issued by a foreign government.

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

55 (9) "Minor" means an individual less than eighteen years of age.

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

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

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

65 (13) "Sexual activity" means sexual contact, sexual intercourse or sexual intrusion, as
66 defined in section one, article eight-b of this chapter, or sexually explicit conduct, as defined in
67 section one, article eight-c of this chapter.

68 (14) "Sexual servitude" means:

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

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

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

§61-14-2. Human trafficking of an individual; penalties.

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

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

§61-14-3. Use of forced labor; penalties.

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

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

§61-14-4. Use of persons in debt bondage; penalties.

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

4 (b) Any person who knowingly uses a minor in debt bondage is guilty of a felony and, upon
5 conviction thereof, shall be imprisoned in a state correctional facility for not less than three nor
6 more than fifteen years, fined not more than \$300,000, or both imprisoned 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 thereof, shall be imprisoned in a state
3 correctional facility for not less than three nor more than fifteen years, fined not more than
4 \$200,000, or both imprisoned 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 thereof,
7 shall be imprisoned in a state correctional facility for not less than ten nor more than twenty years,
8 fined not more than \$300,000, or both imprisoned 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 commercial sexual activity, or that the defendant believed the minor was
11 an adult.

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

1 (a) Any person who knowingly patronizes another in commercial sexual activity and who
2 knows that such person patronized is a victim of sexual servitude, is guilty of a felony and, upon

3 conviction thereof, shall be imprisoned in a state correctional facility for not less than one nor
4 more than five years, fined not more than \$100,000, or both imprisoned and fined.

5 (b) Notwithstanding the provisions of subsection (a) of this section, any person who
6 knowingly patronizes a minor to engage in commercial sexual activity and who knows or has
7 reason to know that said minor is a victim of sexual servitude, is guilty of a felony and, upon
8 conviction thereof, shall be imprisoned in a state correctional facility for not less than three nor
9 more than fifteen years, fined not more than \$300,000, or both imprisoned 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
5 of 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 (c) *Restitution.* —

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

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

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

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

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

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

34 (f) *Forfeiture; Debarment.* —

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

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

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

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

44 (3) Forfeiture actions under this section shall use the procedure set forth in article seven,
45 chapter sixty-a of this code.

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

§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 subject to proof, a minor so charged shall be rebuttably presumed to be a victim under the
5 provisions of this article.

6 (b) This section does not apply in a prosecution or a juvenile proceeding for any of the
7 other offenses under subsection (b), section five, article eight of this chapter, including specifically
8 soliciting, inducing, enticing or procuring another to commit an act or offense of prostitution, unless
9 it is determined by the court that the minor was coerced into the criminal behavior.

10 (c) A minor who, under subsection (a) or (b) of this section, is not subject to criminal liability
11 or adjudication as a juvenile delinquent is presumed to be an abused child, as defined in section
12 two-hundred-one, article one, chapter forty-nine of this code, and may be eligible for services
13 under chapter forty-nine of this code including, but not limited to, appropriate child welfare
14 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 are subject to the procedural requirements of section twenty-six,
11 article eleven of this chapter: *Provided*, That the age or criminal history limitations in that section
12 are inapplicable to victims of human trafficking.

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; (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;
13 (iii) dealing, transferring or trafficking in any controlled substance or substances in the felonious
14 violation of chapter sixty-a of this code; (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.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Roger Handley
.....
Chairman, House Committee

Neil Raymond
.....
Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

Steph J. Harris
.....
Clerk of the House of Delegates

Clark Barnes
.....
Clerk of the Senate

Paul Pao
.....
Speaker of the House of Delegates

Walter B. Cantelero
.....
President of the Senate

FILED
2017 MAR 31 P 4: 08
OFFICE WEST VIRGINIA
SECRETARY OF STATE

The within *is approved* this the *31st*
March day of 2017.

Jim Justice
.....
Governor

PRESENTED TO THE GOVERNOR

MAR 27 2017

Time 9:53 am