

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2830

BY DELEGATES GRAVES, ROWAN, D. JEFFRIES, RILEY,
SMITH, CLARK, STEELE, BRIDGES, HOLSTEIN, SYPOLT
AND HANSHAW (MR. SPEAKER)

[Introduced March 02, 2021; referred to the
Committee on the Judiciary]

1 A BILL to amend and reenact §49-5-104 of the Code of West Virginia, 1931, as amended; to
2 amend and reenact §61-8-5 of said code; and to amend and reenact §61-14-2, §61-14-8,
3 and §61-14-9 of said code, all relating to strengthening sex trafficking laws; allowing for
4 accessibility of juvenile adjudication records for child victims of sex trafficking; providing
5 for immunity from prosecution for child victims of sex trafficking; providing for criminal
6 liability of a person who aids, assists, or abets the trafficking of an adult or child; providing
7 that a child victim of sex trafficking be eligible for comprehensive and specialized trauma-
8 informed child welfare services; and allowing a child victim of sex trafficking to expunge
9 records of juvenile delinquency adjudication.

Be it enacted by the Legislature of West Virginia:

CHAPTER 49. CHILD WELFARE.

ARTICLE 5. RECORD KEEPING AND DATABASE.

§49-5-104. Confidentiality of juvenile records for children who become of age while a ward of the state or who have been transferred to adult criminal jurisdiction; separate and secure location; penalties; damages; accessibility of records for child victims of sex trafficking.

1 (a) One year after the juvenile's 18th birthday, or one year after personal or juvenile
2 jurisdiction has terminated, whichever is later, the records of a juvenile proceeding conducted
3 under this chapter, including, but not limited to, law-enforcement files and records, may be kept
4 in a separate secure confidential place and the records may not be inspected except by order of
5 the circuit court.

6 (b) The records of a juvenile proceeding in which a juvenile was transferred to criminal
7 jurisdiction pursuant to ~~section seven hundred ten, article four of this chapter~~ §49-4-710 of this
8 code shall be kept in a separate secure confidential place and the records may not be inspected
9 except by order of the circuit court if the juvenile is subsequently acquitted or found guilty only of

10 an offense other than an offense upon which the waiver or order of transfer was based, or if the
11 offense upon which the waiver or order of transfer was based is subsequently dismissed.

12 (c) To keep the confidentiality of juvenile records, they shall be returned to the circuit court
13 in which the case was pending and be kept in a separate confidential file. The records shall be
14 physically marked to show that they are to remain confidential and shall be securely kept and filed
15 in a manner so that no one can have access to determine the identity of the juvenile, except upon
16 order of the circuit court.

17 (d) Marking the juvenile records to show they are to remain confidential has the legal effect
18 of extinguishing the offense as if it never occurred.

19 (e) The records of a juvenile convicted under the criminal jurisdiction of the circuit court
20 pursuant to ~~subdivision (1), subsection (d), section seven hundred ten, article four of this chapter~~
21 §49-4-710(d)(1) of this code may not be marked and kept as confidential.

22 (f) Any person who willfully violates this section is guilty of a misdemeanor and, upon
23 conviction thereof, shall be fined not more than \$1,000, or confined in jail for not more than six
24 months, or both so fined and confined, and is liable for damages in the amount of \$300 or actual
25 damages, whichever is greater.

26 (g) Notwithstanding any other provision of this code, the records of a juvenile victim of sex
27 trafficking within the meaning of §61-14-1 et seq. of this code, may be immediately accessible to
28 the juvenile victim upon written request to the circuit court in which a juvenile delinquency case
29 was pending.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

§61-8-5. Houses of ill fame and assignation; immunity for minor victims of sex trafficking; penalties; jurisdiction of courts.

1 (a) Any person who shall keep, set up, maintain, or operate any house, place, building,
2 hotel, tourist camp, other structure, or part thereof, or vehicle, trailer, or other conveyance for the

3 purpose of prostitution, lewdness, or assignation; or who shall own any place, house, hotel, tourist
4 camp, other structure, or part thereof, or trailer or other conveyance knowing the same to be used
5 for the purpose of prostitution, lewdness, or assignation, or who shall let, sublet, or rent any such
6 place, premises, or conveyance to another with knowledge or good reason to know of the intention
7 of the lessee or rentee to use such place, premises, or conveyance for prostitution, lewdness, or
8 assignation; or who shall offer, or offer to secure, another for the purpose of prostitution, or for
9 any other lewd or indecent act; or who shall receive or offer or agree to receive any person into
10 any house, place, building, hotel, tourist camp, or other structure, or vehicle, trailer, or other
11 conveyance for the purpose of prostitution, lewdness, or assignation, or to permit any person to
12 remain there for such purpose; or who for another or others shall direct, take, or transport, or offer
13 or agree to take or transport, or aid or assist in transporting, any person to any house, place,
14 building, hotel, tourist camp, other structure, vehicle, trailer, or other conveyance, or to any other
15 person with knowledge or having reasonable cause to believe that the purpose of such directing,
16 taking, or transporting is prostitution, lewdness, or assignation; or who shall aid, abet, or
17 participate in the doing of any acts herein prohibited, shall, upon conviction for the first offense
18 under this section, be punished by imprisonment in the county jail for a period not less than six
19 months nor more than one year, and by a fine of not less than \$100 and not to exceed \$250, and
20 upon conviction for any subsequent offense under this section shall be punished by imprisonment
21 in the penitentiary for a period of not less than one year nor more than five years.

22 (b) Any person who shall engage in prostitution, lewdness, or assignation, or who shall
23 solicit, induce, entice, or procure another to commit an act of prostitution, lewdness, or
24 assignation; or who shall reside in, enter, or remain in any house, place, building, hotel, tourist
25 camp, or other structure, or enter or remain in any vehicle, trailer, or other conveyance for the
26 purpose of prostitution, lewdness, or assignation; or who shall aid, abet, or participate in the doing
27 of any of the acts herein prohibited, shall, upon conviction for the first offense under this section,
28 be punished by imprisonment in the county jail for a period of not less than 60 days nor more than

29 six months, and by a fine of not less than \$50 and not to exceed \$100; and upon conviction for
30 the second offense under this section, be punished by imprisonment in the county jail for a period
31 of not less than six months nor more than one year, and by a fine of not less than \$100 and not
32 to exceed \$250, and upon conviction for any subsequent offense under this section shall be
33 punished by ~~imprisonment~~ confinement in the penitentiary a state correctional facility for not less
34 than one year nor more than three years: Provided, That no minor shall be prosecuted nor held
35 criminally liable for an offense of prostitution in violation this subsection if the court determines
36 that the minor is a victim of an offense under §61-14-1 et seq. of this code.

37 The subsequent offense provision shall apply only to the pimp, panderer, solicitor,
38 operator or any person benefiting financially or otherwise from the earnings of a prostitute.

39 (c) All leases and agreements, oral or written, for letting, subletting, or renting any house,
40 place, building, hotel, tourist camp, or other structure which is used for the purpose of prostitution,
41 lewdness, or assignation, shall be void from and after the date of any person who is a party to
42 such an agreement shall be convicted of an offense hereunder. The term "tourist camp" shall
43 include any temporary or permanent buildings, tents, cabins, or structures, or trailers, or other
44 vehicles which are maintained, offered, or used for dwelling or sleeping quarters for pay.

45 (d) In the trial of any person, charged with a violation of any of the provisions of this section,
46 testimony concerning the reputation or character of any house, place, building, hotel, tourist camp,
47 or other structure, and of the person or persons who reside in or frequent same, and of the
48 defendant or defendants, shall be admissible in evidence in support of the charge. Justices of the
49 peace shall have concurrent jurisdiction with circuit, intermediate, and criminal courts to try and
50 determine the misdemeanors set forth and described in this section.

ARTICLE 14. HUMAN TRAFFICKING.

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

1 (a) Any person who knowingly and willfully traffics an adult, or who aids, assists, or abets
2 in any manner in the trafficking of an adult, is guilty of a felony and, upon conviction thereof, shall

3 be ~~imprisoned~~ confined in a state correctional facility for not less than three nor more than 15
4 years, fined not more than \$200,000, or both ~~imprisoned~~ confined and fined.

5 (b) Any person who knowingly and willfully traffics a minor, or who aids, assists, or abets
6 in any manner in the trafficking of a minor, is guilty of a felony and, upon conviction thereof, shall
7 be ~~imprisoned~~ confined in a state correctional facility for not less than five nor more than 20 years,
8 fined not more than \$300,000, or both ~~imprisoned~~ confined and fined.

§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~~ §61-8-5(b) of this code, a minor shall not
3 be held criminally liable if the Court determines that the minor is a victim of an offense under this
4 article: *Provided,* That subject to proof, a minor so charged shall be rebuttably presumed to be a
5 victim under the 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~~ §61-8-5(b) of this
8 code, including specifically soliciting, inducing, enticing or procuring another to commit an act or
9 offense of prostitution, unless it is determined by the court that the minor was coerced into the
10 criminal behavior.

11 (c) A minor who, under subsection (a) or (b) of this section, is not subject to criminal liability
12 or adjudication as a juvenile delinquent is presumed to be an abused child, as defined in ~~section~~
13 ~~two hundred one, article one, chapter forty nine~~ §49-1-201 of this code, and may be eligible for
14 services under chapter 49 of this code including, but not limited to, appropriate child welfare
15 services including, but not limited to, comprehensive trauma-informed services that are
16 specialized to the needs of child victims of sexual abuse and exploitation or child sex trafficking
17 victims.

**§61-14-9. Petition to vacate and expunge conviction or juvenile delinquency adjudication
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~~ §61-11-26 of this code or the provisions in §49-4-103 of this code,
3 an individual convicted of prostitution in violation of ~~subsection (b), section five, article eight of~~
4 ~~this chapter~~ §61-8-5(b) of this code as a direct result of being a victim of trafficking, may apply by
5 petition to the circuit court in the county of conviction or juvenile adjudication to vacate the
6 conviction or adjudication of juvenile delinquency and expunge the record of conviction or record
7 of adjudication of juvenile delinquency. The court may grant the petition upon a finding that the
8 individual's participation in the offense was a direct result of being a victim of trafficking.

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

11 (c) A petition filed under subsection (a) of this section, any hearing conducted on the
12 petition, and any relief granted are subject to the procedural requirements of ~~section twenty-six,~~
13 ~~article eleven of this chapter~~ §61-11-26 of this code: *Provided*, That the age or criminal history
14 limitations in that section and the provisions of §49-4-103 of this code are inapplicable to victims
15 of human trafficking.

NOTE: The purpose of this bill is to strengthen state law related to sex trafficking. The bill allows for child victims of sex trafficking to access juvenile adjudication records without a waiting period and provides for immunity from prosecution for child victims of sex trafficking. The bill further allows for the criminal liability of a person who aids, assists, or abets the trafficking of an adult or child and provides that a child victim of sex trafficking be eligible for comprehensive and specialized trauma-informed child welfare services. Finally, it allows a child victim of sex trafficking to expunge records of a juvenile delinquency adjudication.

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