

# **WEST VIRGINIA LEGISLATURE**

**2021 REGULAR SESSION**

**ENROLLED**

## **House Bill 2830**

BY DELEGATES GRAVES, ROWAN, D. JEFFRIES, RILEY,

SMITH, CLARK, STEELE, BRIDGES, HOLSTEIN, SYPOLT

AND HANSHAW (MR. SPEAKER)

[Passed April 8, 2021; in effect ninety days from passage.]



1 AN ACT 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 conviction or juvenile delinquency adjudication; establishing penalties.

*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 §49-4-710 of this code shall be kept in a separate secure confidential place  
8 and the records may not be inspected except by order of the circuit court if the juvenile is  
9 subsequently acquitted or found guilty only of an offense other than an offense upon which the

10 waiver or order of transfer was based, or if the offense upon which the waiver or order of transfer  
11 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 §49-4-710(d)(1) of this code may not be marked and kept as confidential.

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

25 (g) Notwithstanding any other provision of this code, the records of a juvenile victim of sex  
26 trafficking within the meaning of §61-14-1 *et seq.* of this code, may be immediately accessible to  
27 the juvenile victim upon written request to the circuit court in which a juvenile delinquency case  
28 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 confinement in a state correctional facility for not less than one year nor more than  
34 three years: *Provided*, That no minor shall be prosecuted nor held criminally liable for an offense  
35 of prostitution in violation this subsection if the court determines that the minor is a victim of an  
36 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 knowingly and willfully  
2 aids, assists, or abets in any manner in the trafficking of an adult, is guilty of a felony and, upon

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

5 (b) Any person who knowingly and willfully traffics a minor, or who knowingly and willfully  
6 aids, assists, or abets in any manner in the trafficking of a minor, is guilty of a felony and, upon  
7 conviction, shall be confined in a state correctional facility for not less than five nor more than 20  
8 years, fined not more than \$300,000, or both 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 §61-8-5(b) of this code, a minor shall not be held criminally liable if the court determines that the  
3 minor is a victim of an offense under this article: *Provided*, That subject to proof, a minor so  
4 charged shall be rebuttably presumed to be a victim under the provisions of this article.

5 (b) This section does not apply in a prosecution or a juvenile proceeding for any of the  
6 other offenses under §61-8-5(b) of this code, including specifically soliciting, inducing, enticing,  
7 or procuring another to commit an act or offense of prostitution, unless it is determined by the  
8 court that the minor was coerced into the criminal behavior.

9 (c) A minor who, under subsection (a) or (b) of this section, is not subject to criminal liability  
10 or adjudication as a juvenile delinquent is presumed to be an abused child, as defined in §49-1-  
11 201 of this code, and may be eligible for services under chapter 49 of this code including, but not  
12 limited to, appropriate child welfare services including, but not limited to, comprehensive trauma-  
13 informed services that are specialized to the needs of child victims of sexual abuse and  
14 exploitation or child sex trafficking 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 §61-11-26 of this  
2 code or the provisions in §49-4-103 of this code, an individual convicted of prostitution in violation

3 of §61-8-5(b) of this code as a direct result of being a victim of trafficking, may apply by petition  
4 to the circuit court in the county of conviction or juvenile adjudication to vacate the conviction or  
5 adjudication of juvenile delinquency and expunge the record of conviction or record of adjudication  
6 of juvenile delinquency. The court may grant the petition upon a finding that the individual's  
7 participation in the offense was a direct result of being a victim of trafficking.

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

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

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

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*Chairman, House Committee*

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*Chairman, Senate Committee*

Originating in the House.

In effect ninety days from passage.

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*Clerk of the House of Delegates*

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*Clerk of the Senate*

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*Speaker of the House of Delegates*

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*President of the Senate*

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The within ..... this the.....  
day of ....., 2021.

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*Governor*