

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2252

FISCAL
NOTE

By Delegates Steele and Kirby

[Introduced January 11, 2023; Referred to the Committee
on the Judiciary]

1 A BILL to amend and reenact §61-14-2, §61-14-3, §61-14-4, §61-14-5, §61-14-6, §61-14-7, and
 2 §61-14-8 of the Code of West Virginia, all relating to increasing criminal penalties for
 3 human trafficking; establishing limitations on parole; and providing immunity from criminal
 4 liability for juvenile victims.

Be it enacted by the Legislature of West Virginia:

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 a determinate sentence of not less
 4 than ~~three~~ 15 years nor more than ~~45~~ 40 years. ~~fined not more than \$200,000, or both imprisoned~~
 5 ~~and fined~~

6 (b) Any person who knowingly and willfully traffics a minor, or who knowingly and willfully
 7 aids, assists, or abets in any manner in the trafficking of a minor, is guilty of a felony and, upon
 8 conviction, shall be confined in a state correctional facility for a determinate sentence of not less
 9 than ~~five~~ 25 years nor more than ~~twenty~~ 100 years. ~~fined not more than \$300,000, or both~~
 10 ~~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 a determinate sentence of
 3 not less than ~~one~~ 15 nor more than ~~five~~ 40 years. ~~fined not more than \$100,000, or both~~
 4 ~~imprisoned and fined~~

5 (b) Any person who knowingly uses a minor in forced labor is guilty of a felony and, upon
 6 conviction thereof, shall be imprisoned in a state correctional facility for a determinate sentence of
 7 not less than ~~three~~ 25 years or more than ~~fifteen~~ 100 years. ~~fined not more than \$300,000, or both~~

8 ~~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, upon
2 conviction thereof, shall be imprisoned in a state correctional facility for a determinate sentence of
3 not less than ~~one~~ 15 nor more than ~~five~~ 40 years. ~~fined not more than \$100,000, or both~~
4 ~~imprisoned and fined~~

5 (b) Any person who knowingly uses a minor in debt bondage is guilty of a felony and, upon
6 conviction thereof, shall be imprisoned in a state correctional facility for a determinate sentence of
7 not less than ~~one~~ 15 years nor more than ~~five~~ 40 years. ~~fined not more than \$100,000, or both~~
8 ~~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 a determinate sentence of not less than ~~three~~ 25 years with no maximum
4 penalty. ~~nor more than fifteen years, fined not more than \$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 class 1 felony and, upon conviction
7 thereof, shall be imprisoned in a state correctional facility for a determinate sentence of not less
8 than ~~ten nor more than twenty years~~ 50 years determinate with no maximum penalty.
9 ~~fined not more than \$300,000, or both imprisoned and fined~~

10 (c) It is not a defense in a prosecution under subsection (b) of this section that the minor
11 consented to engage in commercial sexual activity, or that the defendant believed the minor was
12 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 a determinate sentence of
4 not less than ~~one~~ 25 years nor more than ~~five~~ 100 years. ~~fined not more than \$100,000, or both~~
5 ~~imprisoned and fined~~

6 (b) Notwithstanding the provisions of subsection (a) of this section, any person who
7 knowingly patronizes a minor to engage in commercial sexual activity and who knows or has
8 reason to know that said minor is a victim of sexual servitude, is guilty of a felony and, upon
9 conviction thereof, shall be imprisoned in a state correctional facility for a determinate sentence of
10 not less than ~~three nor more than fifteen years~~, ~~fined not more than \$300,000, or both imprisoned~~
11 ~~and fined~~ 50 years with no maximum penalty.

§61-14-7. General provisions and other penalties.

1 (a) *Separate violations.* — For purposes of this article, each adult or minor victim
2 constitutes a separate offense.

3 (b) *Aggravating circumstance.* —

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

8 (2) Notwithstanding any provision of this code to the contrary, if an individual is convicted of
9 an offense under this article in which the victim is a minor, that individual is not eligible for parole.

10 ~~(2)~~ (3) For purposes of this subsection, "aggravating circumstance" means the individual
11 recruited, enticed or obtained the victim of the offense from a shelter or facility that serves runaway
12 youths, children in foster care, the homeless or victims of human trafficking, domestic violence or
13 sexual assault.

14 (c) *Restitution.* —

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

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

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

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

26 (d) *Eligibility for Compensation Fund.* — Notwithstanding the definition of victim in §14-2A-
27 3 of this code, a victim of any offense under this article is a victim for all purposes of §14-2A-3 of
28 this code: *Provided*, That for purposes of §14-2A-14(b) of this code, if otherwise qualified, a victim
29 of any offense under this article may not be denied eligibility solely for the failure to report to law
30 enforcement within the designated time frame.

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

36 (f) *Forfeiture; Debarment.* —

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

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

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

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

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

48 (4) Any person or business entity convicted of a violation of this article shall be debarred
49 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~~ proceeding for an offense of prostitution in
2 violation of §61-8-5(b) of this code, a minor ~~shall~~ may not be held criminally liable if the court
3 determines that the minor is a victim of an offense under this article: *Provided*, That subject to
4 proof, a minor so charged shall be rebuttably presumed to be a victim under the provisions of this
5 article.

6 (b) This section does not apply in a prosecution or a juvenile proceeding for any of the
7 other offenses under §61-8-5(b) of this code, including specifically soliciting, inducing, enticing, or
8 procuring another to commit an act or offense of prostitution, unless it is determined by the court
9 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 §49-1-
12 201 of this code, and may be eligible for services under Chapter 49 of this code including, but not
13 limited to, appropriate child welfare services including, but not limited to, comprehensive trauma-
14 informed services that are specialized to the needs of child victims of sexual abuse and
15 exploitation or child sex trafficking victims.

NOTE: The purpose of this bill is to increase penalties for 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.