

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 279

By Senators Azinger and Rucker

[Introduced January 18, 2023; referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §61-8-5 of the Code of West Virginia, 1931, as amended, and to
2 amend and reenact §61-14-1, §61-14-6, §61-14-8, and §61-14-9 of said code, all relating
3 to increasing protection for minor victims of the crime of human trafficking; and modifying
4 terms.

Be it enacted by the Legislature of West Virginia:

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 any
9 other lewd or indecent act; or who shall receive or offer or agree to receive any person into any
10 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, be
28 punished by imprisonment in the county jail for a period of not less than 60 days nor more than six
29 months, and by a fine of not less than \$50 and not to exceed \$100; and upon conviction for the
30 second offense under this section, be punished by imprisonment in the county jail for a period of
31 not less than six months nor more than one year, and by a fine of not less than \$100 and not to
32 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 of~~
35 ~~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 such
42 an agreement shall be convicted of an offense hereunder. The term "tourist camp" shall include
43 any temporary or permanent buildings, tents, cabins, or structures, or trailers, or other vehicles
44 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.

§61-14-1. 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 of
6 an individual;

7 (B) The use of a plan, pattern or statement with intent to cause an individual to believe that
8 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 the
25 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 labor
32 or services, that person or another person would suffer serious bodily harm, physical restraint or
33 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 a
42 minor to the minor's parent, legal custodian or legal guardian, so long as the legal guardianship or
43 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 shall
45 it include physical restraint of a minor, or the threat of physical restraint to a minor, by his or her
46 parents, legal custodian or legal guardian if conducted in an otherwise lawful manner and for the
47 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, or the commercial sexual
51 activity of a minor.

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

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

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

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

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

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

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

69 (14) "Sexual servitude" means:

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

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

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

§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 more
4 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 15 years, fined not more than \$300,000, or both imprisoned 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, or
7 procuring another to commit an act or offense of prostitution, unless it is determined by the court
8 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 to
4 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 by a showing that the underlying offense was as a direct result of sex
7 trafficking. The court may grant the petition upon a finding that the individual’s participation in the
8 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 §61-11-26 of this
13 code: *Provided*, That the age or criminal history limitations in that section and the provisions of
14 §49-4-103 of this code are inapplicable to victims of human trafficking.

NOTE: The purpose of this bill is to provide additional protection for the minor victims of sex 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.