

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 484

By Senators Rucker, Deeds, Barrett, and Woodrum

[Introduced January 26, 2023; referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §61-14-1 of the Code of West Virginia, 1931, as amended; and by
2 adding thereto a new section designated §61-14-2a, relating to human smuggling;
3 amending and clarifying definitions; and prohibiting the offense of human smuggling.

Be it enacted by the Legislature of West Virginia:

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 purpose" includes direct or indirect participation in or facilitation of the
19 transportation of one or more individuals for the purpose of:

20 (A) Charging or obtaining a fee for the transportation; or

(B) Obtaining, exchanging, or receiving any thing or item of value or an attempt to conduct any of these activities.

~~(3)~~ (4) "Commercial sexual activity" means sexual activity for which anything of value is given to, promised to or received by a person.

~~(4)~~ (5) "Debt bondage" means inducing an individual to provide:

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

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

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

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

(6) "Drop house" means property or real property that is used to facilitate human smuggling.

(7) "Facilitation" means providing travel arrangement services; payment for the costs of travel; or property that would advance an act of transportation, including a vehicle or other means of transportation, a weapon, false identification, and making lodging available, including by rent, lease, or sale.

~~(5)~~ (8) "Forced labor" means labor or services that are performed or provided by another person and are obtained or maintained through the following:

(A) Threat, either implicit or explicit, deception or fraud, scheme, plan, or pattern or other action intended to cause a person to believe that, if the person did not perform or provide the labor or services, that person or another person would suffer serious bodily harm, physical restraint or deportation;

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

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

(D) Destroying, concealing, removing, confiscating or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document of another person: *Provided*, That "forced labor" does not mean labor or services required to be performed by a person in compliance with a court order or as a required condition of probation, parole, or imprisonment.

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

(9) "Human smuggling" or "smuggling" or "smuggle" means knowingly transporting or procuring the transportation for an individual for a commercial purpose, knowing or having reason to know that the individual transported or to be transported is not:

(A) A citizen of the United States;

(B) A permanent resident alien; or

(C) Otherwise lawfully in this state or entitled to be in this state.

~~(6)~~ (10) "Human trafficking", "trafficking", or "traffics" means knowingly recruiting, transporting, transferring, harboring, receiving, providing, obtaining, isolating, maintaining, or enticing an individual to engage in debt bondage, forced labor, or sexual servitude.

~~(7)~~ (11) "Identification document" means a passport, driver's license, immigration document, travel document or other government-issued identification document, including a document issued by a foreign government.

~~(8)~~ (12) "Labor or services" means activity having economic value.

~~(9)~~ (13) "Minor" means an individual less than eighteen years of age.

~~(10)~~ (14) "Patronize" means giving, agreeing to give or offering to give anything of value to another person in exchange for commercial sexual activity.

~~(14)~~ (15) "Person" means an individual, estate, business or nonprofit entity, or other legal entity. The term does not include a public corporation or government or governmental subdivision, agency or instrumentality.

(16) "Procurement of transportation" means any participation in or facilitation of transportation and includes providing services that facilitate transportation including travel arrangement services or money transmission services or providing property that facilitates transportation, including a weapon, a vehicle, or other means of transportation or false identification, or selling, leasing, renting, or otherwise making available a drop house.

~~(42)~~ (17) "Serious harm" means harm, whether physical or nonphysical, including psychological, economic, or reputational, to an individual which would compel a reasonable individual of the same background and in the same circumstances to perform or continue to perform labor or services or sexual activity to avoid incurring the harm.

~~(43)~~ (18) "Sexual activity" means sexual contact, sexual intercourse, or sexual intrusion, as defined in section one, article eight-b of this chapter, or sexually explicit conduct, as defined in section one, article eight-c of this chapter.

~~(14)~~ (19) "Sexual servitude" means:

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

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

~~(15)~~ (20) "Victim" means an individual who is subjected to human trafficking, regardless of whether a perpetrator is prosecuted or convicted.

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

(a) Any person who knowingly and willfully smuggles an adult, or who knowingly and

2 willfully aids, assists, or abets in any manner in the smuggling of an adult, is guilty of a felony and,
3 upon conviction, shall be confined in a state correctional facility for not less than three nor more
4 than 15 years, fined not more than \$200,000, or both confined and fined.

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

NOTE: The purpose of this bill relates to human smuggling. The bill amends and clarifies definitions; and prohibits the offense of human smuggling.

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