

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

ENGROSSED

Committee Substitute

for

House Bill 2894

By Delegates Ridenour, Butler, Ward, Jennings,
Hillenbrand, Mallow, Kimble, Maynor, Phillips, and
Akers

[Originating in the Committee on the Judiciary;

Reported on March 26, 2025]

1 A BILL to amend and reenact §61-14-1, §61-14-2, §61-14-3, §61-14-4, §61-14-5, §61-14-6, §61-
2 14-7, and §61-14-8 and creating a new section §61-14-9 of the Code of West Virginia,
3 1931, as amended, relating to human trafficking, adding a definition for "illegal alien";
4 general provisions and penalties; and providing that illegal aliens are not eligible for
5 restitution.

Be it enacted by the Legislature of West Virginia:

ARTICLE 14. HUMAN TRAFFICKING AND HUMAN SMUGGLING.

§61-14-1. Definitions.

1 When used in this article, the following words and terms shall have the meaning specified
2 unless the context clearly indicates a different meaning:

3 (1) "Adult" "Adult" means an individual 18 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, nor does it include the physical restraint of a minor, or the threat

thereof, by the minor's parent, legal guardian, or legal custodian, when lawfully conducted for any otherwise lawful purpose.

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

(4) "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.

(5) "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.

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

50 (6) "Human Smuggling", "smuggling", or "smuggles" means knowingly transporting,
51 transferring, receiving, isolating, enticing, or harboring an illegal alien to avoid enforcement of the
52 laws of this state, another state, or the United States: *Provided*, That term does not apply when an
53 illegal alien is voluntarily transported by an immediate family member: *Provided*, That the term
54 does not include any person acting within the scope of employment, or hired or contracted, by the
55 federal government or another state, who is acting in a manner consistent with the laws of this
56 state and the United States, and who is transporting an illegal alien through this state: *Provided*,
57 *however*, That the illegal alien being transported through this state shall not be transported to this
58 state for permanent placement.

59 ~~(6)~~ (7) "Human trafficking", "trafficking", or "traffics" means knowingly recruiting,
60 transporting, transferring, harboring, receiving, providing, obtaining, isolating, maintaining, or
61 enticing an individual to travel to a location, including actions intended to engage in debt bondage,
62 forced labor, or sexual servitude.

63 ~~(7)~~ (8) "Identification document" means a passport, driver's license, immigration
64 document, travel document or other government-issued identification document, including a
65 document issued by a foreign government.

66 (9) "Illegal alien" means any individual who has entered the United States without
67 authorization and is subject to removal if apprehended, or, an individual who was lawfully admitted

into the United States but has since violated the terms of admission, or otherwise is without legal status, and is a deportable alien as provided in ~~8 U.S.C. § 1227~~ the United States Code.

For the purposes of this article, "Immediate family member" means a person's spouse, parent or step-parent, child, stepchild, or adopted child, grandparent or step-grandparent, grandchild or step-grandchild, sibling, including step-siblings and adopted siblings. The terms "step" and "adopted" include persons related by marriage or legal adoption in the same manner as those related by blood.

~~(8)~~ (10) "Labor or services" means activity having economic value.

~~(9)~~ (11) "Minor" means a person younger than 18 years of age or a person representing himself or herself to be a minor. Any prosecution, pursuant to this article, relating to a person that is representing himself or herself to be a minor shall be limited to investigations being conducted or overseen by law-enforcement officers.

~~(10)~~ (12) "Patronize" means giving, agreeing to give, or offering to give anything of value to another person in exchange for commercial sexual activity.

~~(11)~~ (13) "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.

~~(12)~~ (14) "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.

~~(13)~~ (15) "Sexual activity" means sexual contact, sexual intercourse, or sexual intrusion, as defined in §61-8b-1 of this code, or sexually explicit conduct, as defined in §61-8-1 of this code.

~~(14)~~ (16) "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.

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

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

(a) Any person who knowingly and willfully traffics an adult, or who knowingly and willfully aids, assists, or abets in any manner in the trafficking of an adult, is guilty of a felony and, upon conviction, shall be confined in a state correctional facility for an indeterminate sentence of not less than three years nor more than 15 years ~~fined not more than \$200,000, or both imprisoned and fined.~~

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

(c) Any person who knowingly and willfully smuggles an adult, or who knowingly and willfully aids, assists, or abets in any manner in the smuggling of an adult, is guilty of a felony and, upon conviction, shall be confined in a state correctional facility for an indeterminate sentence of not less than two years nor more than 10 years.

(d) Any person who knowingly and willfully smuggles a minor, or who knowingly and willfully aids, assists, or abets in any manner in the smuggling of a minor, is guilty of a felony and, upon conviction, shall be confined in a state correctional facility for an indeterminate sentence of not less than three nor more than 15 years.

(e) Whenever a vessel, vehicle, aircraft- and the owner, operator, master, pilot, conductor, driver, or any other person in charge thereof- is subject to criminal penalties pursuant to a conviction for a violation of §61-14-2 of this code, the conveyance involved shall be subject to

seizure, forfeiture, and sale in accordance with the provisions of §60A-7-705 and §60A-7-707 of this code, provided that the owner knowingly and willfully engaged in human trafficking or human smuggling in violation of §61-14-2 of this code.

§61-14-3. Use of forced labor; penalties.

(a) Any person who knowingly uses an adult in forced labor is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for an indeterminate sentence of not less than ~~one~~ three nor more than ~~five~~ 15 years. ~~fined not more than \$100,000, or both imprisoned and fined~~

(b) Any person who knowingly uses a minor in forced labor is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for an indeterminate sentence of not less than ~~three~~ five years or more than ~~fifteen~~ 20 years. ~~fined not more than \$300,000, or both imprisoned and fined~~

§61-14-4. Use of persons in debt bondage; penalties.

(a) Any person who knowingly uses an adult in debt bondage is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for an indeterminate sentence of not less than ~~one~~ three nor more than ~~five~~ 15 years. ~~fined not more than \$100,000, or both imprisoned and fined~~

(b) Any person who knowingly uses a minor in debt bondage is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for an indeterminate sentence of not less than ~~one~~ five years nor more than ~~five~~ 20 years. ~~fined not more than \$100,000, or both imprisoned and fined~~

§61-14-5. Sexual servitude; penalties.

(a) Any person who knowingly uses coercion to compel an adult to engage in commercial sexual activity is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a determinate sentence of not less than ~~three~~ 25 years. ~~nor more than fifteen years, fined not more than \$200,000, or both imprisoned and fined~~

(b) Any person who knowingly maintains or makes available a minor for the purpose of engaging the minor in commercial sexual activity is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a determinate sentence of not less than ten nor more than twenty years ~~fined not more than \$300,000, or both imprisoned and fined 50 years.~~

(c) It is not a defense in a prosecution under subsection (b) of this section that the minor consented to engage in commercial sexual activity, or that the defendant believed the minor was an adult.

§61-14-6. Patronizing a victim of sexual servitude; penalties.

(a) Any person who knowingly patronizes another in commercial sexual activity and who knows that such person patronized is a victim of sexual servitude, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for an indeterminate sentence of not less than one two years nor more than five 10 years. ~~fined not more than \$100,000, or both imprisoned and fined~~

(b) Notwithstanding the provisions of subsection (a) of this section, any person who knowingly patronizes a minor to engage in commercial sexual activity and who knows or has reason to know that ~~said~~ the minor is a victim of sexual servitude, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for an indeterminate sentence of not less than three five nor more than fifteen 20 years, ~~fined not more than \$300,000, or both imprisoned and fined~~

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

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

(b) Any individual or entity that transports illegal aliens is engaged in human smuggling.

~~(b)~~ (c) Aggravating circumstance. —

(1) Notwithstanding any provision of this code to the contrary, if an individual is convicted of an offense under this article and the trier of fact makes a finding that the offense involved an

aggravating circumstance, the individual shall not be eligible for parole before serving ~~three-five~~ years in a state correctional facility when the sentence is of an indeterminate nature.

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

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

(A) The individual recruited, enticed or obtained the victim from a shelter or facility that provides services to runaway youth, children in foster care, the homeless, or victims of human trafficking, domestic violence, or sexual assault; or

(B) The human trafficking or smuggling offense involved one or more of the following:

(i) The use of a deadly weapon, or the threat of use of a deadly weapon;

(ii) Bodily injury or disfigurement to any individual who was trafficked or smuggled;

(iii) The commission of a sexual offense against any individual who was trafficked or smuggled or causing individuals being trafficked or smuggled to become a victim of a sexual offense; or

(iv) Causing any individual to engage in sexual servitude.

(c) Restitution. —

(1) The court shall order a person convicted of an offense under this article to pay restitution to the victim of the offense: Provided, That if the victim of the offense is an illegal alien then the allowable restitution may only include reasonably related medical expenses and/or transportation expenses to return the illegal alien to his or her place of origin. Restitution may also be awarded to any third parties, public or private, who incurred costs as a result of any offense under this article.

(2) A judgment order for restitution may be enforced by the state or a victim named in the order to receive the restitution in the same manner as a judgment in a civil action in accordance with §61-11A-4 of this code, including filing a lien against the person, firm or corporation against whom restitution is ordered.

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

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

(d) Eligibility for Compensation Fund. — Notwithstanding the definition of victim in §14-2A-3 of this code, a victim of any offense under this article is a victim for all purposes of §14-2A-1 *et seq.* of this code: *Provided*, That for purposes of §14-2A-1(b) of this code, if otherwise qualified, a victim of any offense under this article may not be denied eligibility solely for the failure to report to law enforcement within the designated time frame.

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

(f) Forfeiture; Debarment. —

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

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

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

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

(3) Forfeiture actions under this section shall use the procedure set forth in article §60A-7-1 *et seq.* of this code.

(4) Any person or business entity convicted of a violation of this article shall be debarred from state or local government contracts.

§61-14-8. Immunity for minor victim of sex trafficking.

(a) In a prosecution or a juvenile ~~prosecution~~ proceeding for an offense of prostitution in violation of §61-8-5(b) of this code, a minor shall may not be held criminally liable if the court determines that the minor is a victim of an offense under this article: *Provided*, That subject to proof, a minor so charged shall be rebuttably presumed to be a victim under the provisions of this article.

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

(c) A minor who, under subsection (a) or (b) of this section, is not subject to criminal liability or adjudication as a juvenile delinquent is presumed to be an abused child, as defined in §49-1-201 of this code, and may be eligible for services under Chapter 49 of this code including, but not limited to, appropriate child welfare services including, but not limited to, comprehensive trauma-informed services that are specialized to the needs of child victims of sexual abuse and exploitation or child sex trafficking victims.

§61-14-9. Exemption for medical, mental health, and legal services.

Notwithstanding any other provision of this code, this article does not apply to any person providing medical or mental health services to an illegal alien, or to any licensed attorney or their

- 3 support staff who maintain an active attorney-client relationship with an illegal alien and are
- 4 engaged in either a criminal matter against the illegal alien or litigation concerning the illegal
- 5 alien's legal status under federal immigration or naturalization law.