WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2012

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 4053

(By Delegates Brown, Poore, Fleischauer, Guthrie, Moore, Frazier, Sobonya and L. Phillips)

Passed March 10, 2012

To Take Effect Ninety Days From Passage
AN ACT to amend and reenact §30-29-3 of the Code of West Virginia, 1931, as amended; to amend and reenact §61-2-14a of said code; and to amend said code by adding a new section, designated §61-2-17, all relating to kidnapping and human trafficking; authorizing the Governor's Committee on Crime, Delinquency and Correction to establish standards governing training to effectively investigate human trafficking offenses and procedures for implementation of a course in investigation of human trafficking offenses; amending the elements of the crime of kidnapping and providing certain defenses and exceptions; creating the new criminal offense of human trafficking; defining certain terms; specifying the penalties for the new human trafficking offense; and including human trafficking as a qualifying offense in the prohibition against operating a criminal enterprise.

Be it enacted by the Legislature of West Virginia:
That §30-29-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §61-2-14a of said code be amended and reenacted; and that said code be amended by adding a new section, designated §61-2-17, all to read as follows:

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.

§30-29-3. Duties of the Governor's committee and the subcommittee.

(a) Upon recommendation of the subcommittee, the Governor's committee shall, by or pursuant to rules proposed for legislative approval in accordance with article three, chapter twenty-nine-a of this code:

(1) Provide funding for the establishment and support of law-enforcement training academies in the state;

(2) Establish standards governing the establishment and operation of the law-enforcement training academies, including regional locations throughout the state, in order to provide access to each law-enforcement agency in the state in accordance with available funds;

(3) Establish minimum law-enforcement instructor qualifications;

(4) Certify qualified law-enforcement instructors;

(5) Maintain a list of approved law-enforcement instructors;
(6) Promulgate standards governing the qualification of law-enforcement officers and the entry-level law-enforcement training curricula. These standards shall require satisfactory completion of a minimum of four hundred classroom hours, shall provide for credit to be given for relevant classroom hours earned pursuant to training other than training at an established law-enforcement training academy if earned within five years immediately preceding the date of application for certification, and shall provide that the required classroom hours can be accumulated on the basis of a part-time curricula spanning no more than twelve months, or a full-time curricula;

(7) Establish standards governing in-service law-enforcement officer training curricula and in-service supervisory level training curricula;

(8) Certify organized criminal enterprise investigation techniques with a qualified anti-racial profiling training course or module;

(9) Establish standards governing mandatory training to effectively investigate organized criminal enterprises as defined in article thirteen, chapter sixty-one of this code, while preventing racial profiling, as defined in section ten of this article, for entry level training curricula and for law-enforcement officers who have not received such training as certified by the Governor’s committee as required in this section;

(10) Establish, no later than July 1, 2011, procedures for implementation of a course in investigation of organized criminal enterprises which includes an anti-racial training module to be available on the Internet or otherwise to all law-enforcement officers. The procedures shall include the frequency with which a law-enforcement officer shall receive
training in investigation of organized criminal enterprises and
anti-racial profiling, and a time frame for which all law-
enforcement officers must receive such training: Provided,
That all law-enforcement officers in this state shall receive
such training no later than July 1, 2012. In order to
implement and carry out the intent of this section, the
Governor’s committee may promulgate emergency rules
pursuant to section fifteen, article three, chapter twenty-nine-
a of this code;

(11) Certify or decertify or reactivate law-enforcement
officers, as provided in sections five and eleven of this
article;

(12) Establish standards and procedures for the reporting
of complaints and certain disciplinary matters concerning
law-enforcement officers and for reviewing the certification
of law-enforcement officers. These standards and procedures
shall provide for preservation of records and access to records
by law-enforcement agencies and conditions as to how the
information in those records is to be used regarding an
officer’s law-enforcement employment by another law-
enforcement agency;

(A) The subcommittee shall establish and manage a
database that is available to all law-enforcement agencies in
the state concerning the status of any person’s certification.

(B) Personnel or personal information not resulting in a
criminal conviction is exempt from disclosure pursuant to the
provisions of chapter twenty-nine-b of this code.

(13) Seek supplemental funding for law-enforcement
training academies from sources other than the fees collected
pursuant to section four of this article;
(14) Any responsibilities and duties as the Legislature may, from time to time, see fit to direct to the committee; and

(15) Submit, on or before September 30 of each year, to the Governor, and upon request to individual members of the Legislature, a report on its activities during the previous year and an accounting of funds paid into and disbursed from the special revenue account established pursuant to section four of this article.

(b) In addition to the duties authorized and established by this section, the Governor’s committee may:

(1) Establish training to effectively investigate human trafficking offenses as defined in article two, chapter sixty of this code, for entry level training curricula and for law-enforcement officers who have not received such training as certified by the committee as required by this section; and

(2) Establish procedures for the implementation of a course in investigation of human trafficking offenses. The course may include methods of identifying and investigating human trafficking and methods for assisting trafficking victims. In order to implement and carry out the intent of this subdivision, the committee may promulgate emergency rules pursuant to section fifteen, article three, chapter twenty-nine-a of this code.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-14a. Kidnapping; penalty.

(a) Any person who unlawfully restrains another person with the intent:
(1) To hold another person for ransom, reward, or
concession;

(2) To transport another person with the intent to inflict
bodily injury or to terrorize the victim or another person; or

(3) To use another person as a shield or hostage, shall be
guilty of a felony and, upon conviction, shall be punished by
confinement by the division of corrections for life, and,
notwithstanding the provisions of article twelve, chapter
sixty-two of this code, shall not be eligible for parole.

(b) The following exceptions shall apply to the penalty
contained in subsection (a):

(1) A jury may, in their discretion, recommend mercy,
and if such recommendation is added to their verdict, such
person shall be eligible for parole in accordance with the
provisions of said article twelve;

(2) If such person pleads guilty, the court may, in its
discretion, provide that such person shall be eligible for
parole in accordance with the provisions of said article
twelve, and, if the court so provides, such person shall be
eligible for parole in accordance with the provisions of said
article twelve in the same manner and with like effect as if
such person had been found guilty by the verdict of a jury
and the jury had recommended mercy;

(3) In all cases where the person against whom the
offense is committed is returned, or is permitted to return,
avive, without bodily harm having been inflicted upon him or
her, but after ransom, money or other thing, or any
concession or advantage of any sort has been paid or yielded,
the punishment shall be confinement by the division of
corrections for a definite term of years not less than twenty
nor more than fifty; or
(4) In all cases where the person against whom the offense is committed is returned, or is permitted to return, alive, without bodily harm having been inflicted upon him or her, but without ransom, money or other thing, or any concession or advantage of any sort having been paid or yielded, the punishment shall be confinement by the division of corrections for a definite term of years not less than ten nor more than thirty.

(c) For purposes of this section: "To use another as a hostage" means to seize or detain and threaten to kill or injure another in order to compel a third person or a governmental organization to do or abstain from doing any legal act as an explicit or implicit condition for the release of the person detained.

(d) Notwithstanding any other provision of this section, if a violation of this section is committed by a family member of a minor abducted or held hostage and he or she is not motivated by monetary purposes, but rather intends to conceal, take, remove the child or refuse to return the child to his or her lawful guardian in the belief, mistaken or not, that it is in the child’s interest to do so, he or she shall be guilty of a felony and, upon conviction thereof, be confined in a correctional facility for not less than one or more than five years or fined not more than one thousand dollars, or both.

(e) Notwithstanding any provision of this code to the contrary, where a law-enforcement agency of this state or a political subdivision thereof receives a complaint that a violation of the provisions of this section has occurred, the receiving law-enforcement agency shall notify any other law-enforcement agency with jurisdiction over the offense, including, but not limited to, the state police and each agency so notified, shall cooperate in the investigation forthwith.
(f) It shall be a defense to a violation of subsection (d) of this section, that the accused’s action was necessary to preserve the welfare of the minor child and the accused promptly reported his or her actions to a person with lawful custody of the minor, to law-enforcement or to Child Protective Services division of the Department of Health and Human Resources.

§61-2-17. Human Trafficking; Criminal penalties.

(a) As used in this section:

(1) “Debt bondage” means the status or condition of a debtor arising from a pledge by the debtor of the debtor’s personal services or those of a person under the debtor’s control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

(2) “Forced labor or services” means labor or services that are performed or provided by another person and are obtained or maintained through a person’s:

(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 or physical restraint: Provided, That this does not include work or services provided by a minor to the minor’s parent or legal guardian so long as the legal guardianship or custody of the minor was not obtained for the purpose compelling the minor to participate in commercial sex acts or sexually explicit performance, or perform forced labor or services.
(B) Physically restraining or threatening to physically restrain a person;

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

(D) Knowingly 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.

"Forced labor or services" 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.

(3) "Human trafficking" means the labor trafficking or sex trafficking involving adults or minors where two or more persons are trafficked within any one year period.

(4) "Labor trafficking" means the promotion, recruitment, transportation, transfer, harboring, enticement, provision, obtaining or receipt of a person by any means, whether a United States citizen or foreign national, for the purpose of:

(A) Debt bondage or forced labor or services;

(B) Slavery or practices similar to slavery.

(5) "Sex trafficking of minors" means the promotion, recruitment, transportation, transfer, harboring, enticement, provision, obtaining or receipt of a person under the age of eighteen by any means, whether a United States citizen or foreign national, for the purpose of causing the minor to engage in sexual acts, or in sexual conduct violating the provisions of subsection (b), section five, article eight of this chapter or article eight-c of this chapter.
(6) "Sex trafficking of adults" means the promotion, recruitment, transportation, transfer, harboring, enticement, provision, obtaining or receipt of a person eighteen years of age or older, whether a United States citizen or foreign national, for the purposes of engaging in violations of subsection (b), section five, article eight of this chapter by means of force, threat or deception.

(b) Any person who knowingly and wilfully engages in human trafficking is guilty of a felony and upon conviction shall be incarcerated in a state correctional facility for an indeterminate sentence of not less than three nor more than fifteen years or fined not more than $200,000, or both.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

To take effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within is approved this the 3rd day of April, 2012.

Governor
PRESENTED TO THE GOVERNOR

MAR 2 3 2012

Time 3:35 pm