

West Virginia State Report State Ratings 2014

The Polaris annual state ratings process tracks the presence or absence of 10 categories of state statutes that Polaris believes are critical to a comprehensive anti-trafficking legal framework. It is important to note that these 10 categories are not exhaustive of all the important legislation that helps combat human trafficking in a given state. Moreover, the ratings do not assess the effectiveness or implementation of these laws, nor the anti-trafficking efforts of task forces, law enforcement, prosecutors, judges, service providers, and advocates in the state. The purpose of the annual state ratings process is to document laws on the books, to motivate legislators and policy advocates, and to focus the attention of states on the statutes that still need to be enacted in order to achieve a strong anti-trafficking legal framework.

Rating: Tier Two (yellow)

Total Points: 5

Credited Categories: 1 Sex Trafficking; 2 Labor Trafficking; 4(a) Training for Law Enforcement; 5 No Requirement of Force, Fraud, or Coercion for Minor Victims of Sex Trafficking; and 9 Civil Remedy.

Categories Still Needed: 3(a) Asset Forfeiture; 3(b) Investigative Tools; 4(b) Human Trafficking Task Force; 6 Posting of a Hotline; 7 Safe Harbor for Minors; 8 Victim Assistance; and 10 Vacating Convictions.

Category By Category Break-Down:

Category 1: Sex Trafficking Statute

§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, 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 willfully 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.

Category 2: Labor Trafficking Statute

Yes. See §61-2-17.

Category 3(a): Asset Forfeiture

None.

Category 3(b): Investigative Tools

None.

Category 4(a): Training for Law Enforcement

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

(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.

Category 4(b): Human Trafficking Task Force

None.

Category 5: No Requirement of Force, Fraud, or Coercion for Sex Trafficking of Minors

Yes. See §61-2-17(a)(5).

Category 6: Posting of a Human Trafficking Hotline

None.

Category 7: Safe Harbor

None.

Category 8: Victim Assistance

None.

Category 9: Civil Remedy

§ 61-2-17. Human trafficking; criminal penalties.

(c) Any person who is a victim of human trafficking may bring a civil action in circuit court. The court may award actual damages, compensatory damages, punitive damages, injunctive relief and any other appropriate relief. A prevailing plaintiff is also entitled to attorney's fees and costs. Treble damages shall be awarded on proof of actual damages where defendant's acts were willful and malicious.

Category 10: Vacating Convictions

*Recognition of efforts, but no credit awarded.

§ 61-2-17. Human trafficking; criminal penalties

(f) Notwithstanding the age and criminal history limitations set forth in section twenty-six, article eleven of this chapter, any person convicted of prostitution in violation of subsection (b), section five, article eight of this chapter where the conviction was a result of the person being a victim of human trafficking as defined in this section, may petition the circuit court of the county of conviction for an order of expungement pursuant to section twenty-six, article eleven of this chapter.

No victim of human trafficking seeking relief under this subsection shall be required to prove her or she has rehabilitated himself or herself in order to obtain expungement.



If you would like assistance in enacting laws to fill in the gaps, please contact the Polaris Policy Program at policy@polarisproject.org.