



COMMONWEALTH of VIRGINIA

Office of the Attorney General

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VIRGINIA ANTI-TRAFFICKING LAWS: CRIMINAL

SUBSTANTIVE LAWS: LABOR TRAFFICKING

§ 18.2-47(B). Abduction for Forced Labor. “Any person who, by force, intimidation or deception, and without legal justification or excuse, seizes, takes, transports, detains or secretes another person with the intent to subject him to forced labor or services shall be deemed guilty of abduction.”

- **Punishment:*** 1 to 10 years in prison, **or** 12 months in jail and fine of up to \$2,500.
- **Elements of the Offense:**
 1. *Use of force, intimidation or deception:*
 - **Force:**
 - Minimal amount/threats of force/violence sufficient. Clanton v. Comm., 53 Va. App. 561, 673 S.E.2d 904 (2009) (*en banc*).
 - Pointing gun at victim. Wilson v. Comm., 249 Va. 95, 452 S.E.2d 669 (1995).
 - Pointing gun at another while taking victim. Clanton.
 - Stranger grabbing 10-year-old victim’s wrist and refusing to let go, forcing the victim to kick and physically struggle to break free. Moreno v. Comm., UNPUBLISHED (2000).
 - **Intimidation:**
 - Includes “destroying, concealing, confiscating, withholding, or threatening to withhold a passport, immigration document, or other governmental identification.” § 18.2-47(B).
 - Includes “threatening to report another as being illegally present in the United States.” § 18.2-47(B).
 - **Deception:**
 - Specific lies to the victim to get them to go willingly. Jerman v. Dir., Dep’t of Corr., 267 Va. 432 (2004).
 - Need not be verbalized, can be inferred from conduct observed by others. Turner v. Comm., 56 Va. App. 391 (2010) (*en banc*) (pending appeal in SCV).

* The sentencing range for felonies can be found in Va. Code § 18.2-10.



2. *Seizes, takes, transports, detains or secretes another:* Also known as the “Asportation/Detention Element.”
 - The slightest asportation or detention will suffice.
3. *Without legal justification or excuse:* Without “[a] lawful or sufficient reason for one’s acts or omissions.” Taylor v. Comm., 260 Va. 683, 690, 537 S.E.2d 592 (2000).
 - Justification/necessity defense.
 - Biological parent of child victim does not qualify. Taylor.
 - Victims trespassing on defendant’s property, and defendant holding them at gunpoint until police arrive, does not qualify. Hitchcock v. Comm., UNPUBLISHED (1998).
4. *Intent to subject him to forced labor or services:*
 - Without a direct admission, must rely on circumstantial evidence of intent, and the defendant’s acts, conduct, and statements may be considered to discern his state of mind. Long v. Comm., 8 Va. App. 194, 379 S.E.2d 473 (1989).
 - “Forced labor or services” undefined in the Va. Code – courts will rely on the plain and ordinary meaning of the words. (Common sense).
 - Forced: Enforced or compulsory.
 - Labor or Services: Work.

§ 18.2-59. Extortion. “Any person who (i) threatens injury to the character, person, or property of another person, (ii) accuses him of any offense, (iii) threatens to report him as being illegally present in the United States, or (iv) knowingly destroys, conceals, removes, confiscates, withholds or threatens to withhold, or possesses any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person, and thereby extorts money, property, or pecuniary benefit or any note, bond, or other evidence of debt from him or any other person, is guilty of a Class 5 felony.”

- Punishment: 1 to 10 years in prison, *or* 12 months in jail and fine of up to \$2,500.
- Elements of Offense:
 1. *Extorts money, property or pecuniary benefit by –*
 2. *(a) Threatening injury to character, person or property, or (b) threatening to report him as illegal, or (c) knowingly destroys, withholds, etc. travel or immigration documents of the victim.*
- Defining Threat: “[C]ommunication relaying an intention to injure another’s person or property which, taken in context, reasonably causes the listener to believe that the speaker will carry out his intention.” DiMaio v. Comm., 46 Va. App. 755, 621 S.E.2d 696 (2005).
 - Evaluated in light of all of the circumstances under which the statement was made.
 - No need to be direct; veiled threats implying harm sufficient.



§ 18.2-356. Receiving money for procuring person. (*Effective July 1, 2011*) “Any person who receives any money or other valuable thing for or on account of . . . (ii) causing any person to engage in forced labor or services . . . shall be guilty of a Class 4 felony.”

- **Punishment:** 2 to 10 years in prison, plus of fine of up to \$100,000.
- **Elements of the Offense:**
 1. *Receipt of money or other valuable thing:*
 - Any money or thing of value, no matter what the amount, received by the defendant.
 2. *For or on account of:* Knowledge element.
 - Must prove defendant knew money he received was for illegal activity. Collins v. Comm., 226 Va. 223, 307 S.E.2d 884 (1983).
 3. *Causing any person:*
 - Cause: To be the cause of; bring about.
 - Must be another person. Stewart v. Comm., 225 Va. 473, 303 S.E.2d 877 (1983).
 4. *To engage in forced labor or services:*
 - “Forced labor or services” undefined in the Va. Code – courts will rely on the plain and ordinary meaning of the words. (Common sense)
 - Forced: Enforced or compulsory.
 - Labor or Services: Work.

SUBSTANTIVE LAWS: SEX TRAFFICKING

§ 18.2-48. Abduction. (*Effective July 1, 2011*) “Abduction . . . (ii) of any person with intent to defile such person, (iii) of any child under sixteen years of age for the purpose of concubinage or prostitution, (iv) of any person for the purpose of prostitution, or (v) of any minor for the purpose of manufacturing child pornography shall be punishable as a Class 2 felony.”

- **Punishment:** 20 years to life in prison, and a fine up to \$100,000.
- **Elements of Offense:** Enhanced penalty for abduction (§ 18.2-47(A)) done with one of the stated purposes; elements are the same as those for general abduction statute.
 1. *Use of force, intimidation or deception:*
 - Force:
 - Minimal amount/threats of force/violence sufficient. Clanton.
 - Pointing gun at victim. Wilson.
 - Pointing gun at another while taking victim. Clanton.
 - Stranger grabbing 10-year-old’s wrist and refusing to let go, forcing the victim to kick and physically struggle to break free. Moreno.
 - Intimidation:



- Includes “destroying, concealing, confiscating, withholding, or threatening to withhold a passport, immigration document, or other governmental identification.” § 18.2-47(B).
- Includes “threatening to report another as being illegally present in the United States.” § 18.2-47(B).
- Deception:
 - Specific lies to the victim to get them to go willingly. Jerman.
 - Need not be verbalized, can be inferred from conduct observed by others. Turner.
- 2. *Seizes, takes, transports, detains or secretes another*: Also known as the “Asportation/Detention Element.”
 - The slightest asportation or detention will suffice.
- 3. *Without legal justification or excuse*: Without “[a] lawful or sufficient reason for one’s acts or omissions.” Taylor.
 - Justification/necessity defense.
 - Biological parent of child victim does not qualify. Taylor.
 - Victims trespassing on defendant’s property, and defendant holding them at gunpoint until police arrive, does not qualify. Hitchcock.
- 4. *With the intent to . . . /For the purpose of . . .*
 - Defile: Synonymous with “sexually molest.” Crawford.
 - Can be useful in gang abductions, where victims sexually assaulted before placing them into prostitution.
 - Child under 16 for Concubinage/Prostitution
 - Concubinage is treating one as a secondary wife or mistress.
 - Conviction under this provision places the defendant on the sex offender registry.
 - Adult Prostitution
 - Child Under 18 for Manufacture of Child Pornography

§ 18.2-346(B). Solicitation of prostitution. Prohibits offering money or its equivalent to another for the purpose of engaging in sexual acts and “thereafter does any substantial act in furtherance thereof.”

- Punishment: Class 1 misdemeanor; Up to 12 months in jail.

§ 18.2-347. Keeping, residing in or frequenting a bawdy place (brothel). Prohibits “keep[ing]” “any bawdy place.” Also punishes one who frequents such a place “with an immoral purpose.”

- Punishment: Class 1 misdemeanor; Up to 12 months in jail.



- Elements of Offense:
 - “Bawdy place” is any place, whether inside a building or not, used for prostitution. § 18.2-347.
 - Motel parking lot. Harrison v. City of Norfolk, 16 Va. App. 572, 431 S.E.2d 658 (1993).
 - Each day in operation is a separate offense.
 - Can use general reputation of place as proof it is used for prostitution.

§ 18.2-348. Aiding prostitution. Makes it unlawful for any person or “employee” of “any firm, association or corporation, with knowledge of, or good reason to believe, the immoral purpose of such visit,” either (1) “to take or transport . . . or offer to take or transport . . . any person to a place . . . used or to be used for the purpose of . . . prostitution” or (2) to “procure or assist in procuring for the purpose of illicit sexual intercourse” or (3) “to give any information or direction to any person” “with intent to enable such person to commit an act of prostitution.”

- Punishment: Class 1 misdemeanor; Up to 12 months in jail.
- Elements of Offense:
 - *Substantial act in furtherance of prostitution.* Fine v. Comm., 31 Va. App. 636, 525 S.E.2d 69 (2000) (discussion of money not enough).
 - Comes from the language of the solicitation of prostitution statute.
 - *Procure* means to take care of, bring about, obtain: achieve. Bakran v. Comm., 57 Va. App. 197, 700 S.E.2d 471 (2010) (on appeal to SCV).
 - *Transportation* can be by foot or any vehicle.

§ 18.2-349. Using vehicles to promote prostitution. Prohibits “any owner or chauffeur of any vehicle, with knowledge or reason to believe the same is to be used for such purpose, to use the same or to allow the same to be used for the purpose of prostitution or unlawful sexual intercourse, or to aid or promote such prostitution or unlawful sexual intercourse by the use of any such vehicle.”

- Punishment: Class 1 misdemeanor; Up to 12 months in jail.
- Elements of Offense:
 - *Substantial act in furtherance of prostitution.* Fine (discussion of money not enough).
 - Comes from the language of the solicitation of prostitution statute.
 - *Owner or chauffeur:* One using a vehicle owned by another does not fall under this section.
 - Allowing another to use vehicle, knowing it will be used for the purpose of aiding or promoting prostitution.
 - Covers traffickers using their vehicle to drive victims to the “Johns.”



§ 18.2-355. Taking person for prostitution, or consenting thereto. Prohibits (1) any person who “for purposes of prostitution or unlawful sexual intercourse” “takes any person into, or persuades, encourages or causes any person to enter, a bawdy place, or takes or causes such person to be taken to any place against his or her will for such purposes;” or (3) being parent or guardian “consents” to a person “being taken or detained by any person for the purpose of prostitution or unlawful sexual intercourse.”

- Punishment: 2 to 10 years in prison, plus of fine of up to \$100,000.
- Elements of the Offense:
 1. *For purpose of prostitution or unlawful sexual intercourse.*
 2. *(a) Takes victim into brothel, or (b) persuades, encourages or causes victim to enter brothel, or (c) causes another to take the victim there against the victim’s will, or (d) if the parent, consents to such.*

§ 18.2-356. Receiving money for procuring person. “Any person who receives any money or other valuable thing for or on account of (i) procuring for or placing in a house of prostitution or elsewhere any person for the purpose of causing such person to engage in unlawful sexual intercourse or any act in violation of Section 18.2-361 . . . shall be guilty of a Class 4 felony.”

- Punishment: 2 to 10 years in prison, plus of fine of up to \$100,000.
- Elements of the Offense:
 1. *Receipt of money or other valuable thing*:
 - Any money or thing of value, no matter what the amount, received by the defendant.
 2. *For or on account of*: Knowledge element.
 - Must prove defendant knew money was for illegal activity. Collins.
 3. *Procuring for or placing in a house of prostitution*:
 - *Procure* means to take care of, bring about, obtain: achieve. Bakran.
 4. *For the purpose of causing victim to engage in unlawful sexual intercourse.*
- A bellman in a hotel given \$10 by a guest to procure for him a prostitute, and does so, guilty. Edwards v. Comm., 218 Va. 994, 243 S.E.2d 834 (1978).

§ 18.2-357. Receiving money from earnings of prostitute. Prohibits knowing receipt of any money or other valuable thing “from the earnings of any male or female engaged in prostitution, except for a consideration deemed good and valuable in law.”

- Punishment: 2 to 10 years in prison, plus of fine of up to \$100,000.
- Elements of the Offense:
 1. *Receipt of money or other valuable thing*:



- Any money or thing of value, no matter what the amount, received by the defendant.
- 2. *Knowledge* that money received was from earnings of prostitution.
- *Good and valuable consideration* is an *affirmative defense*; defendant must come forward with some evidence of consideration. Tart v. Comm., 52 Va. App. 272, (2008).
 - Food, lodging and transportation not lawful consideration, as these items furthered prostitution. Tart.
 - Illicit drugs and alcohol (given to minor) not lawful consideration. Tart.

§ 18.2-374.1. Production of child pornography. Prohibits one who (1) “accosts, entices or solicits” a minor “with intent to induce or force such person to perform in or be a subject of child pornography,” or (2) “produces or makes or attempts or prepares to produce or make child pornography,” or (3) “knowingly . . . participates in the . . . production of child pornography by any means,” or (4) “knowingly finances or attempts or prepares to finance child pornography.”

- Punishment:
 - Victim under 15 – 5 to 30 years in prison.
 - Victim 15 to 17 – 1 to 20 years in prison.
 - Defendant 7 years older than victim – 3 to 30 years in prison.
- Elements of the Offense:
 - *Child pornography*: Sexually explicit visual material which utilizes or has as a subject an identifiable minor.
 - *Identifiable minor*: Person who was a minor at the time the visual depiction was created, adapted, or modified and who is recognizable as an actual person.

§ 18.2-370(B). Taking indecent liberties with children: Sexually Explicit Visual Material. Any adult who, “with lascivious intent, knowingly and intentionally receives money, property, or any other remuneration” either (1) “for allowing, encouraging, or enticing” any minor “to perform in or be a subject of sexually explicit visual material” or (2) “who knowingly encourages such person to perform in or be a subject of sexually explicit material” is guilty of a Class 5 felony.

- Punishment: 1 to 10 years in prison, *or* 12 months in jail and fine of up to \$2,500.
- Elements of Offense:
 - *Lascivious intent* :
 - *Knowing and intentional*
 - *Receipt of money or property or anything of value.*
 - *(1) Allowing, encouraging, or enticing or (2) knowingly encouraging a minor to perform in or be a subject of sexually explicit material.*



Completed Sex Offenses: *Can be useful in prosecuting either traffickers or “Johns,” depending on the circumstances and the age of the trafficking victim. Must be able to show defendant either knew or should have known the victim’s age.*

§ 18.2-61. Rape. Prohibits sexual intercourse with a victim accomplished “(i) against the complaining witness's will, by force, threat or intimidation of or against the complaining witness or another person; or . . . (iii) with a child under age 13 as the victim.”

§ 18.2-63. Carnal knowledge of child between thirteen and fifteen years of age. Prohibits “carnal knowledge,” “without the use of force,” of “a child thirteen years of age or older but under fifteen years of age.” “[C]arnal knowledge includes the acts of sexual intercourse, cunnilingus, fellatio, anilingus, anal intercourse, and animate and inanimate object sexual penetration.”

§ 18.2-67.1. Forcible sodomy. Prohibits engaging in “cunnilingus, fellatio, anilingus, or anal intercourse” with a victim or “caus[ing]” a victim “to engage in such acts with any other person,” and either (1) the victim is “less than 13 years of age,” or (2) “the act is accomplished against the will” of the victim “by force, threat or intimidation of or against the [victim] or another person.”

- Effective in prosecuting traffickers who *cause* a victim to engage in the enumerated sex acts *with any other person* and the act is accomplished by force, threat or intimidation of or against the victim *or another person*.

§ 18.2-67.2. Object sexual penetration. Prohibits “penetrate[ing] . . . the labia majora or anus” of a victim or “caus[ing]” a victim “to so penetrate his or her own body with an object” or “caus[ing]” a victim “to engage in such acts with any other person” and either (1) the victim is “less than 13 years of age,” or (2) “the act is accomplished against the will” of the victim “by force, threat or intimidation of or against the [victim] or another person.”

- Effective in prosecuting traffickers who *cause* a victim to engage in the enumerated sex acts *with any other person* and the act is accomplished by force, threat or intimidation of or against the victim *or another person*.

§ 18.2-67.4. Sexual Battery. Prohibits “sexual[] abuse” of a victim against the will of the victim, by force, threat, intimidation, or ruse.

- Under § 18.2-67.10, sexual abuse defined as intentional touching of victim’s intimate parts (even above the clothing), forcing the victim to touch their intimate parts or those of another (even above the clothing), or causing or assisting a victim under 13 to touch their own intimate parts or those of another (even above the clothing). Such touching must be done with the defendant’s intent to sexually molest, arouse or gratify any person.



§ 18.2-67.3. Aggravated sexual battery. Enhanced penalty when either (1) the victim is “less than 13 years of age” or (2) the act is accomplished “against the will of the complaining witness by force, threat or intimidation,” and either (a) the victim is “at least 13 but less than 15 years of age,” or (b) the “accused causes serious bodily or mental injury to the complaining witness,” or (c) the “accused uses or threatens to use a dangerous weapon.”

§ 18.2-67.4:2. Sexual abuse of a child under 15 years of age. Prohibits sexual abuse, with lascivious intent, of a victim 13 years of age or older but under 15 years of age.

§ 18.2-370(A). Taking indecent liberties with children. Prohibits adult who “with lascivious intent, knowingly and intentionally commits” “with any child under . . . 15 years” an act to either (1) “expose his or her sexual or genital parts to any child . . . or propose that any such child expose his or her sexual or genital parts to such person,” or (3) “propose that any such child feel or fondle the sexual or genital parts of such person or propose that such person feel or fondle the sexual or genital parts of any such child,” or (4) “propose” performance of a sexual act, or (5) “entice, allure, persuade, or invite any such child to enter any vehicle, room, house, or other place, for any of the purposes set forth above.”

§ 18.2-371. Contributing to the delinquency of a minor. Prohibits adult who “(i) willfully contributes to, encourages, or causes any act, omission, or condition which renders a child delinquent, in need of services, in need of supervision, or abused or neglected,” or “(ii) engages in consensual sexual intercourse with a child 15 or older.



OTHER HELPFUL LAWS

§ 18.2-18: Principals in the Second Degree & Accessories Before the Fact. “In the case of every felony, every principal in the second degree and every accessory before the fact may be indicted, tried, convicted and punished in all respects as if a principal in the first degree.”

- “A principal in the second degree is one not the perpetrator, but present, aiding and abetting the act done, or keeping watch or guard at some convenient distance.” Brown v. Commonwealth, 130 Va. 733, 736, 107 S.E. 809, 810 (1921).
- In some way “procured, encouraged, countenanced, or approved commission of the crime.” Augustine v. Commonwealth, 226 Va. 120, 124, 306 S.E.2d 886, 888 (1983).

§ 18.2-22. Conspiracy to commit felony. Any person who “shall conspire, confederate or combine with another . . . to commit a felony . . . he shall be guilty of . . . a Class 5 felony.”

§ 18.2-29. Criminal solicitation. “Any person who commands, entreats, or otherwise attempts to persuade another person to commit a felony . . . shall be guilty of a Class 6 felony. Any [adult] who commands, entreats, or otherwise attempts to persuade [a minor] to commit a felony . . . shall be guilty of a Class 5 felony.”

- Includes forcible sodomy, object sexual penetration, carnal knowledge.
- Solicited crime need not even be attempted for conviction under this section. Ford v. Comm., 10 Va. App. 224, 391 S.E.2d 603 (1990).

§ 18.2-46.1. Criminal street gangs. A violation of § 18.2-356, receiving money for procuring a person, is one of the “predicate criminal acts” that defines a criminal street gang.

§ 18.2-359(A). Venue for prosecutions. “Any person transporting or attempting to transport through or across this Commonwealth, any person for the purposes of unlawful sexual intercourse or prostitution . . . may be presented, indicted, tried, and convicted in any county or city in which any part of such transportation occurred.”