

CHAPTER 276
FORMERLY
SENATE BILL NO. 197
AS AMENDED BY
SENATE AMENDMENT NO. 2

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO TRAFFICKING OF INDIVIDUALS, FORCED LABOR AND SEXUAL SERVITUDE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 787, Title 11 of the Delaware Code as follows and redesignating accordingly:

§ 787 Trafficking an individual, forced labor and sexual servitude; class D felony; class C felony; class B felony; class A felony.

(a) For the purposes of this section, the following definitions shall apply:

“Adult” has the meaning ascribed in Section 302 of Title 1 of the Delaware Code;

“Coercion” means:

a. the use or threat of force against, abduction of, serious harm to, or physical restraint of an individual;

b. the use of a plan, pattern, or statement with intent to cause an individual to believe that failure to perform an act will result in the use of force against, abduction of, serious harm to, or physical restraint of an individual;

c. the abuse or threatened abuse of law or legal process;

d. controlling or threatening to control an individual’s access to a controlled substance enumerated in Sections 4714, 4716, 4718, 4720 or 4722 of Title 16 of the Delaware Code;

e. the destruction of, taking of, or the threat to destroy or take an individual’s identification document or other property;

f. use of debt bondage;

g. the use of an individual’s physical, cognitive disability or mental impairment, where such impairment has substantial adverse effects on the individual’s cognitive or volitional functions; or

h. the commission of civil or criminal fraud;

“Commercial sexual activity” means any sexual activity for which anything of value is given, promised to, or received by any person;

“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:

1. the reasonable value of the labor or services is not applied toward the liquidation of the debt; or

2. the length of the labor or services is not limited and the nature of the labor or services is not defined;

“Forced labor or services” means labor, as defined this section, or services, as defined in this section, that are performed or provided by another person and are obtained or maintained through coercion as enumerated in paragraph (b)(1) of this section;

“Human trafficking” means the commission of any of the offenses created in subsection (b) of this section;

“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, whether actual or purported;

“Labor or services” means activity having economic or financial value, including commercial sexual activity. Nothing in this definition should be construed to legitimize or legalize prostitution;

“Minor” has the meaning ascribed in Section 302 of Title 1 of the Delaware Code;

“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;

“Sexual activity” means any of the sex-related acts enumerated in Section 761 of this Title, or in Sections 1342, 1351, 1352(1), 1353(1), 1354 or 1355 of this Title or sexually-explicit performances;

“Sexually explicit performance” means a live public act or show, production of pornography, or the digital transfer of any of such, intended to arouse or satisfy the sexual desires or appeal to the prurient interest of viewers;

“State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band recognized by federal law or formally acknowledged by state; and

“Victim” means a person who is subjected to the practices set forth in subsection (b) of this section or to conduct that would have constituted a violation of subsection (b) of this section had this act been in effect when the conduct occurred, regardless of whether a perpetrator is identified, apprehended, prosecuted or convicted.

(b) Prohibited activities. --

(1) Trafficking an individual – A person is guilty of trafficking an individual if the person knowingly recruits, transports, harbors, receives, provides, obtains, isolates, maintains, or entices an individual in furtherance of forced labor in violation of paragraph (b)(2) of this section or sexual servitude in violation of paragraph (b)(3) of this section. Trafficking an individual is a Class C felony unless the individual is a minor, in which case it is a Class B felony.

(2) Forced labor – A person is guilty of forced labor if the person knowingly uses coercion to compel an individual to provide labor or services, except where such conduct is permissible under federal law or law of this state other than this act. Forced labor is a Class C felony unless the individual is a minor, in which case it is a Class B felony.

(3) Sexual servitude:

a. A person commits the offense of sexual servitude if the person knowingly:

1. maintains or makes available a minor for the purpose of engaging the minor in commercial sexual activity; or
2. uses coercion or deception to compel an adult to engage in commercial sexual activity.

b. Sexual servitude is a Class C felony unless the individual is a minor, in which case it is a Class B felony.

c. It is not a defense in a prosecution under subsection a.1. that the minor consented to engage in commercial sexual activity or that the defendant believed the minor was an adult.

(4) Patronizing a victim of sexual servitude – A person is guilty of patronizing a victim of sexual servitude if the person knowingly gives, agrees to give, or offers to give anything of value so that the person may engage in commercial sexual activity with another person and the person knows that the other person is a victim of sexual servitude. Patronizing a victim of sexual servitude is a Class D felony unless the victim of sexual servitude is a minor, in which case it is a Class C felony. It is not a defense in a prosecution when the victim of sexual servitude is a minor that the minor consented to engage in commercial sexual activity or that the defendant believed the minor was an adult.

(5) Trafficking of persons for use of body parts. – A person is guilty of trafficking of persons for use of body parts when a person knowingly:

a. Recruits, entices, harbors, provides or obtains by any means, another person, intending or knowing that the person will have body parts removed for sale; or

b. Benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of this section. Such person shall be guilty of a class A felony. Nothing contained herein shall be construed as prohibiting the donation of an organ by an individual at a licensed medical facility after giving an informed voluntary consent.

(6) Aggravating Circumstance. – An aggravating circumstance during the commission of an offense under paragraph (b)(1)-(3) occurs when:

a. the person recruited, enticed, or obtained the victim from a shelter designed to serve victims of human trafficking, victims of domestic violence, victims of sexual assault, runaway youth, foster children, or the homeless; or

b. the person used or threatened use of force against, abduction of, serious harm to, or physical restraint of the victim.

If an aggravating circumstance occurred, the classification of the offense under paragraph (b)(1)-(3) is elevated by one felony grade higher than the underlying offense.

(c) *Organizational liability.* –

(1) An organization may be prosecuted for an offense under this section pursuant to 11 Del. C. § 281 (Criminal liability of organizations).

(2) The court may consider the severity of an organization's offense under this section and order penalties in addition to those otherwise provided for the offense, including:

a. a fine of not more than \$25,000.00 per offense;

b. disgorgement of profit from illegal activity in violation of this section;

and

c. debarment from state and local government contracts.

(d) *Restitution is mandatory under this section.* –

(1) In addition to any other amount of loss identified, the court shall order restitution, including the greater of:

a. The gross income or value to the defendant of the victim's labor or services; or

b. The value of the victim's labor as guaranteed under the minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA) [29 U.S.C. § 201 et seq.] or of Title 19, whichever is greater.

(2) The Court shall order restitution under this paragraph (d) even if the victim is unavailable to accept payment of restitution.

(3) If the victim is unavailable for 5 years from the date of the restitution order, the restitution ordered under this paragraph (d) must be paid to the Victim Compensation Fund established under Section 9016 of this Title.

(e) *Forfeiture.*

(1) On motion, the court shall order a person convicted of an offense under subsection (b)(1)-(3) of this section to forfeit any interest in real or personal property that was used or intended to be used to commit or facilitate the commission of the offense or that constitutes or derives from proceeds that the person obtained, directly or indirectly, as a result of the offense.

(2) In any proceeding against real or personal property under this section, the owner may assert a defense, and has the burden of establishing, by a preponderance of the evidence, that the forfeiture is manifestly disproportional to the seriousness of the offense.

(3) Proceeds from the public sale or auction of property forfeited under this subsection must be distributed in the manner otherwise provided for the distribution of proceeds of judicial sales.

(f) *Admissibility of certain evidence.* –

(1) In a prosecution or civil action for damages under this section, evidence of a specific instance of the alleged victim's past sexual behavior, or reputation or opinion evidence of past sexual behavior of the alleged victim, is not admissible unless the evidence is:

- a. admitted in accordance with Sections 3508 and 3509 of this Title; or
- b. offered by the prosecution in a criminal case to prove a pattern of trafficking by the defendant.

(g) Special provisions regarding a minor. –

(1) A minor who has engaged in commercial sexual activity is presumed to be a neglected or abused child under 10 *Del. C.* §§ 901 et seq. Whenever a police officer has probable cause to believe that a minor has engaged in commercial sexual activity, the police officer shall make an immediate report to the Department of Services for Children, Youth and Their Families pursuant to 16 *Del. C.* §§ 901 et seq.

(2) A party to a juvenile delinquency proceeding in which a minor is charged with prostitution or loitering, or an attorney guardian ad litem or court appointed special advocate appointed in a proceeding under 10 *Del. C.* §§ 901 et seq., may file a motion on behalf of a minor in a juvenile delinquency proceeding seeking to stay the juvenile delinquency proceedings. Such motion may be opposed by the Attorney General. The Family Court may consider such a motion and, in its discretion, may stay the juvenile delinquency proceeding indefinitely. Upon such motion, the Department of Services for Children, Youth and Their Families and/or the Family Court may identify and order available specialized services for the minor that, in the opinion of the Department of Services for Children, Youth and Their Families or Family Court, are best suited to the needs of the juvenile. So long as the minor substantially complies with the requirement of services identified by the Department of Services for Children, Youth and Their Families and/or ordered by the Family Court, the Attorney General shall, upon motion, nolle prosequi the stayed charges no earlier than 1 year after the stay was imposed. Upon motion of the Attorney General that the minor has not substantially complied with the requirement of services identified by the Department of Services for Children, Youth and Their Families and/or ordered by the Family Court, the Family Court shall lift the stay for further proceedings in accordance with the regular course of such proceedings.

(h) Defense to charge of prostitution or loitering. – An individual charged with prostitution or loitering committed as a direct result of being a victim of human trafficking may assert as an affirmative defense that the individual is a victim of human trafficking.

(i) Civil action. –

(1) A victim may bring a civil action against a person that commits an offense under subsection (b) of this section for compensatory damages, punitive damages, injunctive relief, and any other appropriate relief.

(2) In an action under this subsection, the court shall award a prevailing victim reasonable attorney's fees and costs, including reasonable fees for expert witnesses.

(3) An action under this subsection must be commenced not later than 5 years after the later of the date on which the victim:

- a. was freed from the human trafficking situation; or
- b. attained 18 years of age.

(4) Damages awarded to the victim under this subsection for an item must be offset by any restitution paid to the victim pursuant to subsection (d) for the same item.

(5) This subsection does not preclude any other remedy available to the victim under federal law or law of this state other than this section.

(j) Application for pardon and petition to expunge; motion to vacate conviction and expunge record.

(1) Notwithstanding any provision of Title 11, Chapter 43 or any other law to the contrary, a person convicted of prostitution, loitering or obscenity committed as a direct result of being a victim of human trafficking may file an application for a pardon pursuant to Article VII of the Delaware Constitution and

11 *Del. C.* §§ 4361, et seq. and may file a petition requesting expungement of such criminal record pursuant to 11 *Del. C.* §§ 4371, et seq.

(2) A person convicted of prostitution, loitering or obscenity as a direct result of being a victim of human trafficking may file a motion in the court in which the conviction was obtained to vacate the judgment of conviction. A motion filed under this paragraph must:

- a. Be in writing;
- b. Be sent to the Delaware Department of Justice;
- c. Be made 2 years after the person's last criminal conviction and within a reasonable period of time after the person ceases to be a victim of trafficking in persons; and
- d. Describe the evidence and provide copies of any official documents showing that the person is entitled to relief under this paragraph.

If the motion satisfies the foregoing requirements, the court shall hold a hearing on a motion, provided that the court may dismiss a motion without a hearing if the court finds that the motion fails to assert grounds on which relief may be granted. Official documentation of the person's status as a victim of this section, "trafficking in persons," or "a severe form of trafficking" from a federal, state, or local government agency shall create a presumption that the person's participation in the offense of prostitution, loitering or obscenity was a direct result of having been a victim of human trafficking, but shall not be required for the court to grant a petition under this paragraph. If the petitioner can show to the satisfaction of the court that he or she is entitled to relief in a proceeding under this paragraph, the court shall grant the motion and, pursuant to this paragraph, enter an order vacating the judgment of conviction and dismissing the accusatory pleading, and may take such additional action as is appropriate in the circumstances or as justice requires.

(3) Notwithstanding any provision of Title 11, Chapter 43 or any other law to the contrary, any person filing a motion under paragraph (j)(2) in Superior Court or Family Court may also seek in that motion expungement of the criminal record related to such conviction. If the court grants the motion to vacate the conviction under paragraph (j)(2) and the movant also requested expungement, the court's order shall require expungement of the police and court records relating to the charge and conviction. Such order shall contain a statement that the expungement is ordered pursuant to this paragraph and, notwithstanding any limitations to the contrary, that the provisions of 11 *Del. C.* §§ 4374(f), 4376 and 4377 apply to such order.

(4) Notwithstanding any provision of Title 11, Chapter 43 or any other law to the contrary, any person filing in Court of Common Pleas a motion under paragraph (j)(2) may, upon the Court of Common Pleas' entry of an order granting the motion to vacate, file a petition in the Superior Court seeking expungement of the criminal record related to such conviction and attaching to the petition a certified copy of the Court of Common Pleas' order granting the motion to vacate. Upon finding that the Court of Common Pleas entered an order under paragraph (j)(2), the Superior Court shall enter an order requiring expungement of the police and court records relating to the charge and conviction. Such order shall contain a statement that the expungement is ordered pursuant to this paragraph and, notwithstanding any limitations to the contrary, that the provisions of 11 *Del. C.* §§ 4374(f), 4376 and 4377 apply to such order.

(k) Human trafficking coordinating council. – The General Assembly hereby creates a permanent Human Trafficking Coordinating Council.

(1) The Council shall consist of the following members or their designee:

- a. The President Judge of the Superior Court;
- b. The Chief Judge of the Family Court;
- c. The Chief Judge of the Court of Common Pleas;
- d. The Chief Magistrate of the Justice of the Peace Court;
- e. The Attorney General;
- f. The Public Defender;
- g. The Secretary of the Department of Safety and Homeland Security;

h. A representative of the law-enforcement community appointed by the Secretary of the Department of Safety and Homeland Security;

i. The Secretary of the Department of Education;

j. The Secretary of the Department of Services for Children, Youth and Their Families;

k. The Secretary of the Department of Health and Social Services;

l. The Secretary of the Department of Labor;

m. A representative of the health care community designated by the Board of Medical Licensure and Discipline;

n. The Commissioner of the Department of Correction; and

o. Three at-large members representing victims of human trafficking or whose expertise would benefit the council who elected by the Council at the first meeting of each calendar year.

(2) The Council shall:

a. develop a comprehensive plan to provide victims of human trafficking with services;

b. effectuate coordination between agencies, departments and the courts with victims of human trafficking;

c. collect and evaluate data on human trafficking in this state;

d. promote public awareness about human trafficking, victim remedies and services, and trafficking prevention;

e. create a public-awareness sign that contains the state and National Human Trafficking Resource Center hotline information;

f. coordinate training on human trafficking prevention and victim services for state and local employees who may have recurring contact with victims or perpetrators; and

h. conduct other appropriate activities.

(3) Meetings; quorum; officers; committees; procedure.

a. The Council shall meet at least 4 times per year. Seven members shall constitute a quorum.

b. The Chairperson shall have the duty to convene and preside over meetings of the Council and prepare an agenda for meetings.

c. The Attorney General shall convene the initial meeting of the Council. At the initial meeting of the Council a Chairperson and Vice Chairperson shall be elected by the Council members. Thereafter, in December of each year, the Council shall elect a Chairperson and Vice Chairperson. The Vice Chairperson's duty shall be to act as chairperson in the absence of the Chairperson.

d. The Council shall establish committees composed of Council members and other knowledgeable individuals, as it deems advisable, to assist in planning, policy, goal and priority recommendations and developing implementation plans to achieve the purposes of the Council.

e. The Council shall submit a written report of its activities and recommendations to the Governor, General Assembly and the Chief Justice of the Supreme Court at least once every year on or before September 15.

(l) Display of public awareness sign; penalty for failure to display.

(1) The Delaware Department of Transportation shall display a public-awareness sign required by this section in every transportation station, rest area, and welcome center in the state which is open to the public.

(2) A public awareness sign created under paragraph (k)(2)e. shall be displayed at the following locations in a place that is clearly conspicuous and visible to employees:

a. an adult entertainment facility;

b. an entity found to be maintaining a criminal nuisance involving prostitution under Section 7104 of Title 10 of the Delaware Code;

c. a job recruitment center;

d. a hospital; and

e. an emergency care provider.

(3) The Delaware Department of Labor shall impose a fine of \$300 per violation on an employer that knowingly fails to comply with paragraph (k)(2)e. The fine is the exclusive remedy for failure to comply.

(m) Eligibility for services. –

(1) A victim of human trafficking is eligible for a benefit or service, which is available through the state and identified in the plan developed under paragraph (k)(2)a, including compensation under Section 9009 of this Title, regardless of immigration status.

(2) A minor engaged in commercial sexual activity is eligible for a benefit or service, which is available through the state and identified in the plan developed under paragraph (k)(2)a, regardless of immigration status.

(3) As soon as practicable after a first encounter with an individual who reasonably appears to a police officer to be a victim or a minor engaged in commercial sexual activity, the police officer shall notify the appropriate state or local agency, as identified in the plan developed under paragraph (k)(2)a, that the individual may be eligible for a benefit or service under this section.

(n) Law enforcement agency protocol. –

(1) On request from an individual who a police officer or prosecutor reasonably believes is a victim who is or has been subjected to a severe form of trafficking or criminal offense required for the individual to qualify for a nonimmigrant T or U visa under 8 U.S.C. Section 1101(a)(15)(T), as amended from time to time, or 8 U.S.C. Section 1101(a)(15)(U), as amended from time to time, or for continued presence, under 22 U.S.C. Section 7105(c)(3), as amended from time to time, the police officer or prosecutor, as soon as practicable after receiving the request, shall request that a certifying official in his law enforcement agency complete, sign, and give to the individual the Form I-914B or Form I-918B provided by the United States Citizenship and Immigration Services on its Internet website, and ask a federal law enforcement officer to request continued presence.

(2) If the law enforcement agency having responsibility under paragraph (n)(1) determines that an individual does not meet the requirements for such agency to comply with paragraph (n)(1), that agency shall inform the individual of the reason and that the individual may make another request under paragraph (n)(1) and submit additional evidence satisfying the requirements.

(o) Nothing contained in this section shall preclude a separate charge, conviction and sentence for any other crime set forth in this title, or in the Delaware Code.

Section 2. Amend § 9002(5), Title 11 by making deletions as shown by strike through and insertions as shown by underline as follows:

(5) “Crime” for purposes of this chapter shall mean:

h. Any act of human trafficking as defined in § 787 of this title.

Section 3. Amend § 4201(c) of Title 11 by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4201. Transition provisions.

(c) The following felonies shall be designated as violent felonies:

Title 11, Section Crime

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Section 4. Amend § 205(e), Title 11 by making deletions as shown by strike through and insertions as shown by underline as follows:

(e) Notwithstanding the period prescribed by subsection (b) of this section, a prosecution for any crime that is delineated in § 787 of this title and in which the victim is a minor, Subpart D of Subchapter II of Chapter 5 of this

title, or is otherwise defined as a “sexual offense” by § 761 of this title except §§ 763, 764 or 765 of this title, or any attempt to commit said crimes, may be commenced at any time. No prosecution under this subsection shall be based upon the memory of the victim that has been recovered through psychotherapy unless there is some evidence of the corpus delicti independent of such repressed memory. This subsection applies to all causes of action arising before, on or after July 15, 1992, and to the extent consistent with this subsection, it shall revive causes of action that would otherwise be barred by this section.

Section 5. Amend § 4121(a)(4), Title 11 by making deletions as shown by strike through and insertions as shown by underline as follows:

(4) “Sex offender” means any person who is, or has been:

a. Convicted of any of the offenses specified in §§ 765 through 780, § 787(b)(3), § 787(b)(4), § 1100A, §§ 1108 through 1112A, § 1335(a)(6), § 1335(a)(7), § 1352(2), § 1353(2) or § 1361(b) of this title, or of any attempt or conspiracy to commit any of the aforementioned offenses; or

Section 6. Amend § 9401(2), Title 11 by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 9401. Transition provisions.

(2) “Crime” means an act or omission committed by a person, whether or not competent or an adult, which, if committed by a competent adult, is punishable by incarceration and which violates 1 or more of the following sections of this title:

OFFENSES AGAINST THE PERSON

787 Trafficking of an Individual, Forced Labor and Sexual Servitude

Section 7. Amend Chapter 24 of Title 11 by making deletions as shown by strike-through and making insertions as shown by underline as follows:

§ 2402 Interception of communications generally; divulging contents of communications, violations of chapter.

(c) Lawful acts. — It is lawful:

(3) For an investigative or law-enforcement officer acting in a criminal investigation or any other person acting at the prior direction and under the supervision of an investigative or law-enforcement officer in such investigation pursuant to a court order issued by the Superior Court pursuant to § 2407 of this title to intercept a wire, oral or electronic communication in order to provide evidence of the commission of the offenses including racketeering, murder, kidnapping, human trafficking, gambling, robbery, bribery, extortion, dealing in narcotic drugs or dangerous drugs, dealing in central nervous system depressant or stimulant drugs, controlled substances or counterfeit controlled substances, prison escape, jury tampering, stalking, any felony involving risk of physical injury to a victim or any conspiracy or solicitation to commit any of the foregoing offenses or which may provide evidence aiding in the apprehension of the perpetrator of any of the foregoing offenses.

§ 2405 Authorities permitted to apply for order authorizing interception.

The Attorney General, Chief Deputy Attorney General, State Prosecutor or Chief Prosecutor of any county may apply to a judge authorized to receive intercept applications and the judge, in accordance with § 2407 of this title, may grant an order authorizing the interception by investigative or law-enforcement officers of wire, oral or electronic communications when the interception may provide evidence:

(1) Of the commission of the offense of racketeering, murder, kidnapping, human trafficking, gambling, robbery, bribery, extortion, dealing in narcotic drugs or dangerous drugs, dealing in central nervous system depressant or stimulant drugs, dealing in controlled substances or counterfeit controlled substances, prison escape, jury tampering, or stalking;

Section 8. Amend Chapter 5 of Title 11 by making deletions as shown by strike-through and insertions as shown by underline as follows:

§ 1502 Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(9) "Racketeering" shall mean to engage in, to attempt to engage in, to conspire to engage in or to solicit, coerce or intimidate another person to engage in:

a. Any activity defined as "racketeering activity" under 18 U.S.C. § 1961(1)(A), (1)(B), (1)(C) or (1)(D); or

b. Any activity constituting any felony which is chargeable under the Delaware Code or any activity constituting a misdemeanor under the following provisions of the Delaware Code:

10. Chapter 5 of Title 11 relating to tampering with jurors, evidence and witnesses;

11. Chapter 51 of Title 30 relating to motor fuel tax offenses; or

12. Chapter 5 of Title 11 relating to human trafficking.

Section 9. Severability. – If any provision of this section or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

Approved June 30, 2014