

SPONSOR: Rep. K. Williams & Rep. Seigfried & Sen. Poore
Reps. Baumbach, Briggs King, Heffernan, Lynn, Minor-Brown, Griffith; Sens. Delcollo, Hansen, Richardson

HOUSE OF REPRESENTATIVES
150th GENERAL ASSEMBLY

HOUSE BILL NO. 102
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO CRIMES.

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

Section 1. Amend § 787, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

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

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

(1) Notwithstanding any provision of Chapter 43 of this title or any other law to the contrary, a person arrested or convicted of any crime, except those deemed to be violent felonies pursuant to § 4201 of this title ~~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 § 4361 et seq. of this title and may file a petition requesting expungement of such criminal record pursuant to § 4371 et seq. of this title.

(2) A person convicted of any crime, except those deemed to be violent felonies pursuant to § 4201 of this title, committed ~~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; and

~~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.~~c. Describe the evidence and provide copies of any official documents showing that the person is entitled to relief under this paragraph.

HD : NSW : TEH : 1031500022
LC : HVW : NMX : 5081500064
Released: 05/16/2019 03:48 PM

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~~ any crime, except those deemed to be violent felonies pursuant to § 4201 of this title, committed 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 Chapter 43 of this title or any other law to the contrary, any person filing a motion under paragraph (j)(2) of this section 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) of this section 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 §§ 4374(f), 4376 and 4377 of this title apply to such order.

(4) Notwithstanding any provision of Chapter 43 of this title or any other law to the contrary, upon granting the motion, the Court of Common Pleas shall provide Superior Court with the certified order granting the motion to vacate. ~~any person filing in Court of Common Pleas a motion under paragraph (j)(2) of this section 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) of this section, 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 §§ 4374(f), 4376 and 4377 of this title apply to such order.

(k) The Human Trafficking Coordinating Council is hereby dissolved and reestablished as the Human Trafficking Interagency Coordinating Council to assume the functions of the Human Trafficking Coordinating Council and to administer and implement this chapter, and to perform such other responsibilities as may be entrusted to it by law.

(1) The Human Trafficking Interagency Coordinating Council shall consist of ~~13~~ 15 members:

a. ~~Two~~ Three representatives of the Judicial Branch, as appointed by the Chief Justice;

b. A representative of the Department of Justice to be appointed by the Attorney General;

c. A representative of the Office of Defense Services to be appointed by the Chief Defender;

d. A representative of the law-enforcement community to be appointed by the Speaker of the Delaware House of Representatives;

e. A representative of the heath-care community to be appointed by the President Pro Tempore of the Delaware State Senate;

f. A representative of the Department of Health and Social Services to be appointed by the Secretary of the Department of Health and Social Services;

g. A representative of the Department of Labor to be appointed by the Secretary of Labor;

h. A representative of the Department of Services for the Children, Youth and Their Families to be appointed by the Secretary of the Department of Services for the Children, Youth and Their Families;

i. Four members who are advocates or persons who work with victims of human trafficking to be appointed by the Governor for a 3-year term and shall be eligible for reappointment. Members shall include representation from all 3 counties of the State.

j. The representative appointed to the Council by the Secretary of the Department of Health and Social Services shall serve as the temporary Chair of the Council to guide the initial organization of the council by setting a date, time, and place for the initial organizational meeting, and by supervising the preparation and distribution of the notice and agenda for the initial organizational meeting of the council. Members of the Council shall elect a Chair and a Vice Chair from among the members of the Council at the initial organizational meeting. Thereafter, the Chair and Vice Chair shall be elected annually from among the members.

k. A representative of the Delaware Department of Education to be appointed by the Secretary of the Department of Education.

(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

g. 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. The Department of Health and Social Services shall provide the administrative support for the Council.

c. The Vice-Chair's duty shall be to act as Chair in the absence of the Chair.

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. of this section shall be displayed at locations designated by the Council in a place that is clearly conspicuous and visible to employees. <u>These locations shall include adult entertainment facilities, entities found to be maintaining a criminal nuisance involving prostitution under § 7104 of Title 10, job recruitment centers. hospitals, and emergency care providers. The Council shall approve a list of locations on an annual basis.</u>

(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. of this section. The fine is the exclusive remedy for failure to comply.