



DELAWARE

Legal System	Constitution	Bill of Rights	Form of Government
Common Law Statutory Law	Written	Yes	Republic

A. Criminal Statutes

1. Human Trafficking and Related Offenses

a. Del. Code Ann. tit. 11, § 787(b) (2021) – Trafficking an Individual, Forced Labor, and Sexual Servitude

i. Summary

A person is guilty of trafficking an individual if the person knowingly recruits, transports, harbors, receives, provides, obtains, isolates, maintains, advertises, solicits, or entices an individual in furtherance of forced labor or sexual servitude. Del. Code Ann. tit. 11, § 787(b)(1).

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 the law of this State. Del. Code Ann. tit. 11, § 787(b)(2).

A person commits the offense of sexual servitude if the person knowingly maintains or makes available a minor for the purpose of engaging the minor in commercial sexual activity; or uses coercion or deception to compel an adult to engage in commercial sexual activity. Del. Code Ann. tit. 11, § 787(b)(3)(a)(1)–(2).

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. Del. Code Ann. tit. 11, § 787(b)(4).

A person is guilty of trafficking of persons for use of body parts when a person knowingly 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 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. Del. Code Ann. tit. 11, § 787(b)(5)(a)–(b).

“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 [certain] controlled substance[s];

- (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. Del. Code Ann. tit. 11, § 787(a)(2).

"Commercial sexual activity" means any sexual activity for which anything of value is given, promised to, or received by any person. Del. Code Ann. tit. 11, § 787(a)(3).

"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. Del. Code Ann. tit. 11, § 787(a)(4).

"Forced labor or services" means activities with financial value, such as commercial sexual activity, that are "performed or provided by another person and are obtained or maintained through coercion as enumerated in paragraph (b)(1) of this section [trafficking an individual]." See Del. Code Ann. tit. 11, § 787(a)(5), (a)(8).

"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. Del. Code Ann. tit. 11, § 787(a)(12).

ii. Sentencing

Trafficking an individual is a Class C felony unless the individual is a minor, in which case it is a Class B felony. Del. Code Ann. tit. 11, § 787(b)(1). The term of incarceration for a Class C felony is up to 15 years. Del. Code Ann. tit. 11, § 4205(b)(3). The term of incarceration for a Class B felony is fixed between two years to 25 years. Del. Code Ann. tit. 11, § 4205(b)(2).

Forced labor is a Class C felony unless the individual is a minor, in which case it is a Class B felony. Del. Code Ann. tit. 11, § 787(b)(2). The term of incarceration for a Class C felony is up to 15 years. Del. Code Ann. tit. 11, § 4205(b)(3). The term of incarceration for a Class B felony is fixed between two years to 25 years. Del. Code Ann. tit. 11, § 4205(b)(2).

Sexual servitude is a Class C felony unless the individual is a minor, in which case it is a Class B felony. Del. Code Ann. tit. 11, § 787(b)(3)(b). The term of incarceration for a Class C felony is up to 15 years. Del. Code Ann. tit. 11, § 4205(b)(3). The term of incarceration for a Class B felony is fixed between two years to 25 years. Del. Code Ann. tit. 11, § 4205(b)(2).

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. Del. Code Ann. tit. 11, § 787(b)(4). The term of incarceration for a Class D felony is up to eight years. Del. Code Ann. tit. 11, § 4205(b)(4). The term of incarceration for a Class C felony is up to 15 years. Del. Code Ann. tit. 11, § 4205(b)(3).

Trafficking of persons for use of body parts is a Class A felony. Del. Code Ann. tit. 11, § 787(b)(5). The term of incarceration for a Class A felony is between 15 years to life imprisonment. Del. Code Ann. tit. 11, § 4205(b)(1).

An aggravating circumstance during the commission of the offenses of trafficking of persons, forced labor, or sexual servitude occurs when 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 the person used or threatened use of force against, abduction of, serious harm to, or physical restraint of the victim. Del. Code Ann. tit. 11, § 787(6)(a)–(b). When such an aggravating circumstance is present, the classification of the offense is elevated by one felony grade higher than the underlying offense. Del. Code Ann. tit. 11, § 787(6).

Restitution is mandatory upon a conviction for trafficking an individual, forced labor, sexual servitude, patronizing a victim of sexual servitude, or trafficking of persons for use of body parts. The court’s order of restitution shall include the greater of: (1) the gross income or value to the defendant of the victim’s labor or services; or (2) the value of the victim’s labor under the minimum wage and overtime provisions of the Fair Labor Standards Act (29 U.S.C. § 201 *et seq.*) or under state law, whichever is greater. Del. Code Ann. tit. 11, § 787(d).

iii. Statute of Limitations

Generally, felonies have a statute of limitations of five years, unless the crime is a Class A felony. *See* Del. Code Ann. tit. 11, § 205(a). Prosecutions for Class A felonies “may be commenced at any time.” *See* Del. Code Ann. tit. 11, § 205(b).

Additionally, a prosecution for trafficking, forced labor, or sexual servitude of a minor victim, a crime that is otherwise defined as a “sexual offense,” or any attempt to commit these crimes, may be commenced at any time. *See* Del. Code Ann. tit. 11, § 205(e). The definition of “sexual offense” includes trafficking an individual, forced labor, sexual servitude, sexual exploitation of a child, promoting prostitution in the second degree, and promoting prostitution in the first degree. Del. Code Ann. tit. 11, §§ 761(h), 1108, 1352, 1353.

b. Del. Code Ann. tit. 11, § 787(c) (2021) – Organizational Liability

An organization may be prosecuted for trafficking, forced labor of an individual, or sexual servitude of an individual pursuant to Del. Code Ann. tit. 11, § 281. *See* Del. Code Ann. tit. 11, § 787(c)(1). The court may consider the severity of an organization’s offense and order additional penalties, including: A fine of not more than USD 25,000 per offense; disgorgement of profit from the illegal activity; and debarment from state and local government contracts. *See* Del. Code Ann. tit. 11, § 787(c)(2).

c. Del. Code Ann. tit. 11, § 787(e) (2021) – Forfeiture

On motion, the court shall order a person convicted of trafficking an individual, forced labor, or sexual servitude 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. Del. Code Ann. tit. 11, § 787(e)(1).

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. Del. Code Ann. tit. 11, § 787(e)(2).

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. Del. Code Ann. tit. 11, § 787(e)(3).

d. Del. Code Ann. tit. 11, § 1502 (2016) – Organized Crime and Racketeering

Delaware’s racketeering statute includes human trafficking in its predicate acts. See Del. Code Ann. tit. 11, § 1502(9)(b)(12).

e. Del. Code Ann. tit. 11, § 787(h) (2021) – 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. Del. Code Ann. tit. 11, § 787(h).

f. Del. Code Ann. tit. 11, § 787(g) (2021) – Special Provisions Regarding Minors

A minor who has engaged in commercial sexual activity is presumed to be a neglected or abused child. 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. Del. Code Ann. tit. 11, § 787(g)(1).

A juvenile charged with prostitution or loitering may file a motion to stay the juvenile delinquency proceedings and to receive specialized services. The charges may be abandoned after one year if the juvenile substantially complies with required services. See Del. Code Ann. tit. 11, § 787(g)(2).

2. Online Child Sexual Exploitation and Child Pornography Offenses

Del. Code Ann. tit. 11, § 1108 – Sexual Exploitation of a Child

Del. Code Ann. tit. 11, § 1109 – Dealing in Child Pornography

Del. Code Ann. tit. 11, § 1111 – Possession of Child Pornography

Del. Code Ann. tit. 11, § 1112A – Sexual Solicitation of a Child

Del. Code Ann. tit. 11, § 1112B – Promoting Sexual Solicitation of a Child

3. Del. Code Ann. tit. 11, § 4121 (2015) – Sex Offender Registration Act

With limited exceptions, a person adjudicated guilty of a “sex offense” must register as a sex offender. Sexual servitude, patronizing a victim of sexual servitude, sexual exploitation of a child, and possessing or dealing in child pornography are “sex offenses” for registration purposes. See Del. Code Ann. tit. 11, § 4121.

B. Civil Liability Statutes

1. Del. Code Ann. tit. 11, § 787(i) (2021) – Civil Lawsuit

a. Summary

A victim of trafficking, forced labor, or sexual servitude may bring a civil lawsuit against a person who commits an offense. See Del. Code Ann. tit. 11, § 787(i)(1).

This provision does not preclude any other remedy available to the victim under federal law or Delaware law. Del. Code Ann. tit. 11, § 787(i)(5).

b. Damages and Other Relief

A victim may receive compensatory damages, punitive damages, injunctive relief, and any other appropriate relief. Del. Code Ann. tit. 11, § 787(i)(1). The court shall award a prevailing victim reasonable attorney's fees and costs, including reasonable fees for expert witnesses. Del. Code Ann. tit. 11, § 787(i)(2). Damages awarded to the victim under this subsection for an item must be offset by any restitution paid to the victim for the same item. Del. Code Ann. tit. 11, § 787(i)(4).

c. Statute of Limitations

A victim's lawsuit against the perpetrator has a statute of limitations of five years after the later of the date on which the victim was freed from the trafficking situation or attained 18 years of age. *See* Del. Code Ann. tit. 11, § 787(i)(3).

C. Additional Statutes Specific to Human Trafficking

1. Del. Code Ann. tit. 11, § 787(j) (2021) – Application for Pardon and Petition to Expunge; Motion to Vacate Conviction and Expunge Record

A person arrested or convicted of any crime except a violent felony, committed as a direct result of being a victim of human trafficking, may file an application for a pardon, a petition requesting expungement of the criminal record, and a motion to vacate the judgment of conviction. *See* Del. Code Ann. tit. 11, § 787 (j)(1).

2. Del. Code Ann. tit. 11, § 787(k) (2021) – Human Trafficking Interagency [Coordinating] Council

The Human Trafficking Coordinating Council was reestablished as the Human Trafficking Interagency Coordinating Council. The Council shall, among other things, develop a comprehensive plan to provide victims of human trafficking with services; effectuate coordination between agencies, departments, and the courts with victims of human trafficking; collect and evaluate data on human trafficking in the state; promote public awareness about human trafficking, victim remedies and services, and trafficking prevention; create a public-awareness sign that contains the Delaware and National Human Trafficking Resource Center hotline information; and coordinate training on human trafficking prevention and victim services for state and local employees who may have recurring contact with victims or perpetrators. *See* Del. Code Ann. tit. 11, § 787(k).

3. Del. Code Ann. tit. 11, § 787(m) (2021) – Eligibility for Services

Victims of human trafficking and minors engaged in commercial sexual activity are eligible for state benefits and services regardless of immigration status. *See* Del. Code Ann. tit. 11, § 787(m).

4. Del. Code Ann. tit. 11, § 787(l) (2021) – Display of Public Awareness Sign; Penalty for Failure to Display

The Delaware Department of Transportation shall display a human trafficking public-awareness sign in every transportation station, rest area, and welcome center in the state which is open to the public. Del. Code Ann. tit. 11, § 787(l)(1). The sign shall be displayed at locations designated by the Council in a place that is clearly conspicuous and visible to employees. The Council shall approve a list of locations on an annual basis. Del. Code Ann. tit. 11, § 787(l)(2). The Delaware Department of Labor shall impose a fine of USD 300 per violation on an employer that knowingly fails to comply. Del. Code Ann. tit. 11, § 787(l)(3).

5. Del. Code Ann. tit. 19, § 911 (1995) – Minimum Wage Act – Remedies of Employees

An employee who receives less than the full amount of wages owed may bring a civil lawsuit to recover unpaid wages. An employee is also entitled to recover costs and attorney’s fees. The Department of Labor may also bring a lawsuit on behalf of affected employees to recover unpaid wages. See Del. Code Ann. tit. 19, § 911. Employers that violate the Act may be subject to additional civil penalties. See Del. Code Ann. tit. 19, § 910.

More information can be found at: <https://dia.delawareworks.com/labor-law/wage-payment.php>.

D. Significant Cases

No significant cases regarding Delaware’s human trafficking statutes were found.

E. Academic Research/Papers

No academic research or papers were found regarding Delaware’s human trafficking statutes.

F. Resources

Delaware Attorney General – Human Trafficking:

<https://attorneygeneral.delaware.gov/human-trafficking/>

Delaware Health and Social Services – Human Trafficking Interagency Coordinating Council:

<https://dhss.delaware.gov/dhss/admin/humantrafinteragcouncil.html>

Delaware Human Trafficking Interagency Coordinating Council, *Report on Actions and Recommendations on Human Trafficking in Delaware* (Sept. 2018):

https://dhss.delaware.gov/dhss/admin/files/humantrafficking_102018.pdf

National Human Trafficking Hotline (Delaware):

<https://humantraffickinghotline.org/state/delaware>

Shared Hope International, Delaware Report Card (2019):

http://sharedhope.org/PICframe9/reportcards/PIC_RC_2019_DE.pdf

Shared Hope International, Delaware Analysis and Recommendations (2019):

http://sharedhope.org/PICframe9/analysis/PIC_AR_2019_DE.pdf

U.S. Department of Health & Human Services, *Delaware: Efforts to Combat Human Trafficking* (2017):

https://www.acf.hhs.gov/sites/default/files/documents/otip/delaware_profile_efforts_to_combat_human_trafficking.pdf

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