

Delaware 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.

Recognition: Perfect Score and Most Improved in 2014

Rating: Tier One (green)

Total Points: 12

Credited Categories: 1 Sex Trafficking; 2 Labor Trafficking; 3(b) Investigative Tools; ; 3(a) Asset Forfeiture; 4(a) Training for Law Enforcement; 4(b) Human Trafficking Task Force; 5 No Requirement of Force, Fraud, or Coercion for Minor Victims of Sex Trafficking; 6 Posting of a Hotline; 7 Safe Harbor for Minors; 8 Victim Assistance; 9 Civil Remedy; and 10 Vacating Convictions.

Categories Still Needed: None.

Category By Category Break-Down:

Category 1: Sex Trafficking Statute

SB 197 (2014)

§ 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 in 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.

Category 2: Labor Trafficking Statute

Yes. See § 787.

Category 3(a): Asset Forfeiture

SB 197 (2014)

(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.

Category 3(b): Investigative Tools

§ 1502. Definitions.

(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:

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

SB 197 (2014)

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

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.

(4) For a person to intercept a wire, oral or electronic communication where the person is a party to the communication or where one of the parties to the communication has given prior consent to the interception, unless the communication is intercepted for the purpose of committing any criminal or tortious act in violation of the constitutions or laws of the United States, this State or any other state or any political subdivision of the United States or this or any other state.

(5) For a law-enforcement officer in the course of the officer's regular duty to intercept an oral communication, if:

- a. The law-enforcement officer initially detained 1 of the parties and overhears a conversation;
- b. The law-enforcement officer is a party to the oral communication;
- c. Both parties to the oral communication are present in a law-enforcement facility where there is notice to occupants that such communications are monitored;
- d. The law-enforcement officer has been identified as a law-enforcement officer to the other party to the oral communication prior to any interception; or
- e. The oral interception is being made as part of a video tape recording.

(6) For an officer, employee or agent of a government emergency communications center to intercept a wire, oral or electronic communication where the officer, agent or employee is a party to a conversation concerning an emergency.

(7) For law-enforcement personnel or those acting under their direction to utilize body wires to intercept oral communications in the course of a criminal investigation when the law-enforcement personnel or a person acting under their direction is a party to the communication. Communications intercepted by such means may be recorded and may be used against the defendant in a criminal proceeding.

Category 4(a): Training for Law Enforcement

SB 197 (2014)

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

(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.

Category 4(b): Human Trafficking Task Force

SB 197 (2014)

(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.

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

Yes. See §787(b)(3).

Category 6: Posting of a Human Trafficking Hotline

SB 197 (2014)

(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.

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

(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.

Category 7: Safe Harbor

SB 197 (2014)

(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.

(m) Eligibility for services.

(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.

Category 8: Victim Assistance

SB 197 (2014)

(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.

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

(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.

Category 9: Civil Remedy

SB 197 (2014)

(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.

Category 10: Vacating Convictions

SB 197 (2014)

(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 signed and consented to by a Deputy Attorney General in 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.

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