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October 18, 2024

Re: Enforcement of 11 Del. C. § 1321 and 21 Del. C. § 4147

Dwayne J. Bensing, Esq.
Legal Director
ACLU of Delaware
100 W. 10th Street, Ste. 706
Wilmington, DE 19801

Dear Legal Director Bensing,

As Attorney General, I am duty bound to uphold Federal and Delaware law, including the U.S. and Delaware Constitutions, and ensure Delawareans are protected. The neutral application of Delaware law is also very important to me and the Delaware Department of Justice (“DDOJ”). In light of constitutional concerns the ACLU of Delaware has raised regarding the enforcement of 11 Del. C. § 1321 (“Loitering; violation”) and 21 Del. C. § 4147 (“Pedestrians soliciting rides or business”) (individually, “Statute” or collectively, “Statutes”), I am writing to inform you that moving forward I, as Attorney General of the DDOJ, either directly or through any employee of the DDOJ, will not be enforcing either Statute against any Delawarean until the Delaware General Assembly acts to amend these Statutes. The Chief Deputy Attorney General will direct all prosecutors to cease enforcement of these Statutes.

I will be working closely with my colleagues at the DDOJ to draft proposed legislation aligning the Statutes with constitutional protections and will make a good faith effort to have the legislation introduced in the upcoming legislative session. The draft proposed legislation shall include opportunities for those with prior convictions for violating these Statutes to have prior convictions under these Statutes expunged.

This letter will be sent to all Delaware law enforcement agencies with instructions to law enforcement officers that reliance on the Statutes for any law enforcement activity, including any stop, search, or arrest, shall cease immediately. A request will also be sent to the Delaware Criminal Justice Information System (“DELJIS”) to remove both Statutes as a charging option in their mainframe.

Further, my office will provide training on this decision, the DELJIS request, and a refresher on constitutional stops within the next six months and encourage all law enforcement agencies in Delaware to participate. This training will be developed in consultation with the ACLU Legal Director. I will also be strongly encouraging these agencies to amend their own internal policies to reflect this decision and will provide technical assistance as requested.

Respectfully submitted,



KATHLEEN JENNINGS
Attorney General
State of Delaware

*cc (via email): Daniel Logan, Chief Deputy Attorney General
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