



Office of Children and Family Services

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Acting Commissioner

Informational Letter

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| Transmittal: | 17-OCFS-INF-03 |
| To: | Commissioners of Social Services Executive Directors of Voluntary Authorized Agencies Temporary Assistance Directors |
| Issuing Division/Office: | Child Welfare and Community Services |
| Date: | March 17, 2017 |
| Subject: | New York State Processes Related to Notifications of Victims of Human Trafficking |
| Suggested Distribution: | OCFS Regional Directors Directors of Social Services Child Protective and Preventive Services Supervisors Child Welfare Supervisors Foster Care and Adoption Supervisors Staff Development Coordinators Temporary Assistance Directors LDSS Human Trafficking Liaisons |
| Contact Person(s): | humantrafficking@ocfs.ny.gov InfoDCJS@dcjs.ny.gov bria.contact@otda.ny.gov |
| Attachments: | New York State Referral of Human Trafficking Victim Form The following attachments can be accessed by clicking on their titles or by using the OCFS website links below: <ul style="list-style-type: none"> • OCFS-3920: Child Sex Trafficking Indicators Tool • OCFS-3921: Rapid Indicator Tool • OCFS-3922: Law Enforcement Report of a Child Sex Trafficking Victim Form • Sample Sex Trafficking and CSEC Referral Flow Chart: For youth in the care, custody or supervision of an LDSS, Voluntary Agency, or OCFS • DSS Quick Reference Guide for compliance with 15-OCFS-ADM-16 • OCFS intranet: http://ocfs.state.nyenet/admin/forms/Foster_Care/ • OCFS internet: http://ocfs.ny.gov/main/documents/forms.asp |

Filing References

| Previous ADMs/INFs | Releases Cancelled | NYS Regs. | Soc. Serv. Law & Other Legal Ref. | Manual Ref. | Misc. Ref. |
|---|---------------------------|-------------------------------|---|--------------------|--|
| 09-OCFS-ADM-01 / OTDA 09-ADM-01 16-OCFS-ADM-09 15-OCFS-ADM-16 15-OCFS-INF-08 15-OCFS-INF-03 | | 18 NYCRR 431.8(b)(3)(i ii) | 22 U.S.C. §7102; 42 U.S.C. §§671- 679b; Social Services Law §483-aa, bb, cc Chapter 74 of the Laws of 2007; Chapter 368 of the Laws of 2015 | | Preventing Sex Trafficking and Strengthening Families Act (P.L. 113-183); ACYF-CB-IM-14-03; ACYF-CB-PI-14-06 |

I. Purpose

The purpose of this Informational Letter (INF) is to explain differences between certain requirements (detailed in 15-OCFS-ADM-16) to identify, document, and report child victims of trafficking, and the process of confirming human trafficking victimhood; a process managed by the New York State Division of Criminal Justice Services (DCJS) and New York State Office of Temporary and Disability Assistance (OTDA).

II. Background

On September 29, 2014, President Obama signed the *Preventing Sex Trafficking and Strengthening Families Act* (P.L. 113-183) [hereinafter referred to as the “Act”] into law, which amended various provisions of Title IV - E of the *Social Security Act* (SSA). The Act has two primary purposes - to protect and prevent at-risk children and youth from becoming victims of sex trafficking, and to improve the safety, permanency, and well-being outcomes of children and youth involved with the child welfare system. Among other provisions, the Act requires that policies, procedures, and tools for identification, documentation, and response to child victims of sex trafficking, or those at risk of becoming victims, be developed. In response to the Act, the New York State Office of Children and Family Services (OCFS) issued the [Requirements to Identify, Document, Report, and Provide Services to Child Sex Trafficking Victims](#) Administrative Directive (ADM).¹ For more information on the basic provisions of the Act, please see [15-OCFS-INF-03](#).²

¹ 15-OCFS-ADM-16 *Requirements to Identify, Document, Report, and Provide Services to Child Sex Trafficking Victims*.

² 15-OCFS-INF-03 *Preventing Sex Trafficking and Strengthening Families Act*.

On November 1, 2007, the [New York State Anti-Trafficking Law](#)³ took effect, establishing human trafficking as a state crime, and establishing a process to “confirm” victims of human trafficking under the state law. This process was established as a means of providing assistance to confirmed victims, including those who would not be otherwise eligible for assistance due to their immigration status. Confirmed victims, if otherwise eligible, are eligible for benefits and services in accordance with their citizenship or immigration status. On January 7, 2009, OCFS and OTDA issued 09-OCFS-ADM-01 / OTDA 09-ADM-01 to provide local districts with information about this law and its effects, including details about the confirmation process and benefits available to victims.

The *New York State Anti-Trafficking Law* requires DCJS and OTDA to accept referrals of potential victims from local law enforcement agencies or local district attorneys’ offices. In 2015, the ability to refer potential victims of human trafficking expanded to include established legal and social services providers.⁴

Based on the requirements of the two laws, the three agencies (OCFS, OTDA, and DCJS) have roles in the identification and the provision of services to victims. Per the [New York State Anti-Trafficking Law](#), OTDA and DCJS are charged with confirming or denying referrals of victims made to their agencies to allow access to services. Additionally, OTDA manages the New York State Response to Human Trafficking Program (RHTP), which provides case management and referral services to adult foreign-born, New York State confirmed trafficked persons who by virtue of the lack of an eligible immigration status are therefore not otherwise eligible for any mainstream benefits and/or services. This referral process is open to any potential victim of human trafficking, including minors in the care, custody, or supervision of OCFS, local departments of social services (LDSSs), and voluntary agencies (VAs). Additionally, per the federal *Preventing Sex Trafficking and Strengthening Families Act*, OCFS provides oversight to its facilities, LDSSs, and VAs to screen, identify, and provide services to identified victims of human trafficking and youth identified as at risk of becoming a victim.

DCJS, in consultation with OTDA, must determine whether to confirm the referred person as a human trafficking victim (HTV) under statutory and regulatory guidelines. Once confirmed, victims are directed to either the LDSS or the RHTP service provider network. For more information on the *New York State Anti-Trafficking Law* or the RHTP, please refer to [OTDA 09-ADM-01](#).⁵

III. Program Implications

The specific purposes, affected populations, and procedures of the separate and distinct screening, notification, and referral processes of the child sex trafficking and confirmation of victimhood policies described above are summarized in the following table and diagrams:

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| | Child Welfare Screening and Law Enforcement Notification | Confirmation of Victimhood |
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³ Chapter 74 of the Laws of 2007.

⁴ Chapter 368 of the Laws of 2015.

⁵ OTDA 09-ADM-01 *New York State Anti-Trafficking Statute*.

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| Lead Agency and Contact | OCFS: 518-474-8536; humantrafficking@ocfs.ny.gov ; http://ocfs.ny.gov/main/humantrafficking/ | OTDA: (518) 402-3096; bria.contact@otda.ny.gov ; https://otda.ny.gov/programs/bria/trafficking.asp DCJS: (518) 457-5837, InfoDCJS@dcjs.ny.gov ; http://www.criminaljustice.ny.gov/pio/humantrafficking/humantrafficking.htm Shared OTDA/DCJS fax: (518) 485-9611 |
| Relevant Policy | <i>Requirements to Identify, Document, Report, and Provide Services to Child Sex Trafficking Victims (15-OCFS-ADM-16)</i> | <i>New York State Anti-Trafficking Law (OTDA 09-ADM-01)</i> |
| Purpose of Process | To identify, document, and provide services to child sex trafficking victims in the child welfare system | To identify and document adult and minor victims of human trafficking, and refer to the appropriate service provider based on age and eligibility status |
| Applicable Definition of Victims of Sex Trafficking | OCFS's policies refer to the federal definition of sex trafficking, namely that any person under 18 years old who has engaged in transactional or commercial sex is a victim of "severe form of trafficking in persons." ⁶ For the purposes of OCFS policies, any child under age 18 who has engaged in transactional sex or a commercial sex act is considered a sex trafficking victim, regardless of whether force, fraud, or coercion is present. | OTDA and DCJS may confirm an individual under the New York State confirmation process using any definition of "trafficking in persons," either state ⁷ or federal. ⁸ The trafficking must have a nexus to New York State and must have occurred after the <i>New York State Anti-Trafficking Law</i> went into effect in 2007. |
| Applicable Definition of Victims of Labor Trafficking | The <i>Requirements to Identify, Document, Report, and Provide Services to Child Sex Trafficking Victims</i> policy only applies to child victims of sex trafficking; however, children and youth are also able to access services | Referrals for confirmation and associated services are available to potential victims of both sex and labor trafficking under New York State and federal definitions. |

⁶ *Trafficking Victim Protection Act of 2000*, P. L. 106-386 (TVPA).

⁷ Chapter 74 of the Laws of 2007 (New York State Anti-Trafficking Statute).

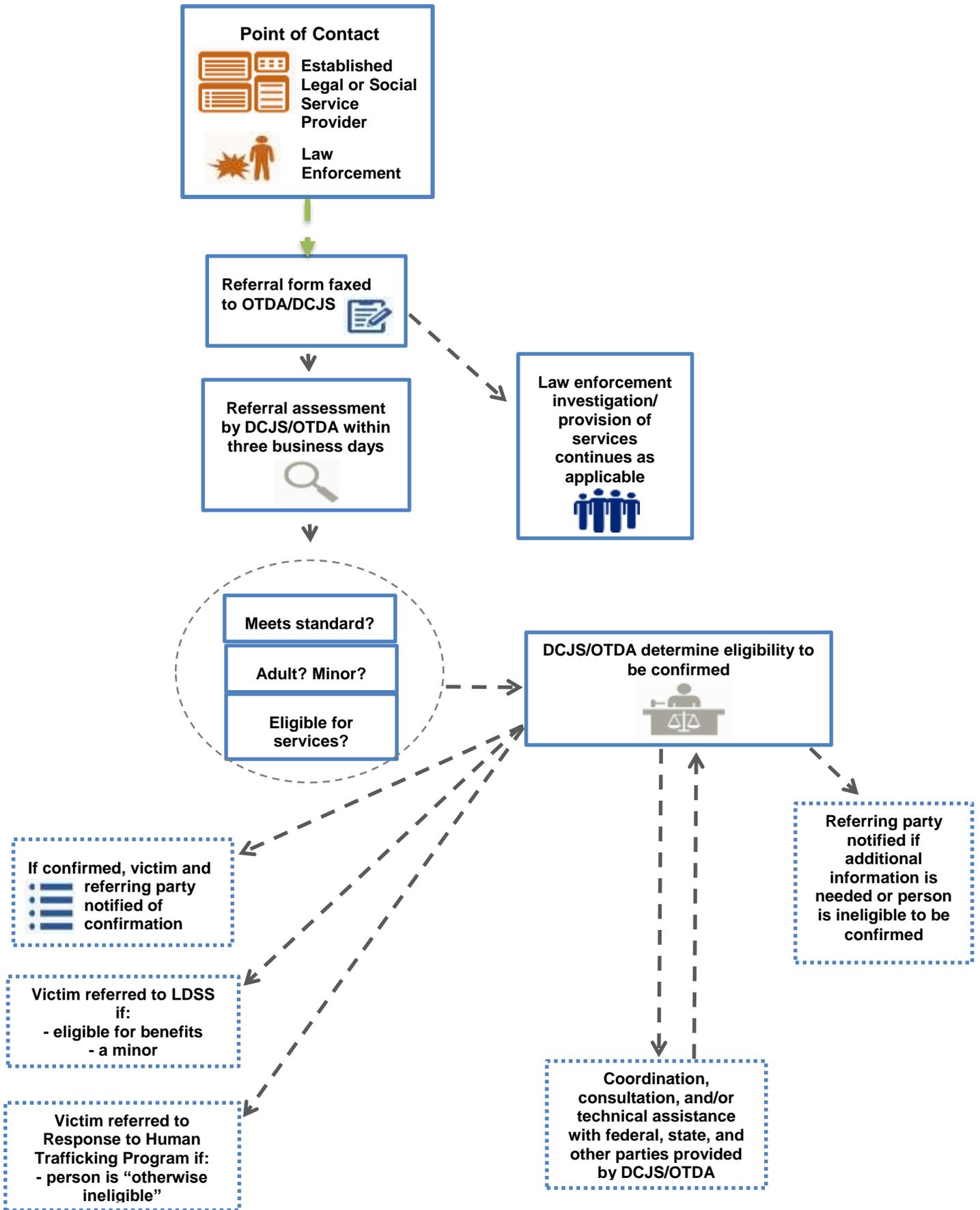
⁸ TVPA.

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| | related to potential labor trafficking experiences. | |
| Client Population Affected | All children and youth, regardless of age, in the care, custody, or supervision of an LDSS or OCFS, including children in foster care, child protective services (including family assessment response [FAR] cases), and open preventive cases, receiving Chafee services, or on runaway status from foster care up until the age of 21 | All persons (children and adults) whom a designated entity reasonably believes to be a victim of human trafficking |
| Professionals Affected | All applicable personnel of OCFS, LDSSs, Voluntary Authorized Agencies, and relevant contractors | All representatives of established social and legal services agencies; all members of law enforcement, including district attorneys' office personnel, probation, and Department of Labor personnel |
| Required Actions | Defined in <i>Requirements to Identify, Document, Report, and Provide Services to Child Sex Trafficking Victims</i> (15-OCFS-ADM-16) | Defined in Chapter 74 of the Laws of 2007, Chapter 368 of the Laws of 2015, and <i>New York State Anti-Trafficking Statute</i> (OTDA 09-ADM-01) |
| Is client consent required to take defined action(s)? | <p>No – Process is mandatory without consent of parent/guardian and/or youth.</p> <p>In instances where a report to law enforcement is made, youth are not required to cooperate with law enforcement. For more information, please refer to “Is cooperation with law enforcement required?” below.</p> <p>Although consent is not required, workers are encouraged to discuss the reporting process with parents/guardians and youth to maintain engagement.</p> | <p>Yes – For referral to be made by established social or legal services provider, regardless of victim's age</p> <p>No – For referral to be made by law enforcement, regardless of victim's age</p> |
| Is there an impact on eligibility for youth to access services? | No – Youth who are entitled to services through LDSSs and community-based services may access those services as needed, even if the youth is not identified | No – For youth under 18 years old |

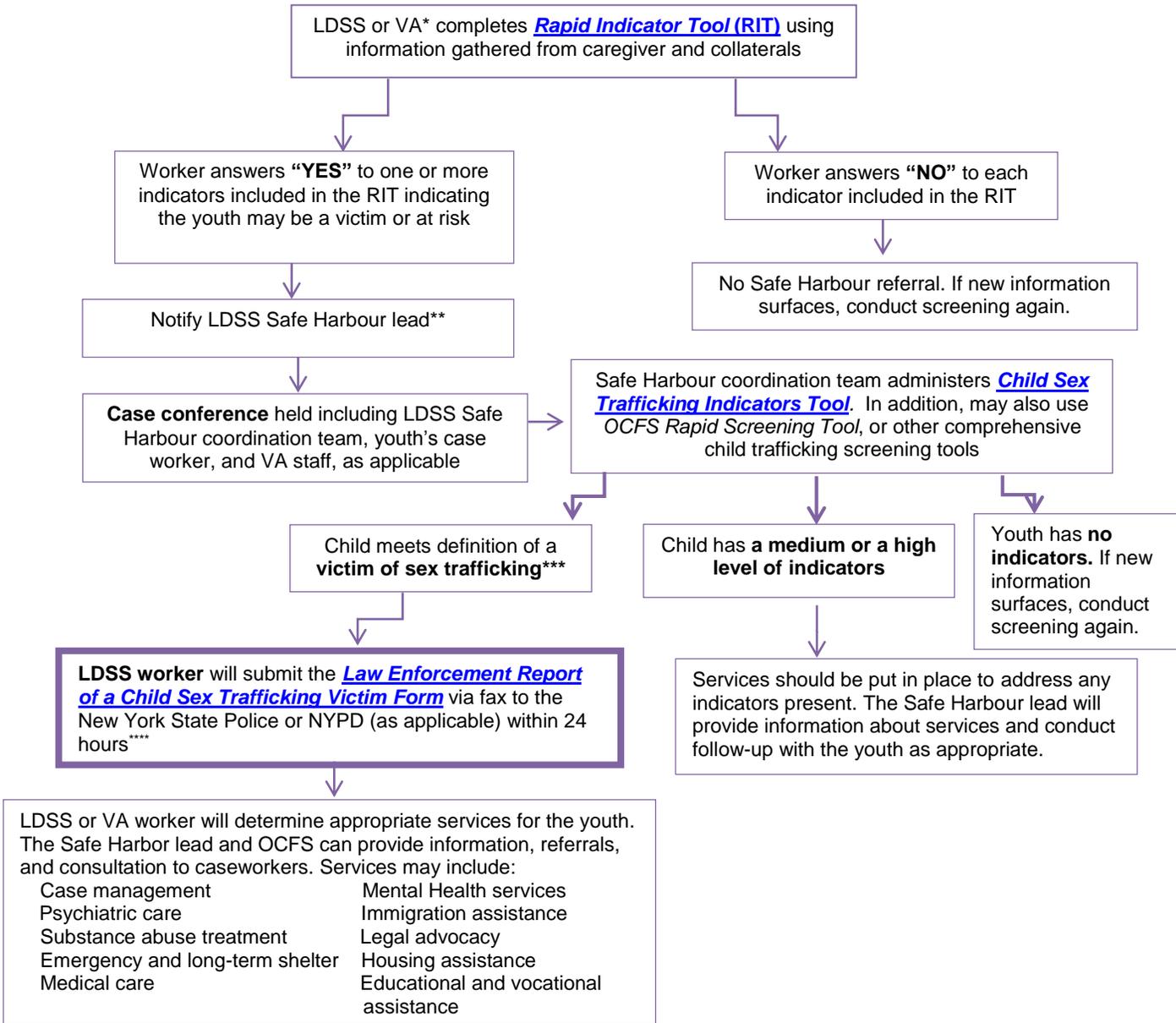
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| | as trafficked or at risk according to screening tools | Potentially – For persons over 18 years old ⁹ |
| Does the result of one process affect the other? | <p>No – The process defined in 15-OCFS-ADM-16 is not impacted by a client's confirmation or lack thereof.</p> <p>There may be instances where a youth is determined to be a sex trafficking victim by the OCFS screening process, but would not qualify for confirmation by OTDA and DCJS.</p> <p>For more information, please refer to "Applicable Definition of Victims of Sex Trafficking" above.</p> | <p>Yes – If through the course of screening, using the tools attached to 15-OCFS-ADM-16, a child-serving professional reasonably suspects a youth has been trafficked, the worker must submit the <i>New York State Referral of Human Trafficking Victim</i> form to OTDA and DCJS, <i>if consent is obtained</i>.</p> <p>(Note: A worker may reasonably suspect a youth has been trafficked even if the results of the screening do not indicate the youth has been trafficked.)</p> |
| Is cooperation with law enforcement required? | <p>Requirements for cooperating with law enforcement differ based on whether the individual is a professional or identified youth victim:</p> <p>Yes – <i>Professionals</i> who notify law enforcement of an identified victim of sex trafficking are required to cooperate following the notification.</p> <p>No – <i>Identified youth victims</i> of human trafficking are not required to cooperate with law enforcement, but should be encouraged to do so by professionals as appropriate.</p> | <p>No – The confirmation process is established as a referral for services. It is not an investigative tool for law enforcement.</p> |

Referral process for confirmation of victimhood as established by the *New York State Anti-Trafficking Law*:

⁹ For more information about the New York State Response to Human Trafficking Program, please contact bria.contact@otda.ny.gov.



Sample Sex Trafficking and CSEC Referral Flow Chart for youth in the care, custody or supervision of an LDSS, Voluntary Agency (VA), or OCFS:



Note: Mandated reporters are **required** to call the New York Statewide Central Register of Child Abuse and Maltreatment if, at any time, it is suspected that a youth’s parent, guardian, or a person legally responsible for the youth is abusive or neglectful of the youth, including by trafficking or exploiting the youth.

***The LDSS and VA should determine in advance** which agency is responsible for the sex trafficking screening, reporting, and determining services requirements.

****To find your local Safe Harbour lead, contact your OCFS regional office.**

*****It must be documented in the case record that the child is a victim of sex trafficking;** if the youth is in foster care, the documentation must indicate whether the victimization occurred prior to or while the youth was in foster care.

******Form OCFS-3922 must be faxed to the New York State Police or the New York City Police Department.** Though LDSSs and VAs are required to report to law enforcement when a child is identified as a sex trafficking victim, the child is **not** required to cooperate with a law enforcement investigation, should one occur as a result of this report. However, children and youth should be given an opportunity to discuss with law enforcement if they wish. For more information on the required protocol when a youth is suspected to be at risk of sex trafficking refer to 15-OCFS-ADM-16. For more information on how to support youth and provide services to youth who may be at risk of experiencing trafficking, refer to Responding to Commercially Sexually Exploited and Trafficked Youth: A Handbook for Child Serving Professionals.

/s/ Laura Velez

Issued By:

Name: Laura Velez

Title: Deputy Commissioner

Division/Office: Child Welfare and Community Services