

Human Trafficking Model Policy

March 2021



**Municipal Police
Training Council**

New York State Division of Criminal Justice Services
80 South Swan Street, Albany, New York 12210

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STATE OF NEW YORK
Division of Criminal Justice Services
Office of Public Safety

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The Human Trafficking Model Policy is intended to allow for the individual needs of each of the police departments in New York State regardless of size or resource limitations. Law Enforcement are encouraged to customize these protocols to meet their regional needs, while being mindful of the intent of the policy. As with all model policies adopted by the Municipal Police Training Council (MPTC), this policy is non-binding upon agencies within New York State and is meant to serve as a guide to be used in developing a department's individual policy.

The Municipal Police Training Council (MPTC) originally approved the model policy in the March 2016 meeting. It was updated during the Council's March 2021 meeting.

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District Attorney's Association of the State of New York

Law Enforcement Training Directors Association of New York State

New York State Association of Chiefs of Police

New York City Police Department

New York State Office of Children and Family Services

New York State Office of Temporary and Disability Assistance

New York State Police

New York State Sheriff's Association

New York State University Police

Worker Justice Center of New York State

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I. PURPOSE

This policy is designed to provide guidance to law enforcement agencies on recognizing, communicating with, and assisting human trafficking victims. Assisting human trafficking victims appropriately will not only help them in obtaining essential services and safety but will also aid law enforcement in the successful apprehension and prosecution of human traffickers.

II. POLICY

As officers often have the first opportunity to identify human trafficking victims while on duty, officers should be cognizant of common trafficking arenas, vulnerable groups, and common conditions which help perpetuate human trafficking. Following the identification of a human trafficking victim law enforcement should follow the interview, mandated reporter and referral protocols outlined herein.

III. DEFINITIONS

A. Human Trafficking

1. **Labor Trafficking** – Compelling or rendering another person through force, fraud or coercion to:
 - a) Engage in labor or services; or
 - b) Recruit, entice, harbor or transport another for the purpose of engaging in labor or services.¹
2. **Sex Trafficking** – Advancing or profiting from prostitution by compelling another to commit a commercial sex act through force, fraud, or coercion.²
3. **Sex Trafficking of a Child** - Force, fraud or coercion unnecessary where the underlying prostitution involved a child less than 18 years old and that child would be deemed a victim of sex trafficking even if she/he “voluntarily” agreed to the prostitution enterprise.³
4. **Force, Fraud, Coercion** – These are the three methods by which traffickers press victims into lives of servitude and/or abuse.
 - a) **Force** –

¹ This policy utilizes New York State Penal Law definition. Under the Trafficking Victims Protection Act of 2000, 22 U.S.C. § 7102, sex trafficking and labor trafficking are “severe forms of trafficking in persons” which are induced by force, fraud or coercion. Peonage and debt peonage are examples of coercion, slavery or unlawful imprisonment are examples of force.

² N.Y. Penal Law § 230.34 (PL).

³ N.Y. Penal Law § 230.34-a (PL).

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- (1) Unlawfully providing drugs to a person to impair their judgment,⁴
 - (2) Utilizing force or a plan or scheme to instill fear in the victim that if they do not comply the actor will:
 - (a) Cause physical injury, serious physical injury, or death to a person;
 - (b) Damage property of victim or another;
 - (c) Kidnap or imprison the victim;
 - (d) Threaten the victim with
 - (i) Criminal charges
 - (ii) Deportation
 - (iii) Exposure of a secret or fact that would be harmful to the victim
 - (iv) Misuse of public servant position ⁵
 - (e) Engage in any other act which would not materially benefit the actor but which is intended to materially harm the victim with respect to health, safety and immigration status.
- b) **Fraud** – Includes false and deceptive offers or promises of employment, housing, assistance, love/marriage or a better life.⁶
- c) **Coercion** – False statements or misrepresentations about US laws and consequences; confiscating or destroying papers and legal documents,⁷ requiring victim to perform prostitution, labor or services to pay off a real or purported debt.⁸
- B. **Human Trafficking Referral** – A mandatory written notification made by a local law enforcement agency to the Office of Temporary and Disability Assistance (OTDA) and the Division of Criminal Justice Services (DCJS), informing OTDA and DCJS of a person reasonably believed to be a victim of human trafficking who may need social services. This referral is done via the completion and submission of the New York State Referral of Human Trafficking Victim form, a link to which is contained in Appendix 1: Resources.⁹

⁴ N.Y. Penal Law § 230.34 (1) (PL). Additionally, the provision of a controlled substance to a human trafficking victim is a component of Aggravated Labor Trafficking as defined by N.Y. Penal Law § 135.37 (PL).

⁵ N.Y. Penal Law § 135.35 (3) (PL) and N.Y. Penal Law § 230.34 (5) (PL)

⁶ N.Y. Penal Law § 135.35 (PL) and N.Y. Penal Law § 230.34 (2) (PL)

⁷ N.Y. Penal Law § 135.35 (2) (PL) and N.Y. Penal Law § 230.34 (3) (PL)

⁸ N.Y. Penal Law § 135.35 (1) (PL) and N.Y. Penal Law § 230.34 (4) (PL)

⁹ NYS Social Services Law section 483-cc (a) (SSL) sets forth the requirement that law enforcement complete and submit a New York State Referral of Human Trafficking Victim form.

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- C. **U-Visa** – A nonimmigrant visa set aside for victims of certain crimes, including but not limited to human trafficking, who have suffered mental or physical abuse and are willing to help law enforcement or government officials in the investigation or prosecution of criminal activity.¹⁰
- D. **T-Visa** – A nonimmigrant visa set aside for those who are or have been victims of human trafficking, protects victims of human trafficking and allows victims to remain in the United States to assist in an investigation or prosecution of human trafficking.¹¹

IV. PROCEDURES FOR IDENTIFYING HUMAN TRAFFICKING VICTIMS

- A. There is no consistent profile of a human trafficking victim and what may appear to be an ordinary observation or piece of information could be valuable corroborating evidence. Below are some examples of notable indicators of such arenas, groups and conditions. This is not intended to be comprehensive, therefore, it is critical that officers undergo additional training on the identification of human trafficking victims, as referenced in section VII of this policy.
 - 1. Visible Indicators
 - a) Common Trafficking Arenas - Human trafficking activity is often found in, but not limited to: certain industries (i.e. commercial food establishments, retail establishments, agricultural operations), systems (i.e. foster care, mass transit) and electronic media (i.e. internet/social media).
 - b) Known Vulnerable Groups – Vulnerable groups that have a higher rate of being human trafficking victims include, but are not limited, to: minors, foreign born persons and vulnerable populations (i.e. runaways, migrant workers and the mentally ill).
 - c) Common Trafficking Conditions – Suspicious work or home conditions as well as physical, physiological and emotional indicators of adults and children should all be assessed to identify a potential victim of human trafficking.

¹⁰ Victims of Criminal Activity: Information on U Nonimmigrant Status can be found on the U.S. Citizenship and Immigration Services (USCIS) website at <http://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-criminal-activity-u-nonimmigrant-status/victims-criminal-activity-u-nonimmigrant-status>

¹¹ Victims of Criminal Activity: Information on T Nonimmigrant Status can be found on the U.S. Citizenship and Immigration Services (USCIS) website at <http://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-human-trafficking-t-nonimmigrant-status>

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V. PROCEDURES FOR INTERVIEWING HUMAN TRAFFICKING VICTIMS

A. Human trafficking victims are a unique class of individuals, many of whom have endured multiple violations, including sexual abuse and are likely to be experiencing trauma. Victims may adopt self-protective reactions as part of their efforts to cope with the trauma and create safety for themselves. Coping or survival mechanisms may result in the victim feeling loyalty, gratitude or dependency upon an individual related to the trafficking operation. In initial contacts with law enforcement, victims may repeat cover stories, may not tell the truth, especially at first, due to unfamiliarity with the legal system or fear of authority figures. Below are some examples of how officers may prepare for and conduct interviews with human trafficking victims. This is not intended to be comprehensive, therefore, it is critical that officers undergo additional training on interviewing human trafficking victims, as referenced in section VII of this policy. Additional information may be accessed via Appendix 1: Resources.

1. Preparation – Prior to interviewing a prospective human trafficking victim, law enforcement should be educated on trauma, its impact and effects. Law enforcement should coordinate with a trauma specialist to assist with interviews as necessary and to develop a pre-written script of sample questions consistent with a trauma-informed approach. Law enforcement should also learn the terminology and dynamics of labor and sex trafficking as this familiarity may put the victim at ease.
2. Interview – When interviewing a prospective human trafficking victim an officer should focus on: work conditions, living conditions, whether the victim has been defrauded or financially coerced and whether the victim has been physically abused. Focusing on these issues will assist the interviewer in accurately identifying a human trafficking victim.
 - a) Interview Location - Interview the victim in a non-law enforcement setting which is conducive to the sensitive nature of the interview. When practicable, law enforcement should coordinate the interview location with the local social services provider. If a non-law enforcement setting is not available law enforcement should make every effort to interview the victim in a setting conducive to the sensitive nature of the interview.
 - b) Demeanor - Maintain a warm, compassionate demeanor and appearance when interviewing a victim. Minimize the presence of uniformed police officers when possible.

VI. PROCEDURES FOR REFERRAL PROCESS, REVIEW AND FOLLOW UP

A. Upon the reasonable belief that an individual is a human trafficking victim a law enforcement agency must notify the Office of Temporary and Disability Assistance

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(OTDA) and the Division of Criminal Justice Services (DCJS) as soon as practicable after a first encounter, that the individual may be eligible for services. This referral is done via the completion and submission of the New York State Referral of Human Trafficking Victim form.^{12 13}

1. OTDA and DCJS Review – DCJS Human Trafficking Director must determine whether the person should be confirmed as a human trafficking victim.¹⁴ Generally, this determination is made within three business days of receipt of the referral.

2. Law Enforcement Actions During Review – Prior to any investigation the investigating police agency should: coordinate with the Office of the District Attorney to determine applicable policies and procedures pertaining to charging determinations, and collaborate with local service organizations and non-governmental organizations on available temporary shelter and services.^{15 16} While referral is being reviewed law enforcement should take the following actions :
 - a) If law enforcement reasonably believes that a prospective human trafficking victim has not committed an offense related to their victimization (i.e. Prostitution), law enforcement should try to locate short term safe housing while awaiting determination of referral.¹⁷ Law enforcement should coordinate with local social service organizations and non-governmental organizations to identify a local temporary shelter.

 - b) If law enforcement has probable cause to believe that a prospective human trafficking victim has committed an offense, not related to the victimization, law enforcement should follow their agency’s applicable arrest guidelines and procedures and coordinate with the local office of the district attorney.

 - c) If law enforcement reasonably believes that a prospective child sex trafficking victim has not committed an offense, law enforcement should coordinate with OTDA and the local social services

¹² NYS Social Services Law § 483-cc (a) (SSL) – Law enforcement and established providers of social or legal services authorized to submit Human Trafficking Referrals.

¹³ The current version of the New York State Referral of Human Trafficking Victim form can be found at www.criminaljustice.ny.gov/pio/humantrafficking/humantrafficking.htm. Additional resources can be found in Appendix 1.

¹⁴ NYS Social Services Law § 483-cc (b) (SSL)

¹⁵ Visit www.otda.ny.gov/programs/bria/providers/ for a list of service providers throughout New York State, by region, who may assist law enforcement agencies locate temporary shelter and services for human trafficking victims. Additional resources can be found in Appendix 1.

¹⁶ NYS Social Services Law § 483-bb (c) (SSL) - Authorizes civil actions including damages and attorney’s fees on behalf of victims against perpetrators of human trafficking.

¹⁷ NYS Social Services Law § 483-bb (b) (SSL)

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department for emergency temporary housing or another short term safe placement such as an approved runaway and homeless youth program, approved respite or crisis program providing crisis intervention or respite services or community-based program to serve sexually exploited children under eighteen.¹⁸ Law enforcement must also report or cause a report to be made to the New York State Central Registry when they have reasonable cause to suspect that a child has been abused or maltreated.¹⁹

3. Review Follow-Up – Upon confirmation of a human trafficking victim, OTDA will notify the human trafficking victim, their representative and the referring law enforcement agency and will assist the referring agency in helping the victim obtain services which may include but are not limited to: case management, emergency temporary housing, healthcare, mental health counseling, drug addiction screening and treatment.
 - a) Law Enforcement must assist victims by providing documentation to assist with immigration benefits and status.
 - (1) Form I-914, Supplement B - A U visa certification document to be completed by law enforcement and given to a human trafficking victim for filing with the United States Citizenship and Immigration Services (USCIS).²⁰
 - (2) Form I-918, Supplement B - A T visa certification document to be completed by law enforcement and given to a human trafficking victim for filing with the USCIS for a T visa.²¹
4. Victim Notification Process
 - a) Throughout the pending case, law enforcement should collaborate with the local social services department, advocates, healthcare providers, counseling services, and other service providers, when practicable, and as necessary, to inform human trafficking victims about their case status and available social services as well as to assist in the investigation of human trafficking crimes.

VII. LAW ENFORCEMENT TRAINING - Law enforcement personnel should complete a training program on the identification and interviewing of human trafficking victims, the

¹⁸ NYS Social Services Law § 447-b (SSL), The New York State Safe Harbor for Exploited Children Act of 2008

¹⁹ NYS Social Services Law § 413 (a) (SSL)

²⁰ Form I-914, Supplement B with instructions can be found on the USCIS website at www.uscis.gov

²¹ Form I-918, Supplement B with instructions can be found on the USCIS website at www.uscis.gov

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investigation of relevant crimes, and applicable local and federal laws, regulations, and the policies and procedures defined herein.

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APPENDIX 1

RESOURCES

- a. The New York State Referral of Human Trafficking Victim form - www.criminaljustice.ny.gov/pio/humantrafficking/humantrafficking.htm
- b. New York State Division of Criminal Justice Services (DCJS) - www.criminaljustice.ny.gov/pio/humantrafficking/humantrafficking.htm
- c. New York State Office of Temporary and Disability Assistance – www.otda.ny.gov/programs/bria/trafficking.asp
- d. New York State Office of Children and Family Services (OCFS) – <http://ocfs.ny.gov/main/humantrafficking/>
- e. New York State Central Register for Child Abuse and Maltreatment - Mandated Reporter: 800-635-1522, Public Hotline: 800-342-3720
- f. New York City Human Trafficking webpage - www.nyc.gov/html/endht/html/home/home.shtml
- g. The Administration for Children and Families (ACF) Human Trafficking - www.acf.hhs.gov/programs/orr/programs/anti-trafficking
- h. The National Human Trafficking Resource Center (NHTRC) – www.polarisproject.org - 888-373-7888 or text “BeFree” (23373)
- i. U.S. Department of Homeland Security, Homeland Security Investigations Tip Line – www.dhs.gov/topic/human-trafficking - 866-347-2423

NOTE: All resources listed above are solely meant to provide guidance to law enforcement as they encounter prospective human trafficking victims and conduct human trafficking investigations. These resources should not serve as a substitute for formal human trafficking training.