



# Office of Children and Family Services

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## Informational Letter

<b>Transmittal:</b>	15-OCFS-INF-07
<b>To:</b>	Commissioners of Social Services Executive Directors of Voluntary Authorized Agencies
<b>Issuing Division/Office:</b>	Strategic Planning and Policy Development
<b>Date:</b>	August 21, 2015
<b>Subject:</b>	<b>Laws to Address Sexual Exploitation of Children</b>
<b>Suggested Distribution:</b>	Directors of Social Services Voluntary Agency Staff Child Protection Supervisors Foster Care/Adoption Supervisors Probation Staff Detention Staff Staff Development Coordinators Legal Staff Youth Bureau Staff Runaway and Homeless Youth Act (RHYA) Coordinators/Staff
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<b>Attachments:</b>	None

**Filing References**

Previous ADMs/INFs	Releases Cancelled	NYS Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
			SSL §§ 447-a and 447-b CPL §§ 170.30(4), 170.80, 720.15(4), 720.25, and 720.35(1) PL § 60.02 (4)		

**I. Purpose**

The purpose of this New York State Office of Children and Family Services (OCFS) Informational Letter (INF) is to provide information to local departments of social services (LDSSs) and voluntary authorized agencies (VAs) on laws that address children and youth who are under 18 years of age who are victims of sexual exploitation.

**II. Background**

The Safe Harbour for Sexually Exploited Youth Act (Chapter 569 of the Laws of 2008, as amended by Part G of Chapter 58 of the Laws of 2010) (hereinafter the “Safe Harbour Act”) defines a “sexually exploited child”<sup>1</sup> as any person under the age of 18 who has been subject to sexual exploitation because he or she:

- (a) Is the victim of the sex trafficking;
- (b) Engages in prostitution;
- (c) Is a victim of compelling prostitution; or
- (d) Engages in a sexual performance or pornography.

The Safe Harbour Act created a mechanism whereby a youth age 15 or younger who was the subject of a juvenile delinquency proceeding as a result of an arrest for a prostitution-related offense could petition for the matter to be converted to a Persons in Need of Supervision (PINS) proceeding. Under the Safe Harbour Act, following such a request, the court must convert the matter to a PINS proceeding, unless the youth was previously adjudicated to be a juvenile delinquent (JD), or expressed an unwillingness to cooperate with specialized services for sexually exploited youth, in which case the court could exercise its discretion in determining whether to convert the case. Central to these reforms was the recognition that children and youth who are sexually exploited are victims, rather than offenders, and should receive specialized services to address their sexual exploitation instead of judicial punishment.

LDSSs are required to address the child welfare needs of sexually exploited children within their district in their multi-year consolidated service plan. To the extent that funds are available specifically for this purpose, LDSSs are required to provide that a short-term safe house or another short-term safe placement be available to child victims residing in their district. Some examples of these are:

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<sup>1</sup> Social Services Law § 447-a (1)

- Approved runaway and homeless youth programs;
- Approved respite or crisis programs; and
- Community-based programs to serve sexually exploited children.

To meet this requirement, districts are permitted to coordinate services with other districts in the region or to utilize already existing programs, such as respite beds or runaway and homeless youth programs. Other services that may be needed by sexually exploited youth include assessment of service need, case management, medical care, legal services, mental health services, substance and alcohol abuse treatment, educational services, and life skills and transition planning services.

Though the Safe Harbour Act's definition of sexually exploited children included those up to age 18 and provided for new mechanisms to handle how children age 15 and younger who were arrested for prostitution-related offenses were treated, the Safe Harbour Act did not change how youth age 16 and 17 were treated in criminal court following an arrest for a prostitution offense. In 2013 and 2014, legislation was enacted (Chapter 555 of the Laws of 2013, as amended by Chapter 402 of the Laws of 2014) to allow for 16- and 17-year-olds charged with certain prostitution-related offenses to have the court conditionally convert the criminal matter, upon the consent of the youth, to a PINS proceeding. Among other things, these chapters provide that in such cases, the court has the authority to order any relief otherwise available to the family court under Article 7 (PINS) of the Family Court Act (FCA), including PINS diversion, detention, and residential placement with an LDSS.<sup>2</sup> However, the criminal court has the ability to restore the underlying criminal matter against the youth if the youth does not meet the conditions regarding participation in services. Additionally, the court has the ability to order the provisions of any specialized services for sexually exploited youth included in Title 8 of Article 6 of the Social Services Law (SSL), as may be reasonably available.

Together, Chapter 555 of the Laws of 2013 and Chapter 402 of the Laws of 2014 clarify that all individuals under age 18 who are arrested for certain prostitution or prostitution-related offenses are victims of sexual exploitation, and as such should be treated as victims and receive specialized services.<sup>3</sup>

### **III. Program Implications**

LDSSs and VAs should be aware of the provisions of the Safe Harbour Act, Chapter 555 of the Laws of 2013, and Chapter 402 of the Laws of 2014, and how they relate to children placed in their care and custody or custody and guardianship.

As a result of the Safe Harbour Act and these two Chapter laws, New York State law recognizes that children under 18 who are arrested for certain prostitution-related offenses are victims of sexual exploitation who are to be afforded certain protections and specialized services as a result of their victim status, and that they should be treated as victims and not offenders. Criminal courts may convert the criminal case of a youth under the age of 18 who has been arrested for certain prostitution-related offenses to a PINS case and order any relief or services available under Article 7 of the FCA in relation to the case; including, but not limited to, PINS diversion, detention or foster care with the LDSS.

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<sup>2</sup> Criminal Procedure Law §170.80(3)

<sup>3</sup> Criminal Procedure Law §170.30 (4), §170.80, §720.15(4), §720.25, §720.35(1) and Penal Law §60.02(4)

Also, the criminal court can order that any services under Title 8 of Article 6 of the SSL be provided as services for sexually exploited youth, if reasonably available. As a result, LDSSs and VAs may see an increase in sexually exploited children identified in need of child welfare placements and/or specialized services who would have otherwise been in the criminal justice system.

Since the Safe Harbour Law and the two Chapter laws are still relatively new, it is unclear whether criminal court cases that are converted to a PINS case under this law would be heard in family court or remain in criminal court. Furthermore, the LDSS may or may not be a party to the action or otherwise have any involvement or tie to the case.

LDSSs and VAs should assess the specialized services they have available to serve sexually exploited children in preparation for a potential increase in victims referred for these services.

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