

## U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

### 11062.2: Sexual Abuse and Assault Prevention and Intervention

**Issue Date: May 22, 2014**

**Effective Date: May 22, 2014**

**Superseded: ICE Policy No. 11062.1: Sexual Abuse and Assault Prevention and Intervention (May 11, 2012)**

**Federal Enterprise Architecture Number: 306-112-002b**

- 1. Purpose/Background.** This Directive establishes policy and procedures for the prevention of sexual abuse or assault of individuals in U.S. Immigration and Customs Enforcement (ICE) custody, and provides agency-wide policy and procedures for timely notification of sexual abuse and assault allegations, prompt and coordinated response and intervention, and effective monitoring of sexual abuse and assault incidents.

This Directive is intended to implement the requirements of the U.S. Department of Homeland Security (DHS) regulation titled, “Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities,” 79 Fed. Reg. 13100 (Mar. 7, 2014), and complement the requirements of the 2011 Performance-Based National Detention Standard on “Sexual Abuse and Assault Prevention and Intervention” (PBNDS 2011 Standard 2.11) and other related detention standards and ICE policies that establish the responsibilities of ICE detention facility staff and ICE personnel with respect to prevention, response and intervention, reporting, investigation, and tracking of incidents of sexual abuse or assault. This Directive ensures an integrated and comprehensive system of preventing and responding to sexual abuse or assault of individuals in ICE custody, including through a coordinated, multidisciplinary team approach, consistent with the goals of the Prison Rape Elimination Act of 2003, Pub. L. No. 108-79, 117 Stat. 972 (2003) (PREA).

- 2. Policy.** ICE has a zero tolerance policy for all forms of sexual abuse or assault. It is ICE policy to provide effective safeguards against sexual abuse and assault of all individuals in ICE custody, including with respect to screening, staff training, detainee education, response and intervention, medical and mental health care, reporting, investigation, and monitoring and oversight, as outlined in this Directive, in the requirements of PBNDS 2011 Standard 2.11, and in other related detention standards and ICE policies.
- 3. Definitions.** The following definitions apply for purposes of this Directive only:
  - 3.1. Custody.** Custody means that period of time during which a person has been arrested by ICE under its administrative and/or criminal authorities, is physically present in an ICE owned, -leased, or -contracted detention, holding, or other facility pursuant to such authorities, or is being transported by ICE (including for purposes of removal from the United States) pursuant to such authorities. Custody ends when the person is released

from ICE's physical confinement, control, or restraint, including upon transfer to another agency for detention under its own legal authorities.

**3.2. Detainee.** Detainee means an individual in ICE custody.

**3.3. Sexual Abuse and Assault.**

1) **Sexual abuse and assault** includes:

- a) Sexual abuse and assault of a detainee by another detainee; and
- b) Sexual abuse and assault of a detainee by a staff member, contractor, or volunteer.

2) **Sexual abuse and assault of a detainee by another detainee** includes any of the following acts by one or more detainees who, by force, coercion, or intimidation, or if the victim did not consent or was unable to consent or refuse, engages in or attempts to engage in:

- a) Contact between the penis and the vulva or anus and, for purposes of this subparagraph, contact involving the penis upon penetration, however slight;
- b) Contact between the mouth and the penis, vulva, or anus;
- c) Penetration, however slight, of the anal or genital opening of another person by a hand or finger or by any object;
- d) Touching of the genitalia, anus, groin, breast, inner thighs or buttocks, either directly or through the clothing, with an intent to abuse, humiliate, harass, degrade or arouse or gratify the sexual desire of any person; or
- e) Threats, intimidation, or other actions or communications by one or more detainees aimed at coercing or pressuring another detainee to engage in a sexual act.

3) **Sexual abuse and assault of a detainee by a staff member, contractor, or volunteer** includes any of the following acts, if engaged in by one or more staff members, volunteers, or contract personnel who, with or without the consent of the detainee, engages in or attempts to engage in:

- a) Contact between the penis and the vulva or anus and, for purposes of this subparagraph, contact involving the penis upon penetration, however slight;
- b) Contact between the mouth and the penis, vulva, or anus;
- c) Penetration, however slight, of the anal or genital opening of another person by a hand or finger or by any object that is unrelated to official duties or where the

staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;

- d) Intentional touching of the genitalia, anus, groin, breast, inner thighs or buttocks, either directly or through the clothing, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
- e) Threats, intimidation, harassment, indecent, profane or abusive language, or other actions or communications, aimed at coercing or pressuring a detainee to engage in a sexual act;
- f) Repeated verbal statements or comments of a sexual nature to a detainee;
- g) Any display of his or her uncovered genitalia, buttocks, or breast in the presence of a detainee; or
- h) Voyeurism, which is defined as the inappropriate visual surveillance of a detainee for reasons unrelated to official duties. Where not conducted for reasons relating to official duties, the following are examples of voyeurism: staring at a detainee who is using a toilet in his or her cell to perform bodily functions; requiring a detainee to expose his or her buttocks, genitals, or breasts; or taking images of all or part of a detainee's naked body or of a detainee performing bodily functions.

#### **4. Responsibilities.**

**4.1. The ICE Director** has responsibilities under Section 5.1 (Coordinator and Supporting Officials).

**4.2. Enforcement and Removal Operations (ERO) Headquarters (HQ)** has responsibilities under:

- 1) Section 5.1 (Coordinator and Supporting Officials);
- 2) Section 5.2 (Training); and
- 3) Section 5.6 (Accommodating Detainees with Limited English Proficiency and Disabilities).

**4.3. The ERO Executive Associate Director** has responsibilities under Section 5.8 (Response: Intervention and Health Care Services Following an Allegation).

**4.4. The ERO Custody Management Division (CMD)** has responsibilities under Section 5.10 (Incident Review and Monitoring).

**4.5. The ERO Field Operations Division** has responsibilities under:

- 1) Section 5.8 (Response: Intervention and Health Care Services Following an Allegation);
- 2) Section 5.9 (Investigation of Allegations); and
- 3) Section 5.10 (Incident Review and Monitoring).

**4.6. ERO Field Office Directors (FODs) have responsibilities under:**

- 1) Section 5.1 (Coordinator and Supporting Officials);
- 2) Section 5.5 (Facility Compliance);
- 3) Section 5.6 (Accommodating Detainees with Limited English Proficiency and Disabilities);
- 4) Section 5.7 (Notification and Reporting Following an Allegation);
- 5) Section 5.8 (Response: Intervention and Health Care Services Following an Allegation); and
- 6) Section 5.9 (Investigation of Allegations).

**4.7. Homeland Security Investigations (HSI) HQ has responsibilities under:**

- 1) Section 5.1 (Coordinator and Supporting Officials);
- 2) Section 5.2 (Training);
- 3) Section 5.6 (Accommodating Detainees with Limited English Proficiency and Disabilities); and
- 3) Section 5.10 (Incident Review and Monitoring).

**4.8. HSI Special Agents in Charge (SACs) have responsibilities under:**

- 1) Section 5.1 (Coordinator and Supporting Officials);
- 2) Section 5.6 (Accommodating Detainees with Limited English Proficiency and Disabilities);
- 3) Section 5.7 (Notification and Reporting Following an Allegation);
- 4) Section 5.8 (Response: Intervention and Health Care Services Following an Allegation); and

- 5) Section 5.9. (Investigation of Allegations).
- 4.9. The HSI Office of Intelligence** has responsibilities under Section 5.7 (Notification and Reporting Following an Allegation).
- 4.10. The ICE Health Service Corps (IHSC)** has responsibilities under:
- 1) Section 5.1 (Coordinator and Supporting Officials);
  - 2) Section 5.2 (Training); and
  - 3) Section 5.8 (Response: Intervention and Health Care Services Following an Allegation).
- 4.11. The IHSC Clinical Director (CD)** has responsibilities under Section 5.8 (Response: Intervention and Health Care Services Following an Allegation).
- 4.12. The Office of Detention Policy and Planning (ODPP)** has responsibilities under Section 5.2 (Training).
- 4.13. The Office of Diversity and Civil Rights (ODCR)** has responsibilities under:
- 1) Section 5.2 (Training); and
  - 2) Section 5.6 (Accommodating Detainees with Disabilities or Limited English Proficiency).
- 4.14. The Office of the Principal Legal Advisor (OPLA)** has responsibilities under:
- 1) Section 5.2 (Training);
  - 2) Section 5.6 (Accommodating Detainees with Limited English Proficiency and Disabilities);
  - 3) Section 5.7 (Notification and Reporting Following an Allegation); and
  - 4) Section 5.9 (Investigation of Allegations).
- 4.15. The Office of Professional Responsibility (OPR)** has responsibilities under:
- 1) Section 5.1 (Coordinator and Supporting Officials);
  - 2) Section 5.2 (Training);
  - 3) Section 5.6 (Accommodating Detainees with Limited English Proficiency and Disabilities)

- 4) Section 5.9 (Investigation of Allegations); and
  - 5) Section 5.10 (Incident Review and Monitoring).
- 4.16. The OPR Joint Intake Center (JIC)** has responsibilities under Section 5.7 (Notification and Reporting Following an Allegation).
- 4.17. The OPR Special Agents in Charge (OPR SACs)** have responsibilities under:
- 1) Section 5.1 (Coordinator and Supporting Officials);
  - 2) Section 5.6 (Accommodating Detainees with Limited English Proficiency and Disabilities);
- 4.18. The Office of Training and Development (OTD)** has responsibilities under Section 5.2 (Training).
- 4.19. The ICE Prevention of Sexual Assault (PSA) Coordinator** has responsibilities under:
- 1) Section 5.1 (Coordinator and Supporting Officials);
  - 2) Section 5.2 (Training);
  - 3) Section 5.6. (Accommodating Detainees with Limited English Proficiency and Disabilities);
  - 4) Section 5.8 (Response: Intervention and Health Care Services Following an Allegation);
  - 5) Section 5.10 (Incident Review and Monitoring); and
  - 6) Section 5.11 (Annual Review and Reporting).
- 4.20. Victim Assistance Coordinators and Victim Assistance Specialists** have responsibilities under Section 5.8 (Response: Intervention and Health Care Services Following an Allegation).
- 4.21. The Detention Monitoring Council (DMC)** has responsibilities under Section 5.10 (Incident Review and Monitoring).
- 4.22. All ICE Employees** have responsibilities under:
- 1) Section 5.2 (Training) if they may have contact with individuals in ICE custody;
  - 2) Section 5.3 (Obligation to Report Information and Prohibition of Retaliation); and

- 3) Section 5.4 (Protection of Individuals at Risk).

## **5. Procedures/Requirements.**

### **5.1. Coordinator and Supporting Officials.**

- 1) The ICE Director shall designate an upper-level, agency-wide ICE PSA Coordinator with sufficient time and authority to develop, implement, and oversee agency efforts to ensure compliance with this Directive, as well as other agency policies and detention standards related to sexual abuse and assault prevention and intervention.
- 2) ERO, HSI, and OPR shall designate specially trained HQ staff with sufficient time and authority to assist in ensuring compliance by their respective program offices with this Directive, as well as other agency policies and detention standards related to sexual abuse and assault prevention and intervention, and to provide information and assistance to the PSA Coordinator.
- 3) IHSC shall designate specially trained supervisory or HQ staff with sufficient time and authority to assist with addressing and responding to medical and mental health issues that arise related to sexual abuse and assault.
- 4) Each ERO FOD shall designate at least one specially trained coordinator at the supervisory level with sufficient time and authority to assist in ensuring compliance with this Directive by Field Office staff and detention facilities in their Area of Responsibility (AOR), and in communication with ERO HQ, OPR, and the PSA Coordinator.
- 5) Each HSI SAC shall designate at least one specially trained coordinator at the supervisory level with sufficient time and authority to assist in ensuring compliance with this Directive by field office staff in his or her AOR, and in communication with HSI HQ, OPR, and the PSA Coordinator.
- 6) Each OPR SAC shall assist in ensuring compliance with this Directive by staff within his or her AOR, and in communication with OPR HQ, ERO, HSI and the PSA Coordinator.

### **5.2. Training.**

- 1) The PSA Coordinator, in consultation with ERO, HSI, OPR, OPLA, ODPP, OTD, ODCR and the DHS Office for Civil Rights and Civil Liberties (CRCL), shall develop training required by this Directive. All current employees required to take the training, as listed below, shall be trained as soon as practicable, but no later than May 1, 2015, and ICE shall provide each employee with biennial refresher training to ensure that all employees know ICE's current sexual abuse and assault policies and procedures. All newly hired employees who may have contact with individuals in ICE custody shall also take the training within one year of their entrance on duty.

The agency shall document that all ICE personnel who may have contact with individuals in ICE custody have completed the training.

- 2) **General Training for ICE Personnel.** All ICE personnel who may have contact with individuals in ICE custody, including all ERO officers and HSI special agents, shall receive training on, among other items:
- a) ICE's zero-tolerance policy for all forms of sexual abuse and assault;
  - b) The right of detainees and staff to be free from sexual abuse or assault;
  - c) Definitions and examples of prohibited and illegal behavior;
  - d) Dynamics of sexual abuse and assault in confinement;
  - e) Prohibitions on retaliation against individuals who report sexual abuse or assault;
  - f) Recognition of physical, behavioral, and emotional signs of sexual abuse or assault, situations in which sexual abuse or assault may occur, and ways of preventing and responding to such occurrences, including:
    - i) Common reactions of sexual abuse and assault victims;
    - ii) How to detect and respond to signs of threatened and actual sexual abuse or assault;
    - iii) Prevention, recognition, and appropriate response to allegations or suspicions of sexual abuse and assault involving detainees with mental or physical disabilities; and
    - iv) How to communicate effectively and professionally with victims and individuals reporting sexual abuse or assault;
  - g) How to avoid inappropriate relationships with detainees;
  - h) Accommodating limited English proficient individuals and individuals with mental or physical disabilities;
  - i) Communicating effectively and professionally with lesbian, gay, bisexual, transgender, intersex, or gender nonconforming individuals, and members of other vulnerable populations;
  - j) Procedures for fulfilling notification and reporting requirements under this Directive;
  - k) The investigation process; and



- l) The requirement to limit reporting of sexual abuse or assault to personnel with a need-to-know in order to make decisions concerning the victim's welfare and for law enforcement or investigative purposes.
- 3) **Specialized Training for OPR Investigators.** OPR shall provide specialized training to OPR investigators who conduct investigations into allegations of sexual abuse and assault, as well as Office of Detention Oversight staff, and other OPR staff, as appropriate. The training should cover, at a minimum, interviewing sexual abuse and assault victims, sexual abuse and assault evidence collection in confinement settings, the criteria and evidence required for administrative action or prosecutorial referral, and information about effective cross-agency coordination in the investigation process.
- 4) **Specialized Training for IHSC Medical and Mental Health Staff.** IHSC shall provide specialized training to all IHSC personnel and all full- and part-time medical and mental health staff who work in facilities where IHSC provides medical and mental health care. The training should cover how to detect and assess signs of sexual abuse and assault, how to preserve physical evidence of sexual abuse and assault, how to respond effectively and professionally to victims of sexual abuse and assault, and how and to whom to report allegations or suspicions of sexual abuse and assault.

### **5.3. Obligation to Report Information and Prohibition of Retaliation.**

- 1) All ICE employees shall immediately report to a supervisor or a designated official any knowledge, suspicion, or information regarding an incident of sexual abuse or assault of an individual in ICE custody, retaliation against detainees or staff who reported or participated in an investigation about such an incident, and any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation.
- 2) The supervisor or designated official shall report the allegation to the FOD or SAC, as appropriate.
- 3) Apart from such reporting, ICE employees shall not reveal any information related to a sexual abuse or assault allegation to anyone other than to the extent necessary to help protect the safety of the victim or prevent further victimization of other detainees or staff, or to make medical treatment, investigation, law enforcement, or other security and management decisions.
- 4) ICE employees shall not retaliate against any person, including a detainee, who reports, complains about, or participates in an investigation into an allegation of sexual abuse or assault, or for participating in sexual activity as a result of force, coercion, threats, or fear of force. However, ICE prohibits deliberately making false sexual abuse or assault allegations, as well as deliberately providing false information

during an investigation, and such misconduct will be addressed through appropriate processes.

- 5.4. Protection of Individuals at Risk.** If an ICE employee has a reasonable belief that a detainee is subject to a substantial risk of imminent sexual abuse or assault, he or she shall take immediate action to protect the detainee.
- 5.5. Facility Compliance.** It is the responsibility of the FOD to ensure all detention facility staff in his or her AOR are aware of their obligation to report allegations of sexual abuse and assault to ICE and the appropriate law enforcement agency, as well as the other requirements of this Directive and PBNDS 2011 Standard 2.11, such as the requirements relating to response and intervention, health care services, and investigations, as well as other relevant standards and contractual requirements. The FOD shall review the written policy and procedures for the Sexual Abuse and Assault Prevention and Intervention Program, required by Standard 2.11, for all the detention facilities in his or her AOR.
- 5.6. Accommodating Detainees with Disabilities or Limited English Proficiency.** With regard to their respective responsibilities under this Directive, **ERO, HSI and OPR HQ, as well as the FOD, SAC, and OPR SAC**, in consultation and coordination with OPLA, ODCR, and the PSA Coordinator shall:
- 1) Take appropriate steps, in accordance with applicable law, to ensure that detainees with disabilities (including, for example, detainees who are deaf or hard of hearing, those who are blind or have low vision, or those who have intellectual, psychiatric, or speech disabilities) have an equal opportunity to participate in or benefit from all aspects of agency and facility efforts to prevent, detect, and respond to sexual abuse and assault. Such steps shall include, when necessary, to ensure effective communication with detainees who are deaf or hard of hearing, providing access to in-person, telephonic, or video interpretive services that enable effective, accurate, and impartial interpretation, both receptively and expressively, using any necessary specialized vocabulary. In addition, the FOD, SAC, or OPR SAC shall ensure that any written materials related to sexual abuse are provided in formats or through methods that ensure effective communication with detainees with disabilities, including detainees who have intellectual disabilities, limited reading skills, or who are blind or have low vision.
  - 2) Take steps to ensure meaningful access to all aspects of agency and facility efforts to prevent, detect, and respond to sexual abuse and assault to detainees who are limited English proficient, including steps to provide in-person or telephonic interpretive services that enable effective, accurate, and impartial interpretation, both receptively and expressively, using any necessary specialized vocabulary.
  - 3) In matters relating to allegations of sexual abuse or assault, ensure the provision of in-person or telephonic interpretation services that enable effective, accurate, and impartial interpretation, by someone other than another detainee, unless the detainee expresses a preference for another detainee to provide interpretation and ICE

determines that such interpretation is appropriate and consistent with DHS policy. The provision of interpreter services by minors, alleged abusers, detainees who witnessed the alleged abuse or assault, and detainees who have a significant relationship with the alleged abuser, is not appropriate in matters relating to allegations of sexual abuse or assault.

**5.7. Notification and Reporting Following an Allegation.** Immediately following notice of an alleged sexual abuse or assault:

- 1) When the incident occurs in ERO custody, **the FOD** shall:
  - a) Ensure that the appropriate law enforcement agency having jurisdiction for the investigation has been notified by the facility administrator of the alleged sexual abuse or assault. The FOD shall notify the appropriate law enforcement agency directly if necessary;
  - b) Notify ERO's Assistant Director for Field Operations telephonically within two hours of the alleged sexual abuse or assault or as soon as practical thereafter, according to procedures outlined in the June 8, 2006 Memorandum from John P. Torres, Acting Director, Office of Detention and Removal Operations, regarding "Protocol on Reporting and Tracking of Assaults" (Torres Memorandum);
  - c) Notify the ICE Joint Intake Center (JIC) telephonically within two hours of the alleged sexual abuse or assault, and in writing within 24 hours via the ICE SEN Notification Database, according to procedures outlined in the Torres Memorandum. The JIC shall notify the DHS Office of Inspector General (OIG);
  - d) When a non-ICE employee, contractor, or volunteer is alleged to be the perpetrator of the sexual abuse or assault, ensure that the facility administrator has also contacted the corporation or locality that operates the facility;
  - e) If the alleged assault occurred at a different facility from the one where it was reported, ensure that the administrator at the facility where the assault is alleged to have occurred is notified as soon as possible, but no later than 72 hours after receiving the allegation, and document such notification;
  - f) If the alleged victim is under the age of 18 or determined, after consultation with the relevant OPLA Office of the Chief Counsel (OCC), to be a vulnerable adult under a State or local vulnerable persons statute, report the allegation to the designated State or local services agency as necessary under applicable mandatory reporting laws; and
  - g) Document his or her efforts taken under this section.
- 2) When the incident occurs in HSI custody, **the SAC** shall:

- a) Ensure that the appropriate law enforcement agency having jurisdiction over the investigation has been notified of the alleged sexual abuse or assault. The SAC shall notify the appropriate law enforcement agency directly if necessary;
  - b) If the alleged victim is under the age of 18 or determined, after consultation with the OPLA OCC, to be a vulnerable adult under a State or local vulnerable persons statute, report the allegation to the designated State or local services agency as necessary under applicable mandatory reporting laws;
  - c) Notify the HSI Assistant Director for Domestic Operations;
  - d) Notify the JIC telephonically within two hours of the alleged sexual abuse or assault, and in writing within 24 hours via the ICE SEN Notification Database, according to procedures outlined in the Torres memo. The JIC shall notify the DHS OIG; and
  - e) Document his or her efforts taken under this section.
- 3) For all alleged incidents, **the HSI Office of Intelligence** shall:
- a) Ensure that the Joint Intelligence Operations Center (the JIOC) compiles on a daily basis from the SEN Notification Database a report that includes all new allegations of sexual abuse or assault; and
  - b) Ensure that the JIOC disseminates the daily report to the PSA Coordinator; the ERO Assistant Director for Field Operations; the ERO Assistant Director for CMD; the HSI Assistant Director for Domestic Operations; the Assistant Director for OPR; the Assistant Director for IHSC; the OPLA Director of Enforcement and Litigation; and DHS CRCL.

#### **5.8. Response: Intervention and Health Care Services Following an Allegation.**

- 1) When the incident occurs in ERO custody, **the FOD** shall:
  - a) Ensure that the detention facility complies with the response and intervention mandates established by PBNDS 2011 Standard 2.11, as well as other relevant detention standards and contractual requirements, including by:
    - i) Offering the alleged victim immediate protection from the alleged abuser;
    - ii) Using a coordinated, multidisciplinary team approach to respond to the allegation;
    - iii) Avoiding punishment of the victim for reporting abuse or for participating in sexual activity as a result of force or coercion;

- iv) Placing the victim in a supportive environment that represents the least restrictive housing option possible;
  - v) Not placing the victim in administrative segregation for longer than five days except in highly unusual circumstances or at the request of the detainee;
  - vi) Attempting to make available to the victim a victim advocate from a rape crisis center, or if unavailable, another community victim service provider; and
  - vii) Complying with the health care mandates of PBNDS 2011 Standard 2.11;
- b) Notify ICE, through ERO Field Operations, if the facility has been unable to make available to the victim a victim advocate from a rape crisis center or community victim service provider;
  - c) If a victim is transferred between detention facilities or holding facilities, or to any non-ICE facility, ensure that, as permitted by law, the receiving facility is informed of the incident and the victim's potential need for medical or mental health care or victim services (unless, in the case of transfer to a non-ICE facility, the victim requests otherwise);
  - d) In addition to steps taken by the facility, ensure the safety and security of the victim and adequate medical and mental health care for the victim, including consideration of appropriate potential custodial options, such as placing the victim in a supportive environment that represents the least restrictive housing option at another facility (within the same jurisdiction if there is an ongoing investigation), transferring the victim to a hospital, or other appropriate custodial options;
  - e) Take the necessary steps to determine whether the alleged abuser is housed in such a manner so as not to jeopardize other detainees housed at the facility until an investigation is completed;
  - f) Ensure that an ICE employee, facility employee, contractor, or volunteer suspected of perpetrating sexual abuse or assault is removed from all duties requiring detainee contact pending the outcome of an investigation;
  - g) Employ multiple protection measures, as appropriate, such as housing changes, removal of alleged staff or detainee abusers from contact with victims, and emotional support services for detainees or staff who fear retaliation for reporting sexual abuse or assault or for cooperating with investigations;
  - h) For at least 90 days following a report of sexual abuse or assault, monitor to see if there are facts that suggest possible retaliation by detainees or staff, and act promptly to remedy any such retaliation. Items to be monitored include any detainee disciplinary reports, housing or program changes, or negative

performance reviews of reassignments of staff. Monitoring shall continue beyond 90 days if initial monitoring indicates a continuing need; and

- i) Through the ERO Assistant Director for Field Operations, provide requested information to relevant ICE entities, including other ERO program offices, OPR, and the PSA Coordinator.
- 2) When the incident occurs in ERO custody, **the IHSC** shall:
- a) In detention facilities staffed by the IHSC, the IHSC Clinical Director or designee shall ensure that the IHSC clinic complies with the health care services mandates of PBNDS 2011 Standard 2.11, including by:
    - i) Providing emergency medical and mental health services and ongoing care, as appropriate;
    - ii) When appropriate, initiating a referral to a hospital emergency department, or to a designated specialized facility, for evaluation and forensic examination, to include testing for sexually transmitted diseases and infections, and offering prophylactic treatment, emergency contraception, follow-up examinations for sexually transmitted diseases, and referrals for counseling and victim advocacy and services; and
    - iii) Ensuring that a mental health professional evaluates the victim's need for crisis intervention counseling and long-term follow-up.
  - b) In detention facilities not staffed by the IHSC, the IHSC shall assist the FOD as needed, including by:
    - i) Helping to ensure that facility medical personnel have complied with the health care services requirements of PBNDS 2011 Standard 2.11;
    - ii) Communicating with the facility regarding the victim's health care (including mental health care) needs; and
    - iii) Reporting information to the FOD or to ERO HQ officials as requested.
- 3) When the incident occurs in ERO custody, **the ERO Executive Associate Director, in coordination with the PSA Coordinator**, shall ensure, as appropriate, that a qualified staff member from a community-based organization, or a qualified agency staff member, provides emotional support, crisis intervention, information, and referrals to the victim.
- 4) When the incident occurs in HSI custody, **the SAC** shall:

- a) Ensure that timely, unimpeded access to emergency medical treatment and crisis intervention services (including emergency contraception and sexually transmitted infections prophylaxis) is provided, in accordance with professionally accepted standards of care. Such treatment services shall be provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident;
- b) Contact the local field office Victim Assistance Specialist (VAS) or Victim Assistance Coordinator (VAC) upon notification of an alleged sexual abuse or assault victimization. The VAS or VAC will provide local referrals for sexual abuse or assault victim service providers and coordinate services as necessary for medical care and examination, including sexual abuse and assault forensic exams, to be conducted by a Sexual Assault Forensic Examiner (SAFE) or Sexual Assault Nurse Examiner (SANE) where practicable, or by other qualified health care personnel where SAFEs or SANEs are unavailable. As appropriate, the VAS or VAC will also coordinate with victim advocates for any local, state, or federal law enforcement agency involved in a subsequent investigation;
- c) Ensure that an ICE employee, contractor, or volunteer suspected of perpetrating sexual abuse or assault is removed from all duties requiring detainee contact pending the outcome of an investigation;
- d) Offer the alleged victim immediate protection from the alleged abuser by separating the alleged victim from anyone involved in the allegation or incident and removing the alleged abuser from contact with any other individual in HSI custody; and
- e) If a victim is transferred between detention facilities or holding facilities, or any non-ICE facility, ensure that, as permitted by law, the receiving facility is informed of the incident and the victim's potential need for medical or mental health care or victim services (unless, in the case of transfer to a non-ICE facility, the victim requests otherwise).

## **5.9. Investigation of Allegations.**

- 1) **OPR** shall:
  - a) Coordinate with the FOD or SAC and facility staff to ensure evidence is appropriately secured and preserved pending an investigation by federal, state, or local law enforcement, DHS OIG, and/or OPR;
  - b) Coordinate with DHS OIG to effect timely acceptance of the case by DHS OIG or referral to OPR;

- c) Upon referral by DHS OIG to OPR, assess the allegation to determine investigative response and assignment, in accordance with ICE policies and procedures;
- d) Coordinate investigative efforts with federal, state, or local law enforcement or facility incident review personnel, in accordance with OPR policies and procedures;
- e) Conduct either an OPR review or investigation, in accordance with OPR policies and procedures. Administrative investigations impose no standard higher than a preponderance of the evidence to substantiate an allegation of sexual abuse or assault, and may not be terminated solely due to the departure of the alleged abuser or victim from the employment or control of ICE;
- f) Coordinate with appropriate ICE entities and federal, state, or local law enforcement to facilitate necessary immigration processes that ensure availability of victims, witnesses, and alleged abusers for investigative interviews and administrative or criminal procedures, and provide federal, state, or local law enforcement with information about U nonimmigrant visa certification;
- g) Coordinate with the FOD or SAC and facility personnel to ensure that the presence of the victim's outside or internal victim advocate, as requested by the victim, is allowed for support during investigatory interviews;
- h) In criminal cases, OPR, in coordination with the FOD and/or SAC, as appropriate, will ensure that any alleged victim of sexual abuse or assault who is an alien is provided timely access to U nonimmigrant status information by:
  - i) Providing the phone number to an appropriate national hotline; and/or
  - ii) Providing relevant informational materials printed by U.S. Citizenship and Immigration Services;
- i) Compile and maintain in the Joint Integrity Case Management System all documentation, to include reports by local law enforcement, the facility, OPLA, HSI, and ERO, if any, and ensure its proper processing in accordance with OPR procedures and this Directive;
- j) Submit briefings and provide information to ICE senior management, including the PSA Coordinator and the ICE Detention Monitoring Council (DMC), as appropriate and in accordance with this Directive;
- k) For detainees still in ICE immigration detention, or where otherwise feasible, following an investigation into a detainee's allegation of sexual abuse or assault, notify the detainee as to the result of the investigation and any responsive action taken, in coordination with the FOD; and



- l) Upon receiving notification from a FOD or SAC of the removal or resignation in lieu of removal of staff for violating agency or facility sexual abuse and assault policies:
  - i) Report that information to appropriate law enforcement agencies, unless the activity was clearly not criminal; and
  - ii) Make reasonable efforts to report that information to any relevant licensing bodies, to the extent known.
- 2) When the incident occurs in ERO custody, **the FOD** shall:
  - a) Ensure that the facility complies with the investigation mandates established by PBNDS 2011 Standard 2.11, as well as other relevant detention standards and contractual requirements, including by:
    - i) When feasible, securing and preserving the crime scene and safeguarding information and evidence consistent with established evidence protocols;
    - ii) Conducting a prompt, thorough, and objective investigation by qualified investigators;
    - iii) Arranging for the victim to undergo a forensic medical examination, where appropriate;
    - iv) Ensuring that the presence of the victim's outside or internal victim advocate, as requested by the victim, is allowed for support during forensic exams and investigatory interviews;
    - v) Pursuing internal administrative investigations and disciplinary sanctions in coordination with the assigned criminal investigative entity to ensure non-interference with criminal investigations;
    - vi) Cooperating with outside investigators and endeavoring to remain informed about the progress of outside investigations; and
    - vii) Ensuring that the facility's Sexual Abuse and Assault Prevention and Intervention Program Coordinator reviews the results of the investigation and that the facility implements any resultant recommendations for improvements to facility policies or practices;
  - b) Determine the result of all facility investigations of allegations of sexual abuse or assault and any associated disciplinary proceedings instituted against detainee abusers, and report that information to OPR through the ERO Assistant Director for Field Operations;

- c) Report to OPR any removals or resignations of staff in lieu of removal for violating agency or facility sexual abuse and assault policies;
  - d) When outside agencies investigate sexual abuse or assault, cooperate with law enforcement agencies, OPR, and other outside investigators and endeavor to remain informed about the progress of the investigation, and ensure that detention facilities do the same; and
  - e) Coordinate with the OPLA OCC and OPR as appropriate to facilitate the availability of potential witnesses.
- 3) When the incident occurs in HSI custody, **the SAC** shall:
- a) When feasible, secure and preserve the crime scene and safeguard information and evidence, consistent with ICE uniform evidence protocols and local evidence protocols in order to maximize the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions;
  - b) Continue with any ongoing investigation or enforcement action and not attempt to conduct an investigation into the alleged sexual abuse or assault incident once it has been reported as set forth in section 5.7(2) above;
  - c) When outside agencies investigate sexual abuse or assault, cooperate with law enforcement agencies, OPR, and other outside investigators and endeavor to remain informed about the progress of the investigation; and
  - d) Coordinate with the OPLA OCC and OPR as appropriate to facilitate the availability of potential witnesses.

## **5.10. Incident Review and Monitoring.**

### **1) ICE PSA Coordinator.**

- a) On an ongoing basis, the ICE PSA Coordinator shall work with other relevant ICE program offices to help ensure an effective agency response to allegations of sexual abuse and assault, and to share data regarding effective methods of responding to sexual abuse and assault.
- b) On a monthly basis, the ICE PSA Coordinator shall prepare a report to the DMC compiling information received about all incidents or allegations of sexual abuse or assault of individuals in ICE custody during that period, as well as ongoing investigations and other pending cases.
- c) On a quarterly basis, the ICE PSA Coordinator shall prepare a report to the DMC and the ICE Director, compiling information received about all incidents or

allegations of sexual abuse or assault of individuals in ICE custody during that period.

- d) The PSA Coordinator shall receive assistance in compiling monthly, quarterly and annual reports from:
  - i) OPR, which shall provide information gathered from its own investigations and inspections, and ongoing review of other investigations;
  - ii) ERO Field Operations, which shall provide information regarding facilities' responses to sexual abuse and assault allegations, and actions taken by Field Offices;
  - iii) ERO CMD, which shall provide information derived from its oversight activities, and received from facilities;
  - iv) HSI, which shall provide information regarding sexual abuse and assault allegations and actions taken by HSI field offices;
  - v) IHSC, which shall provide information and expertise regarding health related matters; and
  - vi) Other relevant program offices.

## 2) **Detention Monitoring Council.**

- a) In response to significant incidents of sexual abuse or assault of individuals in ICE custody, the DMC shall convene when necessary to ensure effective, timely, and comprehensive agency-wide response and investigation, and to determine any appropriate corrective actions that should be taken.
- b) On at least a monthly basis, a subcommittee of the DMC shall convene to review information received from the ICE PSA Coordinator, OPR, ERO Field Operations, Field Offices, and other relevant ICE program offices regarding all incidents or allegations of sexual abuse or assault of individuals in ICE custody, as well as facility intervention and actions taken, the status of any administrative or criminal investigations, and any other ongoing relevant issues (e.g., medical issues and housing/custody issues). This DMC subcommittee shall ensure effective, timely, and comprehensive agency-wide response and investigation, and shall determine any appropriate corrective actions that should be taken.
- c) On at least a quarterly basis, the DMC shall convene to discuss national trends in information received about incidents of sexual abuse or assault and lessons learned from these incidents, and to develop and recommend immediate and long-term remedial plans to improve the agency's effectiveness in addressing sexual abuse and assault.

### **5.11. Annual Review and Reporting.**

- 1) On an annual basis, the ICE PSA Coordinator shall conduct a review of all data received regarding incidents of sexual abuse or assault of individuals in ICE custody during that period, including the number of reported sexual abuse and assault allegations determined to be substantiated, unsubstantiated, or unfounded, or for which investigation is ongoing, and for each incident found to be substantiated, information concerning:
  - a) The date, time, location, and nature of the incident;
  - b) The demographic background of the victim and abuser (including citizenship, age, gender, and whether either has self-identified as gay, lesbian, bisexual, transgender, intersex, or gender nonconforming);
  - c) The reporting timeline for the incident (including the name of the individual who reported the incident, and the date and time the report was received);
  - d) Any injuries sustained by the victim;
  - e) Post-report follow up responses and action taken by ICE or the facility (e.g., housing placement/custody classification, medical examination, and mental health counseling); and
  - f) Any sanctions imposed on the abuser.
- 2) The ICE PSA Coordinator shall prepare a report to the ICE Director identifying problem areas and recommending corrective actions for the agency as well as for each ICE detention facility, and providing an assessment of the agency's progress in addressing sexual abuse and assault based on a comparison of the current year's data and corrective actions with those from prior years.
- 3) Following approval by the ICE Director, the annual report shall be made readily available to the public including through the ICE website. The agency may redact specific material from the reports when publication would present a threat to the safety or security of a facility or violate privacy or other legally protected interests, but must indicate the nature of the material redacted.
- 4) On an ongoing basis, the ICE PSA Coordinator shall review data collected and aggregated pursuant to Sections 5.10 and 5.11 in order to assess and improve the effectiveness of ICE's sexual abuse and assault prevention, detection, and response policies, practices, and training.

### **5.12. Data Storage and Publication.**

- 1) Data collected pursuant to this Directive shall be securely retained in accordance with agency record retention policies and the agency protocol regarding investigation of allegations.
- 2) All aggregated sexual abuse and assault data shall be made available to the public at least annually through the ICE website, consistent with existing agency information disclosure policies and processes, and omitting any personal identifiers.
- 3) All sexual abuse and assault data collected pursuant to this Directive shall be maintained for at least 10 years after the date of initial collection, unless Federal, State, or local law requires otherwise.

## 6. **Authorities/References.**

- 6.1. 2011 Performance-Based National Detention Standard, "2.11 Sexual Abuse and Assault Prevention and Intervention."
- 6.2. Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities, 79 Fed. Reg. 13100 (Mar. 7, 2014).
- 6.3. ICE Policy 11045.1: Memorandum from John P. Torres, Acting Director, Office of Detention and Removal Operations, to Field Office Directors, "Protocol on Reporting and Tracking of Assaults"(June 8, 2006).
- 6.4. Memorandum from Alonzo Pefia, Deputy Director, to All ICE Employees, "Directing Complaints Appropriately to the Joint Intake Center (JIC), the Office of Professional Responsibility (OPR), the Office of the Inspector General (OIG), or Local Management" (November 10, 2010).
- 6.5. ICE Directive 10071.1: "Victim Assistance Program" (August 25, 2011).

## 7. **Attachments.**

N/A.

8. **No Private Right Statement.** This document is an internal policy statement of ICE. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter. Nor are any limitations hereby placed on otherwise lawful enforcement prerogatives of ICE.




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