

## DHS PREA STANDARDS

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):

### **115.6 Definitions Related to Sexual Abuse and Assault**

- (1) Sexual abuse 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 of a detainee by another detainee includes any of the following acts by one or more detainees, prisoners, inmates, or residents of the facility in which the detainee is housed 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 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 an inmate, detainee, or resident, 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 an inmate 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.

## **PREVENTION PLANNING**

### **115.11 Zero tolerance of sexual abuse; Prevention of Sexual Assault Coordinator.**

- (1) Each facility shall have a written policy mandating zero tolerance toward all forms of sexual abuse and outlining the facility's approach to preventing, detecting, and responding to such conduct. The agency shall review and approve each facility's written policy.
- (2) Each facility shall employ or designate a Prevention of Sexual Assault Compliance Manager (PSA Compliance Manager) who shall serve as the facility point of contact for the ICE PSA Coordinator and who has sufficient time and authority to oversee facility efforts to comply with facility sexual abuse prevention and intervention policies and procedures.

### **115.13 Detainee supervision and monitoring.**

- (1) Each facility shall ensure that it maintains sufficient supervision of detainees, including through appropriate staffing levels and, where applicable, video monitoring, to protect detainees against sexual abuse.
- (2) Each facility shall develop and document comprehensive detainee supervision guidelines to determine and meet the facility's detainee supervision needs, and shall review those guidelines at least annually.
- (3) In determining adequate levels of detainee supervision and determining the need for video monitoring, the facility shall take into consideration generally accepted detention and correctional practices, any judicial findings of inadequacy, the physical layout of each facility, the composition of the detainee population, the prevalence of substantiated and unsubstantiated incidents of sexual abuse, the findings and recommendations of sexual abuse incident review reports, and any other relevant factors, including but not limited to the length of time detainees spend in agency custody.
- (4) Each facility shall conduct frequent unannounced security inspections to identify and deter sexual abuse of detainees. Such inspections shall be implemented for night as well as day shifts. Each facility shall prohibit staff from alerting others that these supervisory rounds are occurring, unless such announcement is related to the legitimate operational functions of the facility.

### **115.14 Juvenile and family detainees.**

- (1) Juveniles shall be detained in the least restrictive setting appropriate to the juvenile's age and special needs, provided that such setting is consistent with the need to protect the juvenile's well-being and that of others, as well as with any other laws, regulation, or legal requirements.
- (2) The facility shall hold juveniles apart from adult residents, minimizing sight, sound, and physical contact, unless the juvenile is in the presence of an adult member of the family unit, and provided there are no safety or security concerns with the arrangement.
- (3) In determining the existence of a family unit for detention purposes, the agency shall seek to obtain reliable evidence of a family relationship.
- (4) The agency and facility shall provide priority attention to unaccompanied alien children as defined by 6 U.S.C. 279(g)(2), including transfer to a Department of Health and Human Services Office of Refugee Resettlement facility within 72 hours, except in exceptional circumstances, in accordance with 8 U.S.C. 1232(b)(3).
- (5) If a juvenile who is an accompanied alien child has been convicted as an adult of a crime related to sexual abuse, the agency shall provide the facility and the Department of Health and Human Services Office of Refugee Resettlement with the releasable information regarding the conviction(s) to ensure the appropriate placement of the alien in a Department of Health and Human Services Office of Refugee Resettlement facility.

### **115.15 Limits to cross-gender viewing and searches.**

- (1) Cross-gender pat-down searches of male detainees shall not be conducted unless, after reasonable diligence, staff of the same gender is not available at the time the pat-down search is required or in exigent circumstances.
- (2) Cross-gender pat-down searches of female detainees shall not be conducted unless in exigent circumstances.
- (3) All cross-gender pat-down searches shall be documented.
- (4) Cross-gender strip searches or cross-gender visual body cavity searches shall not be conducted except in exigent circumstances, including consideration of officer safety, or when performed by medical practitioners. Facility staff shall not conduct visual body cavity searches of juveniles and, instead, shall refer all such body cavity searches of juveniles to a medical practitioner.
- (5) All strip searches and visual body cavity searches shall be documented.
- (6) Each facility shall implement policies and procedures that enable detainees to shower, perform bodily functions, and change clothing without being viewed by staff of the opposite gender, except in exigent circumstances or when such viewing is incidental to routine cell checks or is otherwise appropriate in connection with a medical examination or monitored bowel movement. Such policies and procedures shall require staff of the opposite gender to announce their presence when entering an area where detainees are likely to be showering, performing bodily functions, or changing clothing.
- (7) The facility shall not search or physically examine a detainee for the sole purposes of determining the detainee's genital characteristics. If the detainee's gender is unknown, it may be determined during conversations with the detainee, by reviewing medical records, or, if necessary, learning that information as part of a standard medical examination that all detainees must undergo as part of intake or other processing procedure conducted in private, by a medical practitioner.
- (8) The facility shall permit detainees in Family Residential Facilities to shower, perform bodily functions, and change clothing without being viewed by staff, except in exigent circumstances or when such viewing is incidental to routine cell checks or is otherwise appropriate in connection with a medical examination or monitored bowel movement.

### **115.16 Accommodating detainees with disabilities and detainees who are limited English proficient.**

- (1) The agency and each facility shall take appropriate steps 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 the agency's and facility's efforts to prevent, detect, and respond to sexual abuse. 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 agency and facility 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. An agency or facility is not required to take actions that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity, or in undue financial and administrative burdens, as those terms are used in regulations promulgated under title II of the Americans with Disabilities Act, 28 CFR 35.164.

- (2) The agency and each facility shall take steps to ensure meaningful access to all aspects of the agency's and facility's efforts to prevent, detect, and respond to sexual abuse 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, the agency and each facility shall provide 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 a detainee interpreter, and the agency determines that such interpretation is appropriate. The provision of interpreter services by minors, alleged abusers, detainees who witnessed the alleged abuse, and detainees who have a significant relationship with the alleged abuser is not appropriate in matters relating to allegations of sexual abuse.

### **115.17 Hiring and promotion decisions.**

- (1) An agency or facility shall not hire or promote anyone who may have contact with detainees, and shall not enlist the services of any contractor or volunteer who may have contact with detainees, who has engaged in sexual abuse in a prison, jail, holding facility, community confinement facility, juvenile facility, or other institution (as defined in 42 U.S.C. 1997); who has been convicted of engaging or attempting to engage in sexual activity facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse; or who has been civilly or administratively adjudicated to have engaged in such activity.
- (2) An agency or facility considering hiring or promoting staff shall ask all applicants who may have contact with detainees directly about previous misconduct described in paragraph (1) of this section, in written applications or interviews for hiring or promotions and in any interviews or written self-evaluations conducted as part of reviews of current employees. Agencies and facilities shall also impose upon employees a continuing affirmative duty to disclose any such misconduct. The agency, consistent with law, shall make its best efforts to contact all prior institutional employers of an applicant for employment, to obtain information on substantiated allegations of sexual abuse or any resignation during a pending investigation of alleged sexual abuse.
- (3) Before hiring new staff who may have contact with detainees, the agency or facility shall conduct a background investigation to determine whether the candidate for hire is suitable for employment with the facility or agency, including a criminal background records check. Upon request by the agency, the facility shall submit for the agency's approval written documentation showing the detailed elements of the facility's background check for each staff member and the facility's conclusions. The agency shall conduct an updated background investigation every five years for agency employees who may have contact with detainees. The facility shall require an updated background investigation every five years for those facility staff who may have contact with detainees and who work in immigration-only detention facilities.
- (4) The agency or facility shall also perform a background investigation before enlisting the services of any contractor who may have contact with detainees. Upon request by the agency, the facility shall submit for the agency's approval written documentation showing the detailed elements of the facility's background check for each contractor and the facility's conclusions.
- (5) Material omissions regarding such misconduct, or the provision of materially false information, shall be grounds for termination or withdrawal of an offer of employment, as appropriate.

### **115.18 Upgrades to facilities and technologies.**

- (1) When designing or acquiring any new facility and in planning any substantial expansion or modification of existing facilities, the facility or agency, as appropriate, shall consider the effect of the design, acquisition, expansion, or modification upon their ability to protect detainees from sexual abuse.
- (2) When installing or updating a video monitoring system, electronic surveillance system, or other monitoring technology in an immigration detention facility, the facility or agency, as appropriate, shall consider how such technology may enhance their ability to protect detainees from sexual abuse.

## **RESPONSIVE PLANNING**

### **115.21 Evidence protocols and forensic medical examinations.**

- (1) To the extent that the agency or facility is responsible for investigating allegations of sexual abuse involving detainees, it shall follow a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions. The protocol shall be developed in coordination with DHS and shall be developmentally appropriate for juveniles, where applicable.
- (2) The agency and each facility developing an evidence protocol referred to in paragraph (1) of this section, shall consider how best to utilize available community resources and services to provide valuable expertise and support in the areas of crisis intervention and counseling to most appropriately address victims' needs. Each facility shall establish procedures to make available, to the full extent possible, outside victim services following incidents of sexual abuse; the facility shall attempt to make available to the victim a victim advocate from a rape crisis center. If a rape crisis center is not available to provide victim advocate services, the agency shall provide these services by making available a qualified staff member from a community-based organization, or a qualified agency staff member. A qualified agency staff member or a qualified community-based staff member means an individual who has received education concerning sexual assault and forensic examination issues in general. The outside or internal victim advocate shall provide emotional support, crisis intervention, information, and referrals.
- (3) Where evidentiarily or medically appropriate, at no cost to the detainee, and only with the detainee's consent, the facility shall arrange for an alleged victim detainee to undergo a forensic medical examination by qualified health care personnel, including a Sexual Assault Forensic Examiner (SAFE) or Sexual Assault Nurse Examiner (SANE) where practicable. If SAFEs or SANEs cannot be made available, the examination can be performed by other qualified health care personnel.
- (4) As requested by a victim, the presence of his or her outside or internal victim advocate, including any available victim advocacy services offered by a hospital conducting a forensic exam, shall be allowed for support during a forensic exam and investigatory interviews.

### **115.22 Policies to ensure investigation of allegations and appropriate agency oversight.**

- (1) The agency shall establish an agency protocol, and shall require each facility to establish a facility protocol, to ensure that each allegation of sexual abuse is investigated by the agency or facility, or referred to an appropriate investigative authority.
- (2) The agency shall ensure that the agency and facility protocols required by paragraph (a) of this section, include a description of responsibilities of the agency, the facility, and any other investigating entities; and require the documentation and maintenance, for at least five years, of all reports and referrals of allegations of sexual abuse.

- (3) The agency shall post its protocols on its website; each facility shall also post its protocols on its website, if it has one, or otherwise make the protocol available to the public.
- (4) Each facility protocol shall ensure that all allegations are promptly reported to the agency as described in paragraphs (5) and (6) of this section, and, unless the allegation does not involve potentially criminal behavior, are promptly referred for investigation to an appropriate law enforcement agency with the legal authority to conduct criminal investigations. A facility may separately, and in addition to the above reports and referrals, conduct its own investigation.
- (5) When a detainee, prisoner, inmate, or resident of the facility in which an alleged detainee victim is housed is alleged to be the perpetrator of detainee sexual abuse, the facility shall ensure that the incident is promptly reported to the Joint Intake Center, the ICE Office of Professional Responsibility or the DHS Office of Inspector General, as well as the appropriate ICE Field Office Director, and, if it is potentially criminal, referred to an appropriate law enforcement agency having jurisdiction for investigation.
- (6) When a staff member, contractor, or volunteer is alleged to be the perpetrator of detainee sexual abuse, the facility shall ensure that the incident is promptly reported to the Joint Intake Center, the ICE Office of Professional Responsibility or the DHS Office of Inspector General, as well as to the appropriate ICE Field Office Director, and to the local government entity or contractor that owns or operates the facility. If the incident is potentially criminal, the facility shall ensure that it is promptly referred to an appropriate law enforcement agency having jurisdiction for investigation.

## **TRAINING AND EDUCATION**

### **115.31 Staff training.**

- (1) The agency shall train, or require the training of, all employees who may have contact with immigration detainees, and all facility staff, to be able to fulfill their responsibilities under this part, including training on:
  - (a) The agency's and the facility's zero-tolerance policies for all forms of sexual abuse;
  - (b) The right of detainees and staff to be free from sexual abuse, and from retaliation for reporting sexual abuse;
  - (c) Definitions and examples of prohibited and illegal sexual behavior;
  - (d) Recognition of situations where sexual abuse may occur;
  - (e) Recognition of physical, behavioral, and emotional signs of sexual abuse, and methods of preventing and responding to such occurrences;
  - (f) How to avoid inappropriate relationships with detainees;
  - (g) How to communicate effectively and professionally with detainees, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming detainees;
  - (h) Procedures for reporting knowledge or suspicion of sexual abuse; and
  - (i) The requirement to limit reporting of sexual abuse to personnel with a need-to-know in order to make decisions concerning the victim's welfare and for law enforcement or investigative purposes.
- (2) All current facility staff, and all agency employees who may have contact with immigration detention facility detainees, shall be trained within one year of May 6, 2014, and the agency or facility shall provide refresher information every two years.
- (3) The agency and each facility shall document that staff that may have contact with immigration facility detainees have completed the training.

### **115.32 Volunteer and contractor training.**

- (1) The facility shall ensure that all volunteers and contractors who have contact with detainees have been trained on their responsibilities under the agency's and the facility's sexual abuse prevention, detection, intervention and response policies and procedures.
- (2) The level and type of training provided to volunteers and contractors shall be based on the services they provide and level of contact they have with detainees, but all volunteers and contractors who have contact with detainees shall be notified of the agency's and the facility's zero-tolerance policies regarding sexual abuse and informed how to report such incidents.
- (3) Each facility shall receive and maintain written confirmation that contractors and volunteers who may have contact with immigration facility detainees have completed the training.

### **115.33 Detainee education.**

- (1) During the intake process, each facility shall ensure that the detainee orientation program notifies and informs detainees about the agency's and the facility's zero-tolerance policies for all forms of sexual abuse and includes (at a minimum) instruction on:
  - (a) Prevention and intervention strategies;
  - (b) Definitions and examples of detainee-on-detainee sexual abuse, staff-on-detainee sexual abuse and coercive sexual activity;
  - (c) Explanation of methods for reporting sexual abuse, including to any staff member, including a staff member other than an immediate point-of-contact line officer (e.g., the compliance manager or a mental health specialist), the DHS Office of Inspector General, and the Joint Intake Center;
  - (d) Information about self-protection and indicators of sexual abuse;
  - (e) Prohibition against retaliation, including an explanation that reporting sexual abuse shall not negatively impact the detainee's immigration proceedings; and
  - (f) The right of a detainee who has been subjected to sexual abuse to receive treatment and counseling.
- (2) Each facility shall provide the detainee notification, orientation, and instruction in formats accessible to all detainees, including those who are limited English proficient, deaf, visually impaired or otherwise disabled, as well as to detainees who have limited reading skills.
- (3) The facility shall maintain documentation of detainee participation in the intake process orientation.
- (4) Each facility shall post on all housing unit bulletin boards the following notices:
  - (a) The DHS-prescribed sexual assault awareness notice;
  - (b) The name of the Prevention of Sexual Abuse Compliance Manager; and
  - (c) The name of local organizations that can assist detainees who have been victims of sexual abuse.
- (5) The facility shall make available and distribute the DHS-prescribed "Sexual Assault Awareness Information" pamphlet.

### **115.34 Specialized training: Investigations.**

- (1) In addition to the general training provided to all facility staff and employees pursuant to § 115.31, the agency or facility shall provide specialized training on sexual abuse and effective cross-agency coordination to agency or facility investigators, respectively, who conduct investigations into allegations of sexual abuse at immigration detention facilities. All investigations into alleged sexual abuse must be conducted by qualified investigators.
- (2) The agency and facility must maintain written documentation verifying specialized training provided to investigators pursuant to this section.

**115.35 Specialized training: Medical and mental health care.**

- (1) The agency shall review and approve the facility's policy and procedures to ensure that facility medical staff is trained in procedures for examining and treating victims of sexual abuse, in facilities where medical staff may be assigned these activities.

**ASSESSMENT FOR RISK OF SEXUAL VICTIMIZATION AND ABUSIVENESS**

**115.41 Assessment for risk of victimization and abusiveness.**

- (1) The facility shall assess all detainees on intake to identify those likely to be sexual aggressors or sexual abuse victims and shall house detainees to prevent sexual abuse, taking necessary steps to mitigate any such danger. Each new arrival shall be kept separate from the general population until he/she is classified and may be housed accordingly.
- (2) The initial classification process and initial housing assignment should be completed within twelve hours of admission to the facility.
- (3) The facility shall also consider, to the extent that the information is available, the following criteria to assess detainees for risk of sexual victimization:
  - (a) Whether the detainee has a mental, physical, or developmental disability;
  - (b) The age of the detainee;
  - (c) The physical build and appearance of the detainee;
  - (d) Whether the detainee has previously been incarcerated or detained;
  - (e) The nature of the detainee's criminal history;
  - (f) Whether the detainee has any convictions for sex offenses against an adult or child;
  - (g) Whether the detainee has self-identified as gay, lesbian, bisexual, transgender, intersex, or gender nonconforming;
  - (h) Whether the detainee has self-identified as having previously experienced sexual victimization; and
  - (i) The detainee's own concerns about his or her physical safety.
- (4) The initial screening shall consider prior acts of sexual abuse, prior convictions for violent offenses, and history of prior institutional violence or sexual abuse, as known to the facility, in assessing detainees for risk of being sexually abusive.
- (5) The facility shall reassess each detainee's risk of victimization or abusiveness between 60 and 90 days from the date of initial assessment, and at any other time when warranted based upon the receipt of additional, relevant information or following an incident of abuse or victimization.
- (6) Detainees shall not be disciplined for refusing to answer, or for not disclosing complete information in response to, questions asked pursuant to paragraphs (3)(a), (3)(g), (3)(h), or (3)(i) of this section.
- (7) The facility shall implement appropriate controls on the dissemination within the facility of responses to questions asked pursuant to this standard in order to ensure that sensitive information is not exploited to the detainee's detriment by staff or other detainees or inmates.

**115.42 Use of assessment information.**

- (1) The facility shall use the information from the risk assessment under § 115.41 of this part to inform assignment of detainees to housing, recreation and other activities, and voluntary work. The agency shall make individualized determinations about how to ensure the safety of each detainee.



- (2) When making assessment and housing decisions for a transgender or intersex detainee, the facility shall consider the detainee's gender self-identification and an assessment of the effects of placement on the detainee's health and safety. The facility shall consult a medical or mental health professional as soon as practicable on this assessment. The facility should not base placement decisions of transgender or intersex detainees solely on the identity documents or physical anatomy of the detainee; a detainee's self-identification of his/her gender and self-assessment of safety needs shall always be taken into consideration as well. The facility's placement of a transgender or intersex detainee shall be consistent with the safety and security considerations of the facility, and placement and programming assignments for each transgender or intersex detainee shall be reassessed at least twice each year to review any threats to safety experienced by the detainee.
- (3) When operationally feasible, transgender and intersex detainees shall be given the opportunity to shower separately from other detainees.

#### **115.43 Protective custody.**

- (1) The facility shall develop and follow written procedures consistent with the standards in this Subpart A for each facility governing the management of its administrative segregation unit. These procedures, which should be developed in consultation with the ICE Enforcement and Removal Operations Field Office Director having jurisdiction for the facility, must document detailed reasons for placement of an individual in administrative segregation on the basis of a vulnerability to sexual abuse or assault.
- (2) Use of administrative segregation by facilities to protect detainees vulnerable to sexual abuse or assault shall be restricted to those instances where reasonable efforts have been made to provide appropriate housing and shall be made for the least amount of time practicable, and when no other viable housing options exist, as a last resort. The facility should assign detainees vulnerable to sexual abuse or assault to administrative segregation for protective custody only until an alternative means of separation from likely abusers can be arranged, and such an assignment shall not ordinarily exceed a period of 30 days.
- (3) Facilities that place vulnerable detainees in administrative segregation for protective custody shall provide those detainees access to programs, visitation, counsel and other services available to the general population to the maximum extent practicable.
- (4) Facilities shall implement written procedures for the regular review of all vulnerable detainees placed in administrative segregation, as follows:
  - (a) A supervisory staff member shall conduct a review within 72 hours of the detainee's placement in administrative segregation to determine whether segregation is still warranted; and
  - (b) A supervisory staff member shall conduct, at a minimum, an identical review after the detainee has spent seven days in administrative segregation, and every week thereafter for the first 30 days, and every 10 days thereafter.
- (5) Facilities shall notify the appropriate ICE Enforcement and Removal Operations Field Office Director no later than 72 hours after the initial placement into segregation, whenever a detainee has been placed in administrative segregation on the basis of a vulnerability to sexual abuse or assault.

## **REPORTING**

### **115.51 Detainee reporting.**

- (1) The agency and each facility shall develop policies and procedures to ensure that detainees have multiple ways to privately report sexual abuse, retaliation for reporting sexual abuse, or staff neglect or violations of responsibilities that may have contributed to such incidents. The agency and each facility shall also provide instructions on how detainees may contact their consular official, the DHS Office of the Inspector General or, as appropriate, another designated office, to confidentially and, if desired, anonymously, report these incidents.
- (2) The agency shall also provide, and the facility shall inform the detainees of, at least one way for detainees to report sexual abuse to a public or private entity or office that is not part of the agency, and that is able to receive and immediately forward detainee reports of sexual abuse to agency officials, allowing the detainee to remain anonymous upon request.
- (3) Facility policies and procedures shall include provisions for staff to accept reports made verbally, in writing, anonymously, and from third parties and to promptly document any verbal reports.

### **115.52 Grievances.**

- (1) The facility shall permit a detainee to file a formal grievance related to sexual abuse at any time during, after, or in lieu of lodging an informal grievance or complaint.
- (2) The facility shall not impose a time limit on when a detainee may submit a grievance regarding an allegation of sexual abuse.
- (3) The facility shall implement written procedures for identifying and handling time-sensitive grievances that involve an immediate threat to detainee health, safety, or welfare related to sexual abuse.
- (4) Facility staff shall bring medical emergencies to the immediate attention of proper medical personnel for further assessment.
- (5) The facility shall issue a decision on the grievance within five days of receipt. Facilities shall send all grievances related to sexual abuse and the facility's decisions with respect to such grievances to the appropriate ICE Field Office Director at the end of the grievance process.
- (6) To prepare a grievance, a detainee may obtain assistance from another detainee, the housing officer or other facility staff, family members, or legal representatives. Staff shall take reasonable steps to expedite requests for assistance from these other parties.

### **115.53 Detainee access to outside confidential support services.**

- (1) Each facility shall utilize available community resources and services to provide valuable expertise and support in the areas of crisis intervention, counseling, investigation and the prosecution of sexual abuse perpetrators to most appropriately address victims' needs. The facility shall maintain or attempt to enter into memoranda of understanding or other agreements with community service providers or, if local providers are not available, with national organizations that provide legal advocacy and confidential emotional support services for immigrant victims of crime.
- (2) Each facility's written policies shall establish procedures to include outside agencies in the facility's sexual abuse prevention and intervention protocols, if such resources are available.
- (3) Each facility shall make available to detainees information about local organizations that can assist detainees who have been victims of sexual abuse, including mailing addresses and telephone numbers (including toll-free hotline numbers where available). If no such local organizations exist, the facility shall make available the same information about national organizations. The facility shall enable reasonable communication between detainees and these organizations and agencies, in as confidential a manner as possible.

- (4) Each facility shall inform detainees prior to giving them access to outside resources, of the extent to which such communications will be monitored and the extent to which reports of abuse will be forwarded to authorities in accordance with mandatory reporting laws.

#### **115.54 Third-party reporting.**

- (1) Each facility shall establish a method to receive third-party reports of sexual abuse in its immigration detention facilities and shall make available to the public information on how to report sexual abuse on behalf of a detainee.

### **OFFICIAL RESPONSE FOLLOWING A DETAINEE REPORT**

#### **115.61 Staff reporting duties.**

- (1) The agency and each facility shall require all staff to report immediately and according to agency policy any knowledge, suspicion, or information regarding an incident of sexual abuse that occurred in a facility; retaliation against detainees or staff who reported such an incident; and any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation. The agency shall review and approve facility policies and procedures and shall ensure that the facility specifies appropriate reporting procedures, including a method by which staff can report outside of the chain of command.
- (2) Staff members who become aware of alleged sexual abuse shall immediately follow the reporting requirements set forth in the agency's and facility's written policies and procedures.
- (3) Apart from such reporting, staff shall not reveal any information related to a sexual abuse report 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 in the facility, make medical treatment, investigation, law enforcement, or other security and management decisions.

#### **115.62 Protection duties.**

- (1) If an agency employee or facility staff member has a reasonable belief that a detainee is subject to a substantial risk of imminent sexual abuse, he or she shall take immediate action to protect the detainee.

#### **115.63 Reporting to other confinement facilities.**

- (1) Upon receiving an allegation that a detainee was sexually abused while confined at another facility, the agency or facility whose staff received the allegation shall notify the ICE Field Office and the administrator of the facility where the alleged abuse occurred.
- (2) The notification provided in paragraph (1) of this section shall be provided as soon as possible, but no later than 72 hours after receiving the allegation.
- (3) The agency or facility shall document that it has provided such notification.
- (4) The agency or facility office that receives such notification, to the extent the facility is covered by this subpart, shall ensure that the allegation is referred for investigation in accordance with these standards and reported to the appropriate ICE Field Office Director.

#### **115.64 Responder duties.**

- (1) Upon learning of an allegation that a detainee was sexually abused, the first security staff member to respond to the report, or his or her supervisor, shall be required to:
  - (a) Separate the alleged victim and abuser;
  - (b) Preserve and protect, to the greatest extent possible, any crime scene until appropriate steps can be taken to collect any evidence;
  - (c) If the abuse occurred within a time period that still allows for the collection of physical evidence, request the alleged victim not to take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating; and
  - (d) If the sexual abuse occurred within a time period that still allows for the collection of physical evidence, ensure that the alleged abuser does not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating.
- (2) If the first staff responder is not a security staff member, the responder shall be required to request that the alleged victim not take any actions that could destroy physical evidence and then notify security staff.

#### **115.65 Coordinated response.**

- (1) Each facility shall develop a written institutional plan to coordinate actions taken by staff first responders, medical and mental health practitioners, investigators, and facility leadership in response to an incident of sexual abuse.
- (2) Each facility shall use a coordinated, multidisciplinary team approach to responding to sexual abuse.
- (3) If a victim of sexual abuse is transferred between DHS immigration detention facilities, the sending facility shall, as permitted by law, inform the receiving facility of the incident and the victim's potential need for medical or social services.
- (4) If a victim is transferred between DHS immigration detention facilities or to a non-DHS facility, the sending facility shall, as permitted by law, inform the receiving facility of the incident and the victim's potential need for medical or social services, unless the victim requests otherwise.

#### **115.66 Protection of detainees from contact with alleged abusers.**

- (3) Staff, contractors, and volunteers suspected of perpetrating sexual abuse shall be removed from all duties requiring detainee contact pending the outcome of an investigation.

#### **115.67 Agency protection against retaliation.**

- (1) Staff, contractors, and volunteers, and immigration detention facility detainees, 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 for participating in sexual activity as a result of force, coercion, threats, or fear of force.
- (2) For at least 90 days following a report of sexual abuse, the agency and facility shall monitor to see if there are facts that may suggest possible retaliation by detainees or staff, and shall act promptly to remedy any such retaliation.

### **115.68 Post-allegation protective custody.**

- (1) The facility shall take care to place detainee victims of sexual abuse in a supportive environment that represents the least restrictive housing option possible (e.g., protective custody), subject to the requirements of § 115.43.
- (2) Detainee victims shall not be held for longer than five days in any type of administrative segregation, except in unusual circumstances or at the request of the detainee.
- (3) A detainee victim who is in protective custody after having been subjected to sexual abuse shall not be returned to the general population until completion of a proper re-assessment, taking into consideration any increased vulnerability of the detainee as a result of the sexual abuse.
- (4) Facilities shall notify the appropriate ICE Enforcement and Removal Operations Field Office Director whenever a detainee victim has been held in administrative segregation for 72 hours.

## **INVESTIGATIONS**

### **115.71 Criminal and administrative investigations.**

- (1) If the facility has responsibility for investigating allegations of sexual abuse, all investigations into alleged sexual abuse must be prompt, thorough, objective, and conducted by specially trained, qualified investigators.
- (2) Upon conclusion of a criminal investigation where the allegation was substantiated, an administrative investigation shall be conducted. Upon conclusion of a criminal investigation where the allegation was unsubstantiated, the facility shall review any available completed criminal investigation reports to determine whether an administrative investigation is necessary or appropriate. Administrative investigations shall be conducted after consultation with the appropriate investigative office within DHS, and the assigned criminal investigative entity.
- (3) (a) The facility shall develop written procedures for administrative investigations, including provisions requiring:
  - i. Preservation of direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data;
  - ii. (ii) Interviewing alleged victims, suspected perpetrators, and witnesses;
  - iii. (iii) Reviewing prior complaints and reports of sexual abuse involving the suspected perpetrator;
  - iv. (iv) Assessment of the credibility of an alleged victim, suspect, or witness, without regard to the individual's status as detainee, staff, or employee, and without requiring any detainee who alleges sexual abuse to submit to a polygraph;
  - v. (v) An effort to determine whether actions or failures to act at the facility contributed to the abuse; and
  - vi. (vi) Documentation of each investigation by written report, which shall include a description of the physical and testimonial evidence, the reasoning behind credibility assessments, and investigative facts and findings; and
  - vii. (vii) Retention of such reports for as long as the alleged abuser is detained or employed by the agency or facility, plus five years.
- (b) Such procedures shall govern the coordination and sequencing of the two types of investigations, in accordance with paragraph (2) of this section, to ensure that the criminal investigation is not compromised by an internal administrative investigation.
- (4) The departure of the alleged abuser or victim from the employment or control of the facility or agency shall not provide a basis for terminating an investigation.
- (5) When outside agencies investigate sexual abuse, the facility shall cooperate with outside investigators and shall endeavor to remain informed about the progress of the investigation.

## **DISCIPLINE**

### **115.76 Disciplinary sanctions for staff.**

- (1) Staff shall be subject to disciplinary or adverse action up to and including removal from their position and the Federal service for substantiated allegations of sexual abuse or for violating agency or facility sexual abuse policies.
- (2) The agency shall review and approve facility policies and procedures regarding disciplinary or adverse actions for staff and shall ensure that the facility policy and procedures specify disciplinary or adverse actions for staff, up to and including removal from their position and from the Federal service for staff, when there is a substantiated allegation of sexual abuse, or when there has been a violation of agency sexual abuse rules, policies, or standards. Removal from their position and from the Federal service is the presumptive disciplinary sanction for staff who have engaged in or attempted or threatened to engage in sexual abuse, as defined under the definition of sexual abuse of a detainee by a staff member, contractor, or volunteer, paragraphs (a) - (d) and (g) - (h).
- (3) Each facility shall report all removals or resignations in lieu of removal for violations of agency or facility sexual abuse policies to appropriate law enforcement agencies, unless the activity was clearly not criminal.
- (4) Each facility shall make reasonable efforts to report removals or resignations in lieu of removal for violations of agency or facility sexual abuse policies to any relevant licensing bodies, to the extent known.

### **115.77 Corrective action for contractors and volunteers.**

- (1) Any contractor or volunteer who has engaged in sexual abuse shall be prohibited from contact with detainees. Each facility shall make reasonable efforts to report to any relevant licensing body, to the extent known, incidents of substantiated sexual abuse by a contractor or volunteer. Such incidents shall also be reported to law enforcement agencies, unless the activity was clearly not criminal.
- (2) Contractors and volunteers suspected of perpetrating sexual abuse shall be removed from all duties requiring detainee contact pending the outcome of an investigation.
- (3) The facility shall take appropriate remedial measures, and shall consider whether to prohibit further contact with detainees by contractors or volunteers who have not engaged in sexual abuse, but have violated other provisions within these standards.

### **115.78 Disciplinary sanctions for detainees.**

- (1) Each facility shall subject a detainee to disciplinary sanctions pursuant to a formal disciplinary process following an administrative or criminal finding that the detainee engaged in sexual abuse.
- (2) At all steps in the disciplinary process provided in paragraph (1), any sanctions imposed shall be commensurate with the severity of the committed prohibited act and intended to encourage the detainee to conform with rules and regulations in the future.
- (3) Each facility holding detainees in custody shall have a detainee disciplinary system with progressive levels of reviews, appeals, procedures, and documentation procedure.
- (4) The disciplinary process shall consider whether a detainee's mental disabilities or mental illness contributed to his or her behavior when determining what type of sanction, if any, should be imposed.
- (5) The facility shall not discipline a detainee for sexual contact with staff unless there is a finding that the staff member did not consent to such contact.

- (6) For the purpose of disciplinary action, a report of sexual abuse made in good faith based upon a reasonable belief that the alleged conduct occurred shall not constitute falsely reporting an incident or lying, even if an investigation does not establish evidence sufficient to substantiate the allegation.

## **MEDICAL AND MENTAL CARE**

### **115.81 Medical and mental health assessments; history of sexual abuse.**

- (1) If the assessment pursuant to § 115.41 of this part indicates that a detainee has experienced prior sexual victimization or perpetrated sexual abuse, staff shall, as appropriate, ensure that the detainee is immediately referred to a qualified medical or mental health practitioner for medical and/or mental health follow-up as appropriate.
- (2) When a referral for medical follow-up is initiated, the detainee shall receive a health evaluation no later than two working days from the date of assessment.
- (3) When a referral for mental health follow-up is initiated, the detainee shall receive a mental health evaluation no later than 72 hours after the referral.

### **115.82 Access to emergency medical and mental health services.**

- (1) Detainee victims of sexual abuse in immigration detention facilities shall have timely, unimpeded access to emergency medical treatment and crisis intervention services, including emergency contraception and sexually transmitted infections prophylaxis, in accordance with professionally accepted standards of care.
- (2) Emergency medical treatment services provided to the victim shall be without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident.

### **115.83 Ongoing medical and mental health care for sexual abuse victims and abusers.**

- (1) Each facility shall offer medical and mental health evaluation and, as appropriate, treatment to all detainees who have been victimized by sexual abuse while in immigration detention.
- (2) The evaluation and treatment of such victims shall include, as appropriate, follow-up services, treatment plans, and, when necessary, referrals for continued care following their transfer to, or placement in, other facilities, or their release from custody.
- (3) The facility shall provide such victims with medical and mental health services consistent with the community level of care.
- (4) Detainee victims of sexually abusive vaginal penetration by a male abuser while incarcerated shall be offered pregnancy tests. If pregnancy results from an instance of sexual abuse, the victim shall receive timely and comprehensive information about lawful pregnancy-related medical services and timely access to all lawful pregnancy-related medical services.
- (5) Detainee victims of sexual abuse while detained shall be offered tests for sexually transmitted infections as medically appropriate.
- (6) 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.
- (7) The facility shall attempt to conduct a mental health evaluation of all known detainee-on-detainee abusers within 60 days of learning of such abuse history and offer treatment when deemed appropriate by mental health practitioners.

## **DATA COLLECTION AND REVIEW**

### **115.86 Sexual abuse incident reviews.**

- (1) Each facility shall conduct a sexual abuse incident review at the conclusion of every investigation of sexual abuse and, where the allegation was not determined to be unfounded, prepare a written report within 30 days of the conclusion of the investigation recommending whether the allegation or investigation indicates that a change in policy or practice could better prevent, detect, or respond to sexual abuse. The facility shall implement the recommendations for improvement, or shall document its reasons for not doing so in a written response. Both the report and response shall be forwarded to the Field Office Director, for transmission to the ICE PSA Coordinator.
- (2) The review team shall consider whether the incident or allegation was motivated by race; ethnicity; gender identity; lesbian, gay, bisexual, transgender, or intersex identification, status, or perceived status; or gang affiliation; or was motivated or otherwise caused by other group dynamics at the facility.
- (3) Each facility shall conduct an annual review of all sexual abuse investigations and resulting incident reviews to assess and improve sexual abuse intervention, prevention and response efforts. If the facility has not had any reports of sexual abuse during the annual reporting period, then the facility shall prepare a negative report. The results and findings of the annual review shall be provided to the facility administrator and Field Office Director or his or her designee, who shall transmit it to the ICE PSA Coordinator.

### **115.87 Data collection.**

- (1) Each facility shall maintain in a secure area all case records associated with claims of sexual abuse, including incident reports, investigative reports, offender information, case disposition, medical and counseling evaluation findings, and recommendations for post-release treatment, if necessary, and/or counseling in accordance with these standards and applicable agency policies, and in accordance with established schedules.