

**U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
OFFICE OF ENFORCEMENT AND REMOVAL OPERATIONS**

11087.1: Operations of ERO Holding Facilities

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Effective Date: September 22, 2014

Superseded: Memorandum from John P. Torres, Detention and Removal Operations Acting Director, "Guidelines for the Use of Hold Rooms at all Field Office Locations" (Feb. 29, 2008).

Federal Enterprise Architecture Number: 301-112-002b

1. **Purpose/Background.** This Directive governs the operation of holding facilities located within Enforcement and Removal Operations (ERO) field offices. The requirements of this Directive apply to all holding facilities operated by ERO, located in ERO field offices, or jointly operated by ERO and Homeland Security Investigations (HSI) in shared offices. This Directive also incorporates requirements for holding facilities contained in 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), codified at 6 C.F.R. Part 115, and supplements other U.S. Immigration and Customs Enforcement (ICE) policies and procedures for responding to sexual abuse and assault incidents contained in ICE Directive 11062.2, "Sexual Abuse and Assault Prevention and Intervention" (May 22, 2014).
2. **Definitions.** The following definitions apply for purposes of this Directive only:
 - 2.1. **Detainee.** A detainee is an individual in ICE custody.
 - 2.2. **Holding Facility.** A holding facility is a facility that contains hold rooms that are primarily used for the short-term confinement of individuals who have recently been detained, or are being transferred to or from a court, detention facility, other holding facility, or other agency.
 - 2.3. **Hold Room.** A hold room is a holding cell, cell block, or other secure enclosure within a holding facility.
 - 2.4. **Minor.** A minor is any person under 18 years of age.
 - 2.5. **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, 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 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 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.

3. Responsibilities.

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

- 1) Section 4.1 (Holding Facility Supervision and Monitoring);
- 2) Section 4.2 (Hold Room Conditions);
- 3) Section 4.3 (Placement of Detainees with Specialized Needs);
- 4) Section 4.4 (Detainees with Disabilities and Detainees Who are Limited English Proficient);
- 5) Section 4.5 (Searches of Detainees);
- 6) Section 4.6 (Limits to Cross-Gender Viewing);
- 7) Section 4.7 (Property Searches);
- 8) Section 4.8 (Written Logs);
- 9) Section 4.9 (Holding Facility Plans for Evacuations and Medical Emergencies);
- 10) Section 4.10 (Sexual Abuse and Assault Prevention);
- 11) Section 4.11 (Responding to Sexual Abuse and Assault Incidents);
- 12) Section 4.12 (Upgrades to Facilities and Technologies); and

13) Section 4.13 (Annual Review).

3.2. ERO Headquarters (HQ) has responsibilities under:

- 1) Section 4.11 (Responding to Sexual Abuse and Assault Incidents);
- 2) Section 4.12 (Upgrades to Facilities and Technologies); and
- 4) Section 4.13 (Annual Review).

4. Procedures and Requirements.

4.1. Holding Facility Supervision and Monitoring.

- 1) The FOD shall ensure that each holding facility maintains sufficient supervision of detainees, including through appropriate staffing levels and, where applicable, video monitoring, to protect detainees against sexual abuse and assault. In so doing, the FOD shall take into consideration:
 - a) The physical layout of each holding facility;
 - b) The composition of the detainee population;
 - c) The prevalence of substantiated and unsubstantiated incidents of sexual abuse and assault;
 - d) The findings and recommendations of sexual abuse and assault incident review reports; and
 - e) Any other relevant factors, including but not limited to, the length of time detainees spend in custody at the holding facility.
- 2) FODs shall ensure that detainees placed into holding facilities are:
 - a) Accounted for and continuously monitored and that holding facilities are emptied upon the conclusion of daily operations in those field office locations operating on a daily schedule. Absent exceptional circumstances, no detainee should be housed in a holding facility for longer than 12 hours.
 - b) Monitored for any apparent indications of a mental or physical condition or signs of hostility that may require closer supervision or emergency medical care.
 - c) Subject to direct supervision, which shall include regular visual monitoring via a video camera placed inside the hold room, as well as physical hold room checks

at least every 15 minutes.

- d) All physical hold room checks shall be logged, including the time of each check and any important observations.
- 3) When detainees in a holding facility are placed in rooms not originally designed for holding detainees (e.g. interview rooms or offices), the FOD shall ensure that the detainees remain under constant direct supervision.
- 4) The FOD shall also ensure that:
 - a) Any unusual detainee behavior or detainee complaints are immediately addressed and appropriately reported to a supervisor, and the detainee is separated from other detainees where necessary.
 - b) ERO field office personnel do not carry firearms, OC spray, batons or other non-deadly force devices into a hold room, except as necessary and appropriate in responding to a security incident.

4.2. Hold Room Conditions.

- 1) The FOD shall ensure that detainees are provided a meal at least every six hours.
 - a) Regardless of their time in custody, minors and pregnant women shall have regular access to meals, snacks, milk, and juice.
 - b) Drinking water should be available to detainees in hold rooms at all times.
- 2) The FOD shall ensure that ERO personnel are sensitive to detainees' cultural and religious practices. Taking into account safety or security concerns, whenever possible, detainees' religious beliefs and practices shall be accommodated.
- 3) The FOD shall ensure that hold rooms are:
 - a) Safe, clean, and clear of objects that could be used as weapons against ERO personnel or detainees.
 - b) Equipped with restroom facilities.
 - i) If the hold room is not equipped with restroom facilities, the FOD will ensure ERO personnel are positioned within direct sight or earshot of the hold room so that detainees may have regular access to restroom facilities.
 - ii) Detainees using the restroom shall be closely monitored, consistent with the requirements of Section 4.6 below.

4.3. Placement of Detainees with Specialized Needs.

- 1) The FOD shall ensure that males and females are not detained in the same hold room, unless they are a family unit.
 - a) Pregnant women will be detained in the least restrictive setting available, provided such setting is consistent with the need to protect the well-being of the pregnant woman and others.
 - b) Pregnant females will not be held with other detainees, whenever possible.
 - c) A nursing detainee will not be separated from her child absent an articulable serious safety risk.
- 2) The FOD shall ensure that unaccompanied minors, elderly detainees, or family units are not placed in hold rooms, unless they have demonstrated or threatened violent behavior, have a history of criminal activity, or pose an escape risk.
 - a) Detainees not placed in a hold room shall be seated in a designated area outside the hold rooms, under direct supervision and control.
 - b) If the physical layout of the holding facility precludes holding such individuals outside the hold room, they may be held in a separate room.
- 3) The FOD shall ensure that minors are detained in the least restrictive setting appropriate to his or her age and special needs, provided that such setting is consistent with the need to protect the minor's well-being and that of others, as well as with any other laws, regulations, or legal requirements.
- 4) Unaccompanied minors will generally be held apart from adults.
 - a. The unaccompanied minor may temporarily remain with a non-parental adult family member where:
 - i. The family relationship has been vetted to the extent feasible, and
 - ii. It has been determined that remaining with the non-parental adult family member is appropriate, given the totality of circumstances.
 - b. To the extent practicable, unaccompanied minors who may be vulnerable due to their young age should be held separately from older minors.

4.4. Detainees with Disabilities and Detainees Who are Limited English Proficient.

- 1) The FOD shall take appropriate steps to ensure that detainees with disabilities have an equal opportunity to participate in and benefit from processes and procedures in connection with placement in an ERO holding facility, consistent with established statutory, regulatory, DHS and ICE policy requirements.
- 2) The FOD shall take reasonable steps to ensure meaningful access to detainees who are limited English proficient, consistent with established regulatory and DHS and ICE policy requirements.

4.5. Searches of Detainees.

- 1) *Pat Down Searches* – The FOD shall ensure that all pat-down searches are conducted in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs and ICE policy, including consideration of officer safety. Where operationally feasible, an officer of the same gender as the detainee will perform the pat down search.
 - a) Every detainee shall undergo a pat down search for weapons and contraband before being placed in a hold room. A pat down search shall be performed even if another agency or other ERO personnel report completing one prior to the detainee's arrival at the ERO facility or transfer of custody.
 - b) Sharp objects, including pens, pencils, knives, nail files, and other objects that could be used as weapons or to deface property, as well as any smoking materials, matches, and lighters shall be removed from the detainee's possession.
- 2) *Strip and Visual Body Cavity Searches* – The FOD shall ensure that when pat down searches indicate the need for a more thorough search, an extended search (i.e., strip search) is conducted in accordance with ICE policies and procedures, including that:
 - a) All strip searches and visual body cavity searches are documented;
 - b) Cross-gender strip searches or cross-gender visual body cavity searches are not conducted except in exigent circumstances, including consideration of officer safety, or when performed by medical practitioners; and
 - c) Visual body cavity searches of minors are conducted by a medical practitioner and not by law enforcement personnel.
- 3) *Searches to Determine Gender* – The FOD shall ensure that ERO personnel do not search or physically examine a detainee for the sole purpose of determining the detainee's gender. If the detainee's gender is unknown, it may be determined during conversations with the detainee, by reviewing medical records (if available), or, if necessary, learning that information as part of a broader medical examination conducted in private, by a medical practitioner.

4.6. Limits to Cross-Gender Viewing.

- 1) The FOD shall ensure that detainees are permitted to shower (where showers are available), 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 hold room checks, or is otherwise appropriate in connection with a medical exam or monitored bowel movement under medical supervision.
- 2) The FOD will also ensure that ERO personnel of the opposite gender announce their presence when entering an area where detainees are likely to be showering, performing bodily functions, or changing clothing.

4.7. Property.

- 1) The FOD shall ensure that detainee parcels, suitcases, bags, bundles, boxes, and other property are searched for contraband. All detainee property will be kept outside the hold room in a safe and secure area out of the reach of detainees.
- 2) Detainees will be allowed to keep personal inhaled medication on their person and have access to other prescribed medication as necessary.
- 3) The FOD shall ensure that field office personnel appropriately process, inventory, and safeguard detainee property (including funds, valuables, baggage, and other personal property), in order to ensure the return of all such property to the detainee prior to removal or upon release from ICE custody, pursuant to applicable ICE policies and detention standards.

4.8. Written Logs.

- 1) *Detention Logs* – The FOD shall ensure that appropriate field office personnel maintain a detention log for every detainee brought into custody, regardless of purpose (e.g., new arrival, awaiting legal visitation, awaiting interviews). At the conclusion of each day, the FOD shall ensure that an ERO supervisor reviews, dates, and signs the detention log. The detention log will record, at a minimum:
 - a) Detainee's name;
 - b) Gender;
 - c) Age;
 - d) A-Number;
 - e) Nationality;

- f) Language spoken, and if a detainee is not proficient in English;
 - g) Known or reported disability;
 - h) Other special vulnerability (e.g., nursing mother);
 - i) Reason for placement (e.g., court run, removal, interview with detention officer);
 - j) Time in;
 - k) Meal time;
 - l) Time out;
 - m) Final disposition (e.g., removed, transported to ABC County jail, ORR placement); and
 - n) Badge number of logging officer.
- 2) *Holding Facility Inspection Logs* – The FOD shall ensure that all hold rooms are inspected every twelve hours, and that each ERO field office maintains a “Hold Room Inspection Log” to document the results of those inspections.
- a) The log will include the date, time, name and signature of the officer conducting each inspection.
 - b) Visual inspections of every hold room will be conducted at the beginning and conclusion of daily operations to ensure that the hold rooms are operational and that no contraband has been introduced prior to placing a detainee into the room. Visual inspections will be recorded in the log.
 - c) Any evidence of tampering with doors, locks, windows, grills, telephones, plumbing or electrical fixtures will be immediately reported to a supervisor for corrective action or repair and noted in the log. The hold room will not be utilized until the corrective action and/or repair is complete, and a supervisor at the Assistant Field Office Director or higher level has authorized its use.

4.9. Holding Facility Plans for Evacuations and Medical Emergencies.

- 1) The FOD shall develop and maintain a written evacuation plan for holding facilities in a location accessible only to employees.
- 2) The FOD shall also ensure that ERO personnel:

- a) Develop medical emergency procedures and response plans for medical emergencies (to include appropriate supervisory notification).
- b) Are aware of the location of emergency medical supplies and equipment.
- c) Respond immediately to observed or reported medical emergencies, and contact local emergency medical services when a detainee is determined to need urgent medical care.
 - i) If the detainee is removed from a holding facility for medical treatment, ERO personnel shall accompany and remain with the detainee until the completion of treatment and official medical clearance is provided.
 - ii) If the detainee is hospitalized, appropriate supervisory notification shall occur.

4.10. Sexual Abuse and Assault Prevention.

- 1) *Detainee Awareness* – The FOD shall ensure that key information regarding ICE’s zero-tolerance policy for sexual abuse and assault is visible or continuously and readily available to detainees (e.g., through posters, detainee handbooks, or other written formats).
- 2) *Screening*
 - a) The FOD should ensure that before placing detainees together in a hold room, there shall be consideration of whether a detainee may be at a high risk of being sexually abused or assaulted, and, when appropriate, shall take necessary steps to mitigate any such danger to the detainee.
 - b) The FOD shall ensure that detainees who may be held overnight with other detainees are assessed to determine their risk of being either sexually abused or assaulted or sexually abusive, to include being asked about their concerns for their physical safety.
 - c) The FOD shall ensure that the following criteria are considered in assessing detainees for risk of sexual victimization, to the extent that the information is available:
 - i) Whether the detainee has a mental, physical, or developmental disability;
 - ii) The age of the detainee;
 - iii) The physical build and appearance of the detainee;

- iv) Whether the detainee has previously been incarcerated or detained;
 - v) The nature of the detainee's criminal history;
 - vi) Whether the detainee has any convictions for sex offenses;
 - vii) Whether the detainee has self-identified as Lesbian, Gay, Bisexual, Transgender or Intersex (LGBTI) or gender nonconforming;
 - viii) Whether the detainee has self-identified as previously experiencing sexual victimization; and
 - ix) The detainee's own concerns about his or her physical safety.
- d) The FOD shall implement appropriate controls on the dissemination of any sensitive information regarding a detainee provided pursuant to screening procedures.
 - e) For detainees identified as being at high risk for victimization, the FOD shall provide heightened protection, including continuous direct sight and sound supervision, single-housing, or placement in a hold room actively monitored on video by a staff member sufficiently proximate to intervene, unless no such option is feasible.

3) *Sexual Abuse and Assault Reporting* –

- a) The FOD shall ensure that detainees are provided instructions on how they can privately report incidents of sexual abuse or assault, retaliation for reporting sexual abuse or assault, or staff neglect or violations of responsibilities that may have contributed to such incidents to ERO personnel.
- b) The FOD shall implement procedures for ERO personnel to accept reports made verbally, in writing, anonymously, and from third parties and promptly document any verbal reports.
- c) The FOD shall ensure that detainees are provided with instructions on how they can contact the DHS/Office of the Inspector General (OIG) (or, as appropriate, another public or private entity which is able to receive and immediately forward detainee reports of sexual abuse or assault to agency officials) to confidentially and, if desired, anonymously, report these incidents.

4.11. Responding to Sexual Abuse and Assault Incidents.

The FOD shall ensure a coordinated, multidisciplinary team approach to responding to allegations of sexual abuse and assault occurring in holding facilities, or in the course of

transit to or from holding facilities, as well as to allegations made by a detainee at a holding facility of sexual abuse or assault that occurred elsewhere in ICE custody.

- 1) *Reporting Duties* – The FOD shall ensure that all allegations of sexual abuse and assault occurring in holding facilities are immediately reported pursuant to the notification requirements of the ICE Directive on Sexual Abuse and Assault Prevention and Intervention.
- 2) *First Responder Duties (officers or agents)* – The FOD shall ensure that upon learning of an allegation that a detainee was sexually abused or assaulted, the responder, or his or her supervisor:
 - a) Separates the alleged victim and abuser;
 - b) Preserves and protects, to the greatest extent possible, any crime scene until appropriate steps can be taken to collect any evidence;
 - c) If the sexual abuse or assault occurred within a time period that still allows for the collection of physical evidence, requests 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 or assault occurred within a time period that still allows for the collection of physical evidence, ensures 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.
- 3) *First Responder Duties (non-officers or agents)* – If the first responder is not an officer or agent, the responder shall request the alleged victim not to take any actions that could destroy physical evidence, and then notify an officer or agent.
- 4) *Medical and Mental Health Care and Community and Victim Services*
 - a) The FOD shall ensure that detainee victims of sexual abuse or assault have timely, unimpeded access to emergency medical and mental health treatment and crisis intervention services, including emergency contraception and sexually transmitted infections prophylaxis, in accordance with professionally accepted standards of care.
 - b) The FOD shall coordinate with ERO HQ and the ICE PSA Coordinator in utilizing, to the extent available and appropriate, community resources and services that provide expertise and support in the areas of crisis intervention and counseling to address victims' needs.

c) If a victim is transferred from a holding facility to a detention facility or to a non-ICE facility, the FOD shall inform the receiving facility of the incident and the victim's potential need for medical or mental health care or victim services.

5) *Forensic Medical Examinations* – Where evidentiarily or medically appropriate, at no cost to the detainee, and only with the detainee's consent, the FOD shall arrange for or refer an alleged victim detainee to a medical facility to undergo a forensic medical examination, 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. If, in connection with an allegation of sexual abuse or assault, the detainee is transported for a forensic examination to an outside hospital that offers victim advocacy services, the detainee shall be permitted to use such services to the extent available, consistent with security needs.

6) *Sexual Abuse and Assault Incident Reviews* – The FOD shall conduct a sexual abuse and assault incident review at the conclusion of every investigation of sexual abuse or assault occurring at a holding facility and, unless the allegation was determined to be unfounded, prepare a written report recommending whether the allegation or investigation indicates that a change in policy or practice could better prevent, detect, or respond to sexual abuse and assault. Such review shall ordinarily occur within 30 days of ERO's receipt of the investigation results from the investigating authority.

a) The FOD shall implement the recommendations for improvement, or shall document its reasons for not doing so, in a written justification. Both the report and justification shall be forwarded to the ICE PSA Coordinator.

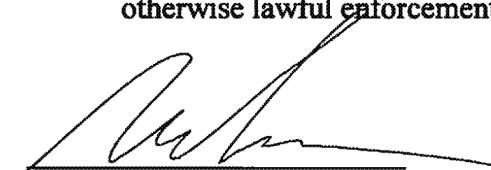
4.12. Upgrades to Facilities and Technologies – When designing or developing any new ERO holding facility and in planning any substantial expansion or modification of existing holding facilities, the FOD, in coordination with the Office of Facilities Administration, Office of the Chief Financial Officer, shall consider the effect of the design, acquisition, expansion, or modification upon the agency's ability to protect detainees from sexual abuse and assault. When installing or updating a video monitoring system, electronic surveillance system, or other monitoring technology in a hold room, the FOD, in coordination with the Office of Facilities Administration, Office of the Chief Financial Officer, shall consider how such technology may enhance the agency's ability to protect detainees from sexual abuse and assault.

4.13. Annual Review.

- 1) ERO HQ shall review this policy at least annually to ensure its continuing effectiveness, and shall update it as necessary.
- 2) The FOD shall at least annually review the application of this policy at each holding facility within his or her AOR to ensure ongoing compliance.

5. Authorities/References.

- 5.1.** Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities, 79 Fed. Reg. 13100 (Mar. 7, 2014).
- 5.2.** ICE Policy 11062.2: "Sexual Abuse and Assault Prevention and Intervention" (May 22, 2014).
- 6. 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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