

**U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
ENFORCEMENT AND REMOVAL OPERATIONS
ICE HEALTH SERVICE CORPS**

FORENSIC PSYCHIATRIC EVALUATIONS

IHSC Directive: 07-03

ERO Directive Number: 11807.2

Federal Enterprise Architecture Number: 306-112-002b

Effective Date: February 11, 2021

Last Review Date: November 30, 2021

By Order of the Assistant Director

(b)(6),(b)(7)(C) DHSc, FACHE

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1. **PURPOSE:** The purpose of this directive is to set forth policies and procedures to guide forensic psychiatric evaluations for detainees and Post Order Custody Reviews (POCR) for especially dangerous detainees who are not qualified for release due to their mental health condition.

2. **APPLICABILITY:** This directive applies to all U.S. Immigration and Customs Enforcement (ICE) Health Service Corps (IHSC) personnel, including but not limited to, U.S. Public Health Service (PHS) officers, civil service employees, and contract personnel. It is applicable to IHSC personnel supporting health care operations in ICE-owned and contracted detention facilities (CDFs) and to IHSC Headquarters (HQ) staff. This directive applies to contract personnel when supporting IHSC in detention facilities and at HQ. Federal contractors are responsible for the management and discipline of their employees supporting IHSC.

3. **AUTHORITIES AND REFERENCES:**
 - 3-1. Title 8, Aliens and Nationality, Section 235.3 (8 CFR 235.3), *Inadmissible Aliens and Expedited Removal*.
 - 3-2. Title 8, Aliens and Nationality, Section 241.14(f) (8 CFR 241.14(f)), *Continued Detention of Removeable Aliens on Account of Special Circumstances*.
 - 3-3. Title 8, Aliens and Nationality, Section 1222(b) (8 USC 1222), *Detention of Aliens for Physical and Mental Examination*.
 - 3-4. Title 42, The Public Health and Welfare, Section 249(a) (42 USC 249(a)),

Medical Care and Treatment of Quarantined and Detained Persons.

- 3-5. Title 42, The Public Health and Welfare, Section 252 (42 USC 252); *Medical Examination of Aliens.*
- 3-6. The Privacy Act of 1974, 5 USC § 552a, as applied in DHS Privacy Policy Memorandum: 2007-1, "DHS Privacy Policy Regarding Collection, Use, Retention, and Dissemination of Information on Non-U.S. Persons," (January 7, 2009).
4. **POLICY:** IHSC coordinates with qualified and certified behavioral health providers (BHP), who are not affiliated with ICE, to perform forensic psychiatric evaluations. IHSC personnel do not conduct forensic evaluations on detainees in ICE custody.
 - 4-1. The Psychiatry Services Unit chief or designee must evaluate the patient prior to referral for a forensic psychiatric evaluation to ensure appropriateness of referral.
 - 4-2. A forensic psychiatrist must conduct the initial forensic evaluation.
 - 4-3. A forensic psychiatrist or forensic psychologist completes the annual forensic evaluations if required.
 - 4-4. IHSC coordinates forensic evaluations by outside forensic providers to support the ICE Enforcement and Removal (ERO) POOCR program. ICE ERO POOCR may request IHSC to arrange forensic evaluations to determine the appropriateness of continued detention of an ICE detainee pursuant to 8 CFR 241.14(f).
5. **RESPONSIBILITIES:**
 - 5-1. The Behavioral Health Unit (BHU) chief provides national oversight of IHSC behavioral health and forensic evaluation requests. ICE ERO POOCR must submit all forensic evaluation requests through BHU.
 - 5.2 The Health Services Administrator (HSA) of the facility where the patient resides coordinates with local ERO regarding travel to and from the evaluation.
 - 5.3 The independent forensic evaluator conducts the evaluation and submits a written report to BHU for review and dissemination to ICE ERO POOCR.
 - 5.4 The forensic evaluator's written report must include all required information as outlined in section 6-2 and 6-3 under forensic mental health evaluation.
6. **PROCEDURES:** The Behavioral Health Unit (BHU) chief or designee identifies a forensic BHP and coordinates the forensic evaluation with the HSA of the facility where the detainee resides. During this coordination, BHU advises the forensic BHP

of the report format requirements outlined in section 6-2 of this document (applicable only to 8 CFR 241.14(f) cases).

6-1. Forensic Psychiatric Evaluations for ICE ERO POCR: ICE ERO POCR initiates referrals for forensic evaluations of detainees to the BHU.

6-2. Required Items for Mental Health Evaluations:

6-2.1. **Identifying Information:** The forensic BHP obtains and documents the detainee's full name, alien number, date of evaluation, date of report, date of birth, gender, education level, date of entry into the U.S., date of entry into ICE custody, and immigration status.

6-2.2. **Translation Service:** The forensic BHP documents the name of the person providing translation services and their qualifying credentials, if applicable.

6-2.3. **Statement of Evaluation's Purpose:** The statement of purpose must annotate that the forensic BHP conducted the following: explained the reason for the evaluation; whether the detainee agreed to participate in the evaluation; and advised the detainee the evaluation is not confidential.

6-2.3.a Health staff do not participate in disciplinary action; and they are not compelled to provide clinical information solely for the purpose of discipline.

6-2.3.b Treatments and medications are never withheld as a form of punishment.

6-2.3.c Segregation and restraints are never clinically implemented as disciplinary actions.

6-2.3.d A written copy of the evaluation is shared with ICE through the assistant field office director (AFOD).

6-2.4. **Records Review:** A forensic evaluator reviews all medical and legal documentation that is provided. This review must be documented in the forensic evaluator's report.

6-2.5. **Criminal History:** ICE provides the criminal history of the detainee as a reference for the forensic BHP.

6-2.6. **Mental Health History:** Includes all known reports of hospitalization/treatment, any previous psychological/psychiatric evaluations, and all past or present symptomatology/mental health conditions and treatment.

6-2.7. **Family and Social History:** Available information concerning the

family of origin, family history of mental illness, marital status, work history, developmental and psycho-sexual history, military service, any legal considerations identified by ICE, repatriation stance, and detention history.

- 6-2.8. **Medical History:** Known medical problems, especially those problems impacting the mental status of the detainee are provided. Additionally, a catalog of current and past medications, known drug allergies and reactions, any history of traumatic brain injury, or any history of seizures.
- 6-2.9. **History of Alcohol and Substance Use:** All alcohol and substance abuse/dependence and past treatment, if any.
- 6-2.10. **Mental Status Examination:** Describes the detainee's general appearance at the time of the evaluation, as well as behavior, mood/affect, orientation, stream of speech and thought, any special preoccupations, presence of delusions, hallucinations, thought content, judgment, insight, abstract thinking, memory, presence of suicidal/homicidal ideas or intentions with estimation for potential of expressive violent behavior, and an estimate of general cognitive functioning. Include current emotional response to incarceration.
- 6-2.11. **Other Observations:** A summary of the results of all psychological tests administered and any other pertinent information derived from the interview process.
- 6-2.12. **Diagnosis:** The forensic BHP who evaluates the detainee refers to and uses the most recent edition of the Diagnostic and Statistical Manual (DSM).
- 6-2.13. **Final Assessment:** A statement from the forensic provider stating their expert opinion of the patient's condition based on findings during the evaluation must be provided to ICE ERO POCR. The statement must include a risk assessment.
- 6-2.14. ICE ERO POCR requires an addendum for all forensic evaluations completed for the purpose of 8 CFR 241.14(f). The addendum is entitled the "Final Mental Health Determination for Release." The forensic provider selects one of the following two statements for this addendum, as appropriate:
 - 6-2.3.a *"Due to a medical condition or personality disorder and behavior associated with that disorder, the alien is likely/unlikely (select one for the written report) to engage*

in acts of violence in the future. No conditions of release to ensure the safety of the public can be reasonably expected." (Following the statement, the forensic provider must include a recommendation of treatment the detainee requires, if any, while in continued detention).

6-2.3.b *"Due to a medical condition or personality disorder and behavior associated with that disorder, the alien is likely/unlikely (select one for the written report) to engage in acts of violence in the future. There are conditions of release that can be reasonably expected to ensure the safety of the public."* The forensic BHP must describe the appropriate existing conditions if there are conditions of release. (Specifics for conditions of release include the type, frequency, duration and setting of any out-patient recommended treatment.)

6-4. Billing/Compensation for Forensic Mental Health Evaluations: The Resource Management Unit (RMU) must provide prior authorization for all consults and services requiring travel, either through personally owned vehicle (POV) or commercial transportation. If telehealth services are utilized to conduct the forensic evaluation, please also reference the *Telehealth Directive* located in the IHSC Policy Library.

6-4.1. All travel arrangements must comply with the federal travel regulations. BHPs must submit an expense report, itemizing all expenses, and provide receipts for reimbursement.

6-4.2. Forensic BHPs are selected from an IHCS approved provider list that has been vetted through Health Plan Management Unit (HPMU) provider network process with a signed letter of understanding.

6-4.3. In addition, the BHP must submit a claim form for services rendered (e.g., forensic evaluation and written documentation of results/report). IHSC utilizes the Veterans Affairs Financial Services Center in Austin, Texas, to adjudicate and pay all medical claims.

7. HISTORICAL NOTES: This directive replaces IHSC 07-03, *Forensic Psychiatric Evaluations*, dated February 11, 2021. Reviewed by BHU chief on November 22, 2021, with no revisions.

8. DEFINITIONS: The following definitions apply for purposes of this directive only:

8-1. Forensic Evaluations – IHSC coordinates forensic evaluations to

determine mental capacity to understand treatment decisions, understand immigration proceedings, or to determine if a detainee is especially dangerous and ineligible for release to the community.

- 8-2. Forensic Psychologists** – Forensic psychologists are not medical providers but must have a doctorate in clinical psychology and must have completed extensive training in forensic psychology from an accredited program/university. A provider who is board certification in forensic psychology should conduct the evaluation, to the extent possible.
- 8-3. Forensic Psychiatrist** - A forensic psychiatrist is a physician who completed a subspecialty training program in forensic psychiatry from an accredited program/university. A provider who is board certification in forensic psychiatry should conduct the evaluation, to the extent possible. Forensic psychiatry is the application of psychiatry in courts of law for determination for commitment, competency, fitness to stand trial, and responsibility for crime.
- 8-4. Forensic Information** – Physical or psychological data collected from an inmate that may be used against them in disciplinary or legal proceedings.
- 8-5. Post Order Custody Reviews (POCR)** – Post Order Custody Reviews are conducted on detainees who are detained in service custody beyond 90 days after the issuance of a final order of removal to ensure that their detention status is justified and that it is in compliance with governing laws and regulations.

9. APPLICABLE STANDARDS:

9-1. National Commission on Correctional Health Care; 2018 J-G-04
Therapeutic Relationship, Forensic Information and Disciplinary Actions.

10. PRIVACY AND RECORDKEEPING: ICE uses detainee health records and information maintained in accordance with the DHS/ICE-013 Alien Health Records System of Records to provide for the care and safety of detainees. IHSC limits access to detainee health records and information to those individuals who need to know the information for the performance of their official duties, and who have appropriate clearances or permissions. IHSC secures paper records in a locked cabinet or room when not under the direct control of an officer or employee with a need for the paper record to perform their duties.

10-1. IHSC staff complete annual training on the protection of patient health information and Sensitive Personally identifiable information.

10.2 IHSC staff reference the Department of Homeland Security Handbook for Safeguarding Sensitive PII (Handbook) at DHS Handbook for Safeguarding

Sensitive PII for additional information concerning safeguarding sensitive PII.

10.3 All relevant documents produced or provided in accordance with this Directive must be maintained in accordance with an applicable National Archives and Records Administration (NARA) General Records Schedule (GRS) or a NARA-approved agency-specific records control schedule. If the records are not subject to a records schedule, they must be maintained indefinitely by the agency. In the event the records are subject to a litigation hold, they may not be disposed of under a records schedule until further notification. Prior to the disposition of any records referenced in this directive, ICE Records Officer approval must be obtained.

11. NO PRIVATE RIGHT STATEMENT: This directive is an internal directive statement of IHSC. It is not intended to, and does not create any rights, privileges, or benefits, substantive or procedural, enforceable against the United States; its departments, agencies, or other entities; its officers or employees; or any other person.

12. POINT OF CONTACT: Chief, IHSC Behavioral Health Unit (BHU).