

STANDARD 2.11

SEXUAL ABUSE AND ASSAULT PREVENTION AND INTERVENTION

I. POLICY

This detention standard requires that facilities that house detainees act affirmatively to prevent sexual abuse and assaults on detainees; provide prompt and effective intervention and treatment for victims of sexual abuse and assault; and control, discipline and prosecute the perpetrators of sexual abuse and assault.

II. STANDARDS AND PROCEDURES

A. Written Policy and Procedures Required

The facility's policy and procedures shall reflect the unique characteristics of the facility, including factors such as the availability of specialized community-based services, including rape crisis/trauma units in local medical centers, clinics, and hospitals.

The facility shall have written policy and procedures for a Sexual Abuse and Assault Prevention and Intervention Program. This policy must mandate zero tolerance toward all forms of sexual abuse and assault, outline the facility's approach to preventing, detecting, and responding to such conduct, and include, at a minimum:

1. Procedures on preventing sexual abuse and assault, including:
 - a. Procedures for assessing all detainees for their risk of sexual abusiveness or victimization;
 - b. Procedures for housing detainees in accordance with their classification assessment;
 - c. Training of all employees, contractors, and volunteers on the agency's and facility's zero tolerance policies and their responsibilities under those policies; and
 - d. Notification to detainees of the facility's Sexual Abuse and Assault Prevention and Intervention Program.
2. Procedures for immediate reporting of sexual abuse and assault allegations, including:
 - a. Procedures for immediate reporting of sexual abuse and assault allegations through the facility's chain of command, from the reporting official to the highest facility official, including also procedures for notifying ICE/ERO (this notification must be

- sent directly to the FOD) and a method by which staff can report outside the chain of command;
- b. Responsibility of all staff to report allegations or suspicions of sexual abuse and assault;
 - c. Referrals to law enforcement agencies;
 - d. Written documentation requirements to ensure that each allegation or suspicion is properly reported and addressed; and
 - e. A method to receive third-party reports of sexual abuse and assault in its facility, with information made available to the public regarding how to report sexual abuse and assault on behalf of a detainee.
3. Procedures for prompt and effective intervention to address the safety and treatment needs of detainee victims if an allegation is made or an assault occurs, including:
 - a. Procedures for offering immediate protection, including prevention of retaliation and medical and mental health referrals;
 - b. 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 and assault; and
 - c. Methods for addressing the alleged victim's future safety, medical, and mental health needs;
 4. Procedures to include victim advocate services in sexual abuse and assault prevention and intervention programs, if such resources are available;
 5. Procedures for investigation and discipline of assailants, including:
 - a. Coordinating with ICE/ERO and other appropriate investigative agencies to ensure that an administrative and/or criminal investigation is completed for all allegations of sexual abuse and assault;
 - b. Following a uniform evidence protocol, including access to a forensic medical exam, which maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions;
 - c. Procedures for coordination of internal administrative investigations with the assigned criminal investigative entity to ensure non-interference with criminal investigations, as well as coordination with the ICE Office of Professional Responsibility; and

- d. Disciplinary sanctions for staff, up to and including termination, when there is a substantiated allegation of sexual abuse and assault, or when staff has violated agency sexual abuse and assault policies.
- 6. Procedures for data collection and reporting; and
- 7. the facility's requirement to cooperate with all ICE/ERO audits and monitoring of facility compliance with sexual abuse and assault policies and standards.

The facility's written policy and procedures must be reviewed and approved by ICE/ERO.

The facility administrator shall ensure that, within 90 days of the adoption of this detention standard, written policy and procedures are in place and that the facility is in full compliance with its requirements and guidelines. The facility must meet all other requirements in this standard which do not require written policy or procedure on the date the standard is adopted.

Each facility shall also post its protocols on its website, if it has one, or otherwise make the protocols available to the public.

B. Acts of Sexual Abuse and Assault

For the purposes of this standard, the following definitions apply:

1. Detainee-on-detainee Sexual Abuse and Assault

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

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

2. Staff-on-detainee Sexual Abuse and Assault

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 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.

C. Compliance Manager

The facility administrator shall designate a Prevention of Sexual Assault (PSA) Compliance Manager who shall serve as the facility point of contact for the ICE/ERO PSA Coordinator and who has sufficient time and authority to oversee facility efforts to comply with facility sexual abuse and assault prevention and intervention policies and procedures. The PSA Compliance Manager shall:

1. Assist with the development of written policies and procedures for the Sexual Abuse and Assault Prevention and Intervention Program, as specified above in this standard, and with keeping them current;
2. Assist with the development of initial and ongoing training protocols;
3. Serve as a liaison with other agencies;
4. Coordinate the gathering of statistics and reports on incidents of sexual abuse or assault, as detailed in “O. Data Collection” in this standard;
5. Review the results of every investigation of sexual abuse and assault and assist in conducting an annual review of all investigations in compliance with the Privacy Act to assess and improve prevention and response efforts;
6. Review facility practices to ensure required levels of confidentiality are maintained; and
7. Be notified of every allegation.

D. Sexual Conduct Between Detainees Prohibited

In addition to the forms of sexual abuse and assault defined above, all other sexual conduct – including consensual sexual conduct – between detainees is prohibited and subject to disciplinary sanctions. However, staff should be sensitive to the possibility that seemingly consensual behavior may have involved coercion by either person involved.

Consensual sexual conduct between detainees and staff, volunteers, or contract personnel is included within the definition of staff-on-detainee sexual abuse and/or assault above.

E. Staff Training

Training on the facility’s Sexual Abuse and Assault Prevention and Intervention Program shall be included in training for all employees and shall also be included in biannual refresher training thereafter.

Employee training shall ensure facility staff are able to fulfill their responsibilities under this standard and shall include:

1. The facility’s zero-tolerance policies for all forms of sexual abuse and assault;
2. Definitions and examples of prohibited and illegal sexual behavior;
3. The right of detainees and staff to be free from sexual abuse and assault, and from retaliation for reporting sexual abuse and assault;

4. Instruction that sexual abuse and assault is never an acceptable consequence of detention;
5. Recognition of situations where sexual abuse and assault may occur;
6. How to avoid inappropriate relationships with detainees;
7. Working with vulnerable populations and addressing their potential vulnerability in the general population;
8. Recognition of the physical, behavioral and emotional signs of sexual abuse and assault and ways to prevent and respond to such occurrences;
9. The requirement to limit reporting of sexual abuse and assault to personnel with a need to know in order to make decisions concerning the detainee-victim's welfare, and for law enforcement/investigative purposes;
10. The investigation process and how to ensure that evidence is not destroyed;
11. Prevention, recognition and appropriate response to allegations or suspicions of sexual abuse and assault involving detainees with mental or physical disabilities;
12. How to communicate effectively and professionally with detainees, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming detainees;
13. Instruction on reporting knowledge or suspicion of sexual abuse and assault; and
14. Instruction on documentation and referral procedures for all allegations or suspicions of sexual abuse and assault.

The facility shall ensure that all volunteers and other contractors who have contact with detainees have been trained on their responsibilities under the facility's sexual abuse and assault prevention, detection, intervention and response policies and procedures. The level and type of training for volunteers and contractors will be based on the services they provide and their level of contact with detainees; however, all volunteers and contractors who have any contact with detainees must be notified of the facility's zero-tolerance policy and informed how to report such incidents. In this paragraph "other contractor" means a person who provides services on a non-recurring basis to the facility pursuant to a contractual agreement with the agency or facility.

The facility must maintain written documentation verifying employee, volunteer, and contractor training. In addition to the general training provided to all facility employees, the facility shall provide specialized training on sexual abuse and assault and effective cross-agency coordination to facility investigators who conduct investigations into allegations of sexual abuse and assault. This training must cover, at a minimum,

interviewing sexual abuse and assault victims, sexual abuse and assault evidence collection in confinement settings, the criteria and evidence required for administrative action or prosecutorial referral, and information about effective cross-agency coordination in the investigation process. The facility must maintain written documentation verifying specialized training provided to investigators pursuant to this paragraph.

Facility medical staff shall be trained in procedures for examining and treating victims of sexual abuse in facilities where medical staff may be assigned these activities. This training shall be subject to the review and approval of ICE/ERO.

F. Detainee Notification, Orientation and Instruction

The facility administrator shall ensure that the orientation program, required by Standard 2.1 “Admission and Release” notifies and informs detainees about the agency’s and the facility’s zero tolerance policies for all forms of sexual abuse and assault.

Following the intake process, the facility shall provide instruction to detainees on the facility’s Sexual Abuse and Assault Prevention and Intervention Program and ensure that such instruction includes (at a minimum):

1. The facility’s zero-tolerance policy for all forms of sexual abuse and assault;
2. Prevention and intervention strategies;
3. Definitions and examples of detainee-on-detainee sexual abuse and assault, staff-on-detainee sexual abuse and assault and coercive sexual activity;
4. Explanation of methods for reporting sexual abuse and assault, including one or more staff members other than an immediate point-of-contact line officer, the ICE Detention and Reporting Information Line (DRIL), the DHS Office of Inspector General and the ICE Office of Professional Responsibility;
5. Information about self-protection and indicators of sexual abuse and assault;
6. Prohibition against retaliation, including an explanation that reporting sexual abuse and assault shall not negatively impact the detainee’s immigration proceedings; and
7. Right of a detainee who has been subjected to sexual abuse and assault to receive treatment and counseling.

Detainee notification, orientation, and instruction must be in a language or manner that the detainee understands, including for those who are limited English proficient, deaf, visually impaired, or who otherwise have a communication impairment, as well as to detainees who have limited reading skills. The facility shall maintain documentation of detainee participation in the instruction session.

The facility shall develop policies and procedures to ensure that detainees have multiple ways to privately report sexual abuse and assault, retaliation for reporting sexual abuse and assault, or staff neglect or violations of responsibilities that may have contributed to such incidents:

1. Each facility's Sexual Abuse and Assault Prevention and Intervention program shall provide detainees who are victims of sexual abuse and assault the option to report the incident or situation to a designated staff member other than an immediate point-of-contact line officer (e.g., the program coordinator or a mental health specialist). The facility shall provide detainees with the name of the program coordinator or designated staff member and information on how to contact him or her. Detainees will also be informed that they can report any incident or situation regarding sexual abuse and assault, or intimidation, to any staff member (as outlined above), the DHS Office of Inspector General, and the DHS Joint Intake Center.
2. The facility shall provide instructions on how detainees may contact their consular official, the DHS Office of Inspector General, or as appropriate, another designated office, to confidentially and, if desired, anonymously report these incidents.
3. The facility shall inform the detainees of at least one way for detainees to report sexual abuse and assault to a public or private entity or office that is not part of the facility, and that is able to receive and immediately forward detainee reports of sexual abuse and assault to facility officials, allowing the detainee to remain anonymous upon request. ICE/ERO will provide a sexual abuse and assault awareness notice to be posted on all housing-unit bulletin boards, as well as a "Sexual Assault Awareness Information" pamphlet to be distributed. The facility shall post with this notice the name of the facility PSA Compliance Manager and information about local organizations that can assist detainees who have been victims of sexual abuse and assault, 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. This information will be provided in English and Spanish, and to other segments of the detainee population with limited English proficiency through translations or oral interpretation.

G. Accommodating Detainees with Disabilities or Limited English Proficiency (LEP)

Consistent with the procedures outlined in Standard 4.7 "Disability Identification, Assessment, and Accommodation," the facility shall take appropriate steps to ensure 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 facility's efforts to prevent, detect, and respond to sexual abuse and assault. Such steps shall include, when necessary to ensure effective communication with detainees who are deaf or hard of hearing, or detainees who have intellectual, psychiatric, or speech disabilities, limited reading skills, or who are blind or have low vision.

1. 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.
2. Providing access to written materials related to sexual abuse and assault in formats or through methods that ensure effective communication.

The facility shall take steps to ensure meaningful access to all aspects of the facility's efforts to prevent, detect, and respond to sexual abuse and assault for detainees who are LEP, 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.

In matters relating to allegations of sexual abuse and assault, the facility shall employ effective expressive and receptive verbal communication techniques while communicating with detainees with disabilities in accordance with professionally accepted standards of care. The facility shall provide detainees with disabilities and detainees with limited English proficiency with in-person or telephonic interpretation services that enable effective, accurate, and impartial interpretation, both receptively and expressively, using any necessary specialized vocabulary. Interpretation services shall be provided by someone other than another detainee, unless the detainee expresses a preference for another detainee to provide interpretation and the facility determines that such interpretation is appropriate and consistent with DHS policy. The provision of interpretation 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 and assault.

Where practicable, provisions for written translation of materials related to sexual abuse and assault shall be made for significant segments of the population with limited English proficiency other than Spanish speakers. Oral interpretation or assistance shall be provided to any detainee who speaks another language into which written material has not been translated or who is illiterate.

H. Victim Advocate Services

The 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 administrator shall establish procedures to make available, to the full extent possible, outside victim services following incidents of sexual abuse and assault. The facility shall also attempt to make available such victim services for any detainees identified as having experienced sexual victimization prior to entering DHS custody.

The facility administrator shall maintain or attempt to enter into memoranda of understanding (MOU) 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. The facility shall enable reasonable communication between detainees and these organizations and agencies, in as confidential a manner as possible. The facility shall also 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.

I. Prevention

All staff and detainees are responsible for being alert to signs of potential situations in which sexual abuse and assaults might occur, and for making reports and intervention referrals as appropriate. If a staff member has a reasonable belief that a detainee is subject to a substantial risk of imminent sexual abuse and assault, he or she shall take immediate action to protect the detainee.

1. Classification and Screening

In accordance with Standards 2.1 “Admission and Release” and 2.2 “Custody Classification System,” the facility shall assess all detainees on intake to identify those likely to be sexual aggressors or sexual abuse and assault victims and shall house detainees to prevent sexual abuse and assault, taking necessary steps to mitigate any such danger. The facility shall also use the assessment to inform assignment of detainees to recreation and other activities, and voluntary work.

Each new arrival shall be kept separate from the general population until he or she is classified and housed accordingly.

The facility shall 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.

The initial screening shall consider prior acts of sexual abuse and assault, prior convictions for violent offenses, and history of prior institutional violence or sexual abuse and assault, as known to the facility, in assessing detainees for risk of being sexually abusive.

Detainees shall not be disciplined for refusing to answer, or for not disclosing complete information in response to, questions asked pursuant to items a, g, h, or i above. The facility shall implement appropriate controls on the dissemination within the facility of responses to questions asked pursuant to this screening in order to ensure that sensitive information is not exploited to the detainee’s detriment by staff or other detainees or inmates. Detainees who are considered at risk shall be placed in the least restrictive housing that is available and appropriate. Such detainees should be assigned 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.

2. Transportation

Detainees identified as being “at risk” for sexual victimization shall be transported in accordance with that special safety concern. The section on “Seating of Detainees,” found in Standard 1.2 “Transportation by Land,” requires that transportation staff seat each detainee in accordance with written procedures from the facility administrator, with particular attention to detainees who may need to be afforded closer observation for their own safety.

3. Upgrades to Facilities and Technologies

When designing or acquiring any new facility and in planning any substantial expansion or modification of existing facilities, the facility shall consider the effect of the design, acquisition, expansion, or modification upon its 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 facility, the facility shall consider how such technology may enhance its ability to protect detainees from sexual abuse and assault.

J. Prompt and Effective Intervention

Staff sensitivity toward detainees who are victims of sexual abuse and assault is critical.

Staff shall take seriously all statements from detainees claiming to be victims of sexual abuse and assaults, and shall respond supportively and non-judgmentally. Any detainee who alleges that he or she has been sexually abused and assaulted shall be offered immediate protection and separation from the assailant and shall be referred for a medical examination and/or clinical assessment for potential negative symptoms. Staff members who become aware of an alleged assault shall immediately follow the reporting requirements set forth in the written policies and procedures.

If a victim is transferred between 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 (unless, in the case of transfer to a non-ICE facility, the victim requests otherwise). If the receiving facility is unknown to the sending facility, the sending facility shall notify ICE/ERO, so that he or she can notify the receiving facility.

Facilities should use a coordinated, multidisciplinary team approach to responding to sexual abuse and assault, such as a sexual abuse and assault response team (SART), which, in accordance with community practices, includes a medical practitioner, a mental health practitioner, a security staff member and an investigator from the assigned investigative entity, as well as representatives from outside entities that provide relevant services and expertise. 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, ICE/ERO will 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.

Care shall be taken to place the detainee in a supportive environment that represents the least restrictive housing option possible (e.g., in a different housing unit, transfer to another facility, medical housing, or protective custody), and that takes into account any ongoing medical and mental health needs of the alleged victim.

Victims shall not be held for longer than five days in any type of administrative segregation, except in highly unusual circumstances or at the request of the detainee. 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.

Where an alleged victim of sexual abuse and assault that occurred elsewhere in ICE/ERO custody is subsequently transferred to the facility, the facility shall comply with all applicable response and intervention requirements in this standard, as appropriate based on the nature and status of the case.

K. Protection Against Retaliation

Staff, contractors, volunteers, and 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 and assault, or for participating in sexual abuse and assault as a result of force, coercion, threats, or fear of force.

The facility shall employ multiple protection measures, such as housing changes, removal of alleged staff or detainee abusers from contact with victims, and emotional support services for detainees or staff who fear retaliation for reporting sexual abuse and assault or for cooperating with investigations.

For at least 90 days following a report of sexual abuse and assault, the 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. Items the facility should monitor include any detainee disciplinary reports, housing, or program changes, or negative performance reviews or reassignments of staff. The facility shall continue such monitoring beyond 90 days if the initial monitoring indicates a continuing need.

L. Reporting, Notifications and Confidentiality

The facility shall require all staff to report immediately any knowledge, suspicion, or information regarding an incident of sexual abuse and assault 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.

Staff members who become aware of alleged sexual abuse and assault shall immediately follow the reporting requirements set forth in the facility's written policies and procedures.

Apart from such reporting, staff shall not reveal any information related to a sexual abuse and assault 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, or to make medical treatment, investigation, law enforcement, or other security and management decisions.

If the alleged victim is under the age of 18 or considered a vulnerable adult under a state or local vulnerable persons statute, the facility shall report that information to ICE/ERO so that the agency can report the allegation to the designated state or local services agency under applicable mandatory reporting laws.

Staff shall accept reports made verbally, in writing, anonymously, and from third parties, and promptly document any verbal reports.

The facility shall establish a method to receive third-party reports of sexual abuse and assault in its facility and shall make available to the public information on how to report sexual abuse and assault on behalf of a detainee.

1. Alleged Detainee Perpetrator

When a detainee(s) is alleged to be the perpetrator, it is the facility administrator's responsibility to ensure that the incident is promptly referred to the appropriate law enforcement agency having jurisdiction for investigation (if the incident is potentially criminal) and reported to ICE/ERO (this notification must go directly to the FOD), which shall report it to the OPR Joint Intake Center.

2. Alleged Staff Perpetrator

When an employee, contractor or volunteer is alleged to be the perpetrator of detainee sexual abuse and assault, it is the facility administrator's responsibility to ensure that the incident is promptly referred to the appropriate law enforcement agency having jurisdiction for investigation (if the incident is potentially criminal) and reported to ICE/ERO, which shall report it to the OPR Joint Intake Center. The local government entity or contractor that owns or operates the facility shall also be notified.

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

Upon receiving an allegation that a detainee was sexually abused and assaulted while confined at another facility, the facility whose staff received the allegation shall notify ICE/ERO and the appropriate administrator of the facility where the alleged abuse occurred. The notification provided in this section shall be provided as soon as possible, but no later than 72 hours after receiving the allegation. The facility shall document that it has provided such notification. The facility where the alleged abuse occurred shall then ensure the allegation is referred for investigation and reported to ICE/ERO (this notification must go directly to the FOD) in accordance with this standard.

M. Investigation, Discipline and Incident Reviews

If a detainee alleges sexual abuse and assault, a sensitive and coordinated response is necessary. The facility shall coordinate with ICE/ERO and other appropriate investigative agencies to ensure that an administrative and/or criminal investigation is completed for all allegations of sexual abuse and assault.

All investigations of alleged sexual abuse and assault must be prompt, thorough, objective, and fair and conducted by specially trained, qualified investigators.

Where an alleged victim of sexual abuse and assault that occurred elsewhere is subsequently transferred to the detention facility, the facility shall cooperate with any administrative or criminal investigative efforts arising from the incident.

1. Preservation of Evidence

The first security staff member to respond to a report of sexual abuse and assault, or his or her supervisor, shall preserve and protect, to the greatest extent possible, any crime scene until appropriate steps can be taken to collect any evidence. If the abuse occurred within a time period that still allows for the collection of physical evidence, the responder shall request the alleged victim not to take any actions, and shall 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. 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.

2. Forensic Examinations

Where evidentiarily or medically appropriate, at no cost to the detainee, and only with the detainee's consent, the facility administrator shall arrange for an alleged victim 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.

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.

The results of the physical examination and all collected physical evidence are to be provided to the investigative entity. Part of the investigative process may also include an examination and collection of physical evidence from the suspected assailant(s).

In the event the investigation is being conducted by a non-federal investigating agency, the facility shall request that the investigating agency follow the applicable requirements of this standard, including subsections 1 and 2 of this section.

3. Procedures for Administrative Investigations

Upon conclusion of a criminal investigation where the allegation was substantiated, or in instances where no criminal investigation has been completed, 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. Substantiated allegation means an allegation that was investigated and determined to have occurred. Unsubstantiated allegation means an allegation that was investigated, and the investigation produced insufficient evidence to make a final determination as to whether or not the event occurred.

Administrative investigations shall be conducted after consultation with the appropriate investigative office within DHS and the assigned criminal investigative entity. The ICE Office of Professional Responsibility will typically be the appropriate investigative office within DHS, as well as the DHS OIG in cases where the DHS OIG is conducting an investigation.

The facility shall develop written procedures for administrative investigations, including provisions requiring:

- a. Preservation of direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data;
- b. Interviewing alleged victims, suspected perpetrators, and witnesses;
- c. Reviewing prior complaints and reports of sexual abuse and assault involving the suspected perpetrator;
- d. 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 and assault to submit to a polygraph;
- e. An effort to determine whether actions or failures to act at the facility contributed to the abuse;
- f. 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
- g. Retention of such reports for as long as the alleged abuser is detained or employed by the agency or facility, plus five years.

Such procedures shall govern the coordination and sequencing of administrative and criminal investigations, in accordance with the first paragraph of this section, to ensure that the criminal investigation is not compromised by an internal administrative investigation.

When an administrative investigation is undertaken, the facility shall impose no standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse and assault are substantiated.

The departure of the alleged abuser or victim from the employment or control of the facility shall not provide a basis for terminating an investigation.

When outside agencies investigate sexual abuse and assault, the facility shall cooperate with outside investigators and shall endeavor to remain informed about the progress of the investigation.

Following an investigation conducted by the facility into a detainee's allegation of sexual abuse and assault, the facility shall notify ICE/ERO of the results of the investigation and any responsive actions taken so that the information can be reported to ICE/ERO headquarters and to the detainee.

4. Discipline

a. Disciplinary sanctions for staff

Staff shall be subject to disciplinary or adverse action up to and including removal from their position for substantiated allegations of sexual abuse and assault or for violating agency or facility sexual abuse rules, policies or standards. Removal from their position is the presumptive disciplinary sanction for staff who have engaged in or attempted or threatened to engage in those acts of sexual abuse and assault defined in paragraphs a-d and g-h of "Staff on Detainee Sexual Abuse and/or Assault" in "B. Acts of Sexual Abuse and/or Assault" in this standard.

The facility shall report all incidents of substantiated sexual abuse and assault by staff, and all removals of staff, or resignations in lieu of removal, for violations of agency or facility sexual abuse and assault policies, to appropriate law enforcement agencies unless the activity was clearly not criminal.

The facility shall also report all such incidents of substantiated abuse, removals, or resignations in lieu of removal to ICE/ERO, regardless of whether the activity was criminal, and shall make reasonable efforts to report such information to any relevant licensing bodies, to the extent known.

b. Corrective action for contractors and volunteers

Any contractor or volunteer who has engaged in sexual abuse and assault shall be prohibited from contact with detainees. 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.

Incidents of substantiated sexual abuse and assault by a contractor or volunteer shall be reported to law enforcement agencies, unless the activity was clearly not criminal. The facility shall also report such incidents to ICE/ERO regardless of whether the

activity was criminal, and shall make reasonable efforts to report such incidents to any relevant licensing bodies, to the extent known.

c. Disciplinary sanctions for detainees

Detainees shall be subjected to disciplinary sanctions pursuant to a formal disciplinary process following an administrative or criminal finding that the detainee engaged in sexual abuse and assault, consistent with the requirements of Standard 3.1 “Disciplinary System.” 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. For the purpose of disciplinary action, a report of sexual abuse and assault 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.

5. Sexual Abuse Incident Reviews

The facility shall conduct a sexual abuse and assault incident review at the conclusion of every investigation of sexual abuse and assault 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 and assault. Unfounded allegation means an allegation that was investigated and determined not to have occurred. 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 ICE/ERO for transmission to the ICE/ERO PSA Coordinator. The facility shall also provide any further information regarding such incident reviews as requested by the ICE/ERO PSA Coordinator.

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.

The facility shall conduct an annual review of all sexual abuse and assault investigations and resulting incident reviews to assess and improve sexual abuse and assault intervention, prevention, and response efforts. If the facility has not had any reports of sexual abuse and assault 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 ICE/ERO for transmission to the ICE PSA Coordinator (this notification must be sent directly to the FOD).

N. Medical and Mental Health Care

Detainee victims of sexual abuse and assault shall be provided emergency medical and mental health services and ongoing care. All treatment services, both emergency and ongoing, 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.

1. Access to emergency medical and mental health services

- a. Detainee victims of sexual abuse and assault 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.
- b. Where evidentiarily or medically appropriate, the facility administrator shall arrange for an alleged victim to undergo a forensic medical examination, in accordance with the requirements of “M. Investigation, Discipline and Incident Reviews” of this standard.
- c. Transportation of an alleged victim for emergency care or other services provided off-site shall be arranged in a manner that takes into account the special needs of victimized detainees.

2. Ongoing medical and mental health care for sexual abuse and assault victims and abusers

- a. The facility shall offer medical and mental health evaluation and, as appropriate, treatment to all detainees who have been victimized by sexual abuse and assault while in immigration detention.
- b. 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.
- c. The facility shall provide such victims with medical and mental health services consistent with the community level of care.
- d. 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 and assault, the victim shall receive timely and comprehensive information about lawful pregnancy-related medical services and timely access to all lawful pregnancy-related medical services.

- e. Detainee victims of sexual abuse and assault while detained shall be offered tests for sexually transmitted infections as medically appropriate.
- f. 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.

O. Data Collection

The facility shall maintain, in a secure area, all case records associated with claims of sexual abuse and assault, 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 shall be maintained in appropriate files in accordance with these detention standards and applicable policies, and retained in accordance with established schedules.

Particularly applicable to the storage, confidentiality and release of case records are the requirements of the “Confidentiality and Release of Medical Records” section of Standard 4.3 “Medical Care” and the requirements of Standard 7.1 “Detention Files,” especially in regard to the Privacy Act of 1974. Because of the very sensitive nature of information about victims and their medical condition, including infectious disease testing, staff must be particularly vigilant about maintaining confidentiality and releasing information only for legitimate need-to-know reasons.

Monitoring and evaluation are essential for assessing both the rate of occurrence of sexual abuse and assault and agency effectiveness in reducing sexually abusive behavior. Accordingly, the facility administrator must maintain two types of files of sexual abuse and assault incidents which include the following minimum information:

1. General files include:

- a. The victim(s) and assailant(s) of a sexual abuse and assault;
- b. The date, time, location, and nature of the incident;
- c. The demographic background of the victim and perpetrator (including citizenship, age, gender, and whether either has self-identified as gay, lesbian, bisexual, transgender, intersex, or gender nonconforming);
- d. Detailed reporting timeline, including the names of the individuals who reported the incident and received the report of sexual assault, date and time the report was received, and steps taken to communicate the report up the chain of command;
- e. Any injuries sustained by the victim;

- f. All formal and/or informal action taken, including all post-report follow up response taken by the facility (e.g., housing placement/custody classification, medical examination, mental health counseling, etc.);
- g. All reports;
- h. Medical forms or other relevant medical information;
- i. Supporting memos and videotapes, if any;
- j. Any sanctions imposed on the perpetrator; and
- k. Any other evidentiary materials pertaining to the allegation.

The facility administrator shall maintain these files chronologically in a secure location.

In addition, the facility administrator shall maintain a listing of the names of sexual abuse and assault victims and assailants, along with the dates and locations of all sexual abuse and assault incidents occurring within the facility, on his or her computerized incident reporting system. Such information shall be maintained on a need-to-know basis in accordance with the Standards 4.3 “Medical Care” and 7.1 “Detention Files,” which includes protection of electronic files from unauthorized access. At no time may law enforcement sensitive documents or evidence be stored at the facility. Access to this designation shall be limited to those staff involved in the treatment of the victim or the investigation of the incident. The authorized designation shall allow appropriate staff to track the detainee victim or assailant of sexual abuse and assault across the system.

On an ongoing basis, the facility PSA Compliance Manager and facility administrator must work with ICE/ERO and the ICE/ERO PSA Coordinator to share data regarding sexual abuse and assault incidents and response.

P. Facility Audits

Facilities shall cooperate with all DHS audits of the facility’s compliance with this standard, including by making available relevant documents, records, and other information as requested (including available videotapes and other electronically available data). Upon request, facilities shall also provide to DHS the results of any audits conducted of the facility against the DOJ “National Standards to Prevent, Detect, and Respond to Prison Rape,” 28 C.F.R. Part 115.

Facilities shall permit auditors access to all areas of the facility and shall make available space suitable for interviews of detainees and staff. Detainees shall be permitted to have private interviews with auditors, and to send confidential information or correspondence to the auditor.