

Sexual Abuse and Assault Prevention and Intervention Program Policy

Policy

Lincoln County Detention Center (LCDC) maintains a zero-tolerance policy for all forms of sexual abuse or assault. It is the policy of LCDC to provide a safe and secure environment for all detainees, employees, contractors, and volunteers, free from the threat of sexual abuse or assault, by maintaining a Sexual Abuse and Assault Prevention and Intervention (SAAPI) Program that ensures effective procedures for preventing, reporting, responding to, investigating, and tracking incidents or allegations of sexual abuse or assault.

Sexual abuse or assault of detainees by other detainees or by employees, contractors, or volunteers is prohibited and subject to administrative, disciplinary, and criminal sanctions.

Definitions

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

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, vagina, 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.

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

- a. Contact between the penis and the vulva or anus and, for purposes of this subparagraph, contact involving the penis upon penetration, however slight.
- b. Contact between the mouth and the penis, vagina, or anus.

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

Staff and detainee perpetrators of sexual abuse, as well as detainees who engage in consensual sexual conduct, are subject to administrative and disciplinary sanctions. The facility does not discipline a detainee for sexual contact with staff unless there is a finding that the staff member did not consent to such contact.

Contractor: A person who or entity that provides services on a recurring basis pursuant to a contractual agreement with the facility.

Volunteer: An individual who donates time and effort on a recurring basis to enhance the activities and programs of the facility.

Compliance Manager

The facility has designated a Prevention of Sexual Assault (PSA) Compliance Manager who serves as the facility point of contact for the local field office and ICE PSA Coordinator. The PSA Compliance Manager must have sufficient time and authority to oversee facility efforts to comply with facility sexual abuse and assault prevention and intervention policies and procedures. The Compliance Manager shall:

1. Assist with the development of written policies and procedures for the SAAP Program, 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 allegations of sexual abuse or assault.
5. Review the results of every investigation of sexual abuse and assist in conducting an annual review of all investigations to assess and improve prevention and response efforts.
6. Review facility practices to ensure required levels of confidentiality are maintained.
7. Ensure s/he is notified of every allegation.
8. Ensure Staff and offenders are provided with crisis intervention, emotional support, safety planning and advocacy.
9. Monitor the conduct and treatment of offenders or Staff who have reported sexual abuse or who were reported to have suffered from sexual abuse for at least 90 days following a report of sexual abuse.
10. Prepare reports of all sexual misconduct for the facility administrator.
11. Provide training and education to Staff, contractors, and volunteers about the nature of prison sexual violence, and how to prevent, detect and respond to incidents of sexual assault and abuse, he or she shall take immediate action to protect the detainee.

Prevention

All staff (employees, volunteers, and contractors) are responsible for being alert to signs of potential sexual abuse or assault, and to situations in which sexual abuses or assaults might occur. If a facility staff member has a reasonable belief that a detainee is subject to a substantial risk of imminent sexual abuse, he or she shall take immediate action to protect the detainee.

Screening and Classification Requirements

All detainees are screened upon arrival at the facility for potential risk of sexual victimization or sexually abusive behavior and shall be housed to prevent sexual abuse or assault, taking necessary steps to mitigate any such danger. The facility uses the assessment to inform assignment of detainees to recreation and other activities, and voluntary work.

Each new detainee shall be kept separate from the general population until he/she has been classified and may be housed accordingly.

The initial classification process and initial housing assignment should be completed within twelve hours of admission to the facility.

The facility considers, 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.

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

The facility has appropriate protections on responses to questions asked pursuant to this screening, limiting dissemination, and ensuring that sensitive information is not exploited to the detainee's detriment by staff or other detainees or inmates.

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

Detainees considered at risk for sexual victimization shall be placed in the least restrictive housing that is available and appropriate. If appropriate custodial options are not available at the facility, the facility will consult with the ICE Field Office Director to determine if ICE can provide additional assistance. Such detainees may 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.

All vulnerable detainees placed in administrative segregation for their protection will have a supervisory staff member conduct a review within 72 hours of placement to determine whether segregation is still warranted. A supervisory staff member will complete an identical review after seven days, and every week thereafter for the first 30 days, and every 10 days thereafter.

The facility reevaluates each detainee's risk of abusiveness between 60 and 90 days from the date of the initial assessment, and at any other time when warranted based upon the receipt of additional, relevant information or following an incident of abuse or victimization.

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

When operationally feasible, transgender and intersex detainees shall be given the opportunity to shower separately from other detainees.

The facility shall provide detainees in administrative segregation for protective custody access to programs, visitation, counsel, and other service available to the general population.

Staff Training Requirements

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

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

- a) The facility's zero-tolerance policies for all forms of sexual abuse.
- b) Definitions and examples of prohibited and illegal sexual behavior.
- c) The right of detainees and staff to be free from sexual abuse, and from retaliation from reporting sexual abuse.
- d) Instruction that sexual abuse and/or assault is never an acceptable consequence of detention.
- e) Recognition of situations where sexual abuse and/or assault may occur.
- f) How to avoid inappropriate relationships with detainees.
- g) Working with vulnerable populations and addressing their potential vulnerability in the general population.

- h) Recognition of the physical, behavioral, and emotional signs of sexual abuse and/or assault and ways to prevent and respond to such occurrences.
- i) The requirement to limit reporting of sexual abuse and assault to personnel with a need-to-know to make decisions concerning the detainee victim's welfare, and for law enforcement/investigative purposes.
- j) The investigation process and how to ensure that evidence is not destroyed.
- k) Prevention, recognition and appropriate response to allegations or suspicions of sexual assault involving detainees with mental or physical disabilities.
- l) How to communicate effectively and professionally with detainees, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming detainees.
- m) Instruction on reporting knowledge or suspicion of sexual abuse and/or assault; and
- n) Instruction on documentation and referral procedures of all allegations or suspicion of sexual abuse and/or assault.

All volunteers and other contractors who have contact with detainees shall be trained on their responsibilities under the facility's sexual abuse 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 ICE/ERO and 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 will maintain documentation verifying employee, volunteer, and contractor training. In addition to the general training, all facility staff responsible for conducting sexual abuse or assault investigations shall receive specialized training that covers, 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 requirement.

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. Such specialized training shall include detecting and assessing signs of sexual abuse and assault, preserving physical evidence of sexual abuse, responding effectively and professionally to victims of sexual abuse and assault, and how and to whom to report allegations or suspicions of sexual abuse or assault.

The facility maintains documentation verifying employee, volunteer, and contractor training.

Detainee Education Requirements

Upon admission to Lincoln County Detention Center, all detainees shall be notified of the facility's zero-tolerance policy for all forms of sexual abuse and assault through the orientation program and detainee handbook and provided with information about the facility's SA API Program. Such information shall include, at a minimum:

- a) The facility's zero tolerance policy for all forms of sexual abuse or assault.
- b) The name of the facility PSA compliance manager, and information about how to contact him/her.
- c) Prevention and intervention strategies.
- d) Definitions and examples of detainee-on detainee sexual abuse and assault, staff on-detainee sexual abuse and assault and coercive sexual activity.
- e) Explanation of methods for reporting sexual abuse or assault, including one or more staff members other than an immediate point-of-contact line officer, the DHS/OIG, and the ICE/OPR investigation processes.
- f) Information about self-protection and indicators of sexual abuse and assault.
- g) Prohibition against retaliation, including an explanation that reporting an assault shall not negatively impact the detainee's immigration proceedings; and
- h) The right of a detainee who has been subjected to sexual abuse to receive treatment and counseling.

The facility provides the detainee notification, orientation, or instruction in formats accessible to all detainees, including those who are limited English proficient, deaf, visually impaired, or otherwise disabled, as well as to detainees who have limited reading skills.

The facility maintains documentation of detainee participation in the instruction session.

The facility posts on all housing unit bulletin boards the following notices:

1. The ICE/ERO prescribed sexual abuse and assault awareness notice.
2. The name of the PSA Compliance Manager; and
3. Information about local organization(s) that can assist detainees who have been victims of sexual abuse or assault, including mailing addresses and telephone numbers (incl. toll-free hotline numbers where available). If no such local organizations exist, the facility makes 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.

The facility makes available and distribute the ICE/ERO-prescribed "Sexual Assault Awareness Information" pamphlet.

Information about reporting sexual abuse shall be included in the ICE Detainee Handbook made available to all immigration detainees at the facility.

Viewing and Search Requirements for Detainees of the Opposite Gender

- a) Pat-down searches of male detainees by female staff shall not be conducted unless, after reasonable diligence, staff of the same gender is not available at the time the pat-down search is required or in exigent circumstances.
- b) Pat-down searches of female detainees by male staff shall not be conducted unless in exigent circumstances.
- c) All pat-down searches by staff of the opposite gender shall be documented.
- d) Strip searches or visual body cavity searches by staff of the opposite gender shall not be conducted except in exigent circumstances, including consideration of officer safety, or when performed by medical practitioners. Staff shall not conduct visual body cavity searches of juveniles and, instead, shall refer all such body cavity searches of juveniles to a medical practitioner.
- e) All strip searches and visual body cavity searches shall be documented.
- f) Detainees shall be able to shower, perform bodily functions, and change clothing without being viewed by staff of the opposite gender, except in exigent circumstances or when such viewing is incidental to routine cell checks or is otherwise appropriate in connection with a medical examination or monitored bowel movement. Staff of the opposite gender shall announce their presence when entering an area where detainees are likely to be showering, performing bodily functions, or changing clothing.
- g) The facility shall not search or physically examine a detainee for the sole purpose of determine the detainee's genital characteristics. If the detainee's gender is unknown, it may be determined during conversations with the detainee, by reviewing medical records, or, if necessary, learning that information as part of a medical examination that all detainees must undergo as part of intake or other processing procedure conducted in private, by a medical practitioner.
- h) All pat-down searches shall be conducted in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs and policy, including officer safety.

Detainee Supervision Requirements

The facility ensures that it maintains sufficient supervision of detainees, including through appropriate staffing levels and, where applicable, video monitoring, to protect detainees against sexual abuse.

The facility administrator determines security needs based on a comprehensive staffing analysis and a documented comprehensive supervision guideline that is reviewed and updated at least annually.

In determining adequate levels of detainee supervision and determining the need for video monitoring, the facility takes into consideration generally accepted detention and correctional practices, any judicial findings of inadequacy, the physical layout of each facility, the composition of the detainee population, the prevalence of substantiated and unsubstantiated incidents of sexual abuse as well as other incidents reflecting on facility security and detainee safety, the findings and recommendations of sexual abuse incident review reports or other findings reflecting on facility security and detainee safety, the length of time detainees spend in agency custody, and any other relevant factors.

Frequent unannounced security inspections shall be conducted to identify and deter sexual abuse of detainees. Inspections will occur on night as well as day shifts. Staff are prohibited from alerting others that these security inspections are occurring unless such announcement is related to the legitimate operational functions of the facility.

Transportation Requirements

Detainees identified as being “at risk” for sexual victimization shall be transported in accordance with that special safety concern.

Transportation staff shall 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.

Requirements for 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 considers 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 considers how such technology may enhance its ability to protect detainees from sexual abuse and assault.

Requirements For Accommodating Detainees with Disabilities or Limited English Proficiency

The facility takes 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. 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, by:

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 in formats or through methods that ensure effective communication.

The facility takes steps to ensure meaningful access to all aspects of the facility's efforts to prevent, detect, and respond to sexual abuse to detainees who are limited English proficient, including steps to provide in-person or telephonic interpretive services that enable effective, accurate, and impartial interpretation, both receptively and expressively, using any necessary specialized vocabulary.

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

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

Detainee Reporting Requirements

Detainees shall have multiple ways to privately, and if desired, anonymously, report signs or incidents of sexual abuse and assault, retaliation for reporting sexual abuse, or staff neglect or violations of responsibilities that may have contributed to such incidents and will not be punished for reporting.

Staff shall take seriously all statements from detainees claiming to be victims of sexual abuse or assault and shall respond supportively and non-judgmentally.

Any detainee may report acts of sexual abuse or assault to any employee, contractor, or volunteer.

If a detainee is not comfortable with making the report to immediate point-of-contact line staff, he/she shall be allowed to make the report to a staff person with whom he/she is comfortable in speaking about the allegations.

The facility provides instruction on how detainees may contact their consular official or the DHS Office of the Inspector General, to confidentially and if desired, anonymously, report these incidents.

Reporting Through Grievance System

- a) Formal grievances related to sexual abuse and assault may be filed at any time during, after, or in lieu of lodging an informal grievance or complaint and with no time limit imposed on when a grievance may be submitted.
- b) Written procedures must be implemented for identifying and handling time- sensitive grievances that involve an immediate threat to detainee health, safety, or welfare related to sexual abuse or assault. Decisions on grievances shall be issued within five days of receipt and appeals shall be responded to within 30 days.
- c) Detainees may obtain assistance from another detainee, the housing officer or other facility staff, family members, or legal representatives. Staff takes reasonable steps to expedite requests for assistance from these other parties.
- d) All grievances related to sexual abuse and the facility's decision on any such grievance must be forwarded to the ICE/ERO Field Office Director at the end of the grievance process.

Detainee Reporting Procedures

Detainee reports of sexual abuse or assault, retaliation for reporting sexual abuse or assault, and/or staff neglect or violations of responsibilities that may have contributed to such incidents may be made using any available methods of communication, including but not limited to:

1. Verbal reports to any staff member (including the PSA Compliance Manager or medical staff).
2. Written informal or formal requests or grievances to the facility.
3. Sick call requests.

4. Reports to an individual or organization outside the facility (family members, friends, or other outside entities) who can contact facility staff.
5. Written informal or formal requests or grievances (including emergency grievances) to the ICE/ERO.
6. Telephone calls or written reports to the DHS/OIG, ICE/OPR, or ICE/DRIL; and
7. Telephone calls or written reports to consular officials.

Staff Notification and Reporting Requirements

The facility requires 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 must also be able to report the above outside of the chain of command.

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

The facility has established a method to receive third-party reports of sexual abuse in its facility and makes it available to the public on how to report sexual abuse on behalf of a detainee.

The facility administrator promptly reports the incident to the ICE/ERO FOD and refer all cases that appear potentially to support criminal prosecution to the appropriate law enforcement agency having jurisdiction for investigation. The facility may separately, and in addition to the required reports and referrals, conduct its own investigation.

If an employee, contractor, or volunteer is alleged to be the perpetrator of detainee sexual abuse or assault, the facility administrator notifies the local government entity or contractor that operates the facility and ICE/ERO. The same notifications are made if a detainee, prisoner, inmate, or resident of the facility is the alleged perpetrator of the sexual abuse.

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 reports that information to the FOD so ICE can report the allegation to the designated State or local services agency under applicable mandatory reporting laws.

Information concerning the identity of a detainee victim reporting a sexual assault, and the facts of the report itself, shall be limited to those who have a need-to-know to make decisions concerning the victim's welfare, and for law enforcement/investigative purposes. 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.

Upon receiving an allegation that a detainee was sexually abused or assaulted while confined at another facility, the facility administrator shall notify ICE/ERO and the appropriate administrator of the facility where the alleged abuse occurred as soon as possible, but no later than 72 hours after receiving the allegation. The facility administrator shall notify the detainee in advance of such reporting. The facility documents 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).

First Response Requirements

Staff shall take immediate action to separate any detainee who alleges that he/she has been sexually abused or assaulted from the alleged assailant and shall refer the detainee for a medical examination and/or clinical assessment for potential negative symptoms.

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

The first security staff member to respond to a report of sexual abuse, 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 period that still allows for the collection of physical evidence, the first responder shall:

1. Request the alleged victim not to take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating; and
2. Ensure 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 request that the alleged victim not take any actions that could destroy physical evidence and then notify security staff.

Specialized Response and Victim Services Requirements

The facility must use a coordinated, multidisciplinary team approach to responding to sexual abuse, such as a sexual assault response team (SART), which 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.

Staff shall utilize available community resources and services to provide valuable expertise and support in areas of crisis intervention, counseling, investigation and the prosecution of sexual abuse and assault perpetrators to address victims' needs most appropriately.

The facility attempts to enter into memoranda of understanding or other agreements with community service providers or, if local providers are not available, national organizations that provide legal advocacy and confidential emotional support services for immigrant victims of crime.

The facility administrator established procedures to make available to detainees' information about local organizations that can assist detainees who have been victims of sexual abuse, including mailing addresses and telephone numbers (including toll-free hotline numbers where available). If no such local organizations exist, the facility makes available the same information about national organizations.

Following an allegation of sexual abuse, the facility administrator shall also establish procedures to make available, to the full extent possible, additional outside victim services.

The facility attempts to make available to the victim a victim advocate from a rape crisis center. If a rape crisis center is not available, the facility works with ICE/ERO to provide these services from a qualified staff member from a community-based organization, or a qualified staff member. The victim advocate shall be able to provide emotional support, crisis intervention, information, and referrals.

The facility enables reasonable communication between detainees and these organizations or agencies, in as confidential a manner as possible.

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

If a victim is transferred between detention facilities, the sending facility, as permitted by law, inform the receiving facility of the incident and the victim's potential need for medical or social services (unless the victim requests otherwise in the case of transfer to a non-ICE facility). If the receiving facility is unknown to the sending facility, the sending facility notifies the ICE/ERO, so he or she can notify the receiving facility.

Where an alleged victim of sexual abuse or assault that occurred elsewhere in ICE/ERO custody is subsequently transferred to the detention facility, the facility complies with all response and

intervention requirements outlined by this policy, as appropriate based on the nature and status of the case.

If any of these requirements cannot be met, the facility will consult with the ICE Field Office Director to determine if ICE/ERO can provide additional assistance.

Housing and Protection Requirements for Victims

Victims and vulnerable detainees shall be housed 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 will, to the extent possible, permit the victim the same level of privileges he/she was permitted immediately prior to the sexual assault. This placement should consider any ongoing medical or mental health needs of the victim. Placement of administrative segregation should be the last resort when no other housing options exist.

Victims may not be held for longer than five days in any type of administrative segregation for protective purposes, except in highly unusual circumstances or at the request of the victim. The facility notifies the appropriate ICE/ERO FOD whenever a detainee victim, or detainee placed due to vulnerability to sexual abuse or assault, has been held in administrative segregation for 72 hours.

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 or assault.

Staff, contractors, and volunteers shall not retaliate against any person, including a detainee, who reports, complains about, or participates in an investigation into an allegation of sexual abuse, or for participating in sexual abuse as a result of force, coercion, threats, or fear of force.

The facility employs 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 or for cooperating with investigations.

For at least 90 days following a report of sexual abuse or assault, the facility, in concert with ICE/ERO, monitors to see if there are facts that may suggest possible retaliation by detainees or staff, and facility monitors 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 by staff. The facility continues such monitoring beyond 90 days if the initial monitoring indicates a continuing need.

If any of these requirements cannot be met, the facility will consult with the ICE Field Office Director to determine if ICE can provide additional assistance.

Health Care Services Requirements

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.

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.

The facility offers medical and mental health evaluation and, as appropriate, treatment to all detainees who have been victimized by sexual abuse while in immigration detention.

The evaluation and treatment of such victims includes, 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.

Detainee victims of sexually abusive vaginal penetration by a male abuser while incarcerated shall be offered pregnancy tests. If pregnancy results from an instance of sexual abuse, the victim shall receive timely and comprehensive information about lawful pregnancy-related medical services and timely access to all lawful pregnancy-related medical services.

Detainee victims of sexual abuse while detained shall be offered tests for sexually transmitted infections as medically appropriate.

The facility attempts 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.

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. The facility provides such victims with medical and mental health services consistent with the community level of care.

Investigation Requirements

The facility to establish a protocol, to ensure each allegation of sexual abuse is investigated by facility or referred to an appropriate investigative authority. This protocol shall be posted on the facility website, or otherwise made available to the public.

The facility coordinates with ICE/ERO and other appropriate investigative entities to ensure that an administrative or criminal investigation is completed for all allegations of sexual abuse. All investigations must be prompt, thorough, objective, fair, and conducted by specially trained, qualified investigators.

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 a Sexual Assault Forensic Examiner (SAFE) or Sexual Assault Nurse Examiner (SANE), where practicable. If SAFE's or SANE's 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.

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 policy, including requirements related to evidence preservation and forensic examinations.

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 reviews any available completed criminal investigation reports to determine whether an administrative investigation is necessary or appropriate.

Administrative investigations shall be conducted after consultation with the appropriate investigative office within DHS and the assigned criminal investigative entity. 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 has written procedures for administrative investigations, including provisions requiring:

1. Preservation of direct and circumstantial evidence, including any available physical DNA evidence and any available electronic monitoring data.
2. Interviewing alleged victims, suspected perpetrators, and witnesses.
3. Reviewing prior complaints and reports of sexual abuse or assault involving the suspected perpetrator.

4. 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 alleged sexual abuse or assault to submit to a polygraph.
5. An effort to determine whether actions or failures to act at the facility contributed to the abuse.
6. 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.
7. Retention of such reports for as long as the alleged abuser is detained or employed by the agency or facility, plus five years; and
8. Coordination and sequencing of administrative and criminal investigations to ensure that a criminal investigation is not compromised by an internal administrative investigation.

The facility uses no standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse are substantiated.

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

When outside agencies investigate sexual abuse and assault, the facility does cooperate with outside investigators and shall endeavor to remain informed about the progress of the investigation. Where an alleged victim of sexual abuse or assault that occurred elsewhere in ICE/ERO custody is subsequently transferred to the facility, the does also cooperate with any administrative or criminal investigative efforts arising from the incident.

Following an investigation conducted by the facility into a detainee's allegation of sexual abuse, the facility notifies 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.

Disciplinary Sanctions

Staff Discipline Requirements

Staff shall be subject to disciplinary or adverse action, up to and including removal from their position, for substantiated allegations of sexual abuse or assault or for violating ICE/ERO or facility sexual abuse rules, policies, or standards.

Removal from their position is the presumptive disciplinary sanction for staff who have engaged in, attempted, or threatened to engage in sexual abuse, as defined under the definitions of staff-on-detainee abuse in the Definitions Section (a)-(d) and (g)-(h).

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

Contractors suspected of perpetrating sexual abuse or assault shall be removed from all duties requiring detainee contact pending the outcome of an investigation.

Any contractor or volunteer who has engaged in sexual abuse or assault shall be prohibited from contact with detainees. The facility takes appropriate remedial measures and shall consider whether to prohibit further contact with detainees by contractors or volunteers who have not engaged in sexual abuse or assault but have violated other sexual abuse policies.

Incidents of substantiated sexual abuse by a contractor or volunteer shall be reported to law enforcement agencies unless the activity was clearly not criminal. The facility reports such incidents to the 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.

Detainee Discipline Requirements

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 or assault.

The facility does 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 or 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.

If a detainee is mentally disabled or mentally ill but competent, the disciplinary process shall consider whether the detainee's mental disabilities or mental illness contributed to his or her behavior when determining what type of sanction, if any, should be imposed.

Sexual Abuse Incident and Annual Reviews

Review Requirements

The facility conducts a sexual abuse and assault incident review at the conclusion of every investigation of sexual abuse or assault.

For any substantiated or unsubstantiated allegation, the facility prepares 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 was investigated and determined not to have occurred.

The facility does 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 provides 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 conducts 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 prepares 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).

Data Collection Requirements

The facility maintains, 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 National Detention Standards 2019 Standard 4.3 “Medical Care” and the requirements of Standard 7.1 “Detention Files,” especially regarding 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:

General files include:

1. The victim(s) and assailant(s) of a sexual assault.
2. The date, time, location, and nature of the incident.
3. The demographic background of the victim and the perpetrator (including citizenship, age, gender, and whether either has self-identified as gay, lesbian, bisexual, transgender, intersex, or gender nonconforming).
4. Detailed reporting timeline, including the names of the individual 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.
5. Any injuries sustained by the victim.
6. 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.).
7. All reports.
8. Medical forms or other relevant medical information.
9. Supporting memos and videotapes, if any.
10. Any sanctions imposed on the perpetrator; and
11. 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, 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 PSA Compliance Manager and facility administrator must work with the ICE/ERO and the ICE/ERO PSA Coordinator to share data regarding sexual abuse incidents and response.

Facility Audits

Lincoln County Detention Center cooperates with all DHS audits of the facility's compliance with sexual abuse and assault policies and standards, including by:

1. In advance of and during the on-site audit, making available relevant documents, records, and other information as requested (including available videotapes and other electronically available data).
2. Permitting auditors access to all areas of the facility.
3. Permitting detainees to have private interviews with auditors, and to send confidential correspondence to the auditor; and
4. Making available space suitable for interviews of detainees and staff.

Upon request, the facility provides 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.

ICE/ERO Approval of Facility Policy

The following policies and procedures require approval by the local ICE Field Office.

Facility Zero Tolerance Policy outlining the facility's approach to preventing, detecting, and responding to all forms of sexual abuse.

Facility policy and procedures to ensure medical staff is trained in procedures for examining and treating victims of sexual abuse (where medical staff may be assigned these duties).

Facility policy and procedures specifying appropriate procedures for staff to report any knowledge, suspicion, or information regarding an incident of 1) sexual abuse that occurred in a

facility; 2) retaliation against detainees or staff who reported or participated in an investigation about such an incident; and any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation.

Facility policy and procedures for coordination and conduct of internal administrative investigations with the assigned criminal investigative entity to ensure non- interference.

Facility policy and procedures regarding disciplinary or adverse actions for staff, up to and including removal, when there is a substantiated allegation of sexual abuse, or when there has been a violation of agency sexual abuse rules, policies, or standards.

Approval of Policy

Name/Title


R. K. Harrell, Sher. FT

Date

April 18, 2003

SEXUAL ASSAULT INTERVENTION PROTOCOL (Attachment 1)

This protocol was developed to provide general guidance for responding to the sexual assault (e.g., Rape or Sexual Assault with an Object) of detainee/offenders.

DETECTION

Staff can detect sexual assault in many ways, to include the following:

Staff discover an assault in progress.

Victim reports an assault to a staff member.

An assault is reported to staff by another detainee/offender or staff (third party) or is the subject of detainee/offender rumors.

Medical evidence (e.g., bruising, rectal or vaginal tears, the presence of semen, etc.)

While some victims will be clearly identified, most will probably not come forward with information about the event. Some victims may be identified through:

Unexplained injuries

Changes in physical behavior due to injuries

Changes in usual routine (to avoid site of, or potential site of an assault) Abrupt personality changes such as withdrawal or suicidal behavior.

INTERVENTION

Reporting at this stage is not appropriate to make judgments about whether a sexual assault occurred. The staff member who first identifies that an assault may have occurred must immediately report the incident to the Shift Supervisor. If a suspected victim is fearful of being labeled "an informer", the detainee/offender should be advised that the identity of the perpetrator(s) is not needed to receive assistance.

PROTECTIVE

Responding is important that all contact with a sexual assault victim be sensitive, supportive, and nonjudgmental. If staff discover an assault in progress, the suspected victim should be removed from the immediate area. Appropriate staff will consult to determine the actions needed to prevent further sexually abusive behavior towards the victim. If possible, the perpetrator will be identified and secured to prevent further sexually.

assaultive behavior.

PHYSICAL

If it is suspected that a detainee/offender was sexually assaulted, the detainee/offender should be advised of the importance of getting help to deal with the assault, including a medical evaluation for evidence collection, and treatment.

To facilitate evidence collection, the victim should be advised not to shower, wash, brush teeth, drink, eat, defecate, urinate, or change any clothing until examined and escort the victim to the Health Services Unit for a medical evaluation.

If necessary, medical staff shall refer the victim to a local emergency facility and examine the perpetrator and collect any evidence that he/she may have engaged in sexually assaultive behavior.

INVESTIGATION

A brief statement about the assault should be obtained from the detainee/offender. It is important to remember that the victim may be in shock, and unable to give much detail. It is important to be understanding and responsive. Opportunities to secure more details will occur later.

INITIAL NOTIFICATION

Make proper notifications to the Sexual Abuse and Assault Prevention and Intervention Coordinator, Jail Administrator, the Detaining Agency and outside law enforcement as appropriate.

Only those staff with a “need to know” should be informed of the incident as it is important to respect the victim’s security, identity, and privacy.

CRIME SCENE

The following procedures may apply for reported or known victims of sexual assault. If the detainee/offender was threatened with sexual assault or was reporting an assault that occurred on an earlier occasion, some steps may not be necessary.

When possible and feasible, staff shall immediately preserve the crime scene, and safeguard information and evidence consistent with the facility’s evidence-gathering and

evidence-processing procedures. Correctional staff shall be placed in a position to protect the suspected crime scene to ensure the crime scene is free of contamination and intact free of disruption.

Use universal precautions in the handling of blood and body fluids. Contact medical staff to determine how to preserve medical indications of sexual assault. At the crime scene, look for the presence of semen and pubic hair that can be used as evidence (e.g., blankets and sheets should be collected). Use standard evidence collection procedures.

PHYSICAL EVIDENCE COLLECTION

From Victim:

A sexual assault medical examination (e.g., "rape kit") will be offered by medical staff trained in such procedures.

If the alleged victim is examined in the institution to determine the extent of injuries, findings should be documented both photographically and in writing. An original Detainee/Offender Injury Assessment and Follow-up form should be filed in the detainee/offender's Health Record. A copy should be provided to the Chief of Security or appropriate law enforcement official.

If deemed necessary by the examining physician, established procedures for using outside medical consultants or for an escorted trip to an outside medical facility will be followed to conduct STD, HIV, and/or pregnancy testing.

From Perpetrator:

Identify the perpetrator, if possible, and monitor, manage, or treat him/her as such pending the outcome of the investigation

Use standard evidence gathering procedures.

Medical staff must attempt to examine the alleged perpetrator, and the findings should be documented both photographically and in writing. A written summary of all medical evidence and findings should be completed and maintained in the detainee/offender's Health Record. Copies of this written summary should also be provided to the Chief of Security and appropriate law enforcement officials.

AFTER ACTION REVIEW

An After-Action Review Committee consisting of the Sexual Abuse and Assault Prevention and Intervention Coordinator, Jail Administrator, Chief of Security, and Health Services Administrator must meet and review the incident. Within two working days of a Rape or Sexual Assault, a written report signed by the Jail Administrator (or designee) shall be forwarded to the appropriate detaining authority. Staff impacted by the incident should be debriefed and referred to appropriate services to mitigate the stress associated with the event.

DISCIPLINE AND PROSECUTION

The Chief of Security will be responsible for accurate Housing assignments related to sexually abusive behavior. These two Administrative Segregation Housing assignments will be entered as soon as the allegation is made.

Victim of Sexually Abusive Behavior-Unverified

This is entered into the Administrative Segregation Housing Record of the alleged victim at the time an allegation of sexually abusive behavior is reported. This assignment will remain current until such time as it is unsubstantiated or unfounded (in which case it will be discontinued) or until it is verified and changed.

Perpetrator of Sexually Abusive Behavior-Unverified

This assignment is entered into the Administrative Segregation Housing Record of the alleged detainee/offender perpetrator at the time the allegation is made. This assignment will remain current until such time as it is unsubstantiated or unfounded (and discontinued) or verified and changed.

VERIFIED CODES

These four Administrative Segregation Housing Assignments are used when there is substantial evidence of sexually abusive behavior against a detainee/offender or by a detainee/offender.

Victim of Detainee/Offender Sexually Abusive Behavior

This assignment should be entered when sexually abusive behavior has been committed. It should remain a current assignment for the length of the detainee/offender victim's incarceration.

Victim of Staff Sexually Abusive Behavior

This assignment should be entered when a sexually abusive behavior has been committed against a detainee/offender victim by a staff member.

Perpetrator of Sexually Abusive Behavior against a Detainee/Offender

This assignment should be entered when there has been a sustained finding (incident report or legal finding) against a detainee/offender perpetrator who has engaged in sexually abusive behavior towards another detainee/offender.

Perpetrator of Sexually Abusive Behavior against a Staff Member/Contractor/Volunteer

This assignment should be entered when there has been a sustained finding (incident report or legal finding) against a detainee/offender perpetrator who has committed sexually abusive behavior against a staff member.