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2011 Operations Manual ICE Performance-Based National Detention Standards

ERO

PBNS 2011

2016
Revisions

Summary of Revisions to the ICE Performance-Based National Detention Standards, December 2016

The 2011 Performance-Based National Detention Standards (PBNS 2011) establish consistent conditions of confinement, program operations and management expectations within the Immigration and Customs Enforcement (ICE) detention system. In February 2013, ICE issued a revised version of PBNS 2011 containing corrections and clarifications. The revisions made in December 2016 will ensure that PBNS 2011 remains consistent with federal legal and regulatory requirements as well as prior ICE and ICE Enforcement and Removal Operations (ERO) policies and policy statements.

A summary of the changes follows, listed by topic.

Detention facility compliance with DHS PREA regulations

In March 2014, the Department of Homeland Security (DHS) promulgated regulations under the Prison Rape Elimination Act (PREA) of 2003, Public Law 108-79, to prevent, detect and respond to sexual abuse and assault in detention facilities. The DHS PREA regulations, *Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities*, 79 Fed. Reg. 13100 (Mar. 7, 2014), cover prevention and responsive planning, the training and education of both employees and detained individuals, assessment for risk of sexual victimization and abusiveness, reporting requirements, the agency's and facility's response following an allegation of sexual abuse or assault, procedures for both criminal and administrative investigations, the provision of medical and mental care, and audits for compliance procedures, among other areas. ICE issued Directive 11062.1, *Sexual Abuse and Assault Prevention and Intervention (SAAPI)*, to implement the PREA requirements applicable to the agency and to ICE employees. The PBNS 2011 revisions complement the ICE Directive by implementing the PREA requirements applicable to ICE detention facilities and facility personnel. All dedicated ICE detention facilities have contractually adopted the DHS PREA standards, and audits of the facilities' compliance with PREA will begin in fiscal year 2017 (as required by Subpart C of the DHS PREA standards). The PBNS 2011 revisions ensure that detention standards are consistent with the DHS PREA requirements.

The most significant PBNS 2011 revisions are to PBNS 2011 Standard 2.11: "Sexual Abuse and Assault Prevention and Intervention." However, PREA requirements impact numerous aspects of detention facility policies and procedures, requiring revisions to a number of other standards, including the following listed provisions (the citations denote the applicable section of DHS PREA Subpart A standards):

- Standard 2.2: Custody Classification System
 - V.C. *Classification Information* [§ 115.41(c) & § 115.42(b)]
 - V.D. *Intake Processing and Initial Classification* [§ 115.41(b)]
 - V.H. *Reclassification* [§ 115.41(e)]
- Standard 2.4: Facility Security and Control
 - V.A. *Detainee Supervision and Monitoring* [§ 115.13(a)-(c)]
 - V.F. *Security Inspections*
 - 1. Required Written Security Inspection Procedures [§ 115.13(d)]
- Standard 2.6: Hold Rooms in Detention Facilities
 - V.B. *Unprocessed Detainees* [§ 115.14(a), (b), (d)]
- Standard 2.10: Searches of Detainees
 - II. *Expected Outcomes #3* [§ 115.15(b), (c)]
 - V.D. *Body Searches of Detainees*

- 1. Pat Search [§ 115.15(b)-(d), (j)]
- 2. Strip Search [§ 115.15(e), (f), (i)]
- 3. Body-Cavity Searches [§ 115.15(e), (f)]
- Standard 2.12: Special Management Units
 - V.A. *Placement in Administrative Segregation* [§ 115.43(a)]
 - 1. Reasons for Placement in Administrative Segregation [§ 115.43(b)]
 - 3. Review of Detainee Status in Administrative Segregation [§ 115.43(d)]
 - V.D. *Notifying ICE of Segregation Placements and Facilitating ICE Review* [§ 115.43(e)]
 - 2. Immediate Notifications [§ 115.43(e) & § 115.68(d)]
- Standard 3.1: Disciplinary System
 - V.A. *Guidelines* [§ 115.78(b, (d))]
- Standard 4.3: Medical Care
 - V.J. *Medical and Mental Health Screening of New Arrivals* [§ 115.81(a)-(b)]
 - V.P. Referrals for Sexual Abuse Victims or Abusers [§ 115.81(a)-(b) & § 115.5]
- Standard 4.4: Medical Care (Women)
 - V.B Initial Health Intake Screening and Health Assessment [§ 115.81(a)-(c)]
- Standard 4.5: Personal Hygiene
 - V.E. *Bathing and Toilet Facilities* [§ 115.15(g) § 115.42(c)]
- Standard 5.7: Visitation
 - V.I. *Visits by Family and Friends*
 - 4. Contact Visits [§ 115.15(f)]
- Standard 6.2: Grievance System
 - V.C. *Grievance Procedures*
 - 2. Emergency Grievances [§ 115.52(c)-(d)]
 - 3. Formal Written Grievances [§ 115.52(a)-(b), (e)-(f)]
 - V.F. *Allegations of Staff Misconduct* [§ 115.52(e)]

Disability Accommodation and Section 504 of the Rehabilitation Act

ICE detention facilities are required to comply with Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, as amended (Section 504), which prohibits discrimination based on disability and requires facilities to provide detainees with disabilities equal access to its programs and activities through the provision of appropriate accommodations, modifications, and services. The PBNDS revisions include a new detention standard, “4.8 Disability Identification, Assessment, and Accommodation,” which establishes processes to ensure compliance by detention facilities with the requirements of Section 504. Targeted revisions have been made to other standards to address more specifically the needs of detainees with disabilities in various contexts, including the following listed provisions:

- Standard 2.2: Custody Classification System
 - V.C. Classification Information
- Standard 2.3: Contraband
 - V.B. Procedures for Handling Contraband –
- Standard 2.6: Hold Rooms and Detention Facilities
 - V.A. Physical Conditions
 - V.B. Unprocessed Detainees
 - V.D. Basic Operational Procedures

- Standard 2.13: Staff-Detainee Communication
 - V.B. Written Detainee Requests to Staff
- Standard 4.3: Medical Care
 - V.F. Facilities
 - V.V. Special Needs and Close Medical Supervision
- Standard 5.5: Religious Practices
 - V.A. Religious Opportunities and Limitations
- Standard 5.6: Telephone Access
 - V.G. Telephone Access for Detainees with Disabilities
- Standard 5.8: Voluntary Work Program
 - V.G. Detainees with Disabilities (previously “Physically and Mentally Challenged Detainees”)
- Standard 6.3: Law Libraries and Legal Materials
 - V.I. Assistance to Detainees with Disabilities, Detainees with Limited-English Proficiency (LEP), and Illiterate Detainees
- Standard 7: Interviews and Tours
 - V.A. News Media Interviews and Tours
- Standard 7.5: Definitions
 - New definitions were included for:
 - Limited English Proficiency
 - Disability
 - Auxiliary Aid and Services
 - Reasonable Accommodation
 - Special Vulnerability

Communication Assistance

A new Expected Outcome describes more precisely longstanding federal legal requirements to provide communication assistance to detainees with disabilities and detainees who are limited in their English Proficiency (LEP). Federal law requires accommodations for detainees with communications impairments to ensure effective communication. Title VI of the Civil Rights Act of 1964 prohibits recipients of federal financial assistance from discriminating based on national origin by, among other things, failing to provide meaningful access to individuals who are limited English proficient (LEP). Executive Order 13166 (EO 13166), *Improving Access to Services for Persons with Limited English Proficiency*, (August 11, 2000), requires all federal agencies to meet the same standards as federal financial assistance recipients in providing meaningful access for LEP individuals to federally conducted programs. The new Expected Outcome has been added to a number of detention standards, in many cases replacing prior language that described the facility’s obligations to provide communication assistance:

“The facility shall provide communication assistance to detainees with disabilities and detainees who are limited in their English proficiency (LEP). The facility will provide detainees with disabilities with effective communication, which may include the provision of auxiliary aids, such as readers, materials in Braille, audio recordings, telephone handset amplifiers, telephones compatible with hearing aids, telecommunications devices for deaf persons (TTYs), interpreters, and note-takers, as needed. The facility will also provide detainees who are LEP with language assistance, including bilingual staff or professional interpretation and translation services, to provide them with meaningful access to its programs and activities.”

Special Management Units (SMUs)

In 2013 ICE issued Directive 11065.1, *Review of the Use of Segregation for ICE Detainees* (Segregation Directive). The Segregation Directive established policy and procedures for ICE review of ICE detainees placed into segregated housing, including collaborative assessments by detention facility administrators and Field Office supervisory-level staff. Standard 2.12 “Special Management Units” has been revised to incorporate requirements from the Segregation Directive, including the requirement that the facility notify

the Field Office of detainees held in the SMU for 14 days, and immediately in the case of detainees with specified conditions and vulnerabilities. Additional changes were made to Standard 2.12 and to Standard 3.1 “Disciplinary System” to incorporate a number of the recommendations made by the Department of Justice (DOJ) in its “Report and Recommendations Concerning the Use of Restrictive Housing,” pursuant to a Presidential Memorandum directing all agencies using restrictive housing to review the DOJ report and implement corresponding changes. 81 Fed. Reg. 11995 (March 7, 2016). The DOJ reforms have also been incorporated in the U.S. Marshals Service Federal Performance-Based Detention Standards. The PBNDS 2011 revisions include:

- a multi-disciplinary panel of facility staff, including facility leadership, medical and mental health professionals, and security staff, will meet weekly to review all segregation placements; during the meeting, the committee will review each detainee’s circumstances individually to ensure all staff are aware of the detainee’s status, current behavior, and physical and mental health, and to consider whether any change in status is appropriate;
- a detainee may not remain in pre-disciplinary segregation for longer than the maximum term permitted for the most serious offense charged, absent compelling circumstances, and time served in pre-disciplinary segregation will be deducted from the ultimate disciplinary sanction;
- disciplinary time for offenses arising out of the same episode will be served concurrently;
- when a detainee has a diagnosed mental illness or mental disability, or demonstrates symptoms of mental illness or mental disability, a mental health professional will provide input as to:
 - the detainee’s competence to participate in the disciplinary hearing;
 - any impact the detainee’s mental illness may have had on his or her responsibility for the charged behavior; and
 - information about any mitigating factors related to the behavior;
- previously an optimal provision, detainees must be evaluated by a medical professional prior to placement in an SMU (or when that is infeasible, as soon as possible and no later than within 24 hours of placement);
- for any detainee with a serious mental illness (as defined in Standard 4.3 “Medical Care”) placed in segregation:
 - a mental health consultation is required within 72 hours of the detainee’s placement; and
 - at least weekly, a mental health provider is required to conduct face-to-face clinical contact with the detainee, to monitor the detainee’s mental health status, identify signs of deterioration, and recommend additional treatment as appropriate;
- specialized training will be required for staff assigned to SMUs on issues such as identifying signs of mental health decompensation, interactions with mentally ill detainees, and de-escalation techniques; and
- a facility standing committee will regularly evaluate SMU policies and practices.

Disciplinary System Timelines and Processes

Additional changes were made to Standard 3.1 “Disciplinary System” to clarify and rationalize contradictory timelines in the standard and to ensure consistent descriptions of processes and due process rights at the various stages of the disciplinary process. The clarified timelines include:

- the investigating officer will be required to complete the investigation within 72 hours of receipt of the Incident Report, barring exceptional circumstances;
- completed investigations may be referred either to the Unit Disciplinary Committee (UDC) or directly to the Institution Disciplinary Panel (IDP);
- UDC hearings, when they occur, must be held within 24 hours after the conclusion of the investigation (unless the detainee requests more time); and
- IDP hearings must occur within 48 hours after the conclusion of the investigation or the UDC hearing (unless the detainee requests more time).

Incorporation of Other ICE and ERO Directives, Memoranda and Policy Statements

Additional PBNDS 2011 revisions incorporate Field Office notification and other requirements from existing ICE and ERO policies and policy statements. They include:

- ICE Policy No. 11067.1: *Identification of Detainees with Serious Mental Disorders or Conditions* (May 7, 2014) (requiring facilities to notify Field Offices of detainees with specified serious

mental disorders) – this notification requirement has been expanded in Standard 4.3 “Medical Care” to include detainees with specified serious physical illnesses;

- ERO Memorandum *Protocol on Reporting and Tracking of Assaults*, (June 8, 2006) (requiring the reporting of sexual and physical assaults);
- ERO Memorandum *Identification and Monitoring of Pregnant Detainees* (August, 2016) (requiring the reporting of detainees determined to be pregnant);
- ERO Bulletin 14-ERO0001, “Accommodation of Kosher Meals” (April, 2014) (explaining facility and ICE obligations to accommodate detainees’ religious dietary requirements); and
- ERO broadcast “Use of Force at ICE Detention Facilities,” (October 19, 2016) (clarifying the types of staff uses of force that detention facilities must report to Field Offices).

Changes to medical standards and requirements

A number of PBNDS 2011 revisions clarify requirements applicable to medical personnel and medical care. Most of these changes were to Standard 4.3 “Medical Care” and Standard 4.4 “Medical Care (Women)”, but revisions were made to a number of other standards. The revisions include:

- Changes to a number of standards shifted responsibility for functions unrelated to the provision of medical care from the facility’s medical staff to the facility administrator.
- The 72 hour time limit for follow-up on a mental health referral can be satisfied by an evaluation by a qualified health care provider, not solely by a mental health provider as in the original PBNDS 2011; however, if the practitioner is not a mental health provider and further referral is necessary, the detainee must be evaluated by a mental health provider within the next business day.
- The requirements regarding the provision of same-gender chaperones have been clarified in both standards 4.3 and 4.4.
- Revisions to Standard 4.4 clarify timelines for follow-up for detainees who may be pregnant or indicate a history of domestic abuse or violence.

Eliminating requirement to provide a complete copy of the medical record with each transfer, release and removal

Another PBNDS 2011 revision eliminates the requirement to provide a copy of the full medical record every time a detainee is transferred, removed, or released. In lieu of that requirement, the revised standards provide greater detail regarding the required contents of the medical transfer summary that accompanies the detainee. This change was made in several standards:

- Standard 1.3 “Transportation (Land)” – V.G. 2.
- Standard 2.1 “Admission and Release” – V.H.4
- Standard 4.3 “Medical Care” – V.Z and V.BB
- Standard 7.4 “Detainee Transfers” – V.C

Suicide Prevention and Intervention

Changes were made to the detention standard 4.6 “Significant Self-Harm and Suicide Prevention and Intervention,” incorporating best practices to reduce the frequency of suicides in ICE detention facilities. These include:

- A multi-disciplinary suicide prevention committee should meet on at least a quarterly basis to provide input regarding all aspects of the facility’s suicide prevention and intervention program;
- a detainee on suicide precautions who requires a special isolation room should be placed in the SMU only as a last resort, and the Field Office immediately notified;
- new details have been added regarding the provision of clothing, hygiene and privacy; and
- required staff training on suicide prevention methods has been relaxed from eight hours annually to eight hours initially with at least two hours of refresher instruction annually.

Appendices and forms

New forms and appendices were inserted, including:

- Three IHSC medical forms (with the IHSC identifiers removed), which facilities are encouraged but not required to use to comply with medical requirements, were added as appendices to Standard 4.3 “Medical Care”. The three forms are:

- Intake Screening
- Physical Examination/Health Appraisal
- Medical Transfer Summary
- Two appendices to Standard 2.11 “Sexual Abuse and Assault Prevention and Intervention” were revised:
 - A revised “Sample Sexual Abuse and Assault Prevention and Intervention Program Policy”
 - A revised “Sexual Abuse and Assault Awareness Brochure” (also added to the ICE Detainee Handbook) (in English and Spanish)
- The appendices to Standard 6.3 “Law Libraries and Legal Materials”, listing legal reference materials for detention facilities, were revised.
- A revised “Detainee Interview Release Form” was added as an appendix to Standard 7.2. (in English and Spanish).

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