

1 **Memorandum of Understanding (MOU) Between the County of Fresno and the United**
2 **States Customs and Border Protection**

3 This Memorandum of Understanding (MOU) is made between the County of
4 Fresno, a political subdivision of the State of California, hereinafter referred to as "COUNTY"
5 and the United States Customs and Border Protection, hereinafter referred to as "CBP."

6 WHEREAS, CBP desires to house CBP detainees in the County of Fresno Jail;
7 and

8 WHEREAS, the COUNTY agrees to provide such service on the terms and
9 conditions set forth herein.

10 NOW, THEREFORE, the parties agree as follows:

11 1. CBP DETAINEES. The COUNTY agrees to provide for the secure custody,
12 safekeeping, housing, subsistence and care of up to six CBP detainees at any one time
13 (individually, "CBP Detainee" or collectively, "CBP Detainees") in the Fresno County Jail
14 ("Facility").
15

16 2. MEDICAL SERVICES.

17 a. The COUNTY shall provide the CBP Detainees with the same level and
18 range of care inside the Facility as that provided by the COUNTY to state and local detainees
19 as required by law and applicable regulations, policies, and procedures. The COUNTY is only
20 financially responsible for all medical care provided inside the Facility to CBP Detainees. This
21 includes the cost of all routinely provided medical, dental, and mental health care at the
22 Facility, as well as the cost of medical supplies, over-the-counter medications and, any
23 prescription medications routinely stocked by the Facility which are provided to CBP
24 Detainees. When possible, generic medications shall be prescribed. The cost of all of the
25 above-referenced medical care is covered by the Per Diem Rate, set forth in Section 6 below.
26 However, for specialized medical services ("Specialized Medical Services") not routinely
27 provided within the Facility, such as dialysis, and specialized medication ("Specialized
28 Medication"), CBP will pay for the cost of those services and medications pursuant to

1 procedure set forth in Section 6, below. Determination of what qualifies as Specialized
2 Medical Services and Specialized Medication shall be made by the COUNTY at its sole
3 discretion.

4 b. CBP is financially responsible for all medical care provided to the CBP
5 Detainees outside the Facility. CBP must and will be billed directly by outside medical care
6 providers pursuant to arrangements made by the COUNTY for outside medical care. CBP
7 will not be billed directly by the COUNTY. If the COUNTY receives any bills for medical care
8 provided to CBP Detainees outside the Facility, the COUNTY will immediately forward those
9 bills to CBP for processing and payment by CBP. All outside medical care provided to CBP
10 Detainees must be pre-approved by CBP except in a medical emergency where the CBP
11 Detainees is not in the facility of an outside medical care provider and where outside medical
12 care is required. In the event of a medical emergency, the COUNTY shall proceed
13 immediately with the necessary medical treatment given the circumstances. In such an event,
14 the COUNTY shall notify CBP as soon as practicable regarding the nature of the CBP
15 Detainees' illness or injury as well as the types of treatment provided. The COUNTY is
16 responsible for all associated medical record keeping it creates and receives from outside
17 medical care providers pursuant to Section (2)(d).

18 c. The Facility shall have in place an adequate infectious disease control
19 program which includes testing of all CBP Detainees for Tuberculosis (TB) within fourteen
20 (14) calendar days of intake. TB testing shall be accomplished in accordance with the latest
21 Centers for Disease Control (CDC) Guidelines and the result promptly documented in the
22 CBP Detainees' medical records. All CBP Detainees shall be tested for COVID-19 in
23 accordance with the Facility's guidelines for COVID-19 testing in order to mitigate the impact
24 of the COVID-19 pandemic and as necessary for the preservation of public health and safety.
25 Special requests for expedited TB, COVID-19, and clearance (to include time-sensitive
26 moves) will be accomplished through advance coordination by CBP and the COUNTY. The
27 COUNTY shall immediately notify CBP of any cases of suspected or active TB, COVID-19,
28

1 or any other highly communicable diseases such as Severe Acute Respiratory Syndrome
2 (SARS), Avian Flu, Methicillin-Resistant Staphylococcus Aureus (MRSA), Chicken Pox, and
3 the like, which might affect scheduled transports so that protective measures can be taken
4 by CBP.

5 d. Medical records must travel with the CBP Detainees at all times. If the
6 records are maintained at a medical contractor's facility, it is the COUNTY's responsibility to
7 obtain them before a CBP Detainees is moved.

8 3. TERM. This MOU is effective June 22, 2021 and shall continue in full force and
9 effect until June 21, 2026, unless earlier terminated according to herein.

10 4. TERMINATION.

11 a. Non-Allocation of Funds - The terms of this MOU, and the services to be
12 provided hereunder, are contingent on the approval of funds by the appropriating government
13 agency. Should sufficient funds not be allocated, the services provided may be modified, or
14 this MOU may be terminated by the COUNTY, at any time by giving CBP thirty (30) calendar
15 days advance written notice.

16 b. Breach of Contract - The COUNTY may immediately suspend or terminate
17 this MOU in whole or in part, where in the determination of the COUNTY there is on the part
18 of the CBP:

- 19 i. An illegal or improper use of funds;
- 20 ii. A failure to comply with any term of this MOU;
- 21 iii. A substantially incorrect or incomplete report submitted to the
22 COUNTY;
- 23 iv. Any delay in payment by CBP.

24 In no event shall receipt of any payment by the COUNTY constitute a waiver by the
25 COUNTY of any breach of this MOU or any default which may then exist on the part of CBP.
26 Neither shall such receipt of payment impair or prejudice any remedy available to the
27 COUNTY with respect to the breach or default.
28

1 c. Without Cause - Under circumstances other than those set forth above, this
2 MOU may be terminated without cause or penalty by either party on the giving of thirty (30)
3 calendar days advance written notice of an intention to terminate to the other party.

4 5. INVOICE. The COUNTY shall invoice CBP monthly for the services rendered
5 hereunder and any Specialized Medical Services or Specialized Medication provided during
6 the previous month. Such invoices shall be addressed to CBP as follows:

7 U.S. Customs and Border Protection
8 555 Battery Street
9 San Francisco, CA 94111
10 Attn: Mission Support Chief

11 6. PAYMENT. Payment for services rendered hereunder and any Specialized Medical
12 Services or Specialized Medication provided shall be made by CBP within thirty (30) calendar
13 days of the invoice date. Payment shall be addressed to the COUNTY as follows:

14 Fresno County Sheriff's Office
15 P.O. Box 1788
16 Fresno, CA 93717
17 Attn: Business Office

18 CBP agrees to pay the COUNTY the rate of \$125.00/calendar day ("Per Diem Rate")
19 per CBP Detainee housed in the Facility. This Per Diem Rate does not cover Specialized
20 Medical Services or Specialized Medication, both of which shall be paid separately by CBP
21 to the COUNTY. Nor does this Per Diem Rate cover any medical care provided to the CBP
22 Detainees outside the Facility, as CBP must and will be billed directly by outside medical care
23 providers pursuant to arrangements made by the COUNTY for outside medical care pursuant
24 to Section 2(b), above.

25 7. LIABILITY. Neither party to this MOU, nor its officers and employees, shall assume
26 any liability for the negligent or wrongful acts or omissions of the other party, its officers or
27 employees. Nothing contained in this MOU shall create, or be deemed to create, any
28

1 relationship of principal-agent, master-servant, employer-employee, partnership, joint
2 venture, or association between CBP and the COUNTY. The relationship between CBP and
3 the COUNTY under this MOU is that of independent contractors, with each party at all times
4 acting in an independent capacity from the other.

5 8. PERFORMANCE. The provision of contract services, the standards of
6 performance, the discipline of officers, and other matters incident to the performance of such
7 services hereunder and the management of personnel so employed, shall remain in the
8 control of the Sheriff's Office. In the event of a dispute between the parties hereto as to the
9 extent and duties and functions to be rendered under this MOU, or the minimum level or
10 manner of such performance of such services, the determination made by the COUNTY's
11 Sheriff's Office shall be final and conclusive.

12 9. PRISON RAPE ELIMINATION ACT. The Prison Rape Elimination Act of 2003
13 (PREA), Public Law 108-79 (Sept. 4, 2003), established a "zero-tolerance standard" for rape
14 in prisons in the United States. 42 U.S.C. § 15602(1). In response to PREA, The Department
15 of Homeland Security (DHS) issued a final rule adopting national standards to prevent,
16 detect, and respond to sexual abuse in DHS confinement facilities. 6 C.F.R. Part 115. These
17 national standards apply to CBP. 42 U.S.C. § 15607(c)(2). The Facility must post the Prison
18 Rape Elimination Act ("PREA") brochure/bulletin provided by CBP in each housing unit of the
19 Facility. The Facility must abide by all relevant PREA regulations. The Facility must also
20 adopt and comply with the DHS national standards with respect to CBP Detainees housed at
21 the Facility. The parties must institute a system of monitoring to ensure the Facility's
22 compliance with the DHS national standards with respect to CBP Detainees. Accordingly,
23 CBP shall utilize and comply with the U.S. Immigration and Customs Enforcement Sexual
24 Abuse And Assault Prevention and Intervention Policy No. 11062.2, a copy of which is
25 attached hereto as Exhibit A, which is incorporated herein, and any amendments thereto or
26 modifications thereof, and COUNTY shall utilize and comply with the Fresno County Sheriff's
27 Office Jail Division Policies And Procedures Sexual Misconduct And Abuse No: D-360, and
28

1 copy of which is attached hereto as Exhibit B, is incorporated herein, and any amendments
2 thereto or modifications thereof.

3 10. SERVICE CONTRACT ACT. This MOU incorporates the following Federal
4 Acquisition Regulation ("FAR") clauses by this reference, with the same force and effect as if
5 it was given in full text:

6 52.222-41 Service Contract Labor Standards;

7 52.222-42 Statement of Equivalent Rates for Federal Hires (May 2014); and

8 52.222-43 Fair Labor Standards Act and Service Contract Labor Standards – Price
9 Adjustment (Multiple Year and Option Contracts) (August 2018).

10 The full text of these FAR clauses may be accessed electronically at the following
11 website: [https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#id123456m)
12 [clauses#id123456m](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#id123456m).

13
14 11. MODIFICATION. Any matters of this MOU may be modified from time to time by
15 the written consent of all the parties without, in any way, affecting the remainder.

16 12. NON-ASSIGNMENT. Neither party shall assign, transfer or sub-contract this MOU
17 nor their rights or duties under this MOU without the prior written consent of the other party.

18 13. PREVAILING WAGE RATE. The current COUNTY wage rates shall be the
19 prevailing wages unless notified by CBP.

20 14. THIRD PARTIES. This MOU is between CBP and the COUNTY and does not
21 create or confer any rights, privileges, or benefits, substantive or procedural, upon any
22 person, party, or entity, enforceable at law against the COUNTY or the United States, CBP,
23 its respective agencies, officers, or employees.

24 15. STATE LEASES. CBP acknowledges that the COUNTY has entered into or will
25 enter into the following agreements to facilitate the financing of the new facility (referred to
26 herein as the "West Annex") which will be accomplished through the forthcoming issuance of
27 lease revenue bonds (the "Bonds") by the State Public Works Board of the State of California
28 (the "Board"). The COUNTY represents that it entered into a ground lease (the "Ground

1 Lease”) with the Board of State and Community Corrections of the State of California
2 (“BSCC”) leasing to BSCC the land upon which the West Annex is located, and, that prior to
3 the forthcoming issuance of the Bonds, BSCC and the Board will enter into a site lease and
4 a facility lease (the “State Leases”) with respect to the Bonds and that BSCC will then
5 sublease the West Annex back to the COUNTY (together with the Ground Lease and the
6 State Leases, the “Financing Leases”). CBP agrees that notwithstanding any provision in this
7 MOU to the contrary, this MOU does not confer upon the CBP any right, title or interest in the
8 West Annex, but if such right, title or interest may otherwise exist, this MOU will be
9 subordinate and subject to the terms of the Financing Leases. Notwithstanding any provision
10 in this MOU to the contrary, the COUNTY has the right, without penalty or cause, to terminate
11 this MOU at any time upon at least thirty (30), but not later than fifty (50), calendar days
12 written notice.

13
14 16. NOTICES. The persons and their addresses having authority to give and receive
15 notices under this MOU include the following:

16 CBP:

17 U.S. Customs and Border Protection

18 555 Battery Street

19 San Francisco, CA 94111

20 Attn: Mission Support Chief

21 COUNTY:

22 Fresno County Sheriff’s Office

23 P.O. Box 1788

24 Fresno, CA 93717

25 Attn: Business Office

26 All notices between the COUNTY and CBP provided for or permitted under this
27 MOU must be in writing and delivered either by personal service, by first-class United States
28 mail, by an overnight commercial courier service, or by telephonic facsimile transmission. A

1 notice delivered by personal service is effective upon service to the recipient. A notice
2 delivered by first-class United States mail is effective three COUNTY business days after
3 deposit in the United States mail, postage prepaid, addressed to the recipient. A notice
4 delivered by an overnight commercial courier service is effective one COUNTY business day
5 after deposit with the overnight commercial courier service, delivery fees prepaid, with
6 delivery instructions given for next day delivery, addressed to the recipient. A notice delivered
7 by telephonic facsimile is effective when transmission to the recipient is completed (but, if
8 such transmission is completed outside of COUNTY business hours, then such delivery shall
9 be deemed to be effective at the next beginning of a COUNTY business day), provided that
10 the sender maintains a machine record of the completed transmission. For all claims arising
11 out of or related to this MOU, nothing in this Section 16 establishes, waives, or modifies any
12 claims presentation requirements or procedures provided by law, including but not limited to
13 the Government Claims Act (Division 3.6 of Title 1 of the Government Code, beginning with
14 section 810).

15
16 17. ENTIRE AGREEMENT. This MOU constitutes the entire agreement between CBP
17 and the COUNTY with respect to the subject matter hereof and supersedes all previous
18 agreement and memorandum of understanding negotiations, proposals, commitments,
19 writings, advertisements, publications, and understanding of any nature whatsoever unless
20 expressly included in this MOU.

21 18. COUNTERPARTS. This MOU may be executed in any number of counterparts,
22 each of which shall be deemed an original, but all of which together shall constitute one and
23 the same MOU, binding on the parties hereto according to its terms and conditions.

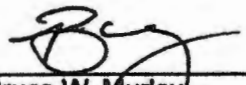
24 [Go to signature page]
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN WITNESS WHEREOF the parties hereto have caused this MOU to be


executed.

UNITED STATES
CUSTOMS AND BORDER PROTECTION



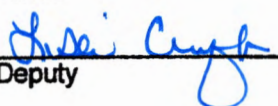
Bruce W. Murley
Area Port Director, San Francisco

COUNTY OF FRESNO



Steve Brandau, Chairman
of the Board of Supervisors of the
County of Fresno

ATTEST:
BERNICE E. SEIDEL
Clerk of the Board of Supervisors,
County of Fresno of the State of
California

By: 

Deputy

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT**11062.2: Sexual Abuse and Assault Prevention and Intervention****Issue Date: May 22, 2014****Effective Date: May 22, 2014****Superseded: ICE Policy No. 11062.1: Sexual Abuse and Assault Prevention and Intervention (May 11, 2012)****Federal Enterprise Architecture Number: 306-112-002b**

1. **Purpose/Background.** This Directive establishes policy and procedures for the prevention of sexual abuse or assault of individuals in U.S. Immigration and Customs Enforcement (ICE) custody, and provides agency-wide policy and procedures for timely notification of sexual abuse and assault allegations, prompt and coordinated response and intervention, and effective monitoring of sexual abuse and assault incidents.

This Directive is intended to implement the requirements of the U.S. Department of Homeland Security (DHS) regulation titled, “Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities,” 79 Fed. Reg. 13100 (Mar. 7, 2014), and complement the requirements of the 2011 Performance-Based National Detention Standard on “Sexual Abuse and Assault Prevention and Intervention” (PBNDS 2011 Standard 2.11) and other related detention standards and ICE policies that establish the responsibilities of ICE detention facility staff and ICE personnel with respect to prevention, response and intervention, reporting, investigation, and tracking of incidents of sexual abuse or assault. This Directive ensures an integrated and comprehensive system of preventing and responding to sexual abuse or assault of individuals in ICE custody, including through a coordinated, multidisciplinary team approach, consistent with the goals of the Prison Rape Elimination Act of 2003, Pub. L. No. 108-79, 117 Stat. 972 (2003) (PREA).

2. **Policy.** ICE has a zero tolerance policy for all forms of sexual abuse or assault. It is ICE policy to provide effective safeguards against sexual abuse and assault of all individuals in ICE custody, including with respect to screening, staff training, detainee education, response and intervention, medical and mental health care, reporting, investigation, and monitoring and oversight, as outlined in this Directive, in the requirements of PBNDS 2011 Standard 2.11, and in other related detention standards and ICE policies.
3. **Definitions.** The following definitions apply for purposes of this Directive only:
 - 3.1. **Custody.** Custody means that period of time during which a person has been arrested by ICE under its administrative and/or criminal authorities, is physically present in an ICE owned, -leased, or -contracted detention, holding, or other facility pursuant to such authorities, or is being transported by ICE (including for purposes of removal from the United States) pursuant to such authorities. Custody ends when the person is released

from ICE's physical confinement, control, or restraint, including upon transfer to another agency for detention under its own legal authorities.

3.2. Detainee. Detainee means an individual in ICE custody.

3.3. Sexual Abuse and Assault.

1) **Sexual abuse and assault** includes:

- a) Sexual abuse and assault of a detainee by another detainee; and
- b) Sexual abuse and assault of a detainee by a staff member, contractor, or volunteer.

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

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

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

- a) Contact between the penis and the vulva or anus and, for purposes of this subparagraph, contact involving the penis upon penetration, however slight;
- b) Contact between the mouth and the penis, vulva, or anus;
- c) Penetration, however slight, of the anal or genital opening of another person by a hand or finger or by any object that is unrelated to official duties or where the

staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;

- d) Intentional touching of the genitalia, anus, groin, breast, inner thighs or buttocks, either directly or through the clothing, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
- e) Threats, intimidation, harassment, indecent, profane or abusive language, or other actions or communications, aimed at coercing or pressuring a detainee to engage in a sexual act;
- f) Repeated verbal statements or comments of a sexual nature to a detainee;
- g) Any display of his or her uncovered genitalia, buttocks, or breast in the presence of a detainee; or
- h) Voyeurism, which is defined as the inappropriate visual surveillance of a detainee for reasons unrelated to official duties. Where not conducted for reasons relating to official duties, the following are examples of voyeurism: staring at a detainee who is using a toilet in his or her cell to perform bodily functions; requiring 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.

4. Responsibilities.

4.1. The ICE Director has responsibilities under Section 5.1 (Coordinator and Supporting Officials).

4.2. Enforcement and Removal Operations (ERO) Headquarters (HQ) has responsibilities under:

- 1) Section 5.1 (Coordinator and Supporting Officials);
- 2) Section 5.2 (Training); and
- 3) Section 5.6 (Accommodating Detainees with Limited English Proficiency and Disabilities).

4.3. The ERO Executive Associate Director has responsibilities under Section 5.8 (Response: Intervention and Health Care Services Following an Allegation).

4.4. The ERO Custody Management Division (CMD) has responsibilities under Section 5.10 (Incident Review and Monitoring).

4.5. The ERO Field Operations Division has responsibilities under:

- 1) Section 5.8 (Response: Intervention and Health Care Services Following an Allegation);
- 2) Section 5.9 (Investigation of Allegations); and
- 3) Section 5.10 (Incident Review and Monitoring).

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

- 1) Section 5.1 (Coordinator and Supporting Officials);
- 2) Section 5.5 (Facility Compliance);
- 3) Section 5.6 (Accommodating Detainees with Limited English Proficiency and Disabilities);
- 4) Section 5.7 (Notification and Reporting Following an Allegation);
- 5) Section 5.8 (Response: Intervention and Health Care Services Following an Allegation); and
- 6) Section 5.9 (Investigation of Allegations).

4.7. Homeland Security Investigations (HSI) HQ has responsibilities under:

- 1) Section 5.1 (Coordinator and Supporting Officials);
- 2) Section 5.2 (Training);
- 3) Section 5.6 (Accommodating Detainees with Limited English Proficiency and Disabilities); and
- 3) Section 5.10 (Incident Review and Monitoring).

4.8. HSI Special Agents in Charge (SACs) have responsibilities under:

- 1) Section 5.1 (Coordinator and Supporting Officials);
- 2) Section 5.6 (Accommodating Detainees with Limited English Proficiency and Disabilities);
- 3) Section 5.7 (Notification and Reporting Following an Allegation);
- 4) Section 5.8 (Response: Intervention and Health Care Services Following an Allegation); and

- 5) Section 5.9. (Investigation of Allegations).
- 4.9. The HSI Office of Intelligence** has responsibilities under Section 5.7 (Notification and Reporting Following an Allegation).
- 4.10. The ICE Health Service Corps (IHSC)** has responsibilities under:
- 1) Section 5.1 (Coordinator and Supporting Officials);
 - 2) Section 5.2 (Training); and
 - 3) Section 5.8 (Response: Intervention and Health Care Services Following an Allegation).
- 4.11. The IHSC Clinical Director (CD)** has responsibilities under Section 5.8 (Response: Intervention and Health Care Services Following an Allegation).
- 4.12. The Office of Detention Policy and Planning (ODPP)** has responsibilities under Section 5.2 (Training).
- 4.13. The Office of Diversity and Civil Rights (ODCR)** has responsibilities under:
- 1) Section 5.2 (Training); and
 - 2) Section 5.6 (Accommodating Detainees with Disabilities or Limited English Proficiency).
- 4.14. The Office of the Principal Legal Advisor (OPLA)** has responsibilities under:
- 1) Section 5.2 (Training);
 - 2) Section 5.6 (Accommodating Detainees with Limited English Proficiency and Disabilities);
 - 3) Section 5.7 (Notification and Reporting Following an Allegation); and
 - 4) Section 5.9 (Investigation of Allegations).
- 4.15. The Office of Professional Responsibility (OPR)** has responsibilities under:
- 1) Section 5.1 (Coordinator and Supporting Officials);
 - 2) Section 5.2 (Training);
 - 3) Section 5.6 (Accommodating Detainees with Limited English Proficiency and Disabilities)

- 4) Section 5.9 (Investigation of Allegations); and
 - 5) Section 5.10 (Incident Review and Monitoring).
- 4.16. The OPR Joint Intake Center (JIC)** has responsibilities under Section 5.7 (Notification and Reporting Following an Allegation).
- 4.17. The OPR Special Agents in Charge (OPR SACs)** have responsibilities under:
- 1) Section 5.1 (Coordinator and Supporting Officials);
 - 2) Section 5.6 (Accommodating Detainees with Limited English Proficiency and Disabilities);
- 4.18. The Office of Training and Development (OTD)** has responsibilities under Section 5.2 (Training).
- 4.19. The ICE Prevention of Sexual Assault (PSA) Coordinator** has responsibilities under:
- 1) Section 5.1 (Coordinator and Supporting Officials);
 - 2) Section 5.2 (Training);
 - 3) Section 5.6. (Accommodating Detainees with Limited English Proficiency and Disabilities);
 - 4) Section 5.8 (Response: Intervention and Health Care Services Following an Allegation);
 - 5) Section 5.10 (Incident Review and Monitoring); and
 - 6) Section 5.11 (Annual Review and Reporting).
- 4.20. Victim Assistance Coordinators and Victim Assistance Specialists** have responsibilities under Section 5.8 (Response: Intervention and Health Care Services Following an Allegation).
- 4.21. The Detention Monitoring Council (DMC)** has responsibilities under Section 5.10 (Incident Review and Monitoring).
- 4.22. All ICE Employees** have responsibilities under:
- 1) Section 5.2 (Training) if they may have contact with individuals in ICE custody;
 - 2) Section 5.3 (Obligation to Report Information and Prohibition of Retaliation); and

3) Section 5.4 (Protection of Individuals at Risk).

5. Procedures/Requirements.

5.1. Coordinator and Supporting Officials.

- 1) The ICE Director shall designate an upper-level, agency-wide ICE PSA Coordinator with sufficient time and authority to develop, implement, and oversee agency efforts to ensure compliance with this Directive, as well as other agency policies and detention standards related to sexual abuse and assault prevention and intervention.
- 2) ERO, HSI, and OPR shall designate specially trained HQ staff with sufficient time and authority to assist in ensuring compliance by their respective program offices with this Directive, as well as other agency policies and detention standards related to sexual abuse and assault prevention and intervention, and to provide information and assistance to the PSA Coordinator.
- 3) IHSC shall designate specially trained supervisory or HQ staff with sufficient time and authority to assist with addressing and responding to medical and mental health issues that arise related to sexual abuse and assault.
- 4) Each ERO FOD shall designate at least one specially trained coordinator at the supervisory level with sufficient time and authority to assist in ensuring compliance with this Directive by Field Office staff and detention facilities in their Area of Responsibility (AOR), and in communication with ERO HQ, OPR, and the PSA Coordinator.
- 5) Each HSI SAC shall designate at least one specially trained coordinator at the supervisory level with sufficient time and authority to assist in ensuring compliance with this Directive by field office staff in his or her AOR, and in communication with HSI HQ, OPR, and the PSA Coordinator.
- 6) Each OPR SAC shall assist in ensuring compliance with this Directive by staff within his or her AOR, and in communication with OPR HQ, ERO, HSI and the PSA Coordinator.

5.2. Training.

- 1) The PSA Coordinator, in consultation with ERO, HSI, OPR, OPLA, ODPP, OTD, ODCR and the DHS Office for Civil Rights and Civil Liberties (CRCL), shall develop training required by this Directive. All current employees required to take the training, as listed below, shall be trained as soon as practicable, but no later than May 1, 2015, and ICE shall provide each employee with biennial refresher training to ensure that all employees know ICE's current sexual abuse and assault policies and procedures. All newly hired employees who may have contact with individuals in ICE custody shall also take the training within one year of their entrance on duty.

The agency shall document that all ICE personnel who may have contact with individuals in ICE custody have completed the training.

- 2) **General Training for ICE Personnel.** All ICE personnel who may have contact with individuals in ICE custody, including all ERO officers and HSI special agents, shall receive training on, among other items:
- a) ICE's zero-tolerance policy for all forms of sexual abuse and assault;
 - b) The right of detainees and staff to be free from sexual abuse or assault;
 - c) Definitions and examples of prohibited and illegal behavior;
 - d) Dynamics of sexual abuse and assault in confinement;
 - e) Prohibitions on retaliation against individuals who report sexual abuse or assault;
 - f) Recognition of physical, behavioral, and emotional signs of sexual abuse or assault, situations in which sexual abuse or assault may occur, and ways of preventing and responding to such occurrences, including:
 - i) Common reactions of sexual abuse and assault victims;
 - ii) How to detect and respond to signs of threatened and actual sexual abuse or assault;
 - iii) Prevention, recognition, and appropriate response to allegations or suspicions of sexual abuse and assault involving detainees with mental or physical disabilities; and
 - iv) How to communicate effectively and professionally with victims and individuals reporting sexual abuse or assault;
 - g) How to avoid inappropriate relationships with detainees;
 - h) Accommodating limited English proficient individuals and individuals with mental or physical disabilities;
 - i) Communicating effectively and professionally with lesbian, gay, bisexual, transgender, intersex, or gender nonconforming individuals, and members of other vulnerable populations;
 - j) Procedures for fulfilling notification and reporting requirements under this Directive;
 - k) The investigation process; and

- l) The requirement to limit reporting of sexual abuse or assault to personnel with a need-to-know in order to make decisions concerning the victim's welfare and for law enforcement or investigative purposes.
- 3) **Specialized Training for OPR Investigators.** OPR shall provide specialized training to OPR investigators who conduct investigations into allegations of sexual abuse and assault, as well as Office of Detention Oversight staff, and other OPR staff, as appropriate. The training should 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.
- 4) **Specialized Training for IHSC Medical and Mental Health Staff.** IHSC shall provide specialized training to all IHSC personnel and all full- and part-time medical and mental health staff who work in facilities where IHSC provides medical and mental health care. The training should cover how to detect and assess signs of sexual abuse and assault, how to preserve physical evidence of sexual abuse and assault, how to respond effectively and professionally to victims of sexual abuse and assault, and how and to whom to report allegations or suspicions of sexual abuse and assault.

5.3. Obligation to Report Information and Prohibition of Retaliation.

- 1) All ICE employees shall immediately report to a supervisor or a designated official any knowledge, suspicion, or information regarding an incident of sexual abuse or assault of an individual in ICE custody, 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.
- 2) The supervisor or designated official shall report the allegation to the FOD or SAC, as appropriate.
- 3) Apart from such reporting, ICE employees shall not reveal any information related to a sexual abuse or assault allegation 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, or to make medical treatment, investigation, law enforcement, or other security and management decisions.
- 4) ICE employees 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 assault, or for participating in sexual activity as a result of force, coercion, threats, or fear of force. However, ICE prohibits deliberately making false sexual abuse or assault allegations, as well as deliberately providing false information

during an investigation, and such misconduct will be addressed through appropriate processes.

- 5.4. Protection of Individuals at Risk.** If an ICE employee has a reasonable belief that a detainee is subject to a substantial risk of imminent sexual abuse or assault, he or she shall take immediate action to protect the detainee.
- 5.5. Facility Compliance.** It is the responsibility of the FOD to ensure all detention facility staff in his or her AOR are aware of their obligation to report allegations of sexual abuse and assault to ICE and the appropriate law enforcement agency, as well as the other requirements of this Directive and PBNDS 2011 Standard 2.11, such as the requirements relating to response and intervention, health care services, and investigations, as well as other relevant standards and contractual requirements. The FOD shall review the written policy and procedures for the Sexual Abuse and Assault Prevention and Intervention Program, required by Standard 2.11, for all the detention facilities in his or her AOR.
- 5.6. Accommodating Detainees with Disabilities or Limited English Proficiency.** With regard to their respective responsibilities under this Directive, **ERO, HSI and OPR HQ, as well as the FOD, SAC, and OPR SAC**, in consultation and coordination with OPLA, ODCR, and the PSA Coordinator shall:
- 1) Take appropriate steps, in accordance with applicable law, to ensure that 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 agency and facility 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, 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. In addition, the FOD, SAC, or OPR SAC shall ensure that any written materials related to sexual abuse are provided in formats or through methods that ensure effective communication with detainees with disabilities, including detainees who have intellectual disabilities, limited reading skills, or who are blind or have low vision.
 - 2) Take steps to ensure meaningful access to all aspects of agency and facility efforts to prevent, detect, and respond to sexual abuse and assault 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.
 - 3) In matters relating to allegations of sexual abuse or assault, ensure the provision of in-person or telephonic interpretation services that enable effective, accurate, and impartial interpretation, by someone other than another detainee, unless the detainee expresses a preference for another detainee to provide interpretation and ICE

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

5.7. Notification and Reporting Following an Allegation. Immediately following notice of an alleged sexual abuse or assault:

- 1) When the incident occurs in ERO custody, **the FOD** shall:
 - a) Ensure that the appropriate law enforcement agency having jurisdiction for the investigation has been notified by the facility administrator of the alleged sexual abuse or assault. The FOD shall notify the appropriate law enforcement agency directly if necessary;
 - b) Notify ERO's Assistant Director for Field Operations telephonically within two hours of the alleged sexual abuse or assault or as soon as practical thereafter, according to procedures outlined in the June 8, 2006 Memorandum from John P. Torres, Acting Director, Office of Detention and Removal Operations, regarding "Protocol on Reporting and Tracking of Assaults" (Torres Memorandum);
 - c) Notify the ICE Joint Intake Center (JIC) telephonically within two hours of the alleged sexual abuse or assault, and in writing within 24 hours via the ICE SEN Notification Database, according to procedures outlined in the Torres Memorandum. The JIC shall notify the DHS Office of Inspector General (OIG);
 - d) When a non-ICE employee, contractor, or volunteer is alleged to be the perpetrator of the sexual abuse or assault, ensure that the facility administrator has also contacted the corporation or locality that operates the facility;
 - e) If the alleged assault occurred at a different facility from the one where it was reported, ensure that the administrator at the facility where the assault is alleged to have occurred is notified as soon as possible, but no later than 72 hours after receiving the allegation, and document such notification;
 - f) If the alleged victim is under the age of 18 or determined, after consultation with the relevant OPLA Office of the Chief Counsel (OCC), to be a vulnerable adult under a State or local vulnerable persons statute, report the allegation to the designated State or local services agency as necessary under applicable mandatory reporting laws; and
 - g) Document his or her efforts taken under this section.
- 2) When the incident occurs in HSI custody, **the SAC** shall:

- a) Ensure that the appropriate law enforcement agency having jurisdiction over the investigation has been notified of the alleged sexual abuse or assault. The SAC shall notify the appropriate law enforcement agency directly if necessary;
 - b) If the alleged victim is under the age of 18 or determined, after consultation with the OPLA OCC, to be a vulnerable adult under a State or local vulnerable persons statute, report the allegation to the designated State or local services agency as necessary under applicable mandatory reporting laws;
 - c) Notify the HSI Assistant Director for Domestic Operations;
 - d) Notify the JIC telephonically within two hours of the alleged sexual abuse or assault, and in writing within 24 hours via the ICE SEN Notification Database, according to procedures outlined in the Torres memo. The JIC shall notify the DHS OIG; and
 - e) Document his or her efforts taken under this section.
- 3) For all alleged incidents, **the HSI Office of Intelligence** shall:
- a) Ensure that the Joint Intelligence Operations Center (the JIOC) compiles on a daily basis from the SEN Notification Database a report that includes all new allegations of sexual abuse or assault; and
 - b) Ensure that the JIOC disseminates the daily report to the PSA Coordinator; the ERO Assistant Director for Field Operations; the ERO Assistant Director for CMD; the HSI Assistant Director for Domestic Operations; the Assistant Director for OPR; the Assistant Director for IHSC; the OPLA Director of Enforcement and Litigation; and DHS CRCL.

5.8. Response: Intervention and Health Care Services Following an Allegation.

- 1) When the incident occurs in ERO custody, **the FOD** shall:
 - a) Ensure that the detention facility complies with the response and intervention mandates established by PBNDS 2011 Standard 2.11, as well as other relevant detention standards and contractual requirements, including by:
 - i) Offering the alleged victim immediate protection from the alleged abuser;
 - ii) Using a coordinated, multidisciplinary team approach to respond to the allegation;
 - iii) Avoiding punishment of the victim for reporting abuse or for participating in sexual activity as a result of force or coercion;

- iv) Placing the victim in a supportive environment that represents the least restrictive housing option possible;
 - v) Not placing the victim in administrative segregation for longer than five days except in highly unusual circumstances or at the request of the detainee;
 - vi) Attempting to make available to the victim a victim advocate from a rape crisis center, or if unavailable, another community victim service provider; and
 - vii) Complying with the health care mandates of PBNDS 2011 Standard 2.11;
- b) Notify ICE, through ERO Field Operations, if the facility has been unable to make available to the victim a victim advocate from a rape crisis center or community victim service provider;
 - c) If a victim is transferred between detention facilities or holding facilities, or to any non-ICE facility, ensure that, as permitted by law, the receiving facility is informed of the incident and the victim's potential need for medical or mental health care or victim services (unless, in the case of transfer to a non-ICE facility, the victim requests otherwise);
 - d) In addition to steps taken by the facility, ensure the safety and security of the victim and adequate medical and mental health care for the victim, including consideration of appropriate potential custodial options, such as placing the victim in a supportive environment that represents the least restrictive housing option at another facility (within the same jurisdiction if there is an ongoing investigation), transferring the victim to a hospital, or other appropriate custodial options;
 - e) Take the necessary steps to determine whether the alleged abuser is housed in such a manner so as not to jeopardize other detainees housed at the facility until an investigation is completed;
 - f) Ensure that an ICE employee, facility employee, contractor, or volunteer suspected of perpetrating sexual abuse or assault is removed from all duties requiring detainee contact pending the outcome of an investigation;
 - g) Employ multiple protection measures, as appropriate, 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 assault or for cooperating with investigations;
 - h) For at least 90 days following a report of sexual abuse or assault, monitor to see if there are facts that suggest possible retaliation by detainees or staff, and act promptly to remedy any such retaliation. Items to be monitored include any detainee disciplinary reports, housing or program changes, or negative

performance reviews of reassignments of staff. Monitoring shall continue beyond 90 days if initial monitoring indicates a continuing need; and

- i) Through the ERO Assistant Director for Field Operations, provide requested information to relevant ICE entities, including other ERO program offices, OPR, and the PSA Coordinator.
- 2) When the incident occurs in ERO custody, **the IHSC** shall:
- a) In detention facilities staffed by the IHSC, the IHSC Clinical Director or designee shall ensure that the IHSC clinic complies with the health care services mandates of PBNDS 2011 Standard 2.11, including by:
 - i) Providing emergency medical and mental health services and ongoing care, as appropriate;
 - ii) When appropriate, initiating a referral to a hospital emergency department, or to a designated specialized facility, for evaluation and forensic examination, to include testing for sexually transmitted diseases and infections, and offering prophylactic treatment, emergency contraception, follow-up examinations for sexually transmitted diseases, and referrals for counseling and victim advocacy and services; and
 - iii) Ensuring that a mental health professional evaluates the victim's need for crisis intervention counseling and long-term follow-up.
 - b) In detention facilities not staffed by the IHSC, the IHSC shall assist the FOD as needed, including by:
 - i) Helping to ensure that facility medical personnel have complied with the health care services requirements of PBNDS 2011 Standard 2.11;
 - ii) Communicating with the facility regarding the victim's health care (including mental health care) needs; and
 - iii) Reporting information to the FOD or to ERO HQ officials as requested.
- 3) When the incident occurs in ERO custody, **the ERO Executive Associate Director, in coordination with the PSA Coordinator**, shall ensure, as appropriate, that a qualified staff member from a community-based organization, or a qualified agency staff member, provides emotional support, crisis intervention, information, and referrals to the victim.
- 4) When the incident occurs in HSI custody, **the SAC** shall:

- a) Ensure that timely, unimpeded access to emergency medical treatment and crisis intervention services (including emergency contraception and sexually transmitted infections prophylaxis) is provided, in accordance with professionally accepted standards of care. Such treatment services 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;
- b) Contact the local field office Victim Assistance Specialist (VAS) or Victim Assistance Coordinator (VAC) upon notification of an alleged sexual abuse or assault victimization. The VAS or VAC will provide local referrals for sexual abuse or assault victim service providers and coordinate services as necessary for medical care and examination, including sexual abuse and assault forensic exams, to be conducted by a Sexual Assault Forensic Examiner (SAFE) or Sexual Assault Nurse Examiner (SANE) where practicable, or by other qualified health care personnel where SAFEs or SANEs are unavailable. As appropriate, the VAS or VAC will also coordinate with victim advocates for any local, state, or federal law enforcement agency involved in a subsequent investigation;
- c) Ensure that an ICE employee, contractor, or volunteer suspected of perpetrating sexual abuse or assault is removed from all duties requiring detainee contact pending the outcome of an investigation;
- d) Offer the alleged victim immediate protection from the alleged abuser by separating the alleged victim from anyone involved in the allegation or incident and removing the alleged abuser from contact with any other individual in HSI custody; and
- e) If a victim is transferred between detention facilities or holding facilities, or any non-ICE facility, ensure that, as permitted by law, the receiving facility is informed of the incident and the victim's potential need for medical or mental health care or victim services (unless, in the case of transfer to a non-ICE facility, the victim requests otherwise).

5.9. Investigation of Allegations.

- 1) **OPR** shall:
 - a) Coordinate with the FOD or SAC and facility staff to ensure evidence is appropriately secured and preserved pending an investigation by federal, state, or local law enforcement, DHS OIG, and/or OPR;
 - b) Coordinate with DHS OIG to effect timely acceptance of the case by DHS OIG or referral to OPR;

- c) Upon referral by DHS OIG to OPR, assess the allegation to determine investigative response and assignment, in accordance with ICE policies and procedures;
- d) Coordinate investigative efforts with federal, state, or local law enforcement or facility incident review personnel, in accordance with OPR policies and procedures;
- e) Conduct either an OPR review or investigation, in accordance with OPR policies and procedures. Administrative investigations impose no standard higher than a preponderance of the evidence to substantiate an allegation of sexual abuse or assault, and may not be terminated solely due to the departure of the alleged abuser or victim from the employment or control of ICE;
- f) Coordinate with appropriate ICE entities and federal, state, or local law enforcement to facilitate necessary immigration processes that ensure availability of victims, witnesses, and alleged abusers for investigative interviews and administrative or criminal procedures, and provide federal, state, or local law enforcement with information about U nonimmigrant visa certification;
- g) Coordinate with the FOD or SAC and facility personnel to ensure that the presence of the victim's outside or internal victim advocate, as requested by the victim, is allowed for support during investigatory interviews;
- h) In criminal cases, OPR, in coordination with the FOD and/or SAC, as appropriate, will ensure that any alleged victim of sexual abuse or assault who is an alien is provided timely access to U nonimmigrant status information by:
 - i) Providing the phone number to an appropriate national hotline; and/or
 - ii) Providing relevant informational materials printed by U.S. Citizenship and Immigration Services;
- i) Compile and maintain in the Joint Integrity Case Management System all documentation, to include reports by local law enforcement, the facility, OPLA, HSI, and ERO, if any, and ensure its proper processing in accordance with OPR procedures and this Directive;
- j) Submit briefings and provide information to ICE senior management, including the PSA Coordinator and the ICE Detention Monitoring Council (DMC), as appropriate and in accordance with this Directive;
- k) For detainees still in ICE immigration detention, or where otherwise feasible, following an investigation into a detainee's allegation of sexual abuse or assault, notify the detainee as to the result of the investigation and any responsive action taken, in coordination with the FOD; and

- l) Upon receiving notification from a FOD or SAC of the removal or resignation in lieu of removal of staff for violating agency or facility sexual abuse and assault policies:
 - i) Report that information to appropriate law enforcement agencies, unless the activity was clearly not criminal; and
 - ii) Make reasonable efforts to report that information to any relevant licensing bodies, to the extent known.
- 2) When the incident occurs in ERO custody, **the FOD** shall:
 - a) Ensure that the facility complies with the investigation mandates established by PBNDS 2011 Standard 2.11, as well as other relevant detention standards and contractual requirements, including by:
 - i) When feasible, securing and preserving the crime scene and safeguarding information and evidence consistent with established evidence protocols;
 - ii) Conducting a prompt, thorough, and objective investigation by qualified investigators;
 - iii) Arranging for the victim to undergo a forensic medical examination, where appropriate;
 - iv) Ensuring that the presence of the victim's outside or internal victim advocate, as requested by the victim, is allowed for support during forensic exams and investigatory interviews;
 - v) Pursuing internal administrative investigations and disciplinary sanctions in coordination with the assigned criminal investigative entity to ensure non-interference with criminal investigations;
 - vi) Cooperating with outside investigators and endeavoring to remain informed about the progress of outside investigations; and
 - vii) Ensuring that the facility's Sexual Abuse and Assault Prevention and Intervention Program Coordinator reviews the results of the investigation and that the facility implements any resultant recommendations for improvements to facility policies or practices;
 - b) Determine the result of all facility investigations of allegations of sexual abuse or assault and any associated disciplinary proceedings instituted against detainee abusers, and report that information to OPR through the ERO Assistant Director for Field Operations;

- c) Report to OPR any removals or resignations of staff in lieu of removal for violating agency or facility sexual abuse and assault policies;
 - d) When outside agencies investigate sexual abuse or assault, cooperate with law enforcement agencies, OPR, and other outside investigators and endeavor to remain informed about the progress of the investigation, and ensure that detention facilities do the same; and
 - e) Coordinate with the OPLA OCC and OPR as appropriate to facilitate the availability of potential witnesses.
- 3) When the incident occurs in HSI custody, **the SAC** shall:
- a) When feasible, secure and preserve the crime scene and safeguard information and evidence, consistent with ICE uniform evidence protocols and local evidence protocols in order to maximize the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions;
 - b) Continue with any ongoing investigation or enforcement action and not attempt to conduct an investigation into the alleged sexual abuse or assault incident once it has been reported as set forth in section 5.7(2) above;
 - c) When outside agencies investigate sexual abuse or assault, cooperate with law enforcement agencies, OPR, and other outside investigators and endeavor to remain informed about the progress of the investigation; and
 - d) Coordinate with the OPLA OCC and OPR as appropriate to facilitate the availability of potential witnesses.

5.10. Incident Review and Monitoring.

- 1) **ICE PSA Coordinator.**
 - a) On an ongoing basis, the ICE PSA Coordinator shall work with other relevant ICE program offices to help ensure an effective agency response to allegations of sexual abuse and assault, and to share data regarding effective methods of responding to sexual abuse and assault.
 - b) On a monthly basis, the ICE PSA Coordinator shall prepare a report to the DMC compiling information received about all incidents or allegations of sexual abuse or assault of individuals in ICE custody during that period, as well as ongoing investigations and other pending cases.
 - c) On a quarterly basis, the ICE PSA Coordinator shall prepare a report to the DMC and the ICE Director, compiling information received about all incidents or

allegations of sexual abuse or assault of individuals in ICE custody during that period.

- d) The PSA Coordinator shall receive assistance in compiling monthly, quarterly and annual reports from:
 - i) OPR, which shall provide information gathered from its own investigations and inspections, and ongoing review of other investigations;
 - ii) ERO Field Operations, which shall provide information regarding facilities' responses to sexual abuse and assault allegations, and actions taken by Field Offices;
 - iii) ERO CMD, which shall provide information derived from its oversight activities, and received from facilities;
 - iv) HSI, which shall provide information regarding sexual abuse and assault allegations and actions taken by HSI field offices;
 - v) IHSC, which shall provide information and expertise regarding health related matters; and
 - vi) Other relevant program offices.

2) **Detention Monitoring Council.**

- a) In response to significant incidents of sexual abuse or assault of individuals in ICE custody, the DMC shall convene when necessary to ensure effective, timely, and comprehensive agency-wide response and investigation, and to determine any appropriate corrective actions that should be taken.
- b) On at least a monthly basis, a subcommittee of the DMC shall convene to review information received from the ICE PSA Coordinator, OPR, ERO Field Operations, Field Offices, and other relevant ICE program offices regarding all incidents or allegations of sexual abuse or assault of individuals in ICE custody, as well as facility intervention and actions taken, the status of any administrative or criminal investigations, and any other ongoing relevant issues (e.g., medical issues and housing/custody issues). This DMC subcommittee shall ensure effective, timely, and comprehensive agency-wide response and investigation, and shall determine any appropriate corrective actions that should be taken.
- c) On at least a quarterly basis, the DMC shall convene to discuss national trends in information received about incidents of sexual abuse or assault and lessons learned from these incidents, and to develop and recommend immediate and long-term remedial plans to improve the agency's effectiveness in addressing sexual abuse and assault.

5.11. Annual Review and Reporting.

- 1) On an annual basis, the ICE PSA Coordinator shall conduct a review of all data received regarding incidents of sexual abuse or assault of individuals in ICE custody during that period, including the number of reported sexual abuse and assault allegations determined to be substantiated, unsubstantiated, or unfounded, or for which investigation is ongoing, and for each incident found to be substantiated, information concerning:
 - a) The date, time, location, and nature of the incident;
 - b) The demographic background of the victim and abuser (including citizenship, age, gender, and whether either has self-identified as gay, lesbian, bisexual, transgender, intersex, or gender nonconforming);
 - c) The reporting timeline for the incident (including the name of the individual who reported the incident, and the date and time the report was received);
 - d) Any injuries sustained by the victim;
 - e) Post-report follow up responses and action taken by ICE or the facility (e.g., housing placement/custody classification, medical examination, and mental health counseling); and
 - f) Any sanctions imposed on the abuser.
- 2) The ICE PSA Coordinator shall prepare a report to the ICE Director identifying problem areas and recommending corrective actions for the agency as well as for each ICE detention facility, and providing an assessment of the agency's progress in addressing sexual abuse and assault based on a comparison of the current year's data and corrective actions with those from prior years.
- 3) Following approval by the ICE Director, the annual report shall be made readily available to the public including through the ICE website. The agency may redact specific material from the reports when publication would present a threat to the safety or security of a facility or violate privacy or other legally protected interests, but must indicate the nature of the material redacted.
- 4) On an ongoing basis, the ICE PSA Coordinator shall review data collected and aggregated pursuant to Sections 5.10 and 5.11 in order to assess and improve the effectiveness of ICE's sexual abuse and assault prevention, detection, and response policies, practices, and training.

5.12. Data Storage and Publication.

- 1) Data collected pursuant to this Directive shall be securely retained in accordance with agency record retention policies and the agency protocol regarding investigation of allegations.
- 2) All aggregated sexual abuse and assault data shall be made available to the public at least annually through the ICE website, consistent with existing agency information disclosure policies and processes, and omitting any personal identifiers.
- 3) All sexual abuse and assault data collected pursuant to this Directive shall be maintained for at least 10 years after the date of initial collection, unless Federal, State, or local law requires otherwise.

6. **Authorities/References.**

- 6.1. 2011 Performance-Based National Detention Standard, "2.11 Sexual Abuse and Assault Prevention and Intervention."
- 6.2. Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities, 79 Fed. Reg. 13100 (Mar. 7, 2014).
- 6.3. ICE Policy 11045.1: Memorandum from John P. Torres, Acting Director, Office of Detention and Removal Operations, to Field Office Directors, "Protocol on Reporting and Tracking of Assaults"(June 8, 2006).
- 6.4. Memorandum from Alonzo Pefia, Deputy Director, to All ICE Employees, "Directing Complaints Appropriately to the Joint Intake Center (JIC), the Office of Professional Responsibility (OPR), the Office of the Inspector General (OIG), or Local Management" (November 10, 2010).
- 6.5. ICE Directive 10071.1: "Victim Assistance Program" (August 25, 2011).

7. **Attachments.**

N/A.

8. **No Private Right Statement.** This document is an internal policy statement of ICE. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter. Nor are any limitations hereby placed on otherwise lawful enforcement prerogatives of ICE.



Thomas Winkowski
Principal Deputy Assistant Secretary
U.S. Immigration and Customs Enforcement

FRESNO COUNTY SHERIFF'S OFFICE
JAIL DIVISION POLICIES AND PROCEDURES

TITLE: SEXUAL MISCONDUCT AND ABUSE
FILE: SEXUAL ABUSE

NO: D-360

EFFECTIVE DATE: 02-01-12

REVISED: 06-27-16, 06-20-17

AUTHORITY: Sheriff M. Mims

APPROVED BY: Assistant Sheriff T. Gattie

REFERENCE: Prison Rape Elimination Act of 2003 (42 USC 15601); 28 CFR 115; Penal Code Sections 264.2, 286(e), 288a(e), 289.6, 293, 679.04 11160.1, 13516, 13823.5, and 13823.11; Fresno County Sheriff's Office Policy and Procedure Manual Section 102.

PURPOSE:

The purpose of this policy is to maintain a program of education, prevention, detection, investigation, punishment for the perpetrator, treatment and support for the victim, and data collection, in order to protect the inmate population from inmate-on-inmate sexual assault and staff sexual abuse, sexual misconduct, and sexual harassment.

POLICY:

It is the policy of the Fresno County Sheriff's Office to maintain a zero-tolerance for inmate-on-inmate sexual assault and staff sexual abuse, sexual misconduct, and sexual harassment toward inmates. This policy provides a response plan universal for all instances of sexual abuse, sexual assault and sexual misconduct.

It is the policy of the Fresno County Sheriff's Office to thoroughly investigate every allegation of sexual abuse, and where warranted by evidence, proportional sanctions, up to and including criminal prosecution, are implemented.

It is the policy of the Fresno County Sheriff's Office that retaliatory measures against employees or inmates who report incidents of sexual abuse shall not be tolerated and shall result in disciplinary action and/or criminal prosecution. Retaliatory measures include, but are not limited to, coercion, threats of punishment, or any other activities intended to discourage or prevent an employee or inmate from reporting the sexual abuse.

This policy applies to all inmates and persons employed by the Fresno County Sheriff's Office, including volunteers and independent contractors.

Consensual sodomy and oral copulation among inmates is prohibited by law (Penal Code Sections 286(e) and 288a(e), respectively). Without repealing those provisions, the increased scrutiny provided by this policy shall apply only to *nonconsensual* sexual contact among inmates and custodial sexual misconduct.

FRESNO COUNTY SHERIFF'S OFFICE
JAIL DIVISION POLICIES AND PROCEDURES

TITLE: SEXUAL MISCONDUCT AND ABUSE
FILE: SEXUAL ABUSE

NO: D-360

PROCEDURES:

I. OVERVIEW

In 2012, the U.S. Department of Justice (DOJ) issued standards that jails must meet to protect inmates from sexual violence and harassment. The standards implement the Prison Rape Elimination Act (PREA) of 2003.

- A. PREA requires jails to prevent sexual abuse from occurring, and requires that staff report and intervene whenever they learn an inmate is being victimized. Jails must screen each inmate's risk level for sexual assault and make efforts to house them safely. Jails also have to minimize opportunities for sexual assault by having sufficient staffing, rounds, and video monitoring.
- B. When sexual assaults do occur, jails must provide inmates with appropriate medical and mental health services, confidentially, and at no cost, in a manner consistent with the level of care in the community. Inmates must receive urgent trauma care, which includes treatment of injuries, sexually transmitted infection testing, post-exposure prophylaxis (i.e., action taken to prevent disease), and for those who need it, emergency contraception and pregnancy testing. Prompt forensic exams must also be provided to inmates who want them, in order to preserve evidence for possible prosecution. Jails have to provide inmates with access to outside victim advocates and rape crisis organizations.
- C. There must be clear mechanisms to report sexual assault and those who report must be protected from retaliation. Real investigations must happen, with uniform protocols, and evidence preserved.

This policy has been written in compliance with the DOJ standards.

II. DEFINITIONS

SEXUAL ABUSE includes sexual abuse by another inmate and sexual abuse of an inmate by a staff member, contractor, or volunteer.

- A. **SEXUAL ABUSE BY ANOTHER INMATE** includes any of the following acts, if the victim does not consent, is coerced into such act by overt or implied threats of violence, or is unable to consent or refuse:

FRESNO COUNTY SHERIFF'S OFFICE
JAIL DIVISION POLICIES AND PROCEDURES

TITLE: SEXUAL MISCONDUCT AND ABUSE
FILE: SEXUAL ABUSE

NO: D-360

1. Contact between the penis and the vulva or the penis and the anus, including penetration, however slight.
 2. Contact between the mouth and the penis, vulva, or anus.
 3. Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument.
 4. Any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person, **excluding contact incidental to a physical altercation.**
- B. **SEXUAL ABUSE BY A STAFF MEMBER, CONTRACTOR, OR VOLUNTEER** includes any of the following acts, with or without consent of the inmate:
1. Contact between the penis and the vulva or the penis and the anus, including penetration, however slight.
 2. Contact between the mouth and the penis, vulva, or anus.
 3. Contact between the mouth and any body part where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire.
 4. Penetration of the anal or genital opening, however slight, by any part of the body of one person, or of any object, substance, instrument or device, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire.
 5. Any other intentional contact, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse or gratify sexual desire.
 6. Any attempt, threat, or request by a staff member, contractor, or volunteer to engage in the activities described in this section [B(1-5)].
 7. Any display by a staff member, contractor, or volunteer of his or her uncovered genitalia, buttocks, or breast in the presence of an inmate.
 8. Voyeurism by a staff member, contractor, or volunteer.

FRESNO COUNTY SHERIFF'S OFFICE
JAIL DIVISION POLICIES AND PROCEDURES

TITLE: SEXUAL MISCONDUCT AND ABUSE
FILE: SEXUAL ABUSE

NO: D-360

C. **SEXUAL HARASSMENT** includes:

1. Repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one inmate directed toward another; and
2. Repeated verbal comments or gestures of a sexual nature to an inmate by a staff member, contractor, or volunteer, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.

D. **SEXUAL MISCONDUCT**

1. As it relates to inmates, includes acts of indecent exposure, sexual disorderly conduct and exhibitionist masturbation. Any inmate who "willfully and lewdly" exposes their private parts or who touches (without exposing) their genitals, buttocks, or breasts in a manner that demonstrates it is for the purpose of sexual arousal, gratification, annoyance, or offense will be subject to a rule violation and/or to criminal prosecution.
2. As it relates to employees, any sexual behavior by a departmental employee directed toward an inmate as defined in Penal Code Section 289.6. The legal concept of "consent" does not exist between employees and inmates; any sexual behavior between them constitutes sexual misconduct and shall subject the employee to disciplinary action and/or to prosecution under the law. Sexual misconduct also includes, but is not limited to, conversations or correspondence that suggests a romantic relationship.

E. **EXONERATED** – the incident under investigation occurred, but was lawful and proper.

F. **GENDER NONCONFORMING** – a person whose appearance or manner does not conform to traditional societal gender expectations.

G. **INTERSEX** - a person whose sexual or reproductive anatomy or chromosomal pattern does not seem to fit typical definitions of male or female.

H. **NOT SUSTAINED ALLEGATION** – also referred to as an *unsubstantiated allegation*. An allegation that was investigated and produced insufficient evidence to make a final determination as to whether or not the event occurred.

FRESNO COUNTY SHERIFF'S OFFICE
JAIL DIVISION POLICIES AND PROCEDURES

TITLE: SEXUAL MISCONDUCT AND ABUSE
FILE: SEXUAL ABUSE

NO: D-360

- I. **SEXUAL SOLICITATION** – the solicitation of another person to engage in sexual activity.
- J. **SUSTAINED ALLEGATION** – also referred to as a *substantiated allegation* – an allegation that was investigated and determined to have occurred.
- K. **TRANSGENDER** – a person whose gender identity (i.e., internal sense of feeling male or female) is different from a person's assigned sex at birth.
- L. **UNFOUNDED ALLEGATION** – an allegation that was investigated and determined not to have occurred.
- M. **VICTIM SUPPORT PERSON** – means any person of the alleged victim's choosing, which could include another inmate, personal friend, chaplain, or family member.
- N. **VOYEURISM** by a staff member, contractor, or volunteer means an invasion of privacy of an inmate by staff for reasons unrelated to official duties, such as peering at an inmate who is using a toilet in his or her cell to perform bodily functions; requiring an inmate to expose his or her buttocks, genitals or breasts; or taking images of all or part of an inmate's naked body or of an inmate performing bodily functions.

III. PREVENTION PLANNING

- A. All staff is to be trained to recognize the signs of sexual abuse and sexual harassment and understand their responsibility in the detection, prevention, response and reporting of an alleged sexual abuse or sexual harassment.
- B. The Sheriff's Office has developed and makes its best effort to comply on a regular basis with a staffing plan that provides for adequate levels of staffing to protect inmates against sexual abuse. Deviations from the staffing plan are documented via Telestaff and/or the Watch Commander's Summary, noting the reason for the staffing deviation (e.g., emergency, etc.).
- C. Sergeants are responsible to conduct and document unannounced rounds on all shifts to deter sexual abuse and sexual harassment. The checks shall be documented via the Safety Check System. Staff is prohibited from alerting other staff members that the supervisory rounds are occurring.

FRESNO COUNTY SHERIFF'S OFFICE
JAIL DIVISION POLICIES AND PROCEDURES

TITLE: SEXUAL MISCONDUCT AND ABUSE
FILE: SEXUAL ABUSE

NO: D-360

- D. Inmates are able to shower, perform bodily functions, and change clothing without staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine cell checks.
1. In order to minimize cross gender exposure, staff of the opposite biological sex shall announce their presence when entering the housing unit. This announcement is required at the beginning of each shift and/or when the status quo within the housing unit changes (e.g., an officer of the opposite sex relieves an assigned officer). An advisement of this policy will be included in the *Inmate Orientation Handbook* so as to allow the inmate to take into consideration that staff of the opposite gender may be present when performing bodily and bathing functions.
 2. If a security concern exists, officers will NOT announce their presence.

IV. RESPONSIBILITIES

- A. The Services Lieutenant shall be assigned as the designated PREA Coordinator. The PREA Coordinator is responsible to oversee efforts to comply with the PREA standards in all facilities, and assess facility compliance with PREA policies and applicable laws.
- B. The designated Sergeant assigned as the PREA Compliance Manager shall be responsible to:
 1. Review all allegations, determine which allegations fall within the definition of sexual abuse or sexual misconduct, and forward those allegations for investigation, as appropriate. (Emergency incidents requiring immediate action will be referred to the Persons Crimes Unit via the Watch Commander and/or by the responding deputy.)
 - a. Ensure that the inmate is referred for medical/mental health evaluation.
 - b. Coordinate and track referrals of allegations to the Persons Crimes Unit, Internal Affairs Unit, and prosecutors.

FRESNO COUNTY SHERIFF'S OFFICE
JAIL DIVISION POLICIES AND PROCEDURES

TITLE: SEXUAL MISCONDUCT AND ABUSE
FILE: SEXUAL ABUSE

NO: D-360

- c. Ensure that any allegation of sexual abuse that occurred at another facility is reported to the appropriate office of the agency where the alleged abuse occurred.
 - d. For allegations determined *not* to fall within the definition of sexual misconduct, the PREA Compliance Manager will ensure the reporting party is notified and any necessary action is taken. The notification shall be documented.
 - e. Investigate (or cause to be investigated) all allegations of sexual harassment, including third-party and anonymous reports.
 - f. Conduct (or cause to be conducted) an administrative investigation to determine whether staff actions or inactions contributed to an act of abuse.
 - i. Substantiation shall be based on a preponderance of the evidence.
 - ii. The departure of the alleged abuser or victim from the employment or control of the Sheriff's Office shall not provide a basis for terminating an investigation.
 - g. Ensure that the inmate is informed as to whether the allegation has been determined to be sustained, not sustained, or unfounded, as well as any subsequent actions (e.g., indictments, convictions). (Refer to Section XXI.)
2. Ensure that the conduct and treatment of inmates or staff who have reported sexual abuse or cooperated with investigations are monitored for signs of retaliation for at least ninety (90) days following their report or cooperation.
 3. Keep the PREA Coordinator and Command Staff informed on PREA-related issues.
 4. Conduct an annual vulnerability assessment for each facility. Staffing and monitoring systems shall be assessed for adjustments and documented on a *PREA Vulnerability Assessment* form. Copies of the forms shall be forwarded to the PREA Coordinator and the Jail Division Bureau Commanders.

FRESNO COUNTY SHERIFF'S OFFICE
JAIL DIVISION POLICIES AND PROCEDURES

TITLE: SEXUAL MISCONDUCT AND ABUSE
FILE: SEXUAL ABUSE

NO: D-360

5. Track, monitor, and ensure that recommendations for improvement made by Command Staff (subsequent to a sexual abuse incident review) are implemented, or document the reason for not doing so.
 6. Maintain, review, and collect data from all incident-based documents, including reports, investigation files, and sexual abuse incident reviews.
 7. Ensure that required documents are prepared on an annual basis and published on the Sheriff's website, to include:
 - a. The aggregated incident-based sexual abuse data.
 - b. A report of findings and corrective actions for each facility, as well as the agency as a whole.
 - c. A copy of this policy.
- C. The Facility Sergeants shall ensure compliance with policy and PREA in each of their respective assigned facilities. The Facility Sergeants shall be responsible to:
1. Verify the presence of the required Sexual Assault/PREA posters in all housing units and other appropriate common areas (i.e., medical rooms, gymnasiums, and program classrooms) during the weekly cleanliness inspections.
 2. Assist in monitoring the conduct and treatment of inmates or staff who have reported sexual abuse or cooperated with investigations for signs of retaliation.
 3. Assist in the implementation of any corrective action plan.
- D. Staff shall accept reports made verbally, in writing, anonymously, and from third parties and shall promptly document all reports.
1. Employees shall maintain a professional demeanor when interacting with an alleged victim of sexual abuse, and display sensitivity to the potential emotional impact of the situation.
 2. Incident-specific information shall be treated as confidential, and disclosure made only to staff who have a "need to know" and to persons and entities as permitted or required by law.

FRESNO COUNTY SHERIFF'S OFFICE
JAIL DIVISION POLICIES AND PROCEDURES

TITLE: SEXUAL MISCONDUCT AND ABUSE
FILE: SEXUAL ABUSE

NO: D-360

3. Staff shall not discriminate in their response to inmates who are gay, bisexual, transgender, intersex, or gender nonconforming who report that they have experienced sexual abuse.

V. EMPLOYEE TRAINING

- A. All employees who may have contact with inmates shall be trained on the Sheriff's Office zero-tolerance policy for sexual abuse and sexual harassment. The training shall include instruction related to the prevention, detection, reporting, and response to inmate sexual abuse.
 1. This training will be conducted during new employee orientation, and included in the curriculum of the Correctional Training Academy.
 2. All employees shall receive refresher training every two (2) years.
 3. In years in which an employee does not receive refresher training, the Sheriff's Office shall provide refresher information on current sexual abuse and sexual harassment policies.
- B. In addition to general training provided to all employees, the Sheriff's Office shall ensure that specialized training is provided to Health Services personnel, sex crime investigators, and other staff identified by the department.
- C. All volunteers and contractors who have contact with inmates shall be notified of the zero-tolerance policy regarding sexual abuse and sexual harassment, and trained on their responsibilities regarding sexual abuse prevention, detection, and response. The level and type of training provided shall be based on the services they provide and level of contact they have with inmates.

VI. INMATE EDUCATION

- A. All inmates will be provided with a copy of the *Inmate Orientation Handbook* during the intake process.
 1. The handbook informs the inmates of the zero-tolerance policy regarding sexual abuse and sexual harassment and how to report incidents or suspicions of sexual abuse or sexual harassment.
 2. Appropriate provisions shall be made to ensure effective education for inmates who are not fluent in English, are deaf, visually impaired, or

FRESNO COUNTY SHERIFF'S OFFICE
JAIL DIVISION POLICIES AND PROCEDURES

TITLE: SEXUAL MISCONDUCT AND ABUSE
FILE: SEXUAL ABUSE

NO: D-360

otherwise disabled, as well as to inmates who have limited reading skills. The Booking Officer should notify the ADA Coordinator or the Booking Sergeant if alternative arrangements need to be made.

- C. An educational video will be provided to the inmates on a weekly basis in both English and Spanish.
- D. Key information is continuously and readily available and visible to inmates. In addition to the *Inmate Orientation Handbook* and the weekly video showings, posters are displayed in appropriate locations throughout the facilities, to include all housing units and common areas (i.e., medical rooms, gymnasiums, program classrooms and court holding). The posters are designed to inform inmates:
 - 1. That all inmates have a right to be safe and free from sexual harassment and sexual assaults.
 - 2. The telephone numbers and current methods available for reporting sexual abuse, retaliation, or sexual harassment.

VII. SCREENING FOR APPROPRIATE PLACEMENT

- A. All inmates shall be assessed during the initial classification process for their risk of being sexually abused by other inmates or sexually abusive *toward* other inmates.
- B. The intake screening shall consider, but is not limited to, the following criteria to assess inmates for risk of sexual victimization:
 - 1. Age
 - 2. Physical stature
 - 3. Mental, physical, or developmental disability
 - 4. First time offender status
 - 5. Sex offender status (per criminal history and previous incarcerations)
 - 6. Past history of victimization
 - 7. Inmate's own perception of vulnerability
 - 8. Perception of inmate to be lesbian, gay, bisexual, transgender, intersex, or gender nonconforming

FRESNO COUNTY SHERIFF'S OFFICE
JAIL DIVISION POLICIES AND PROCEDURES

TITLE: SEXUAL MISCONDUCT AND ABUSE
FILE: SEXUAL ABUSE

NO: D-360

- C. An inmate may be identified for vulnerability if one or more of these factors apply with sufficient documentation by the Population Management Officer to warrant concern. The information shall be used to determine housing and program assignments with the goal of keeping separate those inmates at high risk of being sexually victimized from those at high risk of being sexually abusive.
- D. Inmates at high risk for sexual victimization shall not be placed in involuntary segregated housing unless an assessment of all available alternatives determines that there is no available alternative means of separation from likely abusers. If unable to conduct such an assessment immediately, the inmate may be placed in involuntary segregated housing for less than twenty-four (24) hours while completing the assessment.
1. Inmates placed in segregated housing for this purpose shall have access to programs, privileges, education, and work opportunities to the extent possible. If restricted from access to programs, privileges, education, or work opportunities, the following shall be documented by the Offender Programs Manager:
 - a. The opportunities that have been limited.
 - b. The duration of the limitation.
 - c. The reasons for such limitation.
 2. The inmate may be assigned to involuntary segregated housing only until an alternative means of separation from likely abusers can be arranged. Such an assignment shall not ordinarily exceed a period of thirty (30) days, and documentation shall include:
 - a. The basis for the concern for the inmate's safety.
 - b. The reason why no alternative means of separation can be arranged.
 3. Every thirty (30) days, Population Management shall afford each involuntarily segregated inmate a review to determine whether there is a continuing need for separation from the general population.

FRESNO COUNTY SHERIFF'S OFFICE
JAIL DIVISION POLICIES AND PROCEDURES

TITLE: SEXUAL MISCONDUCT AND ABUSE
FILE: SEXUAL ABUSE

NO: D-360

- E. Inmates are evaluated to specifically determine if there are indications that he/she is a sexually abusive inmate, prone to victimize other inmates, especially in regard to sexual behavior. Indications include the following:
 - 1. History of sexually abusive crimes and prior convictions for violent offenses (per previous arrests and criminal history).
 - 2. History of prior institutional violence or sexually abusive behavior (per previous incarcerations).
- F. In deciding inmate housing and programming assignments for transgender or intersex inmates, the Population Management Unit shall consider on a case-by-case basis whether a placement would ensure the inmate's health and safety, and whether the placement would present management or security problems.
- G. Inmates may not be disciplined for refusing to answer, or for not disclosing complete information in response to questions asked concerning victimization and vulnerability.

VIII. PRIOR SEXUAL ABUSE DISCLOSED DURING INTAKE SCREENING

- A. If an inmate discloses prior sexual victimization, whether it occurred in an institutional setting or in the community, the Population Management Officer shall ensure that the inmate is offered a follow-up meeting with a medical or mental health practitioner. This is true regardless of whether the victimization has been previously reported upon a prior admission.
- B. The Population Management Officer shall be responsible to document the information in an incident report and to:
 - 1. Document the inmate's acceptance or rejection to the offer of the follow-up meeting on the *Inmate Classification Questionnaire* form.
 - 2. Notify Health Services if the inmate wishes to have a follow-up meeting. Document how and/or to whom the notification was made on the *Inmate Classification Questionnaire* form.
 - 3. Forward a copy of the pertinent section of the form that indicates prior sexual victimization to the PREA Compliance Manager (regardless of whether or not the inmate wishes to have a follow-up meeting). The form may be scanned and emailed, or sealed in an envelope and forwarded.

FRESNO COUNTY SHERIFF'S OFFICE
JAIL DIVISION POLICIES AND PROCEDURES

TITLE: SEXUAL MISCONDUCT AND ABUSE
FILE: SEXUAL ABUSE

NO: D-360

4. A corresponding email shall be sent to the PREA Compliance Manager and a "courtesy copy" (CC) to the supervising Population Management Sergeant. "PREA" shall be referenced on the Subject line and the email should contain any additional information, as was disclosed. In cases involving other facilities, additional notifications must be made. (See VIII(D), as follows.)
- C. If the prior sexual victimization occurred in a **Fresno County Sheriff's Office facility**, the PREA Compliance Manager will be responsible to determine if enough information is available to involve the Persons Crime Unit in a criminal investigation.
 - D. If the prior sexual victimization occurred while confined at **another facility**, the other agency must be notified as soon as possible, but no later than seventy-two (72) hours after receiving the allegation. To ensure timely compliance, copies of the *Inmate Classification Questionnaire* and corresponding email shall also be forwarded to the Services Lieutenant and on-duty Watch Commander, in addition to the PREA Compliance Manager. The email should be flagged as "High Importance."
 1. The PREA Compliance Manager will be responsible to make the notification.
 2. If the PREA Compliance Manager is not available to make the notification, the PREA Coordinator shall do so. If neither are available, the Watch Commander shall ensure that the notification is made. The date, time, telephone number and name of the person notified shall be memorialized in an email and forwarded to the PREA Compliance Manager. (Refer also to XII(D).)
 - E. If the prior sexual victimization occurred while in the **community** (i.e., NOT in an institutional setting) and the offense is contemporaneous and/or the inmate requests to press charges, the supervising Population Management Sergeant shall notify the appropriate law enforcement agency.
 - F. For those inmates who so desire, the follow-up meeting with a medical or mental health practitioner shall be provided within fourteen (14) days of the intake screening.

FRESNO COUNTY SHERIFF'S OFFICE
JAIL DIVISION POLICIES AND PROCEDURES

TITLE: SEXUAL MISCONDUCT AND ABUSE
FILE: SEXUAL ABUSE

NO: D-360

IX. REASSESSMENT

- A. Within a set time period, not to exceed thirty (30) days, Population Management shall reassess each inmate's risk of victimization or abusiveness based upon any additional, relevant information received since the intake screening.
- B. An inmate's risk level shall be reassessed when warranted due to a referral, request, or incident of sexual abuse, or receipt of additional information that bears on the inmate's risk of sexual victimization or abusiveness. The Population Management Unit shall be immediately notified in the following circumstances:
 - 1. If an employee has significant concern that an inmate may be subject to sexual victimization.
 - 2. If an inmate displays predatory behavior.
- C. Transgender and intersex inmates shall be reassessed at least twice each year to review any threats to safety experienced by the inmate.

X. DETECTION OF SEXUAL ASSAULT

- A. All employees have a responsibility to protect the inmates in their custody. Staff shall immediately report any knowledge, suspicion, or information regarding sexual abuse, sexual misconduct, sexual solicitation, sexual harassment, retaliation by inmate or staff for reporting, or staff neglect or violation of responsibility that may have contributed to such incidents occurring while incarcerated. Staff shall, except as noted elsewhere in this policy, promptly report the information to their immediate supervisor and document the report. The supervisor shall notify the Watch Commander, who will notify the designated PREA Compliance Manager. In addition to this reporting, employees have a responsibility to assist the inmate and refer him/her to Health Services for evaluation. (Unless the need is immediate, this will most commonly be accomplished by the PREA Compliance Manager.)
- B. An inmate may report sexual abuse that occurs under the jurisdiction of the Sheriff's Office to any employee, volunteer, or contractor. If the person who receives the report is a non-custody employee, he/she shall promptly notify their supervisor and report the information to the Watch

FRESNO COUNTY SHERIFF'S OFFICE
JAIL DIVISION POLICIES AND PROCEDURES

TITLE: SEXUAL MISCONDUCT AND ABUSE
FILE: SEXUAL ABUSE

NO: D-360

Commander. If immediate action is required, *any* correctional staff member may be notified.

- C. Employees are reminded that victims of sexual abuse may be seriously traumatized both physically and/or mentally. Employees are expected to be sensitive to the inmate during their interactions with him/her.

XI. SEXUAL ACTIVITY BETWEEN INMATES AND EMPLOYEES

- A. There is no consensual sex in a custodial/supervisory relationship. Any sexual activity between employees and inmates is inconsistent with the professional ethical principles and policies of the Sheriff's Office. All such allegations will be investigated.
- B. Acts of sexual abuse, sexual misconduct, sexual solicitation, or sexual harassment against inmates, retaliation against inmates who refuse to submit to sexual activity, or intimidation of a witness, may be a crime. Retaliation against individuals because of their involvement in the reporting or investigation of sexual abuse, sexual misconduct or sexual harassment is prohibited.
- C. All cases involving sexual abuse, sexual misconduct, sexual solicitation, or sexual harassment will be referred to the appropriate investigating unit, and if appropriate, such cases will be referred to the District Attorney for prosecution. The involved Lieutenant shall be responsible to notify the PREA Compliance Manager upon completion of the investigation (if not previously aware), for tracking purposes.
- D. All incidents of sexual abuse, sexual misconduct, sexual solicitation, sexual harassment, and retaliatory acts against individuals for reporting incidents will result in corrective and/or disciplinary action, up to and including termination. Termination shall be the presumptive disciplinary sanction for staff who have engaged in sexual abuse.
1. All terminations for violations of sexual abuse or sexual harassment policies, or resignations by staff who would have been terminated if not for their resignation, shall be reported to law enforcement agencies (unless the activity was clearly not criminal) and to any relevant licensing bodies.
 2. Failure of employees to report incidents will result in corrective and/or disciplinary action.

FRESNO COUNTY SHERIFF'S OFFICE
JAIL DIVISION POLICIES AND PROCEDURES

TITLE: SEXUAL MISCONDUCT AND ABUSE
FILE: SEXUAL ABUSE

NO: D-360

XII. REPORTING

- A. Inmates may privately report sexual abuse, sexual misconduct, sexual solicitation, and sexual harassment; retaliation by other inmates or staff for reporting sexual abuse and sexual harassment; and staff neglect or violation of responsibilities that may have contributed to an incident of sexual abuse to any employee, volunteer or contractor. Inmates are encouraged to report when either they are the victim, or they have knowledge or suspicion of an act having occurred or occurring in a correctional institution, or any staff neglect or violation of responsibilities that may have contributed to such an incident.
1. Such allegations shall be treated with discretion and, to the extent permitted by law, confidentially. Staff shall, except as noted elsewhere in this policy, promptly report the information to their immediate supervisor and document the report. The supervisor shall notify the Watch Commander and the PREA Compliance Manager.
 2. Apart from reporting to their immediate supervisor, or discussing with the PREA Coordinator or PREA Compliance Manager, employees shall not reveal any information related to a sexual abuse report to anyone other than to the extent necessary, as specified in this policy, to make treatment, investigation, and other security and management decisions.
 3. Due to the sensitivity involved when an allegation involves another employee, the receiving employee should report the violation directly to their Watch Commander. Employees not comfortable with reporting violations of this policy to their Watch Commander may bypass the chain of command and report the allegation to any supervisor. The chain of command does NOT need to be followed and an incident report will not be written via OffenderTrak. The employee shall document the incident as instructed by the Watch Commander.
- B. Additionally, inmates may report abuse, retaliation, or harassment by writing to the Sheriff's Office Internal Affairs Unit, or by contacting the local Rape Crisis Center at (559) 222-7273. The inmate may remain anonymous upon request. Even though an anonymous report may not allow for a full investigation into the incident, providing information about an incident without the identity of the victim will still alert staff to potential concerns and may help reveal unsafe areas within the facility.

FRESNO COUNTY SHERIFF'S OFFICE
JAIL DIVISION POLICIES AND PROCEDURES

TITLE: SEXUAL MISCONDUCT AND ABUSE
FILE: SEXUAL ABUSE

NO: D-360

- C. Employees shall accept reports made verbally, in writing, anonymously, and from third parties and shall promptly document all reports.
 - 1. If the PREA Compliance Manager is available, the reporting person should be referred or transferred to speak directly to the PREA Compliance Manager.
 - 2. If the PREA Compliance Manager is not available, the employee contacted shall document the information in an email and forward to the PREA Compliance Manager (or notify the Watch Commander, if immediate response is indicated).
- D. Upon receiving an allegation that an inmate was sexually abused while confined at another facility, the PREA Compliance Manager shall email and notify the head of the agency (or appropriate office of the agency) where the alleged abuse occurred.
 - 1. Such notification shall be provided as soon as possible, but no later than seventy-two (72) hours after receiving the allegation.
 - 2. The PREA Compliance Manager shall ensure that documentation is made indicating that such notification was provided.
 - 3. Any facility receiving such notification shall ensure that the allegation is investigated.
- E. Inmate interpreters, inmate readers, or other types of inmate assistants should not be used except in limited circumstances where an extended delay in obtaining an effective interpreter could compromise the inmate's safety, the performance of first-response duties, or the investigation of the inmate's allegations.

XIII. CREDIBILITY

- A. The credibility of an alleged victim, suspect, or witness shall be assessed on an individual basis and shall not be determined by the person's status as inmate or staff. The Sheriff's Office will not require an inmate who alleges sexual abuse to submit to a polygraph examination or other truth-telling device as a condition for proceeding with the investigation of such an allegation.
- B. If it is determined that an inmate's allegations are false, the inmate may be subject to disciplinary action. A charge of "making a false report of a

FRESNO COUNTY SHERIFF'S OFFICE
JAIL DIVISION POLICIES AND PROCEDURES

TITLE: SEXUAL MISCONDUCT AND ABUSE
FILE: SEXUAL ABUSE

NO: D-360

crime” is appropriate if evidence discovered during the investigation would support that charge.

XIV. INITIAL (IMMEDIATE) RESPONSE

- A. Upon learning of an allegation that an inmate was sexually abused, the employee shall immediately notify the Facility Sergeant and:
1. Separate the alleged victim and abuser.
 2. Preserve and protect any crime scene until appropriate steps can be taken to collect any evidence.
 3. Immediately notify the on-duty Charge Nurse. Inmate victims of sexual abuse shall receive timely, unimpeded access to emergency medical treatment and crisis intervention services.
- B. If the abuse occurred within a time period that still allows for the collection of physical evidence (and where appropriate, given the incident alleged), the employee shall request that the victim not take any actions that could destroy physical evidence, including:
1. Showering or washing
 2. Brushing teeth
 3. Changing or removing clothes
 4. Using the restroom facilities
 5. Drinking or eating
- C. Obtain only the necessary information (e.g., victim’s identity, location and time of the incident, name and/or description of alleged offender(s) and any possible witnesses) but **do not interview the victim further**. Do not ask detailed questions or pressure the victim for responses or information about the incident.
- D. Do not attempt to interrogate the alleged suspect, unless circumstances make it unavoidable. If the abuse occurred within a time period that still allows for the collection of physical evidence, 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, drinking, or eating.

FRESNO COUNTY SHERIFF'S OFFICE
JAIL DIVISION POLICIES AND PROCEDURES

TITLE: SEXUAL MISCONDUCT AND ABUSE
FILE: SEXUAL ABUSE

NO: D-360

- E. If the person notified is a volunteer or contractor, the volunteer or contractor shall be required to request the victim not take any actions that could destroy physical evidence, and then notify correctional staff.
- F. The provision of safe housing options, medical care, and the like shall not be contingent upon the victim's willingness to press charges.

XV. DOCUMENTATION

- A. A report shall be written that documents the incident, using only necessary, basic information. Reference should be made to the criminal report, which should contain the incident-specific information. Apart from reporting to designated supervisors, the PREA Compliance Manager, the PREA Coordinator, or investigators, incident-specific information shall be treated as confidential, and disclosure made only to staff who have a "need to know" in order to make treatment, investigation, and other security and management decisions.
- B. The Facility Sergeant shall ensure that the victim of a sex offense (pursuant to GC 6254(f)(2)) is informed that his/her name will become a matter of public record unless he/she requests that it *not* become a matter of public record, pursuant to PC 293(a).
 - 1. The advisement and the victim's response shall be memorialized in the incident report.
 - 2. If the victim has requested confidentiality, ***CONFIDENTIAL*** shall be typed on the first line in the body of the report. The inmate's name will still be used, but cannot be released except to specified persons as authorized by law. Any written report concerning the offense must indicate that the victim requested confidentiality of his/her name pursuant to PC 293(a).
- C. The Watch Commander shall ensure that a copy of the report is forwarded to the PREA Compliance Manager.

XVI. COORDINATED RESPONSE

- A. The discovering employee shall (except as noted elsewhere in this policy) promptly report the information to their immediate supervisor and document the report. The supervisor shall be responsible to notify the Watch Commander.

FRESNO COUNTY SHERIFF'S OFFICE
JAIL DIVISION POLICIES AND PROCEDURES

TITLE: SEXUAL MISCONDUCT AND ABUSE
FILE: SEXUAL ABUSE

NO: D-360

- B. The Watch Commander shall ensure that:
1. A deputy is dispatched to the Jail.
 2. The PREA Coordinator is notified in all cases, and copies of associated reports are forwarded.
 3. The Bureau Commander is notified. If the victim alleges he/she was involved with or assaulted by staff, the Bureau Commander shall notify the Internal Affairs Lieutenant.
- C. The responding deputy (or the PREA Compliance Manager or PREA Coordinator) shall refer all in-custody sexual assaults to the Persons Crimes Unit for investigation.
- D. The investigators shall be responsible to:
1. Gather and preserve evidence, including any available physical and biological evidence and any available electronic monitoring data.
 2. Interview alleged victims, suspects, and witnesses.
 3. Review prior complaints and reports of sexual abuse involving the suspect.
 4. Assess the credibility of the alleged victim, suspect, or witness on an individual basis and not by the person's status as inmate or staff.
 5. Document in written reports a description of physical, testimonial, documentary and other evidence.
 6. Refer substantiated allegations of conduct that appears to be criminal to the District Attorney for possible prosecution.
- E. Health Services staff shall assess the inmate's acute medical needs.
1. If any life-threatening injuries exist, response may include the need to request emergency transportation (i.e., ambulance). When the call is made to request an ambulance, the dispatcher should be informed that the injured inmate is the victim of sexual assault.
 2. Health Services staff shall be cognizant to maintain intact any physical evidence which may be found on the victim's person or clothing.
- F. The inmate will be transported to the hospital and offered a forensic examination.

FRESNO COUNTY SHERIFF'S OFFICE
JAIL DIVISION POLICIES AND PROCEDURES

TITLE: SEXUAL MISCONDUCT AND ABUSE
FILE: SEXUAL ABUSE

NO: D-360

- G. The inmate shall be assigned a custody escort who will remain with the victim for the entire process, whenever possible.
 1. Gender preference should be considered when assigning a custody escort to the victim. The custody escort will ensure effective communication (i.e., complexity of the issues, language barriers, and literacy).
 2. The escort shall not be present in the examination room during the sexual assault examination, unless requested by the victim or hospital staff, or ordered by the Watch Commander.
- H. At the time the victim is sent to the hospital, the Watch Commander or designee shall contact the Rape Crisis Center to request a Victim Sexual Assault Advocate be dispatched to the hospital. The Victim Advocate will provide emotional support, crisis intervention, information, and referrals. Depending on the crime, the inmate may also have a right to a Victim Support person (refer to Section XVII).
- I. The examination will be performed by a Sexual Assault Forensic Examiner (SAFE) or Sexual Assault Nurse Examiner (SANE).
 1. If SAFE's or SANE's cannot be made available, the examination can be performed by other qualified medical practitioners. In such circumstances, the effort to provide a SAFE or SANE shall be documented.
 2. Treatment services 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.
 3. The hospital will provide emergency contraception when medically appropriate.
- J. Upon return to the Jail, all victims of a sexual assault shall be referred to Health Services for an urgent suicide risk assessment. Health Services staff shall evaluate the victim within one (1) hour of referral. Until that time, the inmate shall be placed under constant and direct supervision to ensure he/she does not attempt to hurt him/herself or someone else.
 1. Health Services staff shall be responsible to monitor victims for suicidal impulses, post-traumatic stress disorder, depression, and other mental health consequences.

FRESNO COUNTY SHERIFF'S OFFICE
JAIL DIVISION POLICIES AND PROCEDURES

TITLE: SEXUAL MISCONDUCT AND ABUSE
FILE: SEXUAL ABUSE

NO: D-360

2. The victim shall be offered crisis intervention counseling, appropriate to the individual needs of the victim.
 3. The victim's information will be referred to the suicide prevention multi-disciplinary meeting to ensure follow-up care/housing considerations were made.
- K. Follow-up testing for pregnancy, sexually transmitted infections/diseases and HIV will be offered as clinically indicated and will be the responsibility of the hospital. If pregnancy results, victims shall receive timely and comprehensive information about, and timely access to, all lawful pregnancy-related medical services.
- L. Evaluation and treatment of 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.

XVII. VICTIM ADVOCATE AND SUPPORT PERSON

- A. Victims of the crimes listed below have the right to a Victim Advocate and Victim Support person for both the medical examination and the investigatory interview:
1. PC 261 (rape)
 2. PC 286 (sodomy)
 3. PC 288a (oral copulation)
 4. PC 289 (forcible acts of sexual penetration)
- B. In incidents where an inmate has alleged sexual assault, the Watch Commander/designee or detective shall immediately notify the local Rape Crisis Center whenever a victim of a sexual assault is transported to a hospital for any forensic examination.
- C. The victim has a right to have a Victim Advocate present and a Victim Support person of the victim's choosing at the examination. In most cases, the Victim Advocate will be from the Rape Crisis Center.
- D. The Victim Support person may be excluded from the examination if the Watch Commander/designee, detective, or medical provider determines that the presence of the Victim Support person would be detrimental to

FRESNO COUNTY SHERIFF'S OFFICE
JAIL DIVISION POLICIES AND PROCEDURES

TITLE: SEXUAL MISCONDUCT AND ABUSE
FILE: SEXUAL ABUSE

NO: D-360

the purpose of the examination or poses a threat to the safety and security of the facility or the hospital. If a Victim Support person is excluded, the Watch Commander/designee, or detective shall document the reason (e.g., if time for the support person to attend would result in a significant delay and/or the person requested would present a risk to the safety/security of the facility/hospital).

- E. Victims of the crimes listed in Section XVII(A) have the right to have a Victim Advocate and Victim Support person of their choosing present at any interview by law enforcement, the district attorney, or defense attorneys. The victim must be notified verbally or in writing of this right by the attending investigator or the district attorney prior to the interview.
1. If the investigator or district attorney determines that the presence of the Victim Support person would be detrimental to the interview, the Victim Support person may be excluded from the interview.
 2. Reasons for exclusion of the Victim Support person are the same as identified in the medical examination process (refer to XVII(D)).
 3. An initial investigation by law enforcement to determine whether a crime has been committed and the identity of the suspects shall not constitute a law enforcement interview for purpose of this section.

XVIII. SUSPECT PROCESSING

- A. Staff shall ensure that there is no physical, verbal, or visual contact between the victim and suspect, whenever possible. Correctional staff shall not interrogate the alleged suspect unless circumstances make it unavoidable.
1. The investigating detectives will provide a *Miranda* warning and interview the suspect to obtain his/her account of the incident.
 2. The suspect will be transported to the designated medical location for the forensic examination.
 3. The suspect must consent to the forensic examination or the deputy/detective will take steps necessary to obtain a search warrant.
 4. Upon completion of the forensic medical examination, the suspect will be transferred to an administrative segregation unit. The alleged aggressor shall be held in segregation pending investigation until the investigation is complete.

FRESNO COUNTY SHERIFF'S OFFICE
JAIL DIVISION POLICIES AND PROCEDURES

TITLE: SEXUAL MISCONDUCT AND ABUSE
FILE: SEXUAL ABUSE

NO: D-360

- B. The Persons Crimes Unit will be responsible for all phases of the criminal investigation if the allegations are against an employee.
 - 1. Immediate efforts shall be made to eliminate contact between the victim and the staff member.
 - 2. The Watch Commander shall determine if the employee should be placed on administrative leave consistent with departmental policy during the course of the investigation.
- C. Substantiated allegations of conduct that appear to be criminal shall be referred for prosecution.
- D. The departure of the alleged abuser or victim from the employment or control of the Sheriff's Office shall not provide a basis for terminating an investigation.

XIX. DELAYED REPORTING OF SEXUAL ABUSE – MORE THAN 72 HOURS

- A. If the alleged sexual assault is reported or discovered more than 72 hours after the incident, the employee shall notify their supervisor, who shall notify the Watch Commander. The Watch Commander shall notify the PREA Compliance Manager.
- B. The alleged crime scene shall be secured (if feasible) and the alleged suspect (if identified) shall be placed into administrative segregation.
- C. A medical opinion shall be obtained to determine whether the victim is to be taken for a forensic examination. In addition, the victim should be asked if he/she retained any evidence of the assault (e.g., soiled bedding, clothing, etc.).
- D. Hospital medical staff will be responsible to conduct an examination of the victim and alleged suspect to determine the presence or absence of physical trauma, and perform follow-up testing for sexually transmitted diseases and pregnancy testing, as appropriate.
- E. The victim shall be referred to Health Services for evaluation and counseling.

XX. RETALIATION

- A. Retaliation against any employee or inmate for reporting or cooperating with a sexual abuse investigation is strictly prohibited.

FRESNO COUNTY SHERIFF'S OFFICE
JAIL DIVISION POLICIES AND PROCEDURES

TITLE: SEXUAL MISCONDUCT AND ABUSE
FILE: SEXUAL ABUSE

NO: D-360

- B. Retaliation is a form of employee misconduct. Any evidence of retaliation shall be considered a separate violation of this policy.
- C. The PREA Coordinator, with assistance from the PREA Compliance Manager, shall ensure that the conduct and treatment of inmates or staff who have reported sexual abuse or cooperated with investigations are monitored for signs of retaliation for at least ninety (90) days following their report or cooperation. Items that should be monitored include any inmate disciplinary reports, housing or program changes, or negative performance reviews or reassignments of staff.
 - 1. All actions taken to remedy any such retaliation shall be documented and forwarded to the affected Watch Commander. If necessary, the Watch Commander shall act promptly to remedy any such retaliation.
 - 2. Monitoring shall continue beyond ninety (90) days if the initial monitoring indicates a continuing need.
 - 3. The obligation to monitor shall terminate if the allegation is determined to be unfounded.
- D. If any other individual who cooperates with an investigation expresses a fear of retaliation, appropriate measures shall be taken to protect that individual against retaliation.
 - 1. The individual should report their concern to a Watch Commander (or higher authority).
 - 2. The Watch Commander (or higher authority) shall act promptly to protect the individual from any such retaliation.

XXI. REPORTING TO INMATES

- A. Following an investigation into an inmate's allegation that they suffered sexual abuse in a Sheriff's Office facility, the inmate shall be informed in writing as to whether the allegation has been determined to be sustained/substantiated, not sustained/unsubstantiated, or unfounded.
- B. Following an inmate's allegation that a staff member has committed sexual abuse against the inmate, the inmate shall be informed in writing (unless the allegation is determined to be unfounded) whenever any of the following occur:

FRESNO COUNTY SHERIFF'S OFFICE
JAIL DIVISION POLICIES AND PROCEDURES

TITLE: SEXUAL MISCONDUCT AND ABUSE
FILE: SEXUAL ABUSE

NO: D-360

1. The staff member is no longer posted within the inmate's housing unit.
 2. The staff member is no longer employed by the Sheriff's Office.
 3. The staff member has been indicted on a charge related to sexual abuse within the facility.
 4. The staff member has been convicted on a charge related to sexual abuse within the facility.
- C. Following an inmate's allegation that they have been sexually abused by another inmate, the inmate/victim shall be informed in writing whenever:
1. The alleged abuser has been indicted on a charge related to the sexual abuse within the facility.
 2. The abuser has been convicted on a charged related to sexual abuse within the facility.
- D. All such notifications or attempted notifications shall be documented.
- E. The obligation to notify the inmate/victim shall terminate if the inmate is released from the Sheriff's custody.

XXII. DISCIPLINARY SANCTIONS FOR INMATES

- A. Inmates who are found guilty of committing sexual assault will be punished to the highest degree in accordance with the Jail Division's inmate discipline policy, up to and including criminal prosecution.
- B. An inmate's mental disabilities or mental illness shall be considered when determining what type of discipline, if any, should be imposed.
- C. An inmate may be disciplined for sexual contact with staff only upon a finding that the staff member did not consent to such contact.
- D. For the purpose of disciplinary action, a report of sexual abuse 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.

FRESNO COUNTY SHERIFF'S OFFICE
JAIL DIVISION POLICIES AND PROCEDURES

TITLE: SEXUAL MISCONDUCT AND ABUSE
FILE: SEXUAL ABUSE

NO: D-360

- E. All sexual activity between inmates is prohibited and any sexual activity between inmates may result in discipline. However, any such activity that is not determined to be coerced shall not be deemed to constitute sexual abuse.

XXIII. DISCIPLINARY SANCTIONS FOR EMPLOYEES

- A. Employees shall be subject to disciplinary sanctions up to and including termination for violating this policy.
- B. Termination shall be the presumptive disciplinary sanction for staff who have engaged in sexual abuse.
- C. Disciplinary sanctions for violations of policies relating to sexual abuse or sexual harassment (other than actually engaging in sexual abuse) shall be commensurate with the nature and circumstances of the acts committed, the staff member's disciplinary history, and the sanctions imposed for comparable offenses by other staff with similar histories.
- D. Any incident of sexual harassment shall be considered in determining whether to promote an employee. Any employee who has been civilly or administratively adjudicated to have engaged or attempted to engage in sexual misconduct shall not be promoted.
- E. All terminations for violations of sexual abuse, sexual misconduct, or sexual harassment policies, or resignations by staff who would have been terminated if not for their resignation, shall be reported to law enforcement agencies, unless the activity was clearly not criminal, and to any relevant licensing bodies.

XXIV. DISCIPLINARY SANCTIONS FOR CONTRACTORS AND VOLUNTEERS

- A. Any contractor or volunteer who engages in sexual abuse shall be prohibited from contact with inmates and shall be reported to law enforcement agencies, unless the activity was clearly not criminal, and to relevant licensing bodies.
- B. The Sheriff's Office shall take appropriate remedial measures, and shall consider whether to prohibit further contact with inmates, in the case of any other violation of sexual abuse or sexual harassment policies by a contractor or volunteer.

FRESNO COUNTY SHERIFF'S OFFICE
JAIL DIVISION POLICIES AND PROCEDURES

TITLE: SEXUAL MISCONDUCT AND ABUSE
FILE: SEXUAL ABUSE

NO: D-360

XXV. SEXUAL ABUSE INCIDENT REVIEWS

- A. The Jail Command Staff (Captains and Lieutenants) shall conduct a sexual abuse incident review at the conclusion of every sexual abuse investigation, including when the allegation has not been sustained/substantiated, unless the allegation has been determined to be unfounded.
- B. Such review shall ordinarily occur within thirty (30) days of the conclusion of the investigation, and include input from line supervisors, investigators, and medical or mental health practitioners.
- C. The review shall:
 - 1. Consider whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect or respond to sexual abuse.
 - 2. Consider whether the incident or allegation was motivated by race; ethnicity; gender identity, lesbian, gay, bisexual, transgender, or intersex identification, status, or perceived status; gang affiliation; or was motivated or otherwise caused by other group dynamics at the facility.
 - 3. Examine the area in the facility where the incident allegedly occurred to assess whether physical barriers in the area enabled the abuse.
 - 4. Assess the adequacy of staffing levels in that area during different shifts.
 - 5. Assess whether monitoring technology should be deployed or augmented to supplement supervision by staff.
 - 6. Prepare a report of its findings and any recommendations for improvement and submit such report to the Bureau Commander, the PREA Coordinator, and the PREA Compliance Manager.
- D. The recommendation(s) for improvement shall be implemented, or the reason(s) for not doing so shall be documented by the PREA Compliance Manager.

FRESNO COUNTY SHERIFF'S OFFICE
JAIL DIVISION POLICIES AND PROCEDURES

TITLE: SEXUAL MISCONDUCT AND ABUSE
FILE: SEXUAL ABUSE

NO: D-360

XXVI. DATA COLLECTION AND AUDIT

- A. The PREA Compliance Manager shall collect accurate, uniform data for every allegation of sexual abuse at the Sheriff's Office facilities.
1. The data collected shall include, at a minimum, the data necessary to answer all questions from the most recent version of the *Survey of Sexual Violence* conducted by the Department of Justice (DOJ). Upon request, the data for the previous calendar year shall be provided to the DOJ no later than June 30.
 2. The data collected shall be maintained for at least ten (10) years after the date of the initial collection. Destruction after that time may only be authorized by the Fresno County Board of Supervisors pursuant to Government Code Section 26202.
- B. An annual report shall be prepared by the PREA Compliance Manager, and shall include a comparison of the current year's data and corrective actions with those from prior years, and shall provide an assessment of the progress made in addressing sexual abuse. The report shall be made available on the Sheriff's website.
- C. During each one-year period, at least one-third of all Sheriff Office detention facilities shall be audited. The auditor's final report shall be published on the Sheriff's website, or otherwise made readily available to the public.

XXVII. GRIEVANCES – EXHAUSTION OF ADMINISTRATIVE REMEDIES

- A. Inmates are not required to use any informal procedure or to otherwise attempt to resolve with staff, an alleged incident of sexual abuse.
- B. There is no time limitation on when an inmate may submit a grievance regarding an allegation of sexual abuse.
1. The grievance shall be investigated and processed for review within ninety (90) days of the initial filing of the grievance.
 2. Computation of the 90-day time period shall not include time consumed by inmates in preparing any administrative appeal.

FRESNO COUNTY SHERIFF'S OFFICE
JAIL DIVISION POLICIES AND PROCEDURES

TITLE: SEXUAL MISCONDUCT AND ABUSE
FILE: SEXUAL ABUSE

NO: D-360

3. The response time may be extended up to seventy (70) days, if the normal time period is insufficient to make an appropriate decision. The inmate shall be notified in writing of any such extension and provide a date by which a decision will be made.
 4. At any level of the administrative process, if the inmate does not receive a response within the time allotted for reply, including any properly noticed extension, the inmate may consider the absence of a response to be a denial at that level.
- C. Third parties, including fellow inmates, staff members, family members, attorneys, and outside advocates, shall be permitted to assist inmates in filing requests for administrative remedies relating to allegations of sexual abuse, and shall also be permitted to file such requests on behalf of inmates.
1. If a third party files such a request on behalf of an inmate, the inmate must agree to have the request filed on their behalf, and must personally pursue any subsequent steps in the administrative remedy process.
 2. If the inmate declines to have the request processed on their behalf, that decision shall be documented.
- D. An inmate may file an emergency grievance when the inmate is subject to a substantial risk of imminent sexual abuse
1. After receiving such an emergency grievance, the form shall be forwarded to a level of review at which corrective action may be taken, provide an initial response within forty-eight (48) hours, and a decision made within five (5) calendar days.
 2. The initial response and final decision shall document the determination whether the inmate is in substantial risk of imminent sexual abuse and the action taken in response to the emergency grievance.
 3. An inmate may be disciplined for submitting a grievance related to alleged sexual abuse only when it can be demonstrated that the inmate filed the grievance in bad faith.

FRESNO COUNTY SHERIFF'S OFFICE
JAIL DIVISION POLICIES AND PROCEDURES

TITLE: SEXUAL MISCONDUCT AND ABUSE
FILE: SEXUAL ABUSE

NO: D-360

XXVIII. SEXUAL DISORDERLY CONDUCT

- A. By choosing to work in a jail environment, corrections personnel have acknowledged and accepted the probability that they will face inappropriate and socially deviant behavior. While it is not possible to stop all obscene comments and conduct by inmates, neither shall it be accepted or condoned. Acts of indecent exposure, sexual disorderly conduct and exhibitionist masturbation will not be tolerated. Any inmate who engages in indecent exposure or sexual disorderly conduct shall be reported and disciplined in an attempt to eliminate and reduce the opportunity to repeat the behavior.
- B. If counseling and progressive discipline fails to result in a modification of the inmate's behavior, an additional charge of PC 314.1 (indecent exposure) or PC 647 (disorderly conduct) shall be added after the inmate's third violation.
- C. **Sexually hostile conduct shall not be ignored.** *Every incident shall be documented* by the observing employee. If the exposure or inappropriate touching of one's genitals is considered to be unusual and bizarre behavior, a referral for a mental health evaluation shall be included in the rule violation report process.
- D. If an inmate's continued behavior requires additional security precautions, such steps shall be taken, which may include, but not be limited to the following:
1. Transfer to an administrative housing unit (if the behavior occurs in a group setting or inside the cell/bed area in a general population housing unit).
 2. Window coverings (to limit the inmate's ability to observe staff while engaging in the behavior). If window coverings are used, hourly security checks shall be conducted and documented.
 3. Posted notification, alerting staff to the inmate's propensity to engage in indecent exposure or sexual disorderly conduct.
 4. Temporary restriction from the exercise yard or other settings which may provide a venue for the behavior.
 5. Substitution of activity setting to reduce the possibility of the behavior impacting staff.

FRESNO COUNTY SHERIFF'S OFFICE
JAIL DIVISION POLICIES AND PROCEDURES

TITLE: SEXUAL MISCONDUCT AND ABUSE
FILE: SEXUAL ABUSE

NO: D-360

XXIX. ADDENDUMS

Sexual Misconduct and Abuse Policy Outline ([Addendum A](#))

Sexual Assault Victim Assistance Checklist ([Addendum B](#))

Sexual Assault Response Flow Chart ([Addendum C](#))

Sexual Assault Posters (Addendums D – [English](#), [Spanish](#), [Hmong](#))

Policy Acknowledgement (Addendums E – [Volunteer](#), [Contractor](#),
[Employee](#))

PREA Vulnerability Assessment form ([Addendum F](#))