

§ 115.35 Specialized training: Medical and mental health care.

(a) The agency shall provide specialized training to DHS or agency employees who serve as full- and part-time medical practitioners or full- and part-time mental health practitioners in immigration detention facilities where medical and mental health care is provided.

(b) The training required by this section shall cover, at a minimum, the following topics:

- (1) How to detect and assess signs of sexual abuse;
- (2) How to respond effectively and professionally to victims of sexual abuse,
- (3) How and to whom to report allegations or suspicions of sexual abuse, and
- (4) How to preserve physical evidence of sexual abuse. If medical staff employed by the agency conduct forensic examinations, such medical staff shall receive the appropriate training to conduct such examinations.

(c) The agency shall review and approve the facility’s policy and procedures to ensure that facility medical staff is trained in procedures for examining and treating victims of sexual abuse, in facilities where medical staff may be assigned these activities.

ASSESSMENT FOR RISK OF SEXUAL VICTIMIZATION AND ABUSIVENESS

§ 115.41 Assessment for risk of victimization and abusiveness.

(a) The facility shall assess all detainees on intake to identify those likely to be sexual aggressors or sexual abuse victims and shall house detainees to prevent sexual abuse, taking necessary steps to mitigate any such danger. Each new arrival shall be kept separate from the general population until he/she is classified and may be housed accordingly.

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

(c) The facility shall also consider, to the extent that the information is available, the following criteria to assess detainees for risk of sexual victimization:

- (1) Whether the detainee has a mental, physical, or developmental disability;
- (2) The age of the detainee;
- (3) The physical build and appearance of the detainee;
- (4) Whether the detainee has previously been incarcerated or detained;
- (5) The nature of the detainee’s criminal history;
- (6) Whether the detainee has any convictions for sex offenses against an adult or child;
- (7) Whether the detainee has self-identified as gay, lesbian, bisexual, transgender, intersex, or gender non-conforming;
- (8) Whether the detainee has self-identified as having previously experienced sexual victimization; and
- (9) The detainee’s own concerns about his or her physical safety.

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

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

(f) Detainees shall not be disciplined for refusing to answer, or for not disclosing complete information in response to, questions asked pursuant to paragraphs (c)(1), (c)(7), (c)(8), or (c)(9) of this section.

(g) The facility shall implement appropriate controls on the dissemination within the facility of responses to questions asked pursuant to this standard in order to ensure that sensitive information is not exploited to the detainee’s detriment by staff or other detainees or inmates.

§ 115.42 Use of assessment information.

(a) The facility shall use the information from the risk assessment under

§115.41 of this part to inform assignment of detainees to housing, recreation and other activities, and voluntary work. The agency shall make individualized determinations about how to ensure the safety of each detainee.

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

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

§ 115.43 Protective custody.

(a) The facility shall develop and follow written procedures consistent with the standards in this subpart for each facility governing the management of its administrative segregation unit. These procedures, which should be developed in consultation with the ICE Enforcement and Removal Operations Field Office Director having jurisdiction for the facility, must document detailed reasons for placement of an individual in administrative segregation on the basis of a vulnerability to sexual abuse or assault.

(b) Use of administrative segregation by facilities to protect detainees vulnerable to sexual abuse or assault shall be restricted to those instances where reasonable efforts have been made to

provide appropriate housing and shall be made for the least amount of time practicable, and when no other viable housing options exist, as a last resort. The facility should assign detainees vulnerable to sexual abuse or assault to administrative segregation for their protection until an alternative means of separation from likely abusers can be arranged, and such an assignment shall not ordinarily exceed a period of 30 days.

(c) Facilities that place vulnerable detainees in administrative segregation for protective custody shall provide those detainees access to programs, visitation, counsel and other services available to the general population to the maximum extent practicable.

(d) Facilities shall implement written procedures for the regular review of all vulnerable detainees placed in administrative segregation for their protection, as follows:

(1) A supervisory staff member shall conduct a review within 72 hours of the detainee's placement in administrative segregation to determine whether segregation is still warranted; and

(2) A supervisory staff member shall conduct, at a minimum, an identical review after the detainee has spent seven days in administrative segregation, and every week thereafter for the first 30 days, and every 10 days thereafter.

(e) Facilities shall notify the appropriate ICE Field Office Director no later than 72 hours after the initial placement into segregation, whenever a detainee has been placed in administrative segregation on the basis of a vulnerability to sexual abuse or assault.

(f) Upon receiving notification pursuant to paragraph (e) of this section, the ICE Field Office Director shall review the placement and consider:

(1) Whether continued placement in administrative segregation is warranted;

(2) Whether any alternatives are available and appropriate, such as placing the detainee in a less restrictive housing option at another facility or other appropriate custodial options; and