




U.S. Customs and
Border Protection

MAR 11 2015

Commissioner

MEMORANDUM FOR: All CBP Employees

FROM: R. Gil Kerlikowske 
Commissioner

SUBJECT: CBP Policy on Zero Tolerance of Sexual Abuse and Assault

CBP has a zero tolerance policy prohibiting all forms of sexual abuse and assault of individuals in CBP custody, including in holding facilities, during transport, and during processing. CBP is committed to protecting the safety of individuals in CBP custody, and it is CBP policy to provide effective safeguards against sexual abuse and assault for individuals in CBP custody.

This policy prohibits sexual abuse and assault of a detainee by another detainee; sexual abuse and assault of a detainee by agents, officers, other CBP staff members, contractors, and volunteers; and retaliation against any person, including a detainee, who reports, complains about, or participates in an investigation of sexual abuse and assault.

On March 7, 2014, the Department of Homeland Security issued a final rule adopting Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities (the Standards). The Standards reaffirm a commitment to protecting the safety of individuals in custody and are reflective of the population encountered by CBP in carrying out border security and immigration enforcement missions. It is CBP's policy to adhere to the requirements of the Standards in all of its holding facilities. The Standards can be found at <http://www.cbp.gov/news/standards-prevent-detect-and-respond-sexual-abuse-and-assault-confinement-facilities>.

To comply with these Standards, CBP established an upper-level, agency-wide position of Prevention of Sexual Assault Coordinator (PSA Coordinator). The PSA Coordinator, who is assigned to CBP's Privacy and Diversity Office, is responsible for overseeing CBP's efforts to comply with the Standards. The PSA Coordinator is also responsible for ensuring that CBP conducts an annual review of all sexual abuse and assault investigations and incident reviews to assess and improve sexual abuse prevention, response, and intervention efforts.

In implementing the Standards, CBP will work to prevent sexual abuse and assault by: applying the Standards to all holding facility support contracts; cross-gender personal searches; not hiring or promoting anyone to a position requiring detainee contact who has engaged in sexual abuse or assault in a confinement facility, who has been convicted of engaging in or attempting to engage in sexual activity by force or coercion, or who has been adjudicated to have engaged in such activity; and, considering issues related to the prevention of such abuse in advance of making upgrades to facilities and technologies. In addition, CBP will ensure sufficient supervision of detainees to protect them against sexual abuse and assault. CBP will provide reasonable accommodations to detainees with disabilities and meaningful access to services for persons with limited English proficiency. Before placing detainees together in a holding room, CBP personnel shall consider the information before them. If a determination is made that a detainee may be at a high risk of being sexually abused or assaulted, or of being sexually abusive, CBP will take actions to protect the detainee, including through increased supervision.

CBP reiterates its commitment to detect incidents and investigate allegations of sexual abuse and assault. To that end, CBP will create specialized evidence protocols and provide for forensic medical examinations; develop policies for investigation of allegations and agency oversight of such investigations; and provide specialized training and education for employees, contractors, and volunteers who have contact with detainees as well as additional training relating to investigations. CBP will also ensure that detainees are aware of CBP's zero tolerance policy regarding sexual abuse and assault, and that members of the public and detainees have multiple ways to privately report sexual abuse or assault, retaliation for reporting sexual abuse or assault, or any employee misconduct or neglect that may have contributed to any incident of sexual abuse or assault or retaliation.

CBP will provide a swift response to allegations of sexual abuse of detainees in holding facilities. Agency personnel will separate an alleged victim from the alleged abuser, preserve and protect any crime scene, and ensure that an alleged victim has timely, unimpeded access to emergency medical treatment and crisis intervention services. In addition, agency personnel are required to immediately report any knowledge, suspicion, or information regarding an incident of sexual abuse, retaliation for reporting or participating in an investigation about sexual abuse or assault, or any employee misconduct or neglect that may have contributed to any incident of sexual abuse, assault or retaliation. CBP will cooperate fully with investigations relating to allegations of sexual abuse and assault of detainees and with external audits of and corrective actions relating to sexual abuse and assault in CBP holding facilities. CBP will conduct an incident review following each investigation of sexual abuse and assault. CBP will also collect and analyze required data on reports and incidents of sexual abuse and assault to assess and improve sexual abuse prevention, response, and intervention policies, practices and training.

CBP employees who violate the prohibition against sexual abuse and assault identified in this policy will be subject to disciplinary or adverse action up to and including removal from their position and Federal service. Criminal misconduct by employees will be referred for investigation and potential prosecution, as appropriate.

All sexual abuse and assault allegations shall be considered significant incidents. All allegations of sexual abuse and assault as defined in the Standards (see Appendix A) must immediately be reported to the Commissioner's Situation Room and the Joint Intake Center.

Additionally, employees are reminded of their obligation to report any allegation of employee misconduct through any of the following means:

- Calling the toll-free Joint Intake Center Hotline at 1-877-2INTAKE or sending a fax to (202) 344-3390;
- Sending an e-mail message to Joint.Intake@dhs.gov;
- Contacting your servicing CBP Internal Affairs (IA) Office;
- Writing to the Joint Intake Center at P.O. Box 14475, 1200 Pennsylvania Avenue, NW, Washington, DC 20044;
- Calling the DHS Office of Inspector General at 1-800-323-8603; or
- Sending an e-mail message to OIG at DHSOIGHOTLINE@dhs.gov, or reporting online at <http://www.oig.dhs.gov>.

For additional information on CBP's Prison Rape Elimination Act (PREA) program, please visit the PREA Resource Center website at <https://uconnect.cbpnet.cbp.dhs.gov/sites/OC/PDO/PREA%20Resource%20Center/Forms/AllItems.aspx>.

For additional information on CBP's civil rights and civil liberties program, please visit the Privacy and Diversity Office website at www.cbp.gov/eo.

Attachment

APPENDIX A – Related Definitions

Sexual Abuse: Sexual abuse includes: (1) Sexual abuse and assault of a detainee by another detainee; and (2) Sexual abuse and assault of a detainee by a staff member, contractor, or volunteer.

Sexual abuse of a detainee by another detainee: Sexual abuse of a detainee by another detainee includes any of the following acts by one or more detainees, prisoners, inmates, or residents of the facility in which the detainee is housed 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:

- Contact between the penis and the vulva or anus and, for purposes of this subparagraph, contact involving the penis upon penetration, however slight;
- Contact between the mouth and the penis, vulva, or anus;
- Penetration, however slight, of the anal or genital opening of another person by a hand or finger or by any object;
- 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
- Threats, intimidation, or other actions or communications by one or more detainees aimed at coercing or pressuring another detainee to engage in a sexual act.

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

- Contact between the penis and the vulva or anus and, for purposes of this subparagraph, contact involving the penis upon penetration, however slight;
- Contact between the mouth and the penis, vulva, or anus;
- 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;
- 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;
- 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;
- Repeated verbal statements or comments of a sexual nature to a detainee;
- Any display of his or her uncovered genitalia, buttocks, or breast in the presence of an inmate, detainee, or resident, or
- Voyeurism

Voyeurism: Inappropriate visual surveillance of a detainee for reasons unrelated to official duties. Where not conducted for reasons relating to official duties, the following are examples of voyeurism: staring at a detainee who is using a toilet in his or her cell to perform bodily functions; requiring an inmate detainee to expose his or her buttocks, genitals, or breasts; or taking images of all or part of a detainee's naked body or of a detainee performing bodily functions.