

ICE/DRO RESIDENTIAL STANDARD

DISCIPLINE AND BEHAVIOR MANAGEMENT

I. PURPOSE AND SCOPE: Facility standards of conduct and enforcement of those standards are expected in order to provide a safe and orderly living environment. Facility authorities will manage discipline and behavioral problems in a manner that ensures the safety and welfare of staff, residents, and visitors.

II. EXPECTED OUTCOMES: The expected outcomes of this Standard are:

1. Residents will be informed of facility rules and regulations, prohibited acts, disciplinary sanctions that may be imposed, and the procedure for appealing disciplinary findings.
2. Each facility will have graduated severity scales of prohibited acts and disciplinary consequences.
3. Where permitted by facility policy, staff will informally settle minor transgressions by mutual consent, whenever possible.
4. Staff who witness a prohibited act that cannot or should not be resolved informally, or have reason to suspect one, will prepare a clear, concise, and complete Incident Report.
5. Each Incident Report will be objectively and impartially investigated by a person of supervisory rank.
6. When appropriate, a serious incident that may constitute a criminal act will be referred to the proper investigative agency, and the administrative investigation will be suspended, pending the outcome of that referral.
7. At each step of the disciplinary process, the detainee will be advised of his or her rights.
8. A Management Review Committee (MRC) will further investigate and adjudicate the incident and may impose minor sanctions or refer the matter to a higher level disciplinary panel.
9. A three-member Executive Review Panel (ERP) will conduct formal hearings on Incident Reports referred from an MRC and may impose higher level sanctions for "Greatest" and "High" level prohibited acts.
10. Detainees appearing before the ERP will be afforded a staff representative, upon request, or automatically if the detainee is illiterate, has limited English language skills, or otherwise needs special assistance.
11. Actions of the ERP will be reviewed by the facility administrator, who may concur with the findings and conclusions or may modify them.
12. At all steps and levels in the disciplinary process, any sanctions imposed will be commensurate with the severity of the committed prohibited act and intended to encourage the detainee to comply with the rules and regulations.

13. All steps of the disciplinary process will be done within the required time limits.
14. At all steps of the disciplinary process, accurate and complete records will be maintained, and the detainee will receive the copies to which he or she is entitled.
15. If a resident is found not guilty at any stage of the disciplinary process, the incident records will not be included in the detainee's file (even if they are retained elsewhere for statistical or historical purposes).
16. Residents will be able to appeal disciplinary decisions through a formal grievance process.
17. Residents do not receive any discipline or punishment that is considered to be harsh, cruel, unusual, unnecessary, demeaning, or humiliating.
18. Residents under age 12 will not be referred for disciplinary review.
19. Where required, residents have regular access to translation services and/or are provided information in a language that they understand.
20. The standard complies with federal laws and with DHS regulations regarding residents with special needs.

III. DIRECTIVES AFFECTED: None

IV. REFERENCES:

The First Edition National Residential Standards were written using a variety of methodologies including previous and current practices, review and comment from various subject matter experts, review and comment from various government and non-government organizations, and a review of current state codes in Pennsylvania and Texas. Each standard is written in a manner that affords each resident admission and continuous housing to a family residential facility in a dignified and respectful manner.

There are no specific codes, certifications, or accreditations that deal specifically with unique management requirements of families awaiting the outcome of their immigration proceeding in a non-secure custodial environment.

American Correctional Association, 4th Edition, Standards for Adult Local Detention Facilities: 4-ALDF-3A-01, 3A-02, 6C-01 through 6C-19.

Pennsylvania Welfare Code Chapter 3800: Child Residential and Day Treatment Facilities.

Texas Department of Family and Protective Services: Minimum Standards for General Operations and Residential Treatment Centers

V. APPLICABILITY:

The standards provided in this Standard shall apply to all ICE Family Residential Centers.

See the separate "Definitions" Standard for the meaning of certain terms used in this document.

VI. EXPECTED PRACTICES:

Care providers shall implement a disciplinary and behavioral management program that meets adult and child welfare best practice standards. Behavioral management strategies shall be based on a system of privileges and shall not be punitive in nature.

Care providers shall have written policies and procedures regarding the disciplinary and behavioral modification program used at the facility. All staff shall be trained in effective behavioral modification techniques. The behavioral management system shall be implemented uniformly and explained to an arriving resident in a language that he or she understands. Each family shall receive a copy of the disciplinary and behavioral management system in writing during intake.

Behavior management shall be positive in its development, implementation and outcome. Behavioral management strategies shall include staff-child interactions that are proactive and not reactive in nature. Non-restraining procedures (such as verbal interventions, loss of privileges and time out) should always be the first methods of management for minors. Mechanisms shall be developed to reinforce positive behaviors that include parental intervention, whenever possible. Clinicians shall assist in identifying the causes of the minor's negative behavior in order to develop appropriate treatment and staff intervention plans. These causes may include trauma, neglect, poor modeling or socialization, poor attachments, attention seeking and learned helplessness. Staff shall discuss with minors and their parents ways to meet behavioral needs in a productive way, when possible, as well as ways to address causes to assist in appropriate behavior.

The behavioral modification program shall include rules for the program, rewards and consequences, a list of minor and major behavioral infractions and systemic feedback from staff to each resident, with particular attention to the needs of minors.

Care providers shall have written rules that specify acts prohibited while residing at the program and consequences that may be imposed for various degrees of violation. The written rules shall be posted in a common area, reviewed at least annually and updated when necessary. The rules must be written in a way that is easily understandable by residents and their minor children and should be provided in the languages of the majority of residents in the facility. When a literacy or language problem prevents a resident from understanding the written rules, a staff member or interpreter shall assist the resident in understanding them. Care providers shall ensure that the standards for rules and discipline are formulated with consideration of the range of ages and maturity and are culturally sensitive to the needs of residents in federal custody.

1. Guidelines

Each residential facility holding ICE detainees, who are part of a defined family unit in custody, will have a Behavioral Management Program that includes access to an administrative disciplinary process. This program shall have progressive levels of reviews, appeals, procedures, and documentation procedures. The relevant policy and procedures shall clearly define resident rights and responsibilities.

a. The following procedure outlines the recommended requirements for disciplinary measures with regards to the discipline of minors:

1) Only a caregiver known to and knowledgeable of a child may discipline

the child.

- 2) All disciplinary actions recommended and taken must be explained to the parent of the affected minor.
- 3) Each disciplinary measure must:
 - a) Be consistent with established policies and procedures;
 - b) Not be physically or emotionally damaging to the child;
 - c) Be individualized to meet each child's needs;
 - d) Be appropriate to the child's level of understanding, age, and developmental level; and
 - e) Be appropriate to the incident and severity of the behavior demonstrated.
 - f) The goal of each disciplinary measure is to teach the child acceptable behavior and self-control. The caregiver must explain the reason for the disciplinary measure when the caregiver imposes the measure.

b. Administrative action may not be capricious or retaliatory.

- 1) Corporal punishment, or the threat of corporal punishment, may never be used on a child. Corporal punishment is the infliction of punishment on any part of a child's body as a means of controlling or managing the child's behavior. It includes:
 - a) Hitting or spanking a child with a hand or instrument; or
 - b) Forcing or requiring the child to do any of the following as a method of managing or controlling behavior:
 - i. Perform any form of physical exercise, such as running laps or doing sit-ups or push-ups;
 - ii. Hold a physical position, such as kneeling or squatting; or
 - iii. Do any form of "unproductive work." "Unproductive work" is work that serves no purpose except to demean the resident.
 - 1) Examples include moving rocks or logs from one pile to another or digging a hole and then filling it in. Unproductive work is never an appropriate behavior management tool.
 - 2) "Unproductive work" does not include work that corrects damage that the resident's behavior caused. For example, a child who intentionally defaces a fence or wall may be required to paint that portion defaced. A logical

consequence as a behavioral management tool is acceptable.

- c. Minor residents under the age of 12 may not be subjected to administrative review. Parents whose children exhibit hostile or antisocial behavior will be referred to the MRC for review.
- d. Minor residents 12 and older will not be presented for administrative review without notification being made to their parents(s), and shall only be submitted for administrative review after all other efforts to include counseling have been conducted. If after attempting an informal resolution, the minor remains disruptive and continues to fail to follow established facility rules, the minor and parent(s) shall be referred for administrative review.
- e. In addition, the following actions are prohibited as punishments involving a minor of any age:
 - 1) Any harsh, cruel, unusual, unnecessary, demeaning, or humiliating discipline or punishment
 - 2) Denial of mail or visits with their families as discipline or punishment
 - 3) Threatening with the loss of placement as discipline or punishment;
 - 4) Using sarcastic or cruel humor, and verbal abuse;
 - 5) Maintaining an uncomfortable physical position, such as kneeling or holding the arms out;
 - 6) Pinching, pulling hair, biting, or shaking a child;
 - 7) Putting anything in or on a child's mouth, such as soap or tape;
 - 8) Humiliating, shaming, ridiculing, rejecting, or yelling at a child;
 - 9) Subjecting a child to abusive or profane language;
 - 10) Placing a child in a dark room, bathroom, or closet;
 - 11) Requiring a child to remain silent or inactive for inappropriately long periods of time for the child's age;
 - 12) Confining a child to a highchair, box, or other similar furniture or equipment as discipline or punishment;
 - 13) Denying basic child rights as discipline or punishment;
 - 14) Withholding food that meets the child's nutritional requirements; and;
 - 15) Using or threatening to use emergency behavior intervention as discipline or punishment.

16) Seclusion, defined as placing a child in a locked room, is prohibited. A locked room includes a room with any type of door-locking device, such as a key lock, spring lock, bolt lock, foot pressure lock or physically holding the door shut.

Staff may not impose or allow imposition of the following sanctions for a resident, adult or minor, at a family residential center: corporal punishment; deviations from normal food services; deprivation of clothing, bedding, or items of personal hygiene; deprivation of correspondence, telephone, or visitation privileges; deprivation of physical exercise or access to recreation, deprivation of school or education. No punishment shall require confinement in any locked room or space.

- f. The facility shall not hold a resident accountable for his/her conduct if a medical authority finds him/her mentally incompetent.
- g. The resident handbook or equivalent, issued to each resident upon admittance, shall provide notice of the facility's rules of conduct, and of the sanctions imposed for violations of the rules. Among other things, the handbook shall advise residents of the following:
 - 1) The right to protection from personal abuse, corporal punishment, unnecessary or excessive use of force, personal injury, disease, property damage, and harassment;
 - 2) The right of freedom from discrimination based on race, religion, national origin, sex, handicap, or political beliefs;
 - 3) The right to pursue a grievance in accordance with written procedures (provided in the handbook);
 - 4) The right to correspond with persons or organizations, consistent with safety, security, and the orderly operation of the facility; and
 - 5) The right to due process, including the prompt resolution of an administrative disciplinary matter (in accordance with the rules, procedures, and sanctions provided in the handbook).
 - 6) Copies of the rules of conduct and administrative sanctions will be posted in English, Spanish, and/or other languages spoken by significant numbers of residents, as follows:
 - a) Disciplinary Severity Scale
 - b) Prohibited Acts
 - c) Sanctions

2. Incident Reports

Officers who witness a prohibited act or have reason to suspect one has been committed shall prepare and submit an incident report. All incident reports must state the facts clearly concisely, and completely. Reports also will identify the officer(s), the resident(s), and all who are witness to the incident.

ICE review approval is required for the incident-report forms used in family residential centers.

It is expected that minor rules violations will be settled informally by mutual consent, whenever possible. If, however, the officer involved believes informal resolution is inappropriate or unachievable, he/she shall prepare an Incident Report and Notice of Violations and forward it to the appropriate supervisor before the end of the assigned shift.

The incident report shall cite the relevant rule or standard without quoting it in its entirety. For example, for destruction of government property, the report would cite, briefly, "Code 218–Destroying Government Property."

If the officer observes anything unusual in the resident's behavior or demeanor, he/she shall so note in the report. The reporting officer shall also list all staff, contract officers or resident witnesses to the incident, and the disposition of any physical evidence (contraband, property, etc.) relating to the incident. The reporting officer will sign the report and include title, date and time the report was signed. The shift supervisor shall review all incident reports before going off duty.

3. Investigations

All incident reports shall be investigated within 24 hours of the incident.

The investigating staff member must be a supervisor or higher and shall have had no prior involvement in the incident, either as a witness or an officer at the scene. No incident shall be investigated by line staff. All incidents require a minimum of a supervisory investigation and review. If the facility has a designated investigator, the incident may be investigated by that staff member. The position of investigator may not be a designated position for the purposes of circumventing this standard and must be a full-time trained employee. Minors may not be questioned outside the presence of a parent unless the incident is between the parent and child. Any allegation involving a criminal offense will be immediately referred to the appropriate law enforcement authority and no interviews shall be conducted

The investigating Staff Member shall:

Commence the investigation within 24 hours of receipt of the incident report.

- a. Advise the resident of the right to remain silent at each stage of the administrative process, and ensure he/she has a complete listing of resident rights.
- b. Advise the resident that silence may not be used to support a finding against the resident.
- c. Provide the resident(s) with a copy of the incident report/notice of charges at least 24 hours before the start of administrative proceedings.
- d. Advise the resident of his/her right, if applicable, to an initial hearing before the Management Review Committee (MRC) within 24 hours of his/her notification of charges.
- e. Terminate the investigation if the incident is under investigation elsewhere, e.g.,

on criminal grounds, unless and until the agency with primary jurisdiction concludes its investigation or indicates that it will not pursue the matter.

- f. Record personal observances and other potentially material information.
- g. Prepare a factual report of the investigation, including the location or disposition of any physical evidence.
 - 1) Forward to the MRC all reports relevant to the disciplinary hearing.
NOTE: policy expressly prohibits providing a copy of any such report(s) to the resident at this stage of the disciplinary process.

Management Review Committee (MRC)

All facilities shall establish an intermediate level of investigation/adjudication to adjudicate low or moderate rules infractions. They shall also ensure that the resident is afforded all the rights listed under "Resident Rights in MRC Proceedings," as provided below.

The MRC conducting an administrative review of rules infractions shall be composed of three members. For minor rules infractions, the committee shall consist of a Unit Manager, an ICE Supervisory Officer, and one facility staff member with a minimum rank of Captain.

The MRC shall not include the reporting officer, the investigating officer, or an officer who witnessed or was directly involved in the incident. Only if virtually every available officer witnessed or was directly involved in the incident shall an exception to this rule occur.

The MRC will conduct hearings and, to the extent possible, informally resolve cases involving low to moderate level offenses, in accordance with the list of charges and related sanctions. Unresolved cases and cases involving serious charges are forwarded to the Executive Review Panel (ERP).

The MRC shall have authority to:

- a. Conduct hearings and informally resolve incidents involving low or moderate violations.
- b. Consider written reports, statements, and physical evidence.
- c. Hear pleadings on the part of the resident.
- d. Make findings that a resident did or did not commit the rule violation(s) or prohibited act(s) as charged, based on the preponderance of evidence.
- e. Impose minor sanctions in accordance with the table of prohibited acts and associated sanctions.

The resident in MRC proceedings shall have the right to:

- a. An MRC hearing within 24 hours of the end of the investigation

- b. Attend the hearing (excluding committee deliberations) unless security considerations prevent the resident's attendance. In this instance, the committee must document the security considerations.
- c. Present statements and evidence in his/her own behalf.
- d. Appeal the committee's determination through the resident appeal process.

The MRC shall:

- a. Advise the resident of above-listed rights and procedures before the hearing.
- b. Refer to the ERP any incident involving a serious violation. This includes code violations in the "Moderate" or categories (100s and 200s).
- c. Serve the resident with:
 - 1) A copy of the MRC decision and sanctions imposed; or
 - 2) Written notification of charges and hearing before the ERP.
- d. If the resident's case is being referred to the ERP, advise the resident, in writing, of:
 - 1) The opportunity to call witnesses and present evidence before the ERP; and
 - 2) The opportunity to have a staff representative assist him or her before the ERP.

4. Staff Representation

The Facility Administrator (FA) or designee shall, upon the resident's request, assign a staff representative to help prepare a defense. This help will be automatically provided for illiterate residents, residents with limited English-language skills, and residents without means of collecting and presenting essential evidence.

- a. A staff representative must be a full-time employee.
- b. Because of the potential conflict of interest, the FA, members of the ERP and of the MRC initially involved in the case, eyewitnesses, the reporting and investigating officers, and anyone else with a stake in the outcome shall not act as staff representative.
- c. The resident may select his/her staff representative, barring anyone identified in 4b, above.
- d. The ERP shall arrange for the presence of the staff representative selected by the resident. If that staff member declines or is unavailable, the resident has three choices. He/she may select a different representative; wait for the unavailable staff member to become available (within a reasonable period); or proceed without a staff representative.
- e. A staff member declining to serve as a resident's representative must state the reason on the staff representative form.

- f. If several staff members decline, the FA shall assign a staff member to serve as that resident's staff representative.
- g. The staff representative shall be free to speak to witnesses and to present evidence on the resident's behalf, including any mitigating circumstances.
- h. The ERP shall allow the staff representative enough time to speak with the resident and interview witnesses. The standard pre-hearing preparation time will suit most cases. However, the ERP may grant a postponement if required to prepare an adequate defense.
- i. The ERP shall consider the reliability of information provided by a confidential informant before considering it in the disciplinary proceedings.
- j. The ERP may withhold the confidential informant's identity from the staff representative. While the staff representative may challenge the substance of any confidential information the ERP discloses, he/she may not question its reliability (pre-established by the ERP).
- k. When the resident cannot effectively present his/her own case, the FA shall appoint a staff representative, even if not requested by the resident.

5. Executive Review Panel

All family residential centers housing ICE residents shall have an executive review panel to adjudicate resident incident reports. Residents assigned to residential facilities may not be placed into segregation or lock down housing. Where chronic violations are noted, the ERP may designate placement of a family unit into an orientation and counseling housing unit. The only purpose for placement into this unit is to ensure that all resources are made available for assisting residents to properly conform to facility rules and to ensure the safe and orderly operation of the facility. Placement into an intensive supervision unit is not to be used as punishment and may only be used for the amount of time needed to ensure the proper orientation and counseling of an affected resident or family unit.

At each center:

- a. The ERP will consist of three members, including the chairperson.
- b. The FA shall appoint the two members of the panel. The ICE Operations Manager shall appoint one ICE official.

The panel shall not include the reporting officer, the investigating officer, a member of the referring MRC, or anyone who witnessed or was directly involved in the incident. Only if virtually every available officer witnessed or was directly involved in the incident shall an exception to this rule occur.

The panel shall consist of at least one manager who holds the rank of Chief or higher, one unit manager, and one ICE officer with a rank of Supervisory Immigration Enforcement Agent or higher.

The ERP shall have authority to:

- a. Conduct hearings on all charges and allegations referred by the MRP.
- b. Call witnesses to testify.
- c. Consider written reports, statements, physical evidence, and oral testimony.
- d. Hear pleadings by residents and staff representatives.
- e. Make findings that the resident did or did not commit the rule violation(s) or prohibited act(s) as alleged, based on the preponderance of evidence.
- f. Impose sanctions as listed and authorized in each category.

The ERP shall:

- a. Verify that the resident has been advised of the procedures as identified above.
- b. Advise the resident that he or she may waive the hearing and admit having committed the offense.
- c. Conduct the hearing on the first business day after receiving the ERP referral, unless the resident waives the 24-hour notification provision, requesting an immediate hearing. In cases where a hearing is delayed, the reason(s) must be documented (e.g., a continuing investigation of facts, their unavailability of one or more essential witnesses, etc.) and approved by the OIC.
- d. Prepare a written record of its proceedings. This record must show that the resident was advised of his/her rights. It must also document the evidence considered by the Panel and subsequent findings; the decision and sanctions imposed, along with a brief explanation.
- e. Forward the entire record to the FA, who may (a) concur; (b) terminate the proceedings; or (c) impose stiffer or lesser sanctions.
- f. Serve the resident with written notification of the decision.

6. Postponement of Disciplinary Proceedings

All facilities shall permit hearing postponements or continuances under certain circumstances.

Circumstances justifying postponement or continuance of a hearing might include: defense preparation, physical or mental illness, security, escape, disciplinary transfer, deportation, or pending criminal prosecution.

An uncooperative resident may also cause a delay in the proceedings, either because of inappropriate behavior during the hearing process or a refusal to participate in a productive manner.

7. Duration of Penalties

The duration of penalties shall be within established limits. Neither the panel recommending sanctions nor the FA making the final decision shall impose arbitrary sanctions outside these limits.

- a. Punishments range from the withholding of specified privilege(s) to recommended removal from the residential center and program. Segregation may not be used as a form of penalty in any form at a residential center.
- b. The disciplinary report and accompanying documents are not inserted in the file of a resident who is found not guilty. However, the facility may retain the material in its own files for institutional uses (statistical, historical, etc.).

c. **Best Practice Suggestions for dealing with Minors:**

Disciplinary measures should be consistent among caregivers. Using positive methods of discipline and guidance encourage self-esteem, self-control, and self-direction. Positive methods of discipline include the following:

- 1) Using praise, positive reinforcement, and encouragement of good behavior instead of focusing only on unacceptable behavior;
 - 2) Reminding a child of behavior expectations daily by using clear, positive statements;
 - 3) Talking with the child about the situation;
 - 4) Focusing on the rule to learn and the reason for the rule;
 - 5) Focusing on solutions that are respectful, reasonable, and related to the problem behavior, rather than blaming or focusing on consequences;
 - 6) Redirecting the child's attention or behavior using positive statements;
 - 7) Providing prior notice of possible consequences for inappropriate behaviors;
 - 8) Giving the child acceptable choices or alternatives;
 - 9) Using brief supervised separation or time away from the group or situation, when appropriate for the child's understanding, age, and development. Best practice suggests that quiet time or time out from the group should be limited to no more than one minute per year of the child's chronological or developmental age. However, this time frame may need to be adjusted for some children, such as a child who has attention-deficit disorder. Time out is not appropriate for infants and is not recommended for toddlers, since they are too young to understand this intervention;
 - 10) Arranging the environment to allow safe testing of limits;
 - 11) Using kind but firm action;
 - 12) Giving logical consequences that are appropriate to the situation and severity of the behavior; and
 - 13) Withholding privileges.
- d. **Acceptable Corrective Sanctions for Minors:**

Sanctions in subparagraphs 1. and 4. (below) may be imposed by the MRP.
Sanctions in sub paragraphs 1. through 5. may be imposed by the ERP.

- 1) Referral to Counseling
- 2) Restriction to Housing Area, not to exceed 72 hours
 - a) When a minor resident is restricted to housing, they must be afforded a minimum of one hour of outdoor activity time daily.
 - b) The minor may be restricted to the dayroom area but may not be forced to remain in his/her room except during a time out period.
 - c) No sanction may restrict a minor from attending required school classes or religious practices.
- 3) Minor residents who are 12 years old and older may have their free movement privilege suspended for up to 14 days. Such a suspension would require that the parent supervise all activities for that time period.
- 4) Loss of extracurricular activity time such as movie night.
- 5) Loss of field trip privileges for up to 45 days.

Corrective action may not interfere with such daily functions as eating and sleeping. Disciplinary actions may not adversely impact a child's health, physical or psychological well-being or deny a child regular meals, sufficient sleep, exercise, medical care, the right to correspondence, or legal assistance.

e. Acceptable Corrective Sanctions for Adults:

Sanctions in subparagraphs a. through d. (below) may be imposed by the MRP.

Sanctions in subparagraphs a. through e. may be imposed by the ERP.

- 1) Referral to Counseling
- 2) Require attendance in Parenting Classes
- 3) Additional work details such as:

General housekeeping

- 1) Loss of Commissary
- 2) Restriction to housing Area, not to exceed 72 hours.

Imposition of such a sanction must take into account the ages of minor children and the negative impact this sanction would have on minor's who were not involved in the charged offense.

Sanctions are designed to correct poor behavior and are meant to encourage better behavior within a family residential center. Their use should be limited to those instances where other intervention has been tried and has been unsuccessful.

- f. The MRP/ERP do not have the authority to remove any resident from a facility on the basis of a finding of guilty for any offense. The ERP shall recommend removal to the Chief, JFRMU, of any resident who presents an immediate or continuing threat to the good order, safety, and welfare of the facility.

8. Disciplinary Severity Scale and Prohibited Acts

All facilities shall have graduated scales of offenses and disciplinary consequences, as provided in this section.

Family residential centers shall adopt, without changing, the offense categories and administrative sanctions set forth in this section.

Prohibited acts are divided into three categories: "Major," "Moderate," and "Low." The sanctions authorized for each category (see table of sanctions, below) will be imposed only if the resident is found to have committed a prohibited act and no other method of behavioral modification has been found to be effective. Due to the nature of the facility as a residential family facility, sanctions should be used as a last resort and only as a means to correct behavior that threatens the safety and welfare of residents, staff, and visitors.

a. Low offenses: For all "Low" offenses, staff is afforded the opportunity to resolve these incidents through immediate counseling or referral to a counselor for discussion. This is particularly important during the first 30 days of a residents stay and acclimation to the facility. Staff may, at their discretion, also initiate an incident report

b. Moderate offenses: All moderate offenses are reviewed by the MRP for accuracy and completeness. Once reviewed, the MRP shall concur with the charged offense and refer the matter for review by the ERP, or, the MRP may dismiss or defer the charged offense based on a lack of evidence or the need to obtain additional information.

c. Major offenses: All "Major" offenses require the immediate notification of the Chief, JFRMU, and the Field Office Director. Where a resident is deemed to be an immediate threat to themselves or others, the resident shall be immediately removed to a secure facility pending a full and complete investigation. Permanent removal of a resident from a residential family facility may only be authorized by the Chief, JFRMU. Such authorization will only be given when it can be established that the continued presence of the resident, minor or adult, would jeopardize the safety and welfare of themselves or others.

LOW OFFENSES:

1. (101) Being in an Unauthorized Area – *Being in an area that is designated through verbal, written, or posted orders as "off limits" to residents.*
2. (102) Disorderly Conduct – *Behavior such as loud talking, yelling, or pushing which disrupts the orderly running of the facility.*
3. (103) Failure of Parent/Legal Guardian to Appropriately Manage Children's Behavior – *For parents who allow their children to be unruly, disrespectful, or insubordinate while in their presence.*
4. (104) Failure to Follow Verbal or Posted Rules and/or Regulations – *Not following specific rules and/or orders which have been designated for the*

clean, safe, orderly operation of the facility which residents have been told in advance through posting or have been given verbally by an employee of the facility or person who has charge of the resident at the time. This includes not following the procedures established by the facility for taking count.

5. (105) Fighting – *Exchange of words or body contact in anger wherein no injury requiring medical attention occurs, such as horseplay.*

6. (106) Gambling – *Operate or act in any game of chance involving betting or wagering of goods or other valuables.*

7. (107) Possession of Gambling Paraphernalia – *Having in one's control, items for use in operating or acting in any game of chance involving betting and wagering of goods or other valuables.*

8. (108) Self Mutilation – *Inflicting injury on one's self, such as cutting on one's own body or tattooing.*

9. (109) Smoking – *Smoking tobacco of any form in any area of the facility.*

10. (110) Unauthorized Receipt or Possession of any Item of Value – *Receiving or having in one's possession any item of value which has been obtained through false pretenses, threats, or stealing.*

11. (111) Unexcused Absence from Place of Assignment – *Being away, without authorization from an appropriate supervisor, from the place of assignment such as housing area, recreation area, health services, etc.*

12. (112) Use of Vulgar, Abusive, or Obscene Phrases/Language

13. (113) Failure to Maintain Personal Hygiene or Personal Hygiene of Child – *Not having a clean body or clothes.*

14. (114) Unsanitary and Disorderly Housing Conditions – *Not keeping a clean, neat living area. The area should be kept in a manner so that all possessions are stored in an organized manner in areas designated for such. The area should be free from dirt and clutter.*

15. (115) Possession of Non-Dangerous Contraband (Soft Contraband) – *Possession of contraband items that are not allowed at the facility but are not capable of causing serious injury or harm to self or others, including tobacco products.*

16. (116) Unauthorized Use of Telephone – *Using the telephone during unauthorized times.*

17. (201) Refusal to Submit to a Reasonable Suspicion Drug Test - *Not providing a urine sample for use in reasonable suspicion drug testing.*

MODERATE OFFENSES:

1. (202) Positive Reasonable Suspicion Drug Test – *Testing positive for an illegal drug or un-prescribed controlled substance.*

2. (203) Theft – *Unauthorized taking of something that belongs to someone else.*
3. (204) Destruction, Alteration, or Damage to Property (Under \$1,000.00) – *Destroying, changing or hurting property of the facility or any other person.*
4. (205) Forgery or Unauthorized Reproductions of Documents or Articles (Excluding Money) – *Counterfeiting, forging, or reproducing without approval, any document, article, identification, or security documents.*
5. (206) Hindering an Employee in the Performance of Their Duties – *Acting in such a way to interrupt an employee during their work time such as causing delays or giving false information.*
6. (207) Refusal to Submit to a Reasonable Suspicion Search.
7. (208) Child Neglect – *Failure to give care and proper attention to a child (Non-Injury)*
8. (209) Verbal Sexual Harassment of a Resident. *Acting in such a manner as to create a hostile residential environment for other residents regardless of age or gender.*

MAJOR OFFENSES: Suspicion of any of the following offenses requires immediate notification of ICE and separation from the general population.

1. (301) Arson – *Starting or causing to be started a fire which could or does cause damage to person(s) or property.*
2. (302) Assault/Battery – *A non-sexually related attack upon the body of another person with the intention of harming or causing serious injury.*
3. (303) Rape – *Sexual contact of any person without his or her consent, or of a person who is unable to consent or refuse; and contact between the penis and the vagina or the penis and the anus including penetration, however slight; or contact between the mouth and the penis, vagina, or anus; or penetration of the anal or genital opening of another person by a hand, finger, or other object (i.e. penetration or oral sodomy).*
4. (303) Sexual Assault – *Abusive contact of any person without his or her consent for the purpose of sexual gratification or arousal or of a person who is unable to consent or refuse; and intentional touching, either directly or indirectly or through the clothing, of the genitalia, anus, groin, breast, inner thigh or buttocks of any person. Sexual assault excludes incidents involving penetration or oral sodomy.*
5. (304) Attempt/Conspiracy to Commit a Major Offense – *An offense for residents who do not actually commit the offense but participate in one (1) or more of the following ways:*
 - a. (304a) *Attempts to commit the major offense;*
 - b. (304b) *Solicits another or others to commit the major offense;*

- c. *(304c) Conspires with another or others to commit the major offense; and/or*
- d. *(304d) Facilitates the action of another or others in committing the major offense.*
- 6. *(305) Child Abuse – Treating a child cruelly, roughly, wrongly, improperly, or in an insulting manner.*
- 7. *(306) Child Neglect – Failure to give care and proper attention to a child resulting in endangerment or injury to a child.*
- 8. *(307) Confirmed STG Affiliation/Activity – Affiliated or participating in a gang-related activity.*
- 9. *(308) Counterfeiting, Forgery, or Unauthorized Reproduction of Money*
- 10. *(309) Death of Any Person – Any act of which the end result is the death of any person including employees, visitors/volunteers, and/or other residents.*
- 11. *(310) Destruction, Alteration, or Damage to Property (\$1,000 or more) - Destroying, changing or hurting property of the facility or any other person.*
- 12. *(311) Hostage Taking – Holding a person(s) against their will as a security for the fulfillment of certain terms.*
- 13. *(312) Escape – Leaving the grounds of the facility or from the custody of an employee outside of the facility without permission.*
- 14. *(313) Insurrection – Participation or encouraging another to participate in unauthorized activity such as protesting or rioting.*
- 15. *(314) Possession of Dangerous Contraband (Hard Contraband) - Possession of contraband items that are not allowed at the facility and are capable of causing serious injury or harm to self or others. This includes deadly weapons, items altered to be used as weapons, drugs and drug paraphernalia.*
- 16. *(315) Sexual Misconduct – This includes, but is not limited to, the following acts:*
 - a. *(315a) Exposing the genitals or buttocks to an employee, visitor/volunteer, or resident for the purpose of sexual gratification or arousal.*
 - b. *(315b) Masturbation where an employee, visitor/volunteer, or other resident can see the act*
- 17. *(316) Intimidating or Threatening Another with Harm – Telling someone, through actions or words, that harm will come to them.*
- 18. *(317) Possession of Drugs or Intoxicants – Possession of any drugs or intoxicants which have not been prescribed or approved by the health services department for use.*

19. (318) Violation of any Federal, State, or Local Law – *Any act, through not specifically listed in this policy, that would be considered either a felony or misdemeanor under federal laws or under the state laws in which the resident is housed.*

9. Documents

All documents relevant to the incident, subsequent investigation, hearing(s), etc., will be completed and distributed in accordance with facility procedures.

Documents will be prepared and distributed as follows:

Incident Report/Notice of Charges

The officer shall prepare a report and submit it to the facility supervisor immediately after the incident takes place. If the incident is resolved informally, the officer will so note on the original report, which will then be forwarded to the Chief of Security and a copy forwarded to ICE.

If the MRC is to be involved, the supervisor shall serve the resident with a copy of the Notice of Infractions upon completion of the investigation, no less than 24 hours before the MRC hearing.

The MRC receives the original copy.

If the MRC hears the matter, the ranking member of that committee shall serve the resident with a copy of the Incident Report/Notice of Violations indicating their decision.

The MRC, upon conclusion of its proceedings, will forward the entire record to either the Chief of Detention or the ERP, as appropriate.

Investigation Report

Original–submitted to the MRC.

Resident does not receive a copy

UDC Report of Findings and Action

Original–served on the resident after the committee issues its findings

Copy–to the resident detention file (guilty finding only)

Notice of ERP Hearing

Original–served on resident

Copy–resident detention file

Resident Rights at ERP Hearing

Original–served on resident

Copy–facility detention file

ERP Report

Original–resident detention file

Copy–resident

10. Confidential Information

When a decision relies on information from a confidential informant, the MRC or ERP shall include in the hearing record the factual basis for finding the information reliable.

11. Notice to Residents

The resident handbook shall notify residents of the following:

- a. The facility process for managing and handling rules violations.
- b. The prohibited acts and potential sanctions for prohibited acts:
- c. The procedure for appealing sanctions or adverse administrative findings.

12. Family Shelter Facilities

Family Residential Facilities are subject to review under both adult and juvenile care standards. Family Residential Management is unique to ICE and as such no specific monitoring tool exists independently of this standard. The goal of ICE is to ensure family unity during the immigration court process. Given the unique nature of these facilities in that they are less than secure and house only non-delinquent/criminal or non-violent residents, many of the ICE National Detention Standards for adult detention are inappropriate for use at these centers. Each facility must rely on a program that places a continued emphasis on voluntary acceptance of facility rules and general respect between staff and residents. Many sanctions within this program rely heavily on communication and counseling with the end goal remaining family unification.

The continued good order and general security of the facility relies on the residents continued voluntary cooperation within the confines of each facility. The most severe sanction that can be issued is removal from the facility and placement within alternative secure locations. It is the goal of ICE to avoid such sanctions whenever possible.

Standard Approved:

John P. Torres
Director
Office of Detention and Removal

Date

