

5.6 Telephone Access

I. Purpose and Scope

This detention standard ensures that detainees may maintain ties with their families and others in the community, legal representatives, consulates, courts and government agencies by providing them reasonable and equitable access to telephone services.

This detention standard applies to the following types of facilities housing ERO detainees:

- Service Processing Centers (SPCs);
- Contract Detention Facilities (CDFs); and
- State or local government facilities used by ERO through Intergovernmental Service Agreements (IGSAs) to hold detainees for more than 72 hours.

Procedures in italics are specifically required for SPCs, CDFs, and Dedicated IGSA facilities. Non-dedicated IGSA facilities must conform to these procedures or adopt, adapt or establish alternatives, provided they meet or exceed the intent represented by these procedures.

For all types of facilities, procedures that appear in italics with a marked (**) on the page indicate optimum levels of compliance for this standard.

Various terms used in this standard may be defined in standard “7.5 Definitions.”

II. Expected Outcomes

The expected outcomes of this detention standard are as follows (specific requirements are defined in “V. Expected Practices”).

1. Detainees shall have reasonable and equitable access to reasonably priced telephone services.
2. Detainees with hearing or speech disabilities

shall be granted reasonable accommodations to allow for appropriate telephone services.

3. Detainees in Special Management Units (SMU) shall have access to telephones, commensurate with facility security and good order.
4. Detainees and their legal counsel shall be able to communicate effectively with each other.
5. Privacy for detainee telephone calls regarding legal matters shall be ensured.
6. Telephone access procedures shall foster legal access and confidential communications with attorneys.
7. Detainees shall be able to make free calls to the ICE/ERO-provided list of free legal service providers for the purpose of obtaining initial legal representation, to consular officials, to the Department of Homeland Security (DHS) Office of the Inspector General (OIG), and to the ICE Office of Professional Responsibility (OPR) Joint Intake Center (JIC). Indigent detainees, who are representing themselves pro se, shall be permitted free calls on an as-needed basis to family or other individuals assisting with the detainee’s immigration proceedings.
8. Telephones shall be maintained in proper working order.
9. Facilities shall strive to reduce telephone costs, including through the use of emerging telecommunications, voiceover and Internet protocol technologies.
10. The applicable content and procedures in this standard shall be communicated to the detainee in a language or manner the detainee can understand.

All written materials provided to detainees shall generally be translated into Spanish. Where practicable, provisions for written translation

shall be made for other significant segments of the population with limited English proficiency.

Oral interpretation or assistance shall be provided to any detainee who speaks another language in which written material has not been translated or who is illiterate.

III. Standards Affected

This detention standard replaces “Telephone Access” dated 12/2/2008.

IV. References

American Correctional Association, *Performance-based Standards for Adult Local Detention Facilities*, 4th Edition: 4-ALDF-2A-65, 2A-66, 5B-11, 5B-12, 6a-02, 6A-09.

ICE/ERO *Performance-based National Detention Standards 2011*: “2.13 Staff-Detainee Communication,” in regard to monitoring and documenting telephone serviceability.

V. Expected Practices

A. Telephones and Telephone Services

1. Number

To ensure sufficient access, each facility shall provide at least one operable telephone for every 25 detainees.

***Facilities shall be operating at the optimal level when at least one telephone is provided for every ten (10) detainees.*

2. Cost

Generally, detainees or the persons they call shall be responsible for the costs of telephone calls; required exceptions are listed below.

Each facility shall provide detainees with access to reasonably priced telephone services. Contracts for such services shall comply with all applicable state

and federal regulations and be based on rates and surcharges comparable to those charged to the general public. Any variations shall reflect actual costs associated with the provision of services in a detention setting. Contracts shall also provide the broadest range of calling options including, but not limited to, international calling, calling cards and collect telephone calls, determined by the facility administrator to be consistent with the requirements of sound detention facility management. Facilities shall post a list of card and calling rates in each housing unit. Facility administrators are encouraged to explore the use of new technologies which can facilitate the provision of cost effective means for enhancing detainees’ ability to communicate by telephone, such as, and not limited to, wireless and/or internet communications.

3. Maintenance

Each facility shall maintain detainee telephones in proper working order. Designated facility staff shall inspect the telephones daily, promptly report out-of-order telephones to the repair service so that required repairs are completed quickly. This information shall be logged and maintained by each Field Office. Facility staff shall notify detainees and the ICE/ERO free legal service providers of procedures for reporting problems with telephones.

ICE/ERO headquarters shall maintain and provide Field Offices a list of telephone numbers for current free legal service providers, consulates and the Department of Homeland Security’s (DHS) Office of the Inspector General (OIG), as determined by ICE. All Field Offices are responsible for ensuring facilities which house ICE detainees under their jurisdiction are provided with current pro bono legal service information.

4. Monitoring Detainee Telephone Services

a. Facility Staff Requirements

Facility staff members are responsible for

ensuring on a daily basis that telephone systems are operational and that the free telephone number list is posted. After ensuring that each phone has a dial tone, when testing equipment the officers must be able to demonstrate that an individual has the ability to make calls using the free call platform. Any identified problems must immediately be logged and reported to the appropriate facility and ICE/ERO staff.

ICE/ERO staff shall review and follow up on problems reported by detainees and others.

B. Monitoring of Detainee Telephone Calls

Each facility shall have a written policy on the monitoring of detainee telephone calls. If telephone calls are monitored, the facility shall:

1. include a recorded message on its phone system stating that all telephone calls are subject to monitoring;
2. notify detainees in the detainee handbook, or equivalent, provided upon admission; and
3. at each monitored telephone, place a notice that states the following:
 - a. that detainee calls are subject to monitoring; and
 - b. the procedure for obtaining an unmonitored call to a court, a legal representative or for the purposes of obtaining legal representation.

ICE/ERO and the facility shall coordinate in posting the notice in Spanish and in the language of significant segments of the population with limited English proficiency, where practicable.

A detainee's call to a court, a legal representative, DHS OIG, DHS Civil Rights and Civil Liberties (CRCL) or for the purposes of obtaining legal representation, may not be electronically monitored without a court order.

C. Detainee Notification

Each facility shall provide telephone access rules in writing to each detainee upon admission, and also shall post these rules where detainees may easily see them. ICE/ERO and the facility shall coordinate in posting these rules where practicable in Spanish and in the language of significant segments of the population with limited English proficiency.

Telephone access hours shall also be posted. Updated telephone and consulate lists shall be posted in detainee housing units. Translation and interpretation services shall be provided as needed.

D. Detainee Access

Each facility administrator shall establish and oversee rules and procedures that provide detainees reasonable and equitable access to telephones during established facility "waking hours" (excluding the hours between lights-out and the morning resumption of scheduled activities). Telephones shall be located in parts of the facility that are accessible to detainees. Telephone access hours shall be posted near the telephones.

Each facility shall provide detainees access to international telephone service.

Ordinarily, a facility may restrict the number and duration of general telephone calls only for the following reasons.

1. Availability

When required by the volume of detainee telephone demand, rules and procedures may include, but are not limited to, reasonable limitations on the duration and the number of calls per detainee, the use of predetermined time-blocks and institution of an advanced sign-up system.

2. Orderly Facility Operations

Calls may be restricted or limited if necessary to

prevent interference with counts, meals, scheduled detainee movements, court schedules, or other events constituting the orderly operation of the facility.

3. Emergencies

Telephone access and use may be limited in the event of escapes, escape attempts, disturbances, fires, power outages, etc. Telephone privileges may be suspended entirely during an emergency, but only with the authorization of the facility administrator or designee and only for the briefest period necessary under the circumstances. If suspension of telephone access exceeds 12 hours, ICE/ERO should be notified.

E. Direct or Free Calls

Even if telephone service is generally limited to collect calls, each facility shall permit detainees to make direct or free calls to the offices and individuals listed below. The Field Office Director shall ensure that all information is kept current and is provided to each facility. Updated lists need to be posted in the detainee housing units. A facility may place reasonable restrictions on the hours, frequency and duration of such direct and/or free calls, but may not limit a detainee's attempt to obtain legal representation. Full telephone access shall be granted in order for a detainee to contact the following:

- the Executive Office for Immigration Review or local immigration court;
- the Board of Immigration Appeals;
- federal and state courts where the detainee is or may become involved in a legal proceeding;
- consular officials;
- DHS/OIG;
- legal representatives, to obtain legal

representation, or for consultation when subject to expedited removal (when a detainee is under an expedited removal order, his/her ability to contact pro bono legal representatives shall not be restricted);

- legal service providers or organizations listed on the ICE/ERO free legal service provider list;
- United Nations High Commissioner for Refugees (UNHCR), from asylum-seekers and stateless individuals;
- federal, state or local government offices to obtain documents relevant to his/her immigration case;
- immediate family or others for detainees in personal or family emergencies or who otherwise demonstrate a compelling need (to be interpreted liberally); or
- ICE/OPR Joint Intake Center (JIC).

1. Request Forms

Free and direct calls shall be easily accessible. If detainees are required to complete request forms to make direct or free calls, facility staff must assist them as needed, especially illiterate or non-English speaking detainees. The detainees should also be permitted to seek assistance from their legal representatives, family, or other detainees.

2. Time Requirements

Staff shall allow detainees to make such calls as soon as possible after submission of requests, factoring in the urgency stated by the detainee. Access shall be granted within 24 hours of the request, and ordinarily within eight facility-established "waking hours." Staff must document and report to ICE/ERO any incident of delay beyond eight "waking hours."

3. Indigent Detainees

Ordinarily, a detainee is considered “indigent” if he/she has less than \$15.00 in his/her account for ten (10) days. A facility shall make a timely effort to determine indigence.

Indigent detainees are afforded the same telephone access and privileges as other detainees. Each facility shall enable all detainees to make calls to the ICE/ERO-provided list of free legal service providers and consulates at no charge to the detainee or the receiving party. The indigent detainee may request a call to immediate family or others in personal or family emergencies or on an as-needed basis.

4. Phone System Limitations

If the limitations of an existing phone system preclude meeting these requirements, the facility administrator must notify ICE/ERO so that a means of telephone access may be provided.

SPCs, CDFs, and dedicated IGSAAs shall require its telephone service providers to program and keep current, the telephone system to permit detainees free calls to numbers on the official pro bono legal representation list and to consulates. Other facilities shall adopt equivalent procedures.

F. Legal Calls

1. Restrictions

A facility may neither restrict the number of calls a detainee places to his/her legal representatives, nor limit the duration of such calls by rule or automatic cut-off, unless necessary for security purposes or to maintain orderly and fair access to telephones. If time limits are necessary for such calls, they shall be no shorter than 20 minutes, and the detainee shall be allowed to continue the call at the first available opportunity, if desired.

A facility may place reasonable restrictions on the hours, frequency and duration of such direct and/or

free calls but may not otherwise limit a detainee’s attempt to obtain legal representation.

2. Privacy

For detainee telephone calls regarding legal matters, each facility shall ensure privacy by providing a reasonable number of telephones on which detainees can make such calls without being overheard by staff or other detainees. Absent a court order, staff may not monitor phone calls made in reference to legal matters.

The facility shall inform detainees to contact an officer if they have difficulty making a confidential call relating to a legal proceeding. If notified of such a difficulty, the officer shall take measures to ensure that the call can be made confidentially.

Privacy may be provided in a number of ways, including:

- a. telephones with privacy panels (side partitions) that extend at least 18 inches to prevent conversations from being overheard;
- b. telephones placed where conversations may not be readily overheard by others; or
- c. office telephones on which detainees may be permitted to make such calls; and
- d. detainees shall be supervised within eyeshot, but out of earshot

G. Telephone Access for Detainees with Disabilities

The facility shall provide a TTY device or Accessible Telephone (telephones equipped with volume control and telephones that are hearing-aid compatible for detainees who are deaf or hard of hearing). Detainees who are deaf or hard of hearing shall be provided access to the TTY on the same terms as hearing detainees are provided access to telephones. Except to the extent that there are time

limitations, detainees using the TTY shall be granted additional time, consistent with the safety, security and good order of the facility.

If an Accessible Telephone or TTY is not available in the same location as telephones used by other detainees, detainees shall be allotted additional time to walk to and from the Accessible Telephone or TTY location. Consistent with the order and safety of the facility, the facility shall ensure that the privacy of telephone calls by detainees using Accessible Telephones or TTY is the same as other detainees using telephones.

***Consistent with the order and safety of the facility, the facility may allow for use of other equipment such as video relay and video phones for detainees who are deaf or hard of hearing. Facilities shall permit detainees with disabilities the opportunity to submit requests for the auxiliary aid of their preference.*

Accommodations shall also be made for detainees with speech disabilities.

H. Telephone Privileges in Special Management Units (SMU)

While there are differences in telephone access in SMU, depending on whether a detainee is in Administrative Segregation or Disciplinary Segregation, in general a detainee in either status may be reasonably restricted from using or having access to a phone for the following reasons.

- If that access is used for criminal purposes or would endanger any person, including that detainee.
- If the detainee damages the equipment provided.
- For the safety, security and good order of the facility.

In such instances, staff must clearly document why

such restrictions are necessary to preserve the safety, security and good order of the facility in the appropriate SMU log. Detainees and their legal counsel shall nevertheless be accommodated in order for them to be able to communicate effectively with each other. Telephone access for legal calls, courts, government offices (including the DHS OIG and the DHS JIC) and embassies or consulates shall not be denied.

1. Administrative Segregation

Generally, detainees in administrative segregation should receive the same privileges available to detainees in the general population, subject to any existing safety and security considerations. This requirement applies to a detainee in Administrative Segregation pending a hearing because he/she has been charged with a rule violation, as well as a detainee in Administrative Segregation for other than disciplinary reasons, such as protective custody or suicide risk.

2. Disciplinary Segregation

Detainees in Disciplinary Segregation may be restricted from using telephones to make general calls as part of the disciplinary process. Even in Disciplinary Segregation, however, detainees shall have some access for special purposes. Ordinarily, staff shall permit detainees in Disciplinary Segregation to make direct and/or free and legal calls as previously described in above in sections V.E and V.F, except in the event of compelling and documented reasons of threats to the safety, security and good order of the facility.

I. Inter-facility Telephone Calls

Upon a detainee's request, facility staff shall make special arrangements to permit the detainee to speak by telephone with an immediate family member detained in another facility. Immediate family members include spouses, common-law spouses,

parents, stepparents, foster parents, brothers, sisters, natural or adopted children and stepchildren.

Reasonable limitations may be placed on the frequency and duration of such calls. Facility staff shall liberally grant such requests to discuss legal matters and shall afford the detainee privacy to the extent practicable, while maintaining adequate security.

J. Incoming Calls

The facility shall take and deliver telephone messages to detainees as promptly as possible.

When facility staff receives an emergency telephone call for a detainee, the caller's name and telephone number shall be obtained and promptly given to the detainee. The detainee shall be permitted to promptly return an emergency call at their own cost within the constraints of security and safety. The facility shall enable indigent detainees to make a free return emergency call.