

ICE/DRO DETENTION STANDARD

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.

It applies to the following types of facilities housing ICE/DRO detainees:

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

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

Some terms used in this document may be defined in the separate **Definitions** Standard.

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

1. Detainees will have reasonable and equitable access to reasonably priced telephone services.
2. Detainees with hearing or speech disabilities will have reasonable accommodations to allow for appropriate telephone services.
3. Detainees in Special Management Units will have access to telephones, commensurate with facility security and good order.
4. Detainees will be able to make free calls to the ICE/DRO-provided list of free legal service providers for the purpose of obtaining initial legal representation, to consular officials and to the DHS Office of Inspector General.
5. Telephone access procedures will foster legal access.
6. Telephones will be maintained in proper working order.
7. The applicable contents and procedures in this Standard will be communicated to the detainee in a language or manner which the detainee can understand.

III. DIRECTIVES AFFECTED. This Detention Standard replaces **Telephone Access** dated 9/20/2000.

IV. REFERENCES

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

ICE/DRO Detention Standard on **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.

In SPCs and CDFs, telephones shall permit outgoing calls only.

2. Costs

Generally, detainees or the persons they call are responsible for the costs of telephone calls; however, there are exceptions as required below.

Each facility shall ensure that detainees have 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 commensurate with 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.

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 and ensure that required repairs are completed quickly. This information will be logged.

ICE/DRO Headquarters will maintain and provide Field Offices a list of telephone numbers for current free legal service providers, consulates and OIG, as determined by ICE. All Field Offices are responsible for ensuring all facilities which house ICE detainees under their jurisdiction, including IGSA's, are provided with updated *pro bono* information.

4. Monitoring Detainee Telephone Services

a) Facility Staff Requirements

Facility staff is responsible for ensuring on a daily basis that telephone systems are operational. Ensuring there is a dial tone is only part of what is required: 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 problems identified must immediately be logged and reported to the appropriate facility and ICE staff personnel.

b) ICE Field Office Staff Requirements

In accordance with the Detention Standard on **Staff-Detainee Communication**, designated ICE field office staff members are required to verify the serviceability of all telephones at least weekly. Therefore, Field Office Directors shall ensure that all phones for detainee use are tested at least weekly by visiting ICE staff. To verify the serviceability of all telephones in detainee housing units, ICE/DRO staff shall:

- Make random calls to test pre-programmed numbers for the OIG, free legal service providers, consulates, attorneys, and other numbers as determined by ICE/DRO;
- Interview a sampling of detainees regarding telephone services, and
- Review written detainee complaints regarding telephone services.

Weekly accuracy checks of consulate phone numbers will be performed by the national phone service provider.

Staff shall report any telephone serviceability problem within 24 hours to the appropriate ICE point of contact.

Staff shall document each serviceability test on a form that has been provided by DRO, and each field office shall maintain those forms, organized by month, for three years. The form will record, at a minimum, any problems or irregularities detected in the system and the action taken to remedy those issues. The Detention Standards Compliance Unit shall conduct random audits of field office compliance. The national phone service provider and/or ICE shall update the free telephone number list as needed

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:

- Include a recorded message on its phone system stating that all telephone calls are subject to monitoring;
- Notify detainees in the Detainee Handbook or equivalent provided upon admission;
- At each monitored telephone, place a notice that states:
 - That detainee calls are subject to monitoring; and
 - The procedure for obtaining an unmonitored call to a court, a legal representative, or for the purposes of obtaining legal representation.
 - The notice will be in English, Spanish, and next most prevalent language at the facility

A detainee's call to a court, a legal representative, OIG, or 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 in a language they can understand. Updated telephone and consulate lists shall be posted in the 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 by detainees.

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 advance sign-up.
2. **Orderly Facility Operations.** Counts, meals, scheduled detainee movements, court schedules, etc.
3. **Emergencies.** 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.

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 FOD will ensure that all information is kept current and 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.

- The local immigration court and the Board of Immigration Appeals,
- Federal and State courts where the detainee is or may become involved in a legal proceeding,
- Consular officials,
- Office of the Inspector General of the U.S. Department of Homeland Security at (800) 323-8603,
- Legal representatives, to obtain legal representation, or for consultation when subject to expedited removal. (When a detainee is under an expedited removal order, the ability to contact *pro bono* legal representatives shall not be restricted.)

- Legal service providers or organizations listed on the ICE/DRO free legal service provider list,
- United Nations High Commissioner for Refugees (UNHCR) at 1-888-272-1913 (accepting calls from asylum-seekers and stateless individuals).
- A government office 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).

1. Request Forms

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. Free and direct calls must be easily accessible.

2. Time Requirements

Staff shall allow detainees to make such calls as soon as possible after the requests, factoring in the urgency stated by the detainee. Access shall always be granted within 24 hours of the request, but, ordinarily, within eight facility-established “waking hours.”

Staff must document and report to ICE/DRO any incident of delay beyond eight “waking hours.”

3. Indigent Detainees

A facility may not require indigent detainees to pay for the types of calls listed in this section and indigent detainees are afforded the same telephone access and privileges as detainees in the general population. Each facility shall enable all detainees to make calls to the ICE/DRO-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 for a compelling need (to be interpreted liberally). Ordinarily, a detainee is considered "indigent" if he or she has less than \$15.00 in his or her account. A facility shall make a timely effort to determine indigence.

4. Phone System Limitations

If the limitations of an existing phone system preclude meeting these requirements, the facility administrator must notify ICE/DRO, so that a means of telephone access can be provided (for example, cell phones into which facility staff can pre-program authorized numbers in the above categories with all other numbers blocked). Such phones shall be maintained by on-site ICE/DRO liaison officers or local officials and must be provided in an environment that meets privacy standards.

In SPCs and CDFs, ICE/DRO requires its telephone service providers to program the telephone system to permit detainees free calls to numbers on the official *pro bono* legal representation list and to consulates, and to permit detainees to make direct calls by use of debit cards. IGSA facilities should adopt similar 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 electronically monitor those calls.

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:

- Telephones with privacy panels (side partitions) that extend at least 18 inches to prevent conversations from being overheard;
- Telephones placed where conversations may not be readily overheard by others or
- Office telephones on which detainees may be permitted to make such calls.

G. Telephone Access for Detainees Who Are Deaf or Hard of Hearing

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 hard of hearing will be provided access to the TTY on the same terms as hearing detainees. Except to the extent that there are time limitations, detainees using the TTY will have additional time consistent with the order and safety of the facility.

If an Accessible Telephone or TTY is not available in the same location as telephones used by other detainees, detainees will 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.

Accommodations shall also be made for detainees with speech disabilities.

H. Telephone Privileges in Special Management Units

While there are differences in telephone access in SMUs, 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 if that access is used for criminal purposes or would endanger any person or if the detainee damages the equipment provided or for security reasons. In such instances, staff must clearly document why such restrictions are necessary to preserve the safety, security, and good order of the facility. Any denial of telephone access will be documented in the appropriate SMU log.

1. Administrative Segregation

Generally, detainees in administrative segregation should receive the same privileges that are available to detainees in the general population, subject to any safety and security considerations that may exist. This requirement applies to a detainee in Administrative Segregation pending a hearing because he or 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 paragraphs E and F, except for **compelling and documented** reasons of safety, security and good order.

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, and natural or adopted children, or 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 receive an emergency telephone call for a detainee, the caller's name and telephone number will be obtained and given to the detainee as soon as possible. The detainee shall be permitted to return the emergency call as soon as reasonably possible within the constraints of security and safety. The facility shall enable indigent detainees to make a free return emergency call.

In SPCs/CDFs, messages shall be delivered to detainees no less than three times a day.

Standard Approved:

James T. Hayes, Jr. /s/

12/5/2008

**James T. Hayes, Jr
Director
Office of Detention and Removal Operations**

Date