

2.3 Contraband

I. Purpose and Scope

This detention standard protects detainees and staff while enhancing facility security and good order by identifying, detecting, controlling and properly disposing of contraband.

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.

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. Contraband shall be identified, detected, controlled and disposed of properly.
2. Detainee personal property that would be considered contraband within the facility shall be mailed to a third party or stored until the detainee’s release, unless that property is illegal to possess or constitutes a threat to safety or security.

3. Contraband that may be evidence in connection with a violation of a criminal statute shall be preserved, inventoried, controlled and stored with a documented chain of custody.
4. 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 standard on “Contraband” dated 12/2/2008.

IV. References

American Correctional Association, *Performance-based Standards for Adult Local Detention Facilities*, 4th Edition: 2C-01, 2C-02, 2C-06.

ICE/ERO *Performance-based National Detention Standards 2011*:

- “2.5 Funds and Personal Property”; and
- “6.2 Grievance System.”

V. Expected Practices

A. “Hard” and “Soft” Contraband

Contraband is anything detainees are not authorized to have in their possession.

1. A detainee found in possession of hard contraband could face disciplinary action or

criminal prosecution.

Hard contraband includes, but is not limited to, any item that:

- a. is inherently dangerous;
- b. is a tool or device that could be used to escape; or
- c. may otherwise interfere with security, safety, or the good order of facility operations.

Examples of hard contraband include:

- a. tools that could aid in an escape (e.g., ropes, keys);
- b. ammunition or explosives;
- c. combustible or flammable liquids;
- d. hazardous or poisonous chemicals and gases;
- e. weapons;
- f. intoxicants;
- g. currency (where prohibited); and
- h. narcotics and other controlled substances not dispensed or approved by the medical department, not used as prescribed, or in the possession of a detainee other than the person for whom it was prescribed.

Staff shall consult the facility pharmacist or other health services staff members when uncertain about whether a prescribed medication represents contraband.

Medicine the detainee brings into the facility upon arrival shall be forwarded to the facility medical staff for disposition as specified under standard “4.3 Medical Care.” Only replacement medication duly approved by the facility medical staff shall be returned to the detainee.

2. Soft contraband includes, but is not limited to, “nuisance” items that do not pose a direct and immediate threat to safety or security, but which have the potential to create dangerous or unsanitary conditions in the facility (e.g., excess papers that create a fire hazard; food items that are spoiled or retained beyond the point of safe consumption).

If excessive authorized legal materials create a fire hazard, the facility shall provide an alternate storage area accessible to the detainee.

B. Procedures for Handling Contraband

All facilities shall have written policies and procedures for handling contraband, including the seizure of contraband, disputed ownership, detainee or government property defined as contraband, and the preservation, inventory, and storage of contraband as evidence of a crime. Facilities shall ordinarily consult a religious authority before confiscating a religious item deemed “soft” contraband.

1. Seizure of Contraband

Staff shall seize contraband:

- a. *Found in the physical possession or living area of a detainee (including a detainee awaiting voluntary return);*
- b. *Found in common areas;*
- c. *Found in incoming or outgoing mail;*
- d. *Discovered during admission in-processing; and,*
- e. *Found in transport vehicles.*

Exceptions may occur only upon written authorization of the facility administrator.

2. Religious Items

The facility administrator shall ordinarily consult a religious authority before confiscating a religious

item that is deemed “soft” contraband (see also standard “5.5 Religious Practices”).

3. Disputed Ownership

When a detainee’s claimed ownership of potential contraband material is in question, staff shall:

- a. inventory and store the items pending verification of ownership; and*
- b. provide the detainee with a copy of the inventory as soon as practicable, and place a second copy in the detainee’s detention file. The detainee shall have seven days following receipt of the inventory to prove ownership of the listed items.*

Staff shall deny claims:

- a. arising from the unauthorized use of government property; and*
- b. for any item acquired, without authorization, from another detainee.*

4. Detainee Property Defined as Contraband

Staff shall seize all hard and soft contraband. In the event that the contraband is not illegal to possess under criminal statutes and would not otherwise pose a threat to security, staff shall inventory and provide a receipt for the property. At the detainee’s request, the staff will mail the property to a third party, or store it with the detainee’s other stored personal property, in accordance with standard “2.5 Funds and Personal Property.” If a detainee chooses not to provide an appropriate mailing address within 30 days, or is unable to pay the postage, the facility administrator after ICE/ERO concurrence, and after providing the detainee with written notice of the intent to destroy the property along with information on how to retain the property in question, may dispose of the property in accordance with the section on “Destruction of Contraband” below in this standard. If a detainee cannot establish ownership, staff shall attempt to

resolve the matter. If ownership cannot be reasonably established, the property may be destroyed, as also described below in this standard.

5. Evidence of a Crime

Contraband that is illegal to possess or may be evidence in connection with a violation of a criminal statute shall be preserved, inventoried, controlled and stored with a documented chain of custody, and shall be reported to the appropriate law enforcement authority for action and possible seizure, destruction or disposition of contraband is detailed under standard “2.5 Funds and Personal Property.”

6. Government Property

Contraband which is government property shall be retained as evidence for possible disciplinary action or criminal prosecution, after which, as appropriate, it may be:

- a. returned to the issuing authority;*
- b. returned to normal stock for reissue; or*
- c. destroyed, with the approval of the facility administrator.*

C. Destruction of Contraband

The facility administrator shall establish a procedure for the destruction of contraband items.

Contraband may be destroyed when no longer needed for disciplinary action or criminal prosecution. It may also be kept for official use, such as use as a training tool, if secured in the facility armory when not in use.

- 1. The Chief of Security, or equivalent, shall determine whether an item shall be destroyed.*
- 2. The Chief of Security shall send the facility administrator a memorandum, through official channels, describing what is to be destroyed and the rationale for destruction.*

3. *The facility administrator shall require that an item of questionable ownership be held for 120 days before its destruction can be considered, to afford the detainee ample opportunity to obtain proof of ownership and appeal the decision in accordance with standard “6.2 Grievance System.”*

Where disciplinary action is appropriate, the facility administrator shall defer his/her decision about the property until the disciplinary case, including any appeals, is resolved.

4. *The officer who physically destroys the property and at least one official observer shall attest, in writing, to having witnessed the property’s destruction.*
5. *A copy of the property disposal record shall be given to the detainee, and another copy shall be placed in the detainee’s detention file.*

D. Canine Units

Canine units (in facilities that have them) may be used for contraband detection, but their use for force, control, or intimidation of detainees is prohibited, in accordance with standard “2.15 Use of Force and Restraints.”

Any facility that has a canine unit shall establish a clear and detailed written policy and procedures governing the circumstances in which canine units may be used, in regard to ICE/ ERO detainees.

Canines shall not be used in the presence of ICE detainees.

E. Notice to Detainees

The detainee handbook, or equivalent, shall notify detainees in a language or manner that they understand relative to:

1. The facility’s rules and procedures governing contraband; and
2. The applicability of standard “2.5 Funds and Personal Property,” as it relates to contraband.