

I. INTRODUCTION

II. BACKGROUND

III. RELEVANT REGULATIONS AND POLICIES

a. Standards of Conduct

i. **28 C.F.R. § 2635.101 Basic obligation of public service**

1. 5 C.F.R. § 2635.101(b)(5): "Employees shall put forth honest effort in the performance of their duties."
2. 5 C.F.R. § 2635.101(b)(8): "Employees shall act impartially and not give preferential treatment to any private organization or individual."
3. 5 C.F.R. § 2635.101(b)(9): "Employees shall protect and conserve Federal property and shall not use it for other than authorized activities."
4. 5 C.F.R. § 2635.101(b)(11): "Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities."
5. 5 C.F.R. § 2635.101(b)(14): "Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts."

ii. **28 C.F.R. § 2635.704 Use of Government property**

1. 5 C.F.R. § 2635.704(a): "An employee has a duty to protect and conserve Government property and shall not use such property, or allow its use, for other than authorized purposes."
2. 5 C.F.R. § 2635.704(b)(1): "Government property includes any form of real or personal property in which the Government has an ownership, leasehold, or other property interest as well as any right or other intangible interest that is purchased with Government funds, including the services of contractor personnel. The term includes office supplies, telephone and other telecommunications equipment and services, the Government mails, automated data processing capabilities, printing and reproduction facilities, Government records, and Government vehicles."

iii. **28 C.F.R. § 2635.705 Use of official time**

1. 5 C.F.R. § 2635.705(a): "Unless authorized in accordance with law or regulations to use such time for other purposes, an employee shall use official time in an honest effort to perform official duties."

iv. **BOP Program Statement 3420.11 Standards of Conduct**

1. 4. General Standards: "Employees must:
 - a. Conduct themselves in a manner that fosters respect for the Bureau of Prisons, the Department of Justice, and the U.S. Government.

- b. Endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards promulgated in this policy and the statutes
 - c. As soon as practicable (but no later than 24 hours) report to their CEO (or other appropriate authority such as the Office of Internal Affairs or the Office of the Inspector General) any P3420.11 12/6/2013 6 violation, appearance of a violation, or attempted violation of these Standards or of any law, rule, or regulation.
 - d. Every employee is required to immediately report to management any act or omission by any person that could result in a breach of institution security.”
 - 2. 6. Responsiveness
 - a. “Inattention to duty in a correctional environment can result in escapes, assaults, and other incidents. Employees are required to remain fully alert and attentive during duty hours.”
 - b. “Employees are to obey the orders of their superiors at all times.”
 - 3. 12. Government Property
 - a. “Government property is to be used for authorized purposes only. Authorized purposes include personal use of Government office equipment such as computers, printers, fax machines, telephones, copiers, calculators, and Government-issued cellular phones, provided there is only a negligible cost to the Government.”
 - b. “Personal use of office equipment may take place before or after official working hours or during non-paid meal breaks.”
 - c. “Personal use of office equipment will not take place during official working hours, with the following exceptions: a. Office and Cellular Telephones . . . b. Fitness Equipment”
- b. Pre-Trial Inmates
 - i. 28 C.F.R. Part 551, Subpart J – Pretrial Inmates – N/A
 - ii. **BOP Program Statement 7331.04 Pretrial Inmates**
 - 1. 9(j): “Thorough screening and good professional judgment are essential to ensure pretrial inmates' safety and security. The screening process should identify seriously ill, violent, aggressive, escape risk, or high profile inmates who require closer supervision.”
 - 2. 10. INTAKE SCREENING AND ASSESSMENT OF PRETRIAL INMATES: “Within the first 48 hours of admission, an initial risk/needs assessment must be made. A systematic procedure for interviewing pretrial inmates thoroughly minimizes risks.”
- c. ~~Intake Screening~~
 - ~~i. 28 C.F.R. Part 522, Subpart C—Intake Screening~~
 - ~~ii. BOP Program Statement P5290.15 Intake Screening~~

d.c. SHU

i. **28 C.F.R. Part 541, Subpart B - Special Housing Units**

1. 28 C.F.R. § 541.31(h)(1): “your amount of personal property may be limited for reasons of fire safety or sanitation. (1) In administrative detention status you are ordinarily allowed a reasonable amount of personal property and reasonable access to the commissary.”

ii. **BOP Program Statement 5270.11 Special Housing Units**

1. (h)(3): “Personal property ordinarily allowed in administrative detention (if not otherwise a threat to institution security) includes: ■ Bible, Koran, or other scriptures (1). ■ Books, paperback (5). ■ Eyeglasses, prescription (2). ■ Legal material (see the Program Statement Inmate Legal Activities). ■ Magazine (3). ■ Mail (10). ■ Newspaper (1). ■ Personal hygiene items (1 of each type) (no dental floss or razors*). ■ Photographs (25). ■ Authorized religious medals/headgear (e.g., kufi). ■ Shoes, shower (1). ■ Shoes, other (1). ■ Snack foods without aluminum foil wrappers (5 individual packs). ■ Soft drinks, powdered (1 container). ■ Stationery/stamps (20 each). ■ Wedding band (1). ■ Radio with ear plugs (1). ■ Watch (must not have metal backing) (1). *Razors are controlled by SHU staff. Only disposable razors are used.

The Warden may modify the quantity and type of personal property allowed. Personal property may be limited or withheld for reasons of security, fire safety, or housekeeping. Unauthorized use of any authorized item may result in the restriction of the item.”

2. (m): “In addition to direct supervision by the unit officer, qualified health personnel and one or more responsible officers the Warden designates (ordinarily the Institution Duty Officer) visit each segregated inmate daily, including weekends and holidays. A Lieutenant must visit the SHU during each shift to ensure all procedures are followed.”
3. 13. “While in a SHU, inmates may continue taking their prescribed medications.”
4. 15. “Completion of quarterly training will be required for staff assigned to SHU prior to the start of each new quarter, regardless of how many times a staff member has completed the training. When assignment to a SHU post is known sufficiently in advance, each staff member should be afforded a reasonable amount of duty time to complete the training. For instances when last-minute assignments to the SHU occur, the employer must advise the staff of the general requirements of a SHU post and answer any questions. This training session may include, but is not limited to, search procedures, escort procedures, application of restraints, use of force, orderly supervision, cell/unit sanitation, emergency response, suicide prevention, and dealing with mentally ill inmates, as well as other security procedures related to the unit. If this in-person training is completed, a training sheet will be completed

documenting the training, and will be routed to the Captain and Human Resources Department for retention.”

e.d. Telephone

i. 28 C.F.R. Part 540, Subpart I - Inmate Telephone Regulations

1. 28 C.F.R. § 540.101: “(a) Telephone list preparation. An inmate telephone call shall ordinarily be made to a number identified on the inmate's official telephone list.”
2. 28 C.F.R. § 540.102: “The Warden shall establish procedures that enable monitoring of telephone conversations on any telephone located within the institution, said monitoring to be done to preserve the security and orderly management of the institution and to protect the public.”

ii. BOP Program Statement P5264.08 Inmate Telephone Regulations

1. 1. “the Bureau provides inmates with telephone access consistent with sound correctional management.”
2. 8. “The Bureau’s Inmate Telephone System is a calling system that is available in all institutions operated by the BOP. To ensure the safety and security of the institution and community, inmates must place all personal telephone calls through the ITS and must not circumvent it via call forwarding, including automatic electronic forwarding or any similar telephone function.”
3. 8(a). “Wardens are responsible for implementing and maintaining an inmate telephone program within their institution.”
4. 8(f): “The Warden will establish the maximum length of telephone calls, ordinarily 15 minutes.”
5. 8(g): “Inmate access to telephones will normally be limited during the following times, Monday through Friday, not including holidays: 7:30 am until 10:30 am; and, 12:30 pm until after 4:00 pm count.”
6. 11: “On rare occasion, during times of crisis, staff designated by the Warden may find the need to allow inmates to place telephone calls outside the Inmate Telephone System. These calls should be placed on telephones that are set to record the conversation and shall follow the guidelines detailed below.”
 - a. (1) Inmates using the telephones must have read and signed the Acknowledgment of Inmate form (BP-408) indicating their understanding that telephone calls on that device are subject to monitoring;
 - b. (2) A notice must be placed, in both English and Spanish, above or near the telephone indicating that all calls are subject to monitoring, and that using the telephone constitutes consent to such monitoring. The notice should also indicate that the telephone is for inmate use only. Staff are not permitted to use the telephone because staff telephone calls may not be monitored;

- c. (3) The telephone must be placed in a secure area (e.g., a locked office);
- d. (4) The telephone must be set to record telephone calls;
- e. (5) Staff coordinating the call shall notify the SIS staff in writing via email that telephone call was placed and shall include the following; and # The date/time, telephone number, and name of the person being called # The name and register number of the inmate placing the call # A brief reason for the call.
- f. (6) SIS staff shall be responsible for inputting this data into the recording system to ensure the call recording can identify the inmate on the telephone. This data must be entered within seven calendar days.

f.e. Personal Effects/Medicine

i. 28 C.F.R. Part 553, Subpart B - Inmate Personal Property

- 1. 28 C.F.R. § 553.10: "It is the policy of the Bureau of Prisons that an inmate may possess ordinarily only that property which the inmate is authorized to retain upon admission to the institution, which is issued while the inmate is in custody, which the inmate purchases in the institution commissary, or which is approved by staff to be mailed to, or otherwise received by an inmate, that does not threaten the safety, security, or good order of the facility or protection of the public."

ii. BOP Program Statement 5580.08 Inmate Personal Property

- 1. 4(b)(1): "Medicine the HSU dispensed or approved is hard contraband if not possessed by the inmate for whom it was prescribed or if not consumed or used in the manner prescribed. Staff must consult the institution pharmacist or other health services staff member in any case involving questions whether a prescribed medication represents contraband. Medicines the inmate carries into the institution at the time of commitment (e.g., voluntary commitment) will be forwarded to the institution medical staff for disposition. If appropriate, this medicine will be returned to the inmate."

iii. 28 C.F.R. Part 549, Subpart B – Over-the-Counter (OTC) Medications

- 1. 28 C.F.R. § 549.30: "Inmates may buy OTC medications which are available at the commissary."

iv. BOP Program Statement P6541.02 Over-the-Counter Medications

- 1. "During institution triage/sick call, medical staff will refer inmates to the commissary in response to complaints related to cosmetic and general hygiene issues or symptoms of minor medical ailments."
- 2. "Attachment A lists medications used to treat or alleviate common symptoms safely without the need for a medical examination, consistent with self-treatment practices in the community. In addition, other medications and medically-related items are stocked in the commissary but do not appear on Attachment A. These items are stocked in the commissary for the inmates' convenience but are not

considered medically necessary items which must be made available to inmates without funds (indigent inmates).”

- a. Attachment A: Milk of Magnesia Liquid 12 oz

v. BOP Program Statement P6360.01 Pharmacy Services

- 1. 9(h): “Medications for Inmates in Special Housing Units (SHU). Every workday, the Chief Pharmacist will obtain a list of all inmates placed in a SHU during the previous 24 hours (e.g. SENTRY, Operations Lieutenant). Using this list, the pharmacist will issue current medication(s) and ensure the MAR is available for administration of all restricted medications during SHU rounds.
 - a. Local procedures will be developed and negotiated to retrieve the inmate’s confiscated medication. Health Services staff will determine if the medication should be administered or redistributed to the inmate, if appropriate.
 - b. Local policies and procedures will stipulate the medication(s) and amount (number of days) an inmate in SHU may maintain in their cell.”

g.f. Rounds & Counts

i. BOP Program Statement 5500.14 Correctional Services Procedures Manual, Ch. 3 Counts – Census Checks

- 1. 300. Basic Principles
 - a. “1. Each institution will conduct, at a minimum, five official inmate counts during every 24-hour period. On weekends and holidays an additional count will be conducted at 10:00 a.m. The daily 4:00 p.m. count and 10:00 a.m. count (on weekends and holidays) will be stand-up counts.”
 - b. “3. Each count will be conducted with at least two officers. There will be no inmate movement during an official count. The count process will not be interrupted under any circumstances, other than by an emergency. Exceptions to the no inmate movement must be when inmates are in the wrong place for a count and have to be moved by direct staff escort to their proper place of count. Staff must not be distracted during the count. One staff member will count while the second staff member stands in a position to observe inmate movement. When the first staff member completes the count, the staff member will change positions. The second staff member will conduct the count while the other staff member observes the inmates. If the staff members count totals do not match, a recount will be conducted in the same manner.”
 - c. “4. Staff will not conduct a count based upon movements, sounds, or configurations from a covered bed.
 - d. Staff will ensure they are positively observing human flesh before counting any inmate.”

2. 301. Official Counts
 - a. "1. The official count is to be taken at specific times during each 24-hour period."
 - b. "4. Each count must be reported verbally to the Control Center for verification. If the count does not match the Master Count in the Control Center, the reporting staff members must recount when the Operations Lieutenant is notified by the Control Center."
 - c. "5. A Lieutenant will take at least one count on the morning and evening shifts."
 - d. "6. Count slips, out count sheets, and official count sheets must be prepared in ink and retained for 30 days. The count must have the names (printed and signed) of both officers (staff) who conducted the count. Altered/illegible count slips are not acceptable."
3. 310. Special Accountability
 - a. "A staff member must observe all inmates confined in continuous locked down status, such as administrative detention or disciplinary segregation, at least once in the first 30 minute period of the hour (example, 12:00 a.m. - 12:30 a.m.) followed by another round in the second 30 minute period of the same hour (example, 12:30 a.m. – 1:00 a.m.), thus ensuring an inmate is observed at least twice per hour. These rounds are to be conducted on an irregular schedule and no more than 40 minutes apart. All observations must be documented.
 - b. Closer observation may be required for an inmate who is mentally ill, or who demonstrates unusual or bizarre behavior.
 - c. For specific instructions and guidance for the supervision and monitoring of suicidal inmates refer to the following Program Statements.
 - i. Health Services Manual
 - ii. Suicide Prevention"

h.g. Suicide

i. 28 C.F.R. Part 552, Subpart E – Suicide Prevention Program

1. 28 C.F.R. § 552.40: "The Bureau of Prisons (Bureau) operates a suicide prevention program to assist staff in identifying and managing potentially suicidal inmates. When staff identify an inmate as being at risk for suicide, staff will place the inmate on suicide watch. Based upon clinical findings, staff will either terminate the suicide watch when the inmate is no longer at imminent risk for suicide or arrange for the inmate's transfer to a medical referral center or contract health care facility."

ii. BOP Program Statement P5324.08 Suicide Prevention Program

1. 9. Identification of At-Risk Inmates

- a. “a. Medical Staff Screening. Medical staff are to screen a newly admitted inmate for signs that the inmate is at risk for suicide. Ordinarily, this screening is to take place within twenty-four hours of the inmate’s admission to the institution.”
- b. “c. Inmates in SHUs. Inmates in Administrative Detention or Disciplinary Segregation status often may be at higher risk for suicidal behavior. Inmates being transferred into the SHU will be monitored for signs of potential suicide risk (e.g., crying, emotionally distraught, threats of self-harm, or engaging in misconduct to purposefully effect removal from the general population). Inmates exhibiting such behavior will be referred to the Shift Lieutenant.”

iii.—BOP Program Statement P5310.17 Psychological Services Manual

IV. TIMELINE OF RELEVANT EVENTS

V. FACTUAL BACKGROUND

- a. Background Facts
 - i. Overview of BOP Procedures
 - a) Role & Responsibilities of CO
 - b) Inmate Counts
 - c) 30-Minute rounds
 - d) Suicide Prevention
 - e) Cellmates
 - f) Cameras
 - ii. Epstein
 - a) General Background
 - b) Arrest
- b. Preceding Events re: Epstein
 - i. Detention at MCC
 - ii. 7.23.2019 suicide attempt
 - iii. Suicide Watch
 - iv. Observation
 - v. Cellmate
- c. Key Events in re: death
 - i. Granular 8.9.2019-8-10-2019 chronology
 - ii. Autopsy results
- d. Noel & Thomas arrest & DPA
Nee

VI. ANALYSIS

- a. Falsification of Inmate Count
- b. Failure to Conduct 30-Minute Rounds
- c. Failure to Ensure Epstein Had a Cellmate

Epstein Draft Outline – Policy Excerpts (Revised 7.29.2021)

- d. Violation of telephone policy
- e. Violation of personal property and medication policies

VII. CONCLUSION

- a. Possibly include BOP-wide recommendations, e.g., cameras

VIII. APPENDIX