

ENF 20

Detention

Canada 

Table of contents

Updates to chapter	3
Listing by date	3
1. What this chapter is about	7
2. Program objectives	7
3. The act and regulations	7
3.1. Authority to detain a person	7
3.2. Regulatory factors and conditions	9
3.3. Forms and publications	10
4. Instruments and delegations	12
5. Departmental policy	12
5.1. Principles	12
5.2. General	13
5.3. Grounds for detention	13
5.4. Factors: danger to the public	14
5.5. Factors: unlikely to appear (flight risk)	16
5.6. Factors: identity not established	18
5.7. Factors: detention on entry to complete the examination	19
5.8. Factors: detention on entry for suspected inadmissibility on grounds of security, violating human or international rights, serious criminal, criminality or organized criminality	20
5.9. Factors: mandatory arrest and detention of designated foreign national	21
5.10. Other regulatory factors	22
5.11. Detention of minor children (under 18 years of age)	22
5.12. Housing of minor children (under 18 years of age)	23
5.13. Vulnerable persons	24
5.14. Long term detention and jurisprudence	24
6. Definitions	26
7. Procedure: detention	26
7.1. Data entry	29
7.2. Officer's detention notes	30
7.3. Management review of detention decisions	31
7.4. Detention review after 48-hours and informing the IRB	32
8. Care of the detainee while awaiting transfer	32
8.1. Procedure: suicidal and self-harmful detainee	33
9. Transfer of a detainee	34
9.1. National risk assessment for detention	34
9.2. Detainee medical needs	37
9.3. Vehicular transport of detainees	38
10. Procedure: release by officer before the first detention review	39
10.1. Release: mandatory arrest and detention of a designated foreign national	40
11. Detention facilities	41
11.1. Immigration holding centres	41
11.2. Provincial correctional facilities	41
11.3. Short-term detention rooms or cells	41
12. Detentions program monitoring	42
12.1. Canadian Red Cross	42
12.2. United Nations High Commissioner for Refugees (UNHCR)	43
13. Transitional measures	44
Annex A – National directive for the detention or housing of minors	45
Annex B – Child protection services and family centres	55
Annex C – Provincial definitions of a minor	57

Updates to chapter

Listing by date

2018-11-20

Section 3.1, Authority to detain a person, Section 3.2 Regulatory factors and conditions, Section 5.3 Grounds for detention and section 5.8 have been updated with the coming into force of the Protecting Canada's Immigration System Act.

Section 3.3, Forms and publications, available gender identities has been clarified.

Section 5.4 to 5.8 have been moved and updated with new detention factors.

Section 5.9, Factors: mandatory arrest and detention of designated foreign national has been created.

The section on the Alternatives to Detention has been removed and transferred to the ENF 34.

Section 5.12, housing of minor children (under 18 years of age), has been added.

Section 5.13, vulnerable groups, the term "vulnerable groups", have been renamed "vulnerable persons".

Section 5.13 and 5.14, redundant text have been moved and a new jurisprudence case has been added.

Section 7, Detention: procedure, has been reshaped to facilitate its use by officers.

Section 7.2, Officer's detention notes, has been moved.

Section 7.3 Management review of detention decision, has been updated.

Section 8 Care of the detainee while awaiting transfer and Section 8.1 Procedure: suicidal and self-harmful detainee have been added.

Section 9.1, National risk assessment for detention, clarifications have been added regarding offences where a detainee was found not guilty and common crime examples have been added.

Section 9.3, Vehicular transport of detainees has been added.

Section 10, Procedure: release by officer before the first detention review, has been modified and section 10.1 has been added with information regarding release of designated foreign nationals.

Section 12.1, Canadian Red Cross, has been updated to add information regarding the CBSA notification requests.

Annex B, Child protection services and family centres, was been updated with information for Atlantic and Prairies regions.

2018-02-12

ENF 20 has been updated to reflect changes to the “National Risk Assessment” and “Detainee Medical Needs” forms. Further, changes have been made to reflect the decision-making process regarding detention. These changes will ensure that officers have clear guidance regarding detention decisions and placement of a detainee in a Canada Border Services Agency Immigration Holding Centre or provincial correctional facility.

Section 1, “What this chapter is about”, has been updated to add contact information.

Section 3.3, “Forms and publications”, has been amended, and the brochure titled “Information for People Detained Under the *Immigration and Refugee Protection Act*” has been added.

Section 5.8, “Identity”, has been amended to remove information contained in other sections.

Section 5.10, “Detention of minor children (under 18 years of age)”, has been amended, and a new reference to the “National Directive for the Detention or Housing of Minors” has been added in Annex A.

Section 5.11, “Vulnerable groups”, has been moved and updated to include new vulnerable groups.

Section 5.12, “Alternatives to detention”, and section 5.13, “Third party risk management programs”, have been removed as their content will be in ENF 34.

Multiple sections have been updated to reflect the name change of Citizenship and Immigration Canada (CIC) to Immigration, Refugees and Citizenship Canada (IRCC) and of the Minister of Citizenship and Immigration to the Minister of Immigration, Refugees and Citizenship.

Section 6, has been updated with new definitions for “alternatives to detention”, “best interests of the child” and “unaccompanied minor”.

Section 8.1, “Procedure: Review of Detention Decision”, has been created to clarify when the officer’s initial detention decision must be reviewed by another officer.

Section 8.2, “Informing the Immigration and Refugee Board of a Detention review”, has been created.

Sections 9, 9.1, 9.2 and 9.3, “Transfer of a detainee”, have been rewritten to include new directives regarding the national risk assessment for detention form, the detainee medical needs form and the vehicular transport of detainees.

Section 10, “Procedure: Release by officer”, has been updated to remove information contained in other sections.

Sections 11, 11.1, 11.2 and 11.3, “Place of detention”, have been moved and revised to include types of detention facilities, levels of risk and new detention agreements with provincial governments.

Section 12, "Detentions Program Monitoring", has been added.

Section 13, "Transitional measures", has been moved.

2015-12-22

The detention forms have been updated and converted to the CBSA numbering system (BSF304, 579, 507 E, 508 E, 566, 524, 481, 481-1, 578, 754, 754-1, 674 and 735).

Section 8, "Procedure: Detention", has been updated to remove information contained in other chapters.

Section 9, "Procedure: National risk assessment for detention", and section 9.1, "National risk reassessment for detention", have been created to include a new requirement to ensure the safety and well-being of detainees.

Section 12, "Place of detention", has been amended to reflect the closure of the Kingston Immigration Holding Centre and the maximum length of detention at Vancouver – IHC has been reduced to 48 hours.

Multiple sections have been updated following the Field Operations Support System (FOSS) decommissioning.

2007-09-26

Section 8 has been amended to include clearer and more detailed procedural guidelines on detention.

Section 12, "Place of detention", has been amended to include the addition of the Kingston facility housing security certificate cases.

2005-11-02

Section 4 has been amended to include a reference to A55, A56 as well as to IL 3 where the complete Designation of Officers and Delegation of Authority documents can be found.

Section 5 now reflects that the Minister of Immigration, Refugees and Citizenship is responsible for the administration of the Act with the exception of those areas of responsibility which fall within the mandate of the Minister of Public Safety and Emergency Preparedness.

2004-01-19

The fourth paragraph of Section 5.16, "Right to a detention review", has been amended and now reads as follows:

It should be noted that, according to section 9 of the Immigration Division Rules applicable to detention reviews, if a party has new facts to present, the party may make an application requesting a detention review before the expiry of the seven-day or 30-day period, as the case may be.

2003-02-13

Section 8 has been amended to provide clearer guidance for persons who are in the custody of another judicial body and are of interest to immigration.

1. What this chapter is about

This chapter offers guidance to Canada Border Services Agency (CBSA) officers at ports of entry (POE) and at inland enforcement offices who are delegated to detain under the *Immigration and Refugee Protection Act* (IRPA). It also states the principles underlying our detention policy and describes the administrative and legal framework within which detention operates.

References to IRPA appear in the text with an "A" prefix followed by the section number. References to the *Immigration and Refugee Protection Regulations* (IRPR) appear with an "R" prefix followed by the section number.

Requests for clarification, questions and comments in relation to this manual should be addressed to the CBSA Detentions Unit Programs Branch's generic mailbox at Detention-Programs@cbsa-asfc.gc.ca.

2. Program objectives

A3(1) & (2) of IRPA which outlines the objectives of the Act lists two objectives that are directly linked to the CBSA's responsibility for the enforcement of IRPA regarding both immigration and refugee programs:

- to protect the health and safety of Canadians and to maintain the security of Canadian society; and
- to promote international justice and security by fostering respect for human rights and by denying access to Canadian territory to persons who are criminals or security risks.

The power to detain permanent residents and foreign nationals meets these objectives by:

- protecting Canadian society by detaining those who pose a danger to the public or security risk
- supporting the removal of those who have been denied access to Canadian territory including those who are criminals, security risks, or who are inadmissible for crimes against humanity; and
- supporting the examination and investigation processes which are key elements in ensuring the enforcement of IRPA.

3. The act and regulations

3.1. Authority to detain a person

The following sections identify the grounds on which an officer may arrest and detain a permanent resident or foreign national. For further information on arrest procedures, please see ENF 7 Investigations and Arrests.

For information about	Section of IRPA
<p>Arrest and detention with warrant</p> <p>An officer may issue a warrant for the arrest and detention of a permanent resident or a foreign national who the officer has reasonable grounds to believe is inadmissible and:</p> <ul style="list-style-type: none"> • is a danger to the public; or • is unlikely to appear for examination, an admissibility hearing, for removal from Canada or at a proceeding that could lead to the making of a removal order by the Minister under subsection 44(2). 	A55(1)
<p>Arrest and detention without warrant</p> <p>An officer may, without a warrant, arrest and detain a foreign national, other than a protected person,</p> <ul style="list-style-type: none"> • who the officer has reasonable grounds to believe is inadmissible; and <ul style="list-style-type: none"> ○ is a danger to the public; or ○ is unlikely to appear for examination, an admissibility hearing, removal from Canada, or at a proceeding that could lead to the making of a removal order by the Minister under subsection A44(2); or • if the officer is not satisfied as to the identity of the foreign national in the course of any procedure under this Act. 	A55(2)
<p>Detention on entry</p> <p>A permanent resident or a foreign national may, on entry into Canada, be detained if an officer</p> <ul style="list-style-type: none"> • considers it necessary to do so in order for the examination to be completed; or • has reasonable grounds to suspect that the permanent resident or foreign national is inadmissible on grounds of <ul style="list-style-type: none"> ○ security, ○ violating human or international rights, ○ serious criminality, criminality or ○ organized criminality. 	A55(3)
<p>Mandatory arrest and detention — designated foreign national</p> <p>If a designation is made under subsection 20.1(1), an officer must</p> <ul style="list-style-type: none"> • detain, on their entry into Canada, a foreign national who, as a result of the designation, is a designated foreign national and who is 16 years of age or older on the day of the arrival that is the subject of the designation; or 	A55(3.1)

<ul style="list-style-type: none"> • arrest and detain without a warrant — or issue a warrant for the arrest and detention of — a foreign national who, after their entry into Canada, becomes a designated foreign national as a result of the designation and who was 16 years of age or older on the day of the arrival that is the subject of the designation. 	
<p>Notice to the Immigration Division</p> <p>If a permanent resident or a foreign national is taken into detention, an officer shall without delay give notice to the Immigration Division.</p>	A55(4)
<p>Release: officer</p> <p>An officer may order the release from detention of a permanent resident or a foreign national before the first detention review by the Immigration Division if the officer is of the opinion that the reasons for the detention no longer exist. The officer may impose any conditions, including the payment of a deposit or the posting of a guarantee for compliance with the conditions, that the officer considers necessary.</p>	A56(1)
<p>Minor children</p> <p>It is affirmed as a principle that a minor child shall be detained only as a measure of last resort, taking into account the other applicable grounds and criteria including the best interests of the child.</p>	A60
<p>Ministers' warrant</p> <p>The Minister and the Minister of Citizenship and Immigration may issue a warrant for the arrest and detention of a person who is named in a certificate if they have reasonable grounds to believe that the person is a danger to national security or to the safety of any person or is unlikely to appear at a proceeding or for removal.</p>	A81

3.2. Regulatory factors and conditions

Regulations on detention and release have been developed under A61. Part 14 of the *Immigration and Refugee Protection Regulations* (the Regulations) is constructed as follows:

Factors that shall be considered	R244
Factors: Risk of flight	R245
Factors: Danger to the public	R246
Factors: Identity not established	R247
Other factors	R248

<p>If it is determined that there are grounds for detention, the following factors shall be considered before a decision on detention or release:</p> <ul style="list-style-type: none"> • the reason for detention; • the length of time in detention; • whether there are any elements that can assist in determining the length of time that detention is likely to continue and, if so, that length of time; • any unexplained delays or unexplained lack of diligence caused by the Canada Border Services Agency (CBSA) or the person concerned; and • the existence of Alternatives to Detention (ATDs). 	
<p>Special considerations for minor children</p> <p>For the application of the principle affirmed in section 60 of the Act that a minor child shall be detained only as a measure of last resort, the special considerations that apply in relation to the detention of minor children who are less than 18 years of age are</p> <ul style="list-style-type: none"> • the availability of alternative arrangements with local child-care agencies or child protection services for the care and protection of the minor children; • the anticipated length of detention; • the risk of continued control by the human smugglers or traffickers who brought the children to Canada; • the type of detention facility envisaged and the conditions of detention; • the availability of accommodation that allows for the segregation of the minor children from adult detainees who are not the parent of or the adult legally responsible for the detained minor children; and • the availability of services in the detention facility, including education, counselling and recreation. 	R249
<p>Applications for travel documents</p>	R250
<p>Inadmissibility on grounds of security — conditions</p>	R250.1

3.3. Forms and publications

Several forms require the gender identity of detainees to ensure their safety and well-being. Detention forms will progressively be updated to reflect all available gender identities as follows: male, female and unspecified. Unspecified is mainly being used for individuals with a passport or other travel document with the “X” designation. In addition, transgender, queer and two-spirit individuals may also select the unspecified gender identity.

All relevant detention forms and publications are shown in the following table:

Form title	Form number
Order for Detention	BSF304
Detention Cell Log and Instructions	BSF481
Detention Cell Log	BSF481-1
Review of Detention by Officer (pursuant to section 56 of the <i>Immigration and Refugee Protection Act</i>)	BSF508 E BSF508 F
Minister's Opinion Regarding the Foreign National's Identity (under subsection 58(1)(d) of the <i>Immigration and Refugee Protection Act</i>)	BSF510
Request for Admissibility Hearing/Detention Review Pursuant to the Immigration Division Rules	BSF524
Authority to Release from Detention	BSF566
Detention (stickers)	BSF578
Detainee Medical Needs	BSF674
Request for Release from Mandatory Detention – Exceptional Circumstances (pursuant to paragraph 58.1(1) of the <i>Immigration and Refugee Protection Act</i>)	BSF735
National Risk Assessment for Detention	BSF754
Notice of Rights Conferred by the <i>Canadian Charter of Rights and Freedoms</i> and by the Vienna Convention Following Section 55 of the <i>Immigration and Refugee Protection Act</i> Arrest or Detention	BSF776
Information for people detained under the <i>Immigration and Refugee Protection Act</i> (brochure)	BSF5012 <ul style="list-style-type: none"> • English • French • Arabic • Chinese Simplified • Chinese Traditional • Hindi • Japanese • Korean • Farsi • Portuguese • Punjabi • Russian • Spanish • Tagalog

	<ul style="list-style-type: none"> • Tamil • Urdu
Acknowledgement of Conditions of the <i>Immigration and Refugee Protection Act</i>	IMM 1262 E IMM 1262 F
Identity Information Form	IMM 5007B

4. Instruments and delegations

IRPA provides officers with the discretionary authority or power to arrest and detain under A55. A56 designates to officers the authority, prior to the first detention review, to release a person from detention if, in their opinion, the reasons for detention no longer exist.

Officers at ports of entry and enforcement officers working within inland offices may exercise this power. The CBSA Designation of Officers and Delegation of Authority document can be found in IL 3.

5. Departmental policy

The Minister of Immigration, Refugees and Citizenship is responsible for the administration of the Act with the exception of the areas for which the Minister of Public Safety has assumed responsibility as described below.

The Minister of Public Safety is responsible for the administration of the Act as it relates to the following:

- examinations at ports of entry;
- the enforcement of the Act, including arrest, detention and removal;
- the establishment of policies respecting the enforcement of the Act and inadmissibility on grounds of security, organized criminality or violating human or international rights; or
- determinations under any of A34(2), A35(2) and A37(2).

5.1. Principles

The CBSA is guided by the following principles governing the treatment of persons detained under the Act:

- Immigration detention is an administrative detention and must not be punitive in nature;
- persons detained under IRPA are treated with dignity and respect at all times;
- that persons are detained in an environment that is safe and secure;

- that persons are treated in a manner that is commensurate with the level of risk they pose to public safety or the integrity of the immigration program;
- that persons are duly and appropriately considered for Alternatives to Detention throughout the detention continuum, which includes before every detention review.
- detention operations are conducted in a transparent manner, while respecting the privacy of the detained persons;
- that a minor child shall be detained only as a measure of last resort, taking into account the other applicable grounds and criteria including the best interests of the child;
- people who are detained are informed of their legal rights, are given an opportunity to exercise their rights and are informed of the status of their case;
- feedback is welcomed by the CBSA and all detainees have access to a feedback process;
- for Immigration Holding Centres (IHC), the CBSA maintains national detention standards that incorporate international standards;
- monitoring of the CBSA compliance with these standards will be conducted regularly by an external agency;
- in CBSA IHC's, the CBSA makes reasonable efforts to meet the physical, emotional and spiritual needs of detained persons in a way that is culturally appropriate.

5.2. General

The CBSA recognizes that to deny individuals their liberty is a decision that requires a sensitive and balanced assessment of risk. In exercising their discretionary authority to detain, officers must consider alternatives to detention, individual assessment of the case and the impact of release. Additionally, it requires a risk management approach that supports decision making within the context of the following priorities:

- Where safety or security concerns are identified (including criminality, terrorism or violent behaviour);
- To support removal where removal is imminent and where a flight risk has been identified;
- Where there are significant concerns regarding a person's identity including multiple identity documents, false documents, lack of travel documents or non-cooperation in assisting an officer to establish their identity.

5.3. Grounds for detention

Within Canadian territory and under the authority of A55(1), an officer may issue a warrant for the arrest and detention of a permanent resident or a foreign national,

- who the officer has reasonable grounds to believe is inadmissible and:
 - is a danger to the public; or (see section 5.4)
 - is unlikely to appear for examination, an admissibility hearing, for removal from Canada or at a proceeding that could lead to the making of a removal order by the Minister under subsection 44(2). (see section 5.5)

Within Canadian territory and under the authority of A55(2), an officer may, without a warrant, arrest and detain a foreign national, other than a protected person (the term protected person is defined in A95(2)),

- who the officer has reasonable grounds to believe is inadmissible; and
 - is a danger to the public; or (see section 5.4)
 - is unlikely to appear for examination, an admissibility hearing, removal from Canada, or at a proceeding that could lead to the making of a removal order by the Minister under subsection A44(2); or (see section 5.5)
- the officer is not satisfied as to the identity of the foreign national in the course of any procedure under this Act. (see section 5.6)

On entry into Canada under the authority of A55(3), an officer may detain a permanent resident or a foreign national where:

- the officer considers it necessary to do so in order for the examination to be completed; or (see section 5.7)
- the officer has reasonable grounds to suspect that the permanent resident or foreign national is inadmissible on grounds of security, violating human or international rights, serious criminality, criminality or organized criminality. (see section 5.8)

Under the authority of A55(3.1) if a designation is made under A20.1(1) where:

- The officer must detain, on their entry into Canada, a foreign national who, as a result of the designation, is a designated foreign national and who is 16 years of age or older on the day of the arrival that is the subject of the designation (see section 5.9); or
- The officer must arrest and detain without a warrant — or issue a warrant for the arrest and detention of — a foreign national who, after their entry into Canada, becomes a designated foreign national as a result of the designation and who was 16 years of age or older on the day of the arrival that is the subject of the designation. (see section 5.9)

Under A81, the Minister of Public Safety and Emergency Preparedness and the Minister of Citizenship and Immigration may issue a warrant for the arrest and detention of a person who is named in a certificate if:

they have reasonable grounds to believe that the person is a danger to national security or to the safety of any person or is unlikely to appear at a proceeding or for removal.

5.4. Factors: danger to the public

Where the officer assesses that an individual is inadmissible and there are reasonable grounds to believe the individual is a danger to the public, detention may be warranted if the risk the person poses cannot be mitigated through an alternative to detention.

Prescribed factors

R246 outlines the following factors that must be considered in assessing danger to the public:

- a. the fact that the person constitutes, in the opinion of the Minister of Immigration, Refugees and Citizenship, a danger to the public in Canada or a danger to the security of Canada under A101(2)(b), A113(d)(i) or (ii) or 115(2)(a) or (b);

- b. association with a criminal organization within the meaning of A121.1 (1);
- c. engagement in people smuggling or trafficking in persons;
- d. conviction in Canada under an Act of Parliament for
 - i. a sexual offence, or
 - ii. an offence involving violence or weapons;
- e. conviction for an offence in Canada under any of the following provisions of the *Controlled Drugs and Substances Act*, namely,
 - i. section 5 (trafficking),
 - ii. section 6 (importing and exporting), and
 - iii. section 7 (production);
- f. conviction outside Canada, or the existence of pending charges outside Canada, for an offence that, if committed in Canada, would constitute an offence under an Act of Parliament for
 - i. a sexual offence, or
 - ii. an offence involving violence or weapons; and
- g. conviction outside Canada, or the existence of pending charges outside Canada, for an offence that, if committed in Canada, would constitute an offence under any of the following provisions of the *Controlled Drugs and Substances Act*, namely,
 - i. section 5 (trafficking)
 - ii. section 6 (importing and exporting), and
 - iii. section 7 (production).

Criminal convictions

A criminal record does not necessarily mean that the individual is a threat. For example, a person who was convicted of a criminal offence and has not committed any further offences since that time might not be a danger to the public. Various factors must be weighed, such as the nature of the offences, the circumstances in which they were committed, the punishment imposed, the period of time elapsed since the offence, violent behaviour, the possibility of recidivism, and the possible consequences of releasing the person. Assessment reports by correctional services and by police may be a relevant source of information. It must be established why the presence of one or more of these factors demonstrates that the person is a danger to the public. Facts or the criminal profile should clearly outline why the individual is a danger to the public.

For information regarding persons serving a criminal sentence in a provincial or federal correctional facility, see ENF 22 – Persons serving a sentence.

Committing an offence in Canada

Being charged with committing an offence in Canada is not listed as an inadmissibility (i.e. a pending charge without conviction in Canada). Although this is an important fact, unless an officer relies on other factors or detention grounds, an individual should not be detained for danger to the public solely because he/she has been charged with an offence in Canada. Indeed, the presumption of innocence is a principle where each individual is considered innocent unless proven guilty. In addition, prior to their release from criminal hold, individuals who have been charged with an offence in Canada must satisfy a judicial tribunal that they are not a danger to the public.

Other factors to consider

The above factors outlined in the Regulations provide a non-exhaustive list for the decision-maker to consider. IRPA provides to officers and members of the Immigration Division the authority to consider all other circumstances pertaining to the case. The following are additional factors that may be relevant:

- history of violent or threatening behaviour demonstrated by the person;
- violent incidents or major breaches of a detention facility rules while in detention;
- statements, letters, photos or publication in social media of their intent to commit a violent crime;
- availability of alternatives to detention and whether sufficient to mitigate the danger to the public risk;
- suspected or known untreated addictions or mental illness linked to a violent behavior;
- pattern of criminal behaviour.

Mental health

There may be reasonable grounds for thinking that an individual suffering from an untreated mental illness is a danger to the public (for example, unstable violent behaviour toward an officer during interaction). Instability of the person associated with mental imbalance at the time of the interview may be an important indicator in the assessment of the danger, and may point to future violent behaviour. Following the detainee transfer to a detention facility, health care professionals will be able to provide assistance and to indicate what action should be taken in this type of case.

See section 5.14 for more detail on long term detention and jurisprudence.

5.5. Factors: unlikely to appear (flight risk)

Where the officer assesses that an individual is inadmissible and there are reasonable grounds to believe the individual is unlikely to appear for an examination, an admissibility hearing, removal or at a proceeding that could lead to the making of a removal order by the Minister under A44(2), detention may be warranted if the risk the person poses cannot be mitigated through an alternative to detention.

Prescribed factors

R245 outlines the factors to be taken into account when assessing flight risk:

- a. being a fugitive from justice in a foreign jurisdiction in relation to an offence that, if committed in Canada, would constitute an offence under an Act of Parliament;
 - b. voluntary compliance with any previous departure order;
 - c. voluntary compliance with any previously required appearance at an immigration or criminal proceeding;
 - d. previous compliance with any conditions imposed in respect of entry, release or a stay of removal;
 - e. any previous avoidance of examination or escape from custody, or any previous attempt to do so;
 - f. involvement with a people-smuggling or trafficking-in-persons operation that would likely lead the person to not appear for a measure referred to in R244(a) or to be vulnerable to being influenced or coerced by an organization involved in such an operation to not appear for such a measure;
- and

- g. the existence of strong ties to a community in Canada.

Other factors to consider

The above factors outlined in the Regulations provide a non-exhaustive list for the decision-maker to consider. The Act provides both officers and members of the Immigration Division with the authority to consider all other circumstances pertaining to the individual's case. The following are additional factors that may also be present and relevant:

- no fixed place of residence or attachment in Canada;
- removal is imminent;
- presence of relatives or friends in Canada who can exert influence over the individual, who are prepared to provide a guarantee or surety;
- the individual's cooperation with the authorities to obtain a travel document (for removal);
- availability of alternatives to detention and whether sufficient to mitigate the unlikely to appear risk;
- suspected or known untreated mental illness causing disorientation or confusion.

The mere presence of any of the above factors should not automatically lead to detention. The factors must be considered in the context of all the circumstances in the case. For example, the person may be indigent; however, this does not constitute proof that the person will not appear. Much would depend on the behaviour of the individual as demonstrated during the interview as well as all other circumstances of the case.

It is essential that officers are aware that the unlikelihood to appear may change as the various immigration processes unfold. For example, an individual claiming refugee protection may not be unlikely to appear at the time of the initial claim but may become unlikely to appear on the issuance of a negative determination by the Immigration and Refugee Board. Similarly a person appealing their removal order may not be unlikely to appear while that matter is being reviewed, but may become unlikely to appear following a negative decision.

Removals

Officers may encounter situations where a person is unlikely to appear for removal but the removal is not imminent or unknown due to factors outside the control of the individual (e.g. stay of removal, lack of cooperation of a foreign government to deliver a travel document, lengthy appeal process). In these situations, unless officers rely on other detention grounds, officers should give additional weight to the use of alternatives to detention so as to avoid potentially lengthy detention, while removal arrangements are being worked out.

However, if the removal has been delayed due to the individual's lack of cooperation (e.g. refusal to sign a travel document application or to attend an appointment with foreign mission) then the detention may be maintained. A lack of cooperation on the part of the individual must be noted on the file. See section 5.14 for more detail on long term detention and jurisprudence.

5.6. Factors: identity not established

Where the officer is not satisfied as to the identity of the foreign national, other than a protected person, in the course of any procedure under this Act, detention may be warranted if the risk the person poses cannot be mitigated through an alternative to detention.

“Any procedure” refers to any process with regard to a person’s application or status, whether initiated by the person or by IRCC or the CBSA that has arisen in the normal course of the immigration system. The procedures under the act include examinations, refugee claims, Ministerial determinations, admissibility hearings, etc. An investigation is not a procedure.

Prescribed factors

R247(1) outlines the factors to be taken into account when assessing identity risk:

- a. the foreign national’s cooperation in providing evidence of their identity or assisting the officers in obtaining evidence of their identity, in providing the date and place of their birth and the names of their mother and father, in providing detailed information on the itinerary they followed in travelling to Canada or in completing an application for a travel document;
- b. in the case of a foreign national who makes a claim for refugee protection, the possibility of obtaining identity documents or information without divulging personal information to government officials of their country of nationality or, if there is no country of nationality, their country of former habitual residence;
- c. the destruction of identity or travel documents or the use of fraudulent documents in order to mislead officers, and the circumstances under which the foreign national took those actions
- d. the provision of contradictory information with respect to identity at the time of an application to the CBSA or IRCC; and
- e. the existence of documents that contradict information provided by the foreign national with respect to their identity.

Minor Children

R247(2) directs that a minor child’s failure to cooperate in providing evidence of their identity or assisting must not have a negative impact on the assessment of the case (that is, non-cooperation in itself should not lead to a detention decision). Identification efforts must be actively pursued and expedited.

Other factors to consider

The above factors outlined in the Regulations provide a non-exhaustive list for the decision maker to consider. The IRPA provides officers and members of the Immigration Division with the authority to consider all other circumstances pertaining to the individual’s case. The following are additional factors that may also be present and relevant:

- whether the person is credible;
- whether differences in identities (names) provided resulted from language differences or interpretation difficulties;
- Result of a linguistics assessment;

- whether the person accepts to be interviewed by the embassy of the country of which the officer thinks the person is a citizen (does not apply to asylum seekers with a pending claim at the IRB).
- the officer's opinion that the identity of the foreign national may be established;
- the officer's efforts to establish the identity of the foreign national.

Detention for identity may be considered where the officer is not satisfied as to the person's identity and identity issues need to be resolved for safety, security or inadmissibility concerns to be addressed to the satisfaction of the officer. This includes, but is not limited to, multiple identity documents, fraudulent documents, a lack of documents, a lack of credibility and non-cooperation to establish identity.

Cooperation

The officer must inform the detainee and their counsel that they can assist with the identification process by providing a completed personal information form and by personally attempting to obtain documentary evidence from their country of origin. Foreign nationals may be released if they have reasonably cooperated by providing relevant information and if, despite reasonable efforts by the Minister's, it is not possible to establish identity. A lack of cooperation on the part of the individual must be noted on the file. Given A58(1)(d), the Minister's may be required to demonstrate the possibility of establishing the identity of the person concerned within a reasonable period of time. Officers responsible for the identity investigation must follow each of the cases closely and document any efforts made to establish the person's identity.

Pursuant to A16(3), an officer may require or obtain, from a permanent resident or a foreign national who is arrested, detained or subject to a removal order, any evidence, photograph or fingerprints that may be used to establish their identity or compliance with the IRPA. It is not necessary to obtain the consent of the person concerned to disclose information in the course of verifying their status. Paragraph 8(2)(a) of the *Privacy Act* allows the disclosure of information where such disclosure is made for the purpose for which the information has been gathered (in this case, to establish the identity of a person).

See section 5.14 for more detail on long term detention and jurisprudence.

5.7. Factors: detention on entry to complete the examination

The power of officers to detain "on entry into Canada" in order for the examination to be completed (A55(3)(a)) may only be exercised at a port of entry and it should never be used solely for administrative convenience. Indeed, an individual must not be detained solely because an officer has reached the end of his/her shift of work, but instead, the case should be assigned to another available officer to complete the examination. Officers can detain a foreign national in order for the examination to be completed if the other officer's options for dealing with incomplete examinations (e.g. direct back (R41), entry to complete examination (A23), deposit (R45)) are not available or cannot mitigate the risk. Here are some situations where detention to complete the examination may be justified:

- An inadmissible foreign national wishes to withdraw his application at a port of entry (airport). The foreign national is unable to leave the port of entry because the last returning flight has already left and no other returning flight is available for the next two days. The officer believes that if the foreign national remains in Canada, he will pose a danger to the public. The officer has considered other options for dealing with incomplete examinations and alternatives to detention, however, none of

them can mitigate the risk. The officer decides to detain the foreign national until the next returning flight is available.

- An inadmissible foreign national wishes to withdraw her application at a port of entry (airport). The foreign national is unable to leave the port of entry because the last returning flight has already left and no other returning flight is available until the next day. No traveller can stay overnight at that airport because of local airport policies. The officer believes that if the foreign national remains in Canada, she will unlikely appear for the examination. The officer has considered other options for dealing with incomplete examinations and alternatives to detention, however, none of them can mitigate the risk. The officer decides to detain the foreign national until the next returning flight is available.

Permanent residents

Officers must remain cognizant of the fact that A19(2) of the IRPA gives permanent residents of Canada the right to enter Canada at a port of entry once it is established that a person is a permanent resident, regardless of non-compliance with the residency obligation in A28 or the presence of other inadmissibilities. At ports of entry, officers must not detain a permanent resident in order for the examination to be complete.

For more information on options for dealing with inadmissibility and incomplete examinations, see ENF 4, “Port of Entry Examinations”.

5.8. Factors: detention on entry for suspected inadmissibility on grounds of security, violating human or international rights, serious criminal, criminality or organized criminality

The power of officers to detain “on entry into Canada” may only be exercised at a port of entry where the officer has reasonable grounds to suspect that the permanent resident or the foreign national is inadmissible on grounds of security, violating human or international rights, serious criminality, criminality or organized criminality (A55(3)(b)), and it should never be used solely for administrative convenience.

The standard of proof set under A55(3)(b), reasonable grounds to suspect, is lower than the other one set to arrest and detain with A55(1) or without warrant A55(2). The purpose is to enable officers to obtain further relevant documents, information or other evidence to determine individual admissibility. For more information regarding the evidence required to find a person described in these sections, see, ENF 1 – Inadmissibility.

The officer shall pursue their research to establish whether the person is inadmissible during the period of detention. Any actions, steps undertaken or external delay shall be noted on the file. At the detention review, proof must be provided to the Immigration Division that the Minister of Public Safety and Emergency Preparedness is taking the necessary steps to inquire into the reasonable suspicion that the permanent resident or foreign national is inadmissible on grounds listed above.

Some situations will require consultations with national and international enforcement agencies (e.g. Interpol). Intelligence information or lookouts from CBSA, Immigration Refugees and Citizenship Canada (IRCC), the Royal Canadian Mounted Police (RCMP) or Canadian Security Intelligence Service (CSIS) are essential in obtaining evidence to support the inadmissibility grounds.

Other factors to consider

As previously mentioned, this is only applicable if an individual has been detained “on entry into Canada” may only be exercised at a port of entry. However, if an officer has reasonable grounds to suspect that the permanent resident or the foreign national is inadmissible on grounds of security, violating human or international rights, serious criminality, criminality or organized criminality, the officer should write it in their detention notes as they may be used for the detention review. Indeed, an individual who has initially been detained on specific grounds can subsequently have his/her detention continued on the basis that the Minister is taking necessary steps to inquire into a reasonable suspicion that they are inadmissible on grounds of security, violating human or international rights, serious criminality, criminality or organized criminality” (A58(1)(c)).

5.9. Factors: mandatory arrest and detention of designated foreign national

Under paragraph A55(3.1)(a) or (b), if a designation is made by the Minister under A20.1(1), an officer must detain, arrest or issue a warrant for the arrest and detention of a designated foreign national (DFN) who is or was 16 years of age or older on the day of the arrival that is the subject of the designation.

Section 20.1(1) of the IRPA stipulates that the Minister may, by order, having regard to the public interest, designate as an irregular arrival the arrival in Canada of a group of persons if he or she:

1. is of the opinion that examinations of the persons in the group, particularly for the purpose of establishing identity or determining inadmissibility – and any investigations concerning persons in the group – cannot be conducted in a timely manner, or
2. has reasonable grounds to suspect that, in relation to the arrival in Canada of the group, there has been, or will be, a contravention of subsection 117(1) for profit, or for the benefit of, at the direction of or in association with a criminal organization or terrorist group

When a designation is made, a foreign national who is part of the group whose arrival is the subject of the designation becomes a DFN. DFNs are subject to mandatory arrest and detention, and a revised detention review timeline of within 14 days and then every six months thereafter. The CBSA must arrest and detain all DFNs who were 16 years of age or older at the time of the arrival, where the designated irregular arrival occurred on or after June 28, 2012.

Mandatory detention does not apply to DFNs who are 15 years of age or younger on the day of arrival.

For more information, consult the Designated Irregular Arrivals Standard Operating Procedures.

5.10. Other regulatory factors

R248 outlines the factors the officer or the Immigration Division shall consider before making a decision on detention or release:

- the reason for detention;
- the length of time in detention;
- whether there are any elements that can assist in determining the length of time that detention is likely to continue and, if so, that length of time;
- any unexplained delays or unexplained lack of diligence caused by the CBSA or the person concerned; and
- the existence of alternatives to detention (see ENF 34 Alternatives to Detention).

5.11. Detention of minor children (under 18 years of age)

A60 stipulates that it is affirmed as a principle that a minor child shall be detained only as a measure of last resort, taking into account other applicable criteria including the best interests of the child (BIOC).

Prescribed factors

R249 identifies the special considerations that apply in relation to the detention of minor children under 18 years of age. These considerations are described in R249 as follows:

- a. the availability of alternative arrangements with local child care agencies or child protection services for the care and protection of the minor children;
- b. the anticipated length of detention;
- c. the risk of continued control by the human smugglers or traffickers who brought the children to Canada;
- d. the type of detention facility envisaged and the conditions of detention;
- e. the availability of accommodation that allows for the segregation of the minor children from adult detainees who are not the parent of or the adult legally responsible for the detained minor children; and
- f. the availability of services in the detention facility, including education, counselling and recreation.

The following fundamental considerations must be taken into consideration for any cases involving the detention of a minor child:

1. Detention of a minor is a measure of last resort (A60 above). Detention is to be avoided to the greatest extent possible and applied for the shortest period possible.
2. Alternatives to detention must always be considered first for minors and their parent(s) or legal guardian(s) and be actively pursued until release.
3. The unity of families is to be highly factored in all detention-related decisions.
4. The BIOC are a primary consideration and may be outweighed only by other significant considerations such as public safety (that is, R245(a) and (f) [flight risk] and R246 [danger to the public]) or national security.
5. Detention may be considered when historic, consistent and willful breaches of the IRPA or the Regulations are demonstrated.

6. The BIOC assessment is to be conducted before any decision to detain or house a minor or to separate a minor from their detained parent(s) or legal guardian(s), and should also be conducted on a continual basis [section 8(2)].
7. Only in extremely limited circumstances may a minor be detained or housed if no suitable ATDs can be found:
 - a) if it is in the BIOC to be housed with their parent(s) or legal guardian(s);
 - b) if there are well-founded reasons to believe the minor is a danger to the public;
 - c) when identity is a serious concern only insofar as there are well-founded reasons to believe the minor or their parent(s) or legal guardian(s) may represent a risk to public safety and national security; and
 - d) if the family is scheduled or can be scheduled for removal within 7 days and has demonstrated a consistent pattern of non-compliance and willful breaches of conditions or violations of the IRPA or the Regulations elevating the risk of unlikely to appear for removal.
8. Where detention is warranted,
 - a) detention or housing must be for the shortest period of time;
 - b) ATDs will be reviewed by a CBSA officer in consultation with the minor's parent(s) or legal guardian(s), and counsel where applicable, on a weekly basis to prevent prolonged detention;
 - c) an unaccompanied minor should never be housed for more than 48 hours at an IHC except where danger to the public considerations has been raised;
 - d) there shall be no comingling of unaccompanied minors and other non-familial adult detainees;
 - e) no minor (accompanied or unaccompanied) shall be placed in segregation or be segregated;
 - f) families must not be separated within the detention facility where possible; and
 - g) there shall be access to education, recreation, medical and counselling services, and proper nutrition in accordance with detention standards and international obligations.

A minor child cannot be detained if no grounds for detention exist under section A55. For complete information on the detention of a minor, see Annex A, National Directive for the Detention or Housing of Minors.

For appearances before the Immigration and Refugee Board (IRB) in situations where a minor is detained, A167(2) provides that a representative shall be designated for any person who is under 18 years of age or who, in the opinion of the Division, is unable to understand the nature of the proceedings. For more information on detention review, see ENF 3, Admissibility Hearings and Detention Review Proceedings.

5.12. Housing of minor children (under 18 years of age)

A housed minor is a foreign national, permanent resident or Canadian citizen who, after the completion of a BIOC, is kept with their detained parent(s) or legal guardian(s) at an IHC at the latter's request.

A housed minor is not subject to an Order for Detention and is free to remain and re-enter the IHC subject to consent of the parent(s) or legal guardian(s) in accordance with the rules and procedures of that

facility. No detention related forms should be issued for a housed minor as they are not detained, including the Detainee Medical Needs, as these forms are only issued where the IRPA grounds for detention of the minor are met.

For complete information on the housing of a minor, see Annex A, National Directive for the Detention or Housing of Minors.

5.13. Vulnerable persons

A vulnerable person in the detention context is defined as a person for whom detention may cause a particular hardship. For persons falling into one or more of these categories, officers should apply the principle that where there is no danger to the public, detention is to be avoided or considered as a last resort. Detention of a vulnerable person is not precluded where the individual is considered a danger to the public. However, it should be for the shortest period of time and should be focused on supporting imminent removal. The vulnerable persons are:

- pregnant women and nursing mothers;
- minors (under 18 years of age) (see section 5.11, “Detention of minor children”);
- persons suffering from a severe medical condition or disability;¹
- persons suffering from restricted mobility;¹
- persons with a suspected or known mental illness (includes suicidal and self-harmful persons);
- victims of human trafficking.²

¹To assess if a person’s medical condition, disability or restricted mobility is severe enough to cause a particular hardship, the officer must take into account the detention facility and available services. The officer must believe that the person cannot be satisfactorily managed within the detention facility (for instance, a person requires a walker but the detention facility does not offer this kind of service). When in doubt that a person can be satisfactorily managed within a detention facility, officers should make a decision in consultation with an officer who works at an IHC, a detainee liaison officer or a designated regional representative.

²Victims or suspected victims of human trafficking should never be kept or being in contact with their trafficker, if known.

The officer’s notes should detail efforts that have been taken to find a suitable alternative to detention, and the National Risk Assessment for Detention (NRAD) form (see section 10.1) must clearly identify the individual as a vulnerable person.

5.14. Long term detention and jurisprudence

The CBSA considers all detentions which have lasted over 99 days to be long term detentions. As it is done for each detention, officers should actively determine if alternatives to detention could be available or suitable to mitigate the risk. In cases of long term detentions, officers should carefully document each effort or progress that has been made to reach an objective (e.g. to establish the identity or to remove an individual). Given A58(1)(d), the Minister’s delegate may be required to demonstrate the possibility of establishing the identity of the person concerned within a reasonable period of time. Officers responsible for the identity investigation must follow each of the cases closely and document any efforts made to

establish the person's identity. This will demonstrate that the CBSA is making progress and that the individual detention is not indefinite. Long term detentions are justifiable where:

- the detained individual is a danger to the public;
- alternatives to detention and conditions cannot sufficiently mitigate the danger to the public or the unlikelihood to appear; and
- a large portion of responsibility for the delay in achieving an enforcement outcome, is caused by the detained individual themselves, due to their consistent refusal to cooperate with the CBSA to enforce the removal.

Jurisprudence

In *Sahin v. Canada (Minister of Citizenship and Immigration)*, [1995] 1 F.C. 214, the Federal Court ruled that persons cannot be held indefinitely under the provisions of the *Immigration Act*. There has to be an end to the process in view. This ruling has been quoted several times in several judgements, even if it refers to the former *Immigration Act*. In this case, the reason for detention was that, in the opinion of the adjudicator, the subject would not report for removal if required to do so. The Court's decision in this case set out a four part test regarding detention. These four factors have been integrated into R248.

- The first is that there is a stronger case for justifying a longer detention for someone considered a danger to the public.
- The second concerns the length of future detention: if it cannot be ascertained, the facts would favour release.
- The third is a question of who is responsible for any delay: unexplained delay or even unexplained lack of diligence should count against the offending party.
- The fourth is the availability, effectiveness and appropriateness of alternatives to detention such as outright release, bail bond, periodic reporting, etc.

In *Lunyamila v. Canada (Public Safety and Emergency Preparedness)* 2016 FC 1199, the Federal Court ruled that persons who are a danger to the public or a flight risk and who are not cooperating with the Minister's efforts to remove them from this country, must continue to be detained until such time as they cooperate with their removal, except in exceptional circumstances. However, this might be justified in an exceptional circumstance, such as where there have been unexplained and very substantial delays by the Minister that are not attributable to the detained person's lack of cooperation or to an unwillingness on the part of the Minister to incur substantial costs that would be associated with pursuing non-speculative possibilities for removal. Where a person is a danger to the public, the greater the risk that the public would be required to assume under a particular alternative to detention, the more this factor should weigh in favour of continued detention.

In *Canada (Public Safety and Emergency Preparedness) v. Ismail*, [2015] 3 FCR 53, 2014 FC 390, the Federal Court has determined that there is nothing in subsection A58(1) that ties the ability of the Immigration Division to continue to detain an individual under that provision to the original grounds of detention under A55. It is thus apparent on the face of the legislation that an individual may originally be detained by an officer for one reason, on the basis of one standard, but may later be denied release by the Immigration Division on a different ground, and on the basis of a different standard.

6. Definitions

Any procedure under the IRPA	“Any procedure” refers to any process with regard to a person’s application or status, whether it is initiated by the person, by IRCC or by the CBSA that has arisen in the normal course of the immigration system. “Any procedure” does not include investigation.
Alternatives to Detention (ATDs)	refer to ENF 34, Alternatives to Detention
Best Interests of the Child (BIOC)	An international principle to ensure children enjoy the full and effective benefit of all their rights recognized in Canadian law and the <i>Convention on the Rights of the Child</i> . It is also a rule of procedure that includes an assessment of the possible impact (positive or negative) of a decision regarding the child or children concerned.
Reasonable grounds to believe	Reasonable grounds are a set of facts and circumstances that would convince a normally prudent and informed person. They are not mere suspicions. The opinion must have an objective basis.
Reasonable grounds to suspect	Reasonable grounds to suspect, a lower standard than to believe, is a set of facts or circumstances that would lead the ordinarily cautious and prudent person to have a hunch or suspicion.
Protected person under A95(2)	A protected person is a foreign national on whom refugee protection is conferred under A95(1), and whose claim or application has not subsequently been deemed to be rejected under A108(3), A109(3) or A114(4).
Minor (child)	A minor is defined under the IRPA and the <i>Convention on the Rights of the Child</i> as a person under the age of 18. They are considered to be a minor in the federal context (R249).
Criminal organization within the meaning of A121.1(1)	means a criminal organization as defined in subsection 467.1(1) of the <i>Criminal Code</i> .
Unaccompanied minor	A minor or siblings traveling together who do not arrive in Canada with their parent(s) or legal guardian(s) or do not arrive in Canada to join such a person.

7. Procedure: detention

Arrest

For complete information on the procedures for arrest under the IRPA, see ENF 7, “Investigations and Arrests”, section 15.

Detention

The following table contains the main tasks that must be completed to detain an individual under the IRPA.

Task	Responsibility	Notes and copies
Inform the detained person of the reason for their detention and the right to retain and instruct counsel without delay.	Officer	See ENF 7 Investigation and Arrests
Fill out form <i>Notice of Rights Conferred by the Canadian Charter of Rights and Freedoms and by the Vienna Convention Following Section 55 of the Immigration and Refugee Protection Act Arrest or Detention</i> [BSF776]	Officer	See ENF 7 Investigation and Arrests Give a copy to the detainee
Give the detainee the brochure "Information for people detained under the Immigration and Refugee Protection Act" [BSF 5012]	Officer	Give a copy to the detainee
Search, notice of seizure, photograph and fingerprint the detainee	Officer	If not already done during the arrest process See ENF 12 Search, Seizure, Fingerprinting and Photographing
Monitor frequently physical checks of any individual held in a CBSA short-term detention room or cell (at least once every 15 minutes) by filling out form Detention Cell Log and Instructions BSF481 and BSF481-1.	Officer	For detainees who are believed to be suicidal or self-harmful, see section 9.
Prepare Officer's detention notes	Officer	See section 7.2 Officer's detention notes. Officers must save their detention notes in GCMS. A copy must appear on the front page of the file as well.
Collect documents and gather evidence that support the officer's detention notes These documents would include: statutory declarations IMM 1392B, statements made by the individual, observations of the individual behavior, police reports, warrants, conditions of release from CBSA or court, other court documents, reports from correctional services, list of failure to comply with reporting conditions, identity documents, forensic reports	Officer	If a statutory declaration is made by a detainee, s/he must be given a copy.
Query the National Crime Information Center (NCIC) and the Canadian Police Information Centre (CPIC)	Officer	NCIC authorized usage: officer/public safety concerns.

Fill out form Minister's Opinion Regarding the Foreign National's Identity (under subsection 58(1)(d) of the <i>Immigration and Refugee Protection Act</i>) [BSF510]	Minister's delegate (Superintendent, hearings officer)	Only for detentions where the identity of a foreign national has not been established
Fill out form Identity Information Form [IMM 5007B]. The form is useful in capturing the efforts made by officers to establish identity.	Officer	Only for detentions where the identity of a foreign national has not been established
Notify the Canadian Red Cross by sending an email to IDMP@REDCROSS.CA for each case involving: unaccompanied minors, persons unable to appreciate IRB proceedings, emerging issues and death in custody.	CBSA regional management	See section 12.1, Canadian red cross
Fill out form National Risk Assessment for Detention [BSF754]	Officer	Give a copy to the detainee Give a copy to the detention facility
Fill out form Detainee Medical Needs [BSF674]	Officer	Give a copy to the detainee Give a copy to the detention facility
Data entry in GCMS and NCMS	Officer	See section 7.1 Data entry
Review of the detention decision and the detention placement of an individual and fill out form Review of Detention by Officer (pursuant to section 56 of the <i>Immigration and Refugee Protection Act</i>) [BSF508 E]	Management	See section 7.3 Management review of a detention decisions

To ensure procedural fairness, officers must use an accredited interpreter where a detained individual does not understand one of the Canada's official languages.

After the management review, if the detention is maintained and the detainee will be transferred to a detention facility, the following tasks must be completed:

Task	Responsibility	Notes and copies
Fill out form Request for Admissibility Hearing/Detention Review Pursuant to the Immigration Division Rules [BSF524]	Officer	Give a copy to the CBSA hearings section as well.
Retain in the file evidence (e.g. copy of the facsimile receipt) that the Immigration Division has been informed.		
Fill out form Order for Detention form [BSF304]	Officer	Give the original copy to the detention facility
Provide in writing to the detainee the name, address and telephone number of the detention facility	Officer	Give a copy to the detainee

7.1. Data entry

Detention tracking information is very time sensitive and must be entered into the Global Case Management System (GCMS) and the National Case Management System (NCMS) databases as soon as possible. Both systems are being used to track detainee cases and to produce statistics for the detentions program management.

GCMS

Most detention forms, such as a detention order, are available in GCMS, which allows officers to fill them out electronically. To ensure consistency and the ability to track cases, all GCMS-generated detention forms must be saved in the associated activity (for example, examination, arrest).

Some detention forms, such as the “National Risk Assessment for Detention” and “Detainee Medical Needs” forms, are currently available only as a fillable PDF, which allows officers to fill them out electronically and upload them to GCMS. To ensure consistency and the ability to track cases, all filled-out detention forms that are not available in GCMS must be saved in GCMS, under the detainee’s unique client identifier (UCI), by following these instructions:

- Navigate to “Clients” > “Documents” > “ID Supporting Documents” sub tab.
- Create a new record.
- Select the following options:
 - Type: CDN Immigration Doc
 - Sub Type: Client Submission
 - Document #: Form BSF#
 - Country of Issue: Canada
 - Document Name: Name of the form
- Complete the “Issue Date”.
- Add a new attachment in PDF format.

See the Wiki GCMS reference materials, Arrest & Detain and Detained for Examination or MD Review, for more details. It is essential that the request for detention review and the detention summary screens in GCMS be completed as soon as possible by either the officer or the minister’s delegate.

NCMS

The NCMS must be used for tracking all “Immigration holds” originating at a port of entry, as well as those that originate at inland offices. If an immigration hold detention originates at a port of entry that does not have access to NCMS, then all information pertaining to the detention must be forwarded to the appropriate CBSA office for the earliest possible data entry to NCMS. For procedures on entering detention data into NCMS, please see the NCMS - User Guide.

In addition, if a detainee is being transferred to a detention facility, a National Risk Assessment for Detention event must be completed under the “Immigration Hold” tab in NCMS. Officers must create a new NRAD event, enter the total score in the disposition section and select vulnerable category.

7.2. Officer's detention notes

The factors that justify detention are constantly evolving. They can change if new evidence is uncovered. It is the officer's responsibility to clearly identify the initial factors that led to the decision to detain a person. An officer must be satisfied that given all the available information, the facts warrant the detention of an individual. Legislative grounds and the facts justifying the officer's decision must be supported in notes included in the GCMS, to enable others to understand the rationale for the decision. When documenting their decision, officers should follow the following principles:

- Make a brief case history to provide context for the reasoning;
- Write the detention grounds (section 5.3);
- Make a list of the applicable detention and release factors (section 5.4 to 5.8);
- Write the immigration outcome (e.g. until the detainee has appeared at the immigration hearing or been removed from Canada, until identity has been established, until the minister has completed the examination or establish the suspected inadmissibility).
- Explain how alternatives to detention have been considered and factored (e.g. availability, admissibility criteria, time and distance, if sufficient to mitigate the risk posed by the detainee). Refer to ENF 34 Alternatives to Detention).

A detailed decision will help those involved, specifically the hearings officer and IRB member, to understand the reasoning that led to the decision to detain a person as well as the factors that contributed to maintaining the decision for an extended duration. To this end, the officer's conclusions must appear on the front page of the file, accompanied by a brief case history to provide context for the reasoning. A rigorous approach to the notes will support the action taken and help others understand the evolution of the file throughout the process (from the initial control to the detention review before the Immigration Division). In addition, appropriate and complete note-taking is critical to judicial reviews at the Federal Court, provincial courts, detention reviews at the IRB and any future file review.

When preparing the supporting notes, the officer must show that his or her decision is supported by a rigorous assessment of the facts, including factors prescribed by the Regulations. Although these prescribed factors must be considered during the officer's initial assessment of the situation, they are not restrictive; it is an analysis of the file in its entirety that will determine whether detention is necessary.

Officer's notes must show that alternatives to detention have been considered and weighed against the detainee's risk identified. Officers must clearly document which alternatives to detention have been considered and how they will not mitigate the associated risk.

Should release on an ATD be deemed appropriate but it is not possible to effect release within a reasonable period of time (e.g. depositor not available, time needed to raise cash for deposit, release plan to be put into place, etc.) transfer to a detention facility (e.g. Immigration Holding Centre or Provincial Correctional Facility) may be warranted until release can be effected. In such cases, the proposed ATD should be clearly documented and release effected as soon as possible. Refer to ENF 34 Alternatives to Detention for further information.

7.3. Management review of detention decisions

In order to ensure management oversight and visibility of all detention cases, all decisions to continue detention and detention placement decision shall be reviewed **prior to the transfer of a detainee to an detention facility** by the below authorities:

- a Superintendent (FB05) or higher regional authority for all Port of Entry cases; or,
- an Inland Supervisor or Manager (FB05/FB06) or higher regional authority for all Inland cases

The term “continued detention” refers to the decision, following an arrest, to maintain detention and have the individual transferred to a detention facility. For example, no management review is made if the arresting officer, after interviewing the person decides there are no grounds to detain further and determines release is appropriate.

The management personnel conducting the above review must have experience in the application of the IRPA, or have completed relevant training (i.e. minister’s delegate review (S6027-N)). Should one of the above authorities not be available onsite when continued detention is being considered, officers should call management at another location or a duty manager who meets the requirements, including in another region as necessary. This review should be clearly documented to file and GCMS notes.

This administrative process has been established by the CBSA to ensure consistency in decision making, and to ensure the reasons for the detention exist and continue to exist. The management reviewing the case must consider any new information. For instance, the reviewing management must validate the following as part of the review of a continued detention decision and detention placement decision:

- that there are reasonable grounds to detain, and that the decision to detain is in line with authorities prescribed under legislation and regulations (section 5.3);
- that the decision to continue detention is supported by relevant and articulated facts that are tied to a detention authority. The identified risk factors must be clearly linked to an enforcement or immigration outcome that is at risk of not being achieved without detention (section 5.4 to 5.8);
- that all currently available alternatives to detention have been considered, and documented evidence is on file to understand why available ATDs are considered unsuitable to mitigate risk factors that are present;
- that all appropriate documentation is complete, placed on the individual’s file and copies have been given to the detainee (section 7, Procedure: Detention);
- information is documented in GCMS and NCMS (section 7.1, Data entry);
- that the placement of an individual within an IHC or a Provincial correctional facility is aligned to the considerations outlined in the NRAD form (section 9.1 National Risk Assessment for Detention);

The management review of a detention decision made under Section 55 of the IRPA may result in one of the following outcomes:

- Management concurs with the officer’s decision to continue detention and the detention placement decision; or
- Management concurs with the officer’s decision to continue detention but does not concur with the detention placement decision and fill out a subsequent risk assessment (section 9.1, National risk assessment for detention); or

- Management does not concur with the officer's decision to continue detention and makes a decision to release the person under A56 (section 10, Procedure: Release by officer before the first detention review).

When the management is conducting a review of the detention decision, they must fill out the *Review of Detention by Officer (pursuant to section 56 of the IRPA)* form [BSF508 E], summarizing the facts that warrant continuing detention or alternatives to detention as the appropriate action. Each completed form must be placed in the detainee's case file and uploaded to GCMS.

If the reviewing management does not agree with the originating officer's decision to continue detention, as the decision maker, it will become the manager's responsibility to fill out the required forms to enable release. Where the detention is no longer justified, the reviewing management may release under A56 (see section 11).

All management review and subsequent decisions must be documented to file and must be entered into the GCMS and the NCMS.

7.4. Detention review after 48-hours and informing the IRB

If the detention continues, the Immigration Division of the IRB will review the reasons for continuing detention within 48 hours following the start of the detention or as soon as possible thereafter. As required under A55(4), the officer shall without delay give notice to the Immigration Division by sending the form "Request for admissibility hearing/detention review pursuant to the Immigration Division rules" [BSF524] to the registry by facsimile. The officer will retain in the file evidence that the Immigration Division has been informed. A copy of the facsimile receipt is evidence that the transmission has been completed. For more information on detention review pursuant to the Immigration Division Rules, see ENF 3, "Admissibility, Hearings and Detention Review Proceedings". See section 7.1, data entry, for more information.

Should an individual be subject to a 48-hour detention review and detention be maintained by the IRB member, the detainee must be brought before the Immigration Division at least once in the seven-day (7) period following the first review, then at least every thirty (30) days following the preceding review. When the Immigration Division has jurisdiction, officers may seek an early detention review for the purpose of expediting release.

The process for a designated foreign national and an individual named in a security certificate are different. For more information on detention review pursuant to the Immigration Division Rules, see ENF 3, Admissibility, Hearings and Detention Review Proceedings.

8. Care of the detainee while awaiting transfer

While a detainee is in a detention room or a cell at a POE office or an Inland Enforcement office pending their transfer to another location, the officer should consult and follow the EN manual Part 6 – Chapter 2: Care and Control of Persons in Custody.

8.1. Procedure: suicidal and self-harmful detainee

The IRPA does not authorize the detention of an individual for their own safety, except with special considerations for minor children. Persons who are believed to be suicidal or self-harmful are considered as vulnerable persons, see sections 5.13. If an officer has reason to believe an individual is suicidal or prone to self-harm, the first intervention is for the officer to show concern and speak with the individual. For more information, officers should complete the online training course entitled “Prevention of Suicide and Self-Harm among Detainees” (H2047-P) available through the CAS portal.

Mental health questions are of a sensitive nature and should be asked in a non-judgemental way. Officers should use a friendly and accepting tone and allow the person time to speak. Contrary to common belief, asking someone if they are having thoughts of killing themselves will not make them suicidal. If an officer is concerned about a risk of suicide, the officer must ask questions to the detainee. The following examples can be used to determine if the detainee has thoughts of suicide:

- The situation you describe sounds serious. I want to know if you have considered committing suicide?
- I can see you are feeling down or panicky. Sometimes when people feel like this, they have thoughts of killing themselves. Are you thinking of suicide?

If a detainee says that s/he is thinking about ending their life, the officer must acquire additional information from the detainee. The following examples can be used to investigate the detainee’s plan for suicide:

- I want to know if you have a plan to commit suicide?
- How do you plan to take your life?
- Where do you plan to do this?
- Do you have a means to do this?

Those at the highest risk for suicide in the near future have a specific suicide plan, the means to carry out the plan, a time set for doing it and an intention to do it. If a detainee has a plan and intend to end his/her life soon, do not leave a suicidal person alone. Officers should call an IHC health care professional (if available) or Local Crisis Centres right away and put them in contact with the detainee.

At a port of entry or an inland enforcement office, if a person being detained is believed to be suicidal or self-harmful, a constant visual check or video monitoring is required by using the *Detention cell log and instructions* [BSF481] and *Detention cell log* [BSF481-1]. The detained person is to be kept under continuous monitoring until:

- it is discontinued by the immediate superintendent/manager on duty;
- the detainee is released from custody; or
- the detainee is transferred to an IHC or a provincial correctional facility.

Once the person has been transferred to an IHC or a Provincial correctional facility, the health care professional will make an assessment to determine if the monitoring should continue or not.

9. Transfer of a detainee

The following process is intended to be used when an individual is detained under section 55 of the IRPA and needs to be transferred to a detention facility (IHCs and provincial correctional facilities). The transfer of a detainee to a detention facility cannot be used as a form of punishment.

The Order for Detention [BSF304], the National Risk Assessment for Detention” [BSF754] and the “Detainee Medical Needs” [BSF674] forms must be filled out to ensure the safety and well-being of the detainee, other detainees and staff. The receiving detention facility staff must be provided a copy of these forms.

9.1. National risk assessment for detention

The intent of the NRAD [BSF754] is to ensure national consistency regarding detention placement, in a transparent and objective way. The officer making the detention decision must complete the NRAD form [BSF754] and must identify the detainee’s risk and vulnerability factors. An information session on the NRAD form is available to officers in the following training and learning section: http://atlas/pb-dgp/res/toolkit-outils/detention/forms-formulaires/index_eng.asp

Detention placement assessment

The NRAD risk and vulnerability factors are has follow:

- Risk factors #1 and #2 allocate points if a detainee is possibly inadmissible due to security grounds or organized criminality. Officers must rely on evidence that may lead to the issuance of an inadmissibility report regarding the concerned inadmissibility or must be investigating to obtain such evidence.
- Risk factor #3 allocates points based on the number of years that have passed since the last known offence or conviction that may cause inadmissibility for serious criminality or criminality. Offences where an individual was found not guilty or where charges have been withdrawn must not be counted in the assessment.
- For the purpose of completing risk factors #4 and #5, an officer could consider the last known offence committed, if the person has been charged but the trial has not been concluded, or the conviction date set. These questions apply equally to persons who have committed violent acts associated with inadmissibility pursuant to paragraph A35(1)(a). Offences where an individual was found not guilty or where charges have been withdrawn must not be counted in the assessment. The following table offers a general overview of common non-violent crimes, violent crimes and severely violent crimes:

Crime types	Common crime examples (with criminal code references)
Non-violent crime	<ul style="list-style-type: none">• Theft (section 322)• Operation while impaired (section 253)• Breaking and entering with intent, committing offence or breaking out (section 348)• Fraud (section 380)• Possession of a controlled substance (section 4 of the Controlled Drugs and Substances Act)• Trafficking in substance (section 5 of the Controlled Drugs

	and Substances Act)
Threats or violent crime	<ul style="list-style-type: none"> • Uttering threats (section 264.1) • Assault (section 265) • Sexual assault (section 271) • Includes all severely violent crimes (see below)
Severely violent crime	<ul style="list-style-type: none"> • Assault with a weapon or causing bodily harm (section 267) • Sexual assault with a weapon, threats to a third party or causing bodily harm (section 272) • Aggravated sexual assault (section 273) • Murder (section 229) • Manslaughter (section 234) • Robbery (section 343) • Torture (section 269.1)

- Risk factor #6 allocates points if in the last two years, a detainee was involved in a serious incident during the arrest or was involved in a major breach of the detention facility rules of an IHC, a provincial or a federal correctional facility or a port of entry or inland office cell. It includes major breaches that have occurred in detention facilities outside Canada. The “CBSA National Detention Standards – Disciplinary system” defines a major breach as the following: a detainee commits, attempts or incites acts that are violent, harmful to others, or cause an unsafe environment in the detention facility (for example, resisting arrest, using physical violence aimed at another person, being in possession of any item that may be considered as an offensive weapon, or throwing objects at another person).
- Risk factor #7 allocates points if a detainee previously escaped or attempted escape from legal custody (e.g. from a detention facility or from the custody of an officer).
- Risk factor #8 allocates points if a detainee is a fugitive from justice or remains the subject of an unexecuted criminal warrant for arrest. In the context of completing the NRAD, warrants issued under immigration or traffic laws are not considered as criminal warrants and, as a consequence, do not have any repercussion for this risk factor.
- Vulnerability factor #9 reduces points if a detainee is a vulnerable person. Only one vulnerable category can be selected even if the detainee is part of more than one vulnerable category. For information on vulnerable persons, see section 5.13.

Decision

Any additional information supporting the officer’s decision must be recorded in the narrative section (such as details of key risk factors, the detainee’s comments, incidents and changes in the facility type for detention). Based on the total sum of points attributed to the risk and vulnerability factors, a detainee should be detained in a detention facility according to the total score, as follows:

- 0 to 4 points = IHC (where available)
- 5 to 9 points = IHC or provincial correctional facility (default to IHC where risk can be mitigated)
- 10 points or more = provincial correctional facility

In regions where no IHC is available, detainees will be transferred to a provincial correctional facility. In regions where an IHC is available, officers must make a decision in consultation with an officer who works at an IHC, a detainee liaison officer or a designated regional representative.

An officer's decision for placement in an IHC or provincial correctional facility may be modified by another officer or a manager who works at an IHC. In this case, the decision maker must give details and a rationale to explain their decision in the section of the NRAD titled "FOR IHC USE ONLY".

Regardless of the place of detention, a subsequent assessment using the NRAD form [BSF754] must be completed:

- within 60 days from the date of the initial risk assessment if the detention continues, or
- sooner if the circumstances change or a change in risk is observed (e.g. major breach of the detention facility rules, new criminal conviction).

Requests for an early subsequent assessment may be received from individuals (e.g. counsels and detainees) from time to time. These requests must be responded to with notes to file and any new circumstance must be taken into consideration. When a request is made, if the officer responsible for filling out the subsequent assessments is of the opinion that no circumstance has changed (i.e. no impact on the NRAD total score of the detainee) then, no early subsequent assessment is needed. However, a formal response must be sent to the requestor, which will explain the NRAD subsequent assessment process and the decision.

Subsequent assessments must be supported by information to corroborate the status quo or the change in the facility type for detention. For detainees held in an IHC, the responsibility lies with officers working at the IHC. For detainees held in a detention facility elsewhere (e.g. a provincial correctional facility), the responsibility lies with a detainee liaison officer or an officer designated to perform this function. Changes in the person's risk and vulnerability factors, and the ability to mitigate that risk within an IHC should be considered at each assessment.

For each completed assessment or modification of an NRAD, the detainee must be informed of the risk and vulnerability factors taken into consideration, and officers must ask if there is anything the detainee would like to add that may impact their decision before the chosen facility type has been finalized. It is an opportunity for the detainee to bring new elements to the knowledge of the officer, it's not an obligation. The officer is not bound by the information given by the detainee; however, the information must be taken into consideration in compliance with procedural fairness. If a detainee refuses to or is unable to speak with the officer, the officer should rely on the other information sources to complete the assessment (e.g. a file review, security guards' observations, incident reports and a designated representative).

Details of the key risk factors, criminal convictions, the detainee's behaviour, details given by the detainee (or the refusal thereof) and any other elements supporting the officer's decision must be recorded in the decision section. This section must be completed to support the decision being made and it is not sufficient to state "refer to file". The decision must be communicated to the detainee, the NRAD must be placed in the detainee's case file and a copy of the form must be given to the following:

- the detainee or designated representative (by hand, by mail or electronically); and
- the IHC or the provincial correctional facility.

See section 7.1, data entry, for more information.

Paragraph 8(2)(a) of the Privacy Act (consistent use) allows the disclosure of information where the disclosure is made for the purpose for which the information has been obtained. The individuals are being detained for IRPA purposes, whether the detention is at one of the CBSA's IHCs or at a provincial correctional facility on CBSA's behalf. In this case, the disclosure with provincial correctional facilities is to ensure the safety of the detainee, other detainees and staff where the detainee is being held.

The NRAD detention placement decision shall be reviewed prior to the transfer of a detainee to a detention facility by the below authorities (see section 7.3, management review of detention decision, for more details):

- a Superintendent (FB05) or higher regional authority for all Port of Entry cases; or,
- an Inland Supervisor or Manager (FB05/FB06) or higher regional authority for all Inland cases

Detainees medically unfit for transfer

In regions where an IHC exists, if a health care professional does not recommend to transfer a detainee to or from an IHC because of a medical condition, the information must be communicated to an IHC manager. The decision to authorize, or not, a detainee's transfer remains with an IHC manager.

The decision to authorize or not the transfer should be made in consultation with IHC health care professionals and take into consideration the safety and well-being of the detainee, other detainees and staff. Due to information privacy laws, health care professionals may not be authorized to disclose details or personal information to CBSA staff. However, they can make recommendations on how to facilitate a detainee's transfer or give advice regarding when a detainee should be fit for transfer.

If an IHC manager concurs that a detainee is not medically fit for transfer, it should be documented on the NRAD form [BSF754] in the additional information section. Regular follow up should be done with the health care professionals in case the detainee's medical condition improves.

9.2. Detainee medical needs

The intent of the "Detainee Medical Need" (DMN form) [BSF674] is to ensure national consistency in gathering and sharing information regarding detainee medical needs with detention staff. The officer making the detention decision must complete the DMN form [BSF674]. An information session on the Detainee Medical Needs form is available to officers in the following training and learning section: http://atlas/pb-dgp/res/toolkit-outils/detention/forms-formulaires/index_eng.asp

Information contained in the health condition section is based on information stated by the detainee, and its accuracy cannot be validated before a consultation with a health care professional. The form is not a medical diagnosis but a tool for detention staff to note any information pertaining to the detainee's self-identified needs, before the detainee has their initial consultation with a health care professional. The form contains information on the detainee's health needs (such as mobility impairment) and life-threatening health conditions (such as heart disease, diabetes or allergies). In addition, the DMN form [BSF674] contains emergency contact information. If the detainee provided contacts in this section, the CBSA will contact the individual(s) listed in the event that a medical emergency (such as a serious injury

or death) occurs during the detention period. If required, the detainee's personal information will be shared with the emergency contact.

In addition, the DMN form [BSF674] contains specific questions to capture self-identified mental health conditions (such as depression or bipolar disorder) and indicators (such as a previous suicide attempt), which may indicate a predisposition to suicide and self-harm. Mental health questions are of a sensitive nature and should be asked in a non-judgemental way. Officers should use a friendly and accepting tone and allow the person time to speak. If a person being detained is believed to be suicidal or self-harmful, see section 8.1, Procedure: Suicidal and self-harmful detainee.

Regardless of the place of detention, a new DMN form [BSF674] must be completed:

- within 60 days from the initial assessment if the detention continues, or
- sooner if the detainee self-identifies a change in their medical condition or if a possible change in their medical condition is observed by any custodial staff.

This is to ensure that the form is always up to date in case that the detainee needs to be quickly transferred to another detention facility or the CBSA needs to notify the emergency contact(s). For detainees held in an IHC, the responsibility lies with officers working at the IHC. For detainees held in a detention facility elsewhere (such as a provincial correctional facility), the responsibility lies with a detainee liaison officer or an officer designated to perform this function.

The DMN form [BSF 674] must be placed in the detainee's case file, and a copy of the form must be given to the following:

- the detainee or designated representative (by hand, by mail or electronically);
- the IHC or the provincial correctional facility (to the health care professional).

See section 7.1, data entry, for more information.

Paragraph 8(2)(a) of the Privacy Act (consistent use) allows the disclosure of information where the disclosure is made for the purpose for which the information has been obtained. The individuals are being detained for IRPA purposes, whether the detention is at a CBSA IHC or a provincial correctional facility. In this case, the disclosure to provincial correctional facilities is to ensure detainee well-being and to assess their health needs.

9.3. Vehicular transport of detainees

For complete information on the transport of detainees, see CBSA Enforcement Manual, Part 6, Chapter 8, on the vehicular transport of persons under arrest or detention.

10. Procedure: release by officer before the first detention review

In the event that the grounds for detention cease to exist before the Immigration Division has conducted the first detention review (48-hours review), the officer or the reviewing management may release the person being detained under A56(1). Grounds for detention may no longer exist because an alternative to detention that sufficiently mitigates the risk posed has been identified. The following table contains the main tasks that must be completed to release an individual before the first detention review.

Task	Responsibility	Notes and copies
Fill out form Review of Detention by Officer (pursuant to section 56 of the <i>Immigration and Refugee Protection Act</i>) [BSF508 E]	Officer or management	
Fill out form Authority to Release from Detention [BSF566]	Officer or management	Only if the detainee has already been transferred to a detention facility Give a copy to the detention facility
Fill out form Acknowledgement of Conditions the Immigration and Refugee Protection Act [IMM 1262E]	Officer or management	If conditions have been imposed Give a copy to the detainee
Data entry in GCMS and NCMS	Officer or manager	See section 7.1 Data entry

A56 authorizes the officer to impose any conditions that s/he considers necessary. If the officer is of the opinion that alternatives to detention that sufficiently mitigate the risk posed can be imposed, these conditions are imposed using the “Acknowledgement of Conditions – IRPA” form [IMM 1262E]. Procedures for Deposits and Guarantees are found in ENF 8, Deposits and Guarantees and procedures for Alternatives to detention are found in ENF34, Alternative to detention.

Prescribed conditions

A56(3) states that if an officer orders the release of a permanent resident or foreign national who is the subject of either a report on inadmissibility on grounds of security that is referred to the Immigration Division, or a removal order for inadmissibility on grounds of security, the officer must also impose the prescribed conditions on the person. The conditions that must be imposed on a foreign national or permanent resident are the following (R250.1):

- (a) to inform the CBSA in writing of their address and, in advance, of any change in that address;
- (b) to inform the CBSA in writing of their employer’s name and the address of their place of employment and, in advance, of any change in that information;
- (c) unless they are otherwise required to report to the CBSA because of a condition imposed under subsection 44(3), 56(1), 58(3) or 58.1(3) or paragraph 82(5)(b) of the Act, to report once each month to the Agency;

(d) to present themselves at the time and place that an officer, the Immigration Division, the Minister or the Federal Court requires them to appear to comply with any obligation imposed on them under the Act;

(e) to produce to the CBSA without delay the original of any passport and travel and identity documents that they hold, or that they obtain, in order to permit the Agency to make copies of those documents;

(f) if a removal order made against them comes into force, to surrender to the CBSA without delay any passport and travel document that they hold;

(g) if a removal order made against them comes into force and they do not hold a document that is required to remove them from Canada, to take without delay any action that is necessary to ensure that the document is provided to the CBSA, such as by producing an application or producing evidence verifying their identity;

(h) to not commit an offence under an Act of Parliament or an offence that, if committed in Canada, would constitute an offence under an Act of Parliament;

(i) if they are charged with an offence under an Act of Parliament or an offence that, if committed in Canada, would constitute an offence under an Act of Parliament, to inform the CBSA of that charge in writing and without delay;

(j) if they are convicted of an offence under an Act of Parliament or an offence that, if committed in Canada, would constitute an offence under an Act of Parliament, to inform the CBSA of that conviction in writing and without delay; and

(k) if they intend to leave Canada, to inform the CBSA in writing of the date on which they intend to leave Canada.

10.1. Release: mandatory arrest and detention of a designated foreign national

Under sub-section A56(2) of IRPA, officers cannot release a designated foreign national who is detained and who was 16 years of age or older on the day of the arrival that is the subject of the designation in question until:

(a) a final determination is made to allow their claim for refugee protection or application for protection;

(b) they are released as a result of the Immigration Division ordering their release under section 58; or

(c) they are released as a result of the Minister ordering their release under section 58.1.

For more information on detention review process, see ENF 3, “Admissibility, Hearings and Detention Review Proceedings”.

11. Detention facilities

In the administration of the immigration detention program, the CBSA uses multiple detention facilities to detain individuals under the IRPA. The placement of an individual in a detention facility, is guided by their NRAD score, factors of their case and availability of IHCs in their region.

11.1. Immigration holding centres

The IHC should always be the default detention facility if risk can be mitigated, in regions where those facilities are available. Individuals detained under the IRPA who have scored 0 to 4 points and 5 to 9 points (if risk can be mitigated in an IHC) on the NRAD form [BSF754] should be held in an IHC. The CBSA operates three IHCs:

- The Toronto IHC has a maximum capacity of 195 detainees. It is located at 385 Rexdale Blvd, Toronto, ON M9W 1R9, near the Pearson International Airport. This facility serves the Greater Toronto Area region and may accept detainees from other regions on a case-by-case basis.
- The Laval IHC has a maximum capacity of 144 detainees. It is located at 200 Montée St-François, Laval, QC H7C 1S5. This facility serves the Quebec Region and may accept detainees from other regions on a case-by-case basis.
- The Vancouver IHC has a maximum capacity of 24 detainees. It is located at #113, 5000 Miller Road, Richmond, BC V7B 1K6, inside the Vancouver International Airport. This facility is only for short stays of up to 48 hours, and it serves the Pacific Region. A new IHC is being constructed and it will increase the IHC capacity in the Pacific Region.

11.2. Provincial correctional facilities

Provincial correctional facilities are used in all other regions not served by an IHC. This includes individuals detained over 48 hours in the Pacific Region.

Also, individuals detained under IRPA who have a total score of 5 to 9 points (if risk cannot be mitigated in an IHC) and 10 points and more on the NRAD form [BSF754] should be held in a provincial correctional facility or a remand facility.

The CBSA has several arrangements and bilateral agreements with provincial governments to allow the use of provincial correctional facilities by CBSA detainees. Currently, the CBSA has bilateral agreements with the following provinces for the purpose of immigration detention: Alberta (2006), Ontario (2015), Quebec (2017) and British Columbia (2017).

11.3. Short-term detention rooms or cells

An individual may be detained for a short period of time in a detention room at a CBSA office or a CBSA holding cell where available. A detention room is an area that the CBSA has designated as secure and that is used to detain persons. Occasionally, for short periods, detainees are held in RCMP or other police holding cells.

As detention rooms or cells were not designed for longer detentions and since few services are available to detainees, the period spent in a detention room or cell should be brief. In general, a detainee should not spend more than 24 hours in a short-term detention room or cell before their release or transfer to a more suitable detention facility.

12. Detentions program monitoring

The CBSA conducts internal reviews of its detentions program. Those reviews help ensure operational alignment with CBSA national detention standards adherence to national detention policies and directives, and consistency in officer decision, enabling effective management of the program and continual process improvement. In addition, the CBSA's detentions program is monitored by other organizations. Their regular independent and unbiased reviews have been critical in ensuring that reviews and recommendations are transparent, impartial and in the best interest of immigration detainees.

12.1. Canadian Red Cross

Since 1999, through arrangements with the federal government, the Canadian Red Cross (CRC) has been independently monitoring the CBSA's immigration detention program to ensure that persons detained pursuant to the IRPA are held and treated in accordance with applicable domestic standards and in compliance with international instruments to which Canada is signatory. During this time, the CRC has conducted site visits to IHCs, provincial correctional facilities and other detention facilities across Canada and has provided important feedback and expert advice on policies and programs to the CBSA through their annual reports, detainee visits, communication and regular meetings.

In 2017, a contract was awarded to the CRC for the monitoring of Canada's immigration detention program to ensure that the CBSA's immigration detention program meets both national and international immigration detention standards. Under the contract, the CRC will conduct ongoing site visits throughout the year, report on its findings and provide recommendations to detention authorities to help improve the overall immigration environment for detainees. To this end, the CBSA collaborates with the CRC to:

- The CBSA will provide the CRC with unfettered access to all persons being held in detention facilities under the control and management of the CBSA. As required, the CBSA will escort the CRC and its resources into IHC facilities and areas where they will meet with immigration detainees, upon their informed and voluntary consent, to conduct their confidential interviews.
- Following reasonable notice from the CRC, provincial authorities will allow CRC representatives, identified by the CBSA, access to correctional facilities in order to carry out their monitoring activities.
- In cases where the CRC is denied access to non-CBSA facilities, the CBSA Region or National Headquarters (NHQ) will endeavour, to the fullest extent possible and subject to any lawful limitations, to facilitate access to immigration detainees being held in detention facilities under the control and management of other federal, provincial, territorial or municipal authorities.
- The CBSA will provide limited information regarding a detainee's case history (that is, the country of origin, gender, ethnicity or language of origin) which is required by the CRC to effectively conduct monitoring visits with detainees, and which is relevant for the CRC to assess overall detention operations. These data elements do not identify any individual(s) and are not considered personal information.

- CRC Reporting on Monitoring Visits: following monitoring site visits, the CRC will provide verbal feedback on their findings to the CBSA Region and National Headquarters. NHQ will also receive written reports from the CRC on their monitoring activities on a quarterly and annual basis.
- Following the initial detention review by the Immigration and Refugee Board (IRB) and after 48 hours, in accordance with the legislative and/or procedural protocols established by the CBSA, the CBSA will notify the CRC's established point(s) of contact of unaccompanied minors under the age of 18 being detained, and/or persons who are unable to appreciate the nature of proceedings before the IRB. The CRC must provide 24 hour support service for CBSA notification requests to ensure these requests are addressed immediately.

CBSA Notification Requests

- Unaccompanied Minors: At first contact with an unaccompanied minor, the CBSA regional management will notify the CRC in writing as soon as possible by sending an email message to: IDMP@REDCROSS.CA. On the subject line, the CBSA regional management is to indicate "Unaccompanied Minors" and the facility or location where the minor is being held.
- Persons Unable to Appreciate IRB Proceedings: The CBSA regional management will follow the same communication protocol and send an email to the CRC generic email box including the following in the subject line: "CBSA Notification Request: Persons Unable to Appreciate IRB Proceedings".
- Emerging Issues: Following the same communication protocol, the CBSA regional management will also notify the CRC when an emerging issue or incident occurs such as a hunger strike, protest, allegations of abuse, or lockdown.
- Death in Custody: Following a death in custody, the CRC is not expected to intervene while the provincial authority undergoes its investigation. However, the CBSA regional management will notify the CRC of the death in custody in order for the CRC to conduct a monitoring visit of immigration detainees held in the detention facility to ensure their continued well-being and a healthy detention environment following this incident.

12.2. United Nations High Commissioner for Refugees (UNHCR)

All CBSA facilities are subject to independent monitoring of detention standards by the UNHCR. Canada is a signatory to the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees. Under article 35 of the Convention, Canada is required to co-operate with the UNHCR in the exercise of its functions and will, in particular, facilitate its duty of supervising the application of the provisions of this Convention. In order to enable the UNHCR to finalize performance management reports, Canada is required to provide the UNHCR thorough required information and statistical data requested concerning the following:

- the condition of refugees;
- progress in implementing this Convention; and
- laws, regulations and decrees that are, or may hereafter be, in force relating to refugees.

Refugee claimants should be able to contact and be contacted by the local UNHCR office.

13. Transitional measures

Despite these measures now rarely being used, the following sections of the transitional measures relate to detention:

Every decision made under the former Act continues to be in force after the coming into force of this Act.	R317
Terms and conditions imposed under the former Act become conditions imposed under the Regulations.	R318
(1) The first review of reasons, after the coming into force of this section, for the continued detention of a person detained under the former Act shall be made in accordance with the provisions of the former Act. (2) If the review referred to in subsection (1) was the first review in respect of a person's detention, the period of detention at the end of which that review was made shall be considered the period referred to in subsection 57(1) of the IRPA. (3) If the review of reasons for continued detention follows the review referred to in subsection (1), that review shall be made under the IRPA.	R322
An order issued by a Deputy Minister under subsection 105(1) of the former Act remains in effect under the IRPA and review of reasons for continued detention is made under the IRPA.	R323
A person released from detention under the former Act becomes a person ordered released from detention under the IRPA and any terms and conditions imposed under the former Act become conditions imposed under the IRPA.	R324
(1) A warrant for arrest and detention made under the former Act becomes a warrant for arrest and detention made under the IRPA. (2) An order for the detention of a person made under the former Act becomes an order to detain made under the IRPA.	R325

For example, if a person is detained under the *Immigration Act* and they have never received a detention review prior to the coming into force of IRPA, then they will receive a 48-hour review under 103(6) or 7-day under 103.1(4) of the former Act [R322(1)].

If the 48-hour or 7-day review is the very first detention review in respect of the person's detention, the review is considered to be the 48-hour review, as set out in R322(2). That is, it will be considered as the review after a 48-hour period under A57(1), regardless of how long the detention period really was.

If someone is detained under the old Act and their scheduled 7-day or 30-day review comes up after IRPA has come into force, that detention review shall be conducted under the provisions of the former Act. The next review of their detention shall be conducted under IRPA [R322(3)].

Annex A – National directive for the detention or housing of minors

1 Introduction

The Canada Border Services Agency (CBSA) is responsible for the administration and enforcement of the Immigration and Refugee Protection Act (IRPA), including the arrest and detention of permanent residents or foreign nationals in Canada. When exercising their authority to arrest and detain under the IRPA and the Immigration and Refugee Protection Regulations (IRPR), CBSA officers are guided by jurisprudence as well as internal policies, directives and guidelines. Canada's immigration detention program is based on the principle that detention must be used only as a last resort, in extremely limited circumstances and after appropriate alternatives to detention are considered and determined to be unsuitable or unavailable.

This Directive is fully aligned with the Ministerial Direction issued by the Minister of Public Safety and Emergency Preparedness.

2 Preamble

Canada's international obligations and domestic legislative and policy frameworks are the broad underpinnings of this Directive. Section A60 affirms the principle that the detention of a minor must be a measure of last resort, taking into account other applicable grounds and criteria, including the best interests of the child (BIOC). A Federal Court decision in 2016¹ ruled that the interests of a housed minor are a factor that can be taken into the decision to detain or maintain detention of a parent and are to be weighed along with other mandatory factors under section R248. The United Nations Convention on the Rights of the Child, to which Canada is a party, states that the BIOC must be a primary consideration in all state actions concerning children. In recognizing the vulnerability of children and research on the detrimental effects of detention and family separation on children, the CBSA developed the National Directive for the Detention or Housing of Minors for operational use, which takes a balanced approach to achieve better and consistent outcomes for minors affected by Canada's national immigration detention system.

3 Definitions

Alternatives to Detention (ATDs): ATDs are policies and practices that ensure people are not detained at an Immigration Holding Centre (IHC), provincial facility or any other facility for reasons relating to their immigration status. ATDs allows individuals to live in non-custodial, community-based settings while their immigration status is being resolved. ATDs include community programming (in-person reporting, cash or performance bond, community case management and supervision) and electronic supervision tools, such as voice reporting.

Best interests of the child (BIOC): The BIOC are an international principle to ensure children enjoy the full and effective benefit of all their rights recognized in Canadian law and in the Convention on the Rights

¹ B.B. and for Justice for Children and Youth and the Minister of Citizenship and Immigration, Toronto, Ontario (August 24, 2016) – Final Order on Consent, Justice Hughes Order

of the Child. They are also a rule of procedure that includes an assessment of the possible impact (positive or negative) of a decision on the child or children concerned.

Community-based organizations (CBOs): CBOs are non-profit groups that work at a local level to improve life for residents. The focus is to build equality across society in all streams (health care, environment, quality of education, access to technology, access to spaces and information for the disabled, to name but a few).

Detainee or detained: A detainee or detained is an adult or a minor subject to an Order for Detention under section A55.

Family: Family consists of one or more parents or legal guardians and a dependent minor. This may also include family members as defined by the IRPR and situations where siblings are traveling together without their parents or legal guardians.

Housed (minor): A housed minor is a foreign national, permanent resident or Canadian citizen who, after the completion of a BIOC, is kept with their detained parent(s) or legal guardian(s) at an IHC at the latter's request. A housed minor is not subject to an Order for Detention and is free to remain and re-enter the IHC subject to consent of the parent(s) or legal guardian(s) in accordance with the rules and procedures of that facility.

Minor: A minor is defined under the IRPA and the Convention on the Rights of the Child as a person under the age of 18. In some provinces, a person aged 16 or 17 is not considered a minor (see Annex C). However, this does not change the fact that they are considered to be a minor in the federal context (section R249).

Non-compliance: Non-compliance is a failure or refusal to comply, as with a law, regulation, or term of a condition.

Segregation (administrative): Segregation is the separation of persons to prevent association with others.

Unaccompanied minor: An unaccompanied minor is a minor who, alone or with siblings traveling together, does not arrive in Canada as a member of a family or does not arrive in Canada to join such a person.

4 Objectives

1. To stop detaining or housing minors and family separation, except in extremely limited circumstances.
2. To actively and continuously seek ATDs when unconditional release is inappropriate for the purpose of the above.
3. To preserve the family unit for overall well-being and continuity of care.
4. To ensure that the detention or housing of a minor or the separation of a minor from their detained parent(s) or legal guardian(s), where unavoidable, is for the shortest time possible.
5. To never place minors in segregation (or segregate them) at an IHC, a provincial facility or any other facility.

5 Legislative authorities

Section A55 contains the arrest and detention provisions applicable to both adults and minors:

Subsections A55(1) and (2): A designated officer may arrest and detain, with or without a warrant where the following is true:

- The officer has reasonable grounds to believe the person is inadmissible to Canada and that one of the following is true:
 - The person is a danger to the public
 - The person is unlikely to appear for an immigration process (examination, admissibility hearing, minister's delegate review, or removal)
- The officer is not satisfied of the identity of the foreign national in the course of any procedure under the IRPA.

Subsection A55(3): A designated CBSA officer may detain a person on entry into Canada (limited to port of entry [POE] cases only) where one of the following is true:

- The officer considers it necessary to do so in order for the examination to be completed.
- The officer has reasonable grounds to suspect that the permanent resident or foreign national is inadmissible on grounds of security or for violating human or international rights, serious criminality, criminality or organized criminality.

Subsection A55(3.1): This subsection provides for the mandatory arrest and detention of a designated foreign national who is 16 years of age or older on the day of the arrival and is subject to the designation made by the Minister of Public Safety and Emergency Preparedness pursuant to subsection A20.1(1).

Section A60 enshrines the principle that the detention of a minor is a measure of last resort while concurrently legislating the BIOC must always be considered: "For the purposes of this Division, it is affirmed as a principle that a minor child shall be detained only as a measure of last resort, taking into account the other applicable grounds and criteria including the best interests of the child."

In addition, **section R249** outlines special considerations on the detention of minors:

- (a) the availability of alternative arrangements with local child-care agencies or child protection services for the care and protection of the minor children;
- (b) the anticipated length of detention;
- (c) the risk of continued control by the human smugglers or traffickers who brought the children to Canada;
- (d) the type of detention facility envisaged and the conditions of detention;
- (e) the availability of accommodation that allows for the segregation of the minor children from adult detainees who are not the parent of or the adult legally responsible for the detained or housed minor children; and
- (f) the availability of services in the detention facility, including education, counselling and recreation.

Other factors are prescribed in **section R248** for consideration before a decision is made on detention or release if it is determined that there are grounds for detention:

- (a) the reason for detention;
- (b) the length of time in detention;
- (c) whether there are any elements that can assist in determining the length of time that detention is likely to continue and, if so, that length of time;
- (d) any unexplained delays or unexplained lack of diligence caused by the Department or the person concerned; and
- (e) the existence of alternatives to detention.

6 Fundamental considerations

1. Detention of a minor is a measure of last resort (section A60 above). Detention is to be avoided to the greatest extent possible and applied for the shortest period possible.
2. ATDs must always be considered first for minors and their parent(s) or legal guardian(s) and be actively pursued until release.
3. The unity of families is to be highly factored in all detention-related decisions.
4. The BIOC are a primary consideration and may be outweighed only by other significant considerations such as public safety (that is, section R245 [flight risk, (a) and (f)] and section R246 [danger to the public]) or national security.
5. Detention may be considered when historic, consistent and willful breaches of the IRPA or the IRPR are demonstrated.
6. The BIOC assessment is to be conducted before any decision to detain or house a minor or separate a minor from their detained parent(s) or legal guardian(s), and should also be conducted on a continual basis [subsection 8(2)].
7. Only in extremely limited circumstances may a minor be detained or housed if no suitable ATDs can be found:
 - e) if it is in the BIOC to be housed with their parent(s) or legal guardian(s);
 - f) if there are well-founded reasons to believe the minor is a danger to the public;
 - g) when identity is a serious concern only insofar as there are well-founded reasons to believe the minor or their parent(s) or legal guardian(s) may represent a risk to public safety and national security; and
 - h) if the family is scheduled or can be scheduled for removal within seven days and has demonstrated a consistent pattern of non-compliance and willful breaches of conditions or violations of the IRPA or the IRPR elevating the risk of unlikely to appear for removal.
8. **Where detention is warranted**
 - a) detention or housing must be for the shortest period of time;
 - b) ATDs will be reviewed by a CBSA officer in consultation with the minor's parent(s) or legal guardian(s), and counsel where applicable, on a weekly basis to prevent prolonged detention;
 - c) an unaccompanied minor should never be housed for more than 48 hours at an IHC except where dangers to the public considerations have been raised;
 - d) there must be no comingling of unaccompanied minors and other non-familial adult detainees;
 - e) no minor (accompanied or unaccompanied) must be placed in segregation or be segregated;
 - f) families must not be separated within the detention facility where possible; and
 - g) there must be access to education, recreation, medical services, counselling services and proper nutrition, in accordance with detention standards and international obligations.

7 The BIOC

Mental health evidence is clear that both detention and family separation have detrimental consequences for children's well-being. The BIOC are best achieved where children are united with their families in community-based, non-custodial settings where possible.

1. On all detention decisions that affect minors, CBSA officers must consider the BIOC as a primary consideration, and the BIOC assessment (to be developed) will be conducted within 24 hours of initial contact with the minor.
2. To facilitate decision-making, the BIOC are to be determined separately and before the decision to detain the parent(s) or legal guardian(s). They must be reviewed on an ongoing basis (including observations and day-to-day interactions) based on the legal situation of the minor and their parent(s) or legal guardian(s) and their well-being.
3. Officers must use, but are not limited to, the list of factors to determine the BIOC:
 - a) the child's physical, mental and emotional needs;
 - b) the child's educational needs;
 - c) the preservation of the family environment and maintaining relationships;
 - d) the care, protection and safety of the child;
 - e) the level of dependency between the child and the parent(s) or guardian(s);
 - f) the child's views, if they can be reasonably ascertained; and
 - g) any other relevant factor.
4. The BIOC are to be determined on a case-by-case basis, taking all relevant information related to the minor's situation into account; the interests and rights of the parent(s) or legal guardian(s) are taken into consideration after the BIOC determination.
5. CBSA officers must give minors capable of forming their own views the opportunity to express those views freely in all matters regarding their detention, housing or family separation. Their views should be given due weight in accordance with their age and level of maturity. Although the officer is not bound by their views, they must be considered and duly noted in the determination of what is in the BIOC.
6. A copy of the initial and subsequent BIOC assessments shall be provided to the parent(s) or legal guardian(s) and, as appropriate, to the IRB designated representative, child advocate (or private counsel) and Child Protection Services.

8 Family unity

1. Every effort must be made to preserve the family unit for overall well-being and continuity of care.
2. Families must be released with or without conditions to the greatest extent possible. Where unconditional release is not possible, an ATD should be used.
 - a) When parents or legal guardians are detained and public safety (that is, section R245 [flight risk] and section R246 [danger to the public]) and/or national security are **not an issue**, officers must make every effort to find an appropriate ATD.
 - b) Where public safety (that is, section R245 [flight risk] and section R246 [danger to the public]) and/or national security **are raised**, every effort must be made to find an ATD that sufficiently mitigates the concerns.

Below are possible scenarios that may be encountered by CBSA officers:

- a) Scenario 1: Where removal is not or cannot be scheduled within seven days, detention must be avoided, and the family must be released using an ATD to the greatest extent possible.
 - b) Scenario 2: One parent or guardian may be detained and the other released with the minor. This may be considered when one parent or guardian is a danger to the public or a security concern, whereby an ATD for both parents is not appropriate.
- 3. Though it is crucial to maintain the family unit, there may be exceptional circumstances where it is not possible. Where **an ATD is not appropriate for the family or either parent or guardian** following a thorough review of community-based options and release conditions, CBSA officers, with the parent(s) or legal guardian(s) and relatives or CBO, must find a solution for the temporary care of the minor if this is in the BIOC. Contact information of the organization and/or the person charged with temporary care of the minor must be indicated in the minor's file (or the parent[s] or legal guardian[s]'s file if the minor is a Canadian citizen). Subject to their level of comprehension, the minor should be given Legal Aid and Provincial Child Advocate contact information. Below are additional scenarios that may be encountered by CBSA officers:
 - a) Scenario 1: Where it is deemed appropriate to release one parent or legal guardian but not the other, the minor will join the released parent or legal guardian if this is the BIOC.
 - b) Scenario 2: Where it is not deemed appropriate to release either parent or legal guardian as there is not an ATD to sufficiently mitigate the risk they pose, the minor may be released upon the parent(s) or legal guardian(s) written consent to a relative or trusted community member or accompany their detained parent(s) or legal guardian(s) at an IHC if this is in the BIOC.
 - c) Scenario 3: Where it is not deemed appropriate to release either parent or legal guardian as there is not an ATD to sufficiently mitigate the risk they pose and where a relative or trusted community member is not available to support release, the officer must contact a CBO for advice on the temporary care of the minor until one detained parent or legal guardian is released, or the minor must accompany their parent(s) or legal guardian(s) at an IHC if it is in the BIOC.
 - d) Scenario 4: The family may be detained if removal is scheduled within seven days (travel documents are in order) and release is not a viable option (for instance, historic, consistent and willful breaches of conditions or violations of the IRPA or IRPR).
- 4. If a minor is separated from their family, access to the parent(s) or legal guardian(s) must be facilitated, and the CBSA officer must inform them of the steps being taken, unless the provision of the information is contrary to the BIOC and compromises the safety and well-being of the minor.

9 Child protection services (CPS)

- 1. CPS are responsible for the safety, well-being and familial stability of children, which may involve investigations into abuse or neglect of children (see Annex B). They can also connect families to community resources to address issues like mental health, settlement and temporary accommodations, and provide guidance and advice on the BIOC. Most CBOs are equipped to provide the aforementioned.
- 2. CBSA officers must consult the parent(s) or legal guardian(s) before contacting CPS unless the situation falls within the duty to report under child welfare legislation. Accordingly, CBSA officers must contact CPS if abuse, neglect or other serious concerns are suspected or identified in the BIOC assessment or at any time thereafter. Additional reasons for CPS contact are as follows:

- a) a trauma experienced by a minor;
- b) identified safety issues while in custody due to parent or legal guardian abuse or neglect; and
- c) parents who are facing criminal charges and due to the nature of the charges, are separated from their children (that is, incarcerated in a separate institution).

10 Arrest and detention of a minor

1. Upon the decision to arrest and detain a minor (accompanied or unaccompanied), the CBSA officer must advise their supervisor immediately. The officers must note all the ATDs on the Minister's Delegate form that they considered before concluding that detention is absolutely necessary and cannot be avoided.
2. As per ENF 20, another officer must review the officer's initial detention decision. This officer is responsible for reviewing the case, considering any new information and for authorizing release under section A56, if justified. If, upon internal review, the detention decision is upheld, the Immigration Division of the IRB will review the reasons for continuing with the detention within 48 hours following the start of the detention or as soon as possible thereafter. It should be noted that the CBSA will continue to conduct the BIOC assessments to inform the position taken at IRB reviews until release.
3. Where possible, the initial decision maker must take the lead in the active case management of the minor's file throughout the immigration enforcement stream for the best case oversight.
4. CBSA officers must ensure the security, safety, and protection of the minor under arrest/detention. In addition, the following applies:
 - a) Minors must not be handcuffed **except in extreme circumstances**. Officers must assess the risk and act on reasonable grounds when deciding to handcuff a minor. Extreme circumstances are limited to danger to the public, threat posed to an officer or the public, or self-harm.
 - b) CBSA officers will not handcuff detained parents or legal guardians in front of their children except in extreme circumstances (as above) or if they have a violent criminal past.
 - c) CBSA officers will not conduct personal searches or frisking of a detained parent or legal guardian in front of a minor except in extreme circumstances (as above), or if they have a violent criminal past. Officers must make every effort to conduct searches out of view of the minor, unless doing so would cause more distress to the child.
5. Regardless of the age of the person arrested, a Notice of Arrest (report), an Order for Detention (form), a National Risk Assessment for Detention form and a Detainee Medical form must be completed for a detention made under section A55. Officers must clearly articulate reasons and grounds for arrest and detention when completing the documents, and must be mindful of the utmost importance of taking fulsome and complete notes supporting their decisions and actions.
6. If the detention involves an unaccompanied minor, the CBSA must notify the Canadian Red Cross Society (CRCS) immediately; refer to section 15 (2) of this Directive.

11 Unaccompanied minors

1. Unaccompanied minors must never be detained or housed at an IHC unless it is for an operational reason (for instance, POE arrival outside normal business hours) and an ATD cannot be found. In the event that an unaccompanied minor is held at an IHC for more than 24 hours, a CBSA officer must conduct a BIOC assessment that includes a thorough ATD review for the

purpose of release. Unaccompanied minors must also have heightened supervision (IHC staff) and access to guards, NGO staff and/or other supports as necessary.

2. If the presence of smugglers or traffickers is a concern, the matter must be discussed with CPS to ensure that adequate protection is provided (refer to Annex B).
3. In most cases, unaccompanied minors are to be released into the care of a CBO or CPS (for instance, a local Children's Aid Society where a MOU is established) if they do not have a relative or trusted community link. While the minor is in their custody, the organization will make every effort to ensure that the minor meets CBSA's reporting requirements. Contact information for the organization, the relative, the trusted community member charged with temporary care of the minor or an IRB designated representative or lawyer must be indicated in the minor's file.

12 Housing: Accompanied minors

1. Accompanied minors must be housed at an IHC (where available) only if it has been deemed to be in the BIOC. The CBSA officer must note the ATDs considered for both or one of the parents or legal guardians before concluding that housing was absolutely necessary for the minor or for family unity.
2. The CBSA officer must explain to the parent(s) or legal guardian(s) their option to accept or to refuse housing and that their decision will not affect their immigration case; interpreter services must be offered to the parent(s) or legal guardian(s) to enable clarity and full comprehension of the discussion. A CBSA supervisor or superintendent and the minor's parent(s) or legal guardian(s) must provide their written consent before being housed at an IHC (consult local IHC intake forms).
3. Documentation
 - a) Foreign national and permanent resident minors: In the case of a foreign national or permanent resident minor **accompanying** a detained parent or legal guardian, the following documentation must be completed:
 - I. "Accompanying Minor and Medical/Healthcare Form" (to be drafted)
 - II. "Detainee Medical Form" [BSF 674] (**for detained parent[s] or legal guardian[s] only**); the form must clearly indicate that the minor is accompanying their detained parent(s) or legal guardian(s).
 - b) Canadian citizen minors: The IRPA provides no authority to arrest and detain Canadian citizens. The following must be completed:
 - I. "Accompanying Minor and Medical/Healthcare Form" (to be drafted) (notes should be added to the detained parent[s] or legal guardian[s] NCMS and/or GCMS process note to indicate that a Canadian minor is accompanying their parent[s] or legal guardian[s] at an IHC)
4. A parent or legal guardian may withdraw their consent at any time by informing the CBSA in writing. The CBSA may also withdraw their consent under extreme circumstances, such as the following:
 - inability of the parent(s) or legal guardian(s) to care for and ensure control of the minor, resulting in harm to the minor and subject to duty of care referral under the child welfare legislation
 - an alternative to housing has become available for the accompanied the minor even after the 48-hour detention review
5. If a CBSA officer considers withdrawing consent, they must justify this in writing, discuss it with the parent(s) or legal guardian(s) and give them an opportunity to remedy the circumstances.

6. CBSA officers must conduct a weekly case review to reassess ATDs and the BIOC of accompanied minors.

13 Services in an IHC

In accordance with international standards, IHCs offer a secure and sanitary environment, proper nutrition, access to fresh air, access to the health care services (for instance, psychology and psychiatric supports) and recreation. Furthermore, the following apply:

1. Minors must be housed with both parents or legal guardians to the greatest extent possible in order to preserve family unity.
2. The IHC must adhere to national standard operating procedures for accompanied and unaccompanied minors, and the IHC manager will be responsible for verifying that the national procedures are adhered to when a minor has been admitted for detention or housing.
3. By provincial laws, minors must go to school starting at the age of five or six and until they are between 16 and 18, depending on the province or territory. Qualified teachers will provide in-class education for minors who are at an IHC after seven days until they are released.

14 Transportation and travel

The CBSA Enforcement Manual's Part 6, Chapter 2 on the vehicular transport of persons under arrest or detention is applicable to detained or housed minors. It guarantees the safety and security of individuals in CBSA custody. OB PRG-2015-34, Transportation of Non-Detained Persons in Agency Vehicles while Administering CBSA Program Legislation, is also relevant. Parents or legal guardians are responsible for the care and control of their children; therefore, they must be kept with them at all times, which includes situations where the parent(s) or legal guardian(s) or the minor must leave the IHC for various reasons (detention review, medical appointment, court proceeding, immigration examination, etc.). **Note:** Section 10 applies to this section.

15 Reporting

1. All situations involving the detention, housing or separation of the family unit must be reported immediately to the Border Operations Centre (BOC) as a significant event in the Incident Reporting Criteria (IRC) of "Child Welfare".
 - a) The regional Single Reporting Tool (SRT) OB OPS-2017-03 to the BOC must contain the following information regarding the case:
 - i. Tombstone data for the minor involved (UCI, age, gender, citizenship);
 - ii. UCI for accompanying parent or guardian (if minor is accompanied); and
 - iii. Synopsis of the case containing detailed information regarding the case, including if the minor was accompanied or unaccompanied, detained (and grounds for detention), housed or separated from a detained parent or legal guardian, and the detention facility where they are held.
 - b) The SRT must contain the information that was considered during the decision-making process (information regarding how the BIOC were assessed and the outcome of the assessment; this is relevant for all instances involving minors (whether minors are detained, housed or separated from their detained parent[s] or legal guardian[s])).

- c) The SRT must also contain the information considered regarding actions taken to mitigate the detention of minors or their parent(s) or legal guardian(s) (information regarding how and which ATDs were considered in order to minimize the detention or housing of children, or the separation of children from their parent[s] or legal guardian[s]).
 - d) Once the BIOC have been conducted and ATDs have been considered, and once a minor is detained, housed in a detention facility or separated from a detained parent or legal guardian, the CBSA officer (decision maker) must report the case to the BOC as soon as possible.
 - e) Superintendents and managers must ensure that a notification is sent to the BOC as outlined above.
2. At first contact with an unaccompanied minor (under the age of 18), the CBSA officer will notify the CRCS in writing as soon as possible by sending an email message to IDMP@REDCROSS.CA. In the subject line, the officer should indicate "Unaccompanied Minors" and the facility or location where the minor is being held. For general information, refer to their website at <http://www.redcross.ca/how-we-help/migrant-and-refugee-services/promoting-the-rights-of-immigration-detainees>.
 3. Aggregate reporting on minors will be part of the detention program statistics online quarterly publication that will also include the separation of minors.

Annex B – Child protection services and family centres

- Atlantic
 - Nova-Scotia offices with Child Welfare Services (17 district offices).
 - New-Brunswick child protection 1-888-992-2873 or after hours emergency services 1-800-442-9799 (8 regional sub-district).
 - Newfoundland and Labrador Child Protection Services (4 Regional Health Authority)

- Quebec
 - Association des centres jeunesse du Québec (16 administratives regions)
 - Centre jeunesse de Laval, 450-975-4000
 - Centre jeunesse de Montréal, 514-896-3100
 - Batshaw Youth and Family Centers (Montréal), 514-935-6196
 - Centre jeunesse de l'Estrie, 819-566-4121
 - Centre jeunesse de la Montérégie, 450 679-0140
 - Programme régional d'accueil et d'intégration des demandeurs d'asile, (PRAIDA) (514) 731-8531

- Northern Ontario
 - Ontario Association of Children's Aid Societies (Ottawa, Cornwall, Lansdowne and Prescott)
 - Ontario Association of Children's Aid Societies (Thunder Bay, Sault Saint Marie and Fort Francis)

- Greater Toronto Area
 - Ontario Association of Children's Aid Societies (47 provincial societies)
 - Children's Aid Society of Toronto, 416-924-4640
 - Catholic Children's Aid Society of Toronto, 416-395-1500
 - Jewish Family and Child (Toronto), 416-638-7800
 - Peel Children's Aid Society, 888-700-0996

- Southern Ontario
 - Chatham-Kent Children's Services, 519-352-0440 (Chatham, Blenheim, Bothwell, Chatham, Chatham-Kent, Dresden, Erie Beach, Erieau, Highgate, Ridgeway, Thamesville, Tilbury, Wallaceburg, Wheatley)
 - Children's Aid Society of London and Middlesex, 888-661-6167 (London, Adelaide, Ailsa Craig, Caradoc, East Williams, Ekfrid, Glencoe, London, Lucan Biddulph, McGillivray, Metcalfe, Middlesex, Middlesex Centre, Mosa, Newbury, North Dorchester, Parkhill, Strathroy, Wardsville, West Nissouri, West Williams)
 - Children's Aid Society of Oxford County, 519-539-6176 (Woodstock, Blandford-Blenheim, East Zorra-Tavistock, Ingersoll, Norwich, Oxford, South-West Oxford, Tillsonburg, Woodstock, Zorra)
 - Family and Children's Services Niagara, 888-937-7731 (St. Catharines, Fort Erie, Grimsby, Lincoln, Niagara, Niagara Falls, Niagara-on-the-Lake, Pelham, Port Colborne, St. Catharines, Thorold, Wainfleet, Welland, West Lincoln)
 - Family and Children's Services of St. Thomas and Elgin County, 519-631-1492 (St. Thomas, Aylmer, Bayham, Belmont, Central Elgin, Dutton-Dunwich, Elgin, Malahide, Port Stanley, Southwold, St. Thomas, Vienna, West Elgin, West Lorne)

- Sarnia-Lambton Children's Aid Society, 519-336-0623 (Point Edward, Alvinston, Arkona, Bosanquet, Brooke, Dawn-Euphemia, Enniskillen, Forest, Grand Bend, Lambton, Moore, Oil Springs, Petrolia, Plympton, Point Edward, Sarnia, Sombra, Thedford, Warwick, Wyoming)
 - The Children's Aid Society of Haldimand and Norfolk, 519-587-5437 / 888-227-5437 (Townsend, Delhi, Dunnville, Haldimand (town), Haldimand-Norfolk (regional municipality), Nanticoke, Norfolk, Simcoe (town))
 - Windsor-Essex Children's Aid Society, 800-265-5609 (Windsor, Amherstburg, Essex, Kingsville, Lakeshore, LaSalle, Leamington, Pelee Island, Tecumseh, Windsor)
- Prairies
 - Alberta Child and Family Services, 1-800-387-5437, (several service delivery locations)
 - Saskatchewan social services offices (several social services offices). After hours crisis centre: Prince Albert - 306-764-1011, Saskatoon - 306-933-6200, Regina - 306-569-2724.
 - Manitoba Child and Family Services Contacts, 1-866-345-9241 (several Designated Intake Agencies)
- Pacific
 - Ministry of Children and Family Development (13 offices)
 - Ministry of Children and Family Development, (Vancouver) 604 660-4927 or 310-1234

Annex C – Provincial definitions of a minor

In Canada, the definition of a minor child varies by province as indicated in the table below.

Province	Definition of minor child	Definition of minor for child protection purposes
British Columbia	Person under 19 years	Same
Alberta	Person under 18 years	Same
Saskatchewan	Unmarried person under 16 years	Same
Manitoba	Person under 18 years	Same
Ontario	Person under 18 years	“child” means a person under the age of 16
Quebec	Person under 18 years	Same
Nova Scotia	Person under 19 years	“child” means a person under the age of 16
New Brunswick	Person under 19 years	“child” means a person under the age of 16
Newfoundland	Person under 16 years (youth defined as a person who is 16 years or older, but under the age of 18)	Same
Prince Edward Island	Person under 18 years	Same
Northwest Territories	Person under 19 years	“child” means a person under the age of 16
Yukon	Person under 19 years	“child” means a person under the age of 16
Nunavut	Person under 19 years	“child” means a person under the age of 16