ENF 22 Persons serving a sentence

Contents

ENF 22 Persons serving a sentence

Updates to chapter

Listing by date:

2020-03-16
Substantive and minor changes, as well as clarifications, have been provided throughout the chapter.
New content has been added to provide more detailed guidance, reflect policy changes and ensure consistent application of the IRPA.
Sections have been re-written for clarity and/or moved and re-organized for more logical flow of information.

2005-12-06
Changes were made to chapter ENF 22 in order to reflect the Citizenship and Immigration Canada (CIC) and the Canada Border Services Agency (CBSA) policy responsibility and service delivery roles.

ENF 22 Persons serving a sentence

1 What this chapter is about

This chapter explains an officer's responsibilities and authorities relative to permanent residents and foreign nationals who are serving a sentence in a federal or provincial correctional institution.

The chapter outlines the role of the Canada Border Services Agency (CBSA) as it relates to processes governed by Correctional Services Canada (CSC) and provincial correctional services, and the impact of decisions of the courts as well as federal and provincial parole boards on the administration and enforcement of the *Immigration and Refugee Protection Act* (IRPA). It also describes the transitional provisions regarding permanent residents and foreign nationals who were sentenced before the IRPA came into force and who are serving sentences in provincial and federal correctional institutions.

2 Program objectives

The objectives of the IRPA with respect to its enforcement and inadmissibility provisions are:

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

In collaboration with its correctional partners, the CBSA will achieve government objectives by:

- supporting the IRPA examination, investigation, and removal processes through the early identification of inadmissible permanent residents and foreign nationals who are serving a sentence; and

- protecting Canadian society by detaining those who pose a danger to the public or security risk and through effective management and monitoring of persons serving a sentence who are the subject of IRPA enforcement action.

3 Legislative authorities

3.1 The Act and Regulations

The IRPA provides the authority for an officer to report, arrest, detain, and remove inadmissible persons.

The following are some relevant legislative authorities to assist an officer in dealing with persons serving a criminal sentence who are subject to IRPA enforcement :

Table 1: Relevant sections of the IRPA

Description of IRPA provision	IRPA Section
Arrest and detention with warrant 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 is unlikely to appear for examination, for 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)
Notice to the Immigration Division If a permanent resident or a foreign national is taken into detention, an officer shall without delay give notice to the Immigration Division.	A55(4)
Release: officer 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.	A56(1)
Order to deliver inmate If a warrant for arrest and detention under this Act is issued with respect to a permanent resident or a foreign national who is detained under another Act of Parliament in an institution, the person in charge of the institution shall deliver the inmate to an officer at the end of the inmate's period of detention in the institution.	A59
Stay of removal until sentence completed A stay of removal applies when a foreign national is sentenced to a term of imprisonment in Canada. Officers must not enforce a removal order if the foreign national is an inmate of a penitentiary, jail, reformatory or prison, or if they are serving a conditional sentence order in the community. The stay of removal is effective until the sentence being served is completed. The sentence is completed when the foreign national is released from imprisonment by reason of expiration of sentence, commencement of statutory release or grant of parole.	A50(b)

3.2 The Corrections and Conditional Release Act (CCRA)

The *Corrections and Conditional Release Act* (CCRA) is the law that governs the Correctional Service of Canada (CSC). CSC is responsible for supervising offenders serving a sentence of two years or more, and supervises offenders both in custody and in the community. The CCRA also governs the Parole Board of Canada (PBC). The PBC has exclusive authority to grant, deny or revoke the conditional release of an offender. The PBC also has the authority to impose special conditions on offenders who are supervised in the community on statutory release or long term supervision orders.
Note: Under paragraph 16(1)(b) of the CCRA, a federal institution may also house persons serving a sentence of less than two years where there are service agreements in place.

Table 2: Relevant sections of the CCRA

Description of Provision under the CCRA	CCRA Text	Section of the CCRA
Correctional Service of Canada (CSC)	There shall continue to be a correctional service in and for Canada, to be known as the Correctional Service of Canada, which shall be responsible for (a) the care and custody of inmates; (b) the provision of programs that contribute to the rehabilitation of offenders and to their successful reintegration into the community; (c) the preparation of inmates for release; (d) parole, statutory release supervision and long-term supervision of offenders; and (e) maintaining a program of public education about the operations of the Service	5
Constitution and Jurisdiction of provincial Boards	Jurisdiction of boards Subject to subsection (2), a provincial parole board for a province shall exercise jurisdiction in accordance with this Part in respect of the parole of offenders serving sentences in provincial correctional facilities in that province, other than (a) offenders sentenced to life imprisonment as a minimum punishment; (b) offenders whose sentence has been commuted to life imprisonment; or (c) offenders sentenced to detention for an indeterminate period. Day parole jurisdiction (2) A provincial parole board may, but is not required to, exercise its jurisdiction under this section in relation to day parole.	112(1)

Incorporation of CCRA by reference by province	Where a provincial parole board has been established for a province, the lieutenant governor in council of the province may, by order, declare that all or any of the provisions of this Part that do not otherwise apply in respect of provincial parole boards shall apply in respect of that provincial parole board and offenders under its jurisdiction.	113(1)
Change of province of residence	Subject to any agreement entered into pursuant to this section, an offender who is released on parole in one province and moves to another province remains under the jurisdiction of the board that granted the parole.	114 (1)
Statutory Release	Subject to any provision of this Act, an offender sentenced, committed or transferred to penitentiary is entitled to be released on the date determined in accordance with this section and to remain at large until the expiration of the sentence according to law.	127 (1)
Continuation of sentence	An offender who is released on parole, statutory release or unescorted temporary absence continues, while entitled to be at large, to serve the sentence until its expiration according to law.	128(1)
Freedom to be at large	Except to the extent required by the conditions of any day parole, an offender who is released on parole, statutory release or unescorted temporary absence is entitled, subject to this Part, to remain at large in accordance with the conditions of the parole, statutory release or unescorted temporary absence and is not liable to be returned to custody by reason of the sentence unless the parole, statutory release or unescorted temporary absence is suspended, cancelled, terminated or revoked.	128(2)
Sentence deemed to be completed	Despite subsection (1), for the purposes of paragraph 50(b) of the ***Immigration and Refugee Protection Act*** and section 64 of the Extradition Act, the sentence of an offender who has been released on parole, statutory release or an unescorted temporary absence is deemed to be completed unless the parole or statutory release has been suspended, terminated or revoked, the unescorted temporary absence is suspended or cancelled or the offender has returned to Canada before the expiration of the sentence according to law.	128(3)
Removal order	Despite this Act, the *Prisons and Reformatories Act* and the *Criminal Code,* an offender against whom a removal order has been made under the Immigration and Refugee Protection Act is not eligible for day parole or an unescorted temporary absence until they are eligible for full parole.	128(4)
Parole inoperative where parole eligibility date in future	If, before the full parole eligibility date, a removal order is made under the ***Immigration and Refugee Protection Act*** against an offender who has received day parole or an unescorted temporary absence, on the day that the removal order is made, the day parole or unescorted temporary absence becomes inoperative and the offender shall be re-incarcerated.	128(5)

Exception	An offender referred to in subsection (4) is eligible for day parole or an unescorted temporary absence if the removal order is stayed under paragraph 50(a), 66(b) or 114(1)(b) of the ***Immigration and Refugee Protection Act***.	128(6)
Exception	Where the removal order of an offender referred to in subsection (5) is stayed under paragraph 50(a), 66(b) or 114(1)(b) of the ***Immigration and Refugee Protection Act*** on a day prior to the full parole eligibility of the offender, the unescorted temporary absence or day parole of that offender is resumed as of the day of the stay.	128(7)
Parole reviews		
Day parole review	Subject to subsection 119(2), the Board shall, on application, at the time prescribed by the regulations, review, for the purpose of day parole, the case of every offender other than an offender referred to in subsection (2).	122 (1)
Full parole review	The Board shall, within the period prescribed by the regulations and for the purpose of deciding whether to grant full parole, review the case of every offender who is serving a sentence of two years or more and who is not within the jurisdiction of a provincial parole board.	123 (1)
Further review — Board does not grant parole	If the Board decides not to grant parole following a review under subsection (1) or section 122 or if a review is not made by virtue of subsection (2), the Board shall conduct another review within two years after the later of the day on which the review took place or was scheduled to take place and thereafter within two years after that day until (a) the offender is released on full parole or on statutory release; (b) the offender's sentence expires; or (c) less than four months remain to be served before the offender's statutory release date.	123(5)

3.3 Forms

The following table includes some common forms that may relate to permanent residents and foreign nationals who are serving a sentence in a federal or provincial correctional institution. This is a non-exhaustive list.

Table 3: Forms

Form Title	**Form number**
Warrant for Arrest	BSF499
Order of the Canada Border Services Agency to Deliver Inmate (under section 59 of the IRPA)	BSF498
Notice of Arrest under Section 55 of the *Immigration and Refugee Protection Act*	BSF561

Notice of Rights Conferred by the Canadian Charter of Rights and Freedoms and by the Vienna Convention Following Section 55 Immigration and Refugee Protection Act Arrest or Detention	BSF776
Order for Detention	BSF304
National Risk Assessment for Detention	BSF754
Detainee Medical Needs	BSF674
Acknowledgement of Conditions	BSF 821* IMM1262**
Acknowledgement of Conditions for IRPA Section 34 Cases	BSF798
Request for Admissibility Hearing/Detention Review Pursuant to the Immigration Division Rules	BSF524
Notes to File	BSF788

**currently available in GCMS
* currently available only in CBSA Atlas

4 Instruments and delegations

A4 sets out which Minister is responsible for the administration of the IRPA. The Minister of Citizenship and Immigration [also known as Immigration, Refugees and Citizenship Canada (IRCC)] and the Minister of Public Safety and Emergency Preparedness (PS) are jointly responsible for the administration and enforcement of the IRPA, however there are some differences. The IRCC Minister is responsible for the overall administration of the IRPA, unless otherwise specified. The Minister of PS has the primary responsibility for the administration of the IRPA as it relates to the following:

- port of entry examinations;
- policy lead relating to enforcement of the IRPA including arrest, detention and removal;
- establishment of policies respecting the enforcement of the IRPA and inadmissibility under A34/A35/A37; and
- declarations referred to under A42.1 (Ministerial Relief provision)

Pursuant to A6(1), the responsible Minister has the authority to designate specific persons or classes of persons to carry out any purpose of any provision of the IRPA with respect to their individual mandates as described in A4, and to specify the powers and duties of the officers so designated. In addition, A6(2) authorizes that anything that may be done by the Minister under the Act and the *Immigration and Refugee Protection Regulations* (IRPR) may be done by a person that the Minister authorizes in writing. This is referred to as **delegation of authority**.

A **designated authority** refers to the position that has been given the legal authority by the Minister to carry out the delegated function.

The Delegation of Authority and Designations of Officers (D & D) instruments stipulate who has the authority to perform specific immigration-related functions. **CBSA officials should always consult the D & D instruments with respect to their authorities to take any enforcement action under the IRPA, including the issuance of warrants and arrests under A55, writing A44(1) reports, reviewing reports under A44(2) and release on conditions under A44(3).** For example, under the CBSA D & D instrument, the designated authority to issue warrants for arrest under A55(1) for permanent residents is different from the authority for issuing warrants for foreign nationals.

5 CBSA policy relating to persons serving a sentence

The CBSA is responsible for providing integrated border services that support national security and public safety. As part of its legislative mandate, the CBSA uses offender information to identify and investigate permanent residents and foreign nationals who are inadmissible to Canada in order to enforce the objectives of the IRPA and ensure the safety of Canadians.

To achieve program objectives, the CBSA tracks criminally inadmissible inmates through the following priorities:

- early identification of inmates who are permanent residents and foreign nationals who are serving sentences in federal or provincial correctional institutions;
- communication with correctional partners to ensure that persons who are serving sentences and subject to a removal order under the IRPA are not released in contravention of the CCRA;
- cooperation and communication with partners to ensure that at full parole or statutory release, inmates subject to an IRPA warrant (for examination, admissibility hearing, removal or a proceeding that could lead to the making of a removal order by the Minister) are delivered to the CBSA for their detention under IRPA where a decision is made that IRPA detention is necessary;
- commitment to the maintenance of effective working arrangements with CSC and provincial correctional services relating to permanent residents and foreign nationals who are subject to IRPA enforcement action; and
- minimizing delays in administrative enforcement action taken under the IRPA while a person is serving sentence.

In achieving departmental objectives pertaining to safety with respect to persons serving criminal sentences, an enforcement officer will:

- develop and maintain good working relationships and sound networking systems with a broad range of partners and key contacts;
- be proactive in obtaining and sharing information with CSC and provincial correctional services pursuant to information sharing agreements and privacy legislation regarding permanent residents and foreign nationals serving a sentence to ensure appropriate enforcement action under the IRPA;
- conduct appropriate risk assessments for persons serving sentence who are subject to IRPA enforcement action to determine, at the earliest opportunity and taking into consideration alternatives to detention and the IRPA objectives regarding the safety and security of Canadians, a strategy in regards to detention/release and appropriate monitoring upon the person’s release from criminal detention;

- where the continued detention of an individual serving a sentence is determined to be necessary under the provisions of the IRPA, issue a warrant for arrest and A59 order to the person in charge of the institution and notify the institution of their legal obligations under A59 at the end of the inmate's sentence;
- investigate leads from key partners and take appropriate action; and
- investigate permanent residents and foreign nationals serving a sentence who are suspected to be inadmissible and, where appropriate, gather evidence, prepare reports under A44(1) and ensure timely processing of cases within the immigration enforcement continuum, in accordance with the provisions of the IRPA.

6 Overview of correctional services

Correctional services operate on both the provincial and federal level. A person serving a custodial sentence of two years or more falls under federal jurisdiction; a person who receives a custodial sentence of less than two years will serve their sentence in a provincial correctional facility.

6.1 Federal sentences

CBSA policy with respect to the management of inadmissible permanent residents and foreign nationals serving a federal sentence in Canada is achieved through the IRPA and the CCRA and managed by the CBSA and CSC. While CBSA requires offender information from CSC, pursuant to its mandate, CSC requires information regarding the immigration status of persons subject to IRPA enforcement as they relate to federal offenders in order to enforce their mandate under the CCRA.

Offenders serving a federal sentence are managed by CSC. As part of the information sharing agreement with CSC, CBSA is informed of offenders admitted into a federal institution (penitentiary) where there is reason to believe that the offender is not a Canadian citizen, so that CBSA may determine their immigration status and if any immigration enforcement is warranted. In turn, CBSA provides CSC with information it requires to conduct sentence management in accordance with the provisions of the CCRA. A person subject to arrest and detention under the IRPA who is serving a federal sentence will be transferred to either a provincial correctional facility or an immigration holding centre (IHC) at the end of their sentence, as persons on immigration hold are not 'housed' in federal facilities. Moreover, CBSA is responsible for making the necessary transportation arrangements to transfer an inmate from the Federal facility at the end of their sentence.

6.2 Provincial sentences

Provincial correctional services generally have jurisdiction over offenders 18 years of age and over who are:

- sentenced to terms of imprisonment of less than two years
- terms of probation of up to three years
- conditional sentences of up to two years less a day
- offenders under parole supervision, as granted by a provincial parole board
- adults on remand, awaiting trial or sentencing
- offenders awaiting transfer to federal institutions to serve sentences of two years or more.

In such cases, provincial correctional services establish, maintain and operate adult correctional institutions and probation and parole offices. Provincial correctional services also have jurisdiction over adult offenders under parole supervision, as granted by a provincial parole board (Quebec and Ontario).

In addition, adults held in immigration detention under the IRPA may be housed in a provincial facility following an arrest/detention under A55, depending on the results of the National Risk Assessment for Detention (NRAD). For further information, see ENF 20 *Detention*.

7 Definitions and specific terminology

7.1 General

The following general terms relate to the serving of criminal sentences in Canada. Some terms may be more applicable within the context of sentences served under provincial jurisdiction; others apply to sentences served under both federal and provincial jurisdiction.[1]

Table 3: General terms pertaining to persons serving a sentence

Term	Description
Sentence	A sentence is a ruling handed down by a court in the criminal justice system which determines an accused person's punishment after the person is found guilty or pleads guilty at trial. The Court can impose different types of sentences or combinations of penalties.
Concurrent sentence	A concurrent sentence is merged and served simultaneously with another sentence. It is also referred to as an 'aggregate' or 'combined' sentence. For example: a person who receives a sentence of two concurrent terms of 6 months each would serve a 6-month sentence, not a sentence of 12 months. Sentences are merged in order to calculate a person's parole eligibility date, discharge possible date and warrant expiry date.
Consecutive sentence 718.3(4) CCC	Consecutive sentences are served separately, one after the other. For example: a person who receives a sentence of two consecutive terms of 6 months each would serve a 12-month sentence. Under the *Criminal Code of Canada* (CCC), sentences are concurrent unless otherwise specified by the court.
Intermittent sentence	An intermittent sentence may be imposed for a sentence of 90 days or less and is served in blocks of time on specific days of the week (e.g., on weekends). An intermittent sentence must be accompanied by a probation order.

[1] Sources referenced include: Department of Justice (https://www.justice.gc.ca); Correctional Service Canada (https://www.csc-scc.gc.ca); Parole Board of Canada (https://www.canada.ca/en/parole-board.html); Ontario Ministry of the Solicitor General (https://www.mcscs.jus.gov.on.ca/english/default.html). For further details, please refer to these publications.

Conditional sentence 742.1 CCC	A conditional sentence is served in the community under supervision rather than in a correctional facility. If the person does not meet the conditions imposed by the court, they may be returned to court and ordered to serve some or all of the remainder of the sentence in custody. **Note***:* In *Tran v. The Minister of Public Safety and Emergency Preparedness, (2017 SCC 50)*, the Supreme Court of Canada ruled that conditional sentence does not constitute a "term of imprisonment" for the purpose of determining inadmissibility for serious criminality under A36(1)(a).
Parole	Parole is a form of release granted by the PBC or a provincial parole board that allows persons serving sentences in provincial or federal custody to serve the remainder of their sentence in the community under the supervision of a probation/ parole officer. Most provincial offenders are able to apply for parole. In Ontario and Quebec, provincial parole boards are responsible for the release of offenders from incarceration, outside the normal expiration of sentence.
Probation	Probation is a court disposition that allows the person to be in the community following the completion of their sentence subject to conditions set out in a probation order. The person is supervised by a probation officer.
Absolute or Conditional discharge	A disposition where the court orders that accused be discharged of an offence after a finding of guilt, and no conviction is registered. The court may then grant an absolute discharge (no conditions) or impose conditions for a specified period of time as set out in a probation order and the accused will be discharged when the conditions are met (conditional discharge). If an offender is convicted of a subsequent offence during the term of probation, the court may decide to revoke the probation order and impose any sentence that could have been imposed at the time the order was made.
Suspended Sentence	A conviction where the passing of sentence is suspended. Like a conditional discharge, the order may be revoked if a provision is in place for revoking the order.
Parole Board of Canada (PBC)	An independent administrative tribunal which reports to Parliament through the Minister of Public Safety. The PBC operates under the authority of the CCRA and has exclusive authority to grant, deny, and revoke parole for offenders serving sentences of **two years or more.** The PBC also makes parole decisions for offenders serving sentences of less than two years in all provinces and territories except Ontario and Quebec, which have their own parole boards.

Day Parole	The authority granted to an inmate by the PBC or a provincial parole board to be at large during that inmate's sentence in order to prepare the inmate for full parole or statutory release. Eligibility for day parole is six months into the sentence or six months before full parole, whichever is later. Day parole requires the inmate to return to a penitentiary, a community-based residential facility or a provincial correctional facility each night unless otherwise authorized in writing.
Correctional services	Both federal CSC and its provincial counterparts

7.2 Terminology related to federal offenders

The following table contains terms that pertain to persons serving a federal sentence and types of federal releases under the CCRA for which persons serving a federal sentence may be eligible during their incarceration:

Table 4: Terms pertaining to persons serving a federal sentence

Term	Description
Penitentiary	Section 2(1) of the CCRA describes a penitentiary as (a) a facility of any description, including all lands connected therewith, that is operated, permanently or temporarily, by the CCRA and (b) any place declared to be a penitentiary pursuant to section 7 of the CCRA
Conditional release	The PBC has sole authority to grant both day parole and full parole to Federal offenders under the CCRA, based on information and assessments prepared by CSC prison and community staff. Before granting conditional release, Parole Board members must be satisfied that the offender will not pose undue risk to the community and will fulfill specific conditions.
Full Parole	A form of conditional release by the PBC that allows an offender to serve part of a prison sentence (normally 1/3) in the community under specific conditions. The offender is placed under supervision and is required to abide by conditions designed to reduce the risk of re-offending, and to foster reintegration of the inmate into the community. Under full parole, the person does not have to return nightly to an institution, but must report regularly to a parole supervisor, and in certain cases, to the police. If the offender is performing successfully in the community, full parole may continue, under supervision, for the remainder of the sentence. Offenders (except those serving life sentences for murder) are eligible to apply for full parole after serving either 1/3 of their sentence, or seven years, whichever is less. Offenders serving life sentences for first-degree murder are eligible to apply for full parole, after serving 25 years. Dates for offenders serving life sentences for second-degree murder are set between 10 and 25 years

Day Parole	See definition in section 7.1 above Eligibility to apply for day parole for federal offenders: • Offenders serving sentences of two years or more: 6 months before full parole eligibility date (PED) or 6 months into the sentence, whichever is greater • Offenders serving life sentences: 3 years before PED
Temporary Absences	The first type of release that an offender may receive. Under the CCRA, there are three types of temporary absences from prison: escorted temporary absences (ETA), unescorted temporary absences (UTA) and work releases. Such releases may be authorized for various reasons, including for work in community service projects, contact with family, personal development, and medical reasons.
Escorted Temporary Absence (ETA) CCRA s. 17	A release of temporary duration in which an offender, either alone or as a member of a group, leaves the institution accompanied by one or several escorting correctional officers. The duration of the ETA is limited. Medical absences, however, may be unlimited. Offenders may apply for ETAs at any time during their sentence. Most ETAs are at the discretion of the CSC, however others (e.g. for some life sentences) must be approved by the PBC.
Unescorted Temporary Absence (UTA) CCRA s. 116	A release of temporary duration in which an offender leaves the institution unaccompanied by CSC staff. Offenders must have served a portion of their sentence before being eligible to apply for a UTA. • For sentences of 3 years or more: offenders are eligible for UTAs after serving 1/6 of their sentence • For sentences of 2-3 years: offenders are eligible at 6 months into the sentence • Offenders serving life sentences are eligible for UTAs 3 years before their full parole eligibility date • Offenders classified as maximum security are not eligible for UTAs
Accelerated Day Parole	A streamlined process of review (Accelerated Parole Review or APR) for day parole for first-time offenders serving a sentence for a non-violent offence. It is a conditional release granted by the PBC if the inmate meets certain criteria. The eligibility date for accelerated day parole is at 1/6 of sentence or six months into the sentence, whichever is later. APR is only available to offenders who were sentenced prior to March 28, 2011; in British Colombia, this eligibility is extended to offenders who committed an offence before March 28, 2011, but who were sentenced on or after that date.
Statutory Release Date CCRA s. 127	Statutory release is a mandatory release by law. It is not a form of parole and is not a decision of the PBC; rather, it is an inmate's legal entitlement to be released into the community at 2/3 of the sentence. Unlike parole, statutory release is a right, not a privilege. Statutory Release requires federally sentenced offenders to serve the final third of their sentence in the community, under supervision and under conditions of release similar to those imposed on offenders released on full parole. Offenders serving life or indeterminate sentences are not eligible.

	Offenders on statutory release are offenders who either did not apply for parole, or who were denied release on full parole. Although statutory release is legislated (i.e. it is not 'conditional' and is not granted by the PBC), the PBC can keep an offender in the institution after his/her statutory release where there are reasonable grounds to believe that the offender is likely to commit an offence causing serious harm or death, a sexual offence involving a child or a serious drug offence. Offenders on statutory release are required to follow standard conditions including reporting to a parole officer. In some instances offenders on statutory release are required to reside in a halfway house or community correctional centre operated by CSC.
Warrant Expiry Date	The final date in the inmate's current sentence.
Release on Expiry of Sentence	Release on expiry of sentence is not a conditional release; it is the full release required when the entire sentence has been served.
Work release CCRA s. 18	A structured and supervised program of release, established for a specified period of time, involving work or community service outside the penitentiary. Offenders who are eligible for a UTA are also eligible to apply for a work release.
CSC's Offender Management System (OMS)	A CSC database containing sentence information on every offender under federal jurisdiction. Access to CSC offenders' information is based on governing legislation to ensure that partner organizations receive only the information required to perform their duties, and to which they are legally entitled. Based on a memorandum of understanding (MOU), CSC has granted CBSA access to OMS whereby certain officers can consult relevant offender information and also input data related to an offender's immigration status.

8 Procedure: Identification of inadmissible inmates

8.1 Policy on identification of inadmissible persons serving a sentence

Identifying and monitoring inadmissible foreign nationals and permanent residents who are serving a sentence in Canada is essential to CBSA's ability to achieve its statutory objectives.

The identification of inadmissible foreign nationals and permanent residents serving sentences is dependent on the interrelationship between CBSA and other government institutions, including CSC, the provincial correctional facilities, the provincial courts and police agencies.

Maintaining effective liaison practices and processes ensures that foreign nationals and permanent residents are identified early in their sentence, investigated and tracked to ensure that appropriate enforcement action can be taken by CBSA. In this way, the development and maintenance of working arrangements with key partners within the judicial system are crucial to CBSA investigations.

As officers respond to information or leads regarding permanent residents and foreign nationals serving a sentence, they should follow established investigative procedures. These include citizenship determination, interviewing of individuals, fact-finding, recording of evidence,

preparation of reports and execution of appropriate documents relevant to CBSA enforcement measures.

For further guidance, officers should refer to ENF 7 *Investigations and arrests*, ENF 5 *Writing 44(1) reports*, and ENF 6 *Reviewing reports under A44(2).*

8.2 Information sharing

Identifying inadmissible foreign nationals and permanent residents who are serving sentences is achieved through information sharing with correctional services, police services and the criminal courts. Officers will access different sources of information in their efforts to identify incarcerated permanent residents and foreign nationals serving sentences.

When obtaining and disclosing information obtained from a third party, CBSA officers must be aware of their legal obligations under written collaborative arrangements and privacy legislation. In all cases, officers are required to assess the accuracy and reliability of information received, and properly characterize this information in any further dissemination.

Information sharing agreements make it possible to effectively manage information between organizations in order to ensure effective monitoring through data exchange. Even where there is no formal written agreement in place, the *Privacy Act* may authorize the disclosure of information under a government institution's control to another government body. For example, under the *Privacy Act*, a government institution may disclose personal information to another government institution for the purpose for which the information was obtained or compiled by the institution or for a use consistent with that purpose [8(2)(a)].

CBSA employees are responsible for ensuring that personal information is only disclosed in accordance with the *Privacy Act* and should be guided by the CBSA Policy on the Disclosure of Personal Information: Section 8 of the *Privacy Act*.

CBSA officers should also consult the CBSA Information Sharing Toolkit, including the Written Collaborative Arrangements Toolkit.

8.3 Identification through correctional services

Officers will liaise regularly with correctional institutions in accordance with regionally established procedures and written collaborative agreements to ensure that permanent residents and foreign nationals subject to enforcement action under the IRPA are managed effectively through the Sentence Management offices of correctional services.

Generally, CBSA may require the following information from correctional facilities:

- offender details
- date of committal
- date and details of conviction(s)
- documentation to substantiate conviction (e.g.' warrant of committal)
- statutory release date
- warrant expiry date
- parole eligibility date
- parole board decisions
- correctional service reports

For further information on documentation that may be required to establish inadmissibility under the IRPA, see ENF 2 *Evaluating Inadmissibility*.

Likewise, correctional services may request information from CBSA in order to achieve their mandates, for example:

- confirmation of offender's status/citizenship
- information pertaining to removal orders issued under the IRPA
- stage of an offender's immigration proceedings under the IRPA.

8.4 Information sharing at the federal level

For federal offenders, information sharing is achieved primarily through extraction and inputting of relevant information into CSC's OMS in relation to the offenders status, and whether the CBSA intends to arrest and detain the offender upon completion of their sentence. For CSC, information from the CBSA is entered by a designated CBSA official into CSC's OMS to facilitate effective file management. OMS terminals are available at various CBSA offices. Regional offices must ensure that the running of appropriate OMS reports and monitoring of offender information through OMS and parole/probation contacts are utilized in accordance with established practices and procedures.

In regards to CSC, there is a written collaborative arrangement between CBSA and CSC which establishes the conditions and procedures for the exchange of information between CSC and the CBSA and outlines mutual obligations and responsibilities with respect to management of inmates who are subject to enforcement action under the IRPA through data exchange.

Under this agreement, CBSA shall provide to CSC, any information in its possession which is relevant to the risk assessment of the offender, as soon as practicable, for consideration in the CSC case management and release decision-making processes.

For example, CSC may require the assistance of local CBSA offices when the citizenship of an inmate is in doubt. When such a request is made, the CBSA official must inform the CSC institutional chief, Sentence Management, of the inmate's citizenship status and indicate whether the inmate is of interest to CBSA and whether enforcement action under the IRPA is underway.

In addition, where a person is already under a removal order, CBSA also needs to ensure that the appropriate CSC contacts have been given this information and any related documentation they may require under the CCRA. For further information, refer to section 12 of this manual chapter, 'Impact of removal orders on Federal conditional releases under the CCRA'.

8.5 Information sharing at the provincial level

CBSA has specific MOUs with some provinces authorizing the detention of persons detained under the IRPA in provincial correctional facilities (NB, BC, Ontario, Quebec, NS, Alberta). These agreements also deal with the transfer of custody of a person detained under IRPA at a provincial correctional institution.

CBSA also has information sharing agreements with some provinces which govern procedures surrounding the exchange of information.

9 The Impact of A59

A warrant for the arrest and detention of a foreign national or permanent resident is issued pursuant to A55(1). Where an immigration warrant has been issued against a person who is already detained under another Act of Parliament (e.g. incarcerated while serving a sentence in a correctional facility), A59 provides legislative authority for the transfer of the inmate at the end of the criminal sentence from correctional services custody into CBSA custody.

Section A59 does not legally authorize correctional institutions to continue detention of a person once their sentence is completed and they are released from criminal detention. Rather, A59 of the IRPA imposes an obligation on correctional institutions to notify CBSA that the person's criminal sentence/detention has ended and turn the person over to CBSA to execute an immigration warrant for arrest and take the person into immigration custody. This means that a person is not legally detained under the IRPA until the immigration warrant is executed. This is why the section A59 Order (BSF498) must always be coupled with the A55(1) warrant for arrest.

For example, when a permanent resident or foreign national subject to IRPA enforcement action is eligible for full parole or statutory release, the effect of the A59 order is that the institution shall notify CBSA and release the person to the CBSA so that an immigration warrant can be executed. It is at that point that certain legal processes under the IRPA would be triggered. For example, once detained under the IRPA, the officer shall without delay give notice to the Immigration Division (ID) [A55(4)] and the detained person must be brought before the ID within 48 hours of being taken into detention to review the reasons for detention.

Note: Persons who are detained in a provincial psychiatric hospital under the jurisdiction of a provincial Review Board are **not serving a sentence**. Such persons have been found by a court or a provincial Review Board to be either **not criminally responsible (NCR) or unfit to stand trial for criminal offences on account of a mental disorder**.

Provincial Review Boards are independent tribunals established pursuant to the *Criminal Code of Canada*, which stipulates that each province and territory must establish or designate a Review Board to oversee these individuals.

Following a finding that an accused is NCR (not criminally responsible) or unfit to stand trial, a court or a provincial Review Board may make an order directing that the accused be detained in custody in a hospital, subject to such conditions as the court or Review Board considers appropriate. Such persons are detained under the jurisdiction of the provincial Review Board and are therefore **not detained under an Act of Parliament**. Therefore, in such cases, an A59 Order cannot be used to impose a legal obligation on the institution to notify CBSA in case there is a warrant.

10 Case management: Inadmissibility assessment and investigation

Once a CBSA official identifies that a foreign national or permanent resident is serving a custodial sentence, a case review will need to be conducted to determine whether enforcement action is warranted and to initiate appropriate enforcement steps under the IRPA.

Once the initial investigation confirms that the person is a permanent resident or a foreign national, a preliminary investigation into the status of the person's admissibility or current

immigration processes will need to be conducted. Where the facts indicate the presence of an inadmissibility (or new/additional inadmissibility), an officer will need to review the file to determine whether an A44(1) process should be initiated. If necessary, the file will be transferred and assigned to the appropriate office or unit responsible for processing the A44 investigation.

Officers will need to consider the following:

- Is the person already the subject of a removal order?
- If so, would an additional A44(1) report and another removal order serve the objectives of the IRPA?

Even where the person is already the subject of proceedings under the IRPA, including removal, a CBSA officer will need to conduct a case review to determine whether a new A44(1) process is warranted. Where it is determined that the person is already under a removal order and no new A44(1) proceedings are warranted, the case will need to be assessed to determine next steps in enforcing the removal order. This may require transferring the file to the appropriate office or unit in the jurisdiction where the person is serving their custodial sentence. Where the person is serving a federal sentence and is already under a removal order, CBSA will also need to ensure that CSC has been notified of the removal order in accordance with section 12 of this manual chapter, ‘Impact of removal orders on Federal conditional releases under the CCRA’.

In cases where enforcement action originates at the port of entry (e.g., warrant for arrest and A59 Order are issued following a criminal arrest by another law enforcement agency), case management and monitoring should be coordinated regionally with inland offices and next steps will be determined by the circumstances of the case.

For further details on investigating inadmissibility, refer to ENF 7 *Investigations and arrests* and ENF 2 *Evaluating inadmissibility.*

For further details on writing A44(1) reports, see ENF 5 *Writing 44(1) reports.*

For further information on Minister’s Delegate reviews under A44(2), see ENF 6 *Reviewing reports under A44(2).*

11 Management of risk and effective monitoring

11.1 Assessment of risk

During the initial inadmissibility investigation, a concurrent assessment of the file should also be conducted to consider whether CBSA should seek detention of the permanent resident or foreign national upon completion of their sentence, having regard to all of the circumstances of the case. This assessment will also entail considering whether risks can be offset by any alternatives to detention, including the imposition of conditions under the IRPA.

Risk identification requires an evaluation of the information available at the time of the assessment and includes any information or evidence available that may help predict future behaviour.

ENF 22 Persons serving a sentence

For persons serving a federal sentence, there will generally be an ongoing opportunity to evaluate the need for immigration detention prior to the person completing their criminal sentence. In general, this will include an initial file review prior to any immigration warrant being issued, and an additional assessment of risk factors closer to the statutory release date, prior to executing any warrant (if one was previously issued, along with the A59 order).

Note*:* There is no specific form to document this process, however Notes to File may be used. For further clarity, this is separate from the requirement for a formal risk assessment following the execution of the warrant through the process for completion of the BSF754 form—National Risk Assessment for Detention (NRAD). Officers should consult ENF 20 *Detention* for further details.

It is important for officers to keep in mind that, even if during an earlier review of the file it is determined that the risk can be mitigated upon release from serving sentence, a warrant for arrest and A59 Order can be issued at a later time where circumstances and facts warrant a different assessment.

Conversely, there may be circumstances where an initial review of the case leads to a determination that IRPA arrest and detention are necessary and therefore that a warrant for arrest and A59 Order should be issued and filed with the correctional institution. Where circumstances change prior to the completion of the sentence, officers may later determine that detention under the IRPA is no longer necessary. In such circumstances, a delegated officer or supervisor/manager may cancel the warrant where the initial reasons for the warrant no longer exist and document the reasons in the Global Case Management System (GCMS) and the National Case Management System (NCMS). See ENF 7 *Investigations and arrests* for further information regarding warrant cancellation.

Note: A person serving a sentence may already be subject to conditions imposed under the IRPA by either CBSA, IRCC or the Immigration and Refugee Board (IRB). In such cases, an officer will need to assess whether the existing conditions are sufficient to offset risks upon completion of the sentence, whether these conditions have been violated or whether a new arrest and detention process under the IRPA is warranted.

Risks are related to the objectives of the IRPA and can generally be divided into:

- **Risk to public safety**, as related to A3(1)(h) and A3(2)(g). Public safety is the top priority for the CBSA. When the associated risks to public safety are significant, these risks need to be virtually eliminated before release.

- **Risk to program integrity**. This risk relates to a negative impact on achieving all other objectives of the IRPA. The acceptable degree of risk depends on the specific circumstances of the case.

For further details regarding the assessment of risk see ENF 34 *Alternatives to detention*.

For persons serving a sentence, a layered approach to the evaluation of risk is generally recommended where circumstances permit:

An initial file assessment should be conducted once it is determined that CBSA will pursue enforcement action under the IRPA against the person serving a sentence. The officer will need to consider information such as:

- Nature and extent of recent criminal activity
- Nature of the conviction and type of sentence imposed;
- Statutory release dates;
- Circumstances of the offence(s) for which the person was convicted;
- Presence of any other serious IRPA inadmissibility (e.g., security, organized crime) irrelevant of the conviction(s) for which the person is currently serving sentence;
- Whether removal is imminent once the person finishes serving their sentence;
- Whether the person is already subject to IRPA conditions imposed by CBSA, IRCC or the IRB
- Tools identified to manage or mitigate risk upon release from correctional services custody, including those imposed by the criminal courts.

Where possible, there should be an ongoing evaluation of risk and a final review of the person's case conducted closer to the person's statutory release date or anticipated conditional release by correctional services. This will be particularly important in cases for persons serving a federal sentence who are serving longer sentences and the circumstances pertaining to their level of risk may change over time based on institutional behaviour, programs completed while serving sentence, reports from CSC, and PBC decisions/assessments. Officers should liaise with CSC, probation and parole officers, institutional reports and any other relevant documentation pertaining to institutional programs completed (e.g., anger management) pertaining to the person's behaviour while serving sentence. Officers assessing risk for federal offenders should also obtain decisions of the PBC to determine conditions of release, including residency in CSC facilities (e.g., half-way houses). Once all available information has been gathered, officers should analyze the information to identify risks, determine whether these risks can be offset, and evaluate residual risk. This will require a case-by-case analysis of the information gathered.

Note: This process is not intended to replace the procedures set out in ENF 20 *Detentions*.

For further guidance regarding the assessment of alternatives to detention, officers should refer to ENF 34, section 8, 'Assessment of alternatives".

11.2 Alternatives to detention

Officers handling cases for persons serving a sentence should always consider whether continued detention upon completion of the sentence will be necessary under the IRPA and whether a release plan incorporating alternatives to detention may be appropriate. Where a person serving a sentence is also the subject of enforcement action under the IRPA, it remains open to a delegated CBSA official at any stage to place the person on IRPA conditions following an assessment of risk factors and all the circumstances of the case.

An alternative to detention (ATD) is any condition that may be imposed on an individual to offset a risk they represent to the enforcement objectives and the mandate of the CBSA. ATDs include general conditions, deposits, guarantees, in-person reporting, and, depending on the region, may include other types of community based supervision tools and electronic supervision tools.

As part of the arrest process, an officer must consider the factors outlined in R245–R248, including alternatives to detention, to form a recommendation regarding detention and release. Officers are required to document their assessment of alternatives to detention and the reasons the decision to continue detention or release on the basis of alternatives to detention was made. Officers should refer to ENF 7 *Investigations and arrests*, ENF 20 *Detention* and ENF34 *Alternatives to Detention* for further procedural guidance.

Following an arrest, if an officer determines that risk can be offset by alternatives to detention upon completion of the person's sentence, the person may be placed on conditions by a CBSA official [see Acknowledgement of Conditions (BSF821/IMM1262) and Acknowledgement of Conditions for IRPA Section 34 Cases (BSF798)] **unless** the person is already subject to conditions imposed under the IRPA by the Immigration Division (ID) (for further information, see ENF 8 *Deposits and guarantees*). Officers may also consult with their local Community Liaison Officer (CLO) in accordance with ENF 34 *Alternatives to detention.*

The person may also be placed on conditions by a delegated CBSA official at any time during their sentence prior to the issuance or execution of a warrant (i.e., arrest) **unless** the person is already subject to conditions imposed by the ID. In such cases, the officer has no authority to vary or supersede an order previously issued by the ID. The ID retains jurisdiction with respect to the variation of previous terms and conditions imposed by the Board. In circumstances where an officer believes that previously imposed conditions by the ID are no longer required or are insufficient to ensure compliance, but may not necessarily require that the person be re-arrested first, officers will refer the file to Hearings articulating the need to amend the existing conditions and request that a Hearings Officer make a request to the ID to vary the order.

For further information and guidance on Alternatives to Detention (ATD) Program tools available under the ATD Program and assessment of alternatives to detention, refer to ENF 34 *Alternatives to detention.*

11.3 Procedures where detention under the IRPA is determined to be necessary following completion of the person's custodial sentence

If it is determined that detention under the IRPA is warranted following the completion of the person's sentence, the CBSA officer will need to file an unexecuted warrant for arrest (BSF499) and a Section A59 Order to Deliver Inmate (BSF498) with the institutional Chief of Sentence Management. This ensures that the provincial correctional services or CSC are made aware that an inmate serving sentence is subject to enforcement action under the IRPA, and that the inmate is to be arrested by a designated official under the IRPA upon completion of their sentence.

CBSA officers must then liaise with correctional services to monitor the offender's detention status to ensure that on the day that the inmate is eligible for release from criminal detention (i.e., custodial sentence ends), an official designated under the IRPA meets the inmate in order to execute the immigration warrant and effect the arrest under A55.

Note: Should the IRPA process change during the time of the sentence following the issuance of a warrant, officers must cancel the original warrant and re-issue the warrant under the correct IRPA process. For example, where the original warrant was issued for an admissibility hearing but the hearing has taken place and a removal order has been issued, the original warrant shall

be cancelled and a new warrant issued for removal. In this circumstance, a new A59 Order will also need to be completed.

Following an arrest, the officer must also complete all required forms, including a Notice of Arrest (BSF561), which outlines the circumstances of the arrest and factors that led to their decision to recommend continued detention. In addition, an Order for Detention form (BSF304) shall be completed and left with the authority (correctional services) responsible for housing the person. Officers should refer to ENF 7 *Investigations and arrests*, ENF 20 *Detention* and ENF 34 *Alternatives to detention* for more detailed procedural guidance.

Where applicable, and depending on an officer's assessment of detention placement, CBSA may need to arrange for the transfer of the person to another detention facility (provincial correctional facility or an immigration holding centre) upon completion of the person's sentence, in accordance with CBSA policy and regionally established procedures. **It is to be noted that federal correctional service facilities do not house individuals who are on immigration hold only.** Officers should refer to ENF 20 *Detention* for further procedural details.

CBSA will also need to send notice to the ID without delay so that a detention review is scheduled (BSF524). If the person is not released within 48 hours of their arrest by a CBSA officer, the person is required to have a detention review before the ID.

11.4 Summary of steps to be completed where detention under the IRPA is determined to be necessary following completion of the person's custodial sentence

The following is a summary of required steps and forms to be completed where detention under the IRPA is determined to be necessary following completion of the person's custodial sentence:

Prior to completion of the sentence:

- Unexecuted warrant for arrest (BSF499) and A59 Order to Deliver Inmate (BSF498) issued and left with detaining authority (Sentence Management at correctional facility);
- Federal offenders subject to a removal order: ensure that CSC has been notified of an existing removal order and copy of removal order is provided if necessary.

Once person has completed custodial sentence:

- Execute warrant on day sentence is completed (includes conditional releases);
- Arrest and detention forms completed as required (see ENF 7 *Investigations and arrests* and ENF 20 *Detention* for further details).
- Arrange transfer to provincial facility or IHC as appropriate based on detention placement assessment;
- Order for Detention form (BSF304) issued and left with institution; and
- Send notification and request for detention review to the ID.

12 Impact of removal orders on Federal conditional releases under the CCRA

Officers should be aware that under the provisions of the CCRA, the issuance of a removal order against a non-citizen federal offender may impact their eligibility for certain types of conditional releases.

Pursuant to subsection 128(4) of the CCRA, a permanent resident or foreign national is **not** eligible for day parole or an unescorted temporary absence (UTA) before their full parole eligibility date **if they are subject to a removal order issued under the IRPA**.

Under this provision, if a removal order is issued against the person serving a sentence **after** day parole is granted, the day parole or UTA becomes **inoperative** and the offender shall be re-incarcerated by CSC. It should be noted, however, that this does **not** apply **once the full eligibility date has passed**.

Officers should recognize that delays in the timely execution of appropriate enforcement action under A44 [including delays in referring a case to an MD for a review under A44(2) and/or the ID for an admissibility hearing] could have an adverse impact on CBSA's ability to effectively manage and offset risks posed by permanent residents and foreign nationals serving a federal sentence as the person could be granted conditional release by the PBC prior to the issuance of a removal order.

In situations where a removal order is stayed under A50(a), A66(b), or A114(1)(b) of the IRPA, the non-citizen becomes eligible for day parole or UTA under subsection 128(6) of the CCRA. In such cases, it is the CBSA officer's responsibility to advise CSC of the change by providing the Chief of Sentence Management with a copy of the stay order. For further details regarding stays of removal, see ENF 10 *Removals*.

Notification to CSC for federal offenders

To ensure that CSC has all relevant information they require to enforce their mandate under the CCRA, CBSA officials must notify CSC when a removal order has been issued against the person in accordance with established procedures. In most cases, this will be achieved through communication by CBSA to Sentence Management of the correctional institution where the person is incarcerated.

CBSA officials are also responsible for ensuring that documents required by CSC though the information sharing agreement have been completed and provided to the appropriate CSC officials in Sentence Management and that all relevant systems updates (e.g., OMS) have been completed after a removal order has been issued to a federal offender.

13 Procedure: Removal of persons who are detained

It is important for officers to be aware that a person serving a sentence in Canada, including a conditional sentence order being served in the community, is subject to a stay of removal under A50(b) of the IRPA and cannot be removed until the sentence is complete.

Officers can remove detained persons from Canada who:

- are in CBSA custody after being arrested and detained under A55 for removal from Canada upon completion of a custodial sentence at an institution under the authority of A59 at the end of their custodial sentence; or

- have been detained pursuant to A81 and ordered released under A82.4 for their departure from Canada.

In addition, officers should ensure that regionally established procedures are followed when a person under a removal order is serving a sentence in a correctional institution or other detention facility.

For further information on removal of detained persons, see ENF 10 *Removals*.

14 Cases where the person was sentenced prior to the enactment of the IRPA

The transitional provisions in the IRPA govern cases where the person was sentenced prior to its enactment (June 28, 2002) when the former *Immigration Act*, 1976, was in force. For individuals sentenced **after** the coming into force of the IRPA, the provisions of the CCRA will apply, and the presence of a removal order will render the non-citizen ineligible for UTA or day parole until the full parole eligibility date.

The transitional provisions create a parallel system for offenders who were sentenced prior to the coming into force of the IRPA and the **date of sentence** will determine the legislative provisions and procedures that apply to persons under IRPA enforcement action who are serving a federal sentence.

For example, where a person was sentenced **prior** to June 28, 2002 (i.e., pre-IRPA), they **are eligible** for conditional release whether or not they are subject to a removal order.

Conversely, where a person was sentenced **on or after** June 28, 2002, they are **ineligible** for **day parole** conditional release until the date of full parole eligibility **if they are subject to a removal** order. However the person is **eligible** for day parole conditional release if they are **not** subject to a removal order before reaching their full parole eligibility date.

Under the Transitional provisions:

- An order issued by a Deputy Minister under subsection 105(1) of the former Act (the 1976 *Immigration Act*) continues to be in force and the review of reasons for continued detention shall be made under the IRPA (R323);
- Inmates subject to subsection 105(1) orders under the former *Immigration Act* are eligible for consideration of day parole, including accelerated day parole or a UTA. If conditional release is granted by the PBC, the subsection 105(1) order and the Warrant of arrest prevent the inmate from being released on day parole or UTA before a detention review is conducted by the ID;
- A warrant for arrest and detention made under the former Act is a warrant for arrest and detention made under the IRPA [R325(1)];
- If an inmate subject to an order under subsection 105(1) of the former *Immigration Act* is ordered released by the ID, the subsection 105(1) order is lifted and is no longer valid. **If detention is maintained, the detention review will be conducted under the provisions of the IRPA** [R322(1)].

15 Case examples

The following scenarios are some examples to illustrate case assessments and recommended next steps for managing cases where the permanent resident or foreign national is serving a sentence.

Scenario 1

Notification is received from CSC that a person serving sentence at a federal correctional facility has been granted bail pending an appeal of their conviction and sentence by a provincial court of appeal. The person is already the subject of a removal order issued based on the conviction under appeal. A warrant for arrest under A55 and a section A59 Order to Deliver Inmate have already been issued and filed with CSC Sentence Management by CBSA officials.

Next steps:

Prior to executing the warrant, assess risk to determine whether person should be arrested and detained under the IRPA or placed on conditions, including the posting of deposits or guarantees. Obtain bail conditions from courts or through CSC to review conditions. Where continued detention is warranted under the IRPA, execute A55 warrant and complete required arrest and detention steps, including arrangements for transfer to provincial facility or IHC and send request for detention review to the ID. If determined that release on conditions under the IRPA is warranted, ensure that any conditions imposed do not conflict with bail conditions imposed by the court.

Scenario 2

A person is serving a three-year sentence at a federal correctional facility for aggravated assault. An investigation confirms that the person is a permanent resident of Canada and that enforcement action is warranted based on inadmissibility for serious criminality. A report under A44(1) is issued and referred for admissibility hearing by the MD under A44(2).

Next steps:

Assess risk to determine whether person should be detained under IRPA or placed on conditions following the completion of their custodial sentence. Where IRPA detention is warranted and depending on the end of sentence expiry and anticipated schedule for admissibility hearing, issue warrant for arrest (for admissibility hearing) and section A59 Order to Deliver Inmate. If admissibility hearing concludes before end of sentence and a removal order is made at an admissibility hearing, cancel the previous/unexecuted warrant for admissibility hearing and issue a new warrant for arrest (for removal) and new section A59 Order to Deliver Inmate and provide to CSC Sentence Management. Notify CSC of the removal order and provide required documentation. Monitor risk and conduct a further risk assessment closer to the person’s release from serving sentence.

Note: Where there are no time constraints and the admissibility hearing is anticipated to conclude well before end of sentence, officers should defer issuance of warrant and A59, until the admissibility hearing has concluded to avoid having to issue multiple warrants.

Scenario 3

A person is serving a two-year sentence at a federal correctional facility for fraud. The person is issued a deportation order for serious criminality while serving sentence. Prior to the person’s

statutory release date, CBSA is advised by CSC that the person has been granted conditional release by the PBC.

An initial evaluation of the file leads an officer to determine that detention under IRPA will not be necessary upon completion of the person's sentence, taking into account that the fact that the person will be subject to parole supervision until their warrant expiry date and that the prospect of obtaining a travel document to effect removal is low. An officer determines that the permanent resident does not pose a danger to the public and that flight risk concerns can be offset with appropriate conditions. The person is not currently subject to any prior conditions of release under the IRPA.

Next steps:

It is recommended that no immigration warrant be issued and that CBSA consider placement of permanent resident on IRPA conditions (possibly including posting of bonds/guarantees) prior to completion of the sentence and release from court hold. CBSA will monitor compliance with conditions and continue appropriate enforcement action following the person's release from court hold.

Scenario 4:

A federal offender is serving a sentence for a second-degree murder conviction from 1978 (i.e., pre-IRPA). The person is the subject of a deportation order issued under the former *Immigration Act* of 1976. CBSA is advised that the person has become eligible for conditional release under the CCRA and has applied for release on an unescorted temporary absence (UTA).

Next steps:

This case falls under the transitional provisions. CBSA should conduct an assessment of the risks before determining next steps. If it is determined that the person constitutes a high flight risk or danger to the public under IRPA and that continued detention under the IRPA is warranted, CBSA should follow the steps in section 11.3 of this manual chapter, 'Procedures where detention under the IRPA is determined to be necessary following completion of the person's custodial sentence'. This means that the issuance of a warrant for arrest (for removal) and a section A59 Order to Deliver Inmate will need to be issued each time the person becomes eligible for release on UTA. Each time the person is granted a UTA by the PBC, a CBSA officer will need to execute the warrant and request a detention review from the ID each time a UTA is granted.

Scenario 5

A foreign national who is under a removal order issued after June 28, 2002 is serving a federal sentence. An A59 Order to Deliver Inmate and warrant for arrest have already been issued by CBSA and provided to CSC Sentence Management. After serving 1/3 of their sentence, the offender is transferred to a correctional facility outside the jurisdiction/province of the CBSA office monitoring the file.

Next steps:

Notify the regional CBSA office handling cases from the destination jurisdiction/province of the transfer. Ensure appropriate file transfer for continued monitoring by the new CBSA office. Notify the parole officer (CSC) in the new jurisdiction of the immigration hold (i.e. warrant for arrest and section A59 Order to Deliver Inmate) and provide the contact information for the CBSA office now assigned to the file.