Immigration, Refugees and Citizenship Canada
Immigration, Réfugiés et Citoyenneté Canada

ENF 20

Detention

Canada

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Updates to chapter

Listing by date

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. Further updates will be forthcoming by spring 2018.

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.

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 erased as their content will be in another ENF chapter.

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.

Multiples 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.

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

IRPA has the following objectives:

- protect the health and safety of Canadians and to maintain the security of Canadian society;
- 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; and
- supporting enforcement of IRPA.

3. The Act and Regulations

3.1. Authority to detain a person

A55 identifies the grounds on which an officer may detain a permanent resident or foreign national, and the circumstances under which a warrant is required.

For information about	Refer to this section of IRPA
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, an admissibility hearing or removal from Canada.	A55(1)
Arrest and detention without warrant	A55(2)

An officer may, without a warrant, arrest and detain a foreign national, other than a protected person, who the officer has reasonable grounds to believe: • is inadmissible; and • 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's delegate 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.	A95(2) (protected person)
Detention without warrant on entry into Canada A permanent resident or a foreign national may, on entry into Canada, be detained if an officer • 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 security or for violating human or international rights.	A55(3)(a) and A55(3)(b)
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)
Detention of a person covered by a certificate (without warrant for a foreign national, with warrant for a permanent resident)	A77 and A82

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:

R244	Factors that shall be considered by the officer and the Immigration Division
R245	Factors: Risk of flight

R246	Factors: Danger to the public
R247	Factors: Identity not established
R248	Other factors
R249	Special considerations for minor children
R250	Applications for travel documents

R244 stipulates that the officer and the Immigration Division shall take into consideration the factors set out in Part 4 in making their assessment, whether a person:

- 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's delegate under A44(2);
- is a danger to the public; or
- is a foreign national whose identity has not been established.

R245 to R247 list the factors that shall be taken into consideration when they are present in the case being examined. It must be established how the presence of one or more of these factors shows that the person in question is a danger to the public, is unlikely to comply with the immigration procedure provided for in A55, is not cooperating to establish their identity, or has been unable to prove their identity to the officer's satisfaction.

The Regulations provide a non-exhaustive list of factors that officers and members of the Immigration Division shall consider. The mere presence of a factor or factors should not lead to an automatic detention or release decision. Rather, officers and members of the Immigration Division must always consider, in addition to the factors mentioned in the Regulations, all other factors and facts pertaining to the circumstances of the case when making a detention decision, as provided by A55 and A58.

R248 stipulates that if an officer or the Immigration Division determines that there are grounds for detention, the officer or the Immigration Division shall consider the following factors 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 Canada Border Services Agency (CBSA) or the person concerned; and
- the existence of Alternatives to Detention (ATDs).

R249 prescribes special considerations that apply in relation to the detention of minor children. R249 must be read and interpreted in light of A60:

A60. 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.

This section establishes a framework for any decision concerning the detention and release of a minor.

3.3. Forms and publications

The forms required are shown in the following table.

Form title	Form number
Order for Detention	BSF304
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	BSF776
Review of Detention by Officer (pursuant to section 56 of the *Immigration and Refugee Protection Act*)	BSF508 E BSF508 F
Identity Information Form	IMM 5007B
Minister's Opinion Regarding the Foreign National's Identity (under subsection 58(1)(d) of the *Immigration and Refugee Protection Act*)	BSF510
Request for Admissibility Hearing/Detention Review Pursuant to the Immigration Division Rules	BSF524
Detention Cell Log and Instructions	BSF481
Detention Cell Log	BSF481-1
National Risk Assessment for Detention	BSF754
Detainee Medical Needs	BSF674
Request for Release from Mandatory Detention – Exceptional Circumstances (pursuant to paragraph 58.1(1) of the *Immigration and Refugee Protection Act*)	BSF735
Authority to Release from Detention	BSF566
Acknowledgement of Conditions: The *Immigration and Refugee Protection Act*	IMM 1262E
Detention (stickers)	BSF578

The publications required are shown in the following table.

Information for people detained under the *Immigration and Refugee Protection Act* (brochure)	BSF5012 • English • French • Arabic • Chinese Simplified • Chinese Traditional • Hindi • Japanese • Korean • Farsi • Portuguese • Punjabi • Russian • Spanish • Tagalog • Tamil • Urdu

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 from 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).

For further information on arrest procedures, please see ENF 7 Investigations and Arrests.

5.1. Principles

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

- 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;
- detention operations are conducted in a transparent manner, while respecting the privacy of the detained persons;
- 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 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 approach. In exercising their discretionary authority to detain, officers need to consider all reasonable alternatives before ordering the detention of an individual. This approach requires officers to exercise sound judgment in cases involving the arrest and detention of individuals, pursuant to IRPA.

Sound judgment not only requires individual assessment of the case, but also an assessment of the impact of release on the safety of Canadian society. Additionally, it requires a risk management approach to make decisions within the context of the following priorities:

- first, where safety or security concerns are identified (including criminality, terrorism or violent behaviour at the time of examination);
- second, where identity issues must be resolved before security or safety concerns are eliminated or confirmed;
- third, to support removal where removal is imminent and where a flight risk has been identified;
- fourth, 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

An officer may detain a person on entry into Canada under the authority of A55(3) where:

- the officer considers it necessary to do so in order for the examination to be completed; or

- 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.

Officers may arrest and detain on entry into Canada and within Canadian territory under the authority of A55(1) and A55(2) where:

- the officer has reasonable grounds to believe the person is inadmissible and is a danger to the public; or
- the person 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's delegate under A44(2);or
- the officer is not satisfied of the identity of the foreign national in the course of any procedure under this Act.

For information on how to complete the examination, see Section 5.4.

For information on people suspected of being a security risk/human or international rights violator, see Section 5.5.

For information on how to determine if a person is a danger to the public, see Section 5.6.

For information on assessing a flight risk, see Section 5.7.

For information on detaining a person for reasons of identity, see Section 5.8.

5.4. To complete the examination

Detention to complete an examination is warranted where the officer is concerned that the person may be a security risk, may have violated human or international rights, may be a danger to the public, or may not appear to continue the examination.

Detention to complete an examination must be based on the grounds noted above and should never be used solely for administrative convenience.

An officer may require further relevant documents, information or other evidence to determine admissibility. Some situations will require consultations with national and international enforcement agencies. Validation of information is crucial where significant suspicions remain concerning the admissibility of a foreign national or permanent resident.

If detention is not warranted, the following options are available:

- A23 provides that entry may be authorized for further examination. This authorization is associated with conditions prescribed by R43, and the officer may require that a person provide a guarantee or deposit a sum of money with the Minister of Public Safety to guarantee compliance with any imposed condition [R45];
- R41 stipulates than an officer who examines a foreign national who is seeking to enter Canada from the United States shall direct them to return to the United States temporarily if

- no officer is able to complete the examination;
- the Minister's delegate is not available to consider, under A44(2), a report prepared with respect to the person; or
- an admissibility hearing cannot be held by the Immigration Division [R41].

- R42(1) stipulates the situations in which an officer may allow a foreign national to withdraw their application to enter Canada when they indicate to the officer that they wish to do so.

For more information on the above options, see ENF 4, "Port of Entry Examinations".

5.5. Suspected of security risk/human or international rights violations

Where the officer assesses there are reasonable grounds for suspecting the person is either a security risk or has violated human or international rights, the person should remain detained.

Intelligence information or lookouts from Immigration Refugees and Citizenship Canada (IRCC), the CBSA, the Royal Canadian Mounted Police (RCMP) or Canadian Security Intelligence Service (CSIS) are essential in assessing this type of situation. In addition, these organizations may provide the officer with evidence to support the inadmissibility grounds. A34 and A35 and R14 to R16 describe the factors that result in inadmissibility on grounds of security or for violation of human or international rights. For more information regarding the evidence required to find a person described in these sections, see Inadmissibility, ENF 1, Section 3.

If the officer, in conducting the examination, finds indications that the individual concerned might be a person to whom these sections apply, a detailed examination should follow with more specific questions, relevant to the activities and facts contemplated in A34 and A35. For cases of this type, the officer must contact the appropriate section of the National Security Division, CBSA, NHQ, to receive assistance and to be referred to security experts. It should be noted that this Division is available during regular business hours.

The officer shall pursue their research to establish whether the person is inadmissible for these reasons during the period of detention. Any actions or steps undertaken 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 required action to inquire into the reasonable grounds for suspecting that the permanent resident or foreign national is inadmissible on grounds of security or because of human or international rights violations.

5.6. Danger to the public

Where the officer assesses 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 offset through an alternative to detention. R246 lists 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(2);

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).

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 at the time of examination;
- violent or threatening behaviour at the time of examination;
- mentally unstable behaviour at the time of examination.

It must be established why the presence of one or more of these factors demonstrates that the person is a danger to the public. For instance, it is not enough to state that an individual represents a danger to the public by indicating the individual is the subject of a Minister of Immigration, Refugees and Citizenship's opinion under A101(2)(b). Specific details must support the rationale for the danger opinion. Facts or the criminal profile should clearly outline why the individual is a danger to the public.

A criminal record does not necessarily mean that the individual is a threat. 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.

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 menace to public safety. Conversely, there may be reasonable grounds for thinking that an individual with no criminal record is a danger to the public (for example, violent behaviour toward an officer during an examination). In such cases, if detention is warranted, the

default place of detention should remain an IHC if the risk the person poses can be mitigated in an IHC. Consideration should be given to short-term use of a wet cell to mitigate risk while determining if the person will pose an ongoing risk or if their behaviour changes.

Instability of the person associated with mental imbalance at the time of the examination may be a very important indicator in the assessment of the danger, and may point to future violent behaviour. Officers will have to secure the help of the necessary professional resources, in order to make the best possible assessment of the case. Medical staff at a CBSA IHC, or even local mental health resources, will be able to provide assistance and to indicate what action should be taken in this type of case.

5.7. Flight risk

Where the person poses a potential flight risk and providing removal is not imminent and no other concerns exist (i.e., identity, danger, security or violations of human or international rights), the officer should consider all ATDs.

Officers may detain an individual to ensure their presence for an examination, an admissibility hearing, or removal at a proceeding that could lead to the making of a removal order by the Minister's delegate under A44(2).

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.

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 responsible relatives or friends in Canada, who are prepared to provide a guarantee or surety;
- the credibility of the behaviour the person has demonstrated during the examination;
- availability of alternatives to detention and whether sufficient to mitigate the flight risk.

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 examination as well as all other circumstances of the case.

Alternatives to detention must be considered and weighed against the potential flight risk identified. Officers must clearly document which alternatives to detention have been considered and how they will not mitigate the associated risk. Where detention for removal is being considered, attention should be given to the imminence of the removal (that is, all efforts have been exhausted to obtain a valid travel document, and arrangements can be made) when making a decision to detain for flight risk. If removal is not imminent, officers should give additional weight to the use of an alternative to detention so as to avoid potentially lengthy detention, while removal arrangements are being worked out.

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

5.8. Identity

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.

A55(2)(b) allows an officer to arrest and detain, without a warrant, a foreign national, other than a protected person (the term protected person is defined in A95(2)), if the officer is not satisfied as to the identity of the foreign national in the course of any procedure under this Act.

R247(1) lists the following factors to be considered:

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.

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.

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.

This provision must be read in conjunction with A58(1)(d), which stipulates that the Immigration Division shall order the release of the foreign national unless it is satisfied, taking into account prescribed factors, that

- the Minister's delegate is of the opinion that the identity of the foreign national has not been, but may be, established;
- the foreign national has not reasonably cooperated with an officer or the Immigration Division by providing relevant information for the purpose of establishing their identity; or
- the Minister's delegate is making reasonable efforts to establish the identity of the foreign national.

The IRPA provides for a foreign national to be released if they have reasonably cooperated by providing relevant information and if, despite reasonable efforts by the Minister's delegate, 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 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. In some circumstances, the "Identity Information Form" [IMM 5007B] is useful in capturing the efforts made by officers to establish identity. The following are some steps that may be taken to establish a person's identity:

- photograph and fingerprint the person concerned, and send the prints and photos to the RCMP;
- search the Canadian Police Information Centre system and the National Crime Information Center in the United States;
- conduct a paper investigation of the file to locate names and addresses of associates, employers or relatives;
- ask for the opinion of an interpreter concerning the dialect employed by the person concerned and any observations the interpreter might make;
- interview the person concerned on a regular basis;
- interview the friends, relatives and co-workers of the person concerned;
- have the person concerned interviewed by the embassy of the country of which the officer thinks the person is a citizen (does not apply to a person asking for protection).

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.

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.

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).

5.9. 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.

R248 sets out the factors to be considered in a detention or release decision as directed in two Federal Court decisions, *Sahin v. M.C.I., [1995] 1 F.C. 214* and *Kidane v. Canada* (*Minister of Citizenship and Immigration*, Federal Court (IMM-2044-96, 11th July, 1997). For details on these two decisions, see Section 5.14, Jurisprudence in these guidelines.

These cases provide guidance to decision-makers as to the factors that warrant consideration in decisions concerning detention or release. Consideration of the above factors allows for limitations on immigration detention, particularly in the case of long-term detention. However, neither of these decisions preclude detention, particularly long-term detention.

Detention is feasible where:

- public safety is at issue;
- after serious consideration, alternatives to detention are not available or suitable to mitigate the risk to public safety or flight risks;
- the length of detention can be determined or estimated, that is, when will there be a conclusion to the process, for example, arrangements in place for removal or an estimated time to establish the person's identity; and
- any delays are caused by the detained individual and not the CBSA.

5.10. 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).

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. 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, 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.

For complete information on the detention of a minor, see Appendix 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.

5.11. Vulnerable groups

A vulnerable person in the detention context is defined as a person for whom detention may cause a particular hardship. The vulnerable groups are

- pregnant women and nursing mothers;
- minors (under 18 years of age) (see section 5.10, "Detention of minor children");
- persons suffering from a severe medical condition or disability;
- persons suffering from restricted mobility;
- persons with a suspected or known mental illness;
- victims of human trafficking.

To 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 continued care for feeding 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.

For persons falling into one or more of these groups, 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 officer's notes should detail efforts that have been taken to find a suitable alternative to detention, and the NRAD form (see section 9.1) must clearly identify the individual as a vulnerable person.

5.12. Alternatives to detention

The detentions program is based on the principle that detention shall be used only as a last resort and only after appropriate alternatives to detention have been considered and determined to be unsuitable or unavailable.

For detailed policies and procedures concerning alternatives to detention, refer to ENF 8, Deposits and Guarantees. Further guidance will be provided in the future in ENF 34, Alternatives to Detention (April 2018). The following are examples of conditions that may be imposed at the discretion of the officer or at the request of a hearings officer at a detention review:

- report, when requested to do so by an officer, to any place, on any date and at any time for the purposes of arranging for their departure and removal from Canada;
- report to an officer at the CBSA office nearest to their residence at the date and time stipulated and thereafter (indicate frequency, e.g., every Tuesday);
- report to the Immigration Division of the IRB at the date and time stipulated, as required by the Immigration Division for their admissibility hearing and for any continuation thereof;
- report for any appointments ordered by an officer, at the place, date and time stipulated;
- inform the CBSA in writing without delay of any criminal charges or convictions.

If a person decides to leave Canada, they must notify an officer of their departure arrangements and have their departure verified by an officer;

For persons claiming refugee protection, the following conditions are generally applied:

- the person must not work or study in Canada without written authorization from an officer;
- the person must comply with the instructions issued by IRCC or the CBSA;
- the person must comply with all instructions contained in the IRB's notice to appear;
- the person must undergo a medical examination within the number of days stipulated after receiving the medical instructions (medical report and list of panel doctors).

Before releasing a person, the officer must ensure that the person's fingerprints and photograph are on file and that all travel documents and other important documents have been seized and placed on the file. See ENF 7, Investigations and Arrests, for procedures relating to the seizure of documents and fingerprinting.

If the officer is concerned that the detained person will not appear if released, the officer may release the person to a guarantor who is prepared to take responsibility for the person concerned. Officers must be satisfied that the guarantor will be able to exercise enough control over the released person to ensure their appearance at immigration proceedings. Officers must also assess the reliability of the proposed guarantor. For example, if the guarantor has already failed to observe the conditions of a previous performance bond, the officer will be less inclined to release the person concerned without requiring a security deposit.

In the case of a foreign national who makes a claim for refugee protection, the application for a passport or travel document must not be divulged to government officials of their country of nationality as required by section R250. In the case of a person with no country of nationality, their country of previous habitual residence will not be informed of their claim for refugee protection, as long as the removal order to which they are subject is not enforceable.

5.13. Extra

Reserved for future use.

5.14. Jurisprudence

In *Sahin (supra)*, 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. 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. 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.

However, the Federal Court also determined in *Kidane (supra)* that when an adjudicator found that a person was a danger to the public and that the person refused to cooperate in speeding up their removal, prolonged detention could be more easily justified. In the *Kidane* case, the individual concerned argued that prolonged detention violated his rights as guaranteed by the *Canadian Charter of Rights and Freedoms*. The adjudicator had found that the individual was a danger to the public, that he was to a large extent responsible for the procedural delays that had prolonged his detention, and that in the final analysis, there were no real alternatives to detention. The Court was of the opinion that the adjudicator had properly applied the four-part test set out in *Sahin*, and the prolonged detention of the individual did not violate his rights under the Charter. Consequently, even though the length of detention could not be confirmed, the Court upheld the adjudicator's decision to prolong the individual's detention.

Please refer to more recent jurisprudence for further guidance.

5.15. Rights of detained persons

Rights are conferred under the Charter and the Vienna Convention on Consular Relations and Optional Protocols (the Vienna Convention).

For detailed information regarding the rights of person detained, including the right to retain and instruct counsel and the right to have the nearest representative of the government of their country of nationality informed of the arrest and detention, see "Investigation and Arrests", ENF 7, Section 16.2 and ENF 7, Section 16.3.

5.16. Right to a detention review

In order to ensure management oversight and visibility of all detention cases, all decisions to maintain detention (section A55) and the admission of an individual to a detention facility must be reviewed and approved by a Chief of Operations or a higher regional authority for all port of entry detention cases and by an inland supervisor, manager or higher regional authority for all inland cases. If, upon internal review, the detention decision is upheld, then 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. If, upon internal review, the reviewing authority disagrees with the officer's decision to maintain detention, they may render a new decision under section A56 and release to the individual.

Should an individual be subject to a 48-hour detention review and detention be maintained by the 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.

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.

The IRPA contains specific provisions governing the detention of a person who is named in a certificate. These detention reviews all occur before the Federal Court and the Minister of Public Safety and Emergency Preparedness is represented by the CBSA legal counsel.

Although it is not a right, refugee claimants should be provided with the telephone number and an opportunity to call the local UNHCR representative or a local organization that provides assistance to refugees. Assisting refugee claimants in this way is beneficial to officers as it may help to reduce the individuals' stress level. In addition, these organizations can identify possible alternatives to detention.

5.17. Person named in a certificate described in A77

For persons described in a security certificate under A77(1), the release and detention criteria, and detention review provisions differ from those described in Division 6 of IRPA. The Federal Court Trial Division will conduct detention reviews when needed.

A82(1) provides that when a permanent resident is named in a certificate, the Public Safety Minister may issue a warrant for the arrest and detention of that person if they have reasonable grounds to believe that the permanent resident is a danger to national security or to the safety of any person or is unlikely to appear at a proceeding or for removal. The first detention review must occur within 48 hours after the beginning of the detention. Until a decision is reached regarding the certificate, the permanent resident shall appear for a detention review at least once in the six months following each previous review, or on the authorization of the judge.

A82(2) provides the authority for a foreign national who is named in a certificate is to be detained without a warrant. There is no requirement for a detention review until a decision on the certificate is rendered under A80(1). According to A84(2), if the foreign national has not been removed from Canada within 120 days of the certificate being found reasonable, then the foreign national may apply to the Federal Court for release from detention. The Federal Court will consider the application and render a decision.

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)	A policy or practice that facilitates the release of individuals from detention or enables individuals to avoid being detained at an IHC, a provincial facility or any other facility for reasons relating to their immigration status. ATDs allow individuals to live in community-based settings while their immigration status is being resolved. ATDs include community programming (in-person reporting, cash or performance bonds, community case management and supervision) and electronic supervision tools, such as voice reporting, where available.
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 *Convention on the Rights of the Child*. 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 Convention on *the Rights of the Child* 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(2)	For the purposes of A121(1)(b), "criminal organization" means an organization that is believed on reasonable grounds to be or to have been engaged in activity that is part of a pattern of criminal activity planned and organized by a number of persons acting in concert in furtherance of the commission of an offence punishable under an Act of Parliament by way of indictment or in furtherance of the commission of an offence outside Canada that, if committed in Canada, would constitute such an offence.
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. Importance of notes in the file

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 file, to enable others to understand the rationale for the decision. In addition, the officer's notes may be produced before a court or in the context of a judicial review.

When documenting their decision, officers should follow the following principles:

- Ensure that **all** detention decisions are documented in detail on the individual's file and that all associated forms are completed with relevant facts to justify the detention decision, including an analysis of why available alternatives to detention are not considered appropriate.
- Ensure that all officers' notes are documented in the file and in the officers' notebooks. 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.
- Complete the following forms and provide a copy each to the receiving detention facility: "Order for Detention" [BSF 304], "National Risk Assessment for Detention" [BSF 754] and "Detainee Medical Form" [BSF 674].
- Save these forms in GCMS as attachments. To ensure consistency and the ability to track, save the "National Risk Assessment for Detention" form [BSF 754] and the "Detainee Medical Form" [BSF 674] at the following path: Clients>Documents>ID Supporting documents sub tab, then select type "CDN Immigration Doc", sub-type "Client Submission" and document # "BSF754" or "BSF674".

A detailed decision will help those involved, specifically the hearings officer, 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).

The prescribed factors relating to detention and release in the Regulations can be used as a basis when an officer anticipates the need to detain an individual because they represent a flight risk or a danger to the public or because there is doubt regarding the individual's identity. 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. Thus, each file contains unique details that must be considered in conjunction with the Regulations and that may, when taken alone, lead the officer to conclude that detention is the only alternative.

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. This does not preclude the possibility that a fact or piece of evidence taken alone may be sufficient to warrant detaining an individual.

Although each case must be assessed individually, the prescribed factors are a tool that ensures a high degree of transparency. Indeed, the purpose is not only to determine that a person represents a flight risk

or a danger to the public or that there is doubt regarding his or her identity. The officer must also show that the facts underlying his or her decision are defined in one of the prescribed factors or that they are sufficiently important to warrant detention or the consideration of an alternate measure. For procedures on taking notes, see ENF 7, Section 13.

8. Procedure: Detention

Arrest

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

Detention

Having considered ATDs, if an officer determines that detention is the best solution to ensure that immigration procedures are carried out, the following procedures apply:

- In accordance with Section 10 of the *Canadian Charter of Rights and Freedoms* and in accordance with the rules of natural justice, the detained person must be informed of the reason for their detention, the right to an interpreter and the right to retain and instruct counsel without delay.
- In accordance with article 36 of the Vienna Convention, a person detained in a foreign country must be advised of their right to contact consular officials of their own country without delay.
- The officer must complete the "Order for Detention" form [BSF304]. The original of this form will be given to the authority responsible for detaining the person and a copy must be placed in the detained persons file. The purpose of the detention order is to detain the person in accordance with the provisions of IRPA.
- The officer must complete the "National Risk Assessment for Detention" form [BSF 754] and the "Detainee Medical Needs" form [BSF 674].
- In order to ensure management oversight and visibility of all detention cases, all decisions to maintain detention (section A55) and the admission of an individual to a detention facility must be reviewed and approved by the following:
    - a superintendent (FB05) or a higher regional authority for all port of entry cases
    - an inland supervisor or manager (FB05/FB06) or a higher regional authority for all Inland cases
- An order for detention must be issued only when grounds for detention exist under section A55. Detention orders should not issued for accompanying minors if they do not meet the detention grounds under the IRPA.
- Further, a detention order should not be issued solely to facilitate transport from local police cells to a CBSA office. The CBSA does not need to detain someone to transport them to immigration proceedings. If the individual consents to be transported by the CBSA, the CBSA may do so.

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 immediately. This is particularly true for detention initiations and releases from detention. The NCMS must

be used for tracking all “Immigration holds” originating at a POE, as well as those that originate at inland offices. If an immigration hold detention originates at a POE 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 (regional policy will determine which office is responsible for entering a POE detention into NCMS). For procedures on entering detention data into NCMS, please see the NCMS standard operating procedures.

Further to the directive on detention governance, to ensure consistency and the ability to track cases, all NRADs and “Detainee Medical Needs” forms must be saved in GCMS. Please save the “National Risk Assessment for Detention”form [BSF 754] and the “Detainee Medical Form” [BSF 674] at the following path: Clients>Documents>ID Supporting documents sub tab, then select type “CDN Immigration Doc”, sub-type “Client Submission” and document # “BSF754” or “BSF674”.

The forms are available in a fillable PDF allowing officers to sign them with an electronic signature and upload them directly to GCMS.

Persons serving a sentence

For complete information on the procedures for persons serving a sentence, see chapter ENF 22.

Housing of minors

A housed minor is not subject to an “Order for Detention” form [BSF 304]. A detention order should only be issued where the IRPA grounds for detention of the minor are met. For complete information on the housing of minors, see the National Directive for the Detention or Housing of Minors.

8.1. Review of detention decision

The CBSA is currently in the process of reviewing its governance and oversight mechanisms regarding immigration detention decisions. While this review is undertaken**, the following measures are in effect:**

Officers **must** ensure that the consideration of all currently available **ATDs are factored** into each decision related to the potential detention of an individual under the IRPA (that is, deposits, guarantee, the imposition of terms and conditions, in-person reporting, voice reporting [GTA only], Toronto Bail Program [GTA only]). The presumption should be that release is the preferred option unless alternatives to detention are not appropriate to offset the risk the individual presents or cannot be implemented at the time of the detention. Should alternatives to detention be deemed unsuitable, the officer must justify, in writing, what ATDs were considered and how they were deemed unsuitable **before** making a decision to detain. The officer’s notes should be clearly articulated on the “Notice of Arrest (NOA)” [BSF 561].

- If release on an ATD is deemed appropriate but it is not possible to effect release within a reasonable period of time (depositor not available, time needed to raise cash for deposit, release plan to be put into place, etc.), transfer to an admitting detention facility (that is, an IHC or a provincial correctional facility) may be warranted until release can be effected. In such a case, the proposed ATD should be clearly documented and release effected as soon as possible.
- In order to ensure management oversight and visibility of all detention cases, **all** decisions to maintain detention (section A55) and the admission of an individual to a detention facility **must be reviewed and approved by the following**:

    - A chief of operations (FB07) or a higher regional authority for all port of entry cases
    - An inland supervisor or manager (FB05/FB06) or a higher regional authority for all inland cases
- Please note, it is strongly recommend that the person conducting this review have experience in the application of the IRPA or completed relevant training such as Immigration for Chiefs and Directors (S6014-N).
- All decisions to maintain detention and detention placement decisions **must** be reviewed and approved by the above authorities **before** the admission of a detainee to an admitting detention facility. Should one of the above authorities not be available onsite when continued detention is being considered, officers should contact management at another location or a duty manager who meets the requirements, including in another region as necessary. This consultation should be clearly documented on file and in GCMS notes.
- The review of a detention decision made under section A55 may result in two outcomes:
    - The reviewing authority concurs with the officer's decision to maintain detention and admit the individual to a detention facility.
    - The reviewing authority disagrees with the officer's decision to maintain detention and renders a new decision under section A56 to release the individual.

All management review and subsequent decisions must be documented in accordance with all of the below directions.

- The reviewing authority must undertake the following as part of the review of a 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;
    - that all currently available **ATDs** have been considered, and documented evidence is on file to understand why ATDs are considered unsuitable to mitigate risk factors that are present;
    - that the decision to detain is supported by **relevant and articulated facts** that are tied to a detention authority (for instance, risk to public safety, flight risk, identity concerns, completion of an examination or designated foreign national); the identified risk factors must be clearly linked to an enforcement or immigration outcome that is at risk of not being achieved without detention.
- That the placement of an individual within an IHC or a provincial facility is aligned with the considerations outlined in the "National Risk Assessment for Detention" form, and that complete documents and officer notes justifying placement are on file before the detention occurs. Detention placement **shall default to an IHC** where possible. The presence of criminality **must not** automatically send an individual to a provincial facility. Suspected medical or mental conditions **must not** automatically send an individual to a provincial facility. Officers must consult with the IHC officer or manager if they have any questions about risk mitigation.
- Regions in close proximity to an IHC may wish to consider transfer to an IHC when feasible. Any such transfer must be done in consultation with the IHC and region receiving the detainee. Further policy regarding detainee transfer will be developed in the near future.
- When placement in a provincial facility is made, officers must clearly document why the level of risk posed by the individual could not be mitigated within an IHC.
- That **all** appropriate documentation is complete (for instance, Notice of Arrest, Order for Detention, National Risk Assessment for Detention, National Risk Re-Assessment for Detention, Detainee Medical Form, Request for Admissibility Hearing / Detention Review pursuant to the Immigration Division Rules, Report Under Subsection 44(1), Minister's delegate review, Order of the Canada Border Services Agency to Deliver Inmate under A59, Detention Cell Log and Instructions, Detention

Cell Log and notes to file, as relevant) and information is documented in GCMS and NCMS, as appropriate, and placed on the individual's file.

The Enforcement and Intelligence Operations Division (EIOD) in each respective region is responsible for the regional detentions program. Before the first detention review by the Immigration Division, should the EIOD determine that the detention should no longer be continued, a decision to release under section A56 may be rendered. The EIOD may further render a new decision related to the detention placement of an individual.

8.2. Informing the IRB of a detention review

If the initial detention decision is upheld, 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. The officer must, forthwith, notify the registry of the Immigration Division by sending a "Request for admissibility hearing/detention review pursuant to the Immigration Division rules" form [BSF524] 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".

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 officer reviewing detention. Officers must also ensure that the information concerning the detention of an individual is entered in the appropriate screens of the National Case Management System (NCMS).

9. Procedure: 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 an admitting detention facility. Examples of admitting detention facilities include IHCs and provincial correctional facilities. The transfer of a detainee to an admitting detention facility or the transfer to another detention facility will not be used as a form of punishment.

Before a detainee transfer, an officer should provide in writing to the detainee the name, address and telephone number of the receiving detention facility. Also, the "National Risk Assessment for Detention" form [BSF754] and the "Detainee Medical Needs" form [BSF674] must be filled out to ensure the safety and well-being of the detainee, other detainees and staff. The receiving detention facility staff will be provided a copy of these forms.

9.1. National risk assessment for detention

The intent of the "National Risk Assessment for Detention" (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.

NRAD risk factors #1 and #2 allocate points if a detainee is possibly inadmissible due to security grounds or organized criminality. Officers may select the option “reasonable grounds to suspect” only if the detention has been ordered under subsection 55(3) of the IRPA.

NRAD 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.

For the purpose of completing NRAD 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 chosen. These questions apply to persons who have committed violent acts associated with inadmissibility pursuant to paragraph A35(1)(a). 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	• Theft (section 322) • Operation while impaired (section 253) • Fraud (section 380)
Threats or violent crime	• Uttering threats (section 264.1) • Assault (section 265) • Sexual assault (section 271) • Includes all severely violent crimes (see below)
Severely violent crime	• 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)

NRAD risk factor #6 allocates points if a detainee, in the last two years, was involved in a major breach of CBSA or detention facility rules. 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).

NRAD 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.

NRAD vulnerability factor #9 reduces points if a detainee is part of a vulnerable group. Only one vulnerable group can be selected even if the detainee is part of more than one vulnerable group. For information on vulnerable groups, see section 5.11.

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 an IHC exists, officers are encouraged to make a decision in consultation with an officer who works at an IHC, a detainee liaison officer or a designated regional representative. In these regions, an officer's decision for placement into an IHC **may** be reviewed by an officer or a manager who works at an IHC. Furthermore, the decision to send a detainee to a provincial correctional facility **must** be reviewed by an officer or a manager who works at an IHC 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., incidents). 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.

Subsequent assessments must be supported by information to corroborate the status quo or the change in the facility type for detention. Changes in the person's level of risk and the ability to mitigate that risk within an IHC should be considered at each 60-day review or whenever there is a material change in circumstances.

Following each completed assessment or modification made by an officer or a manager who works at an IHC, the detainee must be informed of the risk 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. Details of the key risk factors, the detainee's behaviour, details given by the detainee and any other elements supporting the officer's decision must be recorded in the decision section. 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. 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 (by hand, by mail or electronically); and
- the IHC or the provincial correctional facility.

Each completed NRAD form [BSF 754] must be saved in GCMS under the detainee's UCI:

- Navigate to the Clients>Documents>ID Supporting documents sub tab.
- Create a new record.
- Select the following options:
    - Type: CDN Immigration Doc;
    - Sub Type: Client Submission;
    - Document #: BSF754;
    - Country of Issue: Canada;
    - Document Name: National Risk Assessment for Detention;
    - Complete the Issue Date;
- Add a new attachment in PDF.

In addition, 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 groups.

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 must be reviewed and approved by a superintendent (at a POE) or supervisor (inland) in accordance with section 8.1 of this manual chapter. If they concur with the officer, the reviewer must sign the NRAD in the section included for that purpose. Should the reviewer disagree with the officer, the reviewer must complete a new NRAD and clearly indicate the reasons for their decision.

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].

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. For more information, officers should

complete the online training course entitled “Prevention of Suicide and Self-Harm among Detainees” available through the CAS portal.

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

Each completed DMN form [BSF 674] must be scanned and saved in GCMS under the detainee’s UCI:

- Navigate to the Clients>Documents>ID Supporting documents sub tab.
- Create a new record.
- Select the following options:
    - Type: CDN Immigration Doc;
    - Sub Type: Client Submission,
    - Document #: BSF674;
    - Country of Issue: Canada;
    - Document Name: Detainee Medical Needs;
    - Complete the Issue Date;
- Add a new attachment in a pdf format.

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 2, on the vehicular transport of persons under arrest or detention.

10. Procedure: Release by officer

Before the first detention review (48 hours review)

In the event that the grounds for detention cease to exist before the Immigration Division has conducted a detention review, the officer may release the person being detained.

An officer, a chief or a supervisor may release a permanent resident or foreign national before the first review by the Immigration Division if they think that the grounds no longer exist or do not warrant detention. Likewise, the "Authority to Release from Detention" form [BSF566] must be served on the authorities of the detention centre holding the individual.

If the officer is of the opinion that release is the best alternative, they may require the imposition of conditions deemed necessary and appropriate, such as a security deposit, to ensure that the client will be present for further proceedings. Those conditions must be included on the "Acknowledgement of Conditions – IRPA" form [IMM 1262E] where the officer releases an individual and a signed copy should be given to the person concerned.

If the conditions for release involve the use of an ATD, refer to ENF 34, Alternatives to Detention (to be released April 2018), and ENF 8, Deposits and Guarantees.

After the first detention review (48-hour review)

When the Immigration Division has jurisdiction, officers may seek an early detention review for the purpose of expediting release. For more information on detention review pursuant to the Immigration Division Rules, see ENF 3, Admissibility, Hearings and Detention Review Proceedings.

11. Detention facilities

The CBSA uses multiple detention facilities based on the individual's level of risk and the region in which they are being detained.

11.1. IHCs

The IHC should always be the default detention facility if risk can be mitigated. Individuals detained under the IRPA who have scored 0 to 9 points on the "National Risk Assessment for Detention" form [BSF754] should be held in a CBSA IHC, in regions where those facilities are available. This generally applies to those persons who may pose a risk that can be mitigated in an IHC. For IHCs, the CBSA contracts with private companies for guarding services. 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.

11.2. Provincial correctional facilities

In all other regions not served by an IHC, individuals detained under IRPA who have scored 5 points or more on the "National Risk Assessment for Detention" form [BSF754] may be held in a provincial

correctional facility or a remand facility. This generally applies to those persons who pose a risk that cannot be mitigated in an IHC. In addition, this includes individuals detained over 48 hours in the Pacific Region.

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. The officer must conduct frequent (at least once every 15 minutes) physical checks of any individual held in a CBSA short-term detention room or cell by using the "Detention cell log and instructions" form [BSF481] and the "Detention cell log" form [BSF481-1].

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 at the systems level 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 detainees to ensure that the CBSA's immigration detention program meets both national and international immigration detention standards. Under the contract, the CRC will conduct up to 86 site visits annually, 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:

- 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 to conduct their confidential meetings.
  In cases where the CRC is denied access to non-CBSA facilities, the CBSA Region or Headquarters 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) that is required by the CRC to effectively conduct monitoring visits with detainees and that is relevant to assess detention operations. These data elements do not identify any individual(s) and are not considered personal information.
  Following the initial detention review by the 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 being detained or housed in detention who are under the age of 18 and of persons who are unable to appreciate the nature of proceedings before the IRB.
  The CBSA will notify the CRC when an emerging issue or incident occurs (such as a hunger strike, allegations of abuse or a death incident) so that the CRC may conduct a monitoring visit to ensure the well-being of other detainees and the detention environment.

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

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)].

Appendix 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 2016[1] 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 B). 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 of=r 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 of 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 A). 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 of 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 A).
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 the 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 A – Child protection services and family centres

- Atlantic
- 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
    - Services d'immigration DJP, 514-239-1287
- 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, Dresdon, Erie Beach, Erieau, Highgate, Ridgetown, 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
- Pacific
    - Ministry of Children and Family Development (13 offices)
    - Ministry of Children and Family Development, (Vancouver) 604 660-4927 or 310-1234

Annex B – 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