

Review of the Arrangement Between Canada Border Services Agency and BC Corrections, Adult Custody Division

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Acronyms

Abbreviation	Definition
ACCW	Alouette Correctional Centre for Women
ATD	Alternative to Detention
CBSA	Canada Border Services Agency
CA	Correction Act (British Columbia)
CAR	Correction Act Regulation (British Columbia)
FRCC	Fraser Regional Correctional Centre
IHC	Immigration Holding Centre
IRB	Immigration Refugee Board
IRPA	Immigration and Refugee Protection Act
NIDS	National Immigration Detention Standards
NRAD	National Risk Assessment for Detention

Introduction

The Canada Border Services Agency (CBSA) is responsible for managing the immigration detention process for individuals subject to detention under the Immigration and Refugee Protection Act (IRPA).

CBSA officers exercise their authority to arrest and detain permanent residents or foreign nationals who are deemed to be inadmissible to Canada as governed by the IRPA and its regulations. Individuals can be detained pursuant to the IRPA if they are a danger to the public, a flight risk, or if their identity cannot be established.

A decision to detain a person is subject to a review by the Immigration and Refugee Board (IRB), an independent quasi-judicial tribunal. Detainees must appear before the IRB within the first 48 hours of being detained. At a detention review, the IRB may release the person, identify conditions for release, or determine that detention should continue. If the IRB determines that detention is appropriate, the individual must appear before the board within the next seven days, and every 30 days thereafter, to review if the reasons for detention continue to exist.

The CBSA's immigration holding centres (IHC) are the default place of detention where they are available (Laval, Quebec; Toronto, Ontario; and Surrey, British Columbia). When the risk a person poses cannot be mitigated through an alternative to detention (ATD), or within an IHC, or where there is no IHC available, the immigration detainee is placed in a provincial correctional centre, subject to arrangements the CBSA has with each province or territory.

In March 2020, the CBSA opened an IHC in Surrey, B.C., replacing the former IHC at the Vancouver International Airport. The new facility provides separate living units for men, women and families and can accommodate up to 70 individuals subject to immigration detention.

As outlined by the CBSA¹, their officers complete a National Risk Assessment for Detention (NRAD) for all detainees to identify risk and vulnerability factors related to their detention. This process is characterized by two central considerations: risk to public safety and risk to the integrity of the immigration system. Based on the results of the NRAD, officers may refer detainees to placement in an IHC or a provincial correctional centre.

¹ Canada Border Services Agency Stakeholder submission to review (p. 4, 5).

The assessed level of risk is based on factors, including:

- Participation in organized crime
- Number of years since the last known offence or conviction
- Number of known convictions involving violent crime
- Existence of outstanding charges or a serious incident during arrest
- Involvement in a major breach of the detention facility rules
- Previous escape or attempted escape
- An unexecuted criminal warrant for arrest
- Whether the individual is considered vulnerable (pregnant, nursing, under the age of 18, medical condition, restricted mobility, mental illness, and/or victim of human trafficking)

According to the CBSA, they are exploring options for developing a more robust IHC capacity in all regions of Canada. Even once these facilities have been completed, the CBSA indicates they will rely on provinces and territories to detain immigration detainees with serious risk of criminality who can neither be safely detained in an IHC nor released on ATDs.

As part of the provincial justice and public safety sector, BC Corrections plays an important role in advancing a shared vision of a safe, secure, and just British Columbia. Similar to other provincial and territorial jurisdictions in Canada, there is an arrangement between the CBSA and the Ministry of Public Safety and Solicitor General (PSSG), BC Corrections, Adult Custody Division (ACD) (the Arrangement) to hold immigration detainees in provincial correctional centres. The Arrangement identifies the roles and responsibilities of each party, including information sharing, transportation, placement, health care and the daily rate of reimbursement for holding immigration detainees in provincial correctional centres.

Stakeholders have been critical of the Arrangement, including Amnesty International and Human Rights Watch², citing concerns that placing immigration detainees in provincial custody across Canada results in:

- Placements with individuals in custody who have been sentenced or awaiting trial on criminal matters
- Likelihood of being placed in segregation or separate confinement

² In June 2021, Amnesty International and Human Rights Watch detailed their concerns in a joint report: *"I Didn't Feel Like a Human in There": Immigration Detention in Canada and its Impact on Mental Health*.

- Exposure to violent incidents
- Lack of health care and/or mental health supports
- Use of security protocols such as searches, handcuffs, etc.

This document summarizes the review of the Arrangement respecting the management of individuals subject to lawful detention under the IRPA. All aspects of the Arrangement were reviewed, including whether it aligns with BC Corrections' mandate and with international and national legal frameworks. Additionally, the following areas were examined:

- The profile of immigration detainees in provincial correctional centres including demographics, length of stay, placement, time spent in segregation, access to health services and impact on centre resources
- Provincial and territorial partners' experiences with immigration detention and related arrangements with the CBSA
- The cost of holding detainees in provincial custody, including a net recovery/loss analysis
- Stakeholder input through written submissions specific to the experiences of individuals detained for immigration reasons in provincial correctional centres in B.C.

The scope of the review was limited to adults (18+) who are held on an order of detention issued by the CBSA under the authority of the IRPA and includes foreign nationals and permanent residents who may be inadmissible to Canada (collectively referred to as "immigration detainees" in this report).

The following were not in scope of the review: individuals who are held with dual status (i.e., those subject to both court-ordered detention and immigration detention), individuals under the age of 18 who are held on an order of detention for immigration purposes, and family units held on an order of detention for immigration purposes.

Research Methodology

Both a quantitative and qualitative approach to data collection provided a comprehensive evaluation of the current Arrangement. All data is primary (that is, collected by BC Corrections) and descriptive.

The quantitative data reflects immigration detention from 2016–2021 to examine the following:

- The total number of unique individuals and average daily counts of individuals in custody each year, for both the overall population and immigration population
- Demographics of immigration detainees, including age, gender, ethnicity, length of stay, mental health needs, involvement in violent incidents, and placement in specific units.

In addition, a snapshot for all immigration detainees held at Fraser Regional Correctional Centre (FRCC) from March 1 to March 31, 2022, was examined to provide a summary of the current status of immigration detention in provincial custody and its impact on correctional centre resources. Individuals represented in the snapshot were not captured in the 2016–2021 data set because their term of detention with BC Corrections has not yet ended. It should be noted that FRCC is the primary centre for holding immigration detainees in provincial custody, and Alouette Correctional Centre for Women (ACCW) is the primary centre for holding female immigration detainees. This data also informed an examination of the impact of immigration detention on centre resources through a net cost/recovery analysis.

The qualitative data supplements the evaluation by describing individual experiences and systemic concerns associated with the practice of holding immigration detainees in provincial correctional centres. It includes written submissions from stakeholder organizations regarding the practice of holding immigration detainees in provincial correctional centres.

Quantitative data specific to the provision of health care across provincial correctional centres was not included in the review. It is currently not possible to disaggregate data related to the use of medication and other healthcare services for individuals detained for immigration reasons. Information regarding use of health care services is included in the section outlining immigration detention at FRCC.

Discussion: Profile of Immigration Detainees in Provincial Correctional Centres, 2016–2021

Number of immigration detainees

Since 2016, the total number of immigration detainees has steadily declined from 481 individuals to 71 in 2021. Although the total number of individuals in custody has also declined during this time, the proportion of detainees to the total number of individuals in custody has significantly declined since 2019, from 4.5 percent of the overall custody population to 1.0 percent.

The decline can be attributed, at least in part, to the COVID-19 pandemic and to the opening of the CBSA's IHC in Surrey, which is suitable for lower risk individuals. Since the onset of the COVID-19 pandemic in March 2020, the CBSA has taken measures to find ATDs so individuals can safely remain in the community, as appropriate.

Table 1: Proportion of immigration detainees to individuals in custody, 2016–2021

Year	Total individuals in custody ³	Immigration Detainees in custody ⁴ (represented as a proportion of total custody population)	Proportion of immigration detainees to total custody population (%)
2016	12,718	481	3.8
2017	12,453	503	4
2018	11,647	409	3.5
2019	11,003	499	4.5
2020	7,747	159	2.1
2021	7,098	71	1.0

³ Represents the number of unique individuals who spent at least one day in custody in a given year.

⁴ Represents the number of unique immigration detainees each year. Note that individuals are only counted once in each year (the year they were admitted), even if they have multiple stays in custody as an immigration detainee in a given year.

Ethnicity

Although data regarding an individual's country of origin is not collected by BC Corrections, ethnicity information is collected during the intake process and is based on self-identification. From 2016–2021, the average annual number of immigration detainees broken down by ethnicity is as follows:

Table 2: Immigration detainees by ethnicity, yearly average, 2016–2021

Ethnicity	Average annual number of detainees	Average annual proportion of all detainees (%)
Asian	50	14
Black	38	11
Caucasian	61	17
South Asian	65	18
Hispanic	73	21
Other/Unknown ^a	67	19

Table note a: Includes groups not tracked by BC Corrections and individuals who do not self-identify/disclose ethnicity.

Mental health needs

The total number of immigration detainees with mental health needs⁵ has varied throughout the past five years. While the majority of immigration detainees do not have an identified mental health need, the proportion of detainees with mental health needs has steadily increased since 2016 (from 8.1 to 29.6 percent).

The increase in proportion of immigration detainees with mental health needs may be attributed to the opening of the IHC in Surrey to hold lower risk individuals in the region, as well as the CBSA's focus on ATDs, and lower overall counts due to the COVID-19 pandemic. Specifically, a lower overall number of detainees, in combination with higher risk and complex needs individuals continuing to be placed in provincial correctional centres, helps to explain this proportional growth.

⁵ Mental health need is identified and designated by correctional staff based on client history and current behaviour and is not indicative of a medical mental health diagnosis.

Table 3: Total immigration detainees with mental health needs, 2016–2021

Year	Immigration detainees with mental health needs	Proportion of all immigration detainees (%)	Total immigration detainees
2016	39	8.1	481
2017	29	5.8	503
2018	35	8.6	409
2019	41	8.2	499
2020	22	13.8	159
2021	21	29.6	71

Gender

Of the immigration detainees held in 2021, 65 were male and six were female. The proportion of female detainees has steadily declined from representing 14.8 percent of the detainee population in 2016 to 8.5 percent in 2021.

Table 4: Gender of immigration detainees, 2016–2021

Year	Male	Female	Unknown	Female proportion of all detainees (%)	Total immigration detainees
2016	410	71	0	14.8	481
2017	440	63	0	12.5	503
2018	358	50	1	12.2	409
2019	447	52	0	10.4	499
2020	146	13	0	8.2	159
2021	65	6	0	8.5	71

Female immigration detainees have a different experience from their male counterparts while in provincial custody. The larger number of male detainees means a greater likelihood they may be placed together at FRCC in a living unit dedicated to immigration detainees, separate from the rest of the correctional centre population.

Female detainees are primarily held at ACCW, a centre with unique design, staffing models and programs dedicated to women. However, due to the smaller number of females in custody, there may be only one or two immigration detainees at any given time at ACCW. This necessitates housing immigration detainees with the general correctional population while in provincial custody, which results in female immigration detainees being placed on living units with other females who are sentenced or awaiting trial for criminal matters.

Age

Between 2016 and 2021, on average, 87 percent of immigration detainees were between 21 to 50 years old.

Table 5: Age⁶ of immigration detainees, 2016–2021

Year	20 and younger	21 to 30	31 to 40	41 to 50	51 to 60	61 and older	Total
2016	5	153	152	114	42	15	481
2017	10	160	176	106	34	17	503
2018	14	129	126	94	36	10	409
2019	13	207	133	98	42	6	499
2020	8	69	43	30	7	2	159
2021	1	26	19	14	10	1	71

⁶ Age was calculated based on the individuals' date of birth and the effective date of the Warrant of Immigration.

Management of Immigration Detainees in Provincial Correctional Centres

Length of stay

In 2021, there were 71 immigration detainees who accounted for 84 stays in provincial correctional centres on an order for detention (10 immigration detainees had ≥ 2 stays in 2021). All these stays were less than 180 days. Comparably, in 2016, 97. of stays were for less than 180 days. From 2016-2019, the number of days detained remained relatively stable but between 2019 and 2021 the proportion of individuals who were held for 31 to 180 days increased from 15 to 32 percent.

This is noteworthy because although fewer immigration detainees were held in provincial correctional centres during this time, the ones who were held were detained for longer periods of time. This may be explained by the COVID 19 pandemic and its impact on detention and that more low risk people stayed at the new IHC in Surrey.

Table 6: Number of stays for detainees by length of stay (in days) and year of admission

Year	One (1) to three (3) days	Four (4) to seven (7) days	Eight (8) to 30 days	31 to 180 days	181 to 365 days	1 year or longer	Total Stays
2016	180	168	121	56	10	2	537
2017	164	150	140	87	7	5	553
2018	115	109	128	104	4	1	461
2019	164	152	152	84	14	5	571
2020	48	55	40	46	2	1	192
2021	19	17	21	27	0	0	84

Placement

The *United Nations Standard Minimum Rules for the Treatment of Prisoners*, commonly referred to as the “Mandela Rules” outline that “different categories of prisoners shall be kept in separate institutions or part of institutions, taking in account their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment” (Rule 11). Guided by the Mandela Rules, BC Corrections prevents the mingling and

placement of immigration detainees with the regular custody population to the greatest extent possible and where operationally feasible. This is primarily accomplished by holding immigration detainees together in a dedicated living unit at FRCC.

While statistics related to the prevalence of placing detainees on units with the correctional population are not readily available, BC Corrections acknowledges that this practice does occur in some cases due to a number of considerations that determine placement. For example, if there is a small number of immigration detainees in provincial custody at any given point in time, operational, physical, geographic and fiscal constraints may limit the ability to dedicate living spaces to one or two immigration detainees. In such circumstances, detainees are placed in general living units with other individuals who are in custody for criminal matters.

Specialized placements and/or protective custody

Additionally, the unique circumstances of each immigration detainee may result in the need for placement on a specialized unit with others from the broader correctional population. In addition to enhanced access to health and mental health services, detainees who have been identified by BC Corrections and Correctional Health Services as having complex mental health needs may be placed in mental health units with other individuals in custody who have similar needs. Detainees who have been identified as being vulnerable and at risk from others in custody may be placed in protective custody to ensure their safety while in the correctional centre. Protective custody is used to support the safety of individuals who may have a history of sexually motivated offences, are past or present employees in the criminal justice system, have peer-related issues, are known informants, or who may be at risk in the general population due to unique physical or mental health needs.

From 2016 to 2021, 103 immigration detainees were placed in protective custody at least once, which represents 4.9 percent of the total immigration detainees held during that time (or 4.3 percent of all stays).

Table 7: Number of immigration detainees with a protective custody population designation, 2016 to 2021

Year	Protective custody placement	Total immigration detainees
2016	15	481
2017	20	503
2018	22	409
2019	29	499
2020	6	159
2021	11	71

Quarantine Unit

To reduce the risk of transmission of COVID-19, individuals must enter a quarantine unit for a period of time⁷ before being placed in their designated unit. A quarantine unit is a living unit that has been designated by the warden to mitigate the spread of communicable diseases while maintaining meaningful human contact. In 2021, 21 immigration detainees spent an average of 6.5 days on a quarantine unit prior to being placed elsewhere in the correctional centre.

Table 8: Number of immigrant detainees held in quarantine units and average length of stay (in days), 2019–2021

Year	Number of detainees placed on quarantine unit	Length of stay on quarantine unit
2019	0	N/A ^{b8}
2020	32	7.3
2021	21	6.5

Segregation

Segregation units are used to temporarily place individuals in custody away from others for security, safety, or disciplinary reasons. Separate confinement in a segregation unit for safety or security reasons is not punitive and is only used to provide the correctional

⁷ Quarantine units were established in March 2020 in response to the COVID-19 pandemic. From March 2020 – February 27, 2022, individuals were required to spend 14 days in the quarantine unit. On February 28, 2022, time in quarantine was reduced to 10 days and effective April 4, 2022, quarantine time was further reduced to 7 days.

⁸ Quarantine units not utilized until COVID-19 pandemic in 2020.

centre or individual an opportunity to address their behaviour, risks, or circumstances that led to separate confinement. Placement in a segregation unit for disciplinary reasons may occur following a hearing conducted by a correctional adjudicator if it is found that an individual in custody breached a rule and is given a penalty of a term of segregation.

BC Corrections has been working to change its segregation practices to better safeguard the well-being of people in its custody while supporting the safety of correctional centre staff and a placement in segregation is used only as a last resort. Many of the individuals placed in a segregation unit are dealing with complex issues that require extra supports and supervision.

In 2021, nine immigration detainees (13 percent of total detainees) were placed in a segregation unit for an average of 9.9 days. Comparatively, in 2020, 26 immigration detainees (16 percent of the total) were held in a segregation unit at some point during their time in BC Corrections' custody for an average of 9.8 days. In 2019, 10 percent of immigration detainees spent some time in a segregation unit for an average of 3.8 days. This increase in average time in the segregation unit reflects the increased proportion of individuals with complex needs who continue to be placed in provincial custody since the opening of the IHC.

Table 9: Number of immigrant detainees held in a segregation unit and average length of stay (in days), 2019–2021

Year	Number of detainees placed on segregation unit ^b	Average length of stay on segregation unit
2019	48	3.8
2020	26	9.8
2021	9	9.9

Table note b: Segregation data was only available from 2019 to 2021.

Incidents of Violence

Since 2016, immigration detainees have rarely been involved in incidents of violence within correctional centres, and there have been no deaths of immigration detainees in provincial custody. [Table 10](#) illustrates the number of immigration detainees involved in violent custody incidents as a proportion of total immigration detainees, and also, as a proportion of their number of stays (as mentioned above, some immigration detainees had multiple stays in provincial custody in a given year).

Table 10: Number of immigrant detainees Involved in violent incidents, 2016–2021

Year	Violent incidents involvement during immigration hold	Total immigration detainees	Total immigration stays
2016	18	481	537
2017	22	503	553
2018	17	409	461
2019	22	499	571
2020	4	159	192
2021	8	71	84

Standards of Detention

The conditions of detention and the treatment of all people in custody, including immigration detainees while they are in provincial custody, are governed by the *Correction Act* (CA) and Correction Act Regulation (CAR) and the policies and procedures of the ACD. Although immigration detainees are in provincial custody due to administrative matters related to the IRPA, detainees are subject to the same security procedures and policies as all other individuals who are in custody due to criminal matters. These security procedures and policies are required for the safe and effective operation of a correctional centre and may include searches, special handling protocols if needed (handcuffs, restraints etc.), and restricted routines and/or movements.

Access to Health Care Services

Effective October 1, 2017, the responsibility for health care services for individuals in provincial correctional centres transitioned from BC Corrections to the Ministry of Health, with services delivered by Correctional Health Services, Provincial Health Services Authority. This transition supports the delivery of health and mental health care in custody as well as continuity of care when individuals enter custody and upon release.

All individuals in custody, including immigration detainees, have equitable access to health care services. Every individual who enters a provincial correctional centre, regardless of reason for detention, is assessed by a nurse and screened by a mental health screener within 24 hours of admission.

Individuals in custody are then assigned to living units, taking into consideration the results of the assessment, and referred to mental health professionals, such as a psychiatrist or psychologist, as required. Each correctional centre also has mental health liaison officers, who are correctional officers with specialized training in managing and supporting individuals with mental health needs.

Immigration Detention in Fraser Regional Correctional Centre, March 1–31, 2022

FRCC is the primary correctional centre used for holding immigration detainees in the province. As such, a snapshot of immigration detainees at FRCC during the period March 1 to March 31, 2022, was examined to provide a summary of the current status of immigration detention and its impact on centre resources. There were no female immigration detainees in the province during this time frame.

FRCC is located in Maple Ridge, B.C. and has a total of 304 cells for all types of security levels: secure, medium and open custody. Although FRCC has a unit dedicated for immigration detainees, there may be circumstances where detainees interact with other individuals in custody during attendance at programming, work programs or if detainees are placed on specialized units such as in segregation, in protective custody, or on a quarantine unit, as described above.

There were 14 immigration detainees at FRCC during the data collection period (March 2022). Persons can be detained pursuant to the IRPA if they are considered a danger to the public, unlikely to appear, or their identity cannot be established. Ten (71 percent) were detained on the grounds that they would pose a danger to the public, four (29 percent) were considered unlikely to appear for a proceeding under the IRPA or pending removal, and some may have been detained on both grounds. Thirteen (93 percent) were assessed by the CBSA's NRAD as being high risk for violence and one as unpredictable due to mental health needs. The median length of stay for these individuals, as of March 31, 2022, was 52 days (ranging from six [6] days to 862 days). It should be noted that 6 detainees had yet to be released at the time of this analysis (as of March 31, 2022), as such, their information is not included in the aggregate statistics contained within this document.

To measure impact on centre resources, information was examined related to the use of health care services as well as requirements for correctional officer supervision during March 2022. During this time, the 14 immigration detainees made 116 health practitioner visits, including appointments with nurses, general practitioners, dentists, psychologists, psychiatrists, addictions counsellors, lab technicians, and mental health clinicians. One individual attended 29 personal healthcare visits, representing 25 percent of all immigration detainee medical visits for the month.

To supervise the 14 detainees during March 2022 FRCC staff spent, on average, four hours per day completing administrative tasks related to their care and detention. This

administrative work included telephone calls with CBSA, managing electronic and written correspondence, photocopying and scanning documents, arranging interviews, and assisting the IRB with scheduling hearings. This is in addition to the staffing resources required to operate the immigration living unit. It is estimated that currently FRCC dedicates a total of eight (8) FTEs (full-time equivalents) to operate the immigration living unit, perform administrative functions, and provide additional correctional supports to detainees for mental health needs, escorts and supervisory duties.

Cost to Hold Immigration Detainees in BC Corrections' Custody

Under the terms of the Arrangement, the CBSA pays BC Corrections a daily rate to cover the costs of holding immigration detainees in provincial correctional centres. The rate charged in 2021 to the CBSA was \$253 per detainee per day. As detailed in the Arrangement, the daily rate is adjusted each fiscal year based on the change in the B.C. Consumer Price Index as set by Statistics Canada. The following table outlines the daily rates charged since 2016:

Table 11: Daily rate charged to CBSA per immigrant detainee, 2016–2021

Year	Daily rate charged
2016	\$228
2017	\$231
2018	\$235
2019	\$240
2020	\$247
2021	\$253

BC Corrections only receives payment for individuals held solely on an IRPA Order of Detention issued by the CBSA, and not for those who are held on an accompanying criminal remand or sentence order. The total amount owing to BC Corrections by the CBSA is calculated by tallying “bed days” (that is, the total number of immigration detainees multiplied by the total number of days spent in custody each fiscal year).

A net recovery/loss analysis was conducted to determine if the amount recovered by BC Corrections meets, exceeds, or is below the actual cost to house immigration detainees over the past three fiscal years.

The analysis was based on the daily rate charged as per the Arrangement by year ([Table 10](#)), an estimated daily cost rate of \$14.66 for food, clothing and other supplies, and a staffing complement of eight (8) FTEs in FY2021/22 and FY 2020/21 (lower immigration detainee counts) and 10.5 FTEs in FY 2019/20 (higher immigration detainee counts). It should be noted that despite the significant reduction in the number of detainees held by BC Corrections in recent years, the FTEs complement does not drop in direct proportion because a set number of FTEs (5.5) are required to operate a living unit regardless of the

number of people held there. This cost estimate does not include health care costs, as such costs are difficult to determine at an aggregate level.

Table 12: Net recovery / loss of costs to house immigration detainees by fiscal year

Fiscal Year	Bed days	Total recoveries	Daily cost (Food, clothing, supplies)	Staffing cost	Total cost	Net Recovery or Loss (Total costs less total recovery)
2019/20	12,306	\$3,101,579	\$180,406	\$941,112	\$1,121,518	\$1,980,061
2020/21	4,464	\$1,129,392	\$65,442	\$717,038	\$782,480	\$346,912
2021/22	2,418	\$616,590	\$35,448	\$717,038	\$752,486	-\$135,896

The net recovery/loss analysis shows that the reduction in the number of immigration detainees in provincial custody has significantly changed the financial implications of the Arrangement and has resulted in a net loss for BC Corrections to fulfill the Arrangement. Over the past three fiscal years, this has had increasingly significant budget implications for the organization, and in the most recent fiscal year results in a loss of resources that could otherwise be used to support other individuals in custody. Given the CBSA's commitment to continue to reduce the number of immigration detainees held in provincial custody, it is reasonable to assume that the net loss per fiscal year will continue for the foreseeable future if the current financial terms of this Arrangement continue.

Jurisdictional Scan

Eleven jurisdictions reported that they admit and maintain custody of immigration detainees within their provincial correctional centres. Of these jurisdictions, all but one has an agreement with the CBSA related to immigration detention.

In four jurisdictions, immigration detainees are held separately from other categories of individuals in custody, whenever feasible based on operational requirements. In the remaining jurisdictions, immigration detainees are held with other individuals in custody.

Stakeholder Engagement

Stakeholders were asked to provide written submissions specific to the experiences of individuals detained for immigration reasons in provincial correctional centres in B.C., detailing their role or interest in this subject and any relevant information relating to human rights, public safety or any other factors considered important to include.

Through this call for information, BC Corrections received 16 submissions from various stakeholder groups including advocates, experts, lawyers, academic scholars, health care practitioners, faith leaders, and individuals detained in provincial correctional centres for immigration purposes.

Specifically, submissions were received from the following organizations:

- BC Civil Liberties Association
- BC's Office of the Human Rights Commissioner
- Canada Border Services Agency
- Faith Leaders, Individuals, and Religious Organizations
- Healthcare Providers
- Investigation and Standards Office, Ministry of the Attorney General (BC)
- John Howard Society of BC
- Joint Submission—Human Rights Watch and Amnesty International
- Joint Submission—BC Poverty Reduction Coalition, Centre for Gender & Sexual Health Equity, Community Legal Assistance Society, Immigration and Refugee Legal Clinic, Migrant Workers BC, and West Coast LEAF
- Office of the Ombudsperson BC
- Rainbow Refugee
- SWAN Vancouver
- West Coast Prison Justice Society

Stakeholder Concerns

There were consistent themes identified in the submissions from stakeholders, including that the practice is:

- Contrary to law and human rights standards
- Traumatic to detained individuals with negative impacts to physical, psychological, social, and spiritual health
- Discriminatory against women, transgender, non-binary, LGBTQI+ immigrants
- Disproportionately harmful to individuals with pre-existing mental health needs and disabilities due to lack of access to services and treatment within provincial correctional centres
- Lacking independent oversight, accountability and transparency
- Built on and perpetuating systemic racism.

Stakeholders question the practice of detaining people for immigration-related reasons in facilities used for criminal law enforcement. Stakeholders cite international law and human rights frameworks that protect individuals held for immigration reasons from being treated in a punitive manner and being held with those accused and/or convicted of criminal acts.

According to BC's Office of the Human Rights Commissioner's (BCOHRC) submission, the Arrangement's current practices "contravene B.C.'s Human Rights Code and international human rights conventions including the Convention on the Rights of Persons with Disabilities, the International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination, as well as guidelines set out by the UN Working Group on Arbitrary Detention, the UN Committee on Economic, Social, and Cultural Rights and the Mandela Rules".

Amnesty International's submission notes there are implications when immigration detainees are held with those in provincial correctional centres related to criminal matters. Specifically, they say detainees in correctional centres are:

"Routinely handcuffed, searched, and restricted to small spaces with rigid routines and under constant surveillance, with severely limited access to the outside world. Many immigration detainees are confined in tense and dangerous environments where they may be subjected to violence, and they are also subjected to solitary confinement."

Stakeholders pointed to the lack of independent oversight of the CBSA and the Province's responsibility in ensuring that the people under its care and supervision are treated humanely.

In a joint submission by lawyers, legal representatives and academic scholars with expertise in migration law and policy, refugee protection, human rights and prison law, signed by Dr. Efrat Arbel, Associate Professor, University of British Columbia Peter A. Allard School of Law, they cite that:

"We are gravely concerned that there are no laws or regulations governing when and under what circumstances an immigration detainee can be transferred to, and incarcerated in, a provincial jail. Instead, these vital decisions regarding immigration detainees' residual liberty rights are within the discretion of CBSA, which remains the only major law enforcement agency in Canada without independent civilian oversight."

In addition, BCOHRC's submission to this review advises that although the detention of immigration detainees is guided by federal legislation, the province takes on responsibility through the Arrangement. Specifically, BCOHRC states that:

"Although immigration detainees are held under the authority of CBSA, the Government of British Columbia is facilitating the detention process through its Arrangement with the federal government. The provincial government de facto assumes responsibility for the conditions under which immigration detainees in B.C. correctional centres are being detained, including ensuring compliance with statutory and international human rights standards".

Other submissions document the harm and trauma caused by the CBSA's policies and practices, especially related to mental health impacts of individuals detained in provincial correctional centres. A joint submission signed by mental health experts, doctors, nurses, social workers, healthcare providers and researchers cited concerns about placing people with mental health needs in provincial centres. The letter, signed by Mei-ling Wiedmeyer, MD, Clinical Assistant Professor, UBC Department of Family Practice and Family Physician at the Umbrella Multicultural Health Cooperative and Clinician Scientist, IRIS project, at the Centre for Gender and Sexual Health Equity, stated that:

"Immigration detainees with conditions such as schizophrenia and bipolar disorder, or those who are perceived to be suicidal, may be incarcerated in provincial jails because of their health symptoms or condition. CBSA's

policy and practice of incarcerating immigration detainees in provincial jails is egregiously discriminatory and profoundly inhumane. Simply put, jails are not healthcare facilities, and they are harmful for individuals undergoing immigration and refugee proceedings.”

Advocates shared stories about the treatment and discriminatory practices related to detaining female immigrants engaged in sex work. An impactful letter was received from an individual seeking refugee status, detained in provincial custody, living with a disability that affected their ability to communicate and therefore understand what was happening to them and around them.

The Office of the Ombudsperson (the Office) investigates complaints about administrative actions and decisions of provincial public authorities. When it is found that a public body has acted unfairly, the Office seeks resolutions and issues reports and recommendations where necessary.

The Office provided a submission noting that the Office has received and investigated complaints from individuals held in provincial correctional centres pursuant to the IRPA. Most of the complaints came from individuals held at FRCC and some of the issues raised include access to health care, visits with family members, access to services needed to prepare their immigration case, and concerns about treatment by correctional centre staff.

In the submission, signed by Ombudsperson Jay Chalke, he states that he is “not in a position to advise whether or not the province should continue holding people detained under IRPA in provincial correctional centres”. However, he notes that if BC Corrections continues to hold immigration detainees, the Office may initiate an investigation of current practices to examine in detail the conditions of their detention.

CBSA Context

The CBSA provided a submission that outlined their authority to arrest and detain individuals as well as the established review processes to ensure transparency and objectivity in detention decisions. The CBSA pointed to their increasing efforts to reduce the reliance on provincial correctional centres through investments in enhancing IHCs and an expansion of the ATD program.

The CBSA stated that “Canada’s immigration detention program is based on the principle that detention shall be used only as a last resort”. They also included the newly revised [National Immigration Detention Standards](#) (NIDS) that establish guidelines for the treatment of detainees in IHCs and non-CBSA detention facilities.

Section 6.5.3 documents the NIDS, which include:

- Federal-provincial memoranda of understanding (MOU) respecting the detention of persons detained under the IRPA are established and mutually respected.
- Regular interaction with provincial partners is maintained and the terms of MOUs revisited as required.
- Detainees held in non-CBSA facilities are regularly monitored to ensure their health and well-being.
- Issues, concerns and complaints raised with the CBSA or other monitoring bodies (in other words, Canadian Red Cross Society, UNHCR) by detainees are promptly broached with facility authorities and resolved where possible.
- Detainees are classified and placed in the appropriate facility and reassessed regularly according to the standard on Classification and Placement of Detainees in Detention Facilities.

It should be noted that an Arrangement has been established and is reviewed and updated by both BC Corrections and the CBSA. As noted earlier, BC Corrections staff are in contact with the CBSA regarding the specific management of immigration detainees in custody, including monitoring of their health and well-being and regularly addressing issues and concerns as needed. BC Corrections also provides information to support the CBSA in their regular placement and classification reviews of detainees, as per the CBSA's guidelines. The CBSA is responsible for ensuring non-CBSA facilities adhere to these standards and to date, BC Corrections has not been made aware of concerns related to compliance.

The Canadian Red Cross (CRC) is contracted by the CBSA to operate the immigration detention monitoring services. The CRC visits detention facilities across Canada (CBSA-managed IHCs and provincial correctional facilities) and interviews immigration detainees. Under the terms of the current contract, the CRC plans and conducts formalized planned quarterly visits as well as ad hoc visits at the IHCs and provincial correctional centres based on detention statistics. The CRC completes a summary of its monitoring activities through a national annual report outlining its findings and recommendations. The latest reports can be found on the CBSA website: [Canadian Red Cross – 2019–2020 IDMP Annual Monitoring Activity Report](#).

According to the CBSA, their efforts to change their detention programs and focus on ATDs have resulted in “reducing the reliance on provincial correctional centres”. This is evidenced in their statistics, which show an 83 percent reduction in the number of immigration detainees held each year in BC's provincial correctional centres from 2017 to

2021 (503 individuals in 2017 to 86 in 2021⁹). The CBSA indicates they expect that number to continue to drop over the coming years. That said, the CBSA believes that even with the expansion of their IHCs, focus on ATDs, and the resulting reduction in number of immigration detainees held by BC Corrections, there continues to be a need to use provincial centres in some cases:

“The CBSA is exploring options for developing a more robust IHC capacity in all regions of Canada. Even once these facilities have been completed, the CBSA will still need to rely on the provinces to detain a small number of immigration detainees with serious criminality who can neither be detained in an IHC nor released on alternatives to detention.”

⁹ Discrepancies between CBSA and BC Corrections’ number of immigration detainees in BC Corrections correctional centres exist due to data being captured at different points of detention and because data is aggregated differently.

Additional Considerations Regarding the Arrangement

Legal Authority

The CBSA has the sole federal authority to detain persons under section 55 of the IRPA and, as such, is responsible for the care and control of immigration detainees. Although section 8 of the IRPA allows the Minister of Public Safety and Emergency Preparedness to enter into agreements with provincial governments for the purposes of the Act, there is no such provision in applicable provincial legislation (*Correction Act*) enabling the province to enter into these agreements.

BC Corrections' Mandate

BC Corrections has a mandate to safely hold people 18 years or older in provincial custody who are serving sentences of two years (less a day) and/or awaiting trial as well as to supervise individuals in the community on probation and/or bail. BC Corrections achieves its mandate by working with individuals to address their needs with the goal of reducing reoffending in the community. A significant component of correctional practice in B.C. is providing programming and working with individuals to promote change, and in doing that, communities are strengthened and protected.

The organization's mandate is an important consideration when examining the future of the Arrangement. Holding immigration detainees is not in alignment with BC Corrections' mandate and that in fact, may use resources that could otherwise be used to better address the criminal behaviours of people in custody serving sentences or awaiting trial.

Public Safety Considerations

If changes are made to the Arrangement between BC Corrections and the CBSA, public safety implications must be contemplated. The CBSA has indicated their IHC does not have the suitable security and infrastructure features required to safely hold high-risk detainees. As noted earlier, the CBSA stated that despite their new IHC and expansion of ATDs, they continue to see an ongoing need for the use of BC Corrections' correctional centres for an increasingly small number of detainees who present high-risk behaviours that cannot safely be managed in their facility.

An additional consideration is that the CBSA's IHC is staffed by contracted security guards. BC Corrections did not review their training program but note that BC Corrections' officers

receive extensive training to address problematic behaviours, violence and self-harm through de-escalation, case management and other interventions to promote safety for staff, contractors and individuals in custody.

Given BC Corrections' larger role in supporting public safety in British Columbia, the organization understands that if immigration detainees are no longer held in provincial correctional centres, the CBSA needs to identify alternatives to safely detain this population. It would be anticipated that the CBSA would require time to plan and implement additional facilities or alternatives that are safe and secure so as to not compromise public safety in B.C. or put those in their care—staff, contractors and detainees—at risk in any way.

Conclusion

The review of BC Corrections' Arrangement with the CBSA shows that while the number of immigration detainees in provincial custody is declining, the CBSA continues to rely on the use of provincial correctional centres to hold high-risk detainees. This practice includes holding some female detainees in correctional centres; this group is more likely to be held with individuals in custody for criminal matters due to their small numbers. Despite the use of a dedicated immigration unit at FRCC, some male detainees are also placed with the general correctional population on specialized units or in protective custody.

In addition, an increasing proportion of immigration detainees have mental health needs, typically requiring more health care, mental health supports and staffing support. The review showed that immigration detainees have regular and readily available access to healthcare and mental health supports in provincial custody.

Immigration detainees in provincial custody are placed at times in segregation for safety, security or disciplinary reasons and are subject to the same security protocols as all other individuals in custody. This includes being subject to procedures such as searches, handcuffing, wearing of institutional clothing, and restricted movements or routines in the correctional centre. The review demonstrated that immigration detainees are not frequently involved in violent incidents and have not been involved in any critical incidents in the past five years.

Stakeholders identified that by holding immigration detainees, BC Corrections takes on de facto legal responsibility for a federal legislative framework, international guidelines and human rights standards. There is a lack of explicit authority for BC Corrections to hold immigration detainees in provincial correctional centres. Meanwhile, BC Corrections manages immigration detainees under the authority of the CA and CAR, provincial legislation drafted for the purposes of holding individuals who are sentenced for two years less a day or are awaiting trial for criminal matters.

While BC Corrections is compensated by the CBSA to hold detainees, the review shows that significant staffing resources are used to supervise these individuals. The net recovery/loss analysis showed that as of the most recent fiscal year, recoveries from the CBSA do not cover BC Corrections' costs, resulting in a net loss. This is a trend that is likely to continue given the overall reduction in the number of detainees in provincial custody. If the Arrangement ended, these are resources that could be used to support BC Corrections' clients, including individuals in custody with complex needs and behaviours.

As demonstrated in this review, holding immigration detainees does not align with BC Corrections' mandate. That said, BC Corrections is committed to contributing to public safety in the province and has had a long-standing partnership with the CBSA. BC Corrections acknowledges the CBSA's efforts to increase ATDs and expand their detention facilities. Next steps regarding the future of the Arrangement must be considerate of this partnership and any implications for public safety in the province.

Appendix – Data Tables

[Table 1: Proportion of immigration detainees to individuals in custody, 2016 to 2021](#)

[Table 2: Immigration detainees by ethnicity, yearly average, 2016 to 2021](#)

[Table 3: Total immigration detainees with mental health needs, 2016 to 2021](#)

[Table 4: Gender of immigration detainees by year, 2016 to 2021](#)

[Table 5: Age of immigration detainees, 2016–2021](#)

[Table 6: Number of stays for detainees by length of stay \(in days\) and year of admission](#)

[Table 7: Number of immigration detainees with a protective custody population designation, 2016 to 2021](#)

[Table 8: Number of immigrant detainees held in quarantine units and average length of stay \(in days\), 2019 to 2021](#)

[Table 9: Number of immigrant detainees held in a segregation unit and average length of stay \(in days\), 2019 to 2021](#)

[Table 10: Number of immigrant detainees Involved in violent incidents, 2016–2021](#)

[Table 11: Daily rate charged to CBSA per immigrant detainee, 2016–2021](#)

[Table 12: Net recovery / loss of costs to house immigration detainees by fiscal year](#)