

Mental health impact of detention and temporary status for refugee claimants under Bill C-31

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The Canadian government is on the brink of adopting Bill C-31, the Protecting Canada's Immigration System Act,¹ which could potentially have a serious negative impact on the mental health of refugees.

Bill C-31 gives the government the discretion to designate any group of two or more refugee claimants entering Canada as an "irregular arrival" if they are suspected of having obtained travel documents from smugglers or if normal processing would be too time-consuming. Refugees routinely rely on smugglers to escape their country, so many refugee claimants could potentially be affected.²

Designated refugee claimants will be automatically detained in high-security prisons until final resolution of their refugee claim; this would include pregnant women, survivors of torture or people who are mentally or physically ill. Designated claimants found to be bona fide refugees will be deprived of their right to family reunification and permanent residence for 5 years.

Children aged 16–18 years will be incarcerated as if they were adults. Those under 16 years of age will either be taken away from their parents and placed in foster care, or held informally with their detained mothers in an immigration prison. In both cases, they will be separated from their fathers.

The Canadian Paediatric Society, the Canadian Academy of Child and Adolescent Psychiatry, the Paediatric Chairs of Canada, and the Urban Public Health Network of Canada have urged the government to ensure that children are not placed in detention or separated from their parents in light of consistent evidence that both detention and separation are harmful to children.³ They have also asked that the government eliminate the 5-year postponement of permanent residence given the negative health consequences of lengthy family separation and prolonged uncertainty.^{4–6}

Initially, there was to be no detention review for the first 12 months. In response to widespread criticism, the government is now proposing detention review after 14 days. This is a major improvement. However, the second detention review would only occur 6 months later. Therefore, those who are not released after the

initial detention review would automatically be detained for an additional 6 months.

Bill C-31 was introduced following the arrival of 2 boats carrying Tamil refugee claimants. This bill has the declared aim of deterring human smugglers from facilitating irregular mass arrivals. However, the Canadian Bar Association stated:

Unfortunately, little of [the bill] is directed at smugglers. Instead, it is directed at refugee claimants and refugees... The [bill's] scheme of imposing imprisonment, denial of access to permanent resident status and loss of appeal rights on persons claiming protection violates *Charter* protections against arbitrary detention and prompt review of detention, as well as Canada's international obligations respecting the treatment of persons seeking protection.⁷

Under the existing laws, refugee claimants may be indefinitely detained upon arrival in Canada, primarily for identity or security checks. Most are held in immigration detention centres run as prisons, with razor-wire fences, security guards, surveillance cameras and handcuffing. Others are incarcerated in provincial prisons alongside criminals. Yet, less than 6% of detained refugee claimants are suspected of criminal activity or being a security risk.² In the past five years, an average of over 650 children each year have been imprisoned in Canada under immigration laws.²

However, under the current system there are at least some safeguards. Few refugee claimants are detained, there are regular detention reviews by an independent tribunal, and claimants are

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KEY POINTS

- Bill C-31 implies mandatory imprisonment of designated refugee claimants, including children aged 16–18 years, for the duration of the refugee claim process, with very limited access to release.
- Children under 16 years of age will be separated from their parents or unofficially detained.
- Claimants recognized to be bona fide refugees will be denied access to family reunification for 5 years.
- Detention of refugee claimants is associated with high levels of psychiatric symptoms, which increase with time in detention and tend to be aggravated if family reunification is delayed after release.

usually released as soon as identity and security checks are completed, generally within less than 3 months.² Bill C-31 would impose a much harsher regime.

Numerous studies have shown high levels of psychiatric symptoms among detained refugee claimants, even after short periods.⁸ Symptoms generally worsen over time. In the United Kingdom, after a median 30-day detention, 76% of detained refugee claimants were clinically depressed, compared with 26% of a nondetained comparison sample.⁹ In the United States, after a median detention of 5 months, 86% of refugee claimants showed clinical levels of depression, 77% had clinical anxiety and 50% had clinical post-traumatic stress disorder. A few months later, the mental health of those who were still detained had continued to deteriorate, whereas it had substantially improved among those who had been released and granted permanent status.¹⁰

The clearest evidence of the harm associated with long-term detention comes from Australia. Since 1992, all refugee claimants entering without a visa have been detained, until final resolution of their claim. In 2010/11, there were over 1100 incidents of self-harm in Australian immigration detention centres, including 6 suicides,¹¹ in a population of about 6000 people detained for a median of 10 months.¹² This is about 10 times the suicide rate in the general population in both Canada and Australia.^{13,14} Yet, in Australia, close to 90% of “irregular” claimants are later accepted as refugees and settle there permanently.¹⁵

In Australia, from 1999 to 2008, “irregular” arrivals recognized as genuine refugees received only temporary status. Australian researchers found that, 3 years after release, refugees who had been detained for more than 6 months and then granted temporary status were still very distressed, with half still experiencing clinical levels of both depression and post-traumatic stress disorder. Temporary status, which implies lengthy family separation and limited job access, was a strong predictor of depression and post-traumatic stress disorder, with an even larger negative impact than premigration trauma.⁴ Four years later, a follow-up study showed a substantial decrease in psychiatric symptoms among individuals who had finally obtained permanent residency.⁵

As health professionals, it is our responsibility to urge the government to minimize harm to children, pregnant women, trauma survivors and other vulnerable people. Children should not be incarcerated or separated from their parents. Detention of all refugee claimants should be lim-

ited to the shortest possible time required for identity and security checks and should generally be in noncarceral accommodation, especially for vulnerable individuals. Ongoing oversight by an independent tribunal is an essential safeguard.

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