



Citizenship and
Immigration Canada

Citoyenneté et
Immigration Canada

ENF 22

Persons Serving Sentences

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Updates to chapter

Listing by date:

Date: 2005-12-06

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

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1. What this chapter is about

This chapter explains an officer's responsibilities and authorities relative to permanent residents and foreign nationals who are serving a sentence in a federal or provincial correctional institution and are sentenced on the day or after the *Immigration and Refugee Protection Act* (IRPA) came into force.

The chapter outlines the role of the Canada Border Services Agency (CBSA) as it relates to our partners: Correctional Services Canada (CSC), provincial correctional services and both the federal and provincial parole boards. It also describes the transitional provisions regarding permanent residents and foreign nationals who were sentenced before IRPA came into force and who are inmates in provincial and federal correctional institutions.

2. Program objectives

To promote the health and safety of Canadians is a key objective of IRPA. Other objectives under IRPA are as follows:

- maintain the security of Canadian society;
- promote international justice and security by fostering respect for human rights; and
- deny access to Canadian territory to those who are a criminal or security risk.

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

- early identification of permanent residents and foreign nationals serving a sentence;
- ensuring that permanent residents and foreign nationals under a removal order are not eligible for unescorted temporary absence and day parole; and
- removal of permanent residents and foreign nationals who are criminally inadmissible at full parole or statutory release.

3. The Act and Regulations

IRPA provides an officer with the authority to report, arrest, detain, and/or remove foreign nationals and permanent residents who may be found or are deemed to be inadmissible to Canada.

The following are relevant legislative and regulatory authorities to assist an officer:

Table 1: Legislative and regulatory authorities

Description	Act and Regulations
The person in charge of the correctional institution shall deliver the inmate to an officer at the end of that person's period of detention if a warrant is issued for arrest and detention under this Act.	A59
Continuation of sentence —128(1) of the <i>Corrections and Conditional Release Act</i> (CCRA) stipulates: An offender who is released on parole, statutory release or unescorted temporary absence continues, while entitled to be at large, to serve the sentence until its expiration according to law.	Section 128 of the <i>Corrections and Conditional Release Act</i> (CCRA) as amended by A242

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<p>Freedom to be at large—128(2) of the CCRA stipulates: Except to the extent required by the conditions of any day parole, an offender who is released on parole, statutory release or unescorted temporary absence is entitled, subject to this Part, to remain at large in accordance with the conditions of the parole, statutory release or unescorted temporary absence and is not liable to be returned to custody by reason of the sentence, unless the parole, statutory release or unescorted temporary absence is suspended, cancelled, terminated or revoked.</p>	
<p>Deeming—128(3) of the CCRA stipulates: Despite subsection (1), for the purposes of paragraph 50(b) of the <i>Immigration and Refugee Protection Act</i> and section 40 of the <i>Extradition Act</i>, the sentence of an offender who has been released on parole, statutory release or an unescorted temporary absence is deemed to be completed unless the parole or statutory release has been suspended, terminated or revoked or the unescorted temporary absence is suspended or cancelled or the offender has returned to Canada before the expiration of the sentence according to law.</p> <p>Removal order—128(4) of the CCRA stipulates: An offender against whom a removal order has been made under the IRPA is ineligible for day parole or unescorted temporary absence until the offender is eligible for full parole.</p> <p>Parole inoperative where parole eligibility date in future—128(5) of the CCRA stipulates: If, before the full parole eligibility date, a removal order is made under the <i>Immigration and Refugee Protection Act</i> against an offender who has received day parole or an unescorted temporary absence, on the day that the removal order is made, the day parole or unescorted temporary absence becomes inoperative and the offender shall be reincarcerated.</p> <p>Exception—128(6) of the CCRA stipulates: An offender referred to in subsection (4) is eligible for day parole or unescorted temporary absence if the removal order is stayed under paragraph 50(a), 66(b) or 114(1)(b) of the <i>Immigration and Refugee Protection Act</i></p> <p>Exception—128(7) of the CCRA stipulates: Where the removal order of an offender referred to in subsection (5) is stayed under paragraph 50(a), 66(b) or 114(1)(b) of the <i>Immigration and Refugee Protection Act</i> on a day prior to the full parole eligibility of the offender, the unescorted temporary absence or day parole of that offender is resumed as of the day of the stay.</p>	

3.1. Forms

The forms required are shown in the following table.

Table 2: Forms

Form Title	Form number
Warrant for Arrest	IMM 0420B
Order of Citizenship and Immigration to Deliver Inmate	IMM 0419B
Notice of Arrest under Section 55 of the <i>Immigration and Refugee Protection Act</i>	IMM 1285B

4. Instruments and delegations

Table 3: Instruments and delegations

Section	Description	Designated officials
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A55(1)	An officer may issue a warrant for the arrest and detention of a permanent resident or a foreign national who the officer has reasonable grounds to believe is inadmissible and is a danger to the public or is unlikely to appear for examination, an admissibility hearing or removal from Canada.	Only CBSA officers are designated to perform this function
A 59	If a warrant for arrest and detention under this Act is issued with respect to a permanent resident or a foreign national who is detained under another Act of Parliament in an institution, the person in charge of the institution shall deliver the inmate to an officer at the end of the inmate's period of detention in the institution.	Only CBSA officers are designated to perform this function

Note: For the CBSA personnel specifically designated to perform these functions, see IL3

5. Departmental policy

Departmental policy with respect to the incarceration of criminally inadmissible persons subject to enforcement action is achieved through two instruments: IRPA and the CCRA. The policy is managed by the CBSA, Correctional Services Canada, provincial correctional services and the national and provincial parole boards. To achieve program objectives, the CBSA is committed to playing an active role in identifying permanent residents and foreign nationals who are inadmissible to remain in Canada and return them to their country of citizenship or habitual residence to ensure the safety of Canadians. To meet these commitments, the CBSA tracks criminally-inadmissible inmates through the following priorities:

- early identification of inmates who are permanent residents and foreign nationals who are incarcerated in federal or provincial correctional institutions;
- communication with correctional partners to ensure that persons who are incarcerated and subject to a removal order under IRPA are not released into Canadian society on day parole or unescorted temporary absence;
- cooperation and communication with partners to ensure that at full parole or statutory release, inmates subject to immigration enforcement action (for examination, admissibility hearing or removal) are delivered to the CBSA for their detention under IRPA;
- commitment to the maintenance of effective working arrangements with CSC and provincial correctional services relating to permanent residents and foreign nationals who are subject to enforcement action; and
- expedition of the removal of criminally-inadmissible persons from Canada.

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

- develop and maintain good working relationships and sound networking systems with a broad range of partners and key contacts;
- be proactive in obtaining and sharing information with CSC and provincial correctional services regarding incarcerated permanent residents and foreign nationals to ensure and coordinate appropriate enforcement action;
- actively investigate all leads from key partners;

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- issue A59 orders to the person in charge of the institution along with the appropriate warrant and a copy of the removal order, and notify the institution that the inmate is to be delivered to the CBSA at the end of their sentence; and
- investigate, gather evidence, prepare reports and assist hearings officers when required.

5.1. Transitional provisions and the importance of S105 orders prior to IRPA

A parallel system will apply for many years. The date of sentence will determine the legislative provisions and the procedures to be followed by officers when they are dealing with inadmissible inmates under enforcement action.

In R323, transitional provisions stipulate that:

323. An order issued by a Deputy Minister under subsection 105(1) of the former Act continues in force and the review of reasons for continued detention shall be made under the *Immigration and Refugee Protection Act*.

For reference, subsection 105(1) of the former *Immigration Act, 1976*, reads:

105.(1) Notwithstanding the *Corrections and Conditional Release Act*, the *Prisons and Reformatories Act* or any Act of a provincial legislature, where a warrant has been issued or an order has been made pursuant to subsection 103(1) or (3) with respect to any person who is incarcerated in any place of confinement pursuant to the order of any court or other body, the Deputy Minister may issue an order to the person in charge of the place directing that (a) the person continue to be detained until the expiration of the sentence to which the person is subject or until the expiration of the sentence or term of confinement as reduced by the operation of any statute or other law or by an act of clemency, and (b) the person be delivered, at the expiration of the sentence or term of confinement referred to in paragraph (a), to an immigration officer to be taken into custody.

If no order of the Deputy Minister under subsection 105(1) of the former *Immigration Act* is issued before the coming into force of IRPA, there will be no legislative power to submit any S105(1) order. The new provisions of the CCRA do not apply to inmates sentenced before IRPA.

Federal Court decisions [*Larsen v. Canada (National Parole Board)* F.C.T.D., No.T-292-99, October 18, 1999 and *Chaudhry v. Canada (Minister of Citizenship and Immigration)*, [1999] 3 F.C. 3, IMM 3814-98, March 8, 1999] regarding inmates under S105(1) orders indicated that no provision in the CCRA or the former *Immigration Act* specifically makes inmates subject to an order under subsection 105(1) of the former *Immigration Act* ineligible to be reviewed for day parole or unescorted temporary absence (UTA); and that they are entitled to a review of the reasons for the continuation of their detention under the former *Immigration Act*.

Inmates subject to S105(1) orders under the former *Immigration Act* are eligible for consideration of day parole, including accelerated day parole or a UTA. If conditional release is granted, the S105(1) order and the Warrant of Arrest prevent the inmate from being released on day parole or UTA before a detention review is conducted by the Immigration Division.

Transitional provisions at R325(1) state:

325.(1) A warrant for arrest and detention made under the former Act is a warrant for arrest and detention made under the *Immigration and Refugee Protection Act*.

Transitional provisions at R322(1) also state:

322.(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.

If the person is ordered released by the Immigration Division, the S105(1) order is lifted and is no longer valid. If detention is maintained, the detention review will be conducted under the provisions of IRPA.

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6. Definitions

The following are useful references describing types of release under the CCRA for which inmates may be eligible during their incarceration:

Table 4: Forms of conditional release

Conditional release	Description
Escorted Temporary Absence (ETA)	A short-term release to the community under escort. An inmate is eligible for an ETA at any time during the sentence. The duration of an ETA is not more than 15 days. The institution head may authorize an ETA. In certain instances involving lifers, National Parole Board (NPB) approval is required until the inmate is at three years of his parole eligibility date.
Unescorted Temporary Absence (UTA)	An unescorted temporary absence from the penitentiary is a short-term release to the community without an escort. Most inmates are eligible for UTA at 1/6 of time served or six months into the sentence. Exceptions are for lifers and inmates classified as maximum security.
Accelerated Day Parole	A streamlined process of review for day parole for first-time offenders serving a sentence for a non-violent offence. It is a conditional release that must be granted by the NPB if the inmate meets certain criteria and the Board believes the inmate is not likely to commit an offence involving violence before the inmate's warrant expiry date. The eligibility date for accelerated day parole is at 1/6 of sentence or six months into the sentence, whichever is later.
Day Parole	The authority granted to an inmate by the NPB or a provincial parole board to be at large during that inmate's sentence in order to prepare the inmate for full parole or statutory release. Day parole requires the inmate to return to a penitentiary, a community-based residential facility or a provincial correctional facility each night unless otherwise authorized in writing. Eligibility for day parole is six months into the sentence or six months before full parole, whichever is later.
Full Parole	The authority granted to an inmate at normally 1/3 of the sentence by the NPB or a provincial parole board to be at large during the remainder of that offender's sentence. If the inmate is performing successfully in the community, full parole may continue, under supervision, for the remainder of the sentence.
Statutory Release	An inmate's legal entitlement to be released into the community at 2/3 of the sentence. Unlike parole, statutory release is a right rather than a privilege.
Warrant Expiry	The final date in the inmate's current sentence.
Inmate	A person serving a sentence either in a federal or provincial correctional institution.
Detained	A person or persons being held for immigration enforcement action.
Conditional Release	Unescorted temporary absence (UTA), accelerated day parole and day parole.
Parole Board	The national and provincial parole boards.
Correctional Services	Both federal CSC and its provincial counterparts.

For information, visit <http://laws.justice.gc.ca/en/C-44.6/40200.html#rid-40201>

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7. Procedure: Identification of inadmissible inmates

Identifying inmates who are inadmissible under IRPA requires tracking individual cases to ensure that a removal order is in place. The following procedures will assist officers with the processing of persons incarcerated in correctional institutions.

Officers must ensure that inmates who are inadmissible to Canada under IRPA are identified quickly and that the appropriate correctional authorities are informed. This ensures that inmates remain incarcerated in the event a removal order is issued.

Although a number of inadmissible inmates are identified through our correctional partners, officers must employ investigation techniques and maintain constant ties with partners in the justice system (police, courts and correctional institutions). Effective liaison with partners ensures that inmates are identified early in their sentence and tracked to ensure that incarcerated permanent residents and foreign nationals do not go undetected by CBSA Enforcement.

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

Officers should access different sources of information in their efforts to identify incarcerated permanent residents and foreign nationals serving sentences.

Information could be provided by the following sources:

- Correctional Services Canada (CSC);
- provincial correctional services; and/or
- court and police liaison.

The development and maintenance of working arrangements with key partners within the judicial system are crucial to the officer's investigative toolkit.

For more details on investigation procedures refer to chapter ENF 7, section 7 on how to conduct investigations that may result in enforcement action.

The CBSA is committed to the pursuit of positive working arrangements with correctional institutions. Our Memorandum of Understanding with CSC outlines our mutual obligations and responsibilities with respect to early identification of inadmissible inmates through data exchange. Agreements on information sharing provide officers access to information on inmates' sentences and dates of eligibility for conditional release as well as information relating to clinical documents on their criminal profiles.

Officers must liaise regularly with correctional institutions to ensure that inmates subject to enforcement action under IRPA are dealt with appropriately through the sentence management offices. Cooperation agreements make it possible to effectively manage information between organizations in order to ensure effective monitoring.

In accordance with regional agreements, correctional institutions require the assistance of local CBSA offices when the citizenship of an inmate is in doubt. When such a request is made, the officer must inform the institutional chief, sentence management, of the inmate's citizenship status and indicate whether the inmate is of interest and whether enforcement action may be necessary.

Following such a query, the officer may request a search of citizenship records by e-mailing the Citizenship Case Processing Centre (CPC) in Sydney, Nova Scotia at:

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CPC-Sydney-Search-Enquiry@cic.gc.ca

The official response will be provided via e-mail.

Where a record letter is required, an officer must follow up the e-mail request by submitting a completed Application for Search of Citizenship Records using the citizenship form CIT 0058E. A written response will be forwarded by FAX as well as by regular mail.

Note: Citizenship searches will only reveal if a person has obtained Canadian citizenship through naturalization. The Sydney CPC does not keep records of persons who are Canadian citizens by birth. Proof of citizenship by birth can be established by a search of provincial birth certificates or baptismal records.

After a person has received Canadian citizenship, the information is entered into the Global Case Management System (GCMS) database. This data is electronically fed into FOSS on a regular basis and FOSS identifies this information as an NCB (type 11 code).

Upon full implementation of GCMS, officers will be able to perform citizenship record searches themselves and will not have to request a search from CPC Sydney.

For CSC, information from the CBSA is entered by a designated CBSA officer into CSC's Offender Management System (OMS) to facilitate effective file management. OMS terminals are available at various CBSA offices.

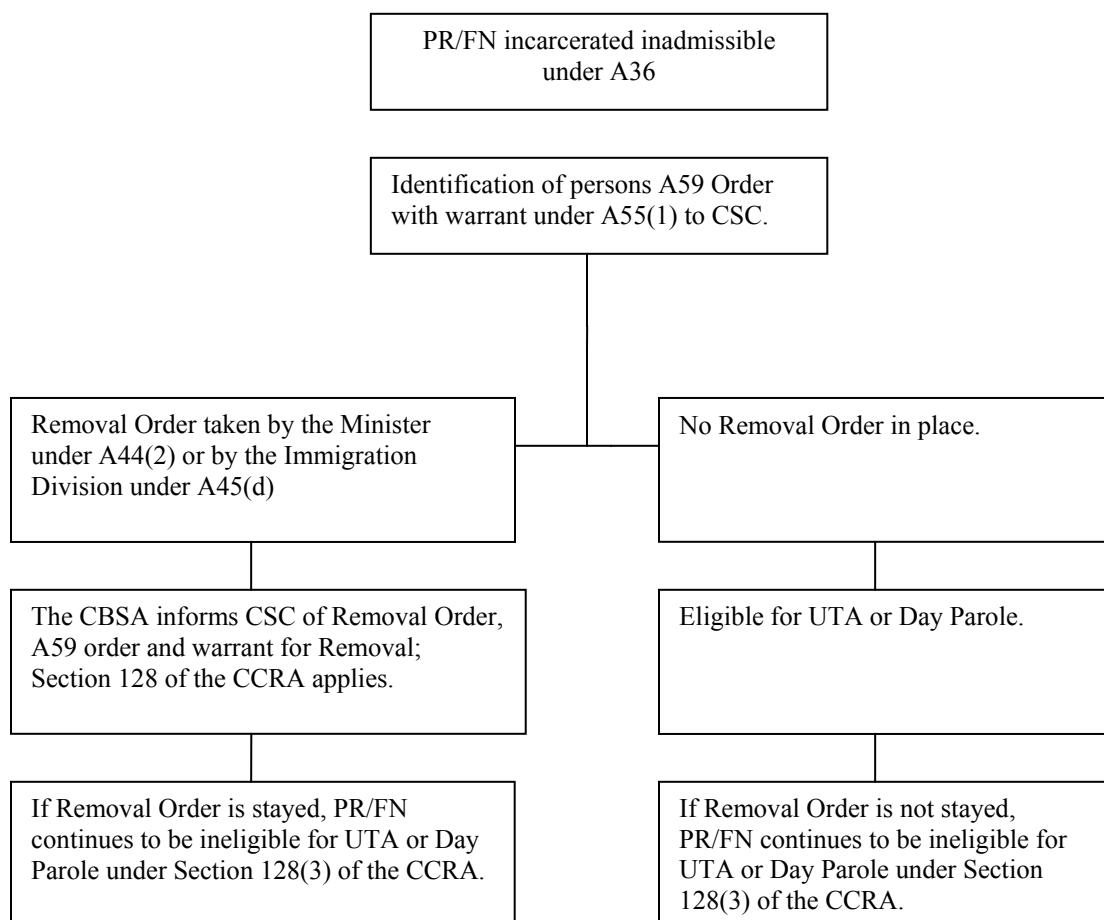
For more information on this partnership, officers should consult the national agreement on data exchange between CSC and CIC and the regional agreements on effective management of inmates who are subject to enforcement action.

8. Procedure: Preparation of the file: inmate ineligible for conditional release

The following is an overview of the procedures that officers must follow when dealing with permanent residents or foreign nationals who apply for UTA or day parole and are subject to enforcement action under IRPA.

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Ineligibility for UTA or Day Parole



Once a case has been identified, the officer must ensure that the appropriate administrative documents have been completed and are placed in the inmate's files (corrections and the CBSA) in order to ensure monitoring. As soon as circumstances permit, the officer must file a Warrant for Arrest (IMM 0420B) and a Section 59 Order, Order of Citizenship and Immigration to Deliver Inmate, (IMM 0419B) with the institutional chief of sentence management. This ensures that provincial correctional services and CSC are aware that an inmate is of interest to the CBSA, and subject to enforcement action by reason of their inadmissibility.

For more information, see the following:

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- Impact of removal order, section 8.1 below;
- Notifying Correctional Services, section 8.2 below; and
- Eligibility due to absence or stay of removal order, section 8.3 below.

8.1. Impact of removal order

The Minister can make a removal order against an inmate under A44(2) or ensure that the Immigration Division carries out an admissibility hearing under A45(d). Delays in obtaining the removal order can have an adverse impact on its execution as the inmate could be granted conditional release prior to the CBSA having the removal order in place. As such, the time it takes to obtain a removal order will have an impact on future management of the file with our correctional partners.

A removal order against a permanent resident or foreign national renders that individual ineligible for unescorted temporary absence or day parole under subsections 128(4) and 128(5) of the CCRA. Subsection 128(4) of the CCRA (as amended by A242) states:

128.(4) Despite this Act and the Prisons and Reformatories Act, an offender against whom a removal order has been made under the *Immigration and Refugee Protection Act* is ineligible for day parole or an unescorted temporary absence until the inmate is eligible for full parole.

If day parole or UTA is granted and the inmate is ordered removed from Canada after being granted day parole, the subject shall be re-incarcerated under subsection 128(5) of the CCRA.

8.2. Notifying Correctional Services

To ensure that a permanent resident or foreign national is not released on day parole or unescorted temporary absence, the officer must notify the chief of sentence management of the correctional institution that a removal order has been issued. The IMM 0419B (Order of Citizenship and Immigration to Deliver Inmate) and IMM 0420B (Warrant for Arrest) must be accompanied by a copy of the removal order to be placed in the inmate's file.

Note: This must be an unexecuted warrant.

8.3. Eligibility due to absence or stay of removal order

Before the Minister or a member of the Immigration Division makes a decision regarding their admissibility to remain in Canada, an inmate is eligible for conditional release. In fact, under the CCRA a permanent resident or foreign national is eligible for an unescorted temporary absence or day parole, including accelerated day parole, if no removal order is issued under IRPA.

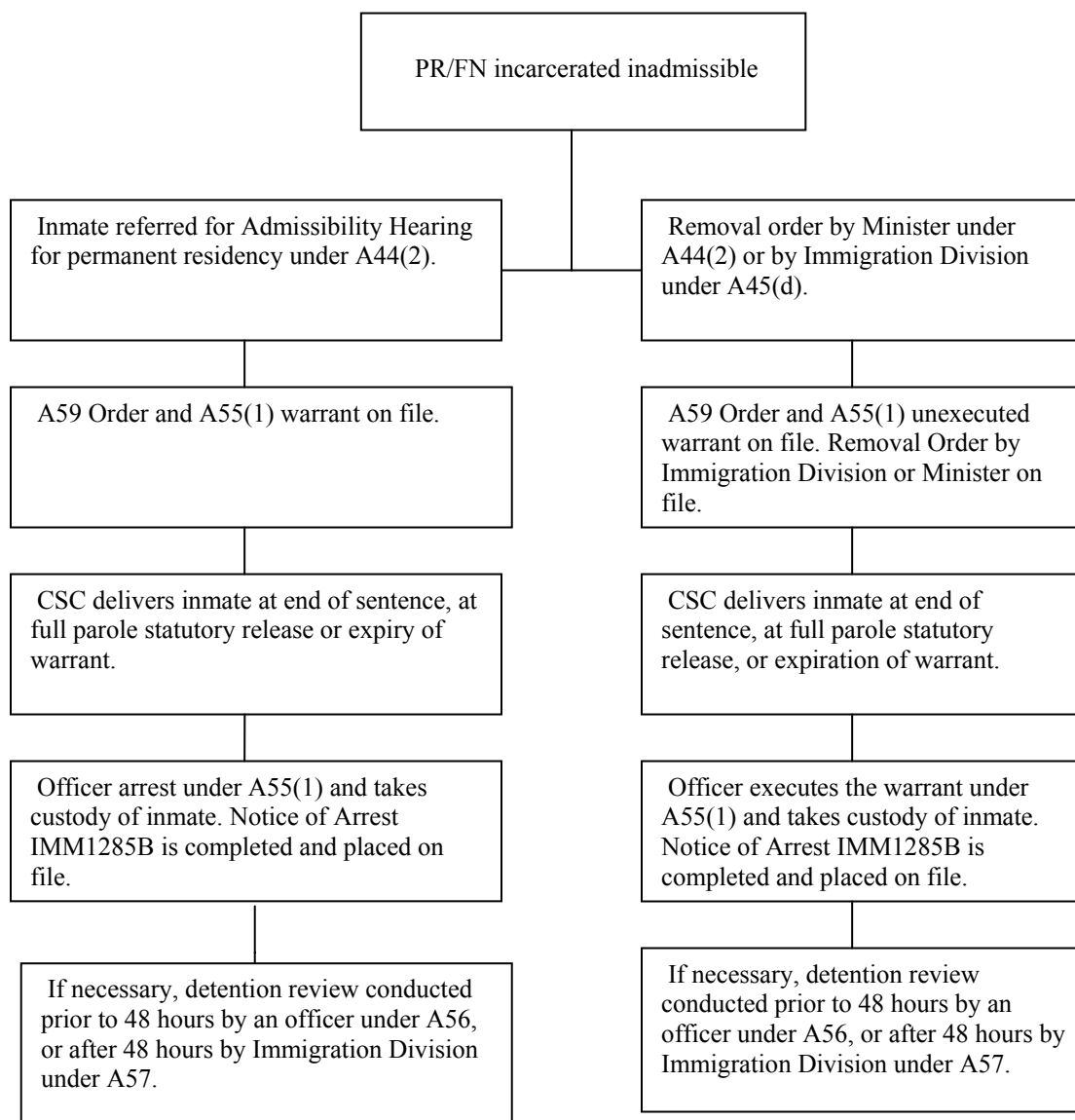
In situations where a removal order is stayed under A50(a), A66(b), or A114(1)(b) of IRPA, the inmate becomes eligible for day parole or UTA under subsection 128(6) of the CCRA. It is the officer's responsibility to advise correctional services of the change by providing the chief of sentence management with a copy of the stay order. See ENF 10, Section 12, Procedure: Application of A50(a) stays of removal.

9. Procedure: Delivery of incarcerated inmates under IRPA

The following is an overview of the steps to be taken by CBSA officers in order to assume the custody of permanent residents or foreign nationals once full parole or statutory release has been granted or the sentence has completely expired.

Delivery of Incarcerated Persons

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When an inmate subject to enforcement action is eligible for full parole or statutory release, the A59 order ensures delivery of the inmate to the CBSA for an examination, an admissibility hearing or for removal from Canada. When taking custody of the inmate, the officer executes the warrant and files a Notice of Arrest under Section 55 of the *Immigration and Refugee Protection Act* IMM 1285B. For complete information on procedures of arrest under IRPA, see ENF 7, section 15.