Home Office

Adults at risk in immigration detention

Version 9.0

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About this guidance

This guidance tells you how to assess whether a person either in immigration detention or being considered for immigration detention is an 'adult at risk'.

Contacts

If you have any questions about the guidance and your line manager or senior caseworker cannot help you, or you think that the guidance has factual errors, email Detention Policy.

If you notice any formatting errors in this guidance (for example, broken links and spelling mistakes), or if you have any comments about the layout or navigability of the guidance, email the Guidance Rules and Forms team.

Publication

Below is information on when this version of the guidance was published:

- version **9.0**
- published for Home Office staff on **20 April 2023**

Changes from last version of this guidance

- guidance updated to reflect modification of Rule 32 of the Short-Term Holding Facility Rules 2018 for Residential Holding Rooms as amended by the Short-term Holding Facility (Amendment) Rules 2022

Related content
Contents

Adults at risk in immigration detention

The information in this guidance applies to all cases in which consideration is being given to detaining an individual in order to remove them. It also applies to cases of individuals who are already in detention though, in those cases, the consideration will be about whether continued detention is appropriate.

There is an existing presumption in immigration policy that a person will not be detained. The adults at risk in immigration detention policy strengthens this presumption against the detention of those who are particularly vulnerable to harm in detention. However, detention may still be appropriate in an individual case when immigration control considerations outweigh the presumption of release, even for a person considered to be at risk. Although there is no statutory time limit on immigration detention in the UK, it is not lawfully possible to detain people indefinitely. Domestic case law is clear that the detention power can be exercised lawfully only if there is a realistic prospect of removal within a reasonable timeframe.

In all cases in which an individual is being considered for immigration detention in order to facilitate their removal, an assessment must first be made of whether the individual is an 'adult at risk' in the terms of this policy and, if so, the level of evidence (based on the available evidence, which may be limited to the individual's account) indicating the level of the policy into which they fall. If the individual is considered to be at risk, a further assessment will be made of whether the immigration considerations outweigh any risk identified. Only when they do will the individual be detained.

An assessment of known risk factors in every case must be made:

- as part of planning for operational enforcement activities
- on encountering individuals during enforcement operations
- when consideration is being given whether to detain
- regularly throughout detention and on an ad hoc basis in light of new information or evidence, reflecting the dynamic nature of vulnerability

Assessment: general principles

The decision maker should answer the following questions to inform their decision:

- does the individual need to be detained in order to effect removal? See Detention – general guidance
    - if the answer is no, they should not be detained
    - if the answer is yes, how long is the detention likely to last
- if the individual is identified as an adult at risk, what is the likely risk of harm to them if detained for the period identified as necessary to effect removal given the level of evidence available in support of them being at risk?

If the evidence suggests that the length of detention is likely to have a harmful effect on the individual, they should not be detained unless there are public interest

concerns which outweigh any risk identified. For this purpose, the public interest in the deportation of foreign national offenders (FNOs) will generally outweigh a risk of harm to the detained person. However, what may be a reasonable period for detention (in line with the Hardial Singh principle (Singh, R v Governor of Durham Prison [1983] EWHC 1 (QB)) will likely be shortened where there is evidence that detention will cause a risk of serious harm. Where the person in detention is not an FNO, detention for a period that is likely to cause serious harm will not usually be justified.

Who is regarded as an adult at risk?

An individual will be regarded as being an adult at risk if:

- they declare that they are suffering from a condition, or have experienced a traumatic event (such as trafficking, torture or sexual violence), that would be likely to render them particularly vulnerable to harm if they are placed in detention or remain in detention
- those considering or reviewing detention are aware of medical or other professional evidence which indicates that an individual is suffering from a condition, or has experienced a traumatic event (such as trafficking, torture or sexual violence), that would be likely to render them particularly vulnerable to harm if they are placed in detention or remain in detention, whether or not the individual has highlighted this themselves
- observations from members of staff lead to a belief that the individual is at risk, in the absence of a self-declaration or other evidence

The nature and severity of a condition, as well as the available evidence of a condition or traumatic event, can change over time. Therefore, decision makers should use the most up-to-date information each time a decision is made about placing someone into detention or continuing that detention.

Before referring individuals to a particular immigration removal centre, decision makers must confirm that a particular centre has adequate healthcare facilities to accommodate that individual's needs. Immigration removal centres do not provide inpatient facilities and can provide primary healthcare only.

Indicators of risk

Indicators of whether an individual may be particularly vulnerable to harm, and therefore at risk in detention, include the conditions or experiences (referred to as 'risk factors') set out below.

Serious physical disability

An individual may be suffering from a serious disability. Such a disability may inhibit their ability to cope within a detention environment and should be factored into any consideration of detention and, indeed, into consideration of their general management through the immigration process.

Serious physical health conditions or illnesses

An individual may be suffering from a serious health condition or illness. Such conditions may inhibit their ability to cope within a detention environment or may make them particularly vulnerable within a detention environment. This should be factored into any consideration of detention and, indeed, into consideration of their general management through the immigration process. If a condition is considered to be serious (on the basis of the considerations set out below) the individual will fall within the scope of the adults at risk policy. If a condition is not considered to be serious, the individual concerned will not fall within the scope of the policy (unless one of the other indicators of risk set out in the policy applies).

When considering whether any given condition qualifies as serious for the purposes of the policy decision-makers must give thought to whether the physical manifestation of the condition puts the individual at risk of harm in immigration detention. Therefore, consideration should be given, on the basis of the available information, to whether the condition or illness can be managed by the individual themselves within detention through medication or through other aids. Whilst the need to take medication could be indicative of a more serious condition, it does not automatically place an individual within the scope of the policy.

Decision-makers must assess the severity of the condition based on the information at the point at which the detention decision is made, and should not make an assessment of the potential for it to become more severe, unless there is professional evidence which indicates that detention will be likely to have the effect of worsening the individual's existing condition.

In some cases, it will be obvious that the individual is suffering from a serious health condition. In other cases, it will be obvious that their physical health condition is not serious. Where there is doubt, and in order to assess whether the condition is serious at the time of making the detention decision, and whether the individual therefore falls within the scope of the policy, decision-makers must take into account a number of factors. These are set out below, although there may be other relevant considerations:

- does the individual take medication?:
  - do they need assistance in taking their medication?
  - what happens if they do not take their medication?
  - medicated conditions will be more likely to be serious, however, if the condition is well managed by the individual through medication, it may not fall within the 'serious medical condition or illness' indicator of risk
- does the condition adversely impact on the individual's mobility or significantly reduce their range of movement?
- does the condition significantly hinder the individual's ability to provide adequate self-care (for example, washing, dressing or eating), severe mobility issues are more likely to indicate that the condition is serious?
- are there other related complicating conditions, such conditions may be an indication of a serious physical health condition?

- where conditions fluctuate, or involve sudden attacks, such as asthma or epilepsy, how long ago was the most recent episode or attack?
  - how severe was it, did the last episode or attack require medical intervention, such as a change in medication or hospitalisation
- has the individual been hospitalised recently, if so, when?

This is a non-exhaustive list of factors which may suggest that an individual has a serious physical health condition that renders them at risk of harm in immigration detention.

See also [Rule 35 and rule 32 - Special illnesses and conditions](#).

There may be some conditions which will almost never be serious, but which are particularly infectious or contagious. Whilst the presence of such conditions may affect the general management or risk assessment of an individual in detention facilities, it will not normally impact on the consideration of whether the condition constitutes a 'serious physical health condition'.

Individuals with a serious condition being cared for under a prescribed specialised service

Some individuals with a medical condition considered to be serious (on the basis of the considerations set out above), may be on a specialised treatment plan which requires specialist clinical support, or specialist medication that is prescribed by specialist prescribers and not GPs in commissioned healthcare services within detention. If so, all reasonable efforts must be made to support continuity of the individual's current treatment plan.

If healthcare services are unable to satisfy the clinical support required (including medication) within the timescale necessary to maintain the individual's current treatment plan, then it is unlikely that the person will be suitable for detention.

Factors to consider:

- is there professional evidence that the individual is suffering from a serious health condition, or mental health condition as defined under the Adults at Risk policy? If so, is the individual under the care of a prescribed specialised service, on a specialised treatment plan and currently taking medication? Specialised services cover rare and/or complex medical conditions and often involve treatments provided to patients with rare cancers, genetic disorders or complex medical or surgical conditions (for example, HIV)
- if an individual has recently completed a custodial sentence and is being considered for detention within an immigration removal centre (IRC), are there any practical considerations that may impact the ability to support continuity of care? It is important to consider logistical implications of treatment plans, such as frequency and location of essential external appointments
- if the individual is entering a place of detention from the community or at a port of entry, what information about their condition and treatment plan is known? Are there any practical considerations that may impact the ability to support

continuity of care if they are detained (for example, feasibility of enabling travel to a specialist clinic if required)?
- what are the clinical impacts if an individual's treatment is disrupted?
- does the individual have enough medication supply to enable treatment to continue without interruption if they are detained?
- if not, how quickly can it reasonably be expected that further medication will be able to be sourced, so as to provide a reasonable amount for continuation of care?
  - you should consider whether the medication can ordinarily be prescribed by IRC/prison healthcare services or whether a specialist prescription is required
  - additional prescribed medication, from a clinic engaged in the individual's treatment within the UK, can usually be obtained within 48 hours
- has the individual paused, stopped or not started a treatment plan for a condition that would normally fall under a prescribed specialist service? If so, the continuity of the current treatment plan may not be a relevant consideration, because the plan will already have been disrupted. If this is the case, please document any information and reasons available to provide the rationale for detention decisions

Responses should be documented to support the rationale for detention decisions.

Mental health conditions

An individual may be suffering from a mental health condition or impairment (this includes psychiatric illness, or clinical depression, post-traumatic stress disorder and more serious learning difficulties depending on the nature and severity of the condition). Such conditions may inhibit their ability to cope within a detention environment and should be factored into any consideration of detention and, indeed, into consideration of their general management through the immigration process.

There may be complex mental health conditions which fall under prescribed specialised services. If this is the case, please refer to Individuals with a serious condition being cared for under a prescribed specialised service outlined above. There may also be specific experiences to which the individual has (or claims to have) been subject, or which indicate that they may suffer particular harm or detriment if detained, because those experiences may have affected the individual's mental state. Indicators can include:

- having been a victim of torture having been a victim of sexual or gender-based violence, including female genital mutilation
- having been a victim of human trafficking or modern slavery

Torture victims

The definition of torture for the purposes of the adults at risk in immigration detention policy is set out in rule 35(6) of the Detention Centre Rules 2001 (as inserted by the Detention Centre (Amendment) Rules 2018) and rule 32(6) of the Short-term Holding Facility Rules 2018 and is defined as:

"any act by which a perpetrator intentionally inflicts severe pain or suffering on a victim in a situation in which-
(a) the perpetrator has control (whether mental or physical) over the victim, and
(b) as a result of that control, the victim is powerless to resist."

For the avoidance of doubt, please note the following: There is no difference between 'powerless to resist' and 'powerlessness'. The proper approach is to consider whether the individual was in a situation of powerlessness.

The process of determining whether an individual meets the definition of torture will be contingent on the evidence available. A declaration from an individual or their legal representative to the effect that they have been tortured should be accepted at face value and they should be regarded as falling within Level 1 of the adults at risk policy.

Where professional evidence is available, a 2-stage approach should be applied:

Stage 1

Decision-makers must determine whether the circumstances disclosed by the individual amount to torture in the terms of this policy. If they do not, that individual will not be considered to be a victim of torture, but they may still fall into one of the other indicators of risk set out in the policy. If, however, the circumstances described do amount to torture, decision-makers must go on to consider stage 2.

There are 3 elements to the definition of torture that must be met in each case: severity, intent and powerlessness.

Severity

In order to constitute torture, the pain or suffering inflicted must be **severe**. It may be physical or mental. The impact on the individual is relevant in any assessment of the severity of the pain and suffering. Therefore, when determining severity, the following factors should be taken into account, though there may be other relevant considerations:

- the duration of the pain and suffering:
  - there might be a single act of significant duration, or a series of acts carried out over an extended duration
  - a short, one-off event involving pain and suffering (such as a beating in the street) is less likely to constitute torture than a sustained period of pain and suffering
  - a sustained period of pain and suffering could take a number of forms, for example, it could be if an individual was confined or held for some hours and regularly subjected to physical or mental violence, alternatively, it could be abuse or violence which takes place over a number of years, this could include a domestic violence situation
- what were the physical effects of the treatment

    - the greater the physical impact, the more likely it is that the pain and suffering has been severe
- what were the mental effects of the treatment
    - the greater the mental impact, the more likely it is that the pain and suffering has been severe
- what were the respective ages of the perpetrator and victim
    - a child or an elderly person may be more likely to be susceptible to severe pain and suffering than a fit adult
- what was the state of health of the victim at the time of the act
    - an individual in a poor state of health may be more susceptible to severe pain and suffering than an individual in good health

Intent

In order to constitute torture, the perpetrator must **intend** to inflict severe pain and suffering. Cases in which an individual has, for example, sadly been accidentally knocked down by a vehicle, or has otherwise been the victim of an accident, should not be regarded as torture (though the impact of the accident may mean that the individual falls within the scope of one of the other indicators of risk set out in the adults at risk policy). If, however, it is apparent that the perpetrator has intended to cause severe pain and suffering to the victim, then the act should be regarded as torture (assuming that it also meets the severity and powerlessness limbs).

Powerlessness

In order for an act to constitute torture, the victim must have been placed in a situation of **powerlessness**. The courts have recognised that 'the situation of powerlessness must be something somewhat over and above that which is inherent in the mere fact that the individual has been unable to prevent the infliction of severe pain and suffering' (Medical Justice & Ors v Secretary of State for the Home Department & Anor [2017] EWHC 2461 (Admin)). Decision makers must consider powerlessness in the context of immigration detention. That is, what are the types of previous experiences which are likely to have a detrimental impact on how the individual will now respond to being placed in immigration detention? Will detention render that individual at risk of harm as a result of their experiences of situations of powerlessness?

The key elements of powerlessness are:

- was severe pain and suffering inflicted against a person whilst they were in the perpetrator's custody or physical control, that is, were they deprived of their liberty or were their movements constrained or were they are coerced into staying
- was any psychological control exerted
- was a degree of power exercised by the perpetrator over the individual to the extent that they could not escape or defend themselves

If any one of the above elements is apparent, the victim should usually be regarded as having been in a situation of powerlessness, provided it is something somewhat

over and above that which is inherent in the mere fact that they were unable to prevent that situation. This, essentially, is the difference between an assault and torture.

Control is the key element in rendering an individual powerless. For example, physical powerlessness could be constituted by physical restraint, such as being detained in a particular place from which escape is blocked, such as a vehicle, a room or a cell. Mental powerlessness could emerge from the kind of control asserted by an abusive individual over their spouse or partner, or by an abusive adult over a child. It could also be related to being persistently degraded or humiliated such that the individual's sense of self and personal autonomy has been damaged - for instance, if they have been subjected routinely to sexual violence.

In some circumstances (particularly, but not exclusively, in a domestic setting) the relationship between the perpetrator and the victim may be a key factor in determining whether control has been exerted. It is most likely to be a factor if there is a subordinate relationship, for example between a moneylender and a debtor, between migrant smugglers and their victims, or in some marriages.

The relative ages of the perpetrator and victim may also be a key factor in determining whether a situation of control existed (see the section on severity above).

Other considerations

The purpose for which the act was committed should not be regarded as a key consideration in the determination of whether the act should be regarded as torture. It may form part of the consideration of the case, particularly if the purpose of the act was, for example, to extract a confession, to extract information, or to punish an individual.

Stage 2

The decision maker must assess what evidence there is to support the individual's account by using the levels of evidence referred to below in this guidance. Where there is professional evidence of torture, the individual should be regarded as being at level 2 in the terms of this policy. Where the professional evidence indicates that a period of detention would be likely to cause harm they should be regarded as being at level 3. There will not always be documentary evidence of every aspect of the individual's account and cases must therefore be considered in the round.

Medico-legal reports

Evidence that an individual is a victim of torture may emerge from a rule 35 (in relation to those detained in immigration removal centres) or rule 32 report (in relation to others in residential short-term holding facilities (STHFs) or a medico-legal report supplied by Freedom from Torture, the Helen Bamber Foundation or another reputable medico-legal report provider. Individuals with a medico-legal report which

indicates that the individual has been a victim of torture will be regarded as meeting level 3 evidence under the policy, providing the report meets the required standards.

In cases in which an individual is detained during the consideration of their asylum claim and is accepted by Freedom for Torture or the Helen Bamber Foundation for a pre-assessment appointment, caseworkers must apply the Medical evidence in asylum claims guidance unless there is a subsequent negative credibility finding.

This section of the guidance applies to the consideration of all Detention Centre rule 35 or Short-term Holding Facility rule 32 reports and medico-legal reports from 2 July onwards, regardless of when the reports were completed. However, no rule 32 reports will have been submitted before the coming into force of the Short-term Holding Facility Rules 2018 on 2 July 2018.

Potential victims of trafficking or modern slavery

For the purposes of this policy, an individual who has received a positive reasonable grounds decision under the National Referral Mechanism (NRM), and has not yet received their conclusive grounds decision or otherwise left the NRM, is considered a potential victim of trafficking or modern slavery and will fall within the scope of the adults at risk policy.

A positive reasonable grounds decision alone from one of the competent authorities will be regarded as official documentary evidence amounting to level 2 evidence (see evidence levels).

There are particular protections afforded to potential victims of trafficking or modern slavery. For the full guidance and process to follow for managing the detention decisions of potential victims of trafficking or modern slavery, please see: Adults at risk: Detention of potential or confirmed victims of modern slavery.

For guidance on the process to be followed when making detention decisions for individuals who have received a Conclusive Grounds decision under the NRM, see: Adults at risk: Detention of potential or confirmed victims of modern slavery.

Age

For the purposes of this policy an individual aged 70 or over (regardless of any other considerations) should be regarded as being at risk. The fact of their age alone will automatically be regarded as amounting to, at least, level 2 evidence (see evidence levels). In the cases of documented individuals, their age will be apparent from the documentation. When the individual is undocumented, however, and there is no definitive information available that indicates their age, a judgement may need to be made on the basis of a visual assessment.

In cases in which an undocumented individual claims to be aged 70 or over, but in which there is no documentary confirmation, the following process should be followed:

- the decision maker (or an officer acting on their behalf) should carry out a visual assessment of the individual
- on the basis of this visual assessment, if the individual is clearly, or is probably, aged 70 or over, they should be treated accordingly for the purposes of this policy
- if there is doubt about whether the individual is in fact aged 70 or over:
    - all existing documentation should be double-checked to ensure that there is no information which indicates the individual's age
    - the individual should be asked whether they have any additional information relevant to the determination of their age
    - the decision maker should reach a view on whether or not the individual is 70 or over
    - if the view is taken that the individual is likely to be under 70, and that the individual is to be detained (or their detention continued), this assessment of age must be corroborated by the decision maker's line manager, who should be of at least the grade of higher executive officer (HEO)

Pregnant women

There are particular restrictions on the detention of pregnant women for the purposes of removal, see Chapter 55a Detention of Pregnant Women. In all cases in which a pregnant woman is being detained for removal, the fact of her pregnancy will automatically be regarded as amounting to level 3 evidence (see evidence levels) for the purpose of this policy and the pregnancy will therefore be afforded significant weight when assessing the risk of harm in detention. The instruction on detention of pregnant women for the purpose of removal provides guidance on establishing or accepting a claimed pregnancy, which would be applicable in all cases.

Transsexual and intersex people

An individual who has transitioned, or is transitioning, from one gender to the other, may be at particular risk of abuse and mistreatment from others in detention. The same could apply to a person who is intersex.

Other conditions

The list of indicators in the adults at risk in immigration detention statutory guidance is not intended to be exhaustive. Caseworkers should note that there may be other unforeseen, conditions and experiences that do not fall within the list of indicators and which may render an individual particularly vulnerable to harm if they are placed in detention or remain in detention. Caseworkers must consider such conditions and experiences in the same way as the indicators in that list. In addition, caseworkers should note that the nature and severity of a condition, as well as the available evidence of a condition or traumatic event, can change over time.

Assessing risk: weighing the evidence

Evidence levels

Once an individual has been identified as being at risk, by virtue of them exhibiting an indicator of risk, consideration should be given to the level of evidence available in support, and the weight that should be afforded to the evidence, in order to assess the likely risk of harm to the individual if detained for the period identified as necessary to effect their removal:

Level 1

A self-declaration (or a declaration made on behalf of an individual by a legal representative) of being an adult at risk should be afforded limited weight, even if the issues raised cannot be readily confirmed.

Level 2

Professional evidence (for example from a social worker, medical practitioner or non-government organisation (NGO)), or official documentary evidence, which indicates that the individual is (or may be) an adult at risk should be afforded greater weight. Such evidence should normally be accepted and consideration given as to how this may be impacted by detention. Representations from the individual's legal representative acting on their behalf in their immigration matter would not be regarded as professional evidence in this context.

Level 3

Professional evidence (for example from a social worker, medical practitioner or NGO) stating that the individual is at risk and that a period of detention would be likely to cause harm, for example, increase the severity of the symptoms or condition that have led to the individual being regarded as an adult at risk, should be afforded significant weight. Such evidence should normally be accepted and any detention reviewed in light of the accepted evidence. Representations from the individual's legal representative acting on their behalf in their immigration matter would not be regarded as professional evidence in this context.

When considering the likely risk of harm for the period identified, decision-makers are entitled not to place decisive weight on assertions that are unsupported by medical evidence.

Given the difficulty involved in validating cases in which the only evidence available is the self-declaration of the individual concerned, the distinction between such cases and cases of those who are not considered to be at risk may not be great. However, the expectation, where the weight of the evidence is at level 1, is that this will act as a flag to all those involved in managing the case, and that particular attention will be paid to pursuing voluntary return options and progressing the case. The flag should also act as an alarm should additional risk issues emerge as the case progresses, particularly if the person is already detained or, if not, following their detention.

However, caseworkers should not usually disagree with medical evidence unless there are very strong reasons for doing so - for example, a finding by an independent tribunal that rejects the same evidence or credibility concerns arising from other sources (such as an asylum casework decision). Such matters may be taken into account in deciding the weight that should be afforded to evidence and could result in a reconsideration of the weight of the evidence.

Weighing the evidence

External medical reports

The standards covered in the following paragraphs will apply to medical reports commissioned by an immigration advisor, or solicitor, resulting from a consultation between an external healthcare professional and their client whilst their client is detained under immigration powers.

These standards are not intended to be applied to all forms of professional evidence, which may arrive through a number of routes. For example, the standards would not apply to evidence from professional sources based on interaction with the person relating to a pre-existing condition, which may have been managed in the community prior to detention. In such cases, evidence to verify the history and treatment of a pre-existing condition could be submitted, thereby aiding consideration of how that condition might impact decisions related to detention.

However, in some cases, a medical report may be submitted which does not evidence any previous interaction with healthcare services in the community and the Home Office receives no recorded history of how a health issue may have been managed prior to arriving in detention.

In order to assess whether an individual may be particularly vulnerable to harm, the following standards must be applied to medical reports commissioned by an immigration advisor, or solicitor, resulting from a consultation between an external healthcare professional and their client whilst their client is detained under immigration powers.

Baseline requirement

Regulation - Reports should be accepted only from a qualified healthcare professional, who is registered with the relevant healthcare professionals' regulator in the UK. For doctors/psychiatrists this is the General Medical Council (GMC) and for psychologists this is the Health and Care Professions Council (HCPC). The report must list the professional's registration number, qualifications and experience in the relevant field.

Without this information, the Home Office cannot be satisfied that the opinions expressed are from a qualified source who is accountable to a professional regulatory body. **Failure to meet this requirement will lead to the rejection of the report, unless evidence of regulation is provided through the legal**

representative or immigration advisor within two working days of notification by the Home Office.

Further standards

Instructions underpinning the report - The report must include an explanation of the healthcare professional's understanding of the purpose and scope of the consultation commissioned by the legal representative. The healthcare professional should not be led to reach specific conclusions by the advisor or legal firm. Without this information, the Home Office cannot be satisfied that the report has been commissioned to provide independent advice within the healthcare professional's scope of practice. Failure to meet this standard may contribute to the report being given limited weight.

Use of supporting documents - The legal representative should have requested access to the detained individual's medical records and all other documents of relevance relating to their case and immigration history and have provided these to the healthcare professional. All documents relied upon should be listed and those sources should be referenced where relied on throughout the report. Failure to meet this standard may contribute to the report being given limited weight.

Location of the assessment - If medical examination facilities are required, the consultation should have been conducted in a suitably equipped room. Guidance on how to book such a room may be found in the link above. If such facilities are not expected to be required for the assessment, it must nevertheless take place in a private area (not a communal space). The location of the consultation should be clearly stated in the report. Where facilities are available and required, they should be utilised. Failure to meet this standard may lead to the report being given limited weight.

Basic examination requirements - Unless prevented from doing so by circumstances beyond the healthcare professional's control, the consultation must have been conducted face-to-face with the detained individual, in person. Aside from exceptional circumstances, for example, the cancellation of visits on grounds of public health, or other sudden exceptional reasons, the report must be based on a face-to-face consultation. Any explanation as to why this could not be satisfied should be noted in the report. Failure to meet this standard may contribute to the report being given limited weight.

Whilst reports completed remotely may be accepted, in exceptional circumstances, those reports completed by telephone, or via video-link, must state the limitations (if any) attached to forming opinions through such methods of assessment. The evidential weight accorded to the report should be considered in light of this. Upon the request of the person being assessed and given their consent, an appropriate third party may also be present. This must not be the legal representative, or a fellow detained person. The role of any third party should be strictly limited to that of an observer and purely in the interests of safeguarding the person assessed.

Use of an interpreter - Where there is no shared language between the healthcare professional and detained person, an independent professional interpreter should be

relied upon, strictly in their capacity as an interpreter. This must not be a fellow detained person. The healthcare professional must confirm that both parties have stated that they understand each other and must state whether an independent interpreter was used to achieve this. Failure to meet this standard may contribute to the report being given limited weight.

The report must be specific to the individual - Reports must deal only with the circumstances relating to the person in question, their condition and any contributory factor of detention upon their condition. Purely generic statements about the impact of detention (or related matters), whether these are based on the healthcare professional's own opinion or on academic research, will not be regarded as being pertinent. Evidential weight should only be given to those sections of the report that relate specifically to the person in question.

Concerns should be raised immediately with the on-site healthcare team - Should the healthcare professional be concerned for the health of the individual following the consultation (and especially when they consider that detention is having, or is likely to cause harm), they should raise the matter immediately (that is, during their visit to the IRC/prison, or immediately following the appointment) and directly with the healthcare team within the place of detention. The healthcare professional should confirm whether such concerns have been referred to the on-site healthcare team when drafting the report.

This reporting facility is essential in the interests of the detained person and all concerns, (subject to the consent of the person in detention, where required) should be communicated at the soonest possible time. Any failure to do this without reasonable explanation may lead to the report being considered with limited weight, particularly if the report raises concerns which are not supported by, or conflict with the existing facts and history of the case.

Consideration of the existing standard of care - The report should consider that primary care is available in all IRCs and prisons and any specialist conditions needing attention will be referred by the healthcare team for secondary care according to need. Mental health teams work within IRCs and prisons and treatment will involve psychiatrist visits in appropriate cases.

A failure to engage with the fact that primary care medical facilities are available means that the report may not have accurately considered the impact of detention on the individual's health. A report which fails to evaluate how access to these facilities might affect the management of the individual's health in assessing the impact/harm of detention may lead to it being treated with limited weight.

Remit of the healthcare professional - Opinions expressed in the report must be confined to the healthcare professional's own scope of practice. The healthcare professional must confine their report to matters within their area of practice. Where opinions are judged to be outside their expertise, whilst their conclusions may be properly reasoned, the Home Office may conclude differently, on the basis that they are not experts in that area.

Statement of assurance - The report must be verified by a statement from both the healthcare professional and the immigration advisor or solicitor that commissioned the report, to confirm that the report has been prepared and completed in line with the aforementioned standards. A failure to meet this requirement will prompt an urgent request from the Home Office to obtain this confirmation, which should be satisfied within 2 working days.

Considering the standards and evidential weight

Whilst a continued failure to comply with the baseline regulation requirement will ultimately lead to the rejection of the report under the policy, the caseworker in receipt of the report must, as with all reports received, refer it to the on-site Healthcare team within the immigration removal centre or prison for their information, in order that they may take any action deemed appropriate in the interests of the person in detention.

A failure to satisfy the further standards, as set out above, may impact the evidential weight that the report would otherwise be granted. In such cases where 'limited weight' is referred to, this means considering whether the report should be placed at a lower evidence level than it would usually be set absent the standards; level 1 or 2. In all cases, the failure to meet particular standards should be considered alongside other factors, where present, such as factual inaccuracies, or information presented which is inconsistent with other known facts in the case, such as any existing healthcare records or previous judicial decisions. In such cases, discretion is encouraged in considering the extent to which such failures, or factual information, might impact the reliability of the report as a whole.

By way of illustration, the combination of a failure to meet a single standard or combination of standards, with other known factual information, may mean that limited weight would be attached to any statement that the person would suffer harm in detention and thus a decision might be made to assign evidence level 2 rather than 3. Alternatively, a report which fails to satisfy the standards sufficiently to establish a particular mental health condition, might not qualify as acceptable professional evidence and be classified as level 1 evidence, the equivalent of an individual self-declaring a condition.

In circumstances where a caseworker proposes to reject a report, or to give a report a reduced level of weight, the decision to do so must be authorised at senior executive officer level or above and it must be fully documented within case details and on CID/Atlas. A letter should be drafted in response to the report, providing full reasons for the consideration of its content. The letter should be sent to the immigration advisor, or legal representative and person concerned.

Similarly, where the standards have been satisfied and barring information from other sources that might impact the reliability of that evidence, the caseworker should assign the evidence level with the appropriate weight as noted in the section on evidence levels. Again, a letter should be drafted to explain the decision and should be sent to the immigration advisor, or legal representative and person concerned.

Assessment of immigration factors

In all cases in which the detention of an individual is being considered, the decision maker deciding on detention should first assess whether there is a realistic prospect of removal within a reasonable timescale. If there is not, the individual should not be detained. In cases in which there is such a prospect, and in which the individual is determined to be at risk in the terms of this policy, the decision maker should carry out an assessment of the balance between the risk factors and the immigration factors. This should involve a weighing of the evidence-based level of risk to the individual against:

- how quickly removal is likely to be effected
- the compliance history of the individual
- any public protection concerns

An individual should be detained only if the immigration factors outweigh the risk factors such as to displace the presumption that individuals at risk should not be detained. This will be a highly case specific consideration taking account of all immigration factors. In each case, however, there must primarily be a careful assessment of the likely length of detention necessary and this should be considered against the likely impact on the health of the individual if detained for the period identified given the evidence available of the risk to the individual. The likely length of detention prior to removal should be quantified in days, weeks or months and this predicted timeframe should be recorded when making detention decisions. For people detained in immigration removal centres the timeframe should also be communicated to individuals in documentation concerning detention decisions, including IS.151F and rule 35 responses.

Individuals can be detained in a STHF for an **absolute maximum** of 7 days. People detained in residential STHFs will be informed of the outcome of any review of their detention and rule 32 responses using CID Doc Gen form 'IS.151F (STHF)'.

In deciding whether to detain, the likely risk of harm (as assessed in accordance with the risk factors identified and the evidential weight that has been afforded to them), must be weighed against any immigration control factors, set out below:

Length of time in detention

In all cases, every effort should be made to ensure that the length of time for which an individual is detained is as short as possible and, as stated above this should be quantified in days, weeks or months. In any given case, it should be possible to estimate the likely duration of detention required to effect removal. This will assist in determining the risk of harm to the individual.

In balancing risk issues against the prospect of removal, the basic principle is, the higher the level of risk to the individual (on the basis of the available evidence), the shorter the length of detention that should be maintained. In each case there should be a careful assessment of the likely length of detention and this should be

considered against the likely impact on the health of the individual given the evidence available.

Individuals who arrive at the border with no right to enter the UK are likely to be detainable notwithstanding the other elements of this policy, on the basis that such individuals are likely to be detained for only a short period of time before being removed.

Public protection issues

Consideration will be given to whether the individual raises public protection concerns. The following issues should be taken into account in assessing the level of public protection concern represented by the individual:

- is the individual a foreign national offender (FNO)
- if so, how serious was the offence or offences
- is there available police or National Offender Management Service (NOMS) evidence on the level of public protection concern
- is the person being deported on national security grounds
- has a decision otherwise been made to deport (or remove through administrative means) the individual on the basis that their presence in the UK is not conducive to the public good

Compliance issues

An assessment must be made, based on the previous compliance record of the individual concerned, of whether that individual is likely to leave the UK voluntarily or whether the individual is likely to be removable only if they are detained for that purpose (in line with the principles set out in Assessment: general principles).

All reasonable and proportionate voluntary return options should be pursued before consideration is given to detaining individuals at risk. Where there are reasonable grounds to believe that the individual would not return without the use of detention to support enforced removal (for example, they have previously been offered the chance to pursue a voluntary return and not taken it up or complied with the process, or, they have been living and working illegally in the UK for some time, or they have made attempts to frustrate their return), this should be regarded as a matter of non-compliance.

By definition, all individuals who, for example, enter the UK illegally or who stay in the UK beyond the date of expiry of their leave, will have been non-compliant with immigration law. However, some acts of non-compliance are more significant than others, and the level of non-compliance should be regarded as indicative of the appropriateness of detention for the purpose of removal.

Positive indicators of compliance will include:

- having fully complied with conditions of leave or any restrictions attached to temporary admission, immigration bail or release on restrictions

- having been compliant with attempts to effect voluntary return
- having made any immigration applications at the earliest opportunity

Negative indicators of compliance will include:

- having previously absconded
- having failed to comply with conditions of stay, including having failed to comply with conditions of temporary admission, immigration bail or release on restrictions:
    - take into account any health conditions (particularly mental health conditions) that may have affected the individual's ability to attend reporting events
- having failed to comply with attempts to effect voluntary return
- having made a protection or human rights claim only after having been served with a negative immigration decision unless there is good reason for them to have delayed the claim, see Assessing credibility and refugee status
- having been in the UK illegally for a protracted period of time without having come into contact with the authorities
- having engaged in 'nationality swapping'
- having failed to comply with re-documentation processes

The level of non-compliance will be considered against the level of risk and alongside any other relevant immigration factors.

Balancing risk factors against immigration control factors

Consideration of the risk and immigration issues set out above should result in a determination of whether the risk factors are outweighed by the immigration factors. An individual should be detained only if the immigration factors outweigh the risk factors such as to displace the presumption that individuals at risk should not be detained. The guidance below is designed to assist decision makers in weighing the evidence.

Evidence assessment

As in any case of potential detention, in order to detain there must be a realistic prospect of removal within a reasonable period. In cases of adults at risk in which this condition is met, the following is a guide to balancing any identified risk issues relating to the individual concerned against the immigration considerations. In all cases, the primary consideration should be based on the length of time for which detention is expected to be required and the likely impact of the length of detention on the individual given the evidence of risk.

Level 1

Where there is no independent evidence that a person is at risk as claimed, the individual will be suitable for consideration for detention if one of the following applies:

- the date of removal can be forecast with some certainty and if this date is within a reasonable timescale given the logistics involved
- any public protection issues are identified, for example, someone whose presence in the UK is not conducive to the public good
- there are indicators of non-compliance with immigration law which suggest that the individual will not be removable unless detained

Level 2

Where there is professional and/or official documentary evidence indicating that an individual is an adult at risk but no indication that detention is likely to lead to a significant risk of harm to the individual if detained for the period identified as necessary to effect removal, they should be considered for detention only if one of the following applies:

- the date of removal is fixed, or can be fixed quickly, and is within a reasonable timescale and the individual has failed to comply with reasonable voluntary return opportunities, or if the individual is being detained at the border pending removal having been refused entry to the UK
- they present a level of public protection concerns that would justify detention, for example, if they meet the criteria of foreign criminal as defined in the Immigration Act 2014 or there is a relevant national security or other public protection concern
- there are negative indicators of non-compliance which suggest that the individual is highly likely not to be removable unless detained

Less compelling evidence of non-compliance should be taken into account if there are also public protection issues. The combination of such non-compliance and public protection issues may justify detention in these cases.

Level 3

Where on the basis of professional and/or official documentary evidence, detention is likely to lead to a risk of harm to the individual if detained for the period identified as necessary to effect removal, they should be considered for detention only if one of the following applies:

- removal has been set for a date in the immediate future, there are no barriers to removal, and escorts and any other appropriate arrangements are (or will be) in place to ensure the safe management of the individual's return and the individual has not complied with voluntary or ensured return
- the individual presents a significant public protection concern, or if they have been subject to a 4 year plus custodial sentence, or there is a serious relevant national security issue or the individual presents a current public protection concern

It is very unlikely that compliance issues, on their own, would warrant detention of individuals falling into this category. Non-compliance should be taken into account if there are also public protection issues or if the individual can be removed quickly.

The above is intended as a guide rather than a prescriptive template for dealing with cases. Each case must be decided on its own merits, taking into account the full range of factors, on the basis of the available evidence.

Where professional evidence is not immediately available, but where observations from Home Office officials lead to a belief that the individual is at a higher level of risk than a simple self-declaration would suggest, an individual can be allocated to a higher risk category in the terms of this policy on the basis of that observational evidence.

In each case the length of likely detention will be a key factor in determining whether an individual should be detained.

As part of the determination of whether an individual should be detained, consideration must be given to whether there are alternative measures, such as residence or reporting restrictions, which could be taken to ensure an individual's compliance whilst removal is being planned or arranged and to reduce to the minimum any period of detention that may be necessary to support that removal – for example, by detaining much closer to the time of removal.

Detention of people at risk: voluntary return options

Voluntary and assisted return options will normally be pursued before consideration is given to detaining individuals at risk.

The level of assistance available to help individuals to return voluntarily will usually be consistent with the level of risk attached to the individual, in other words, the higher the level of risk, the more assistance available. On that basis, where it is believed that the individual would not return without the use of detention to support enforced removal, failure to engage with the returns process, even for those regarded as being at significant risk, on the basis of the available evidence, should be considered to be a non-compliance issue.

Individuals already detained may decide to pursue voluntary return options. If this occurs in the case of an individual who is regarded as being 'at risk' in the terms of this policy, the case should be reviewed and consideration given to whether the individual still needs to be detained in order to effect removal and, on the basis of this, whether the immigration considerations no longer outweigh the risk factors. If they do, then the individual should be released in advance of their return to their country of origin.

Border cases: adults at risk

By virtue of rule 6 of the Short-term Holding Facility Rules 2018, detention in holding rooms is limited to a normal maximum of 24 hours, though there is provision for extending in exceptional circumstances, subject to authorisation for the extension.

Detention in port holding rooms at the border on immigration grounds is likely to remain appropriate, even if an individual is assessed as being at risk. This is because of the inherently short-term nature of the detention in these circumstances.

If there are significant and obvious indicators to suggest that the individual is at immediate risk, or that the detention of the individual is likely to be prolonged, the case should be reviewed and there should be an assessment of the appropriateness of continued detention, and the appropriate facility for continued detention, in line with the policy set out in this guidance. See the guidance on the short-term holding facility rules 2018.

Risk factors emerging after the point of detention

Ongoing assessment

Following the detention of any individual (including those regarded as being at risk) there should be an ongoing assessment of risk made by the caseworker throughout the period of detention which will facilitate the identification of any emerging risk, or changes to known risk factors.

If any new risk factors emerge, or any existing risk factors change, there should be a formal review of the case, with a fresh consideration of the balance of risk factors against the immigration factors, as set out above.

The emerging risk factors may shift the balance to the extent that the risk factors outweigh the immigration factors. In these circumstances, the individual should be released from detention on appropriate release conditions and their compliance monitored. Equally, a failure to remove within the expected timescale might also tip the balance to the extent that release becomes appropriate, though this is less likely if the individual's non-compliance has caused the failure to effect removal.

As part of the induction process into immigration removal centres (IRCs) all individuals should have a medical screening within 2 hours of their arrival and must be given an appointment with a GP within 24 hours of admission to an IRC. They will also have access to health care services throughout their stay in detention.

In residential STHFs detained individuals should also have a medical screening within 2 hours of their arrival. Thereafter, if an individual becomes ill or sustains an injury whilst they remain detained in a residential STHF, they must be provided with prompt access to a healthcare professional, who can be either a doctor or nurse (though in practice the likelihood is that it would be a nurse). Information resulting from medical interventions in detention will usually be made known to the Home Office only if it prompts a report under Rule 35 of the Detention Centre Rules or (in residential STHFs) rule 32 of the Short-term Holding Facility Rules.

Home Office staff may, however, be made aware of an individual's medical condition (or claimed medical condition) through (in asylum claims) the asylum screening process in detention or (in both asylum and non-asylum cases) the detained person directly informing a member of Home Office or detention facility staff of it. In these cases, the information should be recorded as level 1 evidence, the appropriateness of detention should be reviewed in the light of the new information, and healthcare staff in the detention facility informed. Where appropriate, the individual should be advised to seek a medical opinion from the health services available in the detention facility in which they are housed.

If, once detained, new information comes to light which suggests that the individual presents an indicator of risk which is not necessarily medically-related (and which is therefore not brought to the attention of the Home Office by the medical services in the detention setting), such as having been a victim of sexual or gender-based violence, human trafficking or modern slavery, having a physical disabilities, or being transsexual, detention should be reviewed in the light of the new information. If supporting evidence is available, consideration should be given to the weight that should be afforded to that evidence. Individuals self-declaring should be advised that they may provide supporting information if it is available.

Rule 35 of the Detention Centre Rules and rule 32 of the Short-term Holding Facility Rules: special illnesses and conditions

Purpose of Detention Centre rule 35 and Short-term Holding Facility rule 32

The purpose of rule 35 of the Detention Centre Rules and rule 32 of the Short-term Holding Facility Rules is to ensure that particularly vulnerable individuals are brought to the attention of those with direct responsibility for authorising, maintaining and reviewing detention.

Rule 35 of the Detention Centre Rules 2001 sets out the requirement for doctors working in immigration removal centres to report on any detained person:

- whose health is likely to be injuriously affected by continued detention or any conditions of detention
- who is suspected of having suicidal intentions
- for whom there are concerns they may have been a victim of torture, torture is defined in rule 35(6) of the Detention Centre Rules 2001 (as amended), for guidance on considering torture cases see torture victims - please note the guidance set out above that in considering the definition of torture under the Detention Centre Rules, there is no difference between 'powerless to resist' and 'powerlessness' under rule 35(6)(b) - the proper approach is to consider whether the person was in a situation of powerlessness

Rule 32 of the Short-term Holding Facility Rules 2018 sets out the requirement for healthcare professionals (either a doctor or nurse) in residential short-term holding facilities to report on any detained person:

- whose health is likely to be injuriously affected by continued detention or any conditions of detention
- who is suspected of having suicidal intentions
- for whom there are concerns they may have been a victim of torture, torture is defined in rule 32(6) of the Short-term Holding Facility Rules 2018, for guidance on considering torture cases see torture victims please note the guidance set out above that in considering the definition of torture under the Short-term Holding Facility Rules 2018, there is no difference between 'powerless to resist' and 'powerlessness' under rule 32(6)(b) - the proper approach is to consider whether the person was in a situation of powerlessness

IRC doctors or healthcare professionals (a doctor or nurse) in a residential STHF are required to report such cases to the manager, using the prescribed forms appended to Detention Services Order 09/2016 – Detention centre Rule 35 and Short-term Holding Facility Rule 32. In immigration removal centres rule 35 reports are then passed, via Home Office contact management teams in IRCs, to the officer responsible for managing and/or reviewing the individual's detention. Owing to the absence of any Home Office presence in residential STHFs, rule 32 reports are transmitted to the office responsible for managing and/or reviewing the person's detention via the detainee monitoring and population management unit (DEPMU) Duty HEO.

Rule 32 does not apply to residential holding rooms (RHRs) in the same way it does to residential STHFs.

Rule 6A of the Short-Term Holding Facility Rules 2018 as inserted by the Short-term Holding Facility (Amendment) Rules 2022 modifies the way Rule 32 applies in relation to RHRs. It sets out the requirement for healthcare professionals (either a doctor or nurse) in RHRs to report on any immediate risks to a detained person's health identified during the medical screening carried out under rule 30.

Such cases should be reported to the manager using the template at Annex B: Rule 32 (RHR) Report to the Short-term Holding Facility Rules 2018 as amended by the Short-term Holding Facility (Amendment) Rules 2022 and any arrangements must be made in accordance with rule 31 (general medical care). Rule 32 (RHR) reports are then passed via the Escort Contract Monitoring Team (ECMT) Duty HEO to the Home Office responsible officer and to the RHR manager. The manager must ensure that the individual's detention is reviewed as soon as practicable.
The guidance for Rule 32 reports in RHRs is set out at Annex A: Guidance on the application of Rule 32 of the Short-term Holding Facility Rules 2018 (as amended by the Short-term Holding Facility (Amendment) Rules 2022) in RHRs.
The information contained in the report must then be considered by the relevant decision maker and a decision made on whether the individual's continued detention is appropriate, or whether they should be released from detention, in line with the adults at risk process set out above.

Detention Centre (DC) rule 35 report or Short-term Holding Facility (STHF) rule 32 report

On receipt of a rule 35 or rule 32 report, the decision maker should review the report to ensure that it meets the required standards and, if the report does not meet the required standards, it should be returned to the medical practitioner (rule 35 reports only) or nurse (rule 32 reports) with a request for the necessary information. For rule 32 (RHR) reports that contain insufficient content to understand the medical concern and meaningfully consider the report, the responsible officer will immediately inform the ECMT duty HEO of this by phone.

In the meantime, unless an assessment can be made on the basis of the report as it stands, and unless the outcome of that assessment is that the individual should be released, detention should be maintained pending the receipt of a report to the required standard.

For the purpose of the adults at risk policy:

- a report under DC rule 35(1) or STHF rule 32(1) (a detained person whose health is likely to be injuriously affected by continued detention or any conditions of detention) will normally amount to level 3 evidence
- a report under DC rule 35(2) or STHF rule 32(2) (a person suspected by the doctor, or nurse in residential STHF, of having suicidal intentions) will not always necessitate a review of the appropriateness of detention but this will depend on the information provided by the doctor or nurse (residential STHFs only)
- a report under DC rule 35(3) or STHF rule 32(3) (a detained person about whom the doctor or nurse in a residential STHF, has concerns that they may have been the victim of torture) will normally amount to at least level 2 evidence
- a report under STHF rule 32 as amended by the STHF (Amendment) Rules 2022 in relation to RHRs (a detained person who a doctor or nurse in a RHR identifies as at immediate risk to their health) will normally amount to at least level 2 evidence

On receipt of a DC rule 35 or STHF rule 32 report the Detained Medical Reports Team must review the appropriateness of the individual's continued detention in light of the information in the report (see Detention - general guidance) and respond to the centre, within 2 working days of receipt, using CID Doc Gen form IS.335. For rule 32 (RHR) reports, a decision must be taken by the Home Office responsible officer within 24 hours. If a decision is not received from the Home Office responsible officer within 24 hours, the ECMT duty HEO must escalate the matter to the appropriate caseworking Assistant Director or Deputy Director to resolve without delay.

It is possible that a person in detention may independently make available to the Home Office information in respect of a rule 35(1) or STHF rule 32(1) or RHR Rule 32 assessment which falls short of the level of concern required for the doctor, or nurse in residential STHFs or RHRs, to submit a report to the Home Office but

which, regardless, brings it within the scope of the adults at risk in detention policy. If so, it should be treated accordingly, and the case reviewed.

See also Detention Services Order 09/2016 – Detention centre rule 35 and Short-term Holding Facility rule 32 and Annex A: Guidance on the application of Rule 32 of the Short-term Holding Facility Rules 2018 (as amended by the Short-term Holding Facility (Amendment) Rules 2022) to Residential Holding Rooms (RHR).

CID recording requirements

Cases in which Adult at Risk status is identified prior to or at point of detention:

- case is referred to the detention gatekeeper using 'DG Pre-Verification Proforma', 'DG Intake Proforma' or where the Detention Minute Referring Officer adds a special condition flag 'Adult at Risk - Level 1', 'Adult at Risk - Level 2' or 'Adult at Risk - Level 3' as appropriate, dated with the date on which they have accepted that the individual is an adult at risk under the policy (which may pre-date detention in pre-verified cases)
- if adult at risk status is identified by the gatekeeper, they add the special condition as above
- the gatekeeper updates admin events on the current enforcement (or deport) case type as either 'Adult at Risk – Accepted into Detention' or 'Adult at Risk – Rejected from Detention' dependent on the outcome of the referral

Cases in which adult at risk status is identified once someone is already detained:

- caseworker becomes aware of risk factors and considers whether they mean that the individual is now an adult at risk under the policy
- if they are, caseworker adds special condition flag 'Adult at Risk - Level 1', 'Adult at Risk - Level 2' or 'Adult at Risk - Level 3' as appropriate, dated with the date on which they have accepted that the individual is an adult at risk under the policy
- case owner conducts ad hoc detention review
- case owner updates admin events on the current enforcement (or deport) case type as either 'Adult at Risk – Identified in Detention' (if detention is maintained) or 'Adult at Risk – Released from Detention' (if the person is released)

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