



Ending immigration detention of children: Principles

Canada has an opportunity to play a **global leadership role** in ending the detention of children for immigration purposes. By introducing key reforms, Canada can offer a realistic model for the rest of the world, contributing to ending the immigration detention of children in other countries where unfortunately it is widespread.

Five elements are required to address the issue.

1. **End the detention of children under immigration legislation.**
The detention of children for immigration purposes is never in their best interests. Community-based alternatives should always be found. Detention should never be used to house separated children or to “protect” them (for example, from risk of trafficking): in such situations, child-appropriate alternatives should be found, and, where necessary and appropriate, child protection agencies should be called upon.
2. **Preserve children’s right to family unity** by not detaining accompanying parents and guardians (legal or de facto). Community-based alternatives to detention should be found for families, in order to avoid separating families or housing children in detention (in either case a violation of the child’s rights). This principle may not apply in exceptional circumstances, such as where a parent constitutes a danger to the public or to the child, and where the danger cannot be mitigated through alternatives.
3. **Make the best interests of the child a primary consideration** in all detention decisions. Currently the law directs that the child’s best interests only be considered when the child is detained. They need to be considered whenever a child is affected by a decision to detain an adult, and they need to be a *primary* consideration. This includes situations involving the detention of a parent, or of the older sibling of a separated child, and any other situations when the detention of adults would directly affect a child.
4. **Amend the law.** The current wording of “last resort” in the *Immigration and Refugee Protection Act* is outdated and vague and has proven ineffective. Many children, including refugee children, have been detained as a “last resort” even though there are no compelling grounds to detain and alternatives exist. The law is also inadequate in that it does not direct that the best interests of the child be a primary consideration where an adult is detained. This means that children, including Canadian citizen children, are often *de facto* detainees, accompanying a detained parent or other family member. Meaningful and lasting change will depend on the law providing strong protection of children’s rights.
5. **Provide designated representatives to separated children** immediately when they come into contact with immigration authorities and throughout their immigration process. Currently, the law provides for a representative to be designated only when children appear before the Immigration and Refugee Board. This leaves separated children without anyone to protect their interests during many critical parts of their immigration processing. The designated representatives must be properly qualified.