



Segregation in Ontario

Independent Review of Ontario Corrections
March 2017

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Independent Review of Ontario Corrections Team

Core Members

Howard Sapers – Independent Advisor

Andrea Monteiro – Review Team Manager

Nathalie Neault – Senior Advisor

Abby Dushman – Corrections Advisor

Erin McConaghy – Administrative Coordinator

Contract Support

Mary Campbell

Teja Rachamalla

Rachelle Larocque

Ontario Correctional Services Consulting Support

Don Chillman (on assignment from Toronto South Detention Centre)

Jennifer Beisel (on assignment from Toronto South Detention Centre)

Start Up Support

Holly Culhane (on assignment from St. Lawrence Valley Correctional and Treatment Centre)

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PREFACE

Sixty days. 86,400 minutes. 5,184,000 seconds. A lifetime in segregation, but a short time to prepare a report about how to reduce its use and ill effects.

Last year over 1,300 men and women spent 60 or more aggregate days inside an Ontario Correctional Services segregation cell. According to Ministry policy, segregation is “an area ... designated for the placement of inmates who are to be housed separate from the general population.”¹ In practice, this means confining individuals to a six by nine foot cell for 22 or more hours a day, with little human interaction. Policy requires that those confined to segregation be provided with regular reviews in which their continuing placement must be justified. All are to receive regular nursing visits and individuals with mental illness must receive regular assessments from physicians. While there may be a loss of some privileges, those segregated are to be offered the same level of services and programs as individuals in the general population. These requirements routinely go unmet. It is the goal of this report to identify reasons and remedies for this state of affairs.

Reconciliation, rehabilitation, reintegration and restoration are not nostalgic nods to the past or feel-good rhetoric. These words describe prime outcomes of a fair and functioning system of justice, of which corrections is a significant component.

Corrections is at the bottom of the social service and criminal justice funnel. When early intervention and prevention strategies fail; when health, social service and education programs, interventions and opportunities are inadequate, denied or rejected; when poverty, mental illness, addiction and trauma overwhelm individuals, there can be conflict with the law. Decisions made by law enforcement, crown and defence lawyers and members of the bench then provide the human feedstock of correctional enterprise. Correctional authorities do not have the luxury of deciding who their clients will be or for how long they will stay. Others make those decisions, and many of those decision-makers have little true understanding of corrections. Notwithstanding, there are significant expectations that the men and women who are sent to jail will somehow come out better for their experience. Ontario Correctional Services is often expected to address a lifetime of trauma and dysfunction in the months, weeks and sometimes days, people are in its care and custody.

The Government of Ontario is committed to transforming the current system into a modern outcomes-focused correctional service. The vision for this care-based approach is anchored in an integrated case management model, direct supervision within jails and correctional centres, enhanced and regionalized mental health services and specialized institutional housing when

¹ Ministry of Community Safety and Correctional Services. (2016, December 6) *Institutional Services Policy and Procedures Manual: Placement of Special Management Inmates*, Government of Ontario, s. 4.13. (Hereafter MCSCS: PSMI)

required. The goal is to develop a progressive and individualized correctional services system that improves community safety, relies less on custody and focuses more on rehabilitation and reintegration. Current segregation practices are in conflict with this approach.

People may ask, “Why are we so concerned about offenders?” “Where are the voices and concerns of victims of crime?” These are fair questions to which I have two answers. First, after nearly 40 years of working in the system I have come to realize there is often only a thin and blurry line between victim and offender. Many men and women in conflict with the law have themselves lived lives full of personal trauma and victimization. Meeting the needs of offenders often amounts to meeting the needs of victims. Second, the focus of my work is on corrections – what happens after it is determined that an individual is to be held in custody or after a court imposes a sentence. This focus in no way implies that victim issues are not important or less so than those of offenders. Victim needs are real and legitimate and must be addressed, but not at the expense of good correctional practice. “Offender bashing” conditions of confinement does nothing to assist victims of crime or make our communities safer.

The work of the Independent Review Team is guided by principles: restraint in the use of state authority, the use of least restrictive measures while ensuring safety and a commitment to human rights. Our inspiration comes from the *Canadian Charter of Rights and Freedoms* and the United Nations *Standard Minimum Rules for the Treatment of Prisoners* (the *Mandela Rules*).

To inform this report, the Review Team met with stakeholders, read thousands of pages of records, interviewed staff, attended briefings, visited institutions and became familiar with the academic and professional literature on segregation and corrections. Corrections professionals in Ontario, British Columbia, Alberta and those working within the federal system across Canada were generous with their time. Key meetings were held with the Ontario Human Rights Commission, the Ontario Ombudsman, Ontario Public Service Employees Union representatives, the Indigenous Justice Division of the Ministry of the Attorney General and the Office of the Correctional Investigator of Canada. Advice was sought and received from defence counsel, Crown prosecutors, judges and law enforcement officials. Non-governmental organizations and members of the public contacted the Review Team to offer their guidance and present their concerns. Voices of inmates and their family members were also heard.

This report is a quick assessment of the current state of affairs in regard to only one aspect of corrections – the use of segregation – and offers some suggestions on how to improve and accelerate reform efforts, fill gaps and continue to build a corrections system focused on human dignity and excellence in meeting its mission. I urge the Government of Ontario to move quickly as it responds to my recommendations.

- Howard Sapers, Independent Advisor

EXECUTIVE SUMMARY

Last year over 1,300 men and women spent 60 or more aggregate days inside an Ontario Correctional Services segregation cell. These people were confined to a six by nine foot cell for 22 or more hours a day, with little human interaction.

Even though the number of people in Ontario's correctional institutions has been decreasing for a decade, the number of people sent to segregation is on the rise. On any given day last year, 575 people were detained in a segregation cell. Seven out of ten of them were in pretrial detention – legally innocent, waiting for their trial or a determination of their bail. While most were released within two weeks, one in six was segregated for weeks, months, or in some cases even years. In early November 2016, there were 22 inmates known to have been in segregation continuously for over a year; five of those individuals have been in segregation for over three years.

Many of those in segregation simply should not be there. In most institutions, segregation is the default tool to manage individuals with mental health needs; those at risk of self-harm or suicide; the disabled and elderly who need mobility assistance devices; critically ill patients requiring close medical supervision; individuals who feel unsafe in general population units; and transgender inmates before in-depth placement and needs assessments can be completed. Last year, Ontario inmates who were flagged as having potential or confirmed suicide risk or mental illness were more likely to be placed in segregation, and, once there, tended to stay longer than the rest of the segregated population. Even some low risk individuals sentenced to intermittent custody – who are typically in jail only on the weekend – are at times placed in maximum security segregation cells. Whether it is due to inadequate legislation, poorly crafted policies, lack of staff resources, insufficient training, crumbling physical infrastructure or simply a lack of space, the result is the same: segregation has become the default response to a diverse range of correctional challenges.

Particular individuals and groups – the young and the elderly, those with mental illness, women, racialized and Indigenous persons – are differentially impacted by incarceration in general, and segregation in particular. Indigenous people make up 13% of Ontario's custodial population, but only 2% of the overall population. Just over half of the Indigenous women and men admitted to segregation in Ontario in 2016 had a suicide risk alert. Women in segregation in Ontario are more likely than men to be flagged for suicide or mental health issues.

The decision to place a person in segregation results in the most complete deprivation of liberty authorized by law. Such a significant restriction on individual freedom must be tightly controlled by a comprehensive, clear legal and policy framework. Ontario law and policy fails to meet this standard.

The legislation governing corrections in Ontario is skeletal. Although segregation is mentioned in regulation, the vast majority of the substantive provisions are contained in policy. Although the policies are extensive, they are frequently confusing and overlapping, and lack clarity, definition and guidance. For example, Ontario's definition of segregation, which is only

contained in policy, explains that segregation is “an area ... designated for the placement of inmates who are to be housed separate from the general population.” Ontario policy states that a person is in segregation when they are in the official segregation area, a definition that is both under-inclusive and tautological. Similarly, there are no definitions of minimum conditions of confinement. Even minimum mandatory medical standards are unclear and vary from one policy to the next.

The lack of clear definitions and standards undermines accountability and transparency. Ministry policies are not publicly posted and are not provided to inmates or their advocates, unless officially sought through a cumbersome freedom of information request. As a result, neither incarcerated individuals nor the public at large have a straight forward way of determining how Ontario’s correctional system should be operating. In practice, conditions of confinement and protection of inmates’ rights vary from site to site and day to day. Multiple institutions across the province are confining portions of their custodial population to their cells for 22 or more hours a day, but do not consider these individuals to be “in segregation” because they are being held outside of the “designated” segregation area. These individuals are not reflected in the province’s official segregation counts and are not provided the same level of oversight, individual review or mental health services.

There are few if any practices in corrections more in need of robust oversight and full compliance with law and policy than the use of segregation. Unfortunately, Ontario’s procedural safeguards and oversight are insufficient. Provincial law and policy require correctional authorities to maintain an extensive, detailed paper trail, conduct frequent and repeated segregation reviews and forward reports through a cascading oversight structure. Some portions of this oversight framework, however, have never been fully operationalized, and there are frequent gaps in the reviews that are completed. When the reviews and reports are generated, most are simply passed along with little or no critical analysis.

The purpose of these reviews and reports is not to complete paperwork, but to release individuals from segregation at the earliest opportunity. The problems identified in Ontario’s segregation accountability and oversight structure raise questions about the current legislative and policy regime’s support of this goal. Confidence in the review and oversight mechanisms is further undermined because, in practice, all decisions are made within the correctional institution. The adjudicatory and review framework for both administrative and disciplinary segregation lack many basic elements of independence. Ministry policies direct that the “Superintendent or designate” will conduct 24-hour, five day and 30-day segregation reviews, leaving open the possibility for the same correctional staff that decides to place an inmate in segregation to also be involved in subsequent reviews.

Current data collection and records management practices also present problems. Ontario correctional institutions rely on cumbersome, labour-intensive and largely paper-based systems. The Ministry only started to centrally collect basic data on segregation in 2015. Frequently, efforts to identify broader trends in segregation are hampered by data integrity issues. There are difficulties determining accurate segregation placement times due to data

entry or formatting errors, and institutions that ‘start the clock’ again when inmates are taken to court, taken out of official segregation areas, or briefly transferred to alternate housing. The accuracy of reporting also relies extensively on information inputted and compiled at the local level, which is subject to varying procedures and definitions, miscommunication between institutions and human error. To the Ministry’s credit, these issues have clearly been identified and there is a firm commitment to implementing a system that would allow for robust, data-driven analysis and evidence-based practice. These developments are promising.

The Ministry is facing a broad set of infrastructure and staffing challenges, many of which directly impact on segregation. The majority of Ontario’s institutions are between 40 and 100 years old; three of its facilities were built in the 1800s. The design and infrastructure is often inadequate to meet current needs for inmate housing and interventions, and overuse of segregation is one of the consequences. Ontario Correctional Services’ staffing, recruitment and training are also under significant strain. A three-year hiring moratorium between 2009 and 2012 caused a critical staffing shortage. Although hiring restarted in subsequent years, a large recruitment effort – 2000 new correctional officers over the next three years – was announced in March 2016. Recruiting, training and housing so many new staff in such a short time-frame presents significant logistical challenges. The Ministry has also identified that its existing training materials need to be overhauled – a project that will not be undertaken until after hundreds of the new officers have been trained. Finally, current staffing levels and post assignments are based on an outdated model of corrections – an issue that will need to be addressed in the near future.

Over the past few years, the Ministry has launched a wide range of initiatives under the banner of transformation. Reflecting on these activities, the impression that emerges is not one of focused, coordinated change. The Ministry has been pulled from one emergency response to the next, putting out fires and commissioning new investigations, systemic reviews, initiatives and reports to respond to the latest set of court settlements, critical events and public revelations. Add to this mix a significant turnover in leadership and years of sometimes bitter labour strife, and the full context in which the Ministry has operated begins to emerge. The impulse to reform segregation is clearly present and many individuals have worked long hours on dozens of separate projects. Commitment to improvement is not in question but concerns about capacity and coherence remain.

For example, in September 2015 the Ministry overhauled its segregation policies to bring them into compliance with human rights standards and introduced a prohibition, to the point of undue hardship, on placing inmates with mental illness in segregation. Ideally, these changes should have resulted in a significant decrease in the use of segregation, and in particular served to divert a large number of individuals with mental health needs into more appropriate care placements. At the time the policies were updated, however, no training, implementation supports or additional resources or space were offered to institutional managers or frontline staff.

Our review found that these new policies have not translated into operational practices across the system. Mental health screening is frequently delayed, medical services are not provided as required by policy, and local staff struggle to identify any alternatives to segregation for those with mental illness. The best available data show that, over the past year and a half, the number of segregated inmates with mental health or suicide risk alerts has increased.

Many recent Ministry initiatives relating to staffing and segregation reform have merit, aimed as they are at improving conditions for both staff and inmates. My review has found, however, that too many of these initiatives have been implemented in silos, without the benefit of a visible and well-articulated overarching strategic vision, and in the absence of effective consultation with staff and other key partners.

Effective change requires strong leadership and meaningful engagement with staff and stakeholders. The responsibility for facilitating and enabling change rests with the senior level of management within an organization. They must ensure that change is understood and that it progresses in a way that enables staff to not only cope, but thrive within the changed environment.

This report calls for profound changes to segregation practices in Ontario's correctional system. The Government of Ontario is committed to transforming the current system into a modern outcomes-focused, care-based correctional service. The goal is a progressive and individualized correctional services system that improves community safety, relies less on custody and focuses more on rehabilitation and reintegration. Current segregation practices are in conflict with this approach.

My findings relate to a number of themes:

- ❖ Reform Process to Date
- ❖ Law and Policy
- ❖ Definition of Segregation
- ❖ Inappropriate Use of Segregation
- ❖ Mental Health and Segregation
- ❖ Segregation Reviews and Accountability Mechanisms
- ❖ Segregation Data and Analysis
- ❖ Training and Deployment
- ❖ Aging Infrastructure

The report concludes with 41 recommendations calling for immediate action and 22 additional, longer term recommendations. The recommendations are highly interdependent and should be considered in their totality.

MANDATE

I commenced my appointment as the Ontario Independent Advisor on Corrections Reform on January 1, 2017. I have been asked to provide advice to the Government of Ontario and make recommendations to the

Minister of Community Safety and Correctional Services. The Review's activities are nonetheless independent of the government and guided by public Terms of Reference. My mandate, outlined in the Terms of Reference, is three-fold:

- ✓ To provide a report with advice and recommendations on immediate steps that can be taken with respect to the use of segregation.
- ✓ To provide a second report on further segregation reform as well as reform of Ontario adult corrections more broadly. This is to inform a Government Action Plan for release in 2017, which will include a phased implementation plan.
- ✓ To work with the Ministry on developing a phased implementation plan.

"I have ordered this independent review to help build on the important work already underway to address issues with respect to the use of segregation in our adult correctional facilities. We are working to bring some immediate support to inmates currently housed in segregation by continuing to work with Ontario's correctional staff to implement these important changes while this review is underway. These changes are also a critical step in our broader strategy to transform our province's correctional services, and we will ensure that the safety and well-being of inmates and staff remain our top priority."

- Minister of Community Safety and Correctional Services
David Oraziotti, October 17, 2016

The first part of the Ontario Independent Advisor on Corrections Reform's mandate is to provide a report with advice and recommendations on immediate steps to reduce the use of segregation. The report is to consider and provide recommendations with respect to:

- Current segregation-related challenges in Ontario's adult correctional facilities including systemic and capital/facility specific issues;
- Impacts on vulnerable populations and advice on how best to meet their needs;
- The principles and approaches applicable to segregation decision-making;
- Actions already taken to reduce segregation and improve conditions of confinement; and
- Whether there are further actions that could be implemented immediately to reduce the use of segregation and improve conditions of confinement, within the current staffing, programming, infrastructure and resource parameters.

This is the report on segregation, referred to in the first part of my mandate. The advice provided takes into consideration the recommendations from the Ministry's consultations with stakeholders on segregation reform and corrections transformation; reflects on the recommendations from the Ontario Ombudsman as well as the remedies arising from the *Jahn* application and the work done by the Ontario Human Rights Commission.

METHODOLOGY

Given the time constraints, the completion of this report is primarily, but not exclusively, the result of a paper-based review. The Ministry's internal research, analysis and consultation to date on segregation were taken into consideration. Detailed statistics and reports were requested and, where available, analyzed. Further documents were requested regarding the implementation of and responses to:

- The two public interest *Christina Jahn* settlements;
- The submissions from the Ontario Human Rights Commission;
- Recommendations regarding segregation made by the Ontario Ombudsman; and
- Actions to date following public announcements made by the Ministry in 2015 and 2016.

Additionally, the Independent Review Team met with a range of internal and external stakeholders, interviewed staff, attended briefings, and visited numerous institutions. Non-governmental organizations and members of the public contacted the Review Team to provide written submissions and present their concerns. The timeframe for this review did not allow for a full, proactive dialogue with either frontline staff or inmates² and their families; we were attentive to those we did engage with and have ensured as much as possible that what we heard is reflected in these pages.

² Throughout this report, "inmate" is used to refer to all who are incarcerated in Ontario's correctional facilities. This includes, for example, individuals who are pre-trial (i.e., legally innocent and on remand), those serving a consecutive or intermittent sentence after having been found guilty of a crime and people who have not been accused of committing a crime such as those on an "immigration hold."

I. BACKGROUND AND CONTEXT

My appointment followed a period of intense scrutiny of the Ontario correctional system. In particular, stories of persons being held in segregation for inordinate periods of time and under poor and even inhumane conditions had been brought to public attention. Related issues of the need for bail reform, delayed trials, jail overcrowding, staff shortages and inadequate health services were also regular front-page news.

Corrections has always been the subject of keen interest on the part of the media but the number of articles related to Ontario Corrections in the past few years have been staggering. Labour relations issues dominated the headlines in 2015 as the contract with the union representing correctional officers (OPSEU) ended on December 31, 2014. The union was vocal and initiated a communications campaign raising an alarm about what it labelled a "Crisis in Ontario Corrections."

This sentiment has been echoed by others. The former Minister of Community Safety and Correctional Services has agreed that "[t]here are deep-rooted systemic challenges to addressing change in the correctional system," and expressed hope that Ontario is "turning the corner on modernizing and reforming the correctional system"³ Others have been blunter, particularly with respect to Ontario's use of segregation. The Ontario Ombudsman has called segregation "soul-crushing, cruel and counter-productive," and has concluded that "it needs to stop."⁴ The Ontario Human Rights Commission has called for an outright ban on segregation in Ontario's jails, saying that "[w]e cannot let another prisoner die alone in a jail cell while we consider how to reform a practice that is clearly harmful and contrary to human rights law."⁵ The College of Family Physicians of Canada also called for the abolition of solitary confinement, stating that the "negative consequences of sensory deprivation can be seen as early as 48 hours after segregation. These include onset of mental illness, exacerbation of pre-existing mental illness and the development or worsening of physical symptoms."⁶

"The more one learns about Ontario's irresponsible use of solitary confinement, the more it feels as if that irresponsibility has veered into criminal neglect."

- Globe and Mail Editorial Board,
November 21, 2016

³ White, P. (2016, November 23). Ontario minister seeks prison funding, studies segregation conditions. *The Globe and Mail*. Retrieved from: <http://www.theglobeandmail.com/news/national/solitary-confinement-conditions-unacceptable-ontario-minister-says/article32997904/>.

⁴ Toronto Star Editorial. (2016, May 12). Ban long-term solitary confinement: Ontario Ombudsman Paul Dubé is right to call for a ban on the long-term solitary confinement of prison inmates. Toronto Star. Retrieved from <https://www.thestar.com/opinion/editorials/2016/05/12/ban-long-term-solitary-confinement-editorial.html>.

⁵ Mandhane, R. (2016, March 7). Speaker's Corner: End segregation, says Ontario Human Rights Commission. *Law Times*. Retrieved from: <http://lawtimesnews.com/201603075263/commentary/speaker-s-corner-end-segregation-says-ontario-human-rights-commission>.

⁶ College of Family Physicians of Canada. (2016, August 7). *Position Statement on Solitary Confinement*, pg. 1. Retrieved from http://www.cfpc.ca/uploadedFiles/Directories/Committees_List/Solitary%20Confinement_EN_Prison%20Health.p

This public interest in provincial corrections comes at a time when Canada's crime rate has been dropping for decades and is down by half since peaking in 1991.⁷ Ontario in particular had the lowest crime rate of any Canadian province or territory since 2004.⁸ Despite this reality, political messages for years have been more about "getting tough on crime" than making sure our system works as intended. While Ontario's incarceration rate has fallen, it has not dropped as dramatically as the province's crime rate.⁹ This over-reliance on custody is not only expensive; it calls into question our commitment to some of the basic principles that backstop our system of justice. The use of segregation brings particular focus to these questions.

Why is segregation at the forefront of Ontario's agenda? First, consider some universal truths about incarceration:

- i) Incarceration is to be used as a last resort, only when all other options are exhausted;
- ii) People are sent to a correctional facility as punishment, not for punishment;
- iii) Inmates retain all the rights of free persons, other than those necessarily removed by the fact of confinement;
- iv) Almost all inmates will be released and return to their communities; and
- v) Correctional authorities must safely and legally carry out the sentence of the court, and work to return the person to society better able to live a law-abiding life.

Now consider an individual who is at the lowest point in his or her life, perhaps spinning out of control, reacting irrationally and aggressively towards those near them. Perhaps he is your brother. Or someone deeply depressed, almost catatonic, and unable to connect with anyone near them. Perhaps she is your sister.

It is difficult to imagine that placing them in a six by nine foot windowless room – with a concrete floor, no books or other stimulation of any kind, and almost no human contact – is the best response to either public safety needs or their unique personal circumstances. More difficult to imagine is leaving them in those conditions for days, weeks, months or even years.

df. / College of Family Physicians of Canada. (2017, February 27). The CFPC's position on the treatment and health care of incarcerated populations. [News Release] Retrieved from http://www.cfpc.ca/cfpc_position_treatment_health_care_incarcerated_populations/.

⁷ Allen, M. (2015). Police-reported crime statistics in Canada, 2015. Statistics Canada. Ottawa: Government of Canada. Retrieved from <http://www.statcan.gc.ca/pub/85-002-x/2016001/article/14642-eng.htm>.

⁸ Statistics Canada. Incident-based crime statistics, by detailed violations annual. Table 252-0051. Ottawa: Government of Canada. Retrieved from <http://www5.statcan.gc.ca/cansim/a26?lang=eng&id=2520051>.

⁹ Statistics Canada. Adult correctional services, average counts of adults in provincial and territorial programs annual. Table 251-0005. Ottawa: Government of Canada. Retrieved from <http://www5.statcan.gc.ca/cansim/a26?lang=eng&retrLang=eng&id=2510005&tabMode=dataTable&srchLan=-1&p1=-1&p2=9>. / Statistics Canada. Incident-based crime statistics, by detailed violations annual. Table 252-0051. Ottawa: Government of Canada. Retrieved from <http://www5.statcan.gc.ca/cansim/a26?lang=eng&id=2520051>.

Corrections in Ontario and the Broader Transformation Agenda

The Ministry of Community Safety and Correctional Services (MCSCS) establishes, maintains, operates and monitors Ontario's adult correctional institutions and probation and parole offices, and provides programs and facilities designed to assist in offender rehabilitation.

In carrying out its mandate, MCSCS has jurisdiction over offenders 18 years of age and over who are sentenced to terms of imprisonment of less than two years, adults on remand awaiting trial or sentencing, adults held for immigration hearing or deportation, offenders awaiting transfer to federal institutions to serve sentences of two years or more and offenders on probation, conditional sentence or under parole supervision, as granted by the Ontario Parole Board. The Ministry operates 26 facilities that include correctional centres, detention centres, jails and treatment centres. These institutions are located throughout the province and are

Textbox 1: Inmate Supervision Models in Ontario Corrections

Most of Ontario's adult institutions operate on a model of indirect supervision, where inmates are confined in "units", "ranges" or "pods" of approximately 20 cells or 40 inmates. Correctional officers monitor the cells and day rooms remotely, and in some cases can lock and unlock cells from a central control area that is physically separated from the inmates' housing. In some of the larger facilities, one control area can monitor multiple pods of inmates, and officers will only enter the pods if there is an incident that requires officer-intervention or there is a specific need (e.g. transportation for programming, meals).

Ontario's two newest correctional institutions – the 1,650-bed Toronto South Detention Centre and the 315-bed South West Detention Centre in Windsor – were designed to employ a direct supervision model. Direct supervision is a progressive, proactive correctional management system that places the correctional officer in a more normalized housing unit, in direct contact with inmates. This method of supervision is premised on managing inmate behaviour through personal interaction. It combines a physical plant design and a supervisory inmate management model to reduce problematic behaviour. It is designed as a strategy to support rational adult behaviour in the facility. It places staff face-to-face with inmates in order to promote active and continuous interaction. Physical plant design alone does not make direct supervision work; staff engagement is fundamental.

The goal of direct supervision is to ensure the safety and security of inmates, staff and visitors by establishing staff control of all areas of the facility. In direct supervision facilities, there are no barriers between the staff and the inmates so staff can interact with inmates and actively manage their behaviour in an appropriate and timely manner. The unit officer has the authority to make decisions, including the imposition of discipline, to manage and deal with both positive and problematic behaviour, typically without the intervention of a supervisor. The unit officer is to be mindful of what he or she is trying to achieve and is required to think about the effect of the decision on the individual inmate as well as the overall management of inmate behaviour in the unit.

divided into four regional areas (central, eastern, western and northern). Each institution reports to a regional office which reports to the Institutional Services Assistant Deputy Minister.

Many Ontario institutions are crowded. The average daily count of men and women in custody in Ontario has grown from approximately 5,200 to a peak of 8,800 over the last three decades.¹⁰ The facilities routinely operate between 85% and 100% occupancy, and are at times over design capacity, resulting in double and occasionally even triple-bunking. This crowding leads to competition for resources, reduced cell placement flexibility and an inability to respond to specific client needs. Crowded institutions undermine good correctional practices, tend to increase opportunities for conflict and create poor living and working conditions.

Of the 7,357 men and women behind bars in Ontario on February 1, 2017, the majority were being detained pre-trial. Ontario has particularly acute problems in its bail system, which has been identified as the source of a vicious cycle of pre-trial custody, release and re-incarceration. Multiple studies have pointed to an over-reliance on restrictive forms of release; unnecessary and unreasonable bail conditions; and a pervasive risk aversion that runs from the arresting police officer to crown counsel to the justice of the peace, and back again.¹¹

The majority of Ontario institutions are between 40 and 100 years old.¹² Facilities over 40 years of age are typically considered due for replacement. Facilities older than 60 years old are in critical need of replacement due to functional obsolescence, safety and security concerns and increased maintenance and operating costs.

That said, nothing in this report should be taken as an excuse to rely on increased incarceration. All forms of custody should be used with restraint. There are no examples of a society enhancing public safety by simply building more cells. What is required is more correctional capacity, not just cell capacity.

Former MCSCS Minister Yasir Naqvi announced on March 26, 2015 a broad review of segregation policies and procedures in the Ontario correctional system. The Ministry has looked at current research and best practices in other jurisdictions and identified areas needing change. The government also engaged with an extensive list of key stakeholders; some key themes emerged as a result of these discussions and submissions:

- Concern about segregation of vulnerable inmate populations (inmates with mental health needs, as well as those specifically protected by the Ontario *Human Rights Code*);
- The importance of statistical tracking and suggestions for enhanced measurement;
- The importance of recruitment, screening and providing meaningful training and support for correctional staff, as well as the need to explore continuous improvement of performance management;

¹⁰ *Ibid.*

¹¹ Sprott, J.B., and Sutherland, J. (2015). Unintended consequences of multiple bail conditions for youth. *Canadian Journal of Criminology and Criminal Justice*, 57(1), 59-81; Deshman, A., and Myers, N. (2014). Set Up to Fail: Bail and the Revolving Door of Pre-trial Detention. *Canadian Civil Liberties Association*; Sprott, J.B., and Myers, N. (2011). Set up to fail: The unintended consequences of multiple bail conditions. *Canadian Journal of Criminology*

¹² Infrastructure will be further discussed in Section V.h. of this report.

- Larger systemic problems, such as overcrowding and heightened tensions in institutions, that contribute to the use of segregation; and
- Support for independent and external oversight of segregation placements.

As part of its internal segregation review, the Ministry consulted with a range of stakeholders including:

- Advisory Council on Adult Correctional Issues
- African Canadian Legal Clinic
- Canadian Civil Liberties Association
- Community Advisory Boards
- Council of Elizabeth Fry Societies of Ontario
- Heads of Corrections
- Human Services and Justice Coordinating Committee
- John Howard Society of Ontario
- Office of the Ombudsman of Ontario
- Ontario Association of Chiefs of Police
- Ontario Human Rights Commission
- Operation Springboard
- Operational Manager Steering Committee
- Ontario Public Service Employees Union (OPSEU) Corporate and OPSEU Corrections
- Registered Nurses Association of Ontario
- Salvation Army
- Schizophrenia Society
- United Nations High Commission for Refugees

The September 2016 mandate letter to the Minister of Community Safety and Correctional Services requires the Minister to lead correctional transformation by working with stakeholders and relevant ministries to support the long-term transformation of the correctional system.¹³ First steps were to include operational updates to the Ministry's policies on the use of segregation and collaboration with the Attorney General to improve the efficiency and effectiveness of bail and remand in Ontario while maintaining public safety.

This call for a more fulsome review is critically important. Segregation occurs in the context of broader correctional issues, which in turn arise in the context of how the criminal justice system is working. Trying to 'fix' segregation in isolation is futile. Significant changes in how corrections is delivered in Ontario are needed and these changes must be integrated into system-wide criminal justice reform. The criminal justice

system does not itself operate in a vacuum and any lasting improvements in the delivery of justice programs and services will happen only in partnership with key public, private and civil society stakeholders.

¹³ Premier Kathleen Wynne. (2016). Community safety and correctional services. (September 2016 mandate letter). Premier's instructions to the Minister on priorities. Retrieved from https://www.ontario.ca/page/september-2016-mandate-letter-community-safety-and-correctional-services?_ga=1.86572056.1459194607.1480869723.

**Mandate Letter to the Minister of Community Safety and Correctional Services,
September 2014 priorities:**

Transforming Correctional Services

Moving forward with plans for longer-term transformation of the correctional system. This will include: developing and implementing an intermittent offender strategy to help relieve capacity pressures, improving release planning efforts, addressing programmatic and service requirements for female inmates, enhancing inmate training and education programs — and expanding educational offerings in provincial institutions to further enhance rehabilitation and correctional services for clients.

Continuing to transform correctional services by working to improve strategies for the assessment, care and community reintegration of offenders. These efforts will include collaborating with other ministers to enhance skills training — and techniques for probation and parole staff to better address client risk factors and reduce recidivism. You will look for opportunities to pilot these transformation efforts prior to full implementation.

**Mandate Letter to the Minister of Community Safety and Correctional Services,
September 2016 priorities:**

Leading Correctional Transformation

Working with stakeholders and relevant ministries to support the long-term transformation of the correctional system. First steps will include operational updates to the ministry's policies on the use of segregation in correctional facilities in fall 2016.

Working with the Attorney General to develop and initiate implementation of a targeted strategy to improve the efficiency and effectiveness of Ontario's criminal justice system in the area of bail and remand while maintaining public safety.

Table 1: Major segregation-related events, 2012-2017

- October 2012, Christina Jahn files human rights complaint regarding her detention in segregation and receiving inadequate mental health care.
- April 2012, Zlatko Sego commits suicide in a Toronto Jail segregation cell.
- September 2012, Julie Bilotta, 36 weeks pregnant, goes into labour and gives birth in her cell after requesting medical attention for hours; the incident resulted in health care review and recommendations, a lawsuit and disciplinary action against one nurse and numerous correctional officers.
- September 2013, Ontario government agrees to settle Jahn's claim, including ten public interest remedies addressing mental health services and the segregation of inmates with mental illness.
- December 2013, Lawrence Prindible commits suicide in a Central East Correctional Centre segregation cell.
- December 2013, Gerald Smith commits suicide in a Quinte Detention Centre segregation cell
- February 2014, Avery Edison, a transgender woman, is held in segregation in Maplehurst institution for men; she files several human rights complaints in July 2014.
- February 2014, Shane Garry commits suicide in a Toronto East Detention Centre segregation cell.
- September 2014, Keith Patterson commits suicide in an Elgin-Middlesex Detention Centre segregation cell.
- September 2014, Premier releases mandate letter directing Minister of Community Safety and Correctional Services to prioritize long-term transformation of the correctional system.
- 2014-2016, the Ministry of Community Safety and Correctional Services completes a range of reports and policy changes to fulfill public interest *Jahn* remedies:
 - o March 2014, Ministry completes report on psychiatric physician contracts.
 - o March 2015, Ministry produces a report on how to best serve women prisoners with mental illness.
 - o March 2015, Segregation Handout providing information to segregated inmates finalized.
 - o April 2015, institutions begin conducting a daily segregation count and sending the data to the Ministry for verification and analysis.
 - o September 2015, mental health screening upon admission fully implemented.
 - o September 2015, major policy updates enacted, including amendments to the provision of mental health services and segregation processes, oversight and review.
 - o 2014-2016, basic statistics produced regarding the number of women at OCDC in segregation for 30 continuous or 60 aggregate days in each year.
 - o Fall 2016, mental health and human rights training for all front-line staff completed.
 - o November 2016, Ministry announces plans for Schedule 1 mental health facility for incarcerated women.
- January 2015, Ministry updates policies to place transgender inmates according to their gender identity rather than physical characteristics.
- March 2015, the Minister announces a comprehensive internal review of segregation policy and the use of segregation in Ontario's correctional facilities (the internal "Comprehensive Segregation Review"). Research initiatives included:
 - o a literature review and jurisdictional scan;
 - o an internal segregation policy compliance audit;
 - o a training review; and
 - o numerous in-person consultations and written submissions from a wide range of stakeholders, including from the Ontario Ombudsman and the Ontario Human Rights Commission.

- June 2015, Christina Jahn's counsel files a contravention of settlement application to the Human Rights Tribunal of Ontario claiming the government had breached the terms of the first settlement agreement; the application is settled with further public interest remedies in December 2015.
- October 2015, provincial correctional transformation strategy approved.
- February 2016, Ontario Human Rights Commission publicly calls for a ban on segregation.
- February and March 2016, media widely report on people being segregated in "shower cells" at Ottawa-Carleton Detention Centre; the Minister and Premier condemn and prohibit the practice.
- March 2016, Minister establishes the Ottawa-Carleton Detention Centre Task Force to develop an action plan and accountability structure to address overcrowding and improve health and safety for inmates and staff.
- March 2016, Minister announces new Correctional Officer Recruitment and Training Strategy and the hiring of 2000 new correctional officers.
- April 2016, Minister announces that Superintendent of OCDC is no longer with Ontario Public Service, effective immediately, after it is revealed that "shower cells" continue to be used.
- April 2016, Globe and Mail publishes an investigative analysis of 30-day segregation review documents obtained via access to information.
- May 2016, Ontario Ombudsman publicly calls for an end to indefinite solitary confinement.
- June 2016, Ottawa-Carleton Detention Centre Task Force releases its report, including 42 recommendations and a public accountability structure to track implementation.
- August 2016 an internal draft Segregation Review Report is completed outlining the review's analysis and a series of recommendations for immediate, medium-term and long-term actions. The underlying report, however, was never made public, and to this day remains in draft form. No formal response was provided to the Ombudsman, the Human Rights Commission, or any of the other dozens of stakeholders that provided submissions.
- September 2016, Premier releases updated mandate letter, directing Minister to work on long-term transformation of the correctional system including updating the ministry's policies on the use of segregation.
- September-October 2016, the Ministry prepares to announce an immediate action plan regarding segregation reform.
- October 2016, Ottawa-Carleton Detention Centre Taskforce submits its first Progress Report.
- October 2016, Ontario Human Rights Commission holds press conference to release further segregation recommendations, publicize statistics on segregation and mental health and raises the case of Adam Capay, an inmate at Thunder Bay Jail who had been held in segregation for over four years while waiting for trial.
- October 2016, Ministry announces seven immediate actions to reform segregation and the forthcoming appointment of an independent reviewer to examine segregation.
- October 2016, a Ministry working group is struck and convenes daily to develop and implement an emergency solution to ongoing segregation data collection issues. This was later named the Data Collection, Analytics and Management Reform initiative.
- November 2016, Ministry launches an Enhanced Segregation Review looking into inmates who had been in segregation for over 365 days, over 100 days and over 100 aggregate days.
- November 2016, appointment of Independent Advisor announced, work to begin January 2017.
- December 2016, Ombudsman announces systemic investigation into how the province tracks and reviews the placement of inmates in solitary confinement.
- December 2016, Soleiman Faqiri dies in a Central East Correctional Centre segregation cell.
- December 2016, Ministry announces additional staff hiring, capital improvements and program enhancements primarily aimed at inmates with mental health issues and long-term segregation.
- January 2017, Independent Review begins work on segregation.

II. SEGREGATION LAW AND POLICY

a. Legal Framework

Human Rights Law and Constitutional Rights

Canadian law, including the Ontario *Human Rights Code*¹⁴ and the *Canadian Charter of Rights and Freedoms*¹⁵, places limits on the use of segregation.

The *Human Rights Code* enshrines individuals' rights to equal treatment by prohibiting discrimination on a variety of protected grounds, including age, race, ethnic origin, religion, disability (including mental illness), sex and sexual orientation.¹⁶ The Ontario Human Rights Commission has outlined a variety of forms of prohibited discrimination that are relevant to the correctional system in general, and segregation in particular:

- Direct discrimination occurs when a person receives different treatment from others because of a *Code*-protected ground.
- Adverse effect discrimination takes place when a rule, policy or practice is applied equally to everyone, but has a negative impact on a particular individual or group because of a *Code*-protected trait.
- Systemic or institutional discrimination “consists of patterns of behaviour, policies or practices that are part of the social or administrative structure of corrections, and which create or perpetuate a position of relative disadvantage for *Code*-protected prisoners.”¹⁷

To fulfill its obligation of equal treatment, the government must ensure equal access to benefits, programs and services, as well as protect individuals from particular burdens they may face due to a disability, their sex or other *Code*-protected ground. To achieve this equality, the Ministry of Community Safety and Correctional Services must accommodate the *Code*-related needs of individual inmates to the point of undue hardship.¹⁸ Examples of accommodations in the correctional context include ensuring equal access to medical treatment or providing additional support and assistive devices for elderly inmates or those with disabilities.

Although specific accommodations may be denied if they would cause the government “undue hardship,” this is a “high threshold” that is not easily met.¹⁹ The only permissible grounds to deny an accommodation are cost or health and safety. Inconvenience, a negative impact on

¹⁴ *Human Rights Code*, R.S.O. (1990). c. H.19, s. 2(1). (Hereafter HRC, R.S.O)

¹⁵ The Constitution Act (1982). Schedule B to the Canada Act 1982 (UK) (1982) c 11.

¹⁶ HRC, R.S.O, *supra* note 14, s. 2(1)

¹⁷ Ontario Human Rights Commission, (2016, January 29). Submission to MCSCS Segregation Review, pg. 4.

¹⁸ *Ibid* pg.5

¹⁹ Ontario Human Rights Commission. (2016, October). *Supplementary submission of the OHRC to the MCSCS provincial segregation review*, p. 15. Retrieved from <http://www.ohrc.on.ca/en/supplementary-submission-ohrc-mcscs-provincial-segregation-review>; & Ministry of Community Safety and Correctional Services. (30 July 2015). *Undue hardship: Providing accommodation short of undue hardship*. Government of Ontario. (Hereafter OHRC; supplementary submission to the MCSCS)

employee or inmate morale, collective agreements and contract restrictions or inconsistency with other policies, rules or Standing Orders are not sufficient to give rise to undue hardship.²⁰ Moreover, given the size, scope and budgets of Ontario government programs and services, cost is not likely to be an adequate reason for denying an accommodation.

Accommodations can be denied if they would jeopardize the health and safety of the inmate or others. Again, however, this is a high threshold: the risk must be “undue,” and “the person or organization responsible for the accommodation must take steps to try to mitigate or reduce the risks.”²¹

Once all possible steps have been taken to reduce a risk, an analysis must be conducted as to whether the risk is serious, likely and goes beyond the other risks that are encountered in a correctional setting. As explained in the Ministry’s policy documents, “[i]f the potential harm is minor or not very likely to occur, the risk would likely not be considered to be undue.”²²

This analysis must be based on “objective, real, direct and, in the case of costs, quantifiable evidence” rather than speculation or assumptions.²³ The inmate may also be willing to assume some risk, and this possibility should be explored.²⁴

The *Canadian Charter of Rights and Freedoms* also sets out several constitutional rights that are relevant to segregation. Although a wide range of constitutional rights could be engaged,²⁵ the provisions that are most clearly implicated based on the case law to date include the right to be

Textbox 2: The Jahn Public Interest Remedies

In 2011 and 2012, Christina Jahn, a woman with mental illness and addictions, spent over 200 days in segregation at the Ottawa-Carleton Detention Centre. After she was released she launched a human rights complaint against the Ministry of Community Safety and Correctional Services, alleging that she had been discriminated against based on her gender and mental health disabilities. The Ontario Human Rights Commission became involved in the case, and in 2013 the parties reached a landmark settlement that incorporated ten public interest remedies targeting the use of segregation and mental health treatment in corrections. The public interest remedies require the government to, among other things, ensure that inmates with mental illness and/or intellectual disability are not placed in segregation “unless the Ministry can demonstrate and document that all other alternatives to segregation have been considered and rejected because they would cause an undue hardship.”

²⁰ Ministry of Community Safety and Correctional Services. (2015, July 30). *Undue hardship: Providing accommodation short of undue hardship*, p. 2. Government of Ontario. (Hereafter known as MCSCS: accommodation short of undue hardship)

²¹ *Ibid*

²² *Ibid*

²³ *Ibid*.

²⁴ *Ibid*

²⁵ *Constitution Act, 1982*. (1982). Schedule B to the *Canada Act 1982* (UK), 1982, c 11. For example, s. 2(b) freedom of expression; s. 2(a) freedom of religion; s. 8 freedom from arbitrary search and seizure; and s. 15 the right to equality.

free from arbitrary detention;²⁶ the right to be free from cruel or unusual punishment;²⁷ the right not to be deprived of life, liberty or the security of the person, except in accordance with the principles of fundamental justice;²⁸ and the right to habeas corpus.²⁹ Segregation decisions must comply with the guarantees of procedural fairness, including disclosure of all the evidence used to come to the placement decision, the right to make submissions and the right to receive detailed reasons for the decision. Infringements of these rights will only be lawful if the government can prove that the law or action that is limiting individual rights is demonstrably justified in a free and democratic society.³⁰

Two recent court decisions have examined the application of various constitutional rights to inmates in segregation. In *Charlie v. BC (AG)*, 2016 BCSC 2292, Teresa Charlie brought a habeas corpus challenge to her confinement in an “Enhanced Supervision Placement (ESP).” While not officially designated as segregation, the ESP unit imposed very similar restrictions, and Ms. Charlie was locked alone in her cell for at least 21 hours a day. The Court held that her detention was unlawful because she was not provided with basic procedural fairness rights, including an adequate explanation of the reasons for her isolation. In order for a placement in segregation or segregation-like conditions to be lawful, the Court ruled that correctional authorities must provide the inmate with written reasons for the placement decision that include particular details about any alleged incidents that formed the basis for the decision.

Similarly, in *Hamm v. AG (Can.)*, 2016, ABQB 440, an Alberta court found that a high level of procedural fairness is required in segregation decisions, given the consequences they carry. In this case, in addition to providing the inmates with insufficient details regarding the placement decision, the institution also carried out perfunctory, inadequate segregation reviews. Moreover, the Court found that while the initial segregation decision was statutorily compliant, it was not reasonable, in part because there were viable alternatives to segregation; the inmates’ mental health issues made it unreasonable to place them in segregation without a full mental health assessment; and as Indigenous inmates, the assessment should have taken into account their background and the potential rehabilitation benefits of Indigenous-focused programs.³¹

²⁶ *Ibid* s.9

²⁷ *Ibid* s.12

²⁸ *Ibid* s.7

²⁹ *Ibid* s.10

³⁰ *Ibid* s.1

³¹ There are many other cases relevant to inmates’ rights in segregation and when incarcerated generally. See, for example, *McCann v. The Queen*. (1976). 1 FC 570 (Fed TD); *Cardinal v. Director of Kent Institution*. (1985). 2 S.C.R. 643; *R v. Olson*. (1987). CanLII 4314 (ONCA), affirmed (1989) 1 SCR 296; *R v. Marriott*. (2014). NSCA 28; *R v. Munoz*. (2006). ABQB 901; *R v. Chan*. (2005). ABQB 615; *Bacon v. Surrey Pretrial Services Centre (Warden)*. (2010). BCSC 805; *R v. Brooklyn Palmantier*. (2014). NWTTC 10. See also Debra Parkes, A prisoners’ charter? Reflections on prisoner litigation under the *Canadian Charter of Rights and Freedoms*. (2007). UBC Law Rev, 40:2 ; Lisa Kerr, Contesting expertise in prison law. (2014, September). 60 McGill LJ 43.

Textbox 3: Habeas Corpus

Section 10(c) of the *Canadian Charter of Rights and Freedoms* affirms that every person who is arrested or detained has the right “to have the validity of the detention determined by way of *habeas corpus* and to be released if the detention is not lawful.” Prisoners have been using *habeas corpus* to challenge the legality of their detention for centuries, and the Supreme Court of Canada has called it “the strongest tool a prisoner has to ensure that the deprivation of his or her liberty is not unlawful.” (*Mission v Khela*, 2014 SCC 24 at para 29). This provision gives every prisoner the right to appear before a court and raise questions about the legality of their detention. If the court finds that the concerns are legitimate, prison authorities must prove that the imprisonment is lawful. Inmates can challenge not only their continued detention in prison, but also further restrictions on their liberty that prison authorities might impose. This includes the right to challenge the decision to transfer a person to a higher security facility or place an individual in segregation.

Decisions that are unreasonable or made in an unfair manner are unlawful. Recent court decisions have found that procedural fairness for placements in segregation includes the following components:

- Inmates must be given particular details about any alleged incidents that formed the basis for the decision.
- Inmates must be provided with the specific, written reasons for their placement in segregation. These reasons must be more than just conclusory statements or a restatement of the applicable criteria.
- The information prison authorities rely upon must be reliable and credible evidence.
- Inmates must have the opportunity to contest their segregation and provide submissions.
- Fair and meaningful reviews of the inmates’ segregation must be conducted, including a transparent assessment of the basis for initial and continued segregation. These reviews must take into account any mental health and Indigenous issues raised by the segregation decisions.

The decision to place an individual in segregation may be unreasonable if:

- There were viable alternatives to segregation.
- Segregation would not contribute to addressing the stated rationales for the placement decision.
- An inmate with mental health issues was not given a mental health assessment prior to segregation.
- An Indigenous inmate’s placement decision did not take into account his or her Indigenous heritage and the impact, appropriateness or availability of Indigenous spiritual or cultural programming.

International Laws and Standards

There is no question where the international legal and human rights community stands on the use of segregation: the imposition of restricted, isolated confinement beyond 15 days can constitute torture or cruel, inhuman or degrading treatment or punishment.³²

This finding flows from several international legal instruments. The *International Covenant on Civil and Political Rights* (ICCPR), for example, prohibits arbitrary detention, requires that “[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person,” and states that “[t]he penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation.”³³ The ICCPR and the United Nations *Convention Against Torture and Other*

³² See, for example, The Istanbul statement on the use and effects of solitary confinement (2007). Adopted at the International Psychological Trauma Symposium, Istanbul. See also Juan E. Méndez, (2011, August 5), *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, UNGAOR, 66th Sess, UN Doc A/66/268. Other key international recommendations include the abolition of indefinite solitary confinement and a ban on solitary confinement for longer than 15 consecutive days; reserving solitary confinement for exceptional circumstances, as a last resort, and for as short a time as possible; instituting daily medical visits, ensuring a minimum of one hour fresh air per day and providing access to proper beds and mattresses; robust internal and external safeguards, including independent judicial oversight; an absolute prohibition on the use of solitary confinement as punishment, whether as part of a sentence or as a disciplinary measure; an absolute prohibition on the use of solitary confinement for minors and the mentally disabled; and prohibitions on the use of solitary confinement for pregnant women: Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. (2011, August 5). *Interim report of the Special Rapporteur of the Human Rights Council on Torture and Other Cruel Inhuman or Degrading Treatment or Punishment*. United Nations, A/66/268, para. 84, 89, 94-101; Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. (2008, July 28). *Interim report of the Special Rapporteur of the Human Rights Council on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. United Nations. A/63/175, para. 80.; United Nations Subcommittee on Prevention of Torture. (2010, June 7). *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to the Republic of Paraguay*, CAT/OP/PRY/1, para. 184.; United Nations Subcommittee on Prevention of Torture. (2010, June 7). *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Honduras*, CAT/OP/HND/1, para. 227 (a).; United Nations Subcommittee on Prevention of Torture. (2011, August 5). *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to the Republic of Paraguay*, CAT/OP/PRY/1, para 280.; United Nations Subcommittee on Prevention of Torture. (7 June 2010). Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to the Republic of Paraguay, CAT/OP/PRY/1, para 185.; United Nations Committee on the Rights of a Child. (2007, April 25). *General comment no. 10 (2007): Children’s rights in juvenile justice*, CRC/C/GC/10, para 89.; United Nations Committee on the Rights of a Child. (2001, July 10). Concluding observations of the Committee on the Rights of the Child: Denmark (Consideration of reports submitted by states parties under Article 44 of the Convention), CRC/C/15/Add.151, para 41.; United Nations Committee on the Rights of the Child. (2003, October 27). Consideration of Reports Submitted by States Parties Under Article 44 of the Convention. Concluding observations: Singapore, CRC/C/15/Add.220, para 45 (d).; United Nations Committee on the Rights of a Child. (2004, June 20). Concluding observations: El Salvador, CRC/C/15/Add.232, para 36 (a).; UN General Assembly. (2011, March 16). *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)*, A/65/457, Rule 22; and UN General Assembly. (2016, January 8). *United Nations standard minimum rules for the treatment of prisoners (the Mandela Rules)*, A/Res/70/175, Rule 45(2).

³³ United Nations (1966, December 16). *International Covenant on Civil and Political Rights*. United Nations, Treaty Series, vol. 999, Article 9, Article 10(1), Article 10(3).

Cruel, Inhuman and Degrading Treatment or Punishment prohibit the use of torture, cruel, inhuman or degrading treatment or punishment.³⁴

In 2015, the United Nations' *Standard Minimum Rules for the Treatment of Prisoners* were revised and adopted as the *Mandela Rules*.³⁵ These *Rules* speak directly to the standard of care expected in custodial settings. Although not binding law, the *Mandela Rules* have been recognized by Canadian courts and can inform the interpretation of Canadian law and *Charter* rights. As explained by the United Nations Special Rapporteur on Torture and three other leading international human rights experts:

The revised Rules represent a universally accepted minimum standard for the treatment of prisoners, conditions of detention and prison management, and offer essential practical guidance to prison administrations. The implementation of the Rules in prisons around the world would significantly improve the treatment of millions of detainees. At the same time, it is useful guidance to help prison staff deliver their important and difficult task in a professional and effective way, benefiting society at large.³⁶

The *Mandela Rules* stipulate that “solitary confinement shall be used only in exceptional cases as a last resort, for as short a time as possible.”³⁷ The *Rules* also prohibit the indefinite use of segregation, the prolonged use of segregation (defined as more than 15 days) and the use of solitary confinement on women, children and

Textbox 4: Key International Recommendations

- The abolition of indefinite solitary confinement, and a ban on solitary confinement for longer than 15 consecutive days.
- Reserving solitary confinement for exceptional circumstances, as a last resort, and for as short a time as possible.
- Instituting daily medical visits; ensuring a minimum of one hour of fresh air per day; and access to proper beds and mattresses.
- Robust internal and external safeguards, including independent judicial oversight.
- A prohibition on the use of solitary confinement as punishment, whether as part of a sentence or as a disciplinary measure.
- A prohibition on the use of solitary confinement for minors, the mentally disabled and pregnant women.

³⁴ United Nations. (1966, December 16). *International Covenant on Civil and Political Rights*. United Nations, Treaty Series, vol. 999.; United Nations (10 December 1984). *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. United Nations, Treaty Series, vol. 1465, p. 85.

³⁵ UN General Assembly. (2015, September 29). *United Nations standard minimum rules for the treatment of prisoners (the Mandela Rules)*, A/C.3/70/L.3. (Hereafter known as UN General Assembly: Mandela Rules)

³⁶ United Nations Human Rights Office of the High Commissioner. (2016, July 14). Leading human rights experts call for speedy implementation of the Nelson Mandela Rules on Nelson Mandela International Day. (Press Release). Retrieved from http://www.ohchr.org/Documents/Issues/Torture/StatementSR_MandelaRules14-07-2016.docx.

³⁷ UN General Assembly: Mandela Rules, *supra* note 35, Rule 45:18.

prisoners with mental or physical disabilities that would be exacerbated by the use of segregation.³⁸

Canada has been criticized internationally for its use of segregation. In 2012, the United Nations Committee Against Torture concluded its sixth periodic review of Canada and expressed concern over Canada's "use of solitary confinement, in the forms of disciplinary and administrative segregation, often extensively prolonged, even for persons with mental illness."³⁹ The Committee urged Canada to "limit the use of solitary confinement as a measure of last resort for as short a time as possible under strict supervision and with a possibility of judicial review."⁴⁰ Similarly, in 2015, the United Nations Human Rights Committee examined Canada's compliance with the ICCPR, expressing concern over the use of administrative and disciplinary segregation for extended periods of time. It advised the government to "effectively limit the use of administrative or disciplinary segregation as a measure of last resort for as short a time as possible and avoid such confinement for inmates with serious mental illness."⁴¹

The *Ministry of Correctional Services Act* and Regulations

Segregation in Ontario is directly governed by Regulation 778,⁴² which is enacted pursuant to the *Ministry of Correctional Services Act*.⁴³ Regulation 778 sets out two forms of segregation: administrative (referred to in the Regulation simply as segregation) and disciplinary (referred to in the Regulation as close confinement).

Administrative Segregation

Under s. 34 of the Regulation, a Superintendent may place an inmate in administrative segregation if:

- (a) in the opinion of the Superintendent, the inmate is in need of protection;
- (b) in the opinion of the Superintendent, the inmate must be segregated to protect the security of the institution or the safety of other inmates;
- (c) the inmate is alleged to have committed a misconduct of a serious nature; or
- (d) the inmate requests to be placed in segregation.⁴⁴

³⁸ *Ibid.*

³⁹ UN Committee Against Torture. (2012, June 6). Considerations of reports submitted by states parties under Article 19 of the Convention: Concluding observations of the Committee Against Torture, 48th Sess. UN Doc CAT/C/CAN/CO, p. 6.

⁴⁰ *Ibid.*

⁴¹ United Nations Human Rights Committee. (2015, August 13). Concluding observations on the sixth periodic report of Canada, p. 5.

⁴² General, RRO 1990, Reg 778. (Hereafter Regulation 778).

⁴³ Ministry of Correctional Services Act, RSO 1990, c M.22.

⁴⁴ Regulation 778, *supra* note 42, s. 34 (1).

Inmates can also be placed in segregation if they refuse or resist a search, in which case they can be held there until the inmate “submits to the search or until there is no longer a need to search the inmate.”⁴⁵

Regulation 778 requires a Superintendent to conduct a “preliminary review of the inmate’s case” within 24 hours where the inmate is alleged to have committed a misconduct of a serious nature.⁴⁶ In September 2015, the Ministry revised its policy to mandate a 24-hour review for all inmates in segregation. Regulation 778 requires a further review of the circumstances of each inmate once every five days. The effect of the Regulation is that the focus of both reviews is to determine whether the continued segregation of the inmate is warranted. After 30 continuous days in segregation, the Superintendent must report the reasons for the inmate’s continued segregation to the Minister of Community Safety and Correctional Services.⁴⁷ Inmates in administrative segregation are to have “as far as practicable” the same benefits and privileges as non-segregated inmates.⁴⁸

Disciplinary Segregation

An inmate can be placed in disciplinary segregation when the Superintendent “determines that an inmate has committed a misconduct of a serious nature.”⁴⁹ There is no definition of a “misconduct of a serious nature”, but typically this conduct includes assault against another inmate or staff member, assault with a weapon, possession of contraband, significant damage to property or inciting a riot or disturbance. Regulation 778 currently limits disciplinary segregation to a maximum of 30 days.⁵⁰ On October 17, 2016, the Ontario government announced that, effective immediately, disciplinary segregation placements would be limited to 15 consecutive days.⁵¹ In addition to being placed in segregation, the Regulation allows a Superintendent to revoke all inmate “privileges.”⁵² Again, however, the October 2016 announcement directed that inmates in disciplinary segregation could no longer have all privileges simultaneously removed.⁵³

⁴⁵ *Ibid* s. 26.

⁴⁶ *Ibid* s. 34(2), 34(3).

⁴⁷ *Ibid*, s. 34(5).

⁴⁸ *Ibid*, s. 34(4).

⁴⁹ *Ibid*, s. 32(2).

⁵⁰ *Ibid*.

⁵¹ Ministry of Community Safety and Correctional Services. (2016, October 17). Ontario to begin overhaul of the use of segregation in the province: Government to appoint independent reviewer to reform current policies and practices [News Release]. Government of Ontario. Retrieved from (hereafter known as MCSCS: overhaul of the use of segregation) <https://news.ontario.ca/mcscs/en/2016/10/ontario-to-begin-overhaul-of-the-use-of-segregation-in-the-province.html>.

⁵² Regulation 778, *supra* note 42, s. 32(1).

⁵³ MCSCS: overhaul of the use of segregation, *supra* note 51

b. Policy Framework

The Ministry of Community Safety and Correctional Services has developed policies governing the use of segregation, the rights of inmates and the processes that must be followed, both before and during placement in segregation.⁵⁴ In contrast to the regulatory provisions, which are in key areas brief to a fault, the policies are extensive, at times overlapping and frequently confusing. Five main areas of policy are canvassed below:

- Definition of segregation and other restrictive forms of housing;
- Placement in segregation;
- Segregation reviews and reports;
- Human rights obligations; and
- Health care in segregation.

Definition of segregation and other restrictive forms of housing

There is no functional definition of “segregation” in provincial legislation or regulations. Rather, Ministry policy refers to segregation as an “area,” without referencing the treatment of the inmate or conditions of confinement:

Segregation: An area (for administrative segregation or close confinement housing, inmates are confined to their cells, limited social interaction, supervised/restricted privileges and programs, etc.) designated for the placement of inmates who are to be housed separate from the general population (including protective custody, special needs unit(s), etc.).⁵⁵

The slightly more detailed policy definitions of “Administrative Segregation” and “Close Confinement” (or disciplinary segregation) refer to “the separation of an inmate (placement in segregation) from the general population...”⁵⁶

Policy, not law, also defines three other forms of restricted housing that may, depending on the circumstances, be equivalent to segregation: medical isolation, protective custody and a special needs unit. Medical isolation is defined as “[t]he isolation (segregation) of an inmate for health care purposes (e.g., to prevent the spread of infection).”⁵⁷

Protective custody is defined as “[t]he separation of an inmate from the general population where the inmate requests or requires protection from other inmates.”⁵⁸ For inmates in protective custody, policy requires that the Superintendent or designate explain to the inmate that “some benefits, privileges and programs provided to general population inmates may not

⁵⁴ The two primary policy documents governing segregation are *Placement of special management inmates and Discipline and misconduct*. They are included as Appendix B to this Report. MCSCS: PSMI, *supra* note 01. *Institutional services policy and procedures manual: Discipline and misconduct*. Government of Ontario. (Hereafter known as MCSCS: discipline and misconduct)

⁵⁵ MCSCS: PSMI, *supra* note 01, s.413

⁵⁶ *Ibid*, s. 4.1, 4.4.

⁵⁷ *Ibid*, s. 4.9.

⁵⁸ *Ibid*, s. 4.12.

be available due to available resources or where access would undermine the reason for placement in protective custody.”⁵⁹ There are no clear standards directing the levels of service, out-of-cell time, programs or social interaction provided in protective custody.

Special needs units (SNUs) are a “dedicated or allocated physical location ... used to assess, stabilize, treat and house special needs inmates.”⁶⁰ The policy governing SNUs defines an inmate with a special need(s) as an individual who meets one or more of the following criteria:

- Presentation of a severe and/or persistent mental illness (e.g. schizophrenia, affected disorder, organic brain syndrome, borderline personality disorder, dementia, etc.);
- An intellectual disability; and/or
- A significant physical disability (e.g., restricted mobility, deaf, blind, etc.).⁶¹

Special needs units are to be designed taking into consideration a number of factors: the safety and security of the inmate; protection of the inmate’s mental and physical wellbeing; an inmate’s ability to function in the general population; the ability to execute and carry out individualized inmate plans; and access and availability of services, programs and focused resources to address unique or complex needs.

Placement in segregation

In line with Regulation 778, inmates may be placed in administrative segregation for their own protection, for the safety and security of the institution or other inmates, for alleged misconduct or upon their own request. Disciplinary segregation is available as a sanction for having committed a serious misconduct.

Inmates with mental illness and/or intellectual disability are not to be placed in segregation “unless the Ministry can demonstrate and document that all other alternatives to segregation have been considered and rejected because they would cause an undue hardship.”⁶² In addition, although not reflected in current policies, the government recently announced that both administrative and disciplinary segregation would be used as “a last resort.”⁶³ Where a segregation area is the only option for a special needs inmate, a Care Plan or medical Treatment Plan must be developed.⁶⁴ In such cases there must be clear documentation of the placement decision, as well as the measures taken to promote integration, accommodate the

⁵⁹ *Ibid.* s. 6.2.1 (f).

⁶⁰ *Ibid.* s. 4.16.

⁶¹ *Ibid.* s. 4.15.

⁶² *Ibid.* s. 3.1.3.

⁶³ MCSCS: Overhaul of the use of segregation, *supra* note 51.

⁶⁴ A Care Plan is defined as “a written document that guides a consistent approach for inter-professional team members on how to meet care goals and support needs. Care Plans are dynamic documents and are updated as needs of an inmate evolve over time. Inter-professional team members (e.g., correctional staff, program staff, mental health providers, native inmate liaison officer, social workers, community outreach, etc.) work collaboratively to develop the Care Plan.” A Treatment Plan is “a written document which outlines the medical strategies and treatment goals for a patient. A psychiatrist (or physician) and other mental health provider(s) will work collaboratively with other clinical staff to develop a Treatment Plan for those inmates with a mental illness, to provide mental health services that are specific to the inmate on an ongoing basis.” MCSCS: PSMI, *supra* note 1, ss. 4.14, 4.17.

inmate's needs and provide services and programming equivalent to that available in the general population.

Disciplinary segregation (close confinement) can be imposed after a formal misconduct complaint and investigation, the details of which are set out in the *Discipline and Misconduct* policy.

Disciplinary segregation is only available as a sanction after an employee files a formal Misconduct Report.⁶⁵ The subsequent misconduct investigation and adjudication includes four steps: the initial description of the misconduct, the investigation, a distinct inmate interview, and the determination of the disposition.⁶⁶

The employee that was most directly involved in the underlying incident initiates the process by filling out the "Description" section of a Misconduct Report. This will include a detailed factual description of what occurred and the names of any witnesses. At this time the inmate is also given a Misconduct Notice, which "advise[s] the inmate of the nature and circumstances of the alleged misconduct" as well as their rights.⁶⁷

Once the Report has been initiated, an investigation must be carried out "as soon as possible."⁶⁸ The investigator must be an operating manager who, "where operationally feasible", was not directly involved in the incident.⁶⁹ The investigator will interview witnesses and review all relevant evidence.

Within ten days, the Superintendent or designate - other than the investigating operating manager - must conduct the formal inmate interview; this interview must be witnessed by "at least one other employee" and, "if operationally feasible," the witnessing employee should not have been directly involved in the alleged incident.⁷⁰ There is no policy requirement for the primary interviewer to not have been involved in the underlying allegations. Instead, if the interviewer was involved in the investigation or alleged misconduct incident, he or she must "submit an Occurrence Report with a complete rationale explaining why they conducted the interview."⁷¹ Inmates are provided an opportunity to make a statement, and if they wish to deny the alleged misconduct they must be given "sufficient time to prepare" between the investigation and the adjudication. The Superintendent or designate "may" permit any person (e.g., interpreter, support worker, lawyer) to attend the interview and assist.⁷²

Finally, a Superintendent or a designated manager must determine whether or not the inmate committed misconduct and, if so, the appropriate disciplinary sentence. Again, "if operationally

⁶⁵ MCSCS: discipline and misconduct, *supra* note 54

⁶⁶ *Ibid.*, s. 6.4.4.

⁶⁷ *Ibid.*, s. 6.5.3.

⁶⁸ *Ibid.*, s. 6.6.1(a).

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*, s. 6.6.2(a).

⁷¹ *Ibid.*, s. 6.6.2(a)(i).

⁷² *Ibid.*, s. 6.6.2(f), (g).

feasible” the adjudicator should not have been involved in the investigation or the underlying misconduct.⁷³ The inmate must receive written reasons within two days of the interview which include the “rationale and reasons for the decision and the disciplinary measure.”⁷⁴ If the Superintendent or designate determines that the inmate has committed a “serious misconduct”, disciplinary segregation may be imposed.⁷⁵ The inmate may request that the decision be reviewed by the Assistant Deputy Minister, Institutional Services; this review, however, is only available for instances where the inmate alleges that the procedures in Regulation 778 were not followed, or the inmate’s punishment related to the forfeiture or suspension of earned remission.⁷⁶

The Superintendent or designate may place an inmate in protective custody where there is “a definite risk to the safety of the inmate” and a review has confirmed that the risk cannot be mitigated with measures such as increased supervision or “vigilant and resourceful staff.”⁷⁷ Protective custody should only be used as a last resort, and the policy outlines a number of possible alternative management strategies, including counselling to improve peer relations, assignment to another living unit or institution and conflict resolution between protective custody candidates, peers and aggressors.

There is no clear guidance on when an inmate should be placed in a special needs unit. Policy simply states that “[w]henever possible and appropriate for non-disciplinary placement of inmates... protective custody and special needs units should be used as alternatives to segregation and implemented short of undue hardship.”⁷⁸ Each case must be “considered individually on its own merits... based on consultations with clinical staff and/or mental health providers (as appropriate).”⁷⁹ Institutions must make “every attempt”⁸⁰ to transfer special needs inmates if they cannot accommodate them in a special needs unit or if another correctional institution can offer the inmate better quality of life through increased access to programs or services.

Segregation reviews and reports

Regulation 778 in combination with Ministry policy requires a Superintendent or his or her designate to review administrative segregation placements within the first 24 hours, and again every five days.⁸¹ Ministry policy also requires a review take place every 30 days, and clarifies that all review obligations apply to inmates in segregation or “other area designated as an extension of segregation.”⁸² Inmates must be given an opportunity to make written or in-

⁷³ *Ibid*, s. 6.6.3.

⁷⁴ *Ibid*.

⁷⁵ *Ibid*, s. 6.8.3.

⁷⁶ *Ibid*, s. 6.11.2.

⁷⁷ MCSCS: PSMI, *supra* note 01, s. 6.2.1 (b).

⁷⁸ *Ibid*, s. 3.1.5.

⁷⁹ *Ibid*, s. 6.2.2 (a).

⁸⁰ *Ibid*, s. 6.2.2 (a).

⁸¹ *Ibid*, s. 6.6.

⁸² *Ibid*.

person submissions, with assistance as required. The reviews should be a case-by-case assessment that take into account the “full circumstances” of the inmate’s situation, including any direction from medical professionals, inmate submissions, and mental health or other accommodation needs. Both 5-day and 30-day review decisions are to be recorded on standard segregation decision and review forms. Some of the details that must be included on one or both of these reviews are:

- Any human rights-related factors that might mean the inmate experiences harm by placement in segregation;
- Alternative placements and the reason for rejecting them;
- Any new reasons for segregation;
- Any inmate submissions;
- Steps taken to minimize the negative effects of segregation and maximize integration/interaction with other inmates;
- Reasons for continued segregation; and
- Information about when an inmate with mental illness was last seen by a mental health provider.⁸³

In addition to the 30-day report required by the Regulation, Ministry policy also requires that a report be sent to the Assistant Deputy Minister, Institutional Services, when an inmate has been in segregation for 60 aggregate days within the past year.⁸⁴

Policy defines special needs units and protective custody as areas distinct from segregation. Even so, individuals in these units have restrictions on movement and association that should trigger ongoing reporting or review obligations. As mentioned above, to place an individual in protective custody a “review must be conducted” to confirm the inmate’s protection needs and the lack of alternatives.⁸⁵ However, there is no timeline associated with this review and there is no policy requirement to repeat the review or report on individuals in this population. For inmates in protective custody who are there “on an involuntary basis,” the Superintendent or designate must “review the full circumstances of the case, provide the inmate an opportunity to speak to staff about their circumstances and record the information on the reverse of the

⁸³ *Ibid*, s. 6.6.3 (f), 6.6.4 (b)(ii).

⁸⁴ *Ibid*, s. 5.1.4. The Ministry’s standardized Segregation Decision/Review Form provided for these reports set out a number of required fields, including:

- Date inmate was placed in segregation
- Reason for segregation (identify from 5 reasons as per MCSA) Specific reasons and details for segregation (explain the reasons)
- Alternatives explored (list and identify if incorporated or rejected (e.g., PC placement rejected).
- Does this inmate have an Ontario Human Rights Code-related need or need(s)? If Yes, provide details (e.g., mental health issues). If No, indicate.
- Does this inmate have a Treatment Plan? (Advise if Yes, No, or N/A)
- If the inmate has a Treatment Plan, identify when last reviewed and give title of clinical staff (e.g., mm-dd-yy, psychiatrist)

⁸⁵ *Ibid* s. 6.2.1 (b).

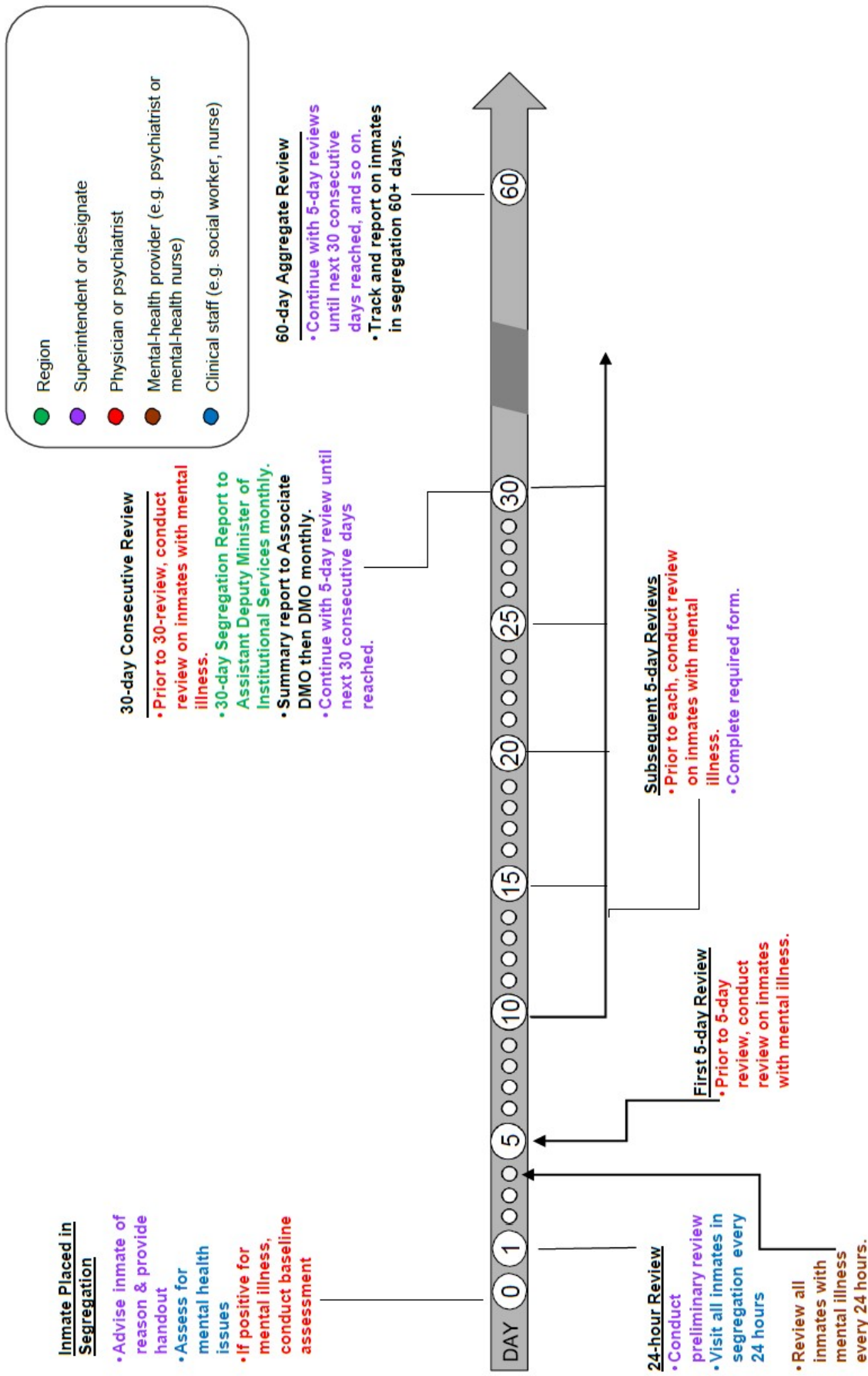


Figure 1: Ministry flowchart: "Current Segregation Protocols"

Protective Custody Decision/Review Form.”⁸⁶ It is not clear how this requirement differs from the general requirement to conduct a placement review.

In October 2016 the government announced that, in addition to the reviews and reports referenced above, institutions would also be convening weekly “Segregation Review Committees.”⁸⁷ The Committees are composed of (at a minimum) the Superintendent or designate, health care staff, mental health care staff (where available) and a correctional manager from the unit(s). The Committees are to meet weekly and review all available documentation regarding inmates “in segregation or any other area where the conditions of confinement match or closely resemble segregation (e.g., repurposed areas, special needs, etc.).”⁸⁸ At the end of the weekly review the Superintendent or designate makes decisions regarding the continued segregation, release or particular actions that must be taken regarding each inmate. The Review Committee must prepare minutes and the Superintendent is to collect the Committee’s recommendations.

Human rights obligations

Current Ministry policies provide detailed direction on human rights obligations and segregation. In addition to the general prohibition on segregating inmates with mental illness or developmental disabilities to the point of undue hardship, policy directs correctional officers and managers to incorporate mental health and other human rights considerations at multiple stages, including: responding to a perceived misconduct, misconduct adjudication, administrative segregation placement decisions, the provision of programs and services in segregation and medical attention prior to and during segregation.⁸⁹ The policy also contains a definition of “undue hardship,” and a further linked document provides more detailed guidance and gives examples of how human rights obligations apply in a correctional setting.⁹⁰

Regardless of the reasons for segregation, policy requires that “acceptable living standards and humane treatment are always maintained.”⁹¹ All inmates placed in segregation must be proactively offered basic information about their rights via the Ministry’s “Segregation Handout.” Inmates have the right to make submissions regarding their placement in segregation at any time, in person or in writing.

Ministry policies contain a general statement that all inmates are to be integrated into the general population to the fullest extent possible, and that access to programs, rights and privileges will be the same, unless access would cause undue hardship.⁹² There is also an requirement that, “as far as practicable,” inmates in administrative and disciplinary segregation, protective custody, special needs units and medical isolation must be “provided

⁸⁶ *Ibid* s. 6.2.1 (h).

⁸⁷ MCSCS: overhaul of the use of segregation, *supra* note 51.

⁸⁸ Ministry of Community Safety and Correctional Services. (2017, January) *Terms of reference: Segregation review committee*, p. 1. (Hereafter MCSCS: SRC)

⁸⁹ See generally, MCSCS: PSMI *supra* note 01

⁹⁰ MCSCS: accommodation short of undue hardship, *supra* note 20

⁹¹ MCSCS: PSMI *supra* note 01, s. 3.1.2.

⁹² *Ibid*. s. 3.1.4.

the same conditions of confinement, rights and privileges as inmates in the general population.”⁹³ For inmates in disciplinary segregation, however, certain rights and privileges may be restricted, including:

- Restricting telephone privileges, except to phone a lawyer or other official legal representative;
- Removing bedding for a “reasonable” period of time each day so long as it is not during regular sleeping hours;
- Placing “excessive” personal property, not including personal hygiene items, in “safekeeping”;
- Suspending canteen privileges;
- Restricting access to reading materials to legal materials or other items “designed to assist in the inmate’s rehabilitation and normal functioning”; and
- Restricting access to fresh air, to a minimum of 20 minutes per day.

As stated, on October 17, 2016, the Ministry announced that inmates in disciplinary segregation would no longer be able to have all their privileges revoked. Although inmates may still lose some privileges while in disciplinary segregation, they will no longer be able to have every single privilege removed at the same time.

⁹³ *Ibid* s. 6.1. Examples provided include accommodations for Human Rights Code-related needs; administrative and health care services; access to mental health provider and mental health care services for those with mental illness; visiting and correspondence; access to telephone services; and amounts of personal property, clothing and bedding, etc.

Textbox 5: Applying Human Rights Principles to Corrections

The following examples of how to apply human rights obligations in a corrections setting are adapted from the Ministry's document, *Undue Hardship: Providing Accommodations Short of Undue Hardship* (MCSCS, July 30, 2015).

Accommodating an inmate with mental illness

An inmate experiences hallucinations. Instead of automatically assuming he will pose a threat to other inmates or himself if placed in the general population, an inter-professional team, which includes mental health providers, considers the inmate's medical, criminal and behavioural backgrounds (both while on and off treatment) and possible risk mitigation strategies before making a placement decision.

Identifying Interim or Next Best Accommodations

An inmate with mental illness has difficulty getting along with others and has been violent with cellmates in the past. Until an assessment can be completed to identify a compatible cellmate, she is housed in single cell accommodation, which happens to be located in segregation. As an interim accommodation, steps are taken to ensure that the inmate spends as much time with the general population as possible and that she has access to all the benefits associated with general population housing (for example access to programming and socialization), short of causing undue hardship.

Considerations when Assessing Undue Hardship

An inmate with mental illness occasionally becomes agitated and aggressive, but calms down when allowed to go for a walk in the yard. Although other inmates may resent his extra access to the yard and fresh air, the impact on institutional morale does not form part of the undue hardship assessment. In other words, the impact on institutional morale should not provide a valid defense for failing to accommodate the inmate's needs under the *Human Rights Code*.

Mitigating Risk

An inmate with mental illness becomes agitated and aggressive in response to certain environmental triggers. Before concluding that it would cause undue hardship to house this inmate with the general population, the inter-professional team, which includes mental health providers, considers how to minimize the risks to other inmates and staff. The inmate herself can be involved in identifying potential triggers. For example, this may lead the team to consider modifying the Treatment and/or Care Plan, minimizing exposure to known triggers, providing access to a quiet space and to calming activities or rituals, increasing the level of supervision on the unit, and ensuring access to support persons.

Health care in segregation

There are several different policies regarding the provision of health care in segregation. Unfortunately, these policies are unclear and at times contradictory.

The Ministry's *Health Care Services Policy and Procedures Manual* contains a specific policy regarding health care examinations of segregated inmates.⁹⁴ It requires a health care professional to conduct examinations before an inmate is admitted to segregation and upon the inmate's release. Where the inmate poses an immediate threat and must be removed before receiving a medical evaluation, or if clinical staff are unavailable, the health care assessment must take place "as soon as possible" after being admitted to segregation.⁹⁵ Health care staff must also visit segregated inmates daily, recording their visits in the segregation unit log book and entering any specific health observations or interventions in the Health Care Record. According to this policy, physicians "may also visit the inmate when necessary."⁹⁶

The *Institutional Services Policy and Procedures Manual* contains a different set of health care standards. According to the *Placement of Special Management Inmates* policy, the admitting and release medical assessments must take place "whenever possible."⁹⁷ The policy also directs that all inmates with mental illness who are placed in segregation are to receive specialized, individual services, including:

- A baseline assessment from a physician (or psychiatrist upon referral) to evaluate treatment and care requirements. This assessment should be conducted as soon as possible upon placement in segregation;
- A "review" by a mental health provider (or where not available another clinical staff) at least once every 24 hours; and
- A mental health assessment by a physician or psychiatrist before each five-day segregation review.⁹⁸

There are no comparable specific policy requirements regarding health care for inmates in special needs units or protective custody.

⁹⁴ Ministry of Community Safety and Correctional Services. (October 1999). *Health care services policy and procedures manual: Health care examination of segregated inmates*. Government of Ontario. (Hereafter known as MCSCS: health care services)

⁹⁵ *Ibid*

⁹⁶ *Ibid*

⁹⁷ MCSCS: PSMI, *supra* note 01, s. 6.3.1.

⁹⁸ *Ibid.* s. 6.2.3 (c).

III. SEGREGATION USE IN ONTARIO

Even though Ontario’s average custodial population has been decreasing over the last 10 years, the average number of people in segregation is on the rise (see Figure 2). On any given day last year, on average, about 575 people – approximately 7% of those detained in Ontario’s correctional facilities – were in segregation.⁹⁹ A decade ago, 5.3% of Ontario’s incarcerated population was in segregation (see Figure 3).

We requested Ministry data to provide as complete a picture of segregation use in Ontario as possible; the figures presented in this section are drawn directly from the data the Ministry provided.

There are significant caveats regarding the integrity of the data received from the Ministry, and as a result the statistics provided in this report should be interpreted with caution. Inconsistencies and lack of clarity regarding the definition of segregation, the reliability of the available mental health and suicide alerts, race-based data collection practices and the Ministry’s inability to track continuous segregation placements across institutions before 2015 undermine the comprehensive and accurate reporting of segregation statistics. These and other concerns regarding data integrity are further elaborated throughout the Findings section of this report.

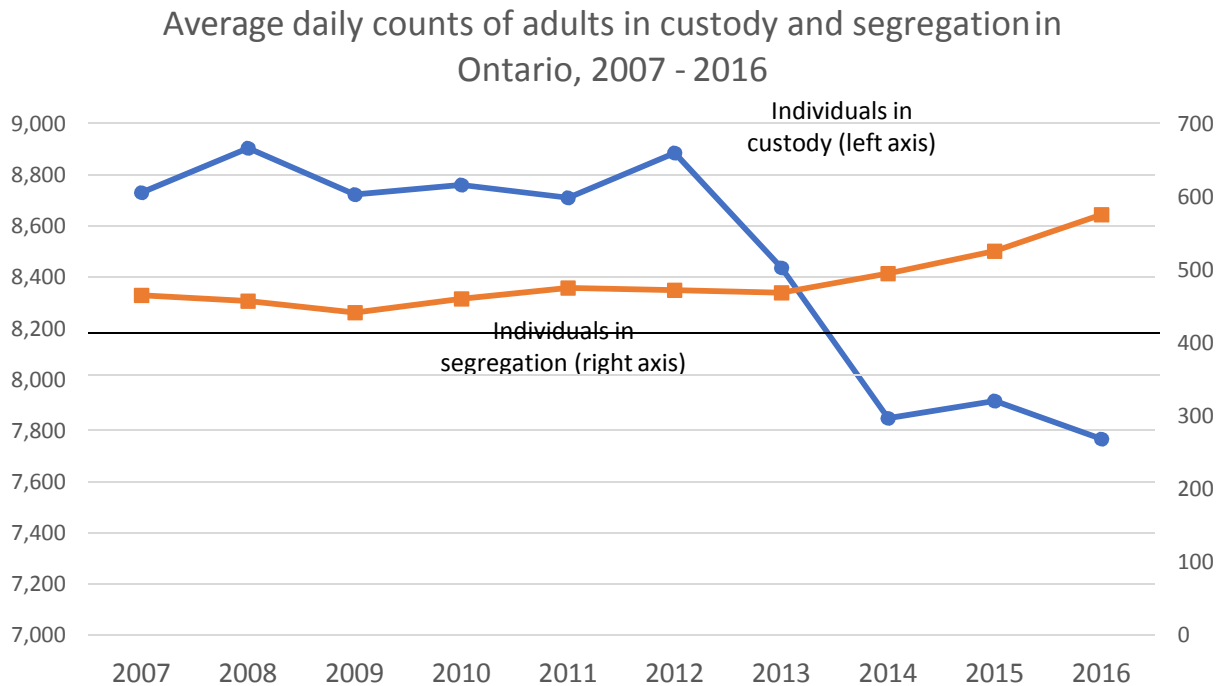


Figure 2 - Yearly averages of daily counts of adults in custody and segregation in Ontario correctional institutions, 2007-2016.

⁹⁹ See Appendix B, Table B-1.

Percentage of Ontario's custodial population in segregation, 2007-2016

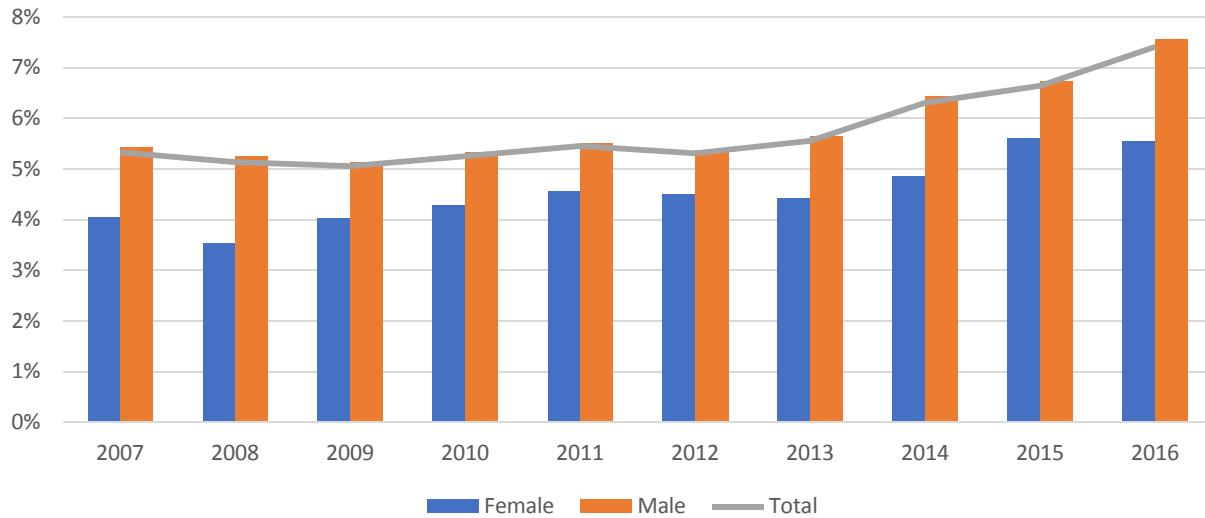


Figure 3 - Percentage of Ontario's male, female and total custodial populations in segregation, 2007-2016. Calculations based on yearly averages of daily counts of adults in custody and segregation.

Admissions to Ontario segregation by reason, 2016

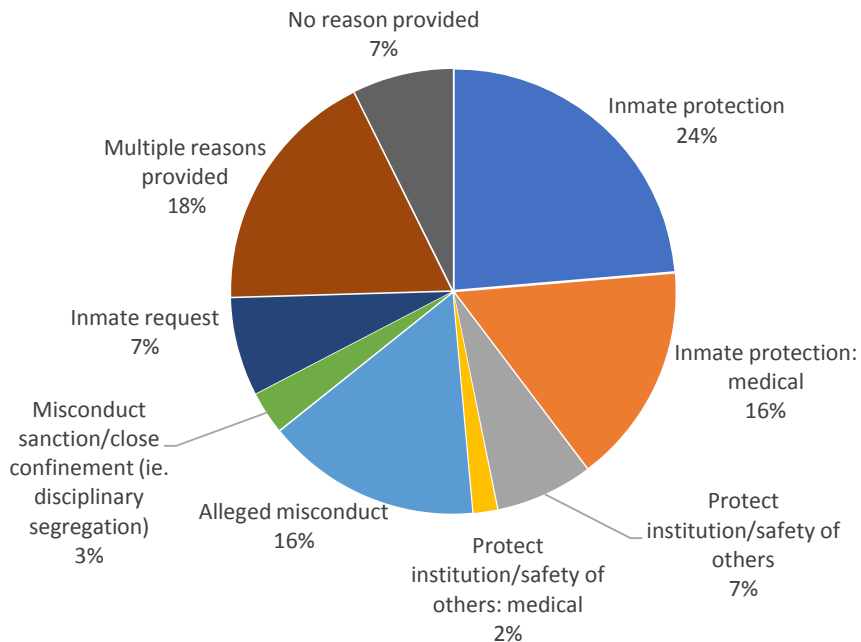


Figure 4 - Admissions to segregation in Ontario correctional facilities in 2016, broken down by reason for admission to segregation. "Multiple reasons provided" refers to inmates who were admitted and/or continuously held in segregation for multiple reasons.

It is difficult to get a full picture of the reasons why people are placed in segregation. In 2016, there were 22,509 distinct admissions to segregation. A significant proportion of these placements (18%) list multiple reasons for the segregation stay, complicating the analysis. Nevertheless, a few trends are clear. First, the vast majority of inmates are in administrative segregation: only 3% of segregation placements in 2016 were attributable to disciplinary segregation. Within the administrative segregation population, the most common reason for segregation is inmate protection. There were 40% of admissions to segregation justified based on a need to protect the inmate, and 40% of those who were considered in need of protection “required” it for medical reasons. Only seven percent of inmates were in segregation based solely upon their own request, and in another seven percent of admissions no reasons were provided for the segregation placement (see Figure 4).

The average length of time spent in segregation in 2016 was 12 days, and the majority of inmates (70%) were placed in segregation for 7 days or less.¹⁰⁰ During the calendar year of 2016, segregation terms ranged from 1 to over 1,500 days.¹⁰¹ In 2015/16, the Ministry reported that 1,019 inmates (999 men, 20 women) spent 30 or more continuous days in segregation, and the average time spent in segregation for these inmates was 104 days.¹⁰² The typical length of a segregation stay varies significantly between institutions. In 2016, the Ottawa-Carleton Detention Centre reported the longest segregation placements, keeping individuals in segregation an average of 26 days and a median of 9 days. Other institutions with above-average segregation placement lengths included the Central East Correctional Centre (average stay 23 days, median 8 days), Thunder Bay Jail (average 18 days, median 5 days) and Hamilton-Wentworth Detention Centre (average 16 days, median 3 days).

There are a number of inmates who have been segregated for extremely long periods of time. In early November 2016, for example, there were 22 inmates known to have been in segregation continuously for over a year. As of January 31, 2017, the Ministry had identified five inmates who were currently in segregation and had been so confined continuously for over three years.¹⁰³ Among these five inmates is Adam Capay, a 23-year-old Indigenous man who has spent over 1,500 days in segregation waiting for his trial. His case was first publicized in the fall of 2016 by the Ontario Human Rights Commissioner, who spoke with him in the Thunder Bay Jail. At the time, he was being detained in a Plexiglas-lined cell within a windowless

¹⁰⁰ Based on releases from segregation in calendar year 2016, 70% of segregation placements were for 7 days or fewer, while 13.3% lasted between 8 and 14 days; 8.1% between 15 and 29 days; 6.3% between 1 and 3 months; 1.6% between 3 and 6 months; 0.5% between 6 and 12 months; and 0.2% spent over a year in segregation. These figures do not take into account inmates that were held continuously in segregation but moved between two or more institutions.

¹⁰¹ In the data overview provided to the Review Team, the Ministry was not able to track inmates with long segregation placements who had been transferred between institutions prior to April 2015. For example, even though Adam Capay spent over 1,500 days in segregation, that total length was not reflected in the Ministry’s statistics for 2016, which stated that segregation terms ranged from 1 to 1,104 days.

¹⁰² Ministry of Community Safety and Correctional Services. (2016, October 4) *Review of segregation: Health, Education and Social Policy Committee*. Government of Ontario, p. 7.

¹⁰³ As of January 31, 2017 the five inmates included on this list had spent at least the following periods in segregation: 1,331 days or 3 years, 7 months, 21 days; 1,237 days, or 3 years, 4 months, 19 days; 1,186 days, or 3 years, 2 months, 29 days; 1,401 days, or 3 years, 9 months, 30 days; and 1,616 days, or 4 years, 5 months, 2 days.

segregation unit, illuminated by artificial light 24 hours per day. Both the Minister and the Premier have denounced his treatment.

Pre-trial detainees constitute a majority (67%)¹⁰⁴ of the people incarcerated in provincial institutions and they represent an even greater proportion of Ontario's segregated population (see Figure 5). In 2016, on average, 7 out of 10 individuals in segregation were on remand – legally innocent, waiting for their trial or bail determination. Based on the average weekend count for 2016, five percent of segregated inmates were serving an intermittent sentence. These people usually spend their weekdays in the community, returning to jail only on weekends. Some are nonetheless held in the most austere form of custody, segregated in maximum security facilities.

“[Adam Capay’s] conditions are completely unacceptable in this day and age in the Province of Ontario. ... That is something that should never occur again.”

- David Oraziotti, former Minister of Community Safety and Correctional Services, November 23, 2016

“[I]t’s extremely disturbing... It shouldn’t have happened. It’s unacceptable. The status quo is unacceptable...”

- Kathleen Wynne, Premier of Ontario, October 31 2016

The percentage of the custodial population in segregation varies widely across institutions. In 2016 the Toronto East Detention Centre and Sudbury Jail held on average 16% and 17% of their inmates respectively in segregation. Kenora Jail, on the other hand, held on average 4% of inmates in segregation (see Appendix A, Figure A-1). Reported segregation use in individual institutions has also varied significantly over time (see Appendix A, Table A-4). Last year, for example, the Ottawa-Carleton Detention Centre saw a 110% jump in its average segregation numbers, going from an average of 31

people in segregation on any given day in 2015 to 65 in 2016. In contrast, since the Toronto South Detention Centre first opened in 2014, it has decreased its use of segregation by 39%. It is important to note, however, that this reported decrease in segregation does not necessarily mean that more inmates are being held in non-restrictive conditions; Toronto South has created an alternative unit that, while not officially counted as segregation, nevertheless restricts inmates to their cells for upwards of 22.5 hours a day (see Textbox 8 and Section V.b. for a further discussion of this issue).

¹⁰⁴ Reitano, J. (2017). Adult Correctional statistics in Canada, 2015/2016. Ottawa: Government of Canada, Statistics Canada. Retrieved from <http://www.statcan.gc.ca/pub/85-002-x/2017001/article/14700-eng.htm>.

Legal status of individuals in Ontario segregation on six random days between July and December 2016

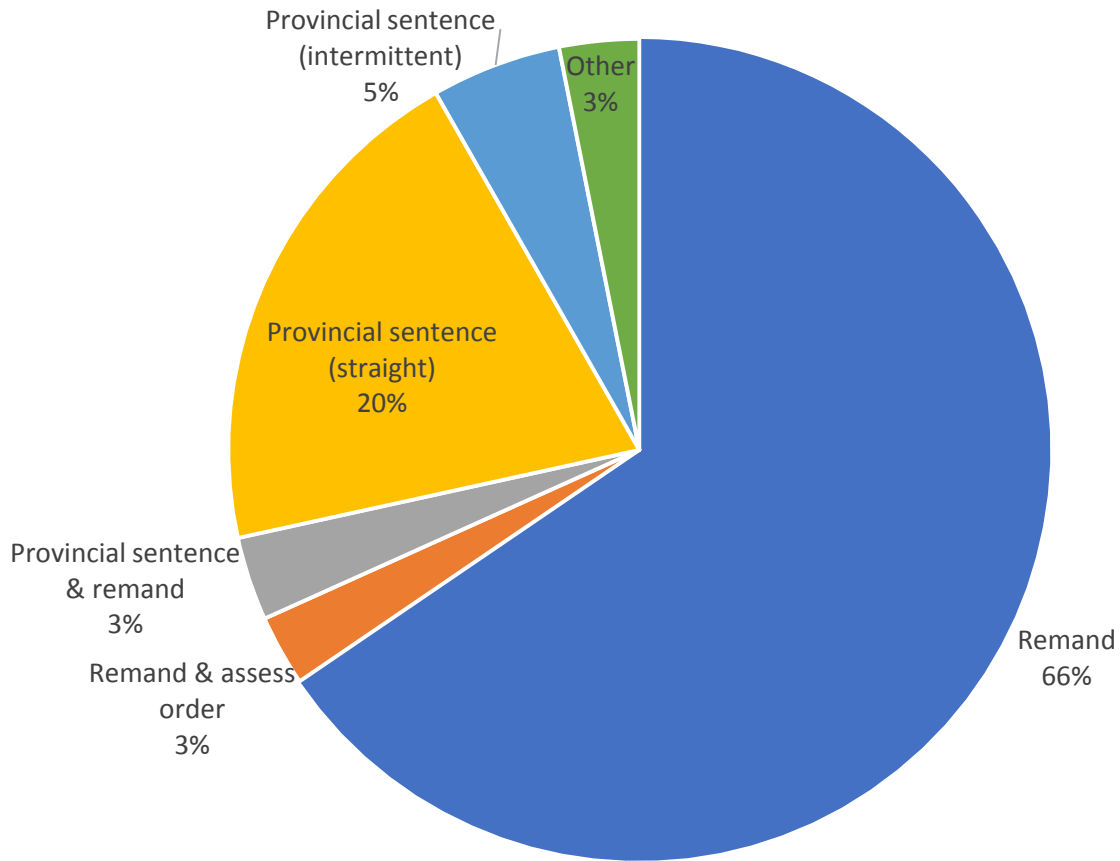


Figure 5 - Legal status of individuals in segregation on six random daily snapshots between July and December 2016. Note that not all institutions reported on the relevant dates.¹⁰⁵ Category “Other” includes immigration holds, extradition holds, federal sentences, national parole violations, remand & immigration holds, and remand & national parole violations

¹⁰⁵ Daily snapshot dates were July 9, August 13, September 10, October 8, November 12, and December 10, 2016. Not all institutions provided a daily segregation report on those dates. Sudbury Jail did not submit a daily segregation report on September 10, 2016. Ontario Correctional Institute did not submit a daily segregation report on October 8, 2016. Elgin-Middlesex Detention Centre did not submit a daily segregation report on November 12, 2016. There were no missing daily segregation reports on July 9, August 13, and December 10, 2016.

Those who have been flagged as having potential or confirmed suicide risk or mental illness are disproportionately placed in segregation, and once there tend to stay longer than the rest of the segregated population. Approximately one in five individuals admitted to custody in Ontario in 2016 had a suicide alert on file. For those admitted to segregation, it was one in three.¹⁰⁶ On December 10, 2016, 322 people in segregation had a mental health alert (49% of the total segregation population), and 271 had a suicide alert (41% of segregation population). On average in 2016, individuals with mental health and/or suicide risk alerts spent approximately 30% more time in segregation than the rest of the segregated population (see Appendix A, Table A-11). Women in segregation are more likely than men to be flagged for suicide or mental

Textbox 6: Segregation by the Numbers

Over the last ten years, Ontario's overall custodial population decreased by 11%, but segregation counts rose 24%.

On any given day last year, on average, about 575 people – approximately 7% of those detained in Ontario's correctional facilities – were in segregation.

In 2016, on average, 7 out of 10 individuals in segregation were on remand – legally innocent, waiting for their trial or bail determination. Based on the average weekend count for 2016, five percent of segregated inmates were serving an intermittent sentence.

In 2016, the average age at admission to segregation was 34. The youngest person placed in segregation that year was 18 and the oldest was nearly 88.

Within the calendar year of 2016, segregation terms ranged from 1 to over 1,500 days.

The average length of time spent in segregation was 12 days. For individuals with a suicide risk alert, the average segregation placement was 14 days.

During 2015/16, over 1000 inmates spent 30 or more continuous days in segregation. The average time spent in segregation for these inmates was 104 days.

In early November 2016 there were at least 22 inmates who had been in segregation continuously for over a year. As of January 31, 2017, the Ministry had identified 5 inmates who were currently in segregation and had been held there continuously for over three years.

Indigenous individuals make up approximately 2% of Ontario's population, but in 2016 accounted for at least 14% of the admissions to custody and segregation. Just over half of the Indigenous women and men admitted to segregation in 2016 had a suicide risk alert.

On average, in 2016 individuals with mental health and/or suicide risk alerts spent approximately 30% more time in segregation as compared to the rest of the segregated population.

¹⁰⁶ Note that this may include multiple admissions to custody by the same individual.

health issues (see Appendix A, Figure A-2). Finally, data also suggest that these trends have increased over time. A snapshot of the incarcerated population on October 8, 2015, showed that 32% of inmates in segregation had a mental health alert; on December 10, 2016, the proportion had significantly increased, to 49% (see Figure 21).¹⁰⁷ Similarly, the percentage of individuals in segregation with suicide risk alerts increased from 28% in October 2015 to 41% in December 2016 (see Figure 22; see also data presented in Appendix A, Figure A-3).

Individuals in segregation in Ontario are usually confined to their cells for 22 or more hours per day with limited association and movement.¹⁰⁸ Ministry policy states that inmates in segregation are entitled to be integrated into the general population to the fullest extent possible and that their access to programs, rights and privileges must be maintained unless doing so would cause undue hardship.¹⁰⁹ However, given staffing challenges, physical design and varying segregation operating procedures, institutions are not adhering to this policy. Shower areas do not exist in some segregation areas, which creates additional escort burdens and time pressures on correctional staff. Only some of the 26 correctional facilities provide television access in segregation and, depending on the number of inmates, the segregation staffing complement, and whether or not the segregation area has a dedicated fresh airspace, there may not be enough time in the day to ensure that all segregated inmates get out of their cell, let alone get the required minimum of 20 minutes of daily fresh air. Access to programming and services frequently differ for inmates in segregation.¹¹⁰ Some segregated inmates do not leave their cells for days on end.

The physical design of segregation cells varies between institutions. The typical space is a six by nine foot concrete cell with a metal or concrete bed and an integrated stainless steel sink/toilet unit. In most facilities there is no other furniture in the cell. Some institutions have bars on their segregation cells while others have solid steel doors. While most institutions house the majority of segregated inmates in their own single cells, there are institutions where segregated inmates are regularly double-bunked. Triple-bunking also occurs on rare occasions. Some segregation cells have access to natural daylight and are fitted with security cameras while others have neither of these features. Even the physical segregation yard will differ from institution to institution. Segregated inmates may or may not have access to an outdoor area directly adjacent to the segregation unit.

¹⁰⁷ The figure for October 8, 2015, does not include information from Monteith Jail, Ottawa-Carleton Detention Centre, Ontario Correctional Institute, and Toronto Intermittent Centre, as none of these institutions submitted a daily segregation report on that date.

¹⁰⁸ Ministry of Community Safety and Correctional Services. (2016, August) *Comprehensive Segregation Review Draft Report*. Government of Ontario. (Hereafter MCSCS: Comprehensive Segregation Review Draft Report)

¹⁰⁹ MCSCS: PSMI, *supra* note 01, s. 3.1.4.

¹¹⁰ MCSCS: Comprehensive Segregation Review Draft Report, *supra* note 108.



Figure 6 – Toronto South Detention Centre Segregation Unit

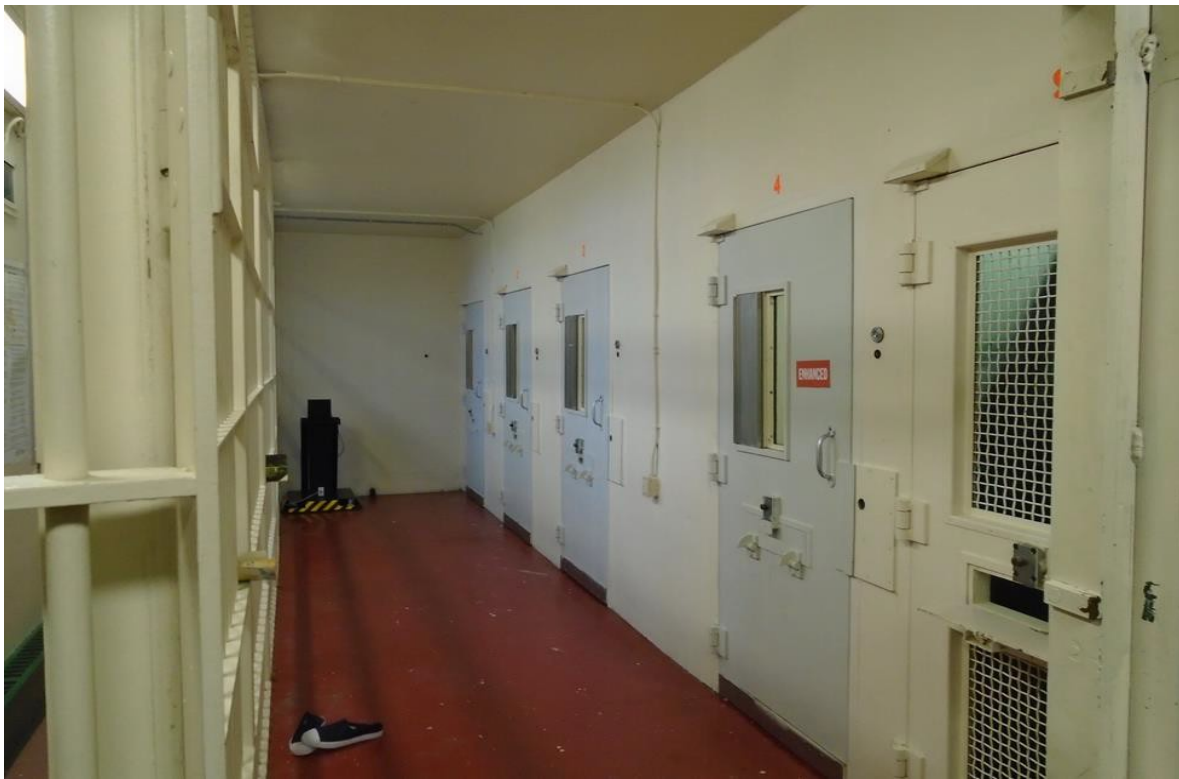


Figure 7 – North Bay Jail Segregation Unit



Figure 8 – Vanier Centre for Women Segregation Unit



Figure 9 – Central East Correctional Centre Male Segregation Cell



Figure 10 – Elgin-Middlesex Detention Centre Male Segregation Cell



Figure 11 – Niagara Detention Centre Male Segregation Cell



Figure 12 – Ottawa-Carleton Detention Centre Male Segregation Cell



Figure 13 – Thunder Bay Jail Male Segregation Cell



Figure 14 – Toronto East Detention Centre Male Segregation Cell



Figure 15 – Central East Correctional Centre Female Segregation Cell



Figure 16 – Maplehurst Correctional Complex Segregation Yard



Figure 17 – Quinte Detention Centre Segregation Yard



Figure 18 – South West Detention Centre Segregation Yard



Figure 19 – Thunder Bay Jail Segregation Yard



Figure 20 – Vanier Centre for Women Segregation Yard

IV. REFORM PROCESS TO DATE

Corrections reform with a focus on segregation has been a political priority since at least 2014. Mandate letters from the Premier have highlighted the need to prioritize long-term transformation of the correctional system.¹¹¹

A wide range of initiatives have been launched under the banner of transformation. Over the past five years there have been broad high-level transformation strategies, internal reviews, pilot projects, local initiatives and a significant series of reports, policy updates, training sessions and reform projects. Many of these undertakings were in response to court filings and legal settlements. Reflecting on these activities the impression that emerges is not one of focused, coordinated change. For the past few years, the Ministry has been pulled from one emergency response to the next, putting out fires and commissioning new investigations, conducting systemic reviews, establishing initiatives and preparing reports to respond to the latest critical issues and public revelations. Add to this mix some significant turnover in leadership and years of sometimes bitter labour strife and the full context in which the Ministry has conducted its segregation work to date begins to emerge.

“Our government is committed to overhauling the use of segregation in this province, and to supporting a fair, humane approach to segregation by focusing on the rehabilitation and reintroduction of offenders through improved programs, mental health supports and greater staff and inmate safety.”

- David Oraziotti, former Minister of Community Services and Public Safety, October 17 2016

Looking back over the major segregation-related news stories, announcements and reforms, it becomes clear that the Ministry has been operating under duress and pressure. Between October and mid-December 2016, the Ministry announced this Independent Review; initiated immediate segregation reforms; undertook an intensive segregation data enhancement project; and initiated an Enhanced Segregation Review where teams fanned out across the province to conduct in-depth interviews with inmates who had been segregated for over a year. During this time there was also extensive public outcry over the case of Adam Capay, and all of this was taking place against the backdrop of the Ministry’s internal Comprehensive Segregation Review, which had been running since March 2015. On November 8th, the government announced my appointment as Independent Advisor, and on December 2nd the Ontario Ombudsman announced a systemic review into the way the province tracks and reviews the placement of inmates in solitary confinement.

This frenetic pace has become the norm, not the exception, and one of the consequences is a lack of strategic planning about how to advance an agenda for reform and transformation. This is not to say that there have not been substantial efforts by dedicated staff and successes along

¹¹¹ Government of Ontario. (2014). 2014 Mandate letter: Community Safety and Correctional Services. Premier’s instructions to the Minister on priorities for the year 2014. Retrieved from https://www.ontario.ca/page/2014-mandate-letter-community-safety-and-correctional-services?_ga=1.39676003.1766493221.1484142849.

the way. The implementation of the new transgender inmate placement policy has positioned Ontario's correctional system as a human rights leader in this area, and by all accounts has had a transformative impact on the management of transgender inmates (see Textbox 13). The ongoing data enhancement project (for further information see Textbox 16) promises to be a similarly impactful initiative in the area of segregation tracking, reporting and analysis. Unfortunately, not all reforms have had the same effect. Two case studies are detailed below: the implementation of the *Jahn* remedies and the government's most recent round of segregation announcements.

***Jahn* remedy implementation**

In 2012, Christina Jahn filed a human rights complaint against the province, alleging that she had been discriminated against when she was held in segregation for 210 days at the Ottawa-Carleton Detention Centre. Ms. Jahn suffers from mental illness, addictions and cancer, and was incarcerated twice between 2011 and 2012. In her human rights claim she stated that, instead of receiving appropriate treatment for her mental illness, she had been placed in segregation for the entirety of both periods of incarceration, spending 23 hours a day in her cell.

In September 2013, the Ontario government settled with Ms. Jahn and the Ontario Human Rights Commission, committing to provide not only individual compensation but also to undertake a series of public interest remedies that addressed the treatment of inmates with mental health issues and the use of segregation. The public interest remedies targeted eight broad areas for further research and reform, and included commitments to revise internal segregation policies, introduce mental health screening and study improvements in mental health services at correctional facilities housing female inmates. All the remedies were accompanied by enforceable deadlines, which were closely monitored by the Ontario Human Rights Commission.

From the outset, the deadlines to complete the systemic transformation required by the *Jahn* remedies were ambitious, perhaps overly-so. For nine months after the settlement agreement there was no Ministry lead assigned to work on the government's response. When a team was finally assembled in the summer of 2014, they were already significantly behind schedule. They scrambled to complete the in-depth policy reviews and reforms, systemic reports, inmate rights guides, enhanced mental health services, additional segregation reporting and develop and deliver the Ministry-wide mental health training.

Many deadlines were extended, and in 2015 the government was served with a contravention of settlement application for failing to distribute information about inmates' rights to individuals in segregation, as required by the settlement. Although the breach application was settled and many of the required reports and policy updates were ultimately completed, some elements fell by the wayside. The requirement to report when inmates had been segregated for 60 aggregate days in the past calendar year, for example, was never actually implemented – an oversight that was only partially rectified in December 2016. Policy updates regarding mental

Textbox 7: Ottawa-Carleton Detention Centre – A Case Study

The Ottawa-Carleton Detention Centre (OCDC) is one of the 26 provincial facilities but it has managed to garner a disproportionate amount of media attention in the past few years. In September 2012, Julie Bilotta gave birth in her cell, and she later filed a civil suit for failure to provide adequate medical care. That same year, Christina Jahn filed a human rights complaint alleging that OCDC discriminated against her by locking her up for more than 200 days in segregation instead of treating her mental illness.

The media had previously reported that the jail had a history of poor conditions: in 2004, a defence lawyer had likened it to an “Iraqi prison camp”. As issues of overcrowding persisted through 2015 and early 2016, allegations were raised by the media that inmates were sleeping on mattresses in secure segregation showers. The Minister of Community Safety and Correctional Services promptly announced the government would form a Taskforce to develop an action plan to address overcrowding. The first day the Taskforce met, a 26-year old OCDC inmate, who suffered from mental health issues and had been placed on suicide watch, was found hanging in his cell.

The OCDC Taskforce submitted an Action Plan on June 30, 2016, comprising 42 recommendations that touched on key elements to address capacity issues in the short, medium and long-term, to prevent overcrowding and improve the health and safety of both staff and inmates at OCDC. The Taskforce recently submitted a second Progress Report on January 31, 2017.

Some critics do not believe the recommendations and subsequent changes address the underlying problems facing Ontario's correctional system. As one criminal defence attorney stated, "It's not enough. That's the short answer. A fresh coat of paint and ending some of the most egregious behaviours like housing people in a shower isn't enough to fix a problem system. There needs to be change from the top, from the political forces who are in charge of the institutions."

health services to segregated inmates that were made in the *Institutional Services Policy and Procedures Manual* were never incorporated into the actual *Health Care Services Policy and Procedures Manual*: the current policy directly governing health services for segregated inmates dates back to 1999.¹¹² The Ministry-wide training, that should have been rolled out at the same time as the September 2015 policy update, was delayed for over a year due to labour disruptions, significantly hampering the operationalization of the new policies. Finally, a community-based reporting mechanism to monitor whether segregated inmates were receiving written information about their rights was never fully implemented.

These deficiencies were not intentional. As one senior official involved in implementing *Jahn* told the Review team, many of these projects had to be worked off the side of their desks, as

¹¹² MCSCS: health care services, *supra* note 94.

the same individuals were grappling with province-wide strike contingency planning, inmate suicides and deaths, riots, fires, inquests and front-page headlines. A stressed management team and insufficient policy, evaluation and analytic capacity have resulted in organizational coordination issues and strategic planning gaps.

The recent segregation reform announcements

On October 17, 2016, the government announced that it would implement a number of immediate action items to reform segregation. It stated:

- Segregation will only be used as a measure of last resort, and will only be used under the least restrictive conditions available while still maintaining inmate and staff safety;
- A limit of 15 consecutive days in disciplinary segregation will be established, reduced from the current maximum of 30 consecutive days;
- A weekly segregation review committee will be created at each institution to conduct case reviews of all inmates in segregation;
- The "loss of all privileges" in disciplinary segregation will be eliminated, and will move towards alternative sanctions and increased incentives for inmates to maintain good behaviour;
- Work will begin with the Ministry of Health and Long-Term Care to explore ways to enhance the appropriate supports for inmates with mental health issues and other vulnerable inmates;
- A review of current data collection practices will be undertaken to ensure the Ministry is collecting the right type of data and is collecting that data efficiently, effectively and consistently across the system; and
- An assessment of existing capital infrastructure relating to segregation will be conducted, including any opportunities for improvements and appropriate alternatives regionally.¹¹³

These action items were drawn directly from results of the Ministry's internal Comprehensive Segregation Review, which was started in March 2015. Although the review itself had not been completed – and indeed, to this day, the report remains in draft form – all of the report's immediate action items were adopted.

Multiple stakeholders expressed concerns about the likely impact of these proposals. Commentators rightly pointed out that the province was capping disciplinary segregation, but had left administrative segregation – which accounts for over 95% of segregated inmates – untouched. There was also no limit on the aggregate number of days a person could stay in segregation, meaning that multiple disciplinary segregation placements could be imposed with little 'break' in between. In addition, the weekly segregation review committees, while interdisciplinary, may not include front-line correctional officers and were still entirely internal

¹¹³ MCSCS: overhaul of the use of segregation, *supra* note 51.

to the institution. Decisions regarding whether or not to continue with an individual's segregation ultimately still rest with the Superintendent or designate.

The Ministry's own Sample Questions and Approved Responses document, released to Superintendents slightly before the public announcement, bolsters these concerns.¹¹⁴ For example, Superintendents were told that if an inmate in disciplinary segregation is "not deemed ready to return to general population" after 15 days due to concerns about the "safety or security of any person," the Ministry suggests that "the inmate would be reclassified and assigned to administrative segregation."¹¹⁵ Similarly, while inmates in disciplinary segregation can no longer have all privileges removed, the document stated that "[i]nmates may still lose some privileges while in disciplinary segregation as a punitive measure".¹¹⁶ In spite of direction to consider alternative sanctions, presumably this could include losing access to all privileges except one. Finally, although it was announced that segregation should be used as a last resort, there were no additional supports or resources provided to frontline staff to implement this immediate directive.

Notwithstanding these internal clarifications, staff maintained that they were not adequately consulted prior to the announcement and believed that eliminating 30-day disciplinary segregation would make institutions unsafe. At this time there are no reliable statistics to either confirm or refute this latter concern.

The commitment to improve segregation infrastructure is also rolling out slowly. On December 15, 2016, the government announced a further set of actions aimed at providing supports to inmates with mental health issues. As part of this initiative, the Ministry indicated that it had received \$14.8 million in infrastructure funding,¹¹⁷ \$2.5 million of which is to be spent improving conditions of confinement before March 31, 2017. During tours conducted at various institutions, staff identified several projects they had targeted: installing televisions in the areas outside the segregation cells, painting walls, replacing doors and repairing floors. These improvements, while necessary, are not meant to be the transformative capital projects that will meaningfully change conditions of confinement for segregated inmates.

The remaining funding has been dedicated to repurposing space to create day rooms and specialty units that could provide alternatives to segregation throughout the province. The Ministry continues doing site assessments on the scope and scale of the individual projects and reviewing submitted business cases for retrofit and repair work at the local level. Given the extensive work that would be required, it is not likely that inmates will see substantial changes to their conditions of confinement in the short-term. In the meantime, institutions are attempting to implement *ad hoc* strategies to move people out of segregation.

¹¹⁴ Ministry of Community Safety and Correctional Services. *Sample questions and approved responses*.

¹¹⁵ *Ibid.*

¹¹⁶ *Ibid.*

¹¹⁷ Jones, A. (2016 December 15). Ontario hiring more jail staff, including officers, nurses, psychologists. *Canadian Press*.

A number of institutions have been attempting to improve local conditions and procedures but ideas and proposals are sometimes stalled due to the workload of decision-makers and reluctance at the corporate level to approve localized practices that do not conform to province-wide approaches. Institutions have applied for funding to make minor repairs and initiate rehabilitation projects, only for the approvals process to take years to complete. While conducting institutional tours to inform this report, many local administrators expressed frustration with the length of time it took for proposals and business cases to be corporately approved.

The December 2016 announcement also included a commitment to hire an additional 239 staff.¹¹⁸ The intention is that these additional staff will directly contribute to reducing the number of inmates in segregation. The process for determining the areas of priority, the number of new hires and their placement within institutions was not immediately clear, an issue discussed further in Section VI of this report.

Inter-ministerial coordination and communication has also proven difficult. The December 2016 announcement included a commitment to expand the availability of “safe beds” to provide temporary emergency housing for those in mental health crisis and “develop cross-training programs for detention centre staff to help them better manage people with mental health challenges and seclusion protocols.”¹¹⁹ The Review Team tried multiple times to obtain a status update on these initiatives. The only information MCSCS could provide was that the Ministry of Health and Long-Term Care was the lead on these projects, the targeted implementation date is 2017/2018, and a joint working group had been established to confirm project scope, scale and timelines.

Overall, the segregation reform initiatives to date have been ambitious. While moving in the right direction, implementation has been rushed and at times insufficiently coordinated. The impulse to reform segregation is clearly present and many individuals have worked long hours on dozens of separate projects. Commitment to improvement is not in question but concerns about capacity and coherence remain.

¹¹⁸ Ministry of Community Safety and Correctional Services. (2016, December 15). Ontario hiring more staff and enhancing supports to reform correctional services: Province investing in a safer system and improved inmate outcome [News Release]. Government of Ontario. Retrieved from <https://news.ontario.ca/mcscs/en/2016/12/ontario-hiring-more-staff-and-enhancing-supports-to-reform-correctional-services.html>. (Hereafter MCSCS: hiring more staff).

¹¹⁹ *Ibid.*

V. FINDINGS

a. Law and Policy

The law, regulations and policies governing segregation should be clear, specific and readily accessible. Individuals in segregation and their advocates need to know why they are there, what their rights are, who is in charge of reviewing their detention and when or under what circumstances they will be released. Institutional staff also need concrete guidance about care and custody: What are the minimum levels of out-of-cell time, services and programming that must be provided to all inmates? What are the accountability mechanisms for determining compliance with these requirements? What do you do with an individual with mental health needs who is having difficulties in a group setting? What minimum resources must be available within the institution to appropriately support both staff and the inmate? What community resources can you access? Who should you call on to assist with decision-making for specialized, difficult cases?

Unfortunately, the existing law and policy frameworks provide little guidance on these questions.

The legislative provisions are remarkably brief: there is nothing in Ontario legislation specifically governing segregation. Indeed, stepping back to look at the overarching legal framework for corrections in Ontario, the entire *Act* is skeletal. Most of the substantive provisions are in Regulation, and even more troubling, there is a significant amount of substance and details in the policies. Incarcerated individuals and the public at large – neither of whom have easy access to the Ministry’s policies – have no way of knowing how Ontario’s correctional system should be operating. In this report, I recommend targeted policy changes that will address the most urgent gaps and inconsistencies. Ultimately, however, if Ontario is to build a properly-governed correctional system, a new legislative foundation must be established.

The existing Regulation sets out the reasons an individual can be confined in administrative or disciplinary segregation and the timelines for reviewing segregation placements. It provides no detailed operational definition of segregation and simply state that inmates retain, “as far as practicable, the same benefits and privileges” as inmates in general population, giving no concrete direction on minimum levels of health care, services, programs or out-of-cell time.¹²⁰ Individual institutions have also developed a range of other forms of restrictive housing that in practice are equivalent to segregation, but none of these *ad hoc* initiatives are defined or specifically governed by law.

Given the lack of legislative and regulatory guidance, it is not surprising that the bulk of the specific provisions governing segregation are in internal Ministry policy. Placing core rights guarantees, definitions and review mechanisms in policies that are not made public severely undermines transparency and accountability. Ministry policies are not publicly posted and are only provided to inmates or their advocates in response to a freedom of information

¹²⁰ MCSCS: PSMI, *supra* note 01, s. 6.1.

application. Indeed, until 2015 inmates were not even being provided with a summary of their rights upon being placed into segregation. Community organizations that assist inmates have been requesting access to these policy documents for years. Although the Ministry has now started posting “plain language” summaries of some basic policies, the detailed provisions remain largely inaccessible.

The substance of the policies is also confusing and contradictory. First, there are numerous segregation or segregation-like statuses outlined in policy that are not authorized by law. Medical segregation, protective custody and special needs units are all defined and governed exclusively by Ministerial policy and institutional orders and practices. None of these more restrictive forms of custody are mentioned in legislation or regulations. While Regulation 778 does set out the allowable reasons a person can be placed in administrative segregation, medical necessity is not one of the listed grounds.

Second, there are clear contradictions within the policies themselves. According to the Ministry’s province-wide *Institutional Services Policy and Procedures Manual*, for example, segregated individuals with mental illness must be assessed by a doctor upon admission, and again every five days.¹²¹ The Ministry’s *Health Care Services Policy and Procedures Manual*, however, only requires that a doctor visit “when necessary.”¹²² Numerous other medical standards outlined in the *Institutional Services Policy and Procedures Manual* are not reflected in the health care policies. It is clear that this discrepancy has caused confusion: none of the institutions we surveyed were providing the more in-depth medical assessments outlined in the *Institutional Services Policy and Procedures Manual*.

Third, the policies are frequently vague and unclear, leaving an enormous amount of discretion regarding even the most basic services. The policy provisions on medical segregation, administrative segregation, protective custody and special needs units, for example, state only that inmate rights and entitlements should be maintained “as far as practicable,” providing no detail about the basic conditions of confinement, including lock-up hours or minimum levels of service or programming.¹²³ With the exception of a requirement to conduct a one-time review for inmates in protective custody, there are no provisions dictating when or by whom placements in protective custody or special needs units should be reviewed. Some standards for even the most basic functions are ambiguous: the directives on health care for inmates entering and leaving segregation in the *Institutional Services Policy and Procedures Manual*, for example, state that medical assessments must be performed “whenever possible,” after which clinical staff “can” – but are not required to – recommend therapeutic alternatives to avoid or mitigate the impact of segregation.¹²⁴

Similarly, the policies on required fresh air time are unclear. The Ministry’s *Discipline and Misconduct* policy states that inmates in disciplinary segregation may, as a punitive measure, have access to fresh air restricted to a minimum of 20 minutes per day. There is no other policy,

¹²¹ *Ibid*, s. 6.2.3 (c).

¹²² *Ibid*.

¹²³ *Ibid*, s. 6.1.

¹²⁴ *Ibid*, s. 6.3.1.

however, that sets out any greater standard for the amount of fresh air that must be provided. The *Placement of Special Management Inmates* policy provides that inmates in administrative segregation, protective custody and special needs units must have, “as far as practicable,” the same conditions of confinement as the general population; it then goes on to specify that this includes “fresh air” and that “the duration of fresh air offered to inmates in segregation units will not be less than 20 minutes each day.”¹²⁵ The general *Conditions of Confinement* policy does not provide any guidance at all, simply stating that “[i]t is Correctional Services' policy to offer every inmate an opportunity for daily fresh air.”¹²⁶

In the absence of any concrete policy direction other than the 20 minute minimum standard, the operational interpretation is that *all* segregated inmates must be offered a *maximum* of 20 minutes fresh air. A punitive, disciplinary sanction has become the default condition of confinement for all segregated inmates in Ontario. For segregated inmates, therefore, the administration of the sentence – or pre-trial custody – is adding a punitive element beyond that which was imposed by the courts.

The lack of effective legal and policy guidance means that, in practice, conditions of confinement and other inmate rights vary from site to site and day to day. Ultimately, the lack of transparency and minimum standards undermine accountability.

b. Definition of Segregation

It is a basic question: “What is segregation”? Unfortunately, provincial law and policy offer no clear answer. The only definition of segregation appears in Ministry policy, which essentially states that a person is in segregation when they are in the official segregation area. This definition is both under-inclusive and tautological. Inmates confined to their cells for 22 or more hours a day, but outside of the designated segregation area, may not fall within this definition. Those inmates that are officially counted in “segregation” are so regarded because the institution has defined the area in which they are held as the segregation area – a designation that is determined solely by the institution itself.

Ontario’s laws and policies set out a series of procedural protections and rights that must apply when an inmate is placed in segregation. When inmates are held in segregation-like conditions outside of the designated segregation areas, these protections often fall away.

The Ontario Ombudsman has recommended that the Ministry adopt a

“The most frequent definition of segregation, used by both international organizations and community stakeholders, is the physical and social isolation of an individual for 22 to 24 hours a day.”

- Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, UN GAOR 66th Sess, UN Doc A/66/628 (2011) at para 25.

¹²⁵ *Ibid*, s. 6.1.13.

¹²⁶ Ministry of Community Safety and Correctional Services. (2011, September 2). *Institutional services policy and procedures manual: Conditions of confinement*. Government of Ontario. s.6.5.1.

broader, more accurate definition that reflects the international consensus, as well as the reality of segregation in Ontario.¹²⁷ Despite the fact that this recommendation was made almost a year ago, no policy change has occurred. Two recent examples highlighted below demonstrate the inadequacy of the existing definition.

Uncounted

In January 2017, an Ontario jail created two Special Handling Units. The Review Team reviewed emails and a memo written by the Superintendent to corrections staff to gain an understanding of how these units were to operate. The Superintendent directed that inmates within the Special Handling Units were to receive daily fresh air and two or more hours in the day room, with access to the television, telephone, and reading materials. Two other blocks were designated as official segregation areas, and were to be used for inmates on suicide watch and constant watch. Inmates that were segregated due to misconduct were also to be housed in the official segregation units when space was available, with priority being given to those who had committed misconducts of a serious nature. If there was not enough room in the official segregation areas, inmates on pending misconduct or disciplinary segregation could be housed in the new Special Handling Units, and would be allowed two or more hours in the day area.

These directions apparently caused uncertainty regarding who officially was in segregation, and thus subject to the segregation oversight and reporting requirements. In early January, the Superintendent sent a message to staff explaining that inmates housed in the new Special Handling Units were no longer “in segregation”:

Please be advised, effective immediately, due our recently changed procedures in blocks ■■■ & ■■■ (daily fresh air, 2+ hours in day room, access to tv, telephone, reading material etc) these areas are no longer referred to as segregation, therefore we are no longer required to complete Part A-Part D segregation reviews of inmates being held there.

Ten days later, the Superintendent circulated a more detailed memorandum, explaining the reporting requirements as follows:

Ministry policy defines “segregation” as a “designated for the placement of inmates who are to be housed separate from the general population (including protective custody, special needs unit(s), etc.).” Therefore, any inmate housed in our SHUs are not in segregation.

¹²⁷ Dubé, P. (2016). *Segregation: Not an isolated problem*. [Submission in response to the Ministry of Community Safety and Correctional Services' consultation on its review of policies related to segregation inmates]. Recommendation 8. Ontario: The Office of the Ontario Ombudsman. Retrieved from [https://www.ombudsman.on.ca/Resources/Speeches/2016/Segregation--Not-an-Isolated-Problem.aspx#Meaningless or non-existent internal segregation reviews](https://www.ombudsman.on.ca/Resources/Speeches/2016/Segregation--Not-an-Isolated-Problem.aspx#Meaningless%20or%20non-existent%20internal%20segregation%20reviews). (Hereafter Segregation: Not an isolated problem).

Inmates who are serving out a misconduct sentence (CC) and are housed in a SHU area due to lack of segregation space (blocks ■■■ & ■■■) are not considered “in segregation” however, they may have loss of privileges.

Inmates locked in on the floors are also not considered in “segregation”.

At this time, our only area that will be deemed in segregation are those housed in [the official segregation] blocks ...

The creation of new Special Handling Units was a positive response to corporate direction. However, as a result of attempting to improve conditions of confinement, a portion of inmates that are being confined to their cells for up to 22 hours per day were no longer considered to be in “segregation.” Removing these individuals from the official segregation designation also removes placement review, reporting, data collection and oversight processes that should be in place for this population.

Cell restrictions in direct supervision facilities

Both the South West Detention Centre (SWDC) and the Toronto South Detention Centre (TSDC) operate using the direct supervision model, which provides staff with full responsibility for managing inmate behaviour. This includes taking disciplinary action in response to problem behaviour – typically without the advice of a supervisor. When implementing such discipline, the unit officer is to be mindful of what he or she is trying to achieve and is to think about the effect of the decision on the individual inmate, as well as the overall management of the unit.

Through the use of an individualized progressive discipline model, it is anticipated that both facilities should see a reduction in the number of inmates being sent to segregation. Any negative behaviour occurring on a unit should be immediately and appropriately addressed by the unit officer prior to the incident becoming serious enough to warrant the use of segregation.

As would be expected, both the SWDC and TSDC are using on-unit cell confinement as a method of managing inmate behaviour. The ability to use short-term, on-unit cell confinement is a valuable tool in direct supervision facilities and, if used appropriately, can contribute to inmate rehabilitation. Inmates should be able to choose to return to their cells, and therefore have the opportunity to self-regulate by spending time in their cells as a means of de-escalation. It can also assist the unit officer to immediately de-escalate a situation on the unit prior to the incident becoming “serious.”

In theory, these intervals of cell confinement should be immediate, short and tied to one specific incident or behaviour. Between August and December 2016, however, there were 562 inmates confined to their cells for 24 or more hours, and only 38 people confined for under 6 hours in direct supervision facilities. This on-unit cell confinement is taking place on direct supervision units, which may include general population and alternative housing units, and is not considered “segregation.” Therefore, the review, reporting, data collection and oversight processes that would be in place for officially-segregated populations are not being applied.

Table 2 Instances of on-unit closed confinement in South West Detention Centre (August 2016 to December 2016)

Location	72+	48 hrs	24 hrs	6-24	≤ 6
Infirmary	0	0	1	0	0
Direct supervision units	1	179	199	18	7
Total number of inmates	1	179	200	18	7

Table 3 Instances of on-unit closed confinement in Toronto South Detention Centre (August 2016 to December 2016, excluding inmates released between October 23 and December 31 2016)

Location	72+ hrs	48 hrs	24 hrs	≤ 6 hrs
General population	0	67	70	24
Orientation	0	8	13	4
Special needs	0	12	12	3
Total number of inmates	0	87	95	31

Until the Independent Review Team requested this data, instances of on-unit cell confinement were not reliably tracked and tallied. In fact, when the information was first requested, the Ministry indicated that on-unit cell confinement was “not an approved practice” and they were therefore doubtful that any statistics would be available.¹²⁸

It took the Review Team a little over one month to obtain the data for the above tables. When it was received, it included inaccurate and contradictory information. For example, the Ministry initially provided the following explanation regarding the TSDC data:

Between the dates of Oct. 23rd to Dec. 31st, 2016 we do not have any data as the institution was not tracking and instead noting it in individual inmate files. Since then, they have gone back to proper central tracking.¹²⁹

When further information was requested to analyze the TSDC information, the Ministry explained:

This data covers the period from August 1st, 2016 to December 31st, 2016 with the exception of sanctions given to any inmates released between Oct. 23rd and Dec. 31st. We DO have data between those dates included, just not for inmates who were released between those dates as their tracking logs have been filed.¹³⁰

¹²⁸ Data Re: Cell Restrictions (TSDC & SWDC). Email from Ministry of Community Safety and Correctional Services. Thursday, January 12, 2017, 9:06 AM.

¹²⁹ Data Re: Cell Restrictions (TSDC & SWDC). Email from Ministry of Community Safety and Correctional Services. Monday, January 30, 2017. 9:23 AM.

¹³⁰ Data Re: Cell Restrictions (TSDC & SWDC). Email from Ministry of Community Safety and Correctional Services. Monday, February 13, 2017. 4:19 PM.

Textbox 8: TSDC and SWDC – Case Studies in the Difficulties Defining and Counting Segregation

Both Toronto South Detention Centre (TSDC) and South West Detention Centre (SWDC) indicated that cell confinement as a result of a sanction is not used on indirect supervision units. There are, however, numerous inmates within these institutions that are being confined to their cells for long periods of time on indirect supervision units.

Toronto South Detention Centre is currently operating Behaviour Management Units (BMU) where inmates are only allowed out of their cells for 1.5 hours per day on a rotational basis. The inmates housed in the BMU have either been identified by correctional staff as presenting a safety and security concern or are new admissions that received a higher score on their initial intake screening prior to their full risk assessment. These inmates are not considered to be in segregation.

As of January 30 2017 the South West Detention Centre was also operating two Behaviour Management Units. The larger unit, consisting of 12 cells with 24 beds, confined inmates to their cells for 21 hours a day. The smaller unit, housing those “who have demonstrated that they present a safety and security concern to the institution,” permits inmates to leave their cells for two 45-minute windows each day. This time is used to offer inmates their opportunity to shower, visit the yard, or make a phone call. These inmates were also not considered to be in segregation.

These inmates are not reflected in the charts above because their cell confinement was not considered the result of a sanction, but rather flowed from the institution’s internal inmate classification assessments and local operating policies and practices.

With respect to information provided from SWDC, over the course of several weeks the institution provided three different tables of information, each with different totals, as a result of the Review Team repeatedly seeking clarifications and the facility finding more sanctions.¹³¹

c. Inappropriate Use of Segregation

We tend to assume that people are in custody because they have committed serious crimes and present a risk to society, and that segregation is reserved for “the worst of the worst.” These presumptions do not reflect the reality in Ontario. Last year, seven out of ten inmates in Ontario’s segregation cells were legally innocent – on remand, waiting for their trial or a bail decision. The most recent publicly-available data showed that the majority of those in pre-trial detention in Canada were facing nonviolent charges; for one in ten, the most serious allegation against them was that they violated a previous court-imposed condition.¹³² In fact, some

¹³¹ Data Re: Cell Restrictions (TSDC & SWDC). Email from Ministry of Community Safety and Correctional Services. Monday February 13, 2017. 4:39 PM.

¹³² Porter, L., & Calverley, D. (2011). Trends in the use of remand in Canada. Statistics Canada. Juristat. Ottawa: Government of Canada. Retrieved from <http://www.statcan.gc.ca/pub/85-002-x/2011001/article/11440-eng.htm>.

Textbox 9: Differential Impacts on Vulnerable Populations

Particular individuals and groups – the young and the elderly, those with mental illness, women, racialized and Indigenous persons – are differentially impacted by incarceration. Incarcerated women, although constituting a small minority of admissions to provincial custody typically have more complex needs. In general, research has shown that women in custody are more likely to have been victims of physical and sexual abuse. They are also more likely to have experienced a history of psychiatric problems and treatment, suicide attempts, and substance abuse. In Ontario in 2016, 54% of women admitted to segregation had a mental health alert, and 42% had been flagged as a suicide risk (see Appendix A, Figure A-2).

Indigenous individuals make up 2% of Ontario’s population, but in 2016 accounted for at least 14% of the admissions to custody and segregation. Just over half of the Indigenous women and men admitted to segregation in 2016 had a suicide risk alert. The circumstances that lead to this over-representation are well-documented, and often relate to the “history of colonialism, displacement, and residential schools” which “translate into lower educational attainment, lower incomes, higher unemployment, [and] higher rates of substance abuse and suicide...” (*R v Ipeelee*, 2012 SCC 13 at para 60).

Those with mental health needs end up in segregation more often and for longer periods of time. Approximately one in five individuals admitted to custody in Ontario in 2016 had a suicide alert on file. For those admitted to segregation, it was one in three. Similarly, while 30% of inmates admitted to Ontario’s institutions in 2016 were flagged as having possible or confirmed mental health issues, this group made up 43% of inmates admitted to segregation. Both those with mental health and suicide risk alerts were segregated for about 30% more time as compared to other inmates.

Individuals held in segregation in Ontario have not been charged with any crime at all. The Ministry currently has a contract with the Canadian Border Services Agency to hold individuals who are accused of contravening immigration laws. On December 10, 2016, ten of the 664 people in segregation in Ontario were on an immigration hold.

Many of the men and women in segregation today simply should not be there. Segregation is frequently used as the default tool to manage individuals with mental health needs, those at risk of self-harm or suicide, the disabled and elderly who need mobility assistance devices, critically ill patients requiring close medical supervision, individuals who feel unsafe when left alone in general population units and transgender inmates before in-depth placement and needs assessments can be completed. Even some low-risk individuals sentenced to intermittent custody – who are typically in jail only on the weekend – are at times placed in maximum security segregation cells.

The vast majority – over 95% – of people in segregation in Ontario are in administrative segregation, and 40% of inmates are segregated only for their own protection. One in six is in segregation solely because they need “protection” due to a medical condition. About seven

percent of admissions to segregation in 2016 were purely voluntary – based solely upon the inmate’s own request. Requesting to be placed in segregation is frequently a symptom of a larger issue. Inmates who feel unsafe in remotely-supervised general population units or who prefer an individualized cell may feel that their only option is to request segregation. Ideally, general population housing should be humane enough and safe enough to alleviate these concerns. Inmates may also request to be in segregation because, although they genuinely need protection within the institution, they are unwilling to be labelled “Protective Custody” due to the stigma that flows from this designation.

Whether it is due to inadequate legislation, poorly crafted policies, lack of staff resources, insufficient training, crumbling physical infrastructure or simply a lack of space, the result is the same: segregation has become the multi-purpose default to respond to diverse correctional challenges. This inappropriate use of segregation must stop.

d. Mental Health and Segregation

A correctional system that has inadequate mental health supports and services is at risk of increasingly relying on segregation to manage its day-to-day operations. Segregation is characterized by social isolation, reduced environmental stimulation, and loss of control over almost all aspects of daily life. Each of these factors is potentially distressing on its own. Together, as the World Health Organization has stated, these factors create a “potent and toxic mix.”¹³³ In its written submission to the MCSCS’ Segregation Review in 2016, the Registered Nurses’ Association of Ontario (RNAO) called for urgent government action, stating that “segregation is a harm in itself.” As the RNAO reported, segregation has been described as “the final common pathway in a grossly inadequate mental health system.”

The practice of placing mentally ill inmates in segregation was squarely addressed by the *Jahn* settlement. As reviewed above, in September 2015 the Ministry overhauled its segregation policies, mandating mental health screening upon admission, ongoing mental health assessments, the development of Care Plans and Treatment Plans, and regular assessments by physicians for segregated inmates with mental illness.¹³⁴ A new model of care was championed, including a push to create mental health step-down units that would move individuals with

¹³³ World Health Organization. (2014). *Prisons and Health*, pg. 28.

¹³⁴ The *Placement of Special Management Inmates* policy defines mental illness as follows: “Mental Illness: For the purposes of this policy, mental illness describes an individual who is experiencing and displaying symptoms of alteration in mood, thought or behaviour resulting in distress and/or some degree of impaired functioning. Mental illness in this context may be accompanied by a diagnosis, but a diagnosis would not necessarily be required. Other professionals may use other terminology such as mental disorder, mental disability or mental health issues which can evolve over time.” MCSCS: PSMI, *supra* note 01, s. 4.11. A Care Plan is defined as “a written document that guides a consistent approach for inter-professional team members on how to meet care goals and support needs. Care Plans are dynamic documents and are updated as needs of an inmate evolve over time. Inter-professional team members (e.g., correctional staff, program staff, mental health providers, native inmate liaison officer, social workers, community outreach, etc.) work collaboratively to develop the Care Plan.” A Treatment Plan is “a written document which outlines the medical strategies and treatment goals for a patient. A psychiatrist (or physician) and other mental health provider(s) will work collaboratively with other clinical staff to develop a Treatment Plan for those inmates with a mental illness, to provide mental health services that are specific to the inmate on an ongoing basis.” MCSCS: PSMI, *supra* note 01, ss. 4.14, 4.17.

mental health issues out of segregation and into more therapeutic and significantly less restrictive settings.

Ideally, these changes should have resulted in a significant decrease in the use of segregation, and in particular served to divert a large number of individuals with mental health needs into more appropriate care placements. Services and accommodations available to individuals within segregation should also have increased.

Our review has found that these policies have simply not translated into operational practices across the system. The best available data show that, between October 2015 and December 2016, the percentage of segregated individuals with suicide risk and mental health alerts increased. Most institutions are still regularly segregating individuals with mental illness for weeks or months at a time. Those detained who are suicidal, requiring medical observation or who self-harm continue to be routinely segregated.

There are many barriers to translating the vision that emerged after the *Jahn* settlement into an operational reality. The policies were updated in September 2015, but no implementation supports were offered to institutional managers or frontline staff at that time. Ministry-wide training on mental illness and human rights obligations, originally intended to accompany the new policy rollout, was delayed for over a year. Institutions were not provided with any additional resources or space to fulfill their obligations to provide the required treatment, services and modifications to conditions of confinement. At some institutions, Superintendents that received the policy update copied and pasted the new directions into memos that were circulated to staff via email, with only limited follow-up or direction.

At every institution there are managers and frontline staff doing excellent work to appropriately provide care within a secure custody setting. The correctional officer who verifies a meal order to ensure a diabetic inmate has received his appropriate diet. The social worker that visits a high-needs woman daily, helping her work through any number of issues. The manager that negotiates through security concerns so that the inmate with a disability can have his personalized wheelchair. The individual staff doing these things do so because it is the right, humane thing to do – not because it is an operational norm. In fact, in many instances it would have been easier for staff to keep their head down and follow the routine procedures. Many we spoke to would like to do more, but feel they are handcuffed by staffing shortages, resource limitations and the prevailing ethos within their workplace.

Transformational change cannot be achieved by simply writing new corporate policies. In this context, it is not surprising that the systemic issues identified by the *Jahn* settlement remain.

Below, I highlight five areas where the operational realities are not currently aligned with policy or law: the timeliness of the mental health screening process, the provision of mental health services, the accommodation of individuals with mental illness, unreliable health care information and poor information-sharing practices and the *ad hoc* creation of alternatives to segregation.

Mental health screening

In 2015 the Ministry rolled out a two-stage mental health screening process. Upon admission, an initial health assessment screen (the Brief Jail Mental Health Screener or BJMHS) is completed by an admitting nurse.¹³⁵ If the inmate screens positive for potential mental health concerns, they are referred to clinical staff – mental health nurses, social workers or psychologists – for the completion of a more in-depth mental health assessment using the Jail Screening Assessment Tool (JSAT). From there, an inmate can be referred to a variety of mental health clinicians or other professional staff as necessary.

Although mental health screening is supposed to be administered to all inmates upon admission, there is considerable variation in the timelines for completing this process. The Ministry has determined that the BJMHS is supposed to be administered at admission or within 48 hours, where possible. The JSAT assessment, if necessary, should then take place within 72 hours (3 days) of the initial screening.

The Ministry has shared with us the early results of an evaluation of the mental health screening process. Preliminary figures indicate that, for inmates admitted in June 2016, the average time to complete the BJMHS was 1 day, with average monthly completion times that ranged from within 24 hours to 2.5 days; overall, 96% of institutions were completing the preliminary screening within the two-day timeline.

There was considerably more delay administering the JSAT: for those admitted in June 2016 and identified as requiring a JSAT through the completion of the BJMHS, an average of 11 days passed between the two assessment stages. Provincial averages ranged from 3 to 38 days across institutions. According to Ministry policy, referrals to psychiatrists or other mental health professionals are to take place after the JSAT screening, meaning that some individuals with significant mental health needs may have waited over a month to receive appropriate medical attention.¹³⁶

We are hopeful that once the final report is received the Ministry will put in place a management action plan to deal with these issues.

The provision of mental health services: baseline assessments, ongoing assessments and critical care

Ministry policies set out a number of medical assessments and services that must be provided to inmates with mental health needs. As part of the September 2015 policy update, inmates with mental illness who are placed in segregation must be provided with or offered a “baseline assessment” by a physician or, for those with major mental illness, a psychiatrist. In each instance the physician should determine whether the inmate’s Treatment Plan should be amended. If the inmate consents, a physician will also conduct an assessment before each five-day segregation review. Ongoing clinical mental health care for those with identified needs can include services from mental health nurses, social workers, primary care physicians and

¹³⁵ MCSCS: PSMI, *supra* note 01, “Institutional response to mental health needs flow chart”.

¹³⁶ *Ibid.*

psychiatrists. Depending on the institution, specialized resources such as psychiatrists may be available once or twice a week, in person or by telemedicine. If inmates are so critically ill that they do not have the capacity to consent to treatment, a physician must send the inmate to hospital, where involuntary treatment can be legally administered.

Not all these processes run as intended. In some institutions, neither the baseline physician assessment nor the five-day check-ups are occurring. In fact the Ministry has reported that it had no way of tracking whether inmates placed in segregation were receiving this baseline assessment.¹³⁷ A 2015 compliance audit from the Ministry found that 87% of inmates were medically examined upon admission to segregation.¹³⁸ Based on interviews with several health care professionals at different institutions, however, this assessment is not being administered by doctors; in general, primary care physicians and psychiatrists will not visit individuals in segregation unless a specific medical issue arises. Several clinical professionals raised the possibility that no baseline segregation medical assessments were happening at all.

Similarly, at most institutions five-day assessments by doctors for segregated inmates with mental illness are not taking place.¹³⁹ As described by one health care manager, there was “no way” this standard could be implemented based on current resources. To get a more comprehensive picture of medical visits in segregation we analyzed one region’s August 2016 report on inmates who had been detained in segregation for 30 or more days. Of the 38 inmates who were identified as having “possible mental health issues” or “mental health issues,” only 14 (37%) had been seen by a medical professional (primary care physician, psychiatrist or mental health nurse) in the month of August. A further 14 inmates had been visited by a psychiatrist or psychologist in June or July.

The Ministry is moving towards instituting a standardized ongoing mental health assessment tool for use with mentally ill inmates in segregation. The intent is that this tool, which would be administered by nurses, will collect information that will be reviewed by a psychiatrist on a regular basis. There are no province-wide plans, however, to introduce regular proactive in-person physician rounds to inmates in segregation.¹⁴⁰

¹³⁷ Ministry Response – Jahn Remedy #5. Email from Ministry of Community Safety and Correctional Services. Monday, January 30, 2017. 12:29 PM. The Ministry defined a “baseline” assessment as follows: “Baseline assessment are ‘initial’ assessments completed by the psychiatrist and would include history, reason for assessment, assessment of mental health, behavioral observations, impressions, possibly diagnosis - then a plan.”

¹³⁸ Correctional Services Oversight and Investigations. Ministry of Community Safety and Correctional Services. (2015, December 21). *Compliance review: Special management inmates institutional services*. Government of Ontario.

¹³⁹ The Ministry was asked whether these assessments were taking place, and if so what they consisted of. Their reply was, “Assessment will vary from practitioner to practitioner. Treatment plans are done for people the psychiatrist sees - and follow up and treatment is reviewed (specifically medications) as per policy.” Ministry Response – Jahn Remedy #5. Email from Ministry of Community Safety and Correctional Services. Monday, January 30, 2017. 12:29 PM.

¹⁴⁰ There are two further areas where current practices do not appear compliant with the government’s obligations in the *Jahn* settlement. First, although the settlement requires a physician to conduct an assessment as soon as possible upon admission to custody if mental health issues are identified, physicians are not generally part of the BJMHS or JSAT screenings and will not always see an inmate who is flagged through this process. Based

Finally, the Review Team heard consistent and significant concerns about the interface between correctional institutions and local hospitals. Correctional institutions are not designated psychiatric facilities (also frequently called Schedule 1 facilities) under the *Mental Health Act*. As a result, they cannot involuntarily treat individuals. The Review Team heard of instances where an inmate in need of acute mental health care would be sent to hospital for involuntary treatment, only to be returned a few hours later because the hospital had determined that he or she did not meet the criteria for involuntary admission and treatment. In other cases, inmates would receive involuntary medical treatment, but upon return to the institution this treatment would stop, and their mental health state would deteriorate rapidly. Some would return from hospital with their physical needs tended – having been given a bath and had their injuries dressed – but the underlying long-term mental health needs would remain.

Medical professionals interviewed by the Review Team thought that there was poor communication and mutual misunderstanding regarding the legal and operational realities in both correctional and health care institutions. As a result, many critically mentally ill inmates are trapped in a cycle of short hospital stays with involuntary treatment followed by a longer period of segregation, during which their mental state deteriorates until they reach the point where they are so unwell that they are sent back to hospital and forcibly treated again.

There are several recent developments that promise to address the needs of the most acutely ill inmates in segregation. The Ministry has announced that it will be constructing a new secure treatment unit for women which will be a designated Schedule 1 facility. This new institution, which was recommended in a report completed pursuant to the *Jahn* settlement, is scheduled to open in early 2018. There is also currently a pilot program operating with the Toronto South Detention Centre and the Hamilton-Wentworth Detention Centre whereby local hospitals reserve dedicated psychiatric beds for inmates that need acute mental health care.

on the JSAT evaluation, a decision is made to either take no further action or refer the individual to one of two levels of medical support: a psychiatric assessment or lower-intensity supports (e.g. primary care practitioner, psychologist or social worker). Those who screen negative on the initial assessment or follow up evaluation are to receive “routine services” by the primary care physician, which may include further referrals. Based on interviews the Review Team conducted, physicians are meeting with inmates and providing a baseline physical upon admission. The wait time for this baseline physical, however, can be several weeks, and it does not seem to be linked to the mental health screening process. Second, the *Jahn* remedies also require that inmates be “continually reassessed” using the screening tool. In most institutions, however, the screening tool is only administered upon admission to custody, and there is no Ministry policy that would require regular mental health reassessments or the proactive provision of mental health care services to the general inmate population.

Textbox 10: General Health Care in Segregation

The focus on mental health and segregation in this report reflects the direct and intimate link between these two issues. There are broader issues relating to health and the provision of health care in Ontario's correctional facilities that also need to be addressed, not only in the context of segregation, but also for the entire incarcerated population.

Frontline health care workers and inmate advocates alike have raised concerns about a "growing health crisis" in the province's correctional institutions. Not only do inmates, as a group, suffer more health problems as compared to the general Canadian population, but ongoing concerns have been expressed over the conditions of correctional institutions themselves, which can expose inmates to additional health risks and poorer health outcomes. As discussed, the experience of segregation can have a profound, negative impact on the mental health of individuals, particularly for those with pre-existing mental challenges or when imposed for long periods. Addressing this means also addressing the tension that often exists between security interests on the one hand and the provision of adequate health care on the other. For those on the frontlines providing care, security concerns are often seen as overshadowing the clinical needs of inmates.

Many have called for a transformation of the delivery of health care within the correctional system. Presently, under Regulation 778, it is the Superintendent of each provincial correctional institution who has responsibility for the management of health care. Health care managers in correctional facilities, who are registered nurses, report directly or indirectly to Superintendents. It is not unusual for health practitioners to report concerns that clinical recommendations are overridden by operational issues. Health care is simply considered one among other "services" that are provided to inmates under a broad correctional umbrella.

Pointing to international and domestic models, many urge a transfer of responsibility for the provision of health care in Ontario's correctional institutions from the current Ministry of Community Safety and Correctional Services to the Ministry of Health and Long-Term Care (MOHLTC), or an integration of correctional health care between the two Ministries. It is argued that such a shift would not only improve the standard of care and the health of inmates, but provide many potential benefits for society at large.

Failure to accommodate individuals with mental illness

To get a better sense of the number of inmates with mental health and suicide risk alerts in segregation over time, we asked for a one-day custodial ‘snapshot’ every month between October 2015 and December 2016.

The figures indicate that the number and proportion of individuals in segregation with mental health concerns has increased since the September 2015 policy update (see Figures 21, 22 and Appendix A Figure A-3). In the fall of 2015, daily snapshots suggest that about 32% of inmates in segregation had a mental health alert; a year later, inmates with mental health alerts

Textbox 11: The Ontario Human Rights Code: A Quick Refresher

The Ontario *Human Rights Code* prohibits discrimination against individuals with mental illness. Within the correctional system, the government has an obligation to ensure that individuals with mental health needs are accommodated and receive medical treatment rather than punishment or isolation due to their illness or its symptoms. Given segregation’s impact on those with mental illness, the government also has the obligation to provide services, programs or conditions of confinement that would alleviate the particularly negative impacts of segregation for this population. Although specific accommodations may be denied if they would cause the government “undue hardship,” this is a very high threshold that is not easily met. These legal obligations formed the core of Christina Jahn’s human rights claim against the Ministry, and in the settlement the government agreed that individuals with mental illness would not be placed in segregation unless all other alternatives had been exhausted to the point of undue hardship. These legal standards are now clearly reflected in the Ministry’s policy on segregation.

consistently comprised over 45% of the segregated population. Similarly, the daily snapshot from October 2015 shows that 28% of segregated inmates had a suicide risk alert; since May 2016, the daily snapshots have consistently shown that over 40% of those in segregation had suicide risk alerts. Although the percentage of the overall custodial population with suicide risk and mental health alerts fluctuates during this time period, it does not show a similar increase.

A review of the regional reports on inmates that have been segregated for 30 or more days reinforces concerns regarding the operationalization of the duty to accommodate. Policy requires Regional Directors to provide details about whether an inmate has a mental illness, what alternatives have been considered and rejected, and whether a Treatment Plan is in place on the 30-day segregation reports. The Review Team examined the regional reports from August 2016 in detail, and they showed almost no exploration of alternate placement options (see Table 4). Of the inmates where regional offices clearly indicated that there were possible or existing mental health

Percentage of individuals in custody and segregation with mental health alerts (single day snapshots over time)

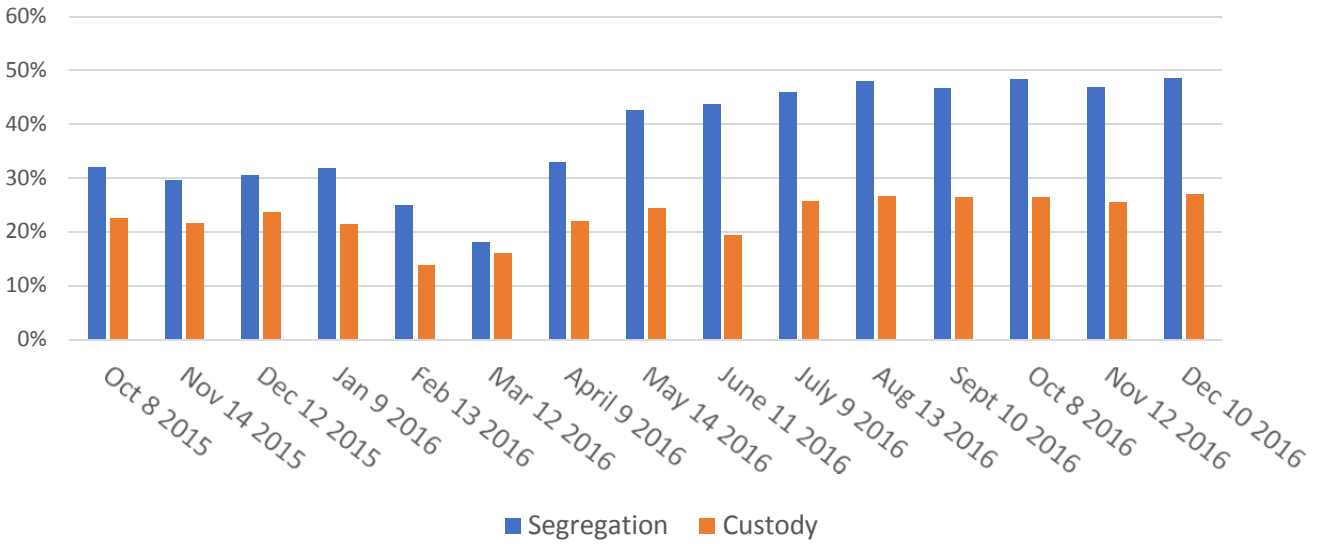


Figure 21 - Percentage of inmates in custody and segregation with mental health alerts over time. Data based on a selection of 15 random daily counts, October 2015 – December 2016. Because institutions did not always submit daily segregation information, several months only capture a portion of the segregated provincial population. See Appendix B, Table B-8 for a full list of dates and institutions.

Percentage of individuals in custody and segregation with suicide risk alerts (single day snapshots over time)

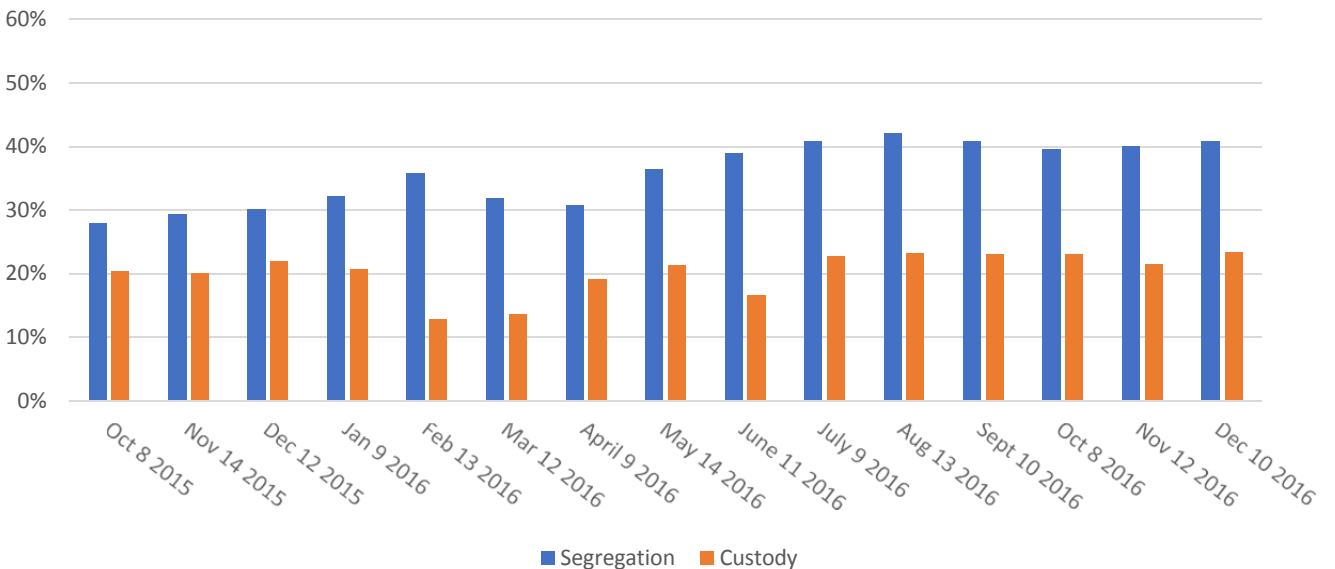


Figure 22 - Percentage of inmates in custody and segregation with suicide risk alerts over time. Data based on a selection of 15 random daily counts, October 2015 – December 2016. Because institutions did not always submit daily segregation information, several months only capture a portion of the segregated provincial population. See Appendix B, Table B-8 for a full list of dates and institutions.

Table 4 Breakdown of August 2016 regional reports on inmates in segregation for 30 or more days

Region	Inmates in segregation 30+ days	Segregated inmates with documented mental health concerns*	Inmates with mental health issues that have treatment plans in place	For segregated inmates with documented mental health concerns, are the alternatives to segregation noted or explored?
Northern region	11	2	0	Both inmates' entries include comments: - "Segregation only option" - "Compliance Manager continues to interview this inmate on a possible
Central region	52	14	None documented	Only two of the 14 inmates have comments on the alternatives: - "Under review of the inter- professional
Eastern region	103	38	15	All 38 inmates have comments, they fall into one of several categories: - Special needs unit was considered but the institution does not have a SNU - PC was considered but the inmate refuses
Western region	39	10	0	Only five of the 10 inmates have comments on alternatives to segregation. - Three of the five state "Attempts to reintegrate not possible at this time" - Two state "Difficult to classify not suitable for living

* Note that the official Ministry summary of this information shows a considerably higher proportion of inmates in segregation with mental health concerns (47% with mental health alerts, 51.4% with substance abuse alerts and 44.1% with suicide alerts). Here we have only included inmates where the regional office itself clearly documented possible or confirmed mental health issues in their self-reporting.

concerns, only 73% included any comment regarding alternatives that had been considered. Eastern Region had by far the most comprehensive 30-day report; without their report, only 35% of segregated inmates with noted mental health concerns had any comments regarding alternative housing. Of those that did explore alternatives to segregation, most were inadequate to comply with the Ministry's human rights obligations. Some only said that there was no option. Of those comments that did provide details, the only alternatives considered were protective custody or a special needs unit – even when the relevant institution did not have a special needs unit.

Policy requires institutions to contact regional office regarding any accommodation that the institution has identified as not feasible because it would result in undue hardship. As of January 2017, there had been no such notifications. Given that lack of resources, space, staff and programs are frequently cited as barriers to appropriate accommodation, it is concerning that regional-level discussions regarding what would constitute undue hardship are not occurring. The Ministry and regional offices were asked to provide examples of any accommodations that had been granted to individuals. While there was no formal documentation of accommodations, the Ministry did canvass the regions and provided a list of “the most salient” accommodations that were “a bit above the norm.” None of the examples explicitly related to segregation and mental illness.¹⁴¹

Textbox 12: Human Rights in Action - Trans Rights Policies

In January 2016, an individual who was relatively new to the Ontario correctional system was brought into custody at the Vanier Centre for Women. During the admission process, the individual self-identified as transgender. As a result of self-identifying, the inmate was placed in segregation at Vanier until a detailed assessment could be undertaken. The following day, a social worker from Vanier met with the inmate. The inmate identified that she believed that she would be “better accepted” at a male jail. As a result of this assessment, a meeting was held two days after the inmate was brought into custody. It included representatives from the Central Regional Office, Operational Support Division, Toronto South Detention Centre and Vanier Centre for Women to further develop a plan of care. That same day the inmate was transferred to the Toronto South Detention Centre where a site-specific plan of care was initiated. As a result of this collaborative effort, the inmate was ultimately placed in a male facility and on a living unit within a matter of days. Concerns were raised by some inmates, staff and managers about shower procedures on the unit, but ultimately, through innovative problem-solving and education, these concerns were alleviated.

¹⁴¹ Email from MCSCS. Saturday, January 28, 2017. The examples the Ministry provided were:

- On every trans admission.
- Transfers between institutions.
- Arrangements such as disclosure materials in cells.
- Special handling – individual logbooks for better documentation.

The interviews the Review Team conducted with health care staff also suggested accommodations were not being fully explored or implemented. For example, one nurse related that inmates, due to operational issues, would not receive their pain or substance abuse medication (i.e., methadone) on a regular schedule. These inmates would become agitated and act out, impacting staff or other inmates. Such individuals would often end up in segregation, without any attempt to address the underlying medication issues. In general, additional therapeutic options were not considered before placement in segregation.

Textbox 13: Physical Disabilities and Segregation

The Ministry's struggles to realize appropriate accommodations are not limited to mental health and segregation. Individuals with physical disabilities are also frequently segregated because the assistive devices they require are not items that would typically be allowed in a jail. Under the *Human Rights Code*, these individuals must be offered the same conditions of confinement as the rest of the inmates, up to the point of undue hardship. In May 2015, a Regional Deputy Director circulated the following email:

From: [REDACTED]
Sent: Tuesday, May 12, 2015 2:23 PM
To: [REDACTED]
CC: [REDACTED]
Subject: Segregation Reviews

Good Afternoon All,

Not sure this is applicable with [REDACTED] Region Institutions but I thought I would share to ensure consistent messaging;

Due to possible concerns and criticism from the Ombudsman and/or HRTO in regards to some of the language that may be used on segregation reviews for inmates who require the use of an assistive device, amendments are required. Currently, segregation decision/review documents contain language such as "due to wheelchair, sleep apnea, and assistive devices" for the reason why the inmate is in segregation. On a going forward basis, please use the following language whenever an inmate is placed in segregation that requires the use of any type of assistive device:

Reg. 778 34. (1) - "based on the needs and safety of the inmate"

Also ensure that on a going forward basis, this language is utilized for any inmate who is already in segregation who requires the use of an assistive device.

If you have any questions, please feel free to contact myself.

[REDACTED]

If you have any accommodation needs or require communication supports or alternate formats, please let me know.

- Special handling – food and dietary requirements.
- Mental health concerns, sending inmate out on a Form 1.
- Reintegration/ release planning – example, drive an inmate from hospital to a shelter rather than leave out in the winter.

Unreliable information on mental health needs

Personal health information is tightly protected by provincial privacy law, and correctional staff do not have access to inmates' medical charts. There must, however, be communication between health care providers and correctional staff to ensure that the operational decisions that are made – where to place an inmate or how to respond to particular behaviours, for example – take into account any underlying mental or physical health needs. Properly accommodating individuals' human rights needs is not possible without this type of information-sharing.

Ministry policy currently requires that correctional staff note and take into account mental illness at several different points in the segregation review and reporting process. This information also plays a key role in the oversight and accountability regime.

As reviewed above, all inmates receive mental health screening upon admission, and, as a result, many should receive additional individualized treatment from a variety of mental health professionals. The resulting health information, however, is recorded on confidential medical charts which are not available to correctional officers.

The information that correctional staff rely on when completing segregation reporting forms comes from mental health alerts contained in the Ministry's Offender Tracking Information System (OTIS). These alerts are based largely on observed behaviour that can be inputted into OTIS by a wide variety of correctional staff. As the Ministry explained to the Ontario Human Rights Commission:

Mental health alerts are applied to inmates because they represent possible management concerns. These can be based on confirmed information or observations made by any supervising Ministry staff; however, the presence of a mental health alert does not indicate a confirmed diagnosis of mental illness. To be included in the mental health alert category, one of the following alerts must be present: the observation of bizarre or abnormal behaviour, developmental delay, current psychiatric treatment, psychiatric prescription drugs, or previous psychiatric assessment/treatment.¹⁴²

These alerts are very rarely, if ever, validated by health care professionals.

One mechanism that could improve communication between clinical staff and correctional officers is the Care Plan. A Care Plan is defined in the policy on *Placement of Special Management Inmates* as follows:

4.2 Care Plan: A Care Plan is a written document that guides a consistent approach for inter-professional team members on how to meet care goals and support needs. Care Plans are dynamic documents and are updated as needs of an inmate evolve over time. Inter-professional team members (e.g., correctional staff, program staff, mental

¹⁴² OHRC: supplementary submission to the MCSCS, *supra* note 19, p. 15.

health providers, native inmate liaison officer, social workers, community outreach, etc.) work collaboratively to develop the Care Plan. Included as part of the plan are:

- 4.2.1 Management and care specific to the inmate;
- 4.2.2 Strategies on managing behavioural issues (i.e., identification of triggers, de-escalation techniques);
- 4.2.3 Living unit options and progression (i.e., which unit the inmate will be placed or housed in);
- 4.2.4 Interventions/therapeutic options (e.g., access to worship rooms, arts/crafts, physical activity, reading/writing, relaxation/meditation, sensory stimulus, supportive conversation/engagement, etc.);
- 4.2.5 Observed behaviour;
- 4.2.6 Human Rights Code needs (including accommodations and specific cultural considerations; i.e., Aboriginal, religious, etc.);
- 4.2.7 Programs and services;
- 4.2.8 Dietary needs;
- 4.2.9 Discharge planning/preparedness (e.g., linking to community services);
- 4.2.10 Any security measures recommended to mitigate risk; and
- 4.2.11 Frequency of review and update.

It is important to note that, while Care Plans may include input from mental health professionals, they are not the same as an inmate's Treatment Plan. The Care Plan refers to "inmates," whereas the Treatment Plan, which is solely created and modified by physicians and mental health professionals, concerns the medical treatment and goals specific to an individual "patient." A Treatment Plan is defined in the *Placement of Special Management Inmates* policy as follows:

4.17 Treatment Plan: The Treatment Plan is a written document which outlines the medical strategies and treatment goals for a patient. A psychiatrist (or physician) and other mental health provider(s) will work collaboratively with other clinical staff to develop a Treatment Plan for those inmates with a mental illness, to provide mental health services that are specific to the inmate on an ongoing basis.¹⁴³

Although Ministry policy does not explicitly state who is responsible for initiating and updating a Care Plan, the official "Inmate Care Plan" template form states that it must be initiated by a

¹⁴³ MCSCS: PSMI, *supra* note 01, s. 4.17.

mental health care provider.¹⁴⁴ The template form includes space to input operational directions and human rights concerns.¹⁴⁵

Very few inmates have Care Plans. In July 2016, for example, 4,700 inmates across 24 institutions were screened with the Brief Jail Mental Health Screener (BJMHS). Nearly a third of inmates (31%) required further mental health screening, but ultimately only 190 – 4% of those initially screened – had a Care Plan completed during the month. Several frontline healthcare providers we spoke to were unaware of the existence of inmate Care Plans, did not know where they were kept and had not been briefed on how to access them.

As a result of these gaps, there is often no consistent way for non-clinical staff to accurately verify which individuals may have ongoing mental health needs. Instead, correctional staff often make placement decisions – including at times assumptions that segregation is the most appropriate housing – based on their personal and historical experience with individual inmates. A lack of accurate mental health information can also undermine appropriate individualized accommodations when considering segregation placements. The mental health alerts that are used to inform placement and review decisions and provide statistics about the mental health needs of the inmate population are based almost entirely on correctional officers' lay interpretation of observed inmate behaviour. This has implications for the accuracy of the mental health information in the segregation placement decisions, the segregation reviews and the 30- and 60-day reports.¹⁴⁶

***Ad hoc* creation of alternatives to segregation**

As a result of the 2013 *Jahn* public interest remedies, the Ministry committed to completing a report on how best to serve female inmates with major mental illness. The Ministry contracted with a consulting firm to identify a potential Service Delivery Model and Facilities Options for female inmates with major mental illness.¹⁴⁷ This 2015 report was the first time that references to “Stabilization Units” and “Step-Down Units” were used when discussing correctional reform in Ontario. The report defines these units as follows:

Stabilization Unit(s): A Stabilization Unit is intended to meet the needs of female inmates with Major Mental Illness who require intensive mental health services, including those who may be exhibiting self-harming behaviour. The goal of this unit is to stabilize female inmates with Major Mental Illness so that they can reintegrate into the General Population. Within the Full Graduated Model, it is expected that female inmates with Major Mental Illness may reintegrate into the General Population via the Step-Down Unit.¹⁴⁸

¹⁴⁴ Ministry of Community Safety and Correctional Services. (2015, September). Inmate Care Plan (template form).

¹⁴⁵ *Ibid.*

¹⁴⁶ This also directly impacts the Ministry's ability to comply with their human rights obligations to accommodate inmates with mental illness to the point of undue hardship, discussed further below.

¹⁴⁷ Optimus SBR. (2015, March 24). *Facility and service delivery options, analysis and recommendations report*. [Prepared for Ministry of Community Safety and Correctional Services].

¹⁴⁸ *Ibid.*

Step-Down Unit(s): The Step-Down Unit is intended to meet the needs of female inmates with Major Mental Illness who require specialized mental health services that cannot be met within the General Population. The Step-Down Unit is intended for inmates who are not considered a danger to themselves or to others. While there are higher levels of supervision than in the General Population, the intensity is less than that in the Stabilization Unit.

In 2016 the Ministry announced that it would immediately develop alternatives to segregation on a regional basis. There were, however, no guidelines regarding what these alternatives would look like and there have been some missed opportunities. Vanier Centre for Women, for example, is currently segregating women who require close medical supervision. The institution has an area that was purpose built to operate as a high needs medical unit but never opened.

The lack of guidelines also means that the names and operational procedures in the alternative units that were created vary from institution to institution. Some of the *ad hoc* units that have been created are variously called “Special Needs Units;” “Step-Down Units;” “Lock-Down Units;” “Special Handling Units;” “Mental Health Stabilization Units;” “Behavioural Management Units;” “Protective Custody Units;” and “Mental Health Units.” Definitions of these units differ depending on the institution, and include:

Special Needs Unit(s) provide specialized space for inmates suffering from acute symptoms of major mental illness through the stabilization of acute psychiatric symptoms and the promotion of psychiatric rehabilitation.

Step-Down Unit(s) provide an intermediate level of structure and control between the proposed SNU and units for the general population of inmates.

Lock-Down Unit(s) provide segregation-like conditions that are not in fact, segregation.

Special Handling Unit(s) provide the inmate with the opportunity to integrate with a smaller inmate population taking into consideration the safety and security of the institution.

Mental Health Stabilization Unit provide a separate living accommodation for inmates with like or similar special management needs.

Behaviour Management Unit(s) provide a separate living accommodation for offenders who have demonstrated that they present a safety and security concern to the Institution.

Despite labeling an alternate unit with the same name (e.g., Step-Down), the operating procedures can vary significantly. For example, Kenora Jail has created a “Step-Down Unit” where inmates are confined to their cells for 22 hours a day. Conversely, the Toronto East Detention Centre has created a “Step-Down Unit” where inmates are confined to their cells for 16 hours a day. In the unlocked hours, inmates may be let out of their cells on a rotating basis,

depending on compatibility and security assessments. The Ottawa-Carleton Detention Centre has recently operationalized two alternate units where inmates are confined to their cells for at least 17.5 hours per day. During the unlock hours, subject to any incompatibility issues, inmates have the option of leaving their cells to access a day room.

Many of these alternate units continue to rely upon significant in-cell restriction and are operating under “segregation-like”¹⁴⁹ conditions. The Toronto South Detention Centre and the South West Detention Centre, for example, have created “Behaviour Management Units” where inmates are confined to their cells for 21 to 22.5 hours a day. Central North Correctional Centre, Elgin-Middlesex Detention Centre, Kenora Jail, Vanier Centre for Women and the Thunder Bay Jail have all created alternate units that confine inmates to their cells for various durations that may exceed 20 hours a day. In spite of this significant deprivation of liberty, those so confined do not benefit from the existing safeguards afforded to those who are officially segregated.

Textbox 14: Toronto East Detention Centre Step-Down Unit

In January 2017, the Toronto East Detention Centre created a step-down unit by retrofitting an existing segregation unit. Inmates in this unit consist of those who are in need of protection and those who requested segregation. Compatibility assessments and a security review were completed on all inmates assigned to the unit to determine who could intermingle in the dayroom. On the unit, inmates are confined to their cells for at least 16 hours a day. During the remaining time, groups of compatible inmates will rotate out of their cells and can access the day room, to take a shower, make phone calls, play board games, play cards or read. This step-down unit was operationalized using existing facility funding and is staffed by dedicated sergeants and correctional officers that expressed an interest in working in this area. The implementation of this initiative involved the local bargaining unit.

e. Segregation Reviews and Accountability Mechanisms

There are few if any practices in corrections more in need of oversight and full compliance with law and policy than the use of segregation. Segregation, and other forms of isolated or restricted housing, have been referred to as a prison within a prison; it is the most austere form of custody legally allowed in Canada. Such a significant restriction on individual freedom must be accompanied by a robust, effective and procedurally-fair oversight and review mechanism. Unfortunately, Ontario’s current system for reviewing the appropriateness and legality of segregation placements fails to meet this standard.

When an inmate is placed in segregation, the Superintendent or designate must initiate a “Segregation Decision/Review Form” which gives the reason for segregation, any relevant

¹⁴⁹ “Segregation-like” is restrictive housing that “looks like and smells like” segregation. It typically allows for more time out of cell and more association with other inmates but is still highly restrictive.

Human Rights Code-related factors (e.g., mental illness), as well as alternative placements that were considered and the reasons they were rejected.¹⁵⁰ When an inmate is accused of misconduct there are additional investigative and adjudicatory steps that must be followed before placement in disciplinary segregation (see Section II.b. of this report for an overview).

After the initial segregation placement decision there are a series of required reviews. Within 24 hours the Superintendent or designate will conduct a preliminary review.¹⁵¹ The inmate must be advised of the reasons for segregation and his or her right to provide written or in-person submissions. Subsequent reviews are conducted – again by the Superintendent or designate – every five days and at every 30-day mark.¹⁵² After 30 continuous days in segregation there is also a report that must be sent to the Regional Director or designate, who must ensure that the reports are reviewed and any concerns are discussed with the Superintendent or designate.¹⁵³ A detailed regional 30-day report is then completed and sent to the Assistant Deputy Minister, Institutional Services for reporting to the Deputy Minister.¹⁵⁴ In addition to these reports on continuous segregation placement, the Superintendent or designate is also to complete a report when an inmate has been in segregation for 60 aggregate days within the last year.¹⁵⁵ This report must be provided to the Regional Director or designate, who then passes it on to the Assistant Deputy Minister, Institutional Services.¹⁵⁶

Given the extensive, detailed paper trail and the cascading reporting system, how is it possible for a mentally ill inmate to languish in segregation for years? In part this happens because, although placements are (at times) reviewed every five days, the 30-day reviews are (at times) generated and (at times) passed along, very little critical analysis is actually done along the way. The purpose of the five-day, 30-day and 60-day individual segregation reviews and reports is not to complete paperwork, but to release individuals from segregation at the earliest opportunity. The problems identified in Ontario’s segregation accountability and oversight structure do not instill confidence that the current legislative and policy regime is achieving this goal.

Five-day and thirty-day reviews: Inconsistent and incomplete

The five- and 30-day reviews should be the core oversight mechanism protecting against unlawful or unnecessarily lengthy segregation placements. Unfortunately, significant proportions of these reviews are either inadequate or incomplete. In December 2015, the Ministry conducted its own internal audit of segregation reviews and reports. It found that 32% of the five-day reviews were “non-compliant” and a further 20% were “partially compliant”:

¹⁵⁰ MCSCS: PSMI, *supra* note 01, s. 6.6.1.

¹⁵¹ *Ibid*, s.6.6.2.

¹⁵² *Ibid*, s.6.6.3, 6.6.4.

¹⁵³ *Ibid*, s.6.6.4.

¹⁵⁴ *Ibid*.

¹⁵⁵ *Ibid*, s.6.6.5.

¹⁵⁶ *Ibid*.

Among all types of reviews of segregation, 5-day reviews had the lowest compliance level and were not consistently completed or documented on time.

5-day reviews were often repetitious and did not necessarily reflect an ongoing consideration of the circumstances of the inmate in segregation or an ongoing determination of whether continuous segregation was warranted.¹⁵⁷

The audit also documented problems with the completion of 30-day segregation reviews, 13% of which were non-compliant, “primarily because a complete and ongoing written record of the circumstances, nature and duration of the segregation was not accurately maintained.”¹⁵⁸

These findings were echoed by the Ontario Ombudsman, who raised significant concerns about these reviews in his 2016 submission to the province’s internal segregation review:

MEANINGLESS OR NON-EXISTENT INTERNAL SEGREGATION “REVIEWS”

32. [T]he periodic segregation reviews guaranteed by the Ministry’s regulation and policy are sometimes not completed, or are completed in a perfunctory and mechanical way. For instance, after receiving a complaint from an inmate who had been in segregation repeatedly since his admission to jail, my Office requested documentation for all five-day and 30-day reviews performed since the inmate’s latest placement. The documentation revealed numerous gaps, with a review occurring, on average, every 20 days. This meant that the length of time between each review was four times longer than the regulation and policy required.

33. This was not a one-off occurrence. My Office has presented numerous cases to the Ministry where mandatory reviews were not completed in accordance with the regulation and policy. On three occasions in 2013 and 2014, my staff discovered inmates had been in segregation continuously for more than three months and the facilities could not produce any of the required reporting for those placements. In two other cases, my Office uncovered that managers had actually replicated segregation review documentation they claimed had gone missing after being properly completed. That revelation led the head of one facility to conduct an audit into the segregation reporting for several periods during 2014. The audit determined that most of the reviews that should have been completed could not be found.¹⁵⁹

Failure to produce 60-day aggregate reports

According to Ministry policy, when an inmate has been segregated for more than 60 aggregate days in the past year, a report should be generated by the Superintendent, passed up through the Regional Director and on to the Assistant Deputy Minister, Institutional Services.¹⁶⁰ This

¹⁵⁷ Correctional Services Oversight and Investigations. Ministry of Community Safety and Correctional Services. (2015, December 21). *Compliance review: Special management inmates institutional services*, p. 21. Government of Ontario.

¹⁵⁸ *Ibid.* p. 22.

¹⁵⁹ *Supra* note 127

¹⁶⁰ MCSCS: PSMI, *supra* note 01, s. 6.6.5.

aggregate reporting mechanism should play an important role in controlling segregation, as it is designed to identify individuals who have spent a significant amount of time in segregation, but may not have been captured by the other review and reporting mechanisms. For instance, an individual who is placed in segregation for 29 days multiple times in a year will never have an enhanced 30-day review – even if he or she is only taken out of segregation for a few days between placements.

We found that neither local institutions nor the Ministry had been producing formal 60-day aggregate reports until December 2016. Even now, the report is only being generated at the Ministerial level: individual institutions are not able to produce a report to track aggregate segregation placements without going back into the paper files and manually compiling the information.

Independence of continued segregation reviews and disciplinary segregation decisions

Many models of segregation accountability have been either legislated or proposed. Proposals to enhance accountability tend to share one common feature: a degree of independence from the authority that made the original decision to segregate.¹⁶¹ This can take many forms including judicial supervision, legal representation and screening and external adjudicative mechanisms.

Ontario's segregation placement, adjudication and review framework currently operates almost entirely within the institution. Policy allows for the same correctional staff who made the initial segregation placement decision to also conduct the five day and 30-day reviews. In practice, these reviews are usually carried out by a designated operational manager, the Deputy Superintendent or the Superintendent. Although the 30-day reports are to be submitted to and reviewed by a regional staff member, who must then compile a report for the Assistant Deputy Minister, it is unclear what – if any – individual case review happens at these higher levels. Ultimately, decision-makers within the institution retain all control over when someone is placed in administrative segregation and when they are released.

Numerous recommendations have been made for independent review of administrative segregation placements. When the *Corrections and Conditional Release Act* (CCRA) became law in 1992, many observers commented on its obvious respect of the *Charter* and its embrace of principles-based correctional practices. Notwithstanding, some were critical of gaps in the newly-legislated accountability structures and mechanisms. Parliament called for a review of the

¹⁶¹ See, for example, Jackson, M. (1983). *Prisoners of Isolation: Solitary Confinement in Canada*. Toronto: University of Toronto Press. (Hereafter Jackson, M). Honourable Louise Arbour, Commissioner. (1996). *Commission of Inquiry into certain events at the Prison for Women in Kingston*. (Hereafter Louise Arbour).; Sub-committee on Corrections and Conditional Release Act of the Standing Committee on Justice and Human Rights. (2000, May). *A Work in Progress: The Corrections and Conditional Release Act*.; Canadian Human Rights Commission. (2004, January 28). *Protecting Their Rights: A systemic review of human rights in correctional services for federally sentenced women*. P 46. <http://www.chrc-ccdp.ca/sites/default/files/fswen.pdf>. (Hereafter CHRC, 2004).

early experience with the law and in May 2000 the Parliamentary Sub-Committee on the Review of the CCRA issued this recommendation:

The Sub-committee recommends that the *Corrections and Conditional Release Act* be amended to provide for the adjudication (by independent chairpersons appointed by the Solicitor General as part of the inmate discipline process) of involuntary administrative segregation cases every 30 calendar days and of voluntary administrative segregation cases every 60 calendar days.¹⁶²

This statement reflected a long line of similar recommendations that have repeatedly called for the independent adjudication of administrative segregation, including those from Law Professor Michael Jackson who first elaborated a *Model Segregation Code* in 1983,¹⁶³ the Honourable Justice Louise Arbour in her 1994 *Report on the Inquiry into Certain Events at the Prison for Women*,¹⁶⁴ and the Correctional Service of Canada's 1996 Task Force on Administrative Segregation.¹⁶⁵ More recently, both the Office of the Correctional Investigator¹⁶⁶ and the Canadian Human Rights Commission¹⁶⁷ have urged the adoption of independent adjudication for segregation placements.

To its credit, the Ministry has moved to enhance the segregation review model set out in Regulation 778. In October 2016, the Ministry announced that institutions will establish a weekly, interdisciplinary segregation review committee that would review the cases of all segregated inmates. It is encouraging to see that the Ministry is looking at ways to enhance the segregation review process, and the inclusion of a range of professionals, including clinicians, in these discussions is a positive step. Ultimately, however, the concern regarding independence

¹⁶² Sub-committee on Corrections and Conditional Release Act of the Standing Committee on Justice and Human Rights. (2000, May). A Work in Progress: The *Corrections and Conditional Release Act*. at s. 5.3.5.

<http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=1031714&Language=E&Mode=1&Parl=36&Ses=2>

¹⁶³ Jackson M, *supra* note 161.

¹⁶⁴ Louise Arbour, *supra* note 161.

¹⁶⁵ Task Force Reviewing Administrative Segregation. (1997, March). *Commitment to Legal Compliance, Fair Decisions and Effective Results: Reviewing Administrative Segregation*.

<https://www.publicsafety.gc.ca/lbrr/archives/hv%208395.a6%20t37%201997-eng.pdf>.

¹⁶⁶ In its 4- year history, the Office of the Correctional Investigator has made numerous recommendations in regard to the placement of offenders into segregation, the adjudication of those placement decisions, procedural safeguards around review and continued segregation status, who it is that may be safely segregated and the conditions of confinement endured by those who are so housed. In its 2014/15 *Annual Report*, the Office once again called for independent review of administrative segregation, calling on the government to amend legislation to "impose a ceiling of no more than 30 continuous days, and introduce judicial oversight or independent adjudication for any subsequent stay in segregation beyond the initial 30 day placement." Office of the Correctional Investigator. (2016, June 30). Annual Report of the Office of the Correctional Investigator, 2015-2016. <http://www.oci-bec.gc.ca/cnt/rpt/annrpt/annrpt20152016-eng.aspx>.

¹⁶⁷ Capping a three year investigation, the Commission recommended "the Correctional Service of Canada implement independent adjudication for decisions related to involuntary segregation at all of its regional facilities for women. The impact of independent adjudication on the fairness and effectiveness of decision making should be assessed by an independent external evaluator after two years." CHRC, 2004, *supra* note 161

remains: the Committees are composed entirely of institutional staff, and the ultimate decision still rests with the Superintendent or his or her designate.

Disciplinary segregation is subject to additional safeguards, and the relevant policies do address the need to have an independent investigator and adjudicator respond to misconduct allegations. However, the policies have so many gaps and caveats that, in practice, the officer that alleged the inmate committed misconduct could also perform key decision-making roles in deciding the inmate's fate. Current policy sets out the following requirements:

- The employee that was most directly involved in the alleged misconduct must file the formal Misconduct Report.
- An operating manager must be designated to investigate the alleged misconduct; the investigating manager should not have been directly involved in the incident "where operationally feasible".¹⁶⁸
- The Superintendent or designate must interview the inmate. According to policy, this individual should not be the same as the investigating manager. He or she can, however, have been directly involved in the underlying incident. If that is the case the interviewer must file an Occurrence Report explaining why he or she conducted the interview.
- At least one other employee must witness the inmate's interview and, "where operationally feasible," this person should not have been directly involved in the incident.
- An operating manager must determine the disposition (i.e. makes a finding of guilt and imposes punishment) and, "where operationally feasible," he or she should not have been directly involved in the incident.

In practice, the disciplinary process varies from what is set out in policy. Operationally the investigation and inmate interview are usually performed by the same manager. It is also very rare for a second employee to be present at the inmate interview. Importantly, institutions generally assign managers to investigate and adjudicate misconducts and do try to maintain a degree of independence in the disciplinary process by not involving those who were directly involved in the underlying incident. The policies, however, are so loosely constructed that it would be possible for all of the key investigators, interviewers or decision-makers to have also been involved in the underlying alleged incident.

Other jurisdictions have enhanced the independence of decision-making for disciplinary segregation. At the federal level, for example, the Correctional Service of Canada has had Independent Chairpersons to adjudicate disciplinary proceedings since 1977. Independent Chairpersons are appointed by the federal Minister and cannot be staff members or offenders.¹⁶⁹ They conduct hearings into serious disciplinary offences and are currently

¹⁶⁸ MCSCS: discipline and misconduct, *supra* note 54, s. 6.6.1(a).

¹⁶⁹ Corrections and Conditional Release Regulations, SOR/92-620, s. 24(1)(a).

responsible for determining whether the offender is guilty of the offence and, if so, imposing the appropriate sanction. They preside over all aspects of the disciplinary hearing.

Independent corrections inspectorate

In addition to meaningful, independent, procedurally-fair reviews of individual cases, many jurisdictions have established independent inspectorates that conduct regular visits and audits of correctional institutions.¹⁷⁰ The *Optional Protocol to the Convention Against Torture*, which the federal government has committed to ratifying, outlines an independent inspection regime that would conduct visits to places of detention with the aim of preventing torture and other cruel, inhuman or degrading treatment or punishment.¹⁷¹ Under the Optional Protocol, governments must establish an independent body to conduct inspections of all places of detention. States Parties also agree to give the United Nations Subcommittee on the Prevention of Torture access to detention sites in order to conduct international inspections.

Currently there are no independent bodies dedicated to perform this function. There are internal Ministry oversight and investigative bodies. The Correctional Services Oversight and Investigations Unit (CSOI) reports to the Associate Deputy Minister. It conducts independent (but still internal) investigations, and compliance and intelligence functions, including audits for compliance with Ministry policy. The majority of their staff is focused on individual investigations. To date they have not conducted comprehensive unannounced inspections of correctional facilities, but the Unit has announced intentions to do so in 2017-2018. The Ministry also has an internal Client Conflict Resolution Unit that responds to human rights complaints from individual inmates. In 2013, the Ministry also established Community Advisory Boards, consisting of volunteers from the local community who “provide advice to the facility’s Superintendent and contribute findings to an annual report for the minister.” Board members have full, 24/7 access to the institution and hold monthly meetings with Superintendents and other senior managers.¹⁷² Community Advisory Boards are currently operational at eight of province’s 26 institutions. Board members are appointed through the Public Appointments Secretariat.¹⁷³

There are external independent bodies whose mandate includes oversight of Ontario Corrections. The Ontario Ombudsman, as an office of last resort, has jurisdiction to investigate

¹⁷⁰ States that have instituted bodies that act as independent prison inspectorates include the United Kingdom, France, Switzerland, Czech Republic, Austria, Norway and Serbia. In total, 65 states have a designated national protective mechanism under the *Optional Protocol to the Convention Against Torture*. See Association for the Prevention of Torture. OPCAT Database. Retrieved at <http://apt.ch/en/opcat-database/>.

¹⁷¹ United Nations (2006, June 22). *Optional Protocol to the Convention Against Torture*. United Nations, Treaty Series, vol. 2375.; (2016, May 2) “Dion official: Canada to join UN anti-torture protocol after more than a decade.” The Canadian Press. Retrieved at <http://www.ctvnews.ca/politics/dion-official-canada-to-join-un-anti-torture-protocol-after-more-than-a-decade-1.2884291>.

¹⁷² Ministry of Community Safety and Correctional Services. *Community Advisory Boards*. Government of Ontario. Retrieved at https://www.mcscs.jus.gov.on.ca/english/corr_serv/CABs/CABs.html.

¹⁷³ Ministry of Community Safety and Correctional Services. (2013, August 28). *Greater transparency in correctional facilities: Community volunteers to advise government* [News Release]. Government of Ontario. Retrieved from https://news.ontario.ca/mcscs/en/2013/08/greater-transparency-in-correctional-facilities.html?_ga=1.117252934.1126588808.1487091216.

individual complaints regarding provincial correctional institutions and can also launch systemic investigations on its own initiative. The Auditor General, the Office of the French Language Commissioner and the Ontario Human Rights Commission all have assurance functions that include corrections. Finally, the Canadian Red Cross monitors the conditions of confinement of immigration detainees, including access to medical services, access to counsel, and family contact including access and communication. All of these bodies play key roles in oversight and accountability. None, however, possess both the resources and mandate to conduct regular independent and detailed compliance audits of correctional facilities.

f. Segregation Data and Analysis

For each inmate in segregation, a mountain of paper is generated. On the operational side, correctional officers must make minute-by-minute entries into log books and journals; complete routine rounds; complete daily checklists; fill out 24-hour, five-day and 30-day reporting forms; and conduct midnight segregation counts. This entirely paper-based system is complemented by, and at times duplicated by, an idiosyncratic and inconsistent use of the electronic Offender Tracking Information System (OTIS). Health care staff and other professionals such as social workers and psychologists also have their own separate paper-based records which must be completed and filed. Reports on longer-term stays in segregation are forwarded to regional offices, who then must provide further reports – including details on mental health status and what alternatives to segregation have been considered – to senior officials within the Ministry, and ultimately, to the Minister.

Unfortunately, this level of effort and wealth of data does not currently translate into meaningful understanding, analysis, reflection or reform. The purpose of reporting is not to generate reports, but to correct errors, inform decisions, change behaviour, track segregation usage and placement and/or modify the institutional response. This important review and feedback is not routinely occurring.

The lack of oversight means that problems with the underlying reports, reviews and data often go undetected. Problems with the accuracy of segregation data lead to difficulties obtaining even the most basic information, such as if, prior to being first placed in segregation, mental health needs were or should have been taken into consideration.

The Ministry started to collect basic data on segregation in 2015, and currently relies on a variety of data sources, some of which are counted and tracked manually, to compile broader statistics on inmates in segregation. Frequently, efforts to identify broader trends in segregation are hampered by data integrity issues. There are difficulties getting accurate segregation placement times due to data entry or formatting errors, and institutions that ‘start the clock’ again when inmates are taken to court, taken out of official segregation areas, or briefly transferred to alternate housing. The accuracy of reporting also relies extensively on information inputted and compiled at the local level, which is subject to varying procedures and definitions, miscommunication between institutions and human error. The Ontario Ombudsman has repeatedly raised concerns about the accuracy of segregation data and review requirements, and is currently conducting an investigation into segregation tracking and

review. At the time of the writing of this report we did not have the benefit of their findings or recommendations.

To the Ministry's credit, these issues have clearly been identified and there is a firm commitment to putting in place a system that would allow for robust, data-driven analysis and evidence-based practice.

The Ministry has indicated it is creating a Data Collection, Analytics and Management Strategic Plan that is intended to address transparency and accountability and will ultimately be making internal recommendations on proposed strategies to address identified risks and gaps (see Textbox 16 for more information).

The Ministry has focused its attention on ensuring that correctional officers and frontline managers are consistently tracking confinement in segregation. In January 2017, the Ministry commenced a provincial rollout of the Care in Placement screen, an inmate placement tracking tool. It is anticipated that this tool will be used to track segregation and replace the various overlapping and error-prone paper-based methods currently in use, improving many of the data quality issues.

These developments are promising. If the Ministry's vision is fully realized, there will be dramatic improvements to data collection and analysis. I look forward to working with the Ministry to achieve this goal as part of my broader mandate to advise on corrections transformation.

Textbox 15: Collecting Race-Based Statistics

A number of organizations, most notably the Ontario Human Rights Commission, have repeatedly recommended that the Ministry collect information on the race and ethnic origin of individuals in segregation so that it can track disproportionate impacts on particular groups. As part of our fact-finding, we requested segregation statistics broken down by race. The Ministry's database contains a mandatory "ethnicity" field with the following options: Aboriginal, Black, Chinese, Declined to Specify, Filipino, Japanese, White, Latin American, Other Racial Origin, South Asian, South East Asian, Racial Origin Unknown, West Asian/Arab, and Korean. Although the Ministry indicated that the data generated by these fields were reliable, there is no policy requirement to request race or ethnic origin data upon admission. Whether and how inmates are being asked to self-identify race or ethnicity varies from institution to institution and officer to officer. If correctional officers do ask inmates to self-identify their race or ethnicity, there is no script or template that they are required to follow. The lack of policy, guidance and training raises significant concerns about the quality of this data set.

Textbox 16: Data Collection, Analytics and Management Reform (DCAMR)

The mandate of the Data Collection, Analytics and Management Reform (DCAMR) project is to:

- Modernize and automate all paper-based and manual functions into centralized electronic/digital means (including but not limited to OTIS);
- Develop and employ business intelligence solutions to create reports that extract data from those centralized electronic/digital forums; and
- Establish an analytics framework for the ongoing monitoring of data quality and continuous analysis of the information needed for timely decision-making purposes.

The current scope of the work of DCAMR can be categorized as follows:

Short-Term Projects

- 1) Institutional Segregation – modernize the real-time data input of segregation activities to automate tracking segregation in OTIS.
 - Creation and implementation of a segregation active reporting tool to extract the information from OTIS and populate daily, exception and compliance reports.
- 2) Institutional Capacity, Loading and Utilization- establishing and implementing automated capacity certificates, for the accurate reporting of institutional bed configurations on a daily basis.
 - Creation and implementation of capacity and utilization of active reporting tool to extract the information from OTIS and populate daily, exception and compliance reports.
- 3) Institutional Accommodation – to automate tracking of the accommodation of inmate needs, for human rights or other legal reasons.
 - Creation and implementation of an accommodation active reporting tool to extract the information from OTIS and populate into daily reports (including exception reports).
- 4) Institutional Lockdowns – to automate tracking of lockdowns in the institutions.
 - Creation and implementation of a lockdowns active reporting tool to extract the information from OTIS and populate into daily reports (including exception reports).

All short term projects are supported by the following functions:

- Development of the necessary IT environments and infrastructure.
- Development of the necessary business sources and back-end supports (e.g., OTIS).
- Development of Business Intelligence tools.
- Identification and development/revision of associated operational policies and practices.
- Validation of completeness and accuracy of data in the system, and development of data quality and communication processes.

In the longer term, focus will turn to automating and reporting on remand and intermittent sentences and automation of log books, with ongoing change management.

In the end, the vision is to enable and implement a correctional services environment where data analytics drive evidence-based decision-making about how best to serve the inmate population.

g. Training and Deployment

Research has shown that the greatest determinant of distress for prisoners is whether or not the institution they live in feels safe.¹⁷⁴ Correctional officers, in turn, play a key role in this dynamic, as prisons feel safer when staff are responsive, approachable and respectful.¹⁷⁵ The appropriate recruitment, training and deployment of correctional officers and other staff is paramount. Currently, Ontario's staffing, recruitment and training structures are under significant strain.

Correctional recruitment and training

Between 2009 and 2012, the Ministry imposed a three-year moratorium on the hiring of new correctional officers, causing a critical staffing shortage. Hiring restarted in 2013, and approximately 700 officers graduated from the Ministry's basic training program between 2013 and 2016. The underlying staffing shortage, however, only began to be addressed in March of last year, when the government announced the hiring of 2,000 correctional officers over the course of three years, with 960 expected to be in place within a year.¹⁷⁶ The government anticipates that these new recruits will reduce the need for lockdowns, overtime costs and staff fatigue. In December 2016, the Ministry announced further plans to hire an additional 239 staff to increase supports for inmates, particularly those with significant challenges related to lengthy terms in segregation.¹⁷⁷ The new positions include correctional officers, staff sergeants, sergeants, health care staff (including mental health nurses and nurses), psychologists, social workers, and a number of other rehabilitative positions. These staff members will be deployed at institutions with high levels of segregation.

These intense recruitment efforts come with significant logistical challenges. The Ontario Correctional Services College provides ongoing learning and development programs for current correctional officers and facilitates the Correctional Officer Training and Assessment (COTA) program for new recruits. However, the new recruitment initiative significantly ballooned COTA enrollment figures (the recent graduating classes increased recruitment numbers by 169% compared to the three previous years), and in 2016/2017 the Ministry is struggling to identify the necessary space to hold COTA programs. The Ministry has had to expand training locations and is currently using space at the Ontario Police College and the Toronto South Detention Centre. Going forward, graduation figures will have to rise even more. The goal of pushing 2,000 recruits through this program in three years is ambitious.

¹⁷⁴ Liebling, A. (2011). Moral performance, inhuman and degrading treatment and prison pain. *Punishment & Society*, 13(5), pp. 530-550.

¹⁷⁵ *Ibid.*

¹⁷⁶ Ministry of Community Safety and Correctional Services. (2016 March 21). Ontario to hire 2000 new correctional officers: Hires will support transformation, help ensure staff and inmate safety.' [News.Release]. Government of Ontario. Retrieved from <https://news.ontario.ca/mcscs/en/2016/03/ontario-to-hire-2000-new-correctional-officers.html>.

¹⁷⁷ MCSCS: Ontario hiring more staff, *supra* note 118.

There will be further challenges accommodating the new recruits and additional staff in the institutions. Space constraints across the province mean that there is already limited room for staff to hang coats, put on boots, run programs or have dedicated office space. The bulk of the new recruits are backfilling existing vacancies. However, the additional 239 hires are new positions that are primarily focused on service and program provision. It is not completely clear how the new staff, services and programs will be accommodated within the existing and already-cramped facilities. For example, Toronto East Detention Centre will house new hires in temporary trailers and a space solution for the Ottawa Carleton Detention Centre is still awaiting approval.

After completing the COTA curriculum, correctional officer graduates undergo an on-site orientation. This orientation also occurs for officers transferring into a new location. The orientation is not formally structured to provide officers with the specialized skills or training that would be required to work directly with high needs populations. At a typical large institution, this training could take up to five weeks. This time may include a week for facility walk-throughs; about a week to read and study a binder of the institution's Standing Orders, which contain all operational policies and procedures; and additional time for job shadowing in multiple areas of the facility. Job shadowing could theoretically provide invaluable guidance on how to deal with vulnerable populations in a sensitive manner, depending on the individual being shadowed.

“A review of available training on the use of segregation was also conducted. Segregation training is currently provided to correctional officer recruits as part of their Correctional Officer Training and Assessment (COTA) program curriculum (in role-play scenarios and debriefs), during the orientation for new recruits at their respective institutions and through extensive coverage of the segregation-related policies. The review found that the current training must be enhanced to reflect the new policies, procedures and documentation in this area. Furthermore, there is a high volume of inmates with mental health and behavioural issues who are considered for segregation. This review has highlighted a need to fill gaps in current training and provide additional training on segregation (including training specific to a recommended model of dedicated segregation staffing). The report also indicated that there is a need for additional training on de-escalation skills, to effectively and appropriately manage this inmate population. A further need was identified for training to understand and deal with the social, mental and physical impact on inmates housed in segregation, both short and long term.”

- Ministry of Community Safety and Correctional Service
Comprehensive Segregation Review Draft Report,
August 2016

Generally, institutions provide no formal specialized training before placing correctional officers in positions with vulnerable inmates. In the summer of 2016, an additional mandatory 1.5-day training session on mental health and human rights was provided to all institutional staff, from correctional officers to kitchen workers to senior administrators. In general, however, participants felt that the allotted time was insufficient to cover the required materials and would have liked more concrete strategies and tools to help in managing inmates with complex needs.

For the most part, the Ministry relies on the standard segregation training that is provided to correctional officer recruits as part of their eight-week COTA training. It is currently part of a 90-minute module dedicated to “special management inmates.” There are also separate modules on managing inmates with mental health concerns, suicide awareness, Indigenous awareness and working with female inmates. The Ministry’s internal Comprehensive Segregation Review, however, found significant training gaps in the existing COTA curriculum. To date, these gaps have not been addressed.

Staffing and deployment models

Current staffing levels and post assignments are based on an outdated model of corrections. The majority of correctional officers are currently staffed on a rotating basis: officers are hired and trained to work in a wide variety of posts within the institution, and rotate between areas depending on the day and assigned shift. These postings are rarely long-term or even slow rotation. This means it is difficult to develop role-specific expertise or have consistent, ongoing interaction with individual inmates.

Ideally, all staff permanently deployed to a segregation area or other specialty posts (e.g., special needs, medical units) should be provided with specialized training. In order to accomplish this, the Ministry would need to purposefully select and train dedicated staff to work these positions – a model that is difficult under the current rotating staff schedule.

The Ministry is currently conducting a Post Audit: a review that will examine the current staffing needs of all institutions. Although some institutions have been able to move towards more consistent staffing models by filling posts within specialty units based on expressions of interest and targeted hiring, not all facilities have been successful in their attempts to implement these deployment strategies. These and other staffing themes will be more fully explored in the next phase of my mandate.

h. Aging Infrastructure

More than half of the province's correctional facilities are over 40 years old, and three were built in the 1800s. Given the age of these buildings, it should come as no surprise that many need repairs. Some are beyond economical repair and simply need to be replaced.

Ontario's infrastructure deficiencies, however, go beyond the physical condition of the buildings. Prison design has also gone through significant changes since the 1800s. Thus, Ontario's current infrastructure reflects a diverse range of supervision methods and correctional philosophies. The design in most facilities is inadequate to meet current inmate needs. Overuse of segregation is one of the consequences.

Segregation units themselves also have differing physical layouts and cell sizes, depending on when they were built. These inconsistencies result in significant differences in conditions of confinement.

“Since December I have toured more than a half dozen detention centres around the province and what I’ve seen isn’t pretty. We know these places are overcrowded and understaffed and that needs immediate fixing. They’re also filthy, unhygienic and physically damaged. These are the working conditions that our members face every day on the job.”

- Warren (Smokey) Thomas, Ontario Public Service Employees Union president.
February 11, 2016

The Ministry has been proactively tackling its infrastructure challenges. A significant capital renewal plan is currently under development and, if realized, promises substantial improvements to existing infrastructure. The Ministry is also in the process of conducting a deficiencies audit on all correctional facilities and cells across the province to better forecast future needs. Architectural visioning exercises have been held and are intended to lay the groundwork for a new, program-based approach to capital investment. These activities, which have taken place across the province and have included the participation of both staff and management, are premised on the core care and custody requirements of institutional corrections. Although no

decisions have been made, these collaborative processes are an indication of positive infrastructure planning. The ultimate goal is to create capacity within facilities in order to be able to meet the complex needs of inmates and the workplace safety requirements of staff.

Table 5 Ontario institutions, construction date* and current operational capacity

Institution	Year Constructed	Age in 2017	Current Operational Capacity**
Brockville Jail	1842	175	48
Brantford Jail	1850	167	87
Stratford Jail	1901	116	50
Fort Frances Jail	1908	109	22
Thunder Bay Jail	1928	89	120
Sudbury Jail	1928	89	168
Kenora Jail	1929	88	154
North Bay Jail	1929	88	108
Monteith Correctional Complex	1960	57	170
Sarnia Jail	1961	56	38
Thunder Bay Correctional Centre	1965	52	124
Quinte Detention Centre	1970	47	229
Ottawa-Carleton Detention Centre	1972	45	496
Ontario Correctional Institute	1973	44	186
Niagara Detention Centre	1973	44	236
Maplehurst Correctional Complex	1976	41	1,048
Toronto East Detention Centre	1977	40	368
Elgin-Middlesex Detention Centre	1977	40	338
Hamilton-Wentworth Detention Centre	1978	39	466
Algoma Treatment & Remand Centre	1990	27	141
Central North Correctional Centre	2001	16	1,103
Vanier Centre for Women (Milton)	2001	16	292
Central East Correctional Centre	2001	16	1,039
St. Lawrence Valley Correctional & Treatment Centre	2003	14	100
Toronto Intermittent Centre	2011	6	290
Toronto South Detention Centre	2012	5	880
South West Detention Centre	2013	4	282

*Note that this table only reflects original construction dates, and does not capture major projects that were undertaken to retrofit or add capacity to an existing institution.

**Based on operating capacity on January 24, 2017

VI. CHANGE MANAGEMENT

This report has focused on segregation practices in Ontario's correctional system. It provides recommendations for immediate actions to improve and accelerate segregation reform efforts, to fill significant gaps and to continue to build a correctional system anchored in human dignity and excellence. To do so, transformational, system-wide change is required, encompassing legislative and policy reform, new approaches to population management and housing, mental health care for inmates, methods of oversight and the appropriate recruitment, training and ongoing support of staff. I appreciate that such broad change can be unsettling, particularly for those on the frontlines. Equally true, change of this magnitude also involves political and organizational risk. For change to be effectively embraced and implemented the vision and goals of both staff and management must align and political and public messaging must be supportive and congruent.

There is a considerable and growing body of research that informs and supports successful change management at the organizational level. Guiding principles include thoughtful planning, sensitive implementation, and above all, consultations with, and the meaningful involvement of, those who will not only be affected by the changes proposed but also those who will be responsible for making them operational. It is important that those affected understand the need for change, and are consulted and involved in defining how changes will be planned and introduced.

Positive change efforts will be undermined if they are seen to be imposed. As a first step, an organization's "new vision" must be clearly enunciated and communicated, with input and feedback sought throughout the organization, ideally facilitated by face-to-face communications. Effective consultations require effort on the part of management, who must capture and integrate feedback received from staff and relevant stakeholders to find areas of common ground. The level of buy-in by staff is critically dependent on their timely inclusion in the process. The organization can then move forward with achieving a more unified vision.¹⁷⁸

Over the past year, the Ministry initiated a number of staffing and segregation reforms. While these initiatives have merit and are aimed at improving conditions for both staff and inmates, the announcements were often met internally with skepticism. Many of the changes are being implemented without the benefit of a clear and visible overarching strategic vision, and in the absence of effective consultation with staff and key partners.

The December 2016 announcement that the Ministry would hire an additional 239 staff to address province-wide resource constraints is a good example.¹⁷⁹ While this announcement showed a commitment to improving staffing complements to better meet needs within existing correctional facilities, it was overshadowed by a lack of prior consultation with the affected institutions. Instead of consulting with local institutions about their particular staffing

¹⁷⁸ Change management: organizational and personal change management, process, plans, change management and business development tips. Retrieved from <http://www.businessballs.com/changemanagement.htm>.

¹⁷⁹ MCSCS: Ontario hiring more staff, *supra* note 118.

pressures, operational realities and the most appropriate allocation of new positions, the Ministry based its resourcing and allocation decisions on a theoretical model used for determining direct supervision staffing ratios. As a result, various institutions were directed to staff positions that did not align with their local priorities, and some did not have available workspace for the newly-created clinical positions.

The rollout of the direct supervision model at the Toronto South Detention Centre continues to be troubled. The Ministry's initial hesitance to fully embrace a model of direct supervision resulted in the construction of a building with design elements that run contrary to the direct supervision philosophy. The Ministry failed to appropriately engage key stakeholders, including Ontario Public Service Employees Union (OPSEU), during the design phase of the facility. Although attempts were made to engage staff and provincial OPSEU representatives once construction had commenced, by that point amendments to the facility design were costly and in some cases not practicable. The initial staffing model for the facility was also fraught with operational challenges, ultimately resulting in unexpected staffing shortages. Current staffing and deployment have not resolved these issues. The lack of meaningful and appropriate prior engagement with staff and stakeholders resulted in labour unrest during the commissioning process and for the first two years of the facility's operation.

Similar concerns were raised regarding the rollout of the fifteen-day limit for disciplinary segregation. In October 2016, the Ministry announced a number of immediate initiatives to reform segregation,¹⁸⁰ one of which was to immediately restrict the maximum number of days an inmate can be held in segregation for disciplinary purposes. For many frontline staff and managers, the announcement came as a surprise. Some staff perceived this change as posing an increased risk to their safety and were anxious about its possible effects. OPSEU contends that it was not consulted at all prior to the announcement and, indeed, there does not appear to have been any meaningful engagement with frontline staff. In the absence of prior consultation, many frontline staff and managers have not only expressed concern, but have questioned the rationale for the change.

Large complex organizations often have difficulty implementing enterprise-wide reform. Coherence, coordination and maintenance of a shared vision are particular challenges. A successful strategy to overcome these challenges involves the development of dedicated capacity to plan and integrate change. The Ministry currently has several units and divisions involved in transformation. The scale and scope of their projects vary, but they all tie into a broader corporate mandate to improve business practices and outcomes. It is my hope that when responding to this report, the Ministry will take the opportunity to create a senior team with the single responsibility of operationalizing change. Such a change management team will better align efforts with strategic goals and provide both the senior level attention needed and the accountability required.

¹⁸⁰ MCSCS: Overhaul of the use of segregation, *supra* note 51.

VII. KEY FINDINGS AND RECOMMENDATIONS

Prisons and jails have rules about everything. There are rules governing every moment a person spends in custody and every movement that person makes. There are rules about everything staff does as well. In spite of this, and with apologies to Justice Louise Arbour,¹⁸¹ although rules are everywhere, the rule of law is too often absent. Concerns about the breakdown of the rule of law in corrections are hardly new. Time and again, incident reviews, investigations from ombudsmen and coroners, audit reports and judicial reviews pass comment and make recommendations about compliance failures, inadequate policy and insufficient accountability.

In 1977, 17 years prior to Justice Arbour's words, the *Report of the Subcommittee on the Penitentiary System in Canada* observed, "There is a great deal of irony in the fact that imprisonment – the ultimate product of our system of criminal justice – itself epitomizes injustice."¹⁸² Twenty years later, this was expressed as straightforward issues of human rights when the former Chief Commissioner of the Canadian Human Rights Commission told the Correctional Service of Canada:

Correctional systems are by their nature heavily dependent on rules, not just for the fair and humane treatment of offenders, but for the orderly conduct of a difficult social relationship. The strategic task is to integrate human rights considerations within that rule-bound environment in such a way that their rationale can be readily understood and their requirements intelligently met. This means that the first step towards ensuring the rule of law in human rights matters must be an explicit recognition that the correctional authority holds itself bound by international, constitutional and statutory obligations that have been accepted by the state.¹⁸³

When I accepted the challenge of being Ontario's Independent Advisor on Corrections Reform, I expected to find a system that, while not problem free, was generally well-managed, adequately staffed and resourced and supported by modern information technology and management capacity and practice. What I found was a thinned-out and overstretched workforce, the work of corrections being carried out in the shadow of strained labour relations and the legacy of ideological, not evidence-based, decisions about infrastructure, program design and service delivery. I also found a resilient and creative management team and frontline staff who were engaged and who have a desire to help create both a better workplace and better outcomes for their communities.

Ontario Correctional Services is a large, highly distributed organization with significant staffing and infrastructure requirements. These realities are at times not widely appreciated and as a result it is often perceived that there are unnecessary delays to improvements to the

¹⁸¹ Louise Arbour, *supra* note 161.

¹⁸² The Sub-committee on the Penitentiary System in Canada. Standing Committee on Justice and Legal Affairs. (Second Session of the Thirtieth Parliament, 1976-77). *Report to Parliament*. p. 85. Mark MacGuigan, Chairman.

¹⁸³ Working Group on Human Rights. (1997). *Human rights and corrections: a strategic model*. Correctional Service Canada.

circumstances of clients and staff. By focusing efforts and resources on defined objectives, the Province should be able to make critical improvements in a relatively short period.

The mission of corrections includes both care and custody; it is demanding work. Senior leaders must acknowledge the difficult environment that operational staff face. Corrections is known to have culture and morale challenges. Meeting these challenges requires a collaborative approach between the Ministry and its staff. Staff buy in and alignment with Ministry goals are critical.

Staff should feel proud of the difficult work that they undertake. This can be supported by improving recruitment, coaching and mentoring new and existing staff, providing clear roles and responsibilities, and enhancing training and other workplace and infrastructure improvements. Creating a safe and healthy environment for inmates also creates a safe and healthy workplace for staff.

Textbox 17: Lessons from Other Jurisdictions

There is a growing momentum nationally and internationally to acknowledge and address the impact of long-term segregation in prisons, particularly for youth and other vulnerable populations, including individuals who suffer from mental health issues.

In the United States, several jurisdictions are reforming their use of solitary confinement. Colorado went so far as to pass two Bills in support of its efforts to limit the use of solitary confinement. The legislation prohibits the placement of persons with serious mental illness in long-term administrative segregation. It also requires that the Department of Corrections report annually to the Senate and the House of Representatives on the use of solitary confinement and its reform. To achieve these goals, that State implemented a residential treatment program to transition prisoners with serious mental health issues out of solitary confinement. Resources were also allocated to support mental health services and programs that were designed to be viable alternatives to segregation. Colorado successfully reduced the number of prisoners in long-term segregation from 1,500 in 2011 to 177 in 2015 (from 7% to 1% of their incarcerated population). The number of women in solitary confinement went from 39 in 2011 to zero by 2015.

The Scandinavian model results in the world's lowest incarceration rates, humane prison conditions and low rates of recidivism. Research and site visits conducted in Finland, Denmark, Norway and Sweden reveal a progressive approach to corrections. The foundational principle is that going to prison is itself is the punishment for crime and that prison conditions must mirror life outside as much as possible.

In Germany and the Netherlands, isolating individuals for discipline purposes is a rare circumstance, and it is only ever done for a short period of time. By statute disciplinary detention cannot exceed in any given year four weeks in Germany and two weeks in the Netherlands per individual offender.

Decreasing the system's use of segregation is one way to help achieve these goals. Over-reliance on segregation is a symptom of broader issues within the correctional system. Inmates who need medical supervision for a physical ailment belong in an infirmary, medical unit or a hospital. Those who need special accommodations, whether it be a prosthetic limb or a sleep apnea machine, should not have to spend 22 hours locked in a cell because of their disability. Those with mental illness or histories of serious self-harming should be placed in supportive, therapeutic settings that have the greatest chance of alleviating their symptoms, not isolation in a six by nine foot concrete cell. Additional alternatives to segregation are within Ontario's reach. Multiple European jurisdictions operate prison systems that rarely, if ever, rely on segregation. Several jurisdictions within the United States have also embarked on significant segregation reform efforts. Colorado, for example reduced the number of prisoners in long-term segregation from 1,500 in 2011 to 177 in 2015. A fall 2015 survey found that, although over 1,800 individuals in Colorado prisons had serious mental health issues, only eight were being held in long-term restrictive housing.¹⁸⁴

Reducing Ontario's segregated populations will not happen overnight. The focus must not only be on creating alternatives to segregation, but also on meaningfully improving the conditions of confinement across the board. Ontario has the opportunity to become a leader within Canada by taking decisive, clear and bold steps to transform its correctional system starting with a decreased use of segregation.

¹⁸⁴ Association of State Correctional Administrators and the Arthur Liman Public Interest Program, Yale Law School. (2016, November). Aiming to Reduce Time-In-Cell: Reports from Correctional Systems on the Numbers of Prisoners in Restricted Housing and on the Potential of Policy Changes to Bring About Reform. p. 51 Retrieved from <https://www.law.yale.edu/system/files/area/center/liman/document/aimingtoreducetic.pdf>. Across the United States, on average 4.9% of the custodial population is in restrictive housing. States that are leading in reducing the reliance on this form of custody include Washington (1.7%), Virginia (2.8%), California (0.9%), Colorado (1.2%), Connecticut (0.8%) and Mississippi (1%). *Ibid.* p. 22.

Key Findings

1. Legal and Policy Framework

- The law governing Ontario Corrections in general, and segregation in particular, is skeletal. Segregation is not mentioned in the governing legislation and is only briefly addressed in Regulation 778. Almost all of the substantive provisions are in policy. Ontario's correctional service needs a new legal framework.
- Ontario's correctional policies are inadequate and outdated. They are frequently confusing and overlapping. Inadequate policy undermines accountability.
- Ministry policies are not publicly available and are not provided to inmates or their advocates in their complete form unless formally requested through the cumbersome freedom of information process. As a result, neither incarcerated individuals nor the public at large have a straight-forward way of determining how Ontario's correctional system should be operating. This lack of transparency further erodes accountability.

2. Definition of Segregation and Conditions of Confinement

- Ontario's definition of segregation is only contained in policy, and is both under-inclusive and tautological.
- Ontario's institutions are currently developing and/or operating a range of units that, although not defined as segregation, subject inmates to segregation-like conditions. Most of these units are not defined in law, regulation or policy.
- Access to programs and services for the majority of segregated inmates is severely restricted; for some it is non-existent. Depending on operational limitations, there may not be enough time in the day to ensure all segregated inmates get out of their cell, let alone get their required minimum daily fresh air. Some segregated inmates do not leave their cells for days on end.
- Policy concerning time out of cell and access to fresh air for segregated inmates is inadequate. The sanction of fresh air being limited to 20 minutes per day has become the *de facto* standard.
- There are no consistent segregation unit design standards throughout the province. Segregation units have differing physical layouts and cell sizes, depending on when they were built. These inconsistencies result in significant differences in segregation conditions of confinement.
- The lack of effective legal and policy guidance means that, in practice, conditions of confinement and protection of inmates' rights vary from site to site and day to day. Ultimately, the lack of clarity and minimum standards undermine accountability.

3. Segregation Placement and Impacts on Vulnerable Populations

- Ontario's average custodial population has decreased over the last 10 years, yet the number of people sent to segregation is on the rise.
- The vast majority of inmates placed in segregation are in administrative segregation, and four out of ten of those people are segregated for their own protection.
- Many of the men and women in segregation today simply should not be there. Segregation is frequently used as the default tool to manage individuals with a variety of special needs and challenging behaviours without first exploring alternatives.
- Particular individuals and groups – the young and the elderly, those with mental illness, women, racialized and Indigenous persons – are differentially impacted by incarceration and segregation.
 - Women in segregation in Ontario are more likely than men to be flagged for suicide or mental health issues.
 - Indigenous individuals make up about 2% of Ontario's population, but in 2016 accounted for at least 14% of the admissions to custody and segregation. Just over half of the Indigenous women and men admitted to segregation in Ontario in 2016 had a suicide risk alert.
- Approximately one in five individuals admitted to custody in Ontario in 2016 had a suicide risk alert on file; for those admitted to segregation, it was one in three. On average, individuals with mental health and/or suicide risk alerts spent about 30% more time in segregation than other segregated inmates.

4. Mental Health

- Health care is considered one among other "services" that are provided to inmates under a broad correctional umbrella. It is not unusual for health care providers to report that clinical recommendations have been overridden by operational concerns.
- The medical standards outlined in the Ministry's *Institutional Services Policy and Procedures Manual* are different from the standards in the *Health Care Services Policy and Procedures Manual*. This discrepancy causes confusion.
- The *Institutional Services Policy and Procedures Manual* directs that all inmates must receive mental health screening upon admission. This screening is not taking place in a timely manner across the system.
- The *Institutional Services Policy and Procedures Manual* directs that all inmates with mental illness who are placed in segregation are to receive specialized, individual services.
 - The Ministry has not been centrally tracking whether the required baseline assessments by physicians are taking place; interviews with various health professionals suggest they are not occurring at all institutions.

- At most institutions the required five-day physician assessments for segregated inmates with mental illness are not taking place.
- There are no comparable specific policy requirements regarding health care for alternate units that have segregation-like conditions of confinement.
- Limited mental health services at correctional institutions, gaps in communication and a lack of mutual understanding between corrections and external health providers contribute to the segregation of individuals with mental illness.
- Correctional staff currently rely on unverified mental health information when making segregation placement decisions and completing segregation reports and reviews.
- Care Plans, which could facilitate appropriate communication between health care and correctional staff, are currently under-used and depending on the institution, may not be readily available when needed. There is a need to identify who has ultimate responsibility for implementing and monitoring Care Plans.
- There are challenges in providing timely access to prescribed medications, which can cause health or behavioural repercussions and result in placement in segregation.
- Vanier Centre for Women has an unused, purpose-built unit to house inmates with medical needs. Opening this unit would provide a care-based alternative for some segregated inmates.

5. Segregation Reviews and Accountability Mechanisms

- Segregation placements must be accompanied by robust, effective and procedurally-fair oversight and review mechanisms. Ontario's current segregation review and oversight framework fails to meet this standard.
- A significant proportion of five-day and 30-day segregation reviews are inadequate or incomplete. When the reviews and reports are generated, they receive little or no critical review.
- Prior to December 2016 neither the Ministry nor the local institutions were producing the required 60-day aggregate segregation reports. Individual institutions are not tracking and reporting critical information, undermining credibility in the review process.
- There are almost no guarantees of independence in Ontario's segregation placement, adjudication and review framework. The review process operates almost entirely within the institution. The same correctional staff who makes the initial segregation placement decision may be a party to the mandatory five-day and 30-day segregation reviews. In addition, although disciplinary segregation is subject to further safeguards, the policies have many gaps and caveats. According to policy, the same officer who alleged that the inmate committed misconduct could also perform key decision-making roles in deciding the inmate's fate.
- Currently there is a range of restrictive housing units that are segregation-like in operation, but are subject to virtually no procedural safeguards or formal oversight.

- The implementation of the weekly, interdisciplinary Segregation Review Committee is a potentially helpful interim measure.
- Although Ontario Correctional Services receives oversight from a variety of internal and external bodies, there is no independent organization that has both the resources and mandate to conduct regular independent visits to, and detailed compliance audits of, correctional facilities.

6. Human Rights and Segregation

- There were many barriers to translating the *Jahn* remedies into operational reality.
- The Ministry continues to struggle to fully implement the duty to accommodate inmates with mental illness. The best available data show that over the past year and a half the number of segregated inmates with mental health or suicide risk alerts increased.

7. Staffing

- Ontario's staffing, recruitment and training capacity is under significant strain.
- The Ministry has identified that the current basic training curriculum, including the segregation-specific training, needs to be overhauled.
- Segregation staff are rarely, if ever, permanently assigned or specially trained.

8. Infrastructure

- More than half of the province's correctional facilities are over 40 years old, and three were built in the 1800s. Many need repairs, and others need to be replaced.
- The physical design in some facilities is inadequate to meet current inmate needs. Overuse of segregation is one consequence.
- The Ministry has been proactively tackling its infrastructure challenges on a number of fronts; these initiatives are promising.

9. Use of Technology and Information Management

- Data collection and statistical analysis in Ontario's correctional system primarily relies on outdated labour-intensive and paper-based systems. This creates multiple opportunities for errors, inconsistent data and ultimately prevents timely and cogent analysis and oversight of the state of corrections generally and segregation specifically.
- There has been a focus on data collection, not data utilization.
- There is a reluctance to embrace technological approaches to replace the existing cumbersome, paper-based information management system.

- There is an opportunity to participate in a Whole of Justice approach to data collection and information management and become a leader in Ontario's commitment to open government.

10. Reform Process to Date and Change Management

- Although a wide range of segregation reform initiatives have been launched over the past five years, many have been hampered by a lack of coordination, communication and consultation with key stakeholders.
- Political and organizational leadership and courage are required to support the magnitude of the change required. Early and frequent engagement with frontline workers is critical.

Recommendations

Keeping in mind that incarceration must be used as a last resort and people are sent to a correctional facility as punishment, not for punishment and, that inmates retain all the rights of free persons, other than those necessarily removed by the fact of confinement, segregation itself must be used as a last resort, for as short a time as possible and only when all other options have been exhausted, I make the following recommendations:

1. New Legal and Policy Framework

Immediate actions

1.1 I recommend that the government table a modernized *Ministry of Correctional Services Act* in the current legislative session.

Next steps

1.2 I recommend that once a new Act receives Royal Assent, but prior to proclamation, the Ministry undertake comprehensive corrections policy renewal and consolidation.

2. Definition of Segregation and Conditions of Confinement

Immediate action

2.1 I recommend that the Ministry amend policy to update its definition of segregation to comply with international standards.

2.2 I recommend that the Ministry establish baseline conditions of confinement for inmates in segregation.

2.3 I recommend that the Ministry take additional steps to improve conditions of confinement in segregation by, at a minimum:

- Formulating individualized plans for each inmate to increase both out-of-cell and outdoor time;
- Extending on-unit delivery of programming, including by allowing community partners that currently provide programming and services to access segregated inmates;
- Enhancing the availability of reading material;
- Establishing a mechanism to allow inmates to listen to audio content, such as music or radio;
- Ensuring that any televisions that will be or have been installed on units are visible and audible to inmates;
- Ensuring that night-time lighting is compatible with sleeping requirements; and
- Wherever possible increasing access to direct unfiltered natural light.

Next steps

2.4 I recommend that the Ministry incorporate the amended definition of segregation into the new Act.

2.5 I recommend that in all new builds and all retrofit projects, segregation cells have natural light and direct access to an outside yard, and that all sites that do not meet this requirement be scheduled for renovation on a priority basis.

3. Segregation Placement and Impacts on Vulnerable Populations

Immediate actions

3.1 I recommend that segregation placements be decided according to the following guidelines:

- Segregation for medical observation be prohibited. Those in need of medical observation or seclusion for health reasons must be housed in medical units, infirmaries or sent to outside hospitals.
- Protective custody not be considered or operated as a form of segregation.
- A life history analysis consistent with the Supreme Court of Canada decision in *Gladue* be considered at the five-day review of all segregated Indigenous inmates.
- The segregation of pregnant women or those who have recently given birth be prohibited.
- The segregation of chronically self-harming, suicidal and diagnosed significantly mentally ill individuals be prohibited.
- No placement in administrative or disciplinary segregation will exceed 15 continuous days.
- Segregation must be limited to no more than 60 days for any individual within a 365 day period without the consent of the Minister.

3.2 I recommend that the Ministry update policy to provide an exhaustive list of all types of alternate units in Ontario correctional facilities. Policy must standardize definitions for the following units:

- Disciplinary Unit, intended for disciplinary segregation and administrative segregation of those who are awaiting adjudication for allegations of serious misconduct.
- Protective Custody Unit, intended for those who are requesting alternate housing for their own protection and those that the Ministry has determined need protection due to their charges or incompatibles.
- Special Needs Unit, intended for those who have a mental health disorder and are unable to integrate into a general population unit as they need additional support.

- Stabilization Unit, intended to meet the needs of inmates who require intensive mental health services, including those who may be exhibiting self-harming behaviour. The goal of this unit is to stabilize inmates so that they can re-integrate into the general population or special needs unit.
- Behavioural Management Unit, intended for inmates who have demonstrated that they present a safety and security concern to the institution. This unit should provide separate living accommodation in smaller groups to allow for more support to manage behavioural issues.
- Medical Units, for those who require specialized housing due to physical health needs.

3.3 I recommend that those institutions that do not have the capacity to create separate units instead create an “alternate housing area” that allows for individualized housing arrangements in line with the above definitions.

3.4 I recommend that the Ministry update policy to provide standards for the minimum conditions of confinement and operational routine in alternative housing.

Next steps

3.5 I recommend that the new Act legislate definitions and minimum conditions of confinement for all housing units and types.

4. Mental Health

Immediate actions

4.1 I recommend that the *Health Care Services Policy and Procedures Manual* be revised to include all of the requirements regarding mental health care outlined in the *Institutional Services Policy and Procedures Manual*.

4.2 I recommend that the Ministry define and institute standardized screening and ongoing mental health assessment for inmates in segregation.

4.3 I recommend that the Ministry convene regular meetings between correctional institutions, local hospitals and psychiatric facilities to increase communication, enhance mutual understanding and streamline patient care.

4.4 I recommend that the pilot study establishing dedicated psychiatric bed space in local hospitals, which is currently operating at Toronto South Detention Centre and Hamilton-Wentworth Detention Centre, be expanded province-wide.

4.5 I recommend operationalizing the medical unit at Vanier Centre for Women.

4.6 I recommend that the Ministry update all relevant policies and template forms to identify who is responsible for initiating, monitoring and updating Care Plans and Treatment Plans.

4.7 I recommend that health care requirements comparable to those in the *Institutional Services Policy and Procedures Manual* be established for alternate units that confine individuals in segregation-like conditions.

Next steps

4.8 I recommend that the Ministry evaluate its approach to the provision of health care in correctional facilities, including best practice standards and options on how best to meet the medical needs of inmates.

4.9 I recommend that new health information-sharing protocols be established.

5. Procedural Safeguards, Transparency and Oversight

Immediate actions

5.1 I recommend that the current segregation placement review process be redesigned to reflect caps on discrete and cumulative segregation placements and to enhance independence, thoroughness, timeliness, accountability and consistency. The new process must guarantee that the segregation clock will not be reset until the inmate is returned to housing that is no more restrictive than general population.

5.2 I recommend the interdisciplinary Segregation Review Committee meetings include correctional officer representation and Native Inmate Liaison Officer's input and they be held as frequently as necessary to ensure a thorough review of each case.

5.3 I recommend that the process for the Segregation Review Committee be reformed to include procedural fairness guarantees. These must include at a minimum:

- Proactively soliciting submissions from the inmate.
- Written reasons for the decision that document all options considered, including those that were rejected, and the supporting reasons. The reasons must also document any dissenting opinions by review team members.
- Full written reasons must be provided to the inmate in a timely manner.

5.4 I recommend that the procedural safeguards and oversight mechanisms applied to administrative segregation be applied to all forms of custody that restrict out-of-cell time to less than that of the general population.

5.5 I recommend that all Ministry policies and statistics highlighting major corrections trends be publicly available on the Ministry's website. This will align with Ontario's Open Government Policy and open-by-default commitment.

Next steps

- 5.6 I recommend that Independent Chairpersons be appointed to be the decision-makers regarding placement in disciplinary segregation (close confinement).
- 5.7 I recommend that Independent Hearing Officers be appointed to adjudicate continued segregation placement beyond five days.
- 5.8 I recommend that the Ministry articulate a renewed vision for the Community Advisory Boards, including mandating Indigenous representation. These Boards must be appointed for each institution.
- 5.9 I recommend that the Government of Ontario establish an independent Corrections Inspectorate to enhance oversight and accountability and to support Canada's anticipated ratification of the *Optional Protocol to the Convention Against Torture*.

6. Enhancing Respect for Human Rights within Corrections

Immediate actions

- 6.1 I recommend that pocket-sized aide memoires on key elements of policy, human rights and correctional law be produced and distributed to all staff.
- 6.2 I recommend that information sheets on key elements of policy, human rights and correctional law be produced and distributed to all inmates upon admission.
- 6.3 I recommend that, in every institution, a specific staff member be designated as a local resource to provide advice on accommodating inmates with *Human Rights Code*-protected needs.
- 6.4 I recommend that, where the Segregation Review Committee cannot find an alternative to segregation for an inmate with *Code*-protected needs, the Committee be required to consult with the staff member who is designated as the institutional resource for human rights accommodation.
- 6.5 I recommend that, in every regional office, a specific staff member be designated who acts as a regional resource, when required, to assist in accommodating inmates with *Code*-protected needs.
- 6.6 I recommend that human rights training be enhanced in initial and ongoing training for all staff, and that more in-depth training be provided to the institutional and regional staff members responsible for human rights accommodation.

Next Steps

6.7 I recommend that the Ministry form partnerships with the Ontario Human Rights Commission, Ombudsman of Ontario and non-governmental organizations active in criminal justice to support ongoing site-specific training and advice regarding administrative fairness, human rights and decision-making in corrections.

7. Staffing

Immediate actions

7.1 I recommend that the Ministry identify several sites to pilot new approaches to segregation staffing models, including:

- slow rotation;
- permanent rostering;
- dedicated Mental Health Liaison Correctional Officers;
- eight-hour shifts; and
- enhanced complement to facilitate out of cell time.

7.2 I recommend that posts in alternate units (e.g., Special Needs Unit, Medical Unit, Behaviour Management Unit, Stabilization Unit) be filled first by seeking expressions of interest.

7.3 I recommend that the Ministry begin discussions with the bargaining unit regarding exceptions to current terms and conditions of employment or deployment practices to facilitate province-wide program and housing initiatives.

7.4 I recommend that the Ministry's current Post Audit exercise be accelerated and that renewed staffing and deployment models be developed based upon its findings.

7.5 I recommend that filling newly-funded permanent positions be accelerated by, wherever possible, hiring from the pool of current fixed-term staff.

7.6 I recommend that space in Toronto South Detention Centre be dedicated to increase capacity for staff training.

Next steps

7.7 I recommend that competency-based position profiles be developed for each correctional service position and that recruitment and training initiatives align with the identified competencies.

7.8 I recommend that the role of the Native Inmate Liaison Officer be expanded and strengthened to allow for complete access to all inmates.

7.9 I recommend that the information gleaned from the Ministry's Post Audit, the analysis of staffing needs for alternate units and the competency-based position profiles be used to inform new recruitment benchmarks for staffing Ontario's correctional facilities.

8. Infrastructure

Immediate actions

8.1 I recommend that the facilities deficiencies study be completed this fiscal year.

8.2 I recommend that institutions accelerate the creation of standardized alternative units to better meet the needs of inmates who are currently housed in segregation. Operationalizing these units must include adequate resources to be appropriately staffed.

8.3 I recommend that the following infrastructure initiatives be given priority:

- A temporary multi-purpose building, to be constructed at the Ottawa-Carleton Detention Centre to accommodate new staff and relieve operational non-housing pressures. This building must be operational within 12 months.
- The repair, renovation and retrofit of design and construction deficiencies at the Toronto South Detention Centre and that, once completed, housing capacity be based on two operational towers.
- Construction of a replacement for the Thunder Bay Jail to be operational within 3 to 5 years.

Next steps

8.4 I recommend that the "visioning exercises" being undertaken on behalf of the Ministry in anticipation of new builds be expanded to include public sessions in at least two locations.

8.5 I recommend that the Ministry rewrite the *Facilities Profile* and security classification policies to incorporate risk-based security classification of inmates.

8.6 I recommend that the Ministry establish multi-security level facilities for risk-based inmate placement by both retrofitting existing institutions and incorporating multi-security designs into any new facilities.

8.7 I recommend that the Ministry develop a program model for North Bay and Sudbury Jails based upon a one-facility, two-campus vision. The model must provide for innovation in, amongst other things:

- the alternative management of intermittent sentences and bail supervision;
- community engagement strategies;
- culturally-appropriate program delivery; and
- increased use of temporary absences for employment, education and treatment.

9. Use of Technology and Information Management

Immediate actions

- 9.1 I recommend that the Ministry accelerate its Data Collection Analytics and Management Reform effort.
- 9.2 I recommend that the Ministry develop a standard script that would ensure the accurate collection of race and ethnic origin inmate data.
- 9.3 I recommend that the Ministry establish a mechanism to ensure validated mental health information in the Offender Tracking Information System, segregation reviews and reporting requirements.
- 9.4 I recommend that the Ministry explore options within Offender Tracking Information System to upload the Inmate Care Plan.
- 9.5 I recommend that the Ministry make participation in a Whole of Justice Data Collection initiative a priority and become a leader in Open Government.

Next steps

- 9.6 I recommend that the Ministry explore using video technology to facilitate communication with the outside community for segregated inmates. This must complement, not replace, existing in-person visitation rights.

10. Change Management

Immediate actions

- 10.1 I recommend that the Ministry develop and implement a strategy to enhance internal communication and consultation regarding corrections transformation. This must prioritize early and frequent consultation with frontline staff.

Next steps

- 10.2 I recommend that the Ministry build internal dedicated and focused capacity to initiate, drive and monitor innovation and change.
- 10.3 I recommend that a strategic approach to transformation be developed. This may require external advice and support.
- 10.4 I recommend that the Ministry undertake a campaign to inform the public and seek feedback in regard to the corrections transformation agenda.

Appendix A – Statistics on Segregation in Ontario

Table A-1 Daily segregation and custodial counts in Ontario correctional facilities, yearly average 2006 – 2016

Average daily population counts, Ontario correctional facilities			
Year	Total custodial population	Segregated population	Percentage of custodial population in
2006	8,533	415	5%
2007	8,730	465	5%
2008	8,905	457	5%
2009	8,723	441	5%
2010	8,761	460	5%
2011	8,710	475	5%
2012	8,886	472	5%
2013	8,436	468	6%
2014	7,847	495	6%
2015	7,894	525	7%
2016	7,766	575	7%

Source: Ministry of Community Safety and Correctional Services

For a visual depiction of this data see Figure 2 in the body of this report.

Table A-2 Yearly averages of daily male custodial and segregation population counts in Ontario correctional facilities, 2006-2016

Average daily population counts, Ontario correctional facilities			
Year	Total male custodial population	Male segregated population	Percent of men in custody in segregation
2006	7957	387	5%
2007	8112	440	5%
2008	8283	435	5%
2009	8128	417	5%
2010	8174	435	5%
2011	8106	447	6%
2012	8238	443	5%
2013	7799	440	6%
2014	7262	466	6%
2015	7277	491	7%
2016	7155	541	8%

Source: Ministry of Community Safety and Correctional Services

For a visual depiction of this data see Figure 3 in the body of this report

Table A-3 Yearly averages of daily female custodial and segregation population counts in Ontario correctional facilities, 2006-2016

Average daily population counts, Ontario correctional facilities			
Year	Total female custodial population	Female segregated population	Percent of women in custody confined to segregation
2006	576	28	5%
2007	618	25	4%
2008	623	22	4%
2009	595	24	4%
2010	587	25	4%
2011	604	28	5%
2012	648	29	5%
2013	637	28	4%
2014	584	28	5%
2015	617	35	6%
2016	611	34	6%

Source: Ministry of Community Safety and Correctional Services

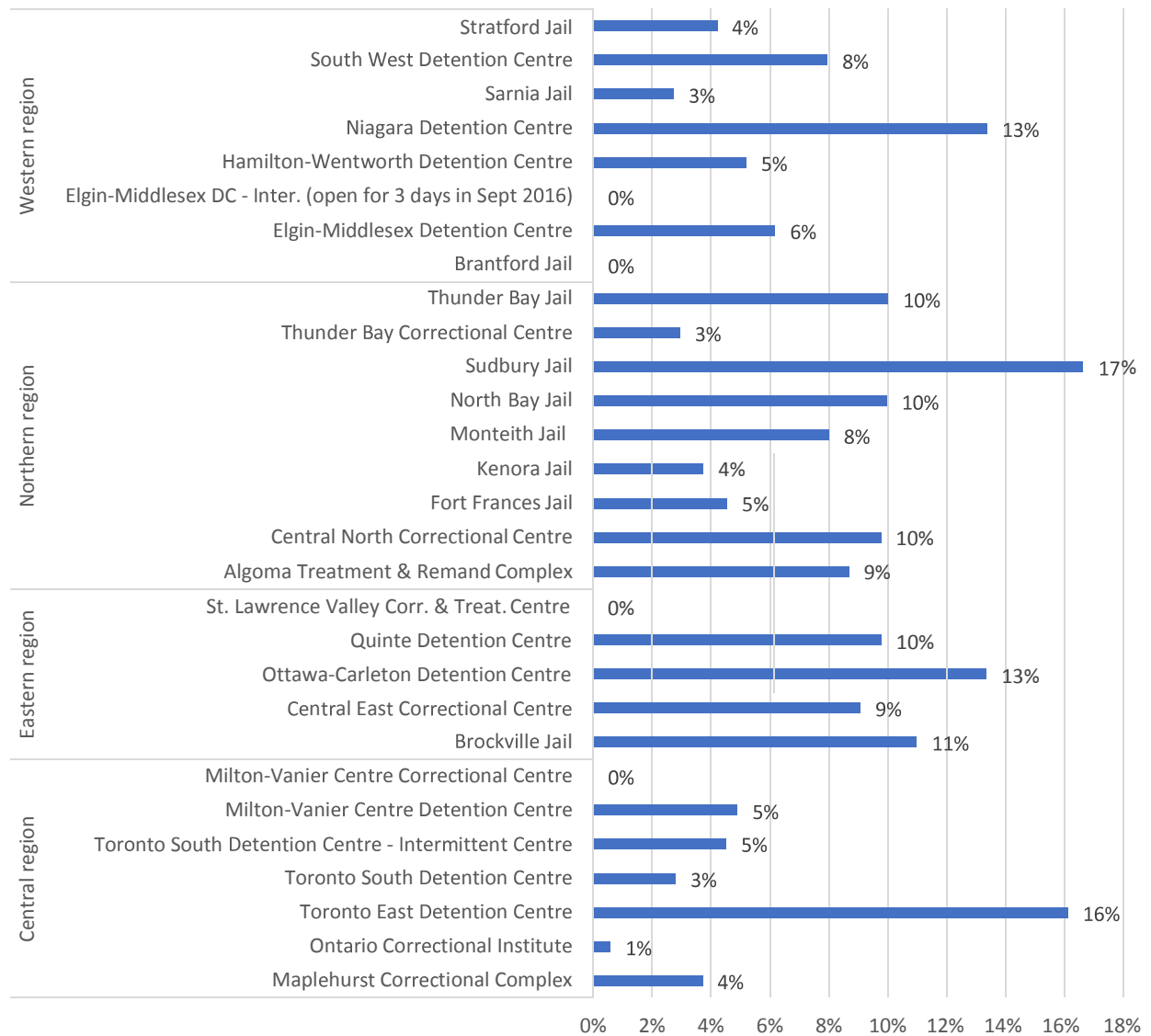
For a visual depiction of this data see Figure 3 in the body of this report.

Table A-4 Percentage of custodial population in segregation by individual institution, yearly averages 2013-2016

Region	Institution	2013	2014	2015	2016
Central region	Maplehurst Correctional Complex	2%	2%	3%	4%
	Ontario Correctional Institute	1%	1%	1%	1%
	Toronto East Detention Centre	11%	15%	16%	16%
	Toronto South Detention Centre	N/A	9%	6%	3%
	Toronto South Detention Centre - Intermittent Centre	4%	5%	4%	5%
	Toronto Jail (Closed Nov 27, 2013)	6%	N/A	N/A	N/A
	Toronto West Detention Centre (Closed Nov 14, 2014)	4%	6%	N/A	N/A
	Milton-Vanier Centre Detention Centre	3%	4%	4%	5%
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Eastern region	Milton-Vanier Centre Correctional Centre	0%	0%	0%	0%
	Brockville Jail	9%	9%	9%	11%
	Central East Correctional Centre	8%	8%	7%	9%
	Ottawa-Carleton Detention Centre	5%	5%	5%	13%
	Quinte Detention Centre	8%	7%	10%	10%
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Northern region	St. Lawrence Valley Corr. & Treat. Centre	0%	0%	0%	0%
	Algoma Treatment & Remand Complex	7%	8%	9%	9%
	Central North Correctional Centre	9%	9%	10%	10%
	Fort Frances Jail	2%	2%	7%	5%
	Kenora Jail	2%	2%	3%	4%
	Monteith Correctional Centre (closed Sept 2015)	3%	3%	2%	N/A
	Monteith Jail	7%	9%	9%	8%
	North Bay Jail	7%	7%	9%	10%
	Sudbury Jail	9%	13%	20%	17%
	Thunder Bay Correctional Centre	3%	3%	3%	3%
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Western region	Thunder Bay Jail	10%	11%	7%	10%
	Brantford Jail	3%	3%	2%	0%
	Chatham Jail (Closed May 16, 2014)	1%	2%	N/A	N/A
	Elgin-Middlesex Detention Centre	6%	5%	6%	6%
	Elgin-Middlesex DC - Inter. (opened Sept 2016)	N/A	N/A	N/A	0%
	Hamilton-Wentworth Detention Centre	3%	3%	3%	5%
	Niagara Detention Centre	8%	10%	12%	13%
	Samia Jail	2%	2%	2%	3%
	South West Detention Centre (opened July/Aug 2014)	N/A	9%	9%	8%
	Stratford Jail	4%	4%	3%	4%
<hr/>					
	Windsor Jail (closed Aug 2014)	3%	3%	N/A	N/A

Source: Ministry of Community Safety and Correctional Services

Figure A-1 Percentage of custodial population in segregation by institution, 2016



Source: Ministry of Community Safety and Correctional Services

Table A-5 Admissions to Ontario custody and segregation, 2016, by gender, suicide risk alert and mental health alert*

Type of Alert	Gender	Admissions to custody		Admissions to segregation	
		Number	Percent of men, women, trans or total admissions	Number	Percent of men, women, trans or total admissions
Suicide risk alert**	Male	10,703	21%	6,960	36%
	Female	2,299	28%	1,196	42%
	Trans	63	44%	90	55%
	Total	13,002	22%	8,156	36%
Mental health alert***	Male	13,965	28%	8,088	41%
	Female	3,522	43%	1,551	54%
	Trans	107	75%	127	77%
	Total	17,487	30%	9,639	43%
Total admissions	Male	50,652	--	19,567	--
	Female	8,183	--	2,878	--
	Trans	143	--	165	--
	Total	58,835	--	22,445	--

Source: Ministry of Community Safety and Correctional Services

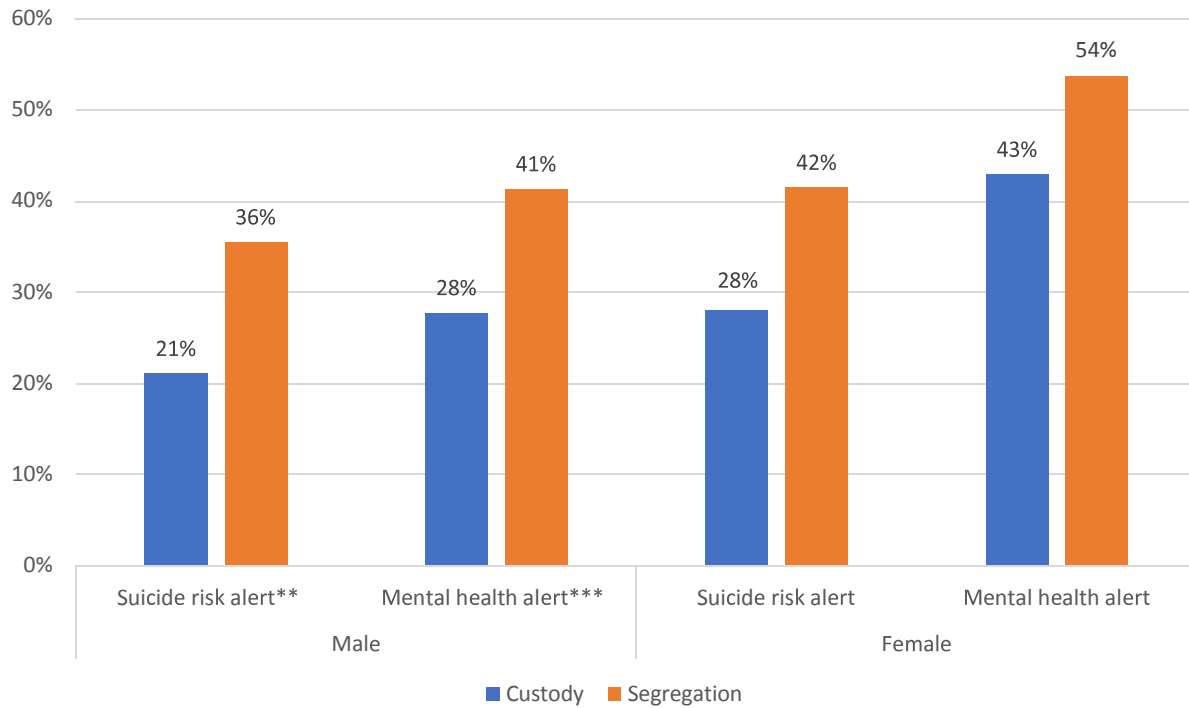
Note:

* Admission numbers within these tables reflect new admissions. Note that one individual may be admitted to custody or segregation multiple times within a calendar year. Each admission would be counted. Some admissions are not reflected in this table because they were not able to be correlated with a specific Offender Tracking Information System number.

** Suicide risk alerts do not necessarily indicate a diagnosis or current behavioural observations.

***Mental health alerts do not necessarily indicate a diagnosis or current behavioural observations.

Figure A-2 Percentage of men and women admitted* to segregation and custody in Ontario in 2016 that had a mental health alert or suicide risk alert



Source: Ministry of Community Safety and Correctional Services

Note:

* Calculations based on new admissions. Note that one individual may be admitted to custody or segregation multiple times within a calendar year. Each admission would be counted.

** Suicide risk alerts do not necessarily indicate a diagnosis or current behavioural observations.

***Mental health alerts do not necessarily indicate a diagnosis or current behavioural observations.

Table A-6 Total admissions to custody and segregation* in 2016, by self-identified Aboriginal status and suicide risk alert*****

			Aboriginal	Non Aboriginal	Total admissions
Male	In custody	Suicide risk alert	2,144	8,559	10,703
		Total	6,294	44,358	50,652
	In segregation	Suicide risk alert	1,354	5,606	6,960
		Total	2,617	16,950	19,567
Female	In custody	Suicide risk alert	616	1,683	2,299
		Total	1,678	6,505	8,183
	In segregation	Suicide risk alert	299	897	1,196
		Total	588	2,290	2,878
Total	In custody	Suicide risk alert	2,760	10,242	13,002
		Total	7,972	50,863	58,835
	In segregation	Suicide risk alert	1,653	6,503	8,156
		Total	3,205	19,240	22,445

Source: Ministry of Community Safety and Correctional Services

Note:

* Calculations based on new admissions. Note that one individual may be admitted to custody or segregation multiple times within a calendar year. Each admission would be counted.

** Aboriginal and non-Aboriginal are the terms used in the Ministry's database. Aboriginal identifier is self-reported and may not capture every Indigenous inmate admitted to custody or segregation in 2016. The number of Aboriginal admissions and non-Aboriginal admissions combined will equal total admissions.

*** Suicide risk alerts do not necessarily indicate a diagnosis or current behavioural observations.

Table A-7 Reasons for admission to segregation in Ontario correctional facilities, 2016

Reason	Percent of placements	Number of placements
Inmate protection	23.7%	5,325
Inmate protection: medical	16.0%	3,612
Protect institution/safety of others	7.1%	1,591
Protect institution/safety of others: medical	1.8%	402
Alleged misconduct	15.7%	3,535
Misconduct sanction/close confinement	3.1%	699
Inmate request	7.2%	1,612
Multiple reasons provided	18.1%	4,081
No reason provided	7.3%	1,652
Total	100.0%	22,509

Source: Ministry of Community Safety and Correctional Services

For a visual depiction of this data see Figure 4 in the body of this report.

Table A-8 Segregation counts by supervision or hold type, total of 6 random daily snapshots between July and December 2016*

Reason	Number of	Percentage
Remand	2588	65%
Remand & assess order	110	3%
Provincial sentence & remand	130	3%
Provincial sentence (straight)	806	20%
Provincial sentence (intermittent)	202	5%
Other**	124	3%
Total	3960	100%

Source: Ministry of Community Safety and Correctional Services

For a visual depiction of these figures see Figure 5 in the body of this report.

Note:

* Daily snapshot dates were July 9, August 13, September 10, October 8, November 12, and December 10, 2016. Not all institutions provided a daily segregation report on those dates. Sudbury Jail did not submit a daily segregation report on September 10th, 2016. Ontario Correctional Institute did not submit a daily segregation report on October 8th, 2016. Elgin-Middlesex Detention Centre did not submit a daily segregation report on November 12th, 2016. There were no missing daily segregation reports on July 9th, August 13th, and December 10th 2016.

** Category “Other” includes immigration holds, extradition holds, federal sentences, national parole violations, remand & immigration holds, and remand & national parole violations.

Table A-9 Daily count snapshots of Ontario segregation population, by gender, mental health alert and suicide risk alert

Snapshot date*	Inmates in segregation			Inmates in segregation with a mental health alert**			Inmates in segregation with a suicide risk alert***		
	Male	Female	Total	Male	Female	Total	Male	Female	Total
Oct 8 2015	539	22	561	171	9	180	148	9	157
Nov 14 2015	575	32	607	164	16	180	161	17	178
Dec 12 2015	598	27	625	178	13	191	174	14	188
Jan 9 2016	527	24	551	166	9	175	163	14	177
Feb 13 2016	26	2	28	6	1	7	9	1	10
Mar 12 2016	22	0	22	4	0	4	7	0	7
April 9 2016	513	22	535	167	9	176	154	11	165
May 14 2016	630	48	678	267	22	289	227	20	247
June 11 2016	425	25	450	182	15	197	163	12	175
July 9 2016	593	49	642	267	28	295	239	23	262
Aug 13 2016	627	36	663	293	25	318	261	18	279
Sept 10 2016	599	39	638	273	25	298	243	17	260
Oct 8 2016	615	41	656	290	27	317	242	17	259
Nov 12 2016	600	42	642	281	20	301	242	15	257
Dec 10 2016	626	37	663	299	23	322	253	18	271

Source: Ministry of Community Safety and Correctional Services

For a visual depiction of the percentage of inmates with mental health and/or suicide alert flags that were held in segregation over time see Figure A-3.

Note:

* Missing Reports by Snapshot Dates: October 8th, 2015: Monteith Jail, Ottawa-Carleton D.C., Ontario Correctional Institute, and Toronto Intermittent Centre did not submit a daily segregation report. November 14th, 2015: Fort Frances, Hamilton-Wentworth D.C., Milton-Vanier Centre for Women, and St. Lawrence Valley Centre did not submit a daily segregation report. December 12th, 2015: Brockville Jail, Fort Frances, Ontario Correctional Institute, and St. Lawrence Valley Centre did not submit a daily segregation report. January 9th, 2016: Central North C.C. & Milton-Vanier Centre for women did not submit a daily segregation report. February 13th, 2016: 11 institutions submitted a daily segregation report resulting in only 28 inmates being reported in segregation. March 12th, 2016: 12 institutions submitted a daily segregation report resulting in only 23 segregated inmates being reported. April 9th, 2016: Central East C.C. & Niagara D.C. did not submit a daily segregation report. May 14th, 2016: Algoma Treatment & Remand Centre, Fort Frances Jail, Ontario Correctional Institute, and Stratford Jail did not have any inmates in segregation, or their daily segregation report was not submitted. June 11, 2016: Algoma Treatment & Remand Centre, Brockville Jail, Central East C.C., Maplehurst C.C., Sudbury Jail, and Thunder Bay C.C. Ontario Correctional Institute did not have any inmates in segregation (nil report). September 10th, 2016: Sudbury Jail did not submit a daily segregation report. October 8th, 2016: Ontario Correctional Institute did not submit a daily segregation report. November 12th, 2016: Elgin-Middlesex Detention Centre did not submit a daily segregation report. There were no missing daily segregation reports on July 9th, August 13th, and December 10th, 2016. Note: some of the smaller institutions and treatment centres often have no segregation placements. Therefore, no reports in some of these instances may reflect 0 segregation placements.

** Mental health alerts do not necessarily indicate a diagnosis or current behavioural observations.

*** Suicide risk alerts do not necessarily indicate a diagnosis or current behavioural observations.

Table A-10 Percentage of segregated inmates that have mental health alerts, suicide risk alerts, broken down by gender; based on 15 random daily snapshots Oct 2015-Dec 2016

Snapshot date*	Percentage of inmates in segregation with a mental health alert**			Percentage of inmates in segregation with a suicide risk alert***		
	Male	Female	Total	Mal	Female	Total
Oct 8 2015	32%	41%	32%	27%	41%	28%
Nov 14 2015	29%	50%	30%	28%	53%	29%
Dec 12 2015	30%	48%	31%	29%	52%	30%
Jan 9 2016	31%	38%	32%	31%	58%	32%
Feb 13 2016	25%	50%	25%	35%	50%	36%
Mar 12 2016	18%	N/A	18%	32%	N/A	32%
April 9 2016	33%	41%	33%	30%	50%	31%
May 14 2016	42%	46%	43%	36%	42%	36%
June 11 2016	43%	60%	44%	38%	48%	39%
July 9 2016	45%	57%	46%	40%	47%	41%
Aug 13 2016	47%	69%	48%	42%	50%	42%
Sept 10 2016	46%	64%	47%	41%	44%	41%
Oct 8 2016	47%	66%	48%	39%	41%	39%
Nov 12 2016	47%	48%	47%	40%	36%	40%
Dec 10 2016	48%	62%	49%	40%	49%	41%
Average, all snapshot dates	40%	54%	41%	36%	46%	36%

Source: Ministry of Community Safety and Correctional Services

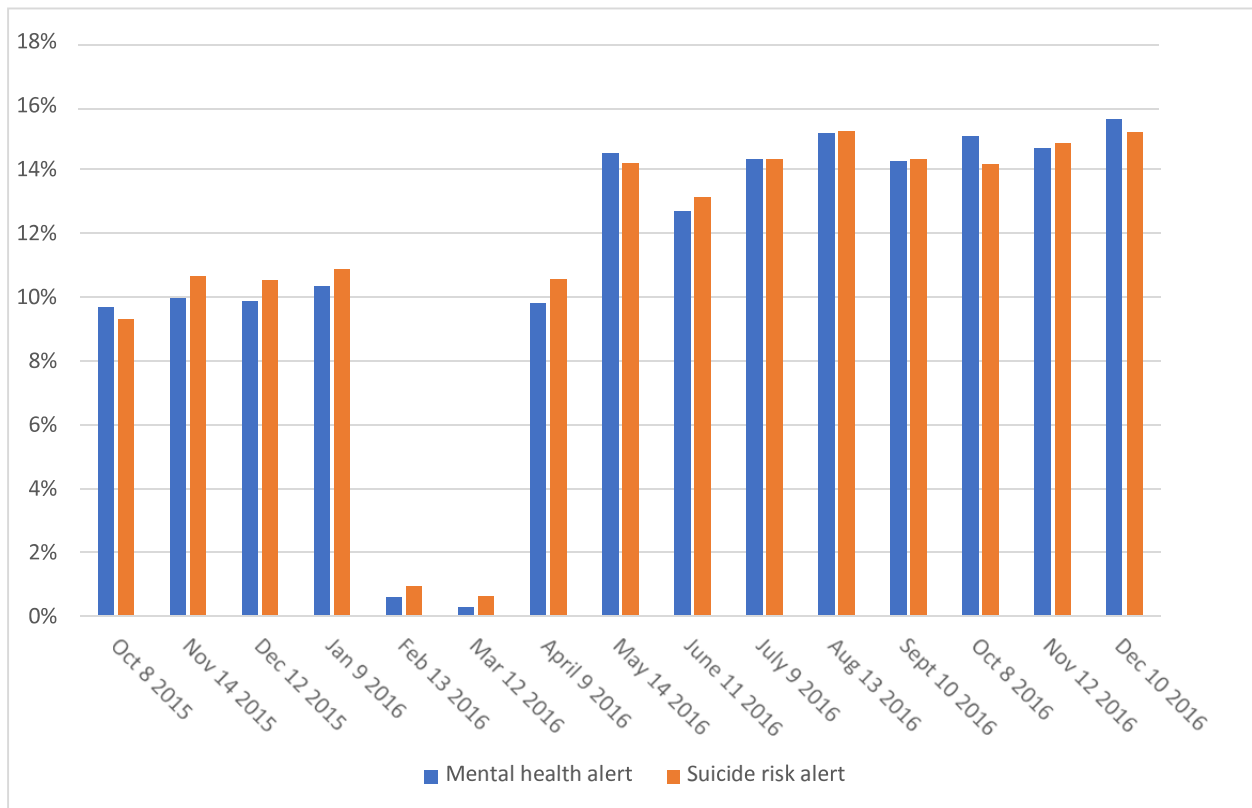
Note:

* Missing Reports by Snapshot Dates: October 8th, 2015: Monteith Jail, Ottawa-Carleton D.C., Ontario Correctional Institute, and Toronto Intermittent Centre did not submit a daily segregation report. November 14th, 2015: Fort Frances, Hamilton-Wentworth D.C., Milton-Vanier Centre for Women, and St. Lawrence Valley Centre did not submit a daily segregation report. December 12th, 2015: Brockville Jail, Fort Frances, Ontario Correctional Institute, and St. Lawrence Valley Centre did not submit a daily segregation report. January 9th, 2016: Central North C.C. & Milton-Vanier Centre for women did not submit a daily segregation report. February 13th, 2016: 11 institutions submitted a daily segregation report resulting in only 28 inmates being reported in segregation. March 12th, 2016: 12 institutions submitted a daily segregation report resulting in only 23 segregated inmates being reported. April 9th, 2016: Central East C.C. & Niagara D.C. did not submit a daily segregation report. May 14th, 2016: Algoma Treatment & Remand Centre, Fort Frances Jail, Ontario Correctional Institute, and Stratford Jail did not have any inmates in segregation, or their daily segregation report was not submitted. June 11, 2016: Algoma Treatment & Remand Centre, Brockville Jail, Central East C.C., Maplehurst C.C., Sudbury Jail, Thunder Bay C.C. and Ontario Correctional Institute did not have any inmates in segregation (nil report). September 10th, 2016: Sudbury Jail did not submit a daily segregation report. October 8th, 2016: Ontario Correctional Institute did not submit a daily segregation report. November 12th, 2016: Elgin-Middlesex Detention Centre did not submit a daily segregation report. There were no missing daily segregation reports on July 9th, August 13th, and December 10th, 2016. Note: some of the smaller institutions and treatment centres often have no segregation placements. Therefore, no reports in some of these instances may reflect 0 segregation placements.

** Mental health alerts do not necessarily indicate a diagnosis or current behavioural observations.

*** Suicide risk alerts do not necessarily indicate a diagnosis or current behavioural observations.

Figure A-3 Percentage of inmates with mental health and/or suicide risk*** alerts that were held in segregation (single day snapshots* overtime)**



* Not all institutions submitted their daily segregation counts on the captured days. To attempt to correct for this we modified the total inmate population with mental health alerts to only reflect those detained at the institutions that submitted segregation reports. Missing Reports by Snapshot Dates: October 8th, 2015: Monteith Jail, Ottawa-Carleton D.C., Ontario Correctional Institute, and Toronto Intermittent Centre did not submit a daily segregation report. November 14th, 2015: Fort Frances, Hamilton-Wentworth D.C., Milton-Vanier Centre for Women, and St. Lawrence Valley Centre did not submit a daily segregation report. December 12th, 2015: Brockville Jail, Fort Frances, Ontario Correctional Institute, and St. Lawrence Valley Centre did not submit a daily segregation report. January 9th, 2016: Central North C.C. & Milton-Vanier Centre for Women did not submit a daily segregation report. February 13th, 2016: 11 institutions submitted a daily segregation report resulting in only 28 inmates being reported in segregation. March 12th, 2016: 12 institutions submitted a daily segregation report resulting in only 23 segregated inmates being reported. April 9th, 2016: Central East C.C. & Niagara D.C. did not submit a daily segregation report. May 14th, 2016: Algoma Treatment & Remand Centre, Fort Frances Jail, Ontario Correctional Institute, and Stratford Jail did not have any inmates in segregation, or their daily segregation report was not submitted. June 11, 2016: Algoma Treatment & Remand Centre, Brockville Jail, Central East C.C., Maplehurst C.C., Sudbury Jail, Thunder Bay C.C. and Ontario Correctional Institute did not have any inmates in segregation (nil report). September 10th, 2016: Sudbury Jail did not submit a daily segregation report. October 8th, 2016: Ontario Correctional Institute did not submit a daily segregation report. November 12th, 2016: Elgin-Middlesex Detention Centre did not submit a daily segregation report. There were no missing daily segregation reports on July 9th, August 13th, and December 10th, 2016. Note: some of the smaller institutions and treatment centres often have no segregation placements. Therefore, no reports in some of these instances may reflect 0 segregation placements.

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*** Suicide risk alerts do not necessarily indicate a diagnosis or current behavioural observations.

Table A-11 Length of segregation placements, 2016

Amount of time spent in segregation	Percentage of 2016 segregation placements*
7 days or fewer	70%
8 - 14 days	13.3%
15-29 days	8.1%
1-3 months	6.3%
3-6 months	1.6%
6-12 months	0.5%
12 months or more	0.2%

Source: Ministry of Community Safety and Correctional Services

Notes:

*Calculation of segregation placement length was based on segregation releases in calendar year 2016. The figures do not account for continuous segregation that occurred between two or more different institutions.

Table A-12 Mean and median segregation placement lengths (days) by gender, Aboriginal status, mental health and suicide risk alerts (2016)***

			Male	Female	Total
Aboriginal	Aboriginal	Mean	14.8	5.7	13.1
		Median	5.0	3.0	4.0
	Non-Aboriginal	Mean	12.8	7.2	12.1
		Median	4.0	2.0	4.0
Mental health alert***	Alert	Mean	15.2	8.1	14.1
		Median	5.0	3.0	4.0
	No alert	Mean	11.5	5.4	10.9
		Median	3.0	2.0	3.0
Suicide risk alert	Alert	Mean	15.4	7.6	14.2
		Median	5.0	3.0	5.0
	No alert	Mean	11.7	6.3	11.1
		Median	4.0	2.0	3.0
Total, all placements		Mean	13.0	6.9	12.3
		Median	4.0	2.0	4.0

Source: Ministry of Community Safety and Correctional Services

Notes:

*Figures are calculated from the Daily Segregation Reports and are subject to the limitations therein. 17 inmates' demographic and alert information could not be obtained due to incorrect OTIS numbers reported by the institutions.

** Aboriginal and non-Aboriginal are the terms used in the Ministry's database. Aboriginal identifier is self-reported and may not capture every Indigenous inmate in custody or segregation in 2016.

***Mental health alerts do not necessarily indicate a diagnosis or current behavioural observations.

Table A-13 Segregation placement lengths (days) by institution (calendar year 2016)*

Institution	Mean	Median
Algoma Treatment & Remand Complex	11.6	3.0
Brantford Jail	4.5	2.0
Brockville Jail	5.0	2.0
Central East Correctional Centre	23.0	8.0
Central North Correctional Centre	14.8	5.0
Elgin-Middlesex Detention Centre	7.4	3.0
Fort Francis Jail	7.7	5.0
Hamilton Wentworth Detention Centre	16.0	3.0
Kenora Jail	13.0	4.0
Maplehurst Correctional Complex	9.2	4.0
Monteith Correctional Centre	5.7	3.0
Niagara Detention Centre	14.0	3.0
North Bay Jail	11.3	3.0
Ontario Correctional Institute	6.9	3.0
Ottawa-Carleton Detention Centre (adult)	25.8	9.0
Quinte Detention Centre	7.4	3.0
Regional Intermittent Centre	1.6	1.0
Sarnia Jail	4.2	3.0
South West Detention Centre	7.9	4.0
St. Lawrence Valley Treatment Centre	5.4	3.0
Stratford Jail	3.8	2.0
Sudbury Jail	15.6	4.0
Thunder Bay Correctional Centre	3.9	2.0
Thunder Bay Jail	18.3	5.0
Toronto East Detention Centre	15.3	5.0
Toronto South Detention Centre – Intermittent Centre	1.8	2.0
Toronto South Detention Centre	10.4	6.0
Vanier Centre for Women	5.2	2.0
Total Province	12.3	4.0

Source: Ministry of Community Safety and Correctional Services

Note:

* Figures based on releases from segregation. Figures based on unique segregation placements. Lengths calculated from Daily Segregation Reports and are subject to the limitations of its reporting practices at the institution level.

Appendix B – Ministry of Community Safety and Correctional Services Policies regarding segregation

Institutional Services Policies and Procedures Manual, Placement of Special Management Inmates



Institutional Services Policy and Procedures Manual

Release Date:

December 6, 2016

Section:

Inmate Management

Sub Section:

General Inmate Management

1. Purpose

- 1.1.1. This policy establishes guidelines for the placement of [special management inmates](#) and the provision of specialized care.

2. Staff Affected

- 2.1.1. All Institutional Services staff involved in the care, custody and control of special management inmates.

3.0 Policy

- 3.1 The policy of Correctional Services is to ensure:

- 3.1.1 Decisions regarding housing special management inmates are based on an individualized assessment of an inmate's needs and circumstances based on reliable information and verified criteria, not assumptions or impressionistic views about the level of risk their being housed with the [general population](#) may pose. The decisions will also be consistent with the principle of managing inmates in the least intrusive or with the lowest level of security possible, which fulfils Correctional Services' legislated mandate, provides for the needs of inmates who require specialized care, and ensures both the safety of all persons and the security of correctional institutions.

- 3.1.2** Acceptable living standards and humane treatment are always maintained, regardless of the reason(s) or purpose for the inmate's placement.
- 3.1.3** Segregation will not be used for inmates with [mental illness](#) and/or intellectual disability unless the Ministry can demonstrate and document that all other alternatives to segregation have been considered and rejected because they would cause an [undue hardship](#) (including for reasons related to health and safety concerns). Undue hardship may be reached sooner in an emergency situation where there is a real and immediate threat of serious harm or a security issue. If segregation is used as a temporary measure to respond to an emergency situation, this placement should be reassessed and alternatives explored as soon as possible after the immediate threat subsides.
- 3.1.4** All inmates including special management inmates are integrated into the general population to the fullest extent possible (where safety and security can be maintained). Where possible certain groups (e.g., sex offenders, inmates concerned about their safety, inmates with mental illness, inmates with intellectual disabilities, etc.) are to be placed in less restrictive areas taking into consideration other alternative placements (e.g., protective custody, special needs unit, etc.). Access to programs, rights and privileges will be the same, unless access would cause undue hardship.
- 3.1.5** Whenever possible and appropriate for non disciplinary placement of inmates (e.g., inmate has an intellectual disability or mental illness), protective custody and special needs units should be used as alternatives to segregation and implemented short of undue hardship. Placement decisions will consider the least possible interference with the inmate's personal freedom.

3.2 Human Rights Principles

All inmates, including special management inmates must be housed and treated in a manner that complies with the Ontario [Human Rights Code](#) (Code) obligation to provide services that are free from discrimination and harassment based on race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status and disability. This means that:

- 3.2.1** Decisions about housing placements and access to services, benefits, privileges and programs must be made on a case by case basis with full consideration given to the inmate's individual needs and circumstances, including Code related factors that may cause them to be adversely impacted by segregation or limitations on access to services (e.g.,

mental illness, blindness, deafness, intellectual disability). Where [mental illness](#) is involved, this should include consultation with a [mental health provider](#). If a mental health provider is not available in a timely manner, other clinical staff may be consulted. This should not preclude further consultation with a mental health provider as soon as possible.

- 3.2.2** No inmate will be subjected to more frequent or prolonged periods in segregation or denied access to services, benefits, privileges and programs because of assumptions, stereotypes or reasons related to Code related factors (e.g., because they require an assistive device, because of their gender identity or mental illness, etc.).
- 3.2.3** Where an inmate has Code related needs which may impact their ability to communicate, understand and/or participate in mental health assessments, segregation placement and review processes (e.g., language barrier, difficulty gathering or articulating thoughts due to a mental illness, etc.), these needs will be accommodated short of undue hardship. Possible accommodations may include support persons (e.g., mental health case worker, social worker, etc.), sign language interpreters, translators, communication supports or alternate formats. See [Interpreter Services](#) and [MCSCS Accessibility](#).
- a. If accommodations are required, it is to be documented on the Segregation Decision/Review Form or Occurrence Report, if additional space is required.
 - b. Where accommodations are not provided, the reason that the accommodations amount to undue hardship is to be documented.
- 3.2.4** Inmates will be housed within the general population, where possible. Where a relevant Code related factor is present (see [3.2](#)), alternatives to housing outside of the general population must be considered and only rejected where it is determined that they would amount to undue hardship. Where appropriate and necessary, the exploration of alternatives should include consultation with a medical health provider and/or clinical staff.
- 3.2.5** Where an inmate would be adversely impacted by segregation due to a Code related factor but there are health and safety risks associated with housing them in the general population, all possible efforts must be made to minimize the risk prior to exploring segregation.
- 3.2.6** Where an inmate is housed outside of the general population, any Code related needs will continue to be accommodated short of undue hardship. Accommodations will be regularly reviewed as part of the review process to ensure their adequacy.

3.2.7 When a mental illness is identified or suspected (see [Institutional Response to Mental Health Needs](#) flow chart in 8.0 for screening process), decisions in respect to the placement and management of the inmate (including risk assessment, alternatives and integration strategies, accommodations) must be made in consultation with a physician or psychiatrist (as appropriate). Where a physician or psychiatrist (as appropriate) is not available in a timely manner, other mental health providers or clinical staff may be consulted. This should not preclude further consultation with a physician or psychiatrist (as appropriate) as soon as possible and in conjunction with a Care Plan and/or Treatment Plan.

- a. Where it is determined it is not possible to house the inmate in the general population or in an alternative, less restrictive areas, without causing undue hardship, the rationale for the placement (segregation placement) and details regarding the alternatives considered and why they amount to undue hardship must be documented on the Segregation Decision/Review Form or Occurrence Report, if additional space is required. Steps taken to integrate the inmate and maximize their contact with other inmates must also be documented.
- b. Where an inmate is placed in segregation and there is a Code related factor present which causes the inmate to be adversely impacted by this housing arrangement or by access to a particular service, benefit, privilege or program, this factor must be documented and reviewed as part of the [24 hour, 5 day and 30 day reviews](#). Any changes to the inmate's Code related needs during this time period must also be considered and documented. Any accommodations that an inmate was receiving will be regularly reviewed and will not be disrupted by changes in housing.

4.0 Definitions

4.1 Administrative Segregation: The separation of an inmate (placement in segregation) from the general population (including protective custody, special needs unit(s), etc.) where the continued presence of the inmate in the general population would pose a threat to the health or safety of any person, to property, or to the security or orderly operation of the institution. This is restricted to inmates:

- 4.1.1** in need of protection;
- 4.1.2** who must be segregated to protect the security of the institution or the safety of other inmates;
- 4.1.3** who are alleged to have committed a misconduct of a serious nature, or
- 4.1.4** who request to be placed in segregation.

- 4.2 Care Plan:** A Care Plan is a written document that guides a consistent approach for inter professional team members on how to meet care goals and support needs. Care Plans are dynamic documents and are updated as needs of an inmate evolve over time. Inter professional team members (e.g., correctional staff, program staff, mental health providers, native inmate liaison officer, social workers, community outreach, etc.) work collaboratively to develop the Care Plan. Included as part of the plan are:
- 4.2.1** management and care specific to the inmate;
 - 4.2.2** strategies on managing behavioural issues (i.e., identification of triggers, de escalation techniques);
 - 4.2.3** living unit options and progression (which unit the inmate will be placed or housed in);
 - 4.2.4** interventions/ therapeutic options (e.g., access to worship room, arts/crafts, physical activity, reading/writing, relaxation/meditation, sensory stimulus, supportive conversation/engagement, etc.);
 - 4.2.5** observed behaviour;
 - 4.2.6** Human Rights Code needs (including accommodations and specific cultural considerations (i.e., Aboriginal, religious, etc.));
 - 4.2.7** programs and services;
 - 4.2.8** dietary needs;
 - 4.2.9** discharge planning/preparedness (linking to community services);
 - 4.2.10** any security measures recommended to mitigate risk; and
 - 4.2.11** frequency of review and update.
- 4.3 Clinical Staff:** Includes nurses, physicians, psychiatrists, psychologists, social workers and any other health professionals responsible for conducting clinical assessments.
- 4.4 Close Confinement:** The separation of an inmate (placement in segregation) from the general population (including protective custody, special needs unit(s), etc.) where it has been determined as the result of a disciplinary proceeding that the inmate has committed a misconduct of a serious nature.
- 4.5 Duty to Accommodate Short of Undue Hardship:** Correctional Services has a legal obligation under the Ontario [Human Rights Code](#) (Code) to accommodate inmates'

Code related needs, short of undue hardship (see 8.0 for [undue hardship](#) information).

4.5.1 This means providing accommodation that:

- a. most respects the dignity and individual needs of the inmate; and
- b. allows inmates to maximize their participation in services.

Note: Efforts will be made to anticipate barriers faced by individuals with Code related needs and proactively address those needs.

4.5.2 Undue hardship is a legal test to describe the extent to which an organization must accommodate these needs. When assessing limits to the duty to accommodate (i.e., how far the organization should go to accommodate), the only factors that can be considered are:

- a. Costs (including outside sources of funding); and/or
- b. health and safety risks (includes inmate, staff, anyone else at the institution).

4.5.3 Undue hardship is a high standard and must be supported by real, direct and objective evidence. The authority to decide that an accommodation cannot be provided because it would result in undue hardship rests with the regional director or designate. The superintendent or designate will contact the regional director or designate who will consult with appropriate corporate supports (e.g., the Client Conflict Resolution Unit, Strategic Projects Unit, Corporate Health Care, Legal Services Branch, etc.) as needed, if they believe that accommodating an inmate's Human Rights Code related need could result in undue hardship.

4.6 **General Population:** Refers to the group of inmates that do not require specific placement or special housing location for treatment such as segregation (e.g., medical isolation), protective custody, suicide watch or special needs units.

4.7 **Inmate Submission:** An inmate in segregation is afforded an opportunity to offer information either in person or in writing to the superintendent or designate in response to being placed in segregation (afforded an opportunity during the initial 5 day and every 30 day review, however inmate may make a submission at any time while housed in segregation). It is an opportunity to tell the inmate's side of the story, in response to the reasons given for segregation.

4.8 **Inter Professional Team:** The team is comprised of different professions and occupations with varied and specialized knowledge, skills and methods. Inter professional teams communicate and work collaboratively, as colleagues to provide quality, individualized care. A team may be comprised of mental health

provider(s), clinical staff, correctional staff, program staff (classification officer, rehabilitative officer, etc.), native inmate liaison officer(s), the inmate and any other relevant staff.

- 4.9 Medical Isolation:** The isolation (segregation) of an inmate for health care purposes (e.g., to prevent the spread of infection).
- 4.10 Mental Health Provider:** Refers to individuals who provide mental health services and assessments (see [Institutional Response to Mental Health Needs](#) flow chart in 8.0 for screening process). Mental health providers are individuals who have specialized training in mental health care. Examples include, psychologists, mental health nurses, psychiatrists, social workers, and psychometrists (with mental health training psychometrists may also conduct assessments where appropriate and with appropriate supervision).
- 4.11 Mental Illness:** For the purposes of this policy, mental illness describes an individual who is experiencing and displaying symptoms of alteration in mood, thought or behaviour resulting in distress and/or some degree of impaired functioning. Mental illness in this context may be accompanied by a diagnosis, but a diagnosis would not necessarily be required. Other professionals may use other terminology such as mental disorder, mental disability or mental health issues which can evolve over time.
- 4.12 Protective Custody:** The separation of an inmate from the general population where the inmate requests or requires protection from other inmates. These inmates are housed in a separate unit from those inmates housed in general population.
- 4.13 Segregation:** An area (for [administrative segregation](#) or [close confinement](#) housing, inmates are confined to their cells, limited social interaction, supervised/restricted privileges and programs, etc.) designated for the placement of inmates who are to be housed separate from the general population (including protective custody, special needs unit(s), etc.).
- 4.14 Special Management Inmate:** An inmate who requires special care services, including physical, mental and social care (i.e., those whose behaviour or potential behaviour could be harmful to the inmate or others which may require minimal contact with other inmates). Examples of special management inmates are:
- 4.14.1** a suicide risk;
 - 4.14.2** some health conditions, such as inmates with communicable disease, immune compromised health status, or a history of serious substance use and/or exhibiting symptoms of drug or alcohol withdrawal requiring close monitoring;

- 4.14.3 intellectual disabilities and mental illness where social and/or cognitive functioning increases an inmate's vulnerability to threats from other inmates;
- 4.14.4 a disability or condition(s), which requires an assistive device (e.g., prosthetic, orthotic or orthopedic, devices for inmates who are blind or partially sighted or hard of hearing and/or deaf, etc.) which cannot be accommodated in general population short of undue hardship (see Human Rights subsections [3.2.1](#) and [3.2.2](#));
- 4.14.5 a management or security risk (e.g., an inmate with a history of misconducts of a serious nature or who otherwise presents a high risk to self or others);
- 4.14.6 an inmate requiring protective custody (e.g., known enemies in the institution, notorious or heinous offence, a known informant, crown witness, etc.);
- 4.14.7 an inmate involved in the investigation of a criminal offence (e.g., inmate on inmate assault, gang related activities, etc.);
- 4.14.8 an inmate involved in an alleged misconduct of a serious nature;
- 4.14.9 an inmate who has committed a misconduct of a serious nature; and
- 4.14.10 any other observation or concern that may require a special management strategy (e.g., [Admission, Classification and Placement of Trans Inmates](#)).

4.15 Special Needs: Service provision and programming for special needs inmates is based on their current need(s) and not solely on meeting the definition criteria. Wherever possible, these inmates should be integrated into the general population. An assessment of an inmate as having special needs should include consultation with mental health providers and/or clinical staff (as appropriate). An inmate with a special need meets one or more of the following criteria:

- 4.15.1 presentation of a severe and/or persistent mental illness (e.g., schizophrenia, affected disorder, organic brain syndrome, borderline personality disorder, dementia, etc.);
- 4.15.2 an intellectual disability; and/or
- 4.15.3 a significant physical disability (e.g., restricted mobility, deaf, blind, etc.).

4.16 Special Needs Unit: By design, the dedicated or allocated physical location of a Special Needs Unit(s) used to assess, stabilize, treat and house special needs inmates considers the:

- 4.16.1** safety and security of the inmate;
- 4.16.2** protection of the inmate's mental and physical wellbeing;
- 4.16.3** ability of the inmate to function within the general population;
- 4.16.4** ability to execute and carry out individualized inmate plans (e.g., Treatment Plan, Care Plan for inmates with mental illness, etc.); and
- 4.16.5** access and availability of services, programs and focused resources to address unique or complex needs of special needs inmates (e.g., trained specific staff, enhanced clinical staff support and/or mental health provider support if inmate has a mental illness, etc.).

4.17 Treatment Plan: The Treatment Plan is a written document which outlines the medical strategies and treatment goals for a patient. A psychiatrist (or physician) and other mental health provider(s) will work collaboratively with other clinical staff to develop a Treatment Plan for those inmates with a mental illness, to provide mental health services that are specific to the inmate on an ongoing basis.

5.0 Responsibilities

5.1 The regional directors or designates ensure that:

- 5.1.1** they consult with the Strategic Projects Unit (SPU), Client Conflict Resolution Unit (CCRU), Corporate Health Care and Legal Services Branch (LSB) if they believe that accommodating an inmate's Code related need could result in undue hardship;
- 5.1.2** where an inmate has been in segregation for 30 continuous days (including if released on the 30th day), a 30 day segregation review is conducted and the decisions documented (on the Segregation Decision/Review Form) and conveyed to the superintendent for action if required (see [6.6.4 b](#));
- 5.1.3** where an inmate has been in segregation for 30 continuous days (including if released on the 30th day), a Regional 30 Day Segregation Report is completed and forwarded to the ADM IS (to be reported to the Deputy Minister); and
- 5.1.4** where an inmate has been in segregation for 60 aggregate days in one year (from the date inmate was first admitted to segregation), the ADM

IS is notified and then again every subsequent 30 aggregate days thereafter (inmate housed in segregation). Notification will indicate if a mental illness or another Code related factor is present.

5.2 The superintendent or designate ensures that:

- 5.2.1** staff are compliant with this policy;
- 5.2.2** staff are aware of and meet the duty to accommodate an inmate's Code related needs (see [3.2](#));
- 5.2.3** they consult with the regional director or designate if they believe that accommodating an inmate's Code related need could result in undue hardship;
- 5.2.4** Standing Orders include designation of staff that are permitted to investigate, adjudicate and conduct reviews (e.g., operating manager, deputy superintendent etc., who were not directly involved as witnesses or victims in any particular misconduct matter);
- 5.2.5** Standing Orders include designation of staff that are to be part of the inter professional teams and leads for Care Plans;
- 5.2.6** segregation reviews (e.g., 24 hour, 5 day and 30 day reviews) are conducted and the Segregation Decision/Review Forms are completed for each review phase;
- 5.2.7** all inmates placed in segregation are proactively offered access to the Inmate Information Guide and provided with a version of the Segregation Handout information sheet in a format they can understand/access (i.e., this may require Code accommodation) which will be documented on the Segregation Decision/Review Form;
- 5.2.8** all inmate placement decisions involving inmates with disabilities (including mental illness) related to medical isolation are done in consultation with clinical staff and/or mental health provider;

5.3 The operating manager ensures that:

- 5.3.1** required documentation is completed and submitted (e.g., Inmate Incident Report (IIR) if required, Occurrence Reports, Use of Force (UoF) Occurrence Reports where appropriate, Misconduct Reports, Segregation Decision/Review Forms, etc.);
- 5.3.2** a comprehensive compatibility assessment is completed whenever more than one inmate occupies a segregation cell;

- 5.3.3 segregation reviews are conducted as per policy; and
- 5.3.4 alternative placement options and management strategies (including measures to maximize integration and full participation) have been explored prior to placing an inmate outside of the general population (particularly where Code related factors are present, see Human Rights subsection [3.2.4](#)). In addition, the alternatives considered and the reasons for rejecting them (because of undue hardship) will be documented.

5.4 The correctional staff ensures that:

- 5.4.1 they complete and submit the required documentation (e.g., Occurrence Report, Misconduct Report, Observation Report Form, etc.);
- 5.4.2 log books and duty notebooks are completed reflecting information that can be used by an inter professional team;
- 5.4.3 they consult with a manager regarding alternative placement options and other strategies (including measures to maximize integration and full participation) before placing an inmate in any other area that is not general population (particularly where Code related factors are present, see [Human Rights Principles](#) section); and
- 5.4.4 where a Care Plan exists, they review it during each shift

6.0 Procedures

This policy is read in conjunction with the text in the Institutional Services Policy and Procedures Manual entitled [Suicide Prevention](#), [Use of Force \(UoF\)](#), [Discipline and Misconduct](#), [Report Writing](#) and any other applicable policy.

Important information regarding special management inmates may be contained in correctional files (e.g., inmate files, Offender Tracking Information System (OTIS), logbooks, duty notebooks, classification records, medical files, Misconduct Reports, etc.), or obtained from police, probation officers, court records, professional personnel, relatives, friends, other inmates, and the observations of employees and the inmate. Health privacy legislation ([Freedom of Information and Protection of Privacy Act](#) and [Personal Health Information Protection Act](#)) provides parameters around who can access health information and in what circumstances. Inmates must be advised of any limitations or restrictions that may apply for access to programs, services and entitlements (subject to Code related needs, see [Human Rights Principles](#) section) when placed in the areas below (see [6.2](#)). For inmates who require Code related accommodations in order to understand this information see Human Rights subsection [3.2.3](#).

- 6.1 As far as practicable, inmates housed in the areas identified in [6.2](#) will be provided the same conditions of confinement, rights and privileges as inmates in general

population (subject to Code related needs, see [Human Rights Principles](#) section). These include, but are not limited to:

- 6.1.1** accommodations for Human Rights Code related needs;
- 6.1.2** administrative and health care services;
- 6.1.3** access to mental health provider and mental health care services for those with mental illness;
- 6.1.4** visiting and correspondence;
- 6.1.5** access to telephone services;
- 6.1.6** amounts of personal property;
- 6.1.7** clothing and bedding. For safety or security reasons, protective clothing and bedding may be substituted;
- 6.1.8** personal hygiene facilities, including opportunities to shave and shower (i.e., a minimum of twice per week where access to shower facilities is extremely limited). For safety or security reasons, in consultation with health care (if applicable), a retrievable kit may be issued when:
 - a. the use of hygiene products may require direct supervision; or
 - b. other restrictions if safety or security concerns exist.
- 6.1.9** regular meal service. Where appropriate, disposable utensils may be used;
- 6.1.10** canteen privileges;
- 6.1.11** access to institutional library materials;
- 6.1.12** access to legal materials and legal services;
- 6.1.13** fresh air (the duration of fresh air offered to inmates in segregation units will not be less than 20 minutes each day);
- 6.1.14** institutional programs or, where access is necessarily restricted, visits by program staff on completion of an Inmate Request Form (subject to Human Rights subsection [3.2.3](#)); and
- 6.1.15** access to television and to wireless headphones, if feasible, to be determined by the superintendent or designate. If approved,

procedures for recording, issuing and collecting of the wireless headphones are to be included in the Standing Orders.

6.2 Based on a comprehensive review of each individual case, special management inmates may be housed in one of the following areas:

6.2.1 Protective Custody

- a. The authority to place an inmate in protective custody resides with the superintendent or designate.
- b. There must be a definite risk to the safety of the inmate prior to placing an inmate in protective custody. A review must be conducted to confirm that the inmate has protective needs and that the risks cannot be mitigated (e.g., with increased supervision, with firm administrative action and vigilant and resourceful staff). Each case must be considered individually on its own merits (where Code related factors are present see Human Rights subsections [3.2.1](#) and [3.2.3](#)). Where applicable, the following factors are considered:
 - i. documented file evidence of incompatibility;
 - ii. information from external sources that an inmate's safety may be in jeopardy;
 - iii. a notorious or high profile offence that is known to other inmates or has been reported in the media;
 - iv. inmate's own request;
 - v. non communication order or non association order (e.g., accused or witness, etc.);
 - vi. likelihood that other inmates are aware of, or may become aware of a particular inmate's circumstances (e.g., previous convictions, past protective custody placement, etc.);
 - vii. past placement during previous period(s) of incarceration;
 - viii. length of time since last period of incarceration;
 - ix. location of institution of previous protective custody placement;
 - x. staff observations or reports of threats, harassment or intimidation;
 - xi. reports by other inmates, spiritual care provider, family members, etc., that the inmate is being or has been threatened, harassed or assaulted;
 - xii. willingness of the inmate to identify aggressors;
 - xiii. a characteristic, condition or a disability that may render an inmate vulnerable or place the inmate at risk (e.g., mental illness or intellectual disability, gender identity, etc.), (see Human Rights subsection [3.2.4](#));
 - xiv. history of being assaulted or victimized by other inmates;
 - xv. staff familiarity with the inmate;
 - xvi. the inmate is employed in the criminal justice system or is a known informant or witness; and

- xvii. other information that may contribute to a fair determination of the case.
- c. A goal of the institution's protective custody program is to return protective custody inmates to the general population wherever possible. Protective custody should only be used as a last resort and if all alternative management strategies and interventions have been explored. This is particularly important where Code related factors are present (see Human Rights subsections [3.2.1](#), [3.2.3](#) and [3.2.4](#)). Where mental illness is present, therapeutic alternatives must be considered in consultation with a mental health provider(s). Possible alternative management strategies may include:
- i. For aggressors:
 - segregation or transfer of aggressors to other units or institutions;
 - use of the inmate discipline process;
 - program reassignment;
 - lock down of the unit to identify and deal with aggressors; and
 - institutional programs emphasizing positive interpersonal relations, communication skills and social awareness (e.g., counselling).
 - ii. For potential protective custody inmates:
 - counselling to improve peer relations;
 - maintenance of the inmate's general population status by assignment to another living unit;
 - transfer to the general population in another institution;
 - temporary living unit reassignment, program reassignment or segregation until the risk has passed; and
 - conflict resolution involving protective custody candidates, peers and aggressors.
- d. A review of the inmate's protective needs, including any information received by the inmate (subject to Human Rights subsection [3.2.3](#)) along with an explanation of the alternatives and management strategies (to maximize integration with general population) considered and the reasons for rejecting them must be documented on the Protective Custody Decision/Review Form and/or on an Occurrence Report if additional space is required. Where Code related needs are concerned, the alternatives and the management strategies must only be rejected if it is determined that they cannot be implemented short of undue hardship.
- e. Pending the outcome of an inmate review, it may be necessary to place the inmate in segregation or in another neutral location where the inmate is protected (e.g., a different cell or living unit, a special needs unit or an area designated for the purpose of protective custody). This placement should be reassessed and alternatives implemented as soon as the review is complete.

- f. When an inmate is placed in protective custody, the superintendent or designate, will explain to the inmate that some benefits, privileges and programs provided to general population inmates may not be available due to available resources or where access would undermine the reason for placement in protective custody. However, any accommodation already being provided will not be disrupted (also see [6.1.1](#) to [6.1.12](#) and [6.1.15](#) and Human Rights subsection [3.2.6](#)).
- g. If an inmate requests to be removed from protective custody and returned to the general population, a Release from Protective Custody Form is completed to reflect the inmate's decision. When completing the form, it is imperative that the superintendent or designate clearly explain the potential consequences of the request to the inmate. For inmates who require assistance in order to understand this information and the placement process see Human Rights subsection [3.2.3](#).
- h. If the inmate is in protective custody on an involuntary basis for their own protection, the superintendent or designate will review the full circumstances of the case, provide the inmate an opportunity to speak to staff about their circumstances and record the information on the reverse of the Protective Custody Decision/Review Form. For inmates who require assistance in order to understand this information and the placement process see Human Rights subsection [3.2.3](#).

6.2.2 Special Needs Units

- a. When making special needs unit determinations each case is considered individually on its own merits (subject to Human Rights subsection [3.2.1](#), [3.2.3](#) and [3.2.4](#)) based on consultations with clinical staff and/or mental health providers (as appropriate).
- b. Clothing and bedding must never be withheld from an inmate in a special needs unit except under the direction of clinical staff for medical reasons, mental health provider for psychiatric reasons or under the direction of the superintendent or designate for safety reasons (e.g., attempting self harm, destruction of property, where risk cannot be mitigated and undue hardship has been determined, see Human Rights subsection [3.2.3](#), [3.2.4](#) and also see [Suicide Prevention](#) policy). If a special management inmate who requires specialized care is destroying property or exhibiting other seriously negative behaviour, clinical staff (or mental health provider if inmate has a mental illness) will be consulted with respect to options for treatment management and assessment of existence and /or appropriateness of Code related accommodations in place.
- c. Every attempt will be made to transfer special management inmates who require special needs to other institutions as soon as it is practical to do so when:

- i. a correctional institution is temporarily unable to have a special needs unit (e.g., during times of high inmate counts or because of a construction project);
 - ii. the facility does not have a special needs unit; or
 - iii. another correctional institution can offer the inmate better quality of life (e.g., access to programs, services, etc.).
- d. If an institution does not have the capacity or no other reasonable alternative for a special needs inmate than using a segregation area, a review of the inmate's needs is required and a [Care Plan](#) or [Treatment Plan](#) (for inmates with a mental illness) is required by a mental health provider in consultation with the inter professional team members. In these instances (temporary and prolonged use), decisions must be clearly documented as to why this location is being used in absence of a special needs unit and indicate measures taken to promote integration, accommodate the inmate's needs and provide them with access to the same rights and privileges afforded the general population (to the degree possible subject to the [Human Rights Principles](#) section).

6.2.3 Administrative Segregation

If segregation is the only viable option, efforts to integrate the inmate into the general population as much as possible (including access to a day room, programming, etc.) must be implemented short of undue hardship.

All inmates placed in segregation are proactively offered access to the [Inmate Information Guide](#) and provided with a version of the [Segregation Handout](#) information sheet in a format they can understand/access (i.e., this may require Code accommodation) which will be documented on the Segregation Decision/Review Form.

- a. When making segregation determinations each case is considered individually on its own merits (subject to Human Rights subsection [3.2.1](#), [3.2.3](#) and [3.2.4](#)). Factors to be considered see [6.2.1 b, i to xvii](#).
- b. An inmate will only be placed in administrative segregation when (see reasons listed in [4.1.1](#) to [4.1.4](#)).
- c. When an inmate with mental illness is placed in segregation (see [Institutional Response to Mental Health Needs](#) flow chart in 8.0):
 - I. a physician will conduct a baseline assessment (as soon as possible) to evaluate treatment and care requirements and to determine what, if any, changes are required to the inmate's existing Treatment Plan and/or Care Plan (in consultation with mental health providers and other clinical staff and inter professional team).
 - II. the psychiatrist will conduct a baseline assessment for inmate's with mental illness when referred by the physician, to evaluate treatment

requirements and to determine what, if any, changes are required to the inmate's existing Treatment Plan with the assistance of other mental health provider(s) and/or clinical staff.

- III. a mental health provider will review an inmate with mental illness at a minimum every 24 hours. When a mental health provider is not available, another clinical staff may review the inmate and will follow up with a mental health provider as soon as possible.
 - IV. further to the minimum review of every 24 hours, for inmates with a mental illness, a physician or psychiatrist (as appropriate) will assess the inmate's mental illness with the assistance of other mental health providers and/or clinical staff (inter professional team if appropriate), prior to each 5 day segregation review to determine if any changes are required to the inmate's Treatment Plan and/or Care Plan.
 - V. clinical information will be documented in the Health Care file and the Treatment Plan. Operational recommendations (e.g., triggers, therapeutic alternatives, de-escalation techniques, etc.) will be documented in the Care Plan and shared with front line staff. Identified members of the inter professional team will assist in creation/updating of the inmate's Care Plan on an on going basis.
 - VI. inmates in segregation may also have other Code related needs (e.g., pregnancy, etc.) which may require special monitoring or accommodations.
 - VII. the care process (assessments/reviews) for placing inmates with mental illness in segregation including responsible staff list is to be placed in Standing Orders. Medical care in Ontario correctional facilities requires the consent of an inmate.
- d. An inmate on suicide watch or exhibiting self harming behaviour must not be placed in the same segregation cell with another inmate (see [Suicide Prevention](#)) under any circumstances.

6.2.4 Close Confinement

See [6.2.3](#)

- a. If the superintendent or designate determines that the inmate has committed a serious misconduct, the inmate may be placed in segregation on close confinement (subject to [Human Rights Principles](#) section).
- b. When an inmate with mental illness is placed in segregation on close confinement, the inmate will be assessed by a physician or psychiatrist (as appropriate, see [6.2.3 c, i to vii](#)).
- c. Inmates placed on close confinement will be afforded the same conditions of confinement, rights and privileges as inmates in general population (see

6.1). However, the following discretionary exceptions may apply (consider Code factors prior to implementing):

- I. telephone privileges may be restricted to calls to a lawyer or other person acting in an official capacity on behalf of the inmate in a legal proceeding;
- II. the inmate's bedding may be removed for a reasonable period of time each day but not during regular inmate sleeping hours;
- III. with the exception of personal hygiene items, excessive personal property will normally be placed in safekeeping;
- IV. canteen privileges may be suspended when imposed as part of the misconduct disposition;
- V. access to reading materials may be restricted to legal materials or other items which are designed to assist in the inmate's rehabilitation and normal functioning; and
- VI. the duration of fresh air offered to inmates in close confinement may be restricted to not less than 20 minutes each day.

6.2.5 Medical Isolation

- a. Clinical staff can request that an inmate to be placed in medical isolation for the purpose of treatment to protect the health and safety of the inmate or to prevent the spread of disease.
- b. The superintendent or designate, in consultation with clinical staff, will continue to be responsible for decisions regarding the use of segregation cells (i.e., administrative segregation) to isolate inmates for medical reasons.
- c. Inmates who have been placed in segregation for medical purposes may only be placed in a cell with another inmate if approved by clinical staff and if there are no security related compatibility concerns.

6.3 Health Care Assessment of Segregated Inmates

6.3.1 Whenever possible, clinical staff will perform assessment both before an inmate is admitted to segregation and upon the release of the inmate from segregation. Upon review, clinical staff (mental health provider for inmates with mental illness) can recommend other therapeutic alternatives (e.g., access to quiet room, access to worship room, arts/crafts, physical activity, reading/writing, relaxation/meditation, sensory stimulus, supportive conversation/engagement, etc.) for consideration as alternatives to segregation or as mitigation strategies.

6.3.2 In situations where the inmate poses an immediate threat to the security or safety of the institution and needs to be removed prior to

being seen by clinical staff, the health care assessment is conducted as soon as possible after the inmate has been admitted to segregation.

- 6.3.3** In situations where clinical staff are unavailable, the assessment is conducted as soon as possible after the inmate has been placed into segregation (see [6.3.6](#)).
- 6.3.4** Monitoring by a mental health provider is required when an inmate is placed in segregation and has or is suspected to have a mental illness (see [6.2.3 c, i to vii](#)), intellectual disability or other Code related need (if required).
- 6.3.5** When force is necessary to bring a rebellious or disturbed inmate under control while being placed in segregation or while in segregation, the operating manager will ensure that clinical staff are immediately notified and an Accident/Injury Report is initiated (see [Use of Force](#)).
- 6.3.6** If clinical staff are not immediately available and it appears that the inmate has sustained an injury warranting medical attention the inmate will be taken to a community hospital. If it can reasonably be determined that an injury does not require immediate medical attention, an Accident/Injury Report is completed (see [Report Writing](#)) and the inmate will be assessed by clinical staff as soon as possible.

6.4 Placing Segregated Inmates Together

- 6.4.1** Placement of two inmates in the same segregation cell will only be considered as a last resort when no alternative placement is available (unless this is to promote integration and minimize isolation). The operating manager will conduct a comprehensive [compatibility assessment](#) before inmates in segregation are placed in the same cell.
- 6.4.2** If a shortage of segregation cells necessitates placing inmates together:
 - a. the inmates must first be assessed for compatibility
 - b. the inmates must be strictly monitored in accordance with the text below (see 6.5);
 - c. inmates with mental illness are not to be placed in a segregation cell with another inmate unless recommended by a mental health provider and approved by the superintendent or designate. If so, rationale will be clearly documented in the Segregation Decision/Review Form; and
- 6.4.3** When inmates in segregation are housed together the Segregation Compatibility Assessment Form (Institution Templates - Operations - Segregation Compatibility Assessment Form) must be completed.

6.4.4 Compatibility Assessment

- a. The compatibility assessment and documentation will be particularly thorough and observation of the inmates will be conducted at a minimum every 20 minutes.
- b. The compatibility assessment is done by the operating manager who:
 - i. completes the Segregation Compatibility Assessment Form and places a copy on each inmate's file;
 - ii. consults with correctional staff currently supervising the inmates;
 - iii. consults with where practicable and where available, the clinical staff when determining inmate compatibility;
 - iv. consults with, where practicable and where available, the classification staff, social worker(s), spiritual care provider(s), other clinical staff and/or mental health provider, etc., when determining inmate compatibility; and
 - v. will interview the inmate separately to identify if there are factors or issues that might preclude placing them together (e.g., a previous dispute in the institution or community, or a dispute between friends or associates).

Note: No inmate will be housed with another inmate in segregation or in medical isolation while under the influence of alcohol or a non prescribed drug.

- c. A full review of each inmate's institutional and OTIS file will be conducted paying particular attention to:
 - i. the OTIS screens for Alerts, Gangs and Non Association;
 - ii. the most recent LSI OR, Classification documentation;
 - iii. the inmate's legal status (e.g., sentenced, on remand, federal inmate, immigration hold, etc.);
 - iv. the inmate's criminal and correctional history (i.e., previous pattern of assault, predatory behaviour or victimization, particularly while incarcerated);
 - v. particulars of the current offences(s);
 - vi. the presentence report (if available); and
 - vii. other factors and information that are relevant to the individual compatibility (e.g., gender identity, psychiatric history, presence of mental illness, language, etc.).

6.5 Monitoring Segregation and Special Needs Units

- 6.5.1 This text should be read in conjunction with [Video Monitoring of Segregation and Close Confinement Cells](#), and [Suicide Prevention](#).

6.5.2 In addition to the supervision by unit officers, senior administration, on a regular basis must also conduct monitoring/checks of segregation and special needs units.

- a) These monitoring/checks enable senior officials to observe and evaluate conditions of confinement and discuss individual problems with confined inmates.
- b) A member of the senior administration will visit inmates in these units at least once in every three day period.

6.5.3 The operating manager and clinical staff (i.e., nurse) and/or mental health provider will visit the inmate daily, and by program staff upon completion of a written request by the inmate.

6.5.4 The officer on duty maintains a permanent log record of the unit. The record includes:

- a) all admissions and releases, including the cell number, date, time, reasons and authorizing official;
- b) all activities and visitors;
- c) all patrols of the unit;
- d) observations of unusual or inappropriate behaviour will be:
 - i. brought to the attention of the appropriate personnel;
 - ii. include any actions taken; and
 - iii. documentation submitted (e.g., Occurrence Report to operating manager).
- e) any other information (e.g., inmate comments) or observations that may be helpful to senior officials or officers on future shifts (also see [Institution Logs](#)).

6.5.5 In addition, a separate and individualized record (see Report Writing - [6.5 Observation Forms](#)) must be maintained for each inmate in segregation, or similar cell (e.g., medical isolation).

- a. Staff are to look into each cell and record the inmate's behaviour each time the area is checked, detailing what the inmate is doing on the Observation Report Form (Institution Templates - Operations - Dual - Observation Report).
- b. The record (i.e., Observation Report Form) is placed on or in very close proximity to the cell entrance and covered to prevent unauthorized persons from reading the entries.
- c. Segregation areas and areas containing inmates who require specialized care will be patrolled at least 3 times each hour at intervals no more than 20 minutes apart (see [Occupied and Unoccupied Areas](#)).

- d. Patrols may be conducted more frequently if directed by the superintendent or designate (see [Occupied and Unoccupied Areas](#) and [Suicide Prevention](#)).

6.6 Reviews of Inmates in Segregation

(or other area designated as an extension of segregation)

The review process is to ensure not only the wellbeing of the inmate, but also procedural fairness. It should encourage ongoing communication (i.e., verbal or written) with the inmate while in segregation. The inmate will be provided with the reasons for segregation. The inmate must know the case to meet to be released from segregation and be given opportunities to respond. These opportunities ensure that the inmate's side of the story is heard. The inmate's response is acknowledged by providing a follow up response that includes reasons for continued segregation, if that is the case. Some inmates may require assistance communicating, understanding and/or participating in the review process because of a Code related need, see Human Rights subsection [3.2.3](#). See sections below for details on the segregation decision and review process.

6.6.1 Initial Placement

When an inmate is placed in segregation, a Segregation Decision/Review Form is initiated by the superintendent or designate.

- a. The details of the segregation placement are documented on the Segregation Decision/Review Form.
- b. Examples of details include but are not limited to:
 - i. any Code related factors (e.g., mental illness, etc.) which may cause the inmate to be adversely impacted by segregation or which may require accommodation (review of Care Plan updated by mental health provider in consultation with clinical staff/inter professional team);
 - ii. other alternative placements considered at the time of the segregation placement and reasons for rejecting them to the point of undue hardship; and
 - iii. reasons for segregation.

6.6.2 24 Hour Review

- a. The superintendent or designate will conduct a preliminary review within 24 hours of an inmate being placed in segregation.
- b. The inmate must be advised by the superintendent or designate of the reasons and duration of the segregation and of any changes in these conditions. For inmates who require assistance to understand this information and/or the process, see Human Rights subsection [3.2.3](#).
- c. Other alternative placements considered at the time of the review (to consider alternative placements, including information about alternatives tried or which were rejected by the inmate), and reasons for rejecting them

to the point of undue hardship (where relevant Code related factors are present).

- d. The inmate is also advised of the right to make a submission to the superintendent or designate in writing or in person (accommodation may be required for Code related needs e.g., support worker, which may include a mental health case worker, etc.).
- e. The inmate's decision to make a submission is documented on the Segregation Decision/Review Form.
- f. If an inmate indicates they wish to make a submission in person, the interview must take place within five days of the inmate being placed in segregation and documented on the Segregation Decision/Review Form or on an Occurrence Report if additional space is required.
- g. Mental health provider assessments/Care Plans are to be reviewed (see [6.2.3 c, i to vii](#)).

6.6.3 5 Day Reviews

- a. The superintendent or designate will, within five days, review the full circumstances of the case, including any submission by the inmate, to determine whether the inmate's continued segregation is warranted.
- b. Prior to the initial 5 day review report being completed, the inmate is provided an opportunity to make a written submission or in person submission. Every subsequent 5 day review should include inmate in person comments and/or additional written submissions (if the inmate has provided/or has requested to provide a further submission). Some inmates may require assistance (e.g., from a support worker, which may include a mental health case worker, etc.) preparing a submission because of a Code related need (see Human Rights subsection [3.2.3](#)).
 - i. If it is a written submission, it is to be attached to the Segregation Decision/Review Form.
 - ii. If it is an in person submission, include a summary of the inmate's comments in the Segregation Decision/Review Form inmate comment section and on an Occurrence Report if additional space is required.
 - iii. An inmate can make a submission at any time throughout the time in segregation, either in person or in writing, if the inmate indicates the intention to do so (see [4.7](#)).
- c. Decisions to place or keep inmates in segregation will always be made on a case by case basis after a careful examination of the specific circumstances and any Code related factors which may apply (see [Human Rights Principles](#) section).
- d. Decisions to place or keep inmates in segregation will consider whether a Treatment Plan and /or Care Plan is in place that may assist the inmate in

leaving segregation (mental health provider and /or clinical staff assessment/Care Plan to be reviewed see [6.2.3 c, i to vii](#)).

- e. The superintendent or designate must review the circumstances of each inmate in segregation at least once every five days to determine if the continued placement is warranted.
- f. The details of the 5 day reviews are documented on the Segregation Decision/Review Form in superintendent or designate comment section and on an Occurrence Report if additional space is required. Examples of details include but are not limited to:
 - i. any Code related factors which may cause the inmate to be adversely impacted by segregation or which may require accommodation (review of Care Plan updated by mental health provider in consultation with clinical staff/inter professional team);
 - ii. other alternative placements considered at the time of the review (to consider alternative placements at every review including information about alternatives tried or which were rejected by the inmate), and reasons for rejecting them to the point of undue hardship (where relevant Code related factors are present);
 - iii. any new reasons for segregation;
 - iv. any inmate submissions;
 - v. steps taken to minimize the negative effects of segregation and to maximize integration and interaction with other inmates. These should be considered and documented at every review phase and implemented short of undue hardship (where relevant Code related factors are present);
 - vi. reasons for continued segregation;
 - vii. reason for release from segregation; and
- g. Information regarding when an inmate (with mental illness) was last seen by a mental health provider is to be recorded on the Segregation and Decision/Review Form.

6.6.4 30 Day Segregation Review

- a. The superintendent or designate will ensure:
 - i. a review of the reasons for continued segregation has been conducted when an inmate has been in segregation for a continuous period of 30 days (includes inmates released on the 30th day) see [6.6.3, c to g](#)
 - ii. when an inmate is in segregation for a continuous period of 30 days, the appropriate section (in superintendent or designate's comments section) of the Segregation Decision/Review Form and Occurrence Report if additional space is required, is completed and submitted to the regional director or designate within 3 business days of the inmate's 30th day in segregation.

- iii. before the report is completed, the inmate is provided an opportunity to make a written or an in person submission during the interview with the superintendent or designate (see [3.2.3](#)).
 - If it is a written submission, it is to be attached to the Segregation Decision/Review Form.
 - If it is an in person submission, include summary of inmate's comments in the Segregation Decision/Review Form inmate comment section or an Occurrence Report if additional space is required.
 - iv. if no inmates have been in segregation for 30 days during a calendar month, the superintendent or designate will submit a nil report via email to the regional director or designate by the 15th day of the following month.
- b. The regional director or designate will ensure:
- i. the Segregation Decision/Review Form and related Occurrence Report(s) are reviewed and any concerns are discussed with the superintendent or designate.
 - ii. the details of the 30 day reviews are documented on the Segregation Decision/Review Form (in regional director or designate comment section) or on a report if additional space is required. Details include but are not limited to:
 - the reason for continued segregation;
 - any Code related factors which may cause the inmate to be adversely impacted by segregation or which may require accommodation (see Human Rights section);
 - any Code considerations applied that relate to the inmate's need (e.g., provision for a translator or interpreter assistance, etc.);
 - what alternatives have been offered and rejected by the inmate; what alternatives and accommodations to maximize integration have been considered and rejected by the superintendent or designate and explain why they amount to undue hardship;
 - information related to being seen by clinical staff and/or mental health provider;
 - information of suspected or known mental illness;
 - information related to assessments completed by mental health provider if the inmate has suspected or known mental illness;
 - information related to the completion of subsequent 5 day needs assessments completed by a physician or psychiatrist (as appropriate) for inmates with suspected or known mental illness;
 - information regarding the status of the inmate's Treatment Plan and/or Care Plan; and
 - reasons for supporting segregation or not supporting continued segregation, including suggestions for alternatives to be considered, offered or tried.

- iii. a copy of the Segregation Decision/Review Form, including their comments, is retained in the regional office.
- iv. the original Segregation Decision/Review Form is returned within three business days to the superintendent or designate for inclusion in the inmate's file.
- v. the above procedure must be followed for each continuous 30 day period that the inmate remains in segregation.
- vi. a Regional 30 Day Segregation Report (see items to be included above in [6.6.4 b ii](#)) to the ADM IS (to be reported to the Deputy Minister) where an inmate is placed in segregation for a continuous period of 30 days (includes inmates released on the 30th day). This report will be submitted no later than the 5th day of each month.

6.6.5 60 Day Review Report

- a. The superintendent or designate will track when an inmate has been in segregation for a period of 60 aggregate days in one year and report to the ADM IS (via the regional director or designate).
- b. The superintendent or designate will notify the regional director or designate within 3 business days when an inmate has been in segregation for 60 aggregate days in one year (from the date inmate was admitted to segregation) and to be reported every subsequent 30 aggregate days thereafter (inmate housed in segregation). In this report, it will indicate if the inmate has a mental illness or other Code related needs which may cause them to be adversely impacted by a prolonged period of segregation (e.g., cognitive, emotional, social functioning and physical functioning). It will also detail the reasons for continued segregation and any alternatives considered and attempted to integrate the inmate out of segregation.
- c. The ADM IS will be notified by the regional director or designate within 5 business days, at the beginning of every month when any inmate has been in segregation in excess of 60 aggregate days in one year (from date inmate was first admitted to segregation). The ADM IS will be notified if the inmate has a mental illness. Any additional Code related factors (e.g., disability such as blindness or deafness, etc.), which may cause the inmate to be disproportionately impacted by a prolonged period of segregation, will also be identified.

6.7 Using Segregation for Temporary Housing

- 6.7.1** In some situations, it may be necessary to place inmates for short durations of several hours in segregation (not as a routine) due to special circumstance (e.g., for sleeping purposes, trans inmate risk assessment, etc.). This can only be done where in the opinion of the superintendent or designate, the inmate must be segregated to protect the security of the institution or safety of other inmates or the inmate's own protection.

6.7.2 Since segregation in this situation may be considered a temporary extension of a regular living unit, more than one inmate may be placed in the cell without conducting a comprehensive compatibility assessment.

6.7.3 At no time, however, will general population and protective custody inmates be placed in a cell together (also see [6.4](#) and [6.5](#)).

6.8 Protective Clothing

6.8.1 Security Gown and Special Bedding

- a. Each institution will have a supply of sleeveless, tear resistant clothing and special bedding for issue to inmates who:
 - i. based on an individual assessment, are considered to be potentially suicidal or are on a suicide watch;
 - ii. are considered at risk for intentional or unintentional self harm if issued routine bedding and clothing; or
 - iii. are destroying property or exhibiting other seriously negative behaviour.
- b. While these items (security gown and special bedding) are insulated, the operating manager must make a personal check to ensure that the temperature of the segregated area is suitable. When below room temperature or if an inmate is requesting blankets and/or appears to be cold additional security blankets may be provided.
- c. Trilcor Industries is the only approved supplier of security gowns to Correctional Services. Trilcor labels gowns in sizes small (fits medium torso 40 inch), medium (fits large torso 60 inch) and large (fits extremely large torso 75 inch).
- d. It is essential that size of the security gown be appropriate to the size of the inmate and staff inspect the gown for any tears, threading, edging issues prior to issuing to the inmate.

Note: Suicides have occurred in correctional facilities when large security gowns were issued to small inmates and the armholes were used as ligatures.

- e. The superintendent or designate will ensure that a sufficient stock of all gown sizes is maintained at the institution.

6.8.2 Modesty Gown

The purpose of the modesty gown is to provide a strategy to ensure that the modesty of an inmate can be maintained even when the inmate is in state of crisis and is unwilling to don appropriate clothing. The modesty

gown is worn only as a temporary alternative and correctional staff are to be present whenever the modesty gown is worn by an inmate. The use of the modesty gown is only to be used under direct supervision. The modesty gowns are to be laundered as directed by the manufacturer after use.

- a. Each institution will have a supply of sleeveless, tear resistant modesty gowns for issue to inmates who:
 - i. require to be escorted while in a state of undress; and
 - ii. are unwilling to don appropriate clothing.
- b. Trilcor Industries is the only approved supplier of modesty gowns to Correctional Services. Trilcor labels gowns in sizes extra small, small, medium, large, extra large and extra extra large.
- c. It is essential that size of the modesty gown be appropriate to the size of the inmate to ensure the inmate's modesty and safety.
- d. The superintendent or designate will ensure that a sufficient stock of all modesty gown sizes is maintained at the institution (i.e. Group A and B institutions to have a minimum of 2 of each size, Group C and D institutions to have a minimum of 4 of extra small, small, medium and large and 2 of extra large and extra extra large).
- e. The superintendent or designate will ensure the modesty gowns are placed in a strategic area of the institution for use.

6.9 Documentation

6.9.1 The provisions of the [Freedom of Information and Protection of Privacy Act](#) regarding documentation must be adhered to. This is particularly important when a higher level of intervention is used. A written record is essential to provide evidence based support for decisions. Written records include, but are not limited to, the following documents:

- a) Occurrence Report;
- b) Misconduct Report;
- c) Protective Custody Decision/Review Form;
- d) Observation Report Form;
- e) Segregation Decision/Review Form;
- f) Care Plan;
- g) Treatment Plan (assessment information by psychiatrist, physician or mental health provider with therapeutic options, etc.);
- h) Suicide Initiation Notice and Change/Cancellation of Suicide Watch Notice;
- i) Enhanced Supervision Initiation Notice;
- j) Log Book; and

k) Duty Notebook.

6.9.2 Clear documentation enhances inter professional communication and provides evidence to show that all factors relevant to the placement decision have been considered, including an assessment of:

- a) Code related needs (e.g., physical, mental illness, social, intellectual disabilities) which may cause the inmate to be adversely impacted by the placement or the process used (see [Human Rights Principles](#) section) or which may require additional accommodations.
- b) alternatives to placement and steps taken to maximize integration that were explored/implemented in order to accommodate Code needs and the rationale for rejecting them (due to undue hardship).
- c) the potential risk to the individual inmate (see risk assessment information in [Undue Hardship](#) 8.0);
- d) the potential risk to employees, other inmates and the public (see risk assessment information in [Undue Hardship](#) 8.0);
- e) the rationale for using special management strategies (e.g., for violent, unstable or unpredictable inmates);
- f) in the case of a communicable disease or other health care condition, the degree of infectiousness or requirement to provide special medical care (e.g., medication, monitoring, personal hygiene, etc.); and
- g) the availability of suitable placement

7.0 Authority

Canadian Charter of Rights and Freedoms, ref. Life, Liberty and Security of Person;
Detention and Imprisonment; Treatment or Punishment; and Equality Rights

Ontario Human Rights Code, ref. Freedom from Discrimination regarding Services and
Accommodation

Ministry of Correctional Services Act, ref. Functions of Ministry

Regulations under the Ministry of Correctional Services Act, ref. Duties of Superintendent
Health Care Professionals, Employees; Inmate Misconduct; and Segregation

Freedom of Information and Protection of Privacy Act, ref. Use and Disclosure of Personal
Information

Institutional Services Policies and Procedures Manual, Discipline and Misconduct



Institutional Services
Policy and Procedures Manual

Release Date:
December 6, 2016

Section:
Inmate Management

Sub Section:
General Inmate Management

1.0 Purpose

This policy establishes guidelines for the fair and consistent application of inmate discipline.

2.0 Staff Affected

All authorized personnel involved in the inmate discipline process.

3.0 Policy

3.1 The policy of Correctional Services is to ensure that:

3.1.1 A fair and consistently applied system of inmate discipline which includes both formal and informal responses and procedures is essential for maintaining security, safety and good order in institutions and for achieving rehabilitation goals.

3.1.2 When an inmate is determined to have violated an acceptable standard of institutional conduct by committing a misconduct, a disciplinary measure may be imposed. A disposition would be determined only after the interview stage has been completed with the inmate in accordance with Ministry of Correctional Services Act, Regulations 778, taking into consideration any relevant documentation and the inmate's Human Rights Code related needs and circumstances (this is not an exclusive list of factors) including whether

accommodation is necessary and the adequacy of accommodations already in place (see Human Rights subsections 3.2.1 to 3.2.6).

- 3.1.3** In carrying out its disciplinary policy, Correctional Services stresses the importance of inmates accepting personal responsibility (exception on a case by case basis for inmates with mental illness and/or intellectual disability) for their actions, including the positive or negative consequences of their conduct, so that they may be motivated towards productive and law abiding behaviour within the institutions and upon their return to their communities.
- 3.1.4** The review process is to ensure not only the wellbeing of the inmate during a period of close confinement but also procedural fairness.
- 3.1.5** Segregation will not be used to discipline and/or manage inmates with mental illness and/or intellectual disability, unless the Ministry can demonstrate and document that all other alternatives to segregation have been considered and rejected because they would cause an undue hardship (including for reasons related to health and safety concerns). Undue hardship may be reached sooner in an emergency situation where there is a real and immediate threat of serious harm or a security issue. If segregation is used as a temporary measure to respond to an emergency situation, this placement should be reassessed and alternatives explored as soon as possible after the immediate threat subsides.

3.2 Human Rights Principles:

The system of inmate discipline must be applied in a manner that complies with the Ontario Human Rights Code (Code) obligations to provide services that are free from discrimination and harassment based on race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status and disability. This means that:

- 3.2.1** No inmate will be subjected to harsher disciplinary measures or allegations of misconduct because of assumptions, stereotypes or reasons related to Code related factors.
- 3.2.2** Where an inmate has Code related needs which may impact their ability to understand their rights and responsibilities or to participate in the disciplinary process, these needs will be accommodated short of undue hardship. Possible accommodations may include support persons (e.g., mental health case worker, social worker, etc.), sign language interpreters, translators, communication supports or alternate formats. See Interpreter Services, and MCSCS Accessibility.
 - a. If accommodations are required, it is to be documented on an Occurrence Report/Misconduct Report (as appropriate) and placed on the inmate's file.
 - b. Where accommodations are not provided, the reason that the accommodations amount to undue hardship is to be documented.

- 3.2.3** Cases of misconduct will be assessed and disciplinary measures will be addressed on an individualized, case by case basis. Where relevant and appropriate, consideration must be given to any Code related factors that would:
- a. mitigate the severity of the misconduct of the inmate's culpability for it;
 - b. cause the inmate to be adversely impacted by a particular disciplinary measure if imposed (e.g., close confinement, loss of privilege, change in programs and or activities, disruption of accommodation, etc.); and
 - c. include consultation with a mental health provider where mental illness is involved. If a mental health provider is not available in a timely manner, clinical staff may be consulted. This will not preclude further consultation with a mental health provider as soon as possible.
- 3.2.4** In the above cases, alternatives including therapeutic options, Treatment Plans and/or Care Plan and strategies to maximize integration, must be explored and only rejected where it is determined that they would amount to undue hardship.
- 3.2.5** Where an inmate is in segregation, any existing Code related needs will continue to be accommodated. Accommodations will be regularly reviewed as part of the segregation review process to ensure their adequacy.
- 3.2.6** For every instance that an inmate is placed into segregation and every phase of the segregation review process (i.e., 24 hours, 5 days, 30 days) alternatives to segregation and strategies to maximize integration and participation with general population are to be explored in light of current circumstances and implemented short of undue hardship. At a minimum, segregation placement accounts should consider:
- a. Where segregation is identified as the only viable option (short of undue hardship) as either a pending disposition of a misconduct of a serious nature or imposed disciplinary measure, the rationale for the segregation placement and details regarding the alternatives considered and rejected as amounting to undue hardship must be documented on the Segregation Decision/Review Form or Occurrence Report, if additional space is required.
 - b. Where operationally feasible, a manager not involved in the misconduct will make the determination with respect to segregation as an interim measure.

4.0 Definitions

- 4.1 Administrative Segregation:** The separation of an inmate (placement in segregation) from the general population (including the separation of an inmate from protective custody, special needs unit(s), etc.) where the continued presence of the inmate in

the general population would pose a threat to the health or safety of any person, to property, or to the security or orderly operation of the institution. This is restricted to inmates:

- 4.1.1 in need of protection;
- 4.1.2 who must be segregated to protect the security of the institution or the safety of other inmates;
- 4.1.3 who are alleged to have committed a misconduct of a serious nature; or
- 4.1.4 who request to be placed in segregation.

4.2 Care Plan: A Care Plan is a written document that guides a consistent approach for inter-professional team members on how to meet care goals and support needs. Care Plans are dynamic documents and are updated as needs of an inmate evolve over time. Inter-professional team members (e.g., correctional staff, program staff, mental health providers, native inmate liaison officer, social workers, community outreach, etc.) work collaboratively to develop the Care Plan. Included as part of the plan are:

- 4.2.1 management and care specific to the inmate;
- 4.2.2 strategies on managing behavioural issues (i.e., identification of triggers, de-escalation techniques);
- 4.2.3 living unit options and progression (which unit the inmate will be placed or housed in);
- 4.2.4 interventions/therapeutic options (e.g., access to worship room, arts/crafts, physical activity, reading/writing, relaxation/meditation, sensory stimulus, supportive conversation/engagement, etc.);
- 4.2.5 observed behaviour;
- 4.2.6 Human Rights Code needs including accommodations and specific cultural considerations (i.e., Aboriginal, religious, etc.);
- 4.2.7 programs and services;
- 4.2.8 dietary needs;
- 4.2.9 discharge planning/preparedness (linking to community services);
- 4.2.10 any security measures recommended to mitigate risk; and
- 4.2.11 frequency of review and update.

4.3 Clinical Staff: Includes nurses, physicians, psychiatrists, psychologists, social workers and any other health professionals responsible for conducting clinical assessments.

4.4 Close Confinement: The separation of an inmate (placement in segregation) from the general population (including the separation of an inmate from protective custody, special needs unit(s), etc.) where it has been determined as the result of a disciplinary proceeding that the inmate has committed a misconduct of a serious nature.

4.5 Duty to Accommodate Short of Undue Hardship: Correctional Services has a legal obligation under the Ontario Human Rights Code (Code) to accommodate inmates' Code related needs, short of undue hardship (see 8.0 Related Documents for undue hardship information).

4.5.1 This means providing accommodation that:

- a. most respects the dignity and individual needs of the inmate; and
- b. allows inmates to maximize their participation in services.

Note: Efforts will be made to anticipate barriers faced by individuals with Code related needs and proactively address those needs.

4.5.2 Undue hardship is a legal test to describe the extent to which an organization must accommodate these needs. When assessing limits to the duty to accommodate (i.e., how far the organization should go to accommodate), the only factors that can be considered are:

- a. costs (including outside sources of funding); and/or
- b. health and safety risks (includes inmate, staff, anyone else at the institution).

4.5.3 Undue hardship is a high standard and must be supported by real, direct and objective evidence. The authority to decide that an accommodation cannot be provided because it would result in undue hardship rests with the regional director or designate. The superintendent or designate will contact the regional director or designate who will consult with appropriate corporate supports (e.g., the Client Conflict Resolution Unit, Strategic Projects Unit, Corporate Health Care, Legal Services Branch, etc.) as needed, if they believe that accommodating an inmate's Human Rights Code related need could result in undue hardship.

4.6 Inmate Submission: An inmate in segregation is afforded an opportunity to offer information either in person or in writing to the superintendent or designate in response to being placed in segregation (afforded an opportunity during the initial 5 day and every 30 day review, however inmate may make a submission at any time while housed in segregation). It is an opportunity to tell the inmate's side of the story, in response to the reasons given for segregation.

4.7 Inter-Professional Team: The team is comprised of different professions and occupations with varied and specialized knowledge, skills and methods. Inter-professional teams communicate and work collaboratively, as colleagues to provide quality, individualized care. A team may be comprised of mental health provider(s),

clinical staff, correctional staff, program staff (classification officer, rehabilitative officer, etc.), native inmate liaison officer(s), the inmate and any other relevant staff.

- 4.8 Mental Health Provider:** Refers to individuals who provide mental health services and assessments (see Institutional Response to Mental Health Needs flow chart in 8.0 for screening process). Mental health providers are individuals who have specialized training in mental health care. Examples include, psychologists, mental health nurses, psychiatrists, social workers, and psychometrists (with mental health training psychometrists may also conduct assessments where appropriate and with appropriate supervision).
- 4.9 Mental Illness:** For the purposes of this policy, mental illness describes an individual who is experiencing and displaying symptoms of alteration in mood, thought or behaviour resulting in distress and/or some degree of impaired functioning. Mental illness in this context may be accompanied by a diagnosis, but a diagnosis would not necessarily be required. Other professionals may use other terminology such as mental disorder, mental disability or mental health issues which can evolve over time.
- 4.10 Misconduct:** A breach of a written rule governing the conduct of the inmates.
- 4.11 Misconduct Outcome:** A finding of guilty or not guilty at the completion of the misconduct process. With a finding of guilt, an approved disciplinary measure is imposed.
- 4.12 Misconduct Report:** A report used to document alleged, negative behaviour of an inmate, as described in Reg. 778, s. 29(1) made under the Ministry of Correctional Services Act. The Misconduct Report is both a record of the process and a legal document. It must be retained in the inmate's file not only as a record of the information considered in the disposition, but also as evidence that the procedure was in accordance with the Reg. 778 and Institutional Services Policies and Procedures. This record serves to protect the rights of the inmate by ensuring the accountability of the reporting (description), investigating, interviewing and disposition officials.
- 4.13 Segregation:** An area (for administrative segregation or close confinement housing, inmates are confined to their cells, limited social interaction, supervised/restricted privileges and programs, etc.) designated for the placement of inmates who are to be housed separate from the general population (including the separation of an inmate from protective custody, special needs unit(s), etc.).
- 4.14 Treatment Plan:** The Treatment Plan is a written document which outlines the medical strategies and treatment goals for a patient. A psychiatrist (or physician) and other mental health provider(s) will work collaboratively with other clinical staff to develop a Treatment Plan for those inmates with a mental illness, to provide mental health services that are specific to the inmate on an ongoing basis.

5.0 Responsibilities

- 5.1** The Assistant Deputy Minister, Institutional Services (ADM IS), when requested by an inmate, may review a misconduct decision of the superintendent or designate.

- 5.2** The regional directors or designates ensure that:
- 5.2.1** they consult with the Strategic Projects Unit (SPU), Client Conflict Resolution Unit (CCRU), Corporate Health Care and Legal Services Branch (LSB) if they believe that accommodating an inmate's Code related need could result in undue hardship;
 - 5.2.2** where an inmate has been in segregation for 30 continuous days (including if released on the 30th day), a 30 day segregation review is conducted and the decisions documented (on the Segregation Decision/Review Form) and conveyed to the superintendent for action if required (see 6.6.4 b in Placement of Special Management Inmates);
 - 5.2.3** where an inmate has been in segregation for 30 continuous days (including if released on the 30th day), a Regional 30 Day Segregation Report is completed and forwarded to the ADM IS (to be reported to the Deputy Minister);and
 - 5.2.4** where an inmate has been in segregation for 60 aggregate days in one year (from the date inmate was first admitted to segregation), the ADM IS is notified and then again every subsequent 30 aggregate days thereafter (inmate housed in segregation). Notification will indicate if a mental illness or another Code related factor is present.
- 5.3** The superintendent or designate ensures that:
- 5.3.1** staff are compliant with this policy;
 - 5.3.2** staff are aware and meet the duty to accommodate an inmate's Code related needs (see 3.2);
 - 5.3.3** consistency is promoted by monitoring all misconduct dispositions made by delegated staff;
 - 5.3.4** Standing Orders include powers delegated by the superintendent to designated senior administrative staff (i.e., deputy superintendent, etc.) and operating managers (who are not directly involved as witnesses or victims in any particular misconduct matter) to discipline inmates and conduct reviews of inmates in segregation;
 - 5.3.5** Standing Orders include designation of staff that are to be part of the inter-professional teams and leads for Care Plans;
 - 5.3.6** they consult with the regional director or designate if they believe that accommodating an inmate's Code related need could result in undue hardship;
 - 5.3.7** segregation reviews (e.g., 24 hour, 5 day and 30 day reviews) are conducted and the Segregation Decision/Review Forms are completed for each review phase;

- 5.3.8** all inmates placed in segregation are proactively offered access to the Inmate Information Guide and provided with a version of the Segregation Handout information sheet in a format they can understand/access (i.e., this may require Code accommodation) which will be documented on the Segregation Decision/Review Form;
 - 5.3.9** police are contacted when an inmate is charged with a misconduct that may also involve a criminal offence;
 - 5.3.10** inmates are aware of institutional rules, regulations and disciplinary measures for violations (see 6.4);
 - 5.3.11** inmates who require assistance communicating, understanding or participating in the disciplinary process are accommodated to the point of undue hardship (see Human Rights subsection 3.2.2);
 - 5.3.12** Misconduct Reports and all other appropriate documentation as outlined in this policy are completed for all formal misconducts in accordance to Reg. 778, this policy and any other related policies (e.g., Use of Force, Report Writing, etc.);
 - 5.3.13** where operationally feasible, staff directly involved in the incident that resulted in the misconduct are not witnesses at the investigation, interview and disposition;
 - 5.3.14** where operationally feasible, different managers are completing the Misconduct Report for the various stages in the misconduct process (i.e., investigation, interview and disposition);
 - 5.3.15** inmates are aware of the right to request misconduct disposition reviews;
 - 5.3.16** all applicable documentation is immediately forwarded to the ADM IS when an inmate requests a misconduct disposition review; and
 - 5.3.17** ensures a misconduct register is maintained at the institution.
- 5.4** The operating manager ensures that:
- 5.4.1** required documentation is completed and submitted (e.g., Inmate Incident Report (IIR) if required, Occurrence Reports, Use of Force (UoF) Occurrence Reports where applicable, Misconduct Reports, Segregation Decision/Review Forms, etc.);
 - 5.4.2** segregation reviews are conducted as per policy; and
 - 5.4.3** alternative placement options and management strategies (including measures to maximize integration and full participation) have been explored and implemented prior to placing an inmate outside of the general population (particularly where Code related factors are present, see Human Rights subsection 3.2.4). In addition, the alternatives considered and the reasons for rejecting them (because of undue hardship) will be documented.

5.5 Correctional staff ensure that:

- 5.5.1** they complete and submit the proper required documentation when an inmate has committed a misconduct (e.g., Occurrence Report, Misconduct Report, etc.);
- 5.5.2** log books and duty notebooks are completed reflecting information that can be used by an inter-professional team;
- 5.5.3** they consult with a manager regarding alternative placement options and other strategies (including measures to maximize integration and full participation) before placing an inmate in any other area that is not general population (particularly where Code related factors are present, see Human Rights Principles section; and
- 5.5.4** where a Care Plan exists, they review it during each shift.

6.0 **Procedures**

This policy should be read in conjunction with the text in the Institutional Services Policy and Procedures Manual entitled Placement of Special Management Inmates, Use of Force, Report Writing.

- 6.1** Correctional institutions have incentive tools at their disposal for promoting acceptable behaviour, including temporary absence (excluding medical temporary absence), and earned remission for sentenced inmates. Correctional institutions also have disciplinary measures for non-compliance through the formal disciplinary process. These incentives and sanctions are designed to promote conformity to the rules and regulations of the institution and develop behaviour patterns that will assist the inmate after release. As such, these incentives must be given out on an objective and equitable basis in accordance with our obligations under the Code.
- 6.2** When an inmate is alleged to have committed a misconduct that may also involve a criminal offence, the police must be advised. Police involvement and the laying of criminal charges do not preclude completing the misconduct process.
- 6.3** When an inmate is suspected or known to have a mental illness and/or intellectual disability, staff will attempt to involve mental health providers and/or other clinical staff in moving an inmate to a quieter environment and invoking de-escalation techniques, if appropriate (see Care Plan).

6.4 **Regulations and Rules**

- 6.4.1** Inmates are notified about institutional rules, regulations and disciplinary measures for violations through orientation lectures, if available (e.g., TV loop, information packages and Inmate Information Guide) describing the operation, programs and services of individual institutions. Employees play a vital role in clarifying the duties and responsibilities of inmates by providing instruction, responding to questions and concerns and referring inmates to appropriate information sources for assistance with specific problems and

providing accommodation for Code related needs (see Human Rights subsection 3.2.2).

6.4.2 An inmate is deemed to have received notice of a regulation or rule governing conduct when it is posted in one or more conspicuous places in the institution where it is most likely to come to the inmate's attention and is included in the Inmate Information Guide. For inmates that have accommodation needs (see Human Rights subsection 3.2.2).

- a. The Inmate Information Guide Summary (Institution templates - Operations - Inmate Information Guide Summary) is to be posted throughout the institution, in particular Admitting and Discharge, Inmate Living Areas and Segregation.
- b. All inmates placed in segregation are proactively offered access to the Inmate Information Guide and provided the Segregation Handout information sheet in a format they can understand/access (i.e., this may require Code accommodation) which will be documented on the Segregation Decision/Review Form.

6.4.3 Section 29(1) of Regulations 778 under the Ministry of Correctional Services Act states that an inmate commits a misconduct if the inmate:

- a. wilfully disobeys a lawful order of an officer;
- b. commits or threatens to commit an assault upon another person;
- c. makes a gross insult, by gesture, use of abusive language, or other act, directed at any person;
- d. takes or converts to the inmate's own use or to the use of another person any property without the consent of the rightful owner of the property;
- e. damages any property that is not owned by the inmate;
- f. has contraband in his or her possession or attempts to or participates in an attempt to bring contraband in or take contraband out of the institution;
- g. creates or incites a disturbance likely to endanger the security of the institution;
- h. escapes, attempts to escape or is unlawfully at large from an institution;
- i. leaves a cell, place of work or other appointed place without proper authority;
- j. gives or offers a bribe or reward to an employee of the institution;
- k. counsels, aids or abets another inmate to do an act in contravention of the Act and Regulations;
- l. refuses to pay a fee or charge that the inmate is required to pay under the Act or Regulations;

- m. obstructs an investigation conducted or authorized by the superintendent;
- n. wilfully breaches or attempts to breach any other regulation or written rule, of which the inmate has received notice, governing the conduct of inmates; or
- o. wilfully breaches or attempts to breach any term or condition of a temporary absence.

6.4.4 The Misconduct Report process is comprised of the following four components:

- a. description;
- b. investigation;
- c. interview; and
- d. disposition.

6.5 Reporting a Misconduct

6.5.1 Where an employee has reasonable and probable grounds to believe that an inmate has committed or is committing a misconduct, the employee will, if circumstances allow, stop the commission of the misconduct and explain the nature of the breach to the inmate (see Human Rights subsection 3.2.2).

6.5.2 Reporting an Informal Misconduct

- a. The employee may elect to informally resolve the misconduct and counsel the inmate verbally if:
 - i. the misconduct is a minor violation or occurred as a result of a lack of understanding, carelessness or unintentional behaviour;
 - ii. the inmate immediately takes corrective action, apologizes or makes amends for the misconduct;
 - iii. Code related factor is present (e.g., mental illness, intellectual disability, etc.) which mitigates the inmate's culpability for it (see Human Rights subsections 3.2.1 and 3.2.3); or
 - iv. where applicable, the aggrieved party consents.
- b. A second employee will be present whenever an inmate is informally counselled.
- c. Where informal counselling is used, it is not necessary to prepare a Misconduct Report. However, a notation documenting the counselling, any Code related factors, is to be made in the appropriate logbook, duty notebook and an Occurrence Report is submitted.

6.5.3 Reporting a Formal Misconduct

- a. If the misconduct cannot or should not be resolved informally, the employee must inform the inmate of the misconduct allegation and prepare the Misconduct Report (Institution Templates - Operations - Misconduct Templates - Misconduct Report) and an Occurrence Report.
- b. Since a Misconduct Report is a legal document, it is important to adhere to the following:
 - i. the employee most directly involved with the incident completes the Description Section of the Misconduct Report (see exception 6.5.3 e);
 - ii. the report will be completed in full, be legible and be in black ink if handwritten;
 - iii. where there is a mistake in the document, a single line drawn through the mistake and initialled will correct any errors. There will be no use of erasers, liquid paper or similar correcting device;
 - iv. the report will only contain factual information;
 - v. the narrative section will avoid opinions, hearsay evidence or suggested disciplinary measures. If necessary or relevant, this type of information is included in an Occurrence Report or UoF Occurrence Report, if applicable;
 - vi. every employee witness to the misconduct prepares independently an Occurrence Report or UoF Occurrence Report, where applicable. Copies of all reports are attached to the Misconduct Report;
 - vii. if there are no other witnesses, this is recorded on the Misconduct Report;
 - viii. the name of every person signing a Misconduct Report will be printed next to their signature; and
 - ix. any unused space in the report is voided by means of a diagonal line.
- c. When an inmate is alleged to have committed a misconduct, the responding employee must provide (to be recorded in log book and duty notebook) the inmate with a completed copy of the Misconduct Notice (Institution templates - Operations - Misconduct Templates - Misconduct Notice).
 - i. Any unused space in the report is voided by means of a diagonal line.
 - ii. The Misconduct Notice will serve to advise the inmate of the nature and circumstances of the alleged misconduct.

- iii. The Misconduct Notice also advises the inmate of their rights when the misconduct disposition is imposed.
- d. An inmate will only be charged with the most serious alleged misconduct when an incident or a series of related incidents have occurred. Only the most serious alleged misconduct is the subject of the Misconduct Report. The other alleged misconducts will be documented in an Occurrence Report, or UoF Occurrence Report if applicable, which is to be submitted with the Misconduct Report.
- e. When several employees are present when the alleged misconduct occurs, the most directly involved employee (or as assigned by the operating manager) will prepare the Misconduct Report.
 - i. Other employees present will be listed as witnesses on the Misconduct Report.
 - ii. All employees will complete independently an Occurrence Report, or UoF Occurrence Report if applicable, detailing what they observed and the part they played.
- f. If force is used or there are any injuries to an inmate, an Accident/Injury Report will also be completed (see Report Writing). The operating manager on duty ensures that all necessary reports and supporting documents are properly completed, collected and forwarded with the Misconduct Report.
- g. Nurses who witness or experience inmate behaviour that is of concern will ask the correctional officer accompanying them for assistance in managing the situation. The therapeutic nurse client relationship is at the core for nurses and it is an essential component for the delivery of safe and effective health care. Therefore, initiating disciplinary processes such as misconduct reports is not part of the nurses' role. Nurses will prepare a written statement (i.e., Occurrence Report) describing the incident to provide information to facilitate management decisions.
- h. When a person who is not an employee (e.g., volunteer, contractor, visitor, etc.) reports or experiences inmate behaviour warranting a misconduct, the person prepares a written statement describing the incident. Citing the written statement as evidence, the employee receiving the statement prepares the Misconduct Report and any other required documentation (e.g., Occurrence Report, Accident/Injury Report, etc.). The written statement is submitted with the Misconduct Report.
- i. In some cases, it may be necessary to segregate an inmate after the alleged misconduct pending investigation of the allegation (see 4.1.3). The following reasons are to be taken into consideration for placement in segregation:

- i. to prevent collusion (maintain order and security, as long as the misconduct is of a serious nature);
 - ii. inmate's behaviour (see Human Rights Principles section); and/or
 - iii. allegation is of a serious nature (see 6.2.3 of the Placement of Special Management Inmates policy).
- j. When an inmate is alleged to have committed a misconduct of assault, the victim is advised of the right to initiate criminal proceedings. This notification and the victim's decision are recorded on a Notification of Right to Pursue/Decline of Criminal Charges Form (see Threats Against Correctional Services Employees and Request to See a Justice of the Peace).

6.6 Misconduct Process

6.6.1 Investigation

- a. As soon as possible (see Reviews of Inmates in Segregation section 6.6 of Placement of Special Management Inmates) after the misconduct is submitted, an operating manager conducting the investigation (not directly involved in the incident where operationally feasible) investigates the allegation. If it is necessary for an operating manager that was involved in the misconduct incident to conduct the investigation, the operating manager will submit a written rationale in an Occurrence Report (UoF Occurrence Report if applicable) to justify conducting the investigation.
- b. This investigation must include the reviewing of all documentation, video footage, etc. submitted and/or collected concerning the misconduct.
- c. The operating manager will follow up to ensure incomplete or missing information related to the investigation is submitted.
- d. The inmate will be advised of the right to prepare an inmate's submission and call witnesses for consideration during the misconduct interview with the superintendent or designate.
- e. Identify any extenuating or Code related factors (e.g., mental illness, etc.) or circumstances that must be considered.
- f. All interviews with the inmate placed on misconduct during the investigation will be conducted with at least one other employee present who was not directly involved in the incident, if operationally feasible.
- g. Upon completing the investigation, the investigating manager forwards the Misconduct Report and all supporting documents (e.g., Occurrence Report(s), UoF Occurrence Report(s) if applicable, Accident/Injury

Report if applicable, inmate written submission if applicable, etc.) to the superintendent or designate.

- h. Information on Misconduct Reports must be added to the OTIS Offences in Custody (OIC refers to misconducts as offences in custody) record screens as soon as practicable (see Misconducts - OIC). Staff are to complete these screens as completely as possible, especially in regard to the nature of the misconduct (e.g., commits or threatens to commit an assault on staff, contraband, tobacco, etc.).
- i. The superintendent or designate will assign the employees who will be responsible for entering misconduct information into OTIS and will ensure that these individuals receive the required documentation. This includes populating the comment section in the OIC screen ensuring that all details for the investigation decision are entered (e.g., other alternatives explored for mental illness or including alternatives explored to accommodate Code related needs to the point of undue hardship or circumstances (see Human Rights subsections 3.2.1, 3.2.2, 3.2.4).

6.6.2 Interview

- a. The superintendent or designate (other manager that has not conducted the investigation) will interview (i.e., adjudicate the misconduct) the inmate no later than 10 days after becoming aware of the alleged misconduct (i.e., from the date of when the misconduct was written), see Reg. 778, s. 31(2). At least one other employee must witness the interview (who was not directly involved in the incident, if operationally feasible).
 - i. If it is necessary for a superintendent or designate involved in the investigation or misconduct incident to conduct the interview, the superintendent or designate will submit an Occurrence Report with a complete rationale explaining why they conducted the interview .
 - ii. If an employee that was involved in the misconduct incident is required to be a witness for the misconduct interview, the employee will submit an Occurrence Report with a written rationale explaining why they witnessed the interview.
- b. The superintendent or designate will ensure if the inmate requires any assistance or Code related accommodation (e.g., due to language barrier, mental illness, intellectual disability, etc.) it is provided.
- c. The inmate is provided an opportunity to make a statement (inmate submission) of mitigating circumstances or other factors to be considered in determining an appropriate disciplinary measure including relevant Code related factors (see Human Rights subsections 3.2.1 to 3.2.4).

- d. When an inmate wishes to deny the misconduct, the inmate is given sufficient time to prepare, between the completion of the investigation and the superintendent's or designate's interview.
- e. Where a witness is excluded or it is necessary to withhold information relating to an allegation from an inmate because of potentially serious security or safety repercussions (e.g., in the case of a confidential informant), the inmate will be provided with sufficient information to allow a response.
- f. The superintendent or designate may permit any person, including an interpreter, support worker, lawyer, etc., to attend the interview and assist in any appropriate manner (see Human Rights subsection 3.2.2). The more complex the allegation or the more limited the inmate's ability to comprehend or communicate effectively, the more appropriate assistance may be (if community medical professionals are requested to attend the interview, a consultation will take place with the health care department on a case by case basis).
- g. If necessary for the inmate to adequately respond to the allegation of the misconduct, the superintendent or designate will permit legal counsel to attend the interview and assist in an appropriate manner. The superintendent or designate will contact the regional director and the Director, Legal Services Branch, for advice. Factors relevant to the decision include:
 - i. the seriousness of the alleged misconduct and potential consequences;
 - ii. the inmate's ability to represent themselves adequately and to understand the allegation;
 - iv. the complexity of the issues, and
 - v. Human Rights Code considerations.
- h. The superintendent or designate may adjourn the interview:
 - i. to obtain additional information;
 - ii. to permit the attendance of a witness, an inmate assistant, a lawyer, other support workers or the employee making the allegation;
 - iii. due to inappropriate inmate behaviour; or
 - iv. for another reasonable cause. If the misconduct interview is adjourned for any of the above reasons, it is to be documented on the Misconduct Report or on a separate Occurrence Report if additional space is required.

- v. No adjournment will be longer than three clear days (i.e., 72 hours) except where the inmate consents in writing to a longer adjournment.
- vi. If an intermittently sentenced inmate cannot be interviewed during the current period in custody (i.e., weekend), the inmate must be interviewed during the next period when the inmate is scheduled to be in the institution (see 6.6.2 a and transfer section). If the intermittent inmate is in their last scheduled period in custody, the interview must take place prior to the inmate being discharged

6.6.3 Disposition

- a. When the superintendent assigns or delegates the responsibility for misconduct dispositions, the superintendent will assign a manager to complete the disposition section, ensuring that it is:
 - i. a manager that has not conduct the investigation (if operationally feasible;and
 - i. a manager who was not directly involved in the misconduct incident (if operationally feasible). If it is necessary for the manager who conducted the investigation or was involved in the misconduct incident to conduct the disposition section, the manager will submit a written rationale in an Occurrence Report to justify them conducting or witnessing the disposition.
- b. Prior to making a determination on disciplinary measures, if warranted, the superintendent or designate will make themselves aware of the sentence the inmate is serving, and if the inmate has any remission to the inmate's credit at the time of the disposition of the misconduct.
- c. Prior to imposing disciplinary measures, the superintendent or designate are to consider factors (not limited to) identified in 6.8.1 and Code related factors (see Human Rights subsections 3.2.1 to 3.2.4).
- d. Within two days after the interview, the inmate is informed in writing using the Inmate Notification of Misconduct Disposition Form (see 6.10 and Human Rights subsection 3.2.2) of;
 - i. the superintendent or designate's decision of whether the inmate is guilty or not guilty (misconduct outcome), and
 - ii. the rationale and reasons for the decision and the disciplinary measure imposed (see 6.8.2 and 6.8.3), if any. This information must also be clearly and thoroughly documented in the disposition section of the Misconduct Report.

- e. The employee submitting the Misconduct Report is also advised of the decision. In making the determination the superintendent or designate weighs all the facts in a fair and impartial manner.
- f. When a misconduct disposition has been completed, the disciplinary measure imposed cannot be varied, except as a result of a review and decision by the ADM IS.
- g. If a forfeiture of remission is imposed, and the inmate does not have enough or any remission to the inmate's credit, a partial forfeiture can be applied. However, any disciplinary measure that cannot be applied when the misconduct disposition is completed cannot be carried forward.
- h. Information on Misconduct Reports must be entered into the OTIS OIC Hearing screens as soon as practicable (see Misconducts - Offences in Custody).
- i. The recording of a disposition of a forfeiture of remission or a suspension of eligibility to earn remission will automatically amend the inmate's discharge date on OTIS.
- j. The Inmate Records Office must be notified immediately of any misconduct involving a loss of remission, so that a manual sentence calculation can be completed and the discharge date verified.
- k. Superintendents will designate the employees who will be responsible for entering misconduct information into OTIS

6.7 Completing the Misconduct Report

(see Appendix A)

6.8 Disciplinary Measures

6.8.1 In determining the appropriate disposition, the superintendent or designate will consider:

- a. any Code related needs of characteristics (e.g., mental illness and/or intellectual disability) which may cause the inmate to be adversely impacted by a particular disciplinary measure and which require accommodation (i.e., implementation of alternatives) up to the point of undue hardship. Where mental illness is present, this will include consultation with mental health providers and/or clinical staff (see 3.1.5 and 3.2.3);
- b. the adequacy of accommodations currently in place;
- c. the nature and seriousness of the misconduct;

- d. any explanation or statement of mitigating factors provided by the inmate;
- e. the impact the misconduct may have had on staff, other inmates or the security, safety and good order of the institution;
- f. the performance of the inmate during the present incarceration;
- g. previous Misconducts and Misconduct Report(s) (or other reports regarding inmate's behaviour) during the present incarceration;
- h. the inmate's conduct and demeanour during the interview (taking into consideration any mental illness that may impact on inmate's response to interview or pending discipline); and
- i. whether the inmate has taken corrective action, apologized or attempted to make amends for the misconduct.

6.8.2 When the superintendent or designate determines that an inmate has committed a misconduct and is found guilty (misconduct outcome) of the misconduct, one or more of the following disciplinary measures may be imposed (subject to Human Rights subsection 3.2.3):

- a. loss of all or some privileges for a period not greater than 120 days including the privilege of purchasing items from the institutional canteen;
- b. change of program or work activity;
- c. change of security status;
- d. reprimand; and/or
- e. revocation of a temporary absence permit (excluding medical temporary absence).

6.8.3 If the superintendent or designate determines that the inmate has committed a serious misconduct, in addition to the disciplinary measures above (6.8.2 a to e), one of the following may be imposed (subject to section 3.1.5 and Human Rights subsections 3.2.1, 3.2.3 and 3.2.4):

- a. close confinement for a definite period not greater than thirty days on a regular diet (i.e., regular diet refers to the diet issued prior to being placed in segregation);
- b. close confinement for an indefinite period not greater than thirty days on a regular diet;
- c. forfeiture of a portion or all earned remission that stands to an inmate's credit but no such forfeiture shall exceed fifteen days without the Minister's (delegated to ADM IS) approval. The superintendent or designate can impose a penalty of forfeiture of part of all of earned remission only up to a 15 day maximum. The Regulation requires that forfeiture of earned remission over 15 days

must be approved by the Minister. Since the ADM IS has been delegated this authority on behalf of the Minister, any forfeiture of earned remission over 15 days requires ADM IS approval; or

- d. subject to the approval of the Minister (delegated to ADM IS), suspension of the eligibility of an inmate to earn remission for a period of up to two months. The superintendent or designate has no authority under the Regulation to impose any suspension of the eligibility to earn remission. Any suspension of eligibility to earn remission up to the maximum allowed of two months can only be approved by the Minister. Since the ADM IS has been delegated this authority on behalf of the Minister, any suspension to earn remission requires ADM IS approval.

Note: If approval is being sought by ADM IS, an e-mail is to be submitted to your respective regional office with reasons for recommending level of discipline. Regional office will forward on request for approval to the ADM IS to make an informed decision.

- 6.8.4** Remission cannot be forfeited unless it has been earned and is applied at the end of each rating period (month) that an inmate has served.
 - a. forfeiture cannot be applied during the first rating period of a sentence.
 - b. If the time to be served is less than one month, the inmate earns all the remission on the discharge date.
 - c. A disciplinary measure ordering a forfeiture of remission cannot be applied to an inmate during the first rating period of a sentence, nor can it be applied to an inmate who is serving less than one full month in custody, unless the misconduct disposition is completed on the inmate's discharge date.
 - d. A disciplinary measure of a forfeiture of remission cannot be changed to a suspension of eligibility to earn remission.
- 6.8.5** An alternative to a forfeiture of remission is ordering a suspension of eligibility to earn remission. A suspension can be ordered at any time during the service of a sentence, however requires ADM IS approval (see 6.8.3 d).
- 6.8.6** Only disciplinary measures as set out in 6.8.2 and 6.8.3 above can be imposed. No other disciplinary measures may be imposed.
- 6.8.7** When determining disciplinary measures for more than one misconduct, arising out of a single incident or a series of closely related incidents, the superintendent or designate will only proceed to discipline on the most serious misconduct and not proceed to discipline on minor misconducts. Where it is determined that the inmate has committed two or more serious misconducts, arising out of a single incident or series of closely related incidents, the superintendent or designate will not impose more

than one disciplinary measure from those designated for a serious misconduct.

6.9 Reviews of Inmates if placed in Segregation

(see Placement of Special Management Inmates sections 6.6 to 6.6.5)

6.10 Providing the Inmate with an Inmate Notification of Misconduct Disposition Form

6.10.1 Within two days of completing the misconduct disposition, the Inmate Notification of Misconduct Disposition Form (Institution templates - Operations - Misconduct Templates - Notification of Misconduct Disposition) must be completed and a copy made. The inmate signs one copy of the form which is forwarded to the inmate file. The unsigned copy is provided to the inmate as a written notice of the disposition.

6.10.2 For inmates who require Code related accommodation in order to understand the disposition, see Human Rights subsection 3.2.2.

6.10.3 To ensure accountability, the staff member delivering the Inmate Notification of Misconduct Disposition Form to the inmate will print and sign (on the file copy only) their name as well as the date and time the form was delivered.

6.11 Review by Assistant Deputy Minister, Institutional Services

6.11.1 The ADM IS, is a designate of the Minister for the purpose of reviewing a misconduct decision of the superintendent or designate.

6.11.2 When an inmate is notified of the superintendent's or designate's decision, the Inmate Notification of Misconduct Disposition Form will include the information that the inmate may (at any time) make a written request (see 3.2.2) to ADM IS, for a review of the decision where:

- a. the inmate alleges that the decision was not made in accordance with the procedures set out in the Regulation 778; or
- b. the inmate has been disciplined by having a portion or the whole of the inmate's remission forfeited or by receiving a suspension from eligibility to earn remission.

6.11.3 When the superintendent receives a request for review, they immediately forward a copy of all documents relating to the misconduct to the ADM IS.

6.11.4 The ADM IS may confirm or vary the decision of the superintendent or designate or direct the superintendent or designate to reconsider the case. This decision is final.

6.11.5 A written response to the inmate will include the reasons for the decision. For inmates who require Code related accommodation in order to understand the written decision, see Human Rights subsection 3.2.2.

- a. Once a review has been initiated, it will continue until completed and a response will be given even if the inmate has been released from custody back to the community, transferred to another jurisdiction (e.g. penitentiary), or remains in the provincial correctional system.
- b. The letter is addressed to the inmate (or former inmate) and is sent to the facility, last known address, or penitentiary.
- c. If the inmate is still in custody, the inmate receives the original letter and then signs the superintendent's copy of the letter which is then placed in the inmate's file. A copy of the letter is also sent to the regional office and to the Information Management Unit for record purposes

Note: The term inmate referred to in this section also includes a former inmate who submits a written request.

6.12 Absent Inmate

6.12.1 If an inmate is no longer in the institution (e.g., released, escaped, unlawfully at large, transferred to another jurisdiction, deported, etc.) the misconduct process (i.e., adjudication) is discontinued.

6.12.2 The reasons why the misconduct process (i.e., adjudication) has not been completed are recorded on the Misconduct Report with the entry dated, signed and placed in the inmate's file.

6.12.3 This information must be recorded on OTIS on the Offence in Custody Record and the Offence in Custody hearing screens.

6.12.4 The OTIS code Unable to Adjudicate will be selected in the plea and penalty screens. A comment noting why the misconduct process was not completed will also be made in the OTIS outcome screen.

6.12.5 The Misconduct Report and any supporting documentation would be retained in the appropriate designated areas (e.g., inmate file, local investigation file, etc.). The continuation of the investigation (local review) post inmate release is necessary as it may result in outcomes (such as criminal charges, searches/patrols of areas, determination of any policy breaches, etc.). Investigations results would be kept in the local investigation file or the inmate file in the event that the local review does not prompt an investigation.

6.13 Transfer

6.13.1 An inmate's transfer may be delayed pending the investigation or final disposition of a misconduct. If the misconduct process is not completed prior to the inmate's transfer a copy of the Misconduct Report and all supporting documents (e.g., Occurrence Reports, UoF Occurrence Report

if applicable, digital images, video footage, investigation findings, etc.) must be included with the transfer files or shortly after. The misconduct process will be completed at the receiving institution.

6.13.2 When an inmate is transferred and a misconduct disciplinary measure or part of a disciplinary measure has not been satisfied, the remaining disposition will be satisfied at the receiving institution.

6.13.3 In each case, the superintendent or designate of the transferring institution will notify and advise the superintendent of the receiving institution of the impending disposition or remaining disposition of the inmate's misconduct.

6.14 Misconduct Register

6.14.1 The superintendent will ensure that a misconduct register is maintained at the institution. Entries must include the inmate's full name (preferred name where individual is a trans inmate, if applicable), date of misconduct, regulation contravened, date of interview, disposition and the signature of the person deciding the disposition.

6.14.2 Electronic and paper versions of the Misconduct Register are located in Institution Templates - Operations - Misconduct templates. Institutions will identify in their Standing Orders which version is to be used and who is responsible for maintaining the Misconduct Register.

6.14.3 Regardless of whether an electronic or paper version is used, all Misconduct Registers are subject to Records Schedules.

7.0 Authority

Ontario Human Rights Code

Ministry of Correctional Services Act, ref. Functions of Ministry

Regulations under the Ministry of Correctional Services Act, ref. Inmate Misconduct; Segregation; and Temporary Absence



**Health Care Services
Policy and Procedures Manual**

**Release Date:
October 1999**

**Section:
Health Care Services**

**Sub Section:
Health Care and Security/Safety Related Issues**

Health Care Examination of Segregated Inmates

A health care examination by a health care professional shall be performed both before an inmate is admitted to segregation and upon the release of the inmate from segregation. In situations where the inmate poses an immediate threat to the security or safety of the institution or a health care professional is unavailable, the examination shall be conducted as soon as practicable after the inmate has been admitted to the segregation unit. The findings of the examination shall be recorded on the inmate's "Health Care Record, Part D". Staff shall be advised in writing of any special precautions (e.g., enteric precautions, suicide watch, etc.).

If a member of the health care staff is not immediately available and it appears that the inmate has sustained an injury warranting medical attention by a health care professional, the inmate shall be taken to a community hospital. If it can reasonably be determined that the injury does not require immediate medical attention, the injury shall be examined by a member of the health care staff as soon as one becomes available (see "Accident/Injury Report" below).

The health care assessment shall include an assessment of the inmate's fitness for continuing segregation, an examination of the inmate's body for any cuts, bruises or other injury and an inquiry about the inmate's present state of health. Should any cuts or injuries be identified, an "Accident/Injury Report" shall be completed and notations made on the "Health Care Record".

Where the mattress of an inmate in close confinement is removed for a period each day (see [Conditions of Confinement](#) in the Institutional Services Policy and Procedures manual) and this would be contrary to the inmate's medical status, the nurse completing the admission/daily assessment shall inform the superintendent or designate of this fact by means of an administrative summary. Where an inmate requires a mattress for medical reasons, the superintendent or designate shall ensure that a mattress is provided. The institution physician shall be consulted when necessary.

Inmates on hunger strike or where otherwise indicated should normally be weighed at the beginning of segregation and on its termination. Weight monitoring during the period of segregation should be conducted where indicated (e.g., hungerstrike).

Health care staff shall visit segregated inmates daily and record their visits in the segregation unit log book. Specific health observations or interventions shall be recorded in the "Health Care Record". The physician may also visit the inmate when necessary.

Undue Hardship

Providing Accommodation Short of Undue Hardship

July 30, 2015

We have a legal duty to accommodate the Human Rights Code related needs of inmates short of undue hardship. Here are some factors to consider in choosing an accommodation and assessing undue hardship.

Note: Undue hardship is a legal test and a high threshold that is not easily reached. Therefore, wherever there are cost or health and safety factors associated with an accommodation, you should consider the factors set out below. If you encounter a situation where there is reason to believe that accommodating an inmate's Human Rights Code related needs might amount to undue hardship, please contact the regional office. The regional director or designate will consult with other areas (including Legal Services Branch) as necessary to assess if undue hardship exists and to explore the options available.

Choosing an Accommodation

When accommodating an inmate's Human Rights Code related needs we must do so in a manner that most respects the dignity of the individual.

Among other things, this means that:

- We accept accommodation requests in good faith, we do not question a person's need to be accommodated unless there are legitimate reasons to.
- We involve the inmate in the accommodation process. We talk to the inmate about their needs, possible options, pros and cons, etc., and consider their input and suggestions. We consider involving other parties in the process (e.g., community agencies) if this is what the inmate wants.
- We choose an accommodation that is individualized (i.e. not a one size fits all approach). We think about the inmate's individualized needs and circumstances and come up with solutions that best respond to these so, you may need to come up with creative solutions (i.e. think outside the box).
- We make sure that the accommodation process (and the accommodation itself) is respectful of the inmate's dignity, including their comfort levels and need for privacy and confidentiality.
- We make sure that sensitive information about the inmate's Human Rights Code based needs (e.g. mental health, gender identity) is only shared with other inmates (e.g. in the case of compatibility assessments) or staff on a need to know basis.
- We consider a number of accommodation options and choose the accommodation option that maximizes integration and promotes full participation. We make sure that segregation is used as a last resort (subject to inmate preference) and that inmates in

segregation have access to the same services and opportunities as other inmates where operationally feasible.

Once the most appropriate (best) accommodation (i.e. the one which incorporates all of the above factors) has been identified, it must be implemented unless it would cause undue hardship to do so.

Interim or Next Best Accommodations

Where the most appropriate accommodation cannot be implemented because of undue hardship or where it takes time to accomplish, we still have an obligation to do whatever we can to meet the inmate's needs by implementing interim or next best solutions.

Example: Until an assessment can be completed to identify a compatible cellmate for an inmate with mental illness who has difficulty getting along with others and has become violent with previous cellmates, she is housed in a single cell accommodation- which happens to be located in segregation. As an interim accommodation, steps are taken to ensure that the inmate spends as much time with the general population as possible and that she has access to all the benefits associated with general population housing (e.g., access to programming, socialization, etc.) short of causing undue hardship.

Example: An inmate who is deaf, who is alleged to have committed a misconduct, requires assistance from an American Sign Language (ASL) interpreter in order to understand and participate in the disciplinary proceedings. Because of the remote location of the correctional facility and the weather conditions, it is not possible to have in-person ASL interpreter at the institution to assist. As a kind of next best accommodation, arrangements are made for ASL interpretation over videoconference.

Assessing Undue Hardship

When assessing whether it would cause undue hardship to accommodate an inmate's Human Rights Code related needs, the legislation states that we can only consider cost (including outside sources of funding) and health and safety.

In other words, we cannot conclude that it would cause undue hardship to accommodate an inmate's needs simply because it would result in inconvenience, even significant inconvenience; negatively impact employee or inmate morale; run counter to a collective agreement or other contract; or be inconsistent with another policy, rule or Standing Order

Example: An inmate with mental illness, who occasionally becomes agitated and aggressive, calms down when she is allowed to go for a walk in the yard. Although other inmates may resent the inmate's extra access to the yard and fresh air, the impact on inmate morale should not be factored into the undue hardship assessment. In other words, the impact on inmate morale would not provide a valid defense for failing to accommodate the inmate's needs under the Human Rights Code.

Proving Undue Hardship

The responsibility for proving undue hardship lies with the person or organization responsible for making the accommodation. It is not the responsibility of the person whose needs are being accommodated to prove that providing a particular accommodation would not result in undue hardship.

The person or organization responsible for the accommodation must be able to prove that undue hardship was reached using objective, real, direct and, in the case of costs, quantifiable evidence. They should not rely on impressionistic views or assumptions.

Example: Instead of automatically assuming that an inmate who experiences hallucinations will pose a threat to other inmates or himself if placed in the general population, the inter-professional team (which includes mental providers) considers the inmate's medical, criminal and behavioural backgrounds (both when they are on and off treatment) and possible risk mitigation strategies (if necessary) before making a placement decision

Cost

In order to prove that the costs associated with an accommodation would cause undue hardship, the person or organization responsible for the accommodation will have to use quantifiable evidence (e.g. official estimates, etc.).

For costs to be considered undue, they must be "so substantial that they would alter the essential nature of the enterprise, or so significant that they would substantially affect its viability."

1 Ontario Human Rights Commission, *Policy and guidelines on disability and the duty to accommodate* (2000), page

Because the Ontario Public Service is such a large organization with access to so many resources, it would be extremely difficult to meet this threshold.

In other words, accommodations should almost never be denied because of cost.

Health and Safety

In some cases, there may be health and safety risks associated with accommodating an inmate's Human Rights Code related needs and circumstances but it is not enough that there is some risk; the risk involved must be undue. It should be noted that this is a high threshold.

Mitigating Risk

Before assessing whether a risk would be undue, the person or organization responsible for the accommodation must take steps to try to mitigate or reduce the risks.

Example: An inmate with mental illness becomes agitated and aggressive in response to certain environmental triggers. Before concluding that it would cause undue hardship to house an inmate with the general population, the inter-professional team (which includes of mental health providers) considers how to minimize these risks to other inmates and staff by:

- Revisiting or modifying the inmate's treatment plan and/or care plan
- Identifying or minimizing exposure to triggers
- Providing the inmate with access to a quiet space
- Providing the inmate with access to therapeutic or calming activities or rituals
- Increasing supervision on the unit
- Ensuring that the inmate has access to support persons

Assessing Risk

It is only after all possible steps have been taken to reduce the risk that we consider whether the undue hardship threshold has been reached.

It is important to remember that there are inherent risks associated with the experience of being incarcerated or of working in an incarceration setting. The potential risk posed by an accommodation should be assessed in light of the other risks that inmates and Correctional Services employees encounter on a daily basis.

In assessing the seriousness of the risk, we consider the following questions and non-exhaustive list of hypothetical considerations.

What could happen that could be harmful?

Are we concerned that someone will be:

- Physically or sexually harmed?
- Bullied?
- Harassed?
- Traumatized?
- Other?

How serious would the harm be if it occurred?

Are we concerned about:

- Serious injury or trauma?
- Death?
- Other?

How likely is it that the potential harm will actually occur?

Taking into consideration, factors like:

- the fact that supervision may be increased as part of a mitigation strategy
- the backgrounds (e.g. criminal, medical, behavioural) of the inmate in question and other inmates involved
- the fact that unsupervised access to potentially victimized inmates may be limited as part of a mitigation strategy

- the chances that staff could not intervene quickly enough to prevent serious harm
- the history of violence in this institution
- the inmate in question's experiences during previous incarcerations

Is it a real risk, or merely hypothetical or speculative?

Is the likelihood/seriousness of harm supported by:

- Inmate records?
- Statistics?
- Incident Reports?
- Other documentation?

Who will be affected by the event if it does occur?

Who are we concerned about:

- The inmate in question?
- The other inmates?
- The staff?
- Other?

If the potential harm is minor or not very likely to occur, the risk would likely not be considered to be undue. It is important to note, however, that high probability of substantial harm to anyone will constitute undue hardship.

Assuming Risk

It is also important to consider whether the inmate is willing to assume any risk. An inmate may be willing to assume some risk if it would mean that they could have a better quality of life during incarceration (e.g. access to more programming or opportunities for socialization). It should be noted that some individuals with mental illness or intellectual disabilities may not have the capacity to make an informed decision about the assumption of risk. In light of this, consultation with a mental health provider may be necessary.

NOTE: This document is based on information provided in the Ontario Human Rights Commission's *Policy and guidelines on disability and the duty to accommodate* (2000). For more information, please see <http://www.ohrc.on.ca/en/policy-and-guidelines-disability-and-duty-accommodate>

Before we approach an inmate about their willingness to assume risk, the person or organization responsible for the accommodation must identify all possible measures that can be taken to reduce or minimize the risk.

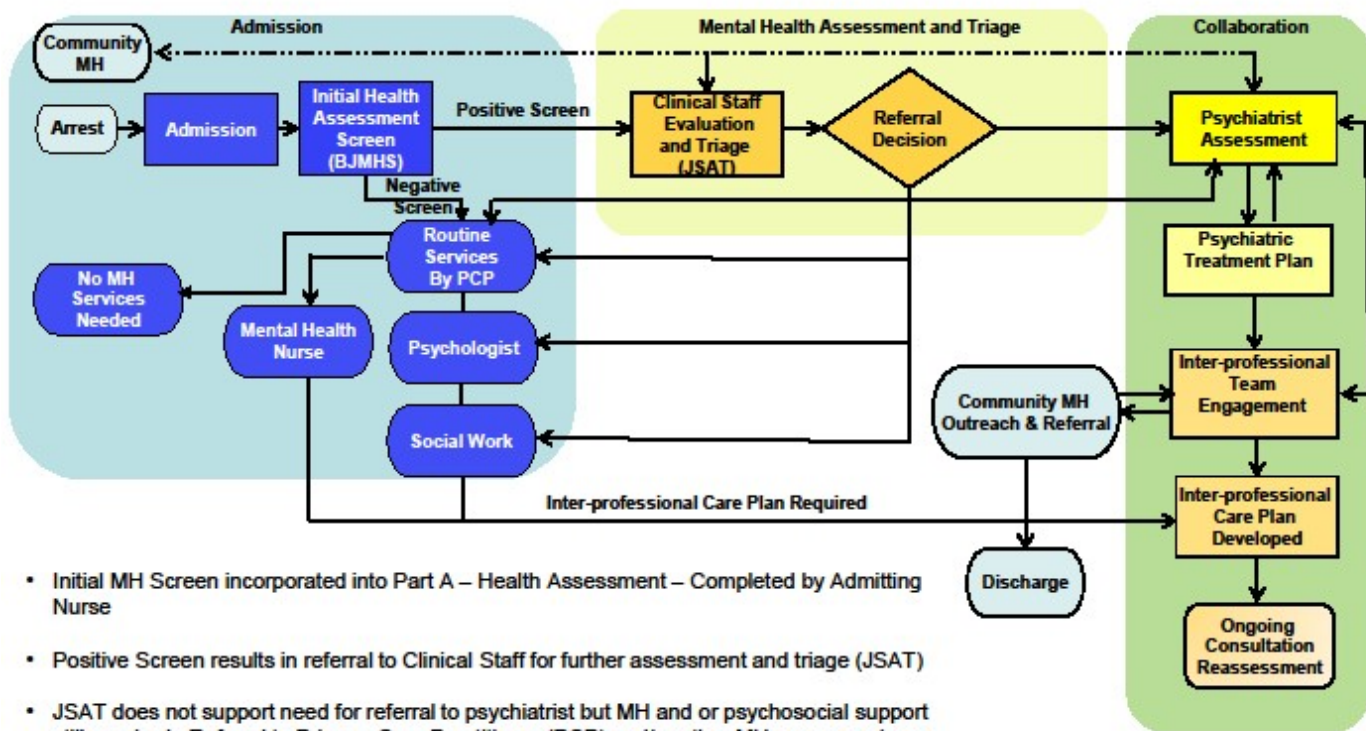
In order to ascertain an inmate's willingness to assume risk, the person or organization responsible for the accommodation must:

- Explain the situation to the inmate
- Identify the potential risks involved and the steps that will be taken to reduce or minimize these risks
- Provide alternatives to consider or weigh against risky accommodation
- Most importantly, ask the inmate what they think, feel, prefer and if they have any suggestions

Example: An inmate who is blind who uses a cane is admitted to a correctional facility. He expresses a desire to be housed with the general population. After considering the risks involved (including potential risks to other inmates and staff) and taking steps to reduce these risks as much as possible (see above), the superintendent concludes that there is still a small risk to the inmate's health and safety. Instead of ruling out housing with the general population on account of this small risk, the case management team sits down with the inmate and explains the risks to him. He concludes that he would rather assume the risk and be housed amidst the general population than be placed in administrative segregation.

That being said, if the health and safety risks are substantial enough, there may still be undue hardship even if the inmate is willing to assume the risk.

Mental Health Flowchart



- Initial MH Screen incorporated into Part A – Health Assessment – Completed by Admitting Nurse
- Positive Screen results in referral to Clinical Staff for further assessment and triage (JSAT)
- JSAT does not support need for referral to psychiatrist but MH and or psychosocial support still required. Referral to Primary Care Practitioner (PCP) and/or other MH resources (e.g. psychologist, SW, maintain on MHN patient load). Possible requirement for Inter-professional Care Plan
- JSAT does not support requirement for further intervention at this time
- JSAT supports referral for assessment and diagnosis therefore referral to psychiatrist
 - Highly complex needs supports requirement for inter-professional engagement and development of inter-professional care plan

Ministerial Directives

Ministry of Community Safety and Correctional Services

Office of the
Assistant Deputy Minister
Institutional Services

25 Grosvenor Street
17th Floor
Toronto ON M7A 1Y6
Tel: 416-327-9992
Fax: 416-327-3849

Ministère de la Sécurité communautaire et des Services correctionnels

Bureau du sous-ministre adjoint
Services établissement pour adultes

25, rue Grosvenor
17^e étage
Toronto ON M7A 1Y6
Tél. : 416-327-9992
Télééc. : 416-327-3849



MEMORANDUM TO: All Staff
Institutional Services

FROM: Christina Danylchenko
Assistant Deputy
Minister Institutional
Services

DATE: October 17, 2016

SUBJECT: Segregation Review Action Required – ADM Directive

As you are aware, in March 2015, former Minister of Community Safety and Correctional Services, Yasir Naqvi, announced a broad review of segregation policies and procedures in Ontario's correctional system.

Since then, MCSCS has been conducting a review of segregation in Ontario's correctional institutions to:

- review its use and evaluate related policies, practices and procedures;
- compare existing practices with current research and other jurisdictions' best practices; and
- Identify areas needing change.

As part of the review, MCSCS engaged a number of stakeholders, including civil liberties organizations (e.g., Canadian Civil Liberties Association), mental-health experts (e.g., Canadian Mental Health Association), prison advocacy groups (Elizabeth Fry and John Howard Societies), correctional staff and their bargaining unit (OPSEU) and other interested parties (e.g. Ombudsman of Ontario, Ontario Human Rights Commission). As well, the Ministry consulted the public via a posting on its website.

The Ministry is committed to taking action to address the concerns, issues and recommendations from our stakeholders. As the review continues, there are immediate actions

that can be taken relating to the segregation of inmates and that stem from the ongoing review. Accordingly, please take note of the four new directives outlined below:

- **Directive #1 - Segregation will only be used as a measure of last resort (all other alternatives are to be explored prior to placement in segregation).** Segregation is only to be used under the least restrictive conditions available while still maintaining inmate and staff safety
 - While in administrative segregation, inmates will retain as many privileges as those not segregated (i.e. access to programs, reading materials, visits, etc.), as operationally feasible.
 - If segregation is the only viable option for placement, the Segregation Decision/Review Form will be used to demonstrate and document that all other alternatives to segregation have been considered and rejected because they would cause an undue hardship (including reasons related to health and safety concerns).
 - Medical isolation cases are to be identified independently.
- **Directive #2 - The use of close confinement (i.e. disciplinary segregation) is now limited** from the current maximum of 30 consecutive days to a new maximum of 15 consecutive days
 - Reviews and reporting are to continue as currently prescribed at the 24-hour mark, at all 5-day points of the inmate's stay in segregation (i.e. 5, 10, 15)
 - When adjudicating the misconduct and the inmate is to be placed in close confinement for an indefinite period that shall not exceed 15 days (Reg. 778, s. 32 (2) (2))
 - Inmates placed in indefinite close confinement are to be reviewed daily to determine if close confinement needs to continue
- **Directive #3 - Creation of an internal weekly Segregation Review Committee**
 - Institutions will create a segregation review committee which will meet weekly. The committee will review every inmate in segregation to determine the
 - inmate's status, other alternative placements and re-integration strategies. The committee will consist of: Superintendent or designate, health care staff, mental health provider (e.g., social worker, psychologist, mental health nurse, etc.) and any other institutional staff assigned by the superintendent.
- **Directive #4 - Elimination of "loss of all privileges" for inmates in close confinement (i.e. disciplinary segregation)** which will include a move towards alternative sanctions (e.g., loss of earned remission if inmate is sentenced, loss of only specified privileges [canteen privileges, telephone privileges, etc.]) and increase incentives for inmates to maintain good behaviour. Bedding shall never be taken away from inmates as a form of punishment.
 - The loss of privileges as discipline will be considered on a case by case basis taking into account the nature and severity of the offense
 - The loss of privileges is to be documented in detail on the Misconduct Disposition Form (i.e. loss of reading materials only).

At this time, relevant Ministry policies and templates have not been updated to reflect these changes. Once the revised policies are available, all standing orders will be required to be update. In the meantime, this memo serves as the direction for all staff to commence with these procedures effective immediately.

Thank you in advance for the great work you do in contributing to the public safety of all Ontarians

Thank you,

A handwritten signature in cursive script, appearing to read "Christina Danylchencko". The signature is written in a light grey or blue ink.

Christina Danylchencko

Inmate Segregation Handout

You can be placed in segregation if:

- you are in need of protection;
- it is necessary to protect the security of the institution or the safety of other inmates;
- you are alleged to have committed a misconduct of a serious nature;
- you request to be placed in segregation; or
- you are found guilty of misconduct.

Those who need to be isolated for medical reasons, for example, those with a contagious disease, may be placed in medical segregation.

Your Rights

If you are placed in segregation:

- You have, as much as possible, the same rights and privileges as all other inmates such as health care and programs within the institution.
- If you do not understand why you have been placed in segregation, or if you need help to participate in the segregation review process (for example, making a request to the superintendent or designate, participating in interviews about alleged misconduct, having conversations with the health care staff or the superintendent or designate), you may ask for help.
- At any time during the segregation review process you may make a submission (opportunity to offer information) to the superintendent or designate either in person or in writing.

Review and Reporting Requirements

- When you are first placed in segregation, you will be advised about the reasons for your placement.
- Your segregation status will be reviewed within 24 hours, and you will be advised why you are in segregation, and if segregation is no longer needed, you will be removed from segregation.
 - If you are in segregation for an alleged serious misconduct you will be provided with a Misconduct Notice Form.
 - If you are in segregation as discipline for being found guilty of misconduct, you will be provided with an Inmate Notification of Misconduct Disposition Form.
- Your segregation status will be reviewed at least once in every 5-day period to determine whether your continued segregation is warranted.

- If you are in segregation for a continuous period of 30 days, a review of the reasons for continued segregation must be conducted. A review must be conducted after every 30 day period you remain in segregation. This review will include and document:
 - Your mental health status and/or Human Rights Code related needs.
 - What alternatives to segregation have been considered and rejected, as well as any segregation review plan and/or treatment plan to help you get out of segregation.

If you are in segregation for a continuous period of 30 days:

- The Superintendent will report to the Assistant Deputy Minister of Institutional Services the reason(s) for your continued segregation, including what alternatives to segregation have been considered and rejected and whether there is a treatment plan to help you get out of segregation.

If you are in segregation for more than 60 days (total) in one year:

- The Superintendent will notify the Assistant Deputy Minister of Institutional Services.

Mental Health and Segregation

Segregation is not to be used to discipline and/or manage inmates with mental illness unless the Ministry has first considered and rejected alternatives to segregation to the point of undue hardship.

If you have mental health concerns or mental illness:

- As part of your care, you will be assessed as soon as possible after you are placed in segregation.
- The assessment will determine how to best meet your mental health needs and recommend mental health services that are specific to you.
- You will be re-assessed at least every 5 days to determine your mental health needs. Changes to your treatment plan will be made, if needed.
- Physicians, psychiatrists and other clinicians (such as psychologists, psychometrists, mental health nurses, nurses and social workers) will work as a team to provide mental health services that are specific to you on an ongoing basis.

Your health is important! You have the right to refuse to be assessed by a clinician, however; you are strongly encouraged to participate and provide accurate information about your health and mental health. Mental Health services are available in your institution. All health care conversations and records are confidential unless there is a risk to your health and safety or the health and safety of others.

Appendix C – Important Resources

Background research commissioned by the Independent Review

Larocque, R. (Jan 2017). *Segregation Literature Review*. Available on the website of the Independent Review of Ontario Corrections at www.ontariocorrectionsreview.ca.

Key Canadian Laws

The Canadian Charter of Rights and Freedoms

The Constitution Act (1982). Schedule B to the Canada Act 1982 (UK) (1982) c 11, <http://canlii.ca/t/ljsx>

Corrections and Conditional Release Act, SC 1992, c 20, <http://canlii.ca/t/52rw4>

General, RRO 1990, Regulation 778, <http://canlii.ca/t/51z4n>

Ministry of Correctional Services Act, RSO 1990, c M.22, <http://canlii.ca/t/52hpg>

Key International Laws and Standards

The Bangkok Rules

UN General Assembly. (2011, March 16). *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)*, A/65/457, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/65/229

The Mandela Rules

UN General Assembly. (2016, January 8). *United Nations standard minimum rules for the treatment of prisoners (the Mandela Rules)*, A/Res/70/175, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/70/175

United Nations (10 December 1984). *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. United Nations, Treaty Series, vol. 1465.

United Nations (1966, December 16). *International Covenant on Civil and Political Rights*. United Nations, Treaty Series, vol. 999.

United Nations (2006, June 22). *Optional Protocol to the Convention Against Torture*. United Nations, Treaty Series, vol. 2375.

