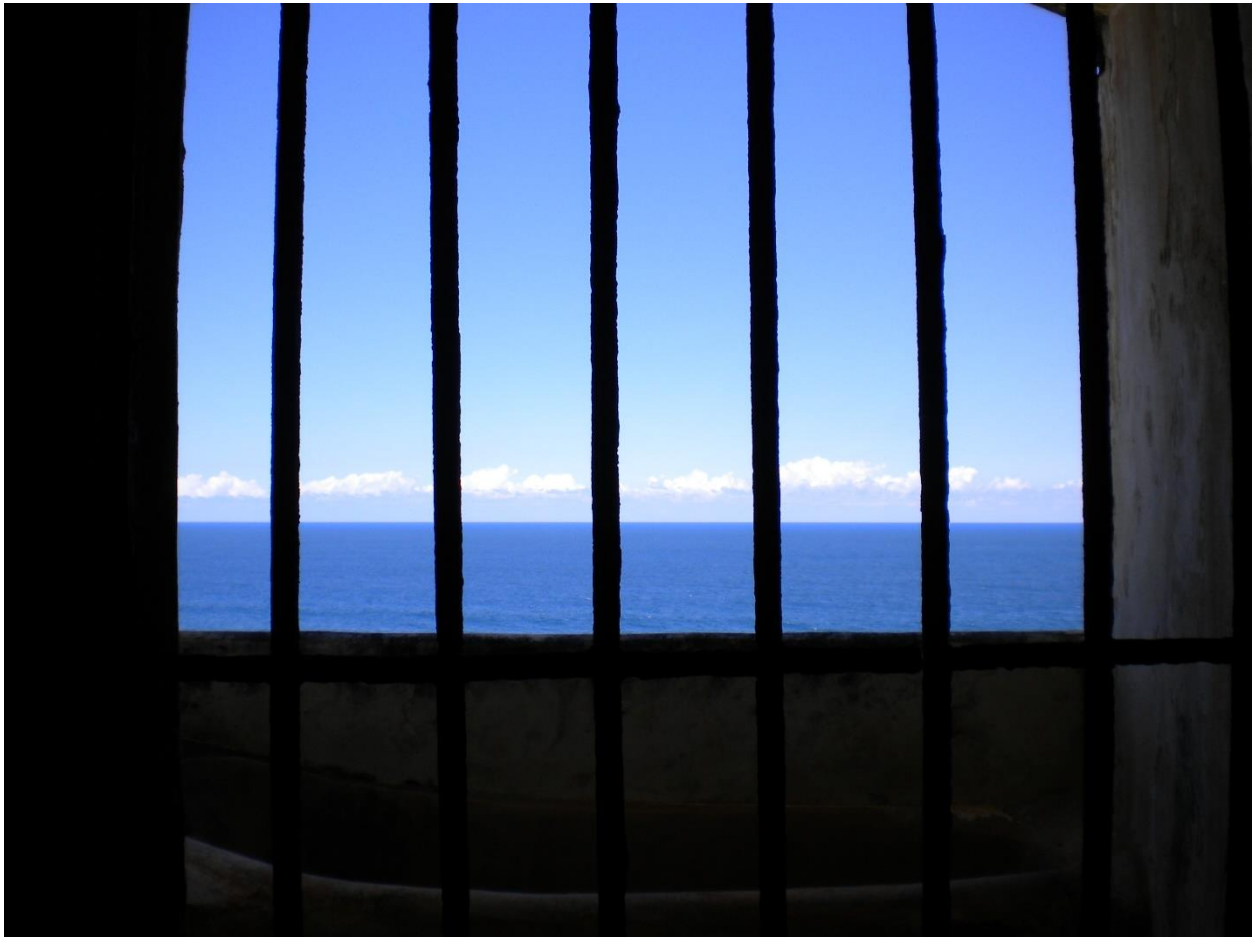


**A Review of the Use of Disciplinary Segregation
in Newfoundland and Labrador Adult Correctional
Institutions**

Final Report



April 2017

April 7, 2017

Mr. Owen Brophy
Superintendent of Prisons
Department of Justice and Public Safety
Government of Newfoundland and Labrador

Dear Superintendent Brophy,

We are pleased to submit the report of the Segregation Review Committee for consideration by Corrections and Community Services, Department of Justice and Public Safety. The Review Committee began its work in April 2016 and carried out the mandate as was provided to us. At a time when the use of segregation is being critically reviewed both nationally and around the world, due to its damaging effects, especially for those with mental illness, we feel the examination of the issues relating to disciplinary segregation was quite timely and important.

Based on the information gathered, the Committee has proposed 18 recommendations for your consideration and feel most of the recommendations can be implemented very quickly. Should you wish to discuss any of these in more detail, the Committee would be happy to meet with you at your convenience.

Respectively submitted,

The Segregation Review Committee

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Introduction

In preparation for the introduction for the new Correctional Services Act, the Superintendent of Prisons assembled a Segregation Review Committee and was given the mandate to review the use of segregation in the province's adult correctional facilities. This review comes at a time when the use of segregation is being examined both nationally and internationally due to the numerous concerns raised around its damaging effects, especially those with mental illness. In recent years, sudden deaths in segregation in Canada have further heightened concerns around its use and calls for more legal restrictions, including a prohibition against the use of segregation for vulnerable persons, those with known serious mental health issues, or a history of self-harm or injury.

The Terms of Reference provided to the Review Committee were as follows:

- Review of the existing guidelines
- Review of the use of segregation for pre-disciplinary court detention
- Jurisdictional scan
- Recommendations with emphasis on alternatives to segregation.

The Review Committee had representation from both the correctional setting and community organizations working within the criminal justice system. The cross representation of committee members allowed for a broad discussion about the use of segregation. The appointed members of the Review Committee were:

- Cindy Murphy, Executive Director, John Howard Society Newfoundland & Labrador
- Denise Hillier, Director of Clinical Services, Stella's Circle
- Heather Yetman, Manager of Institutional Programs, Adult Custody, Department of Justice & Public Safety
- Heidi Edgar, Program Manager, Canadian Mental Health Association NL Division
- Lieutenant Randy Hanlon, Unit Manager, Her Majesty's Penitentiary (HMP), Adult Custody, Department of Justice & Public Safety
- Rod Harris, Manager of Programs, John Howard Society of Newfoundland and Labrador.

Information for this report was gathered from a number of provincial correctional sources including:

- The Prisons Act 1970 (amended 2006) including Prisons Regulations
- Adult Custody Policy, NL Corrections & Community Services
- Adult Custody Standing Orders

- Disciplinary Offences - Punishments and Dispositions Guidelines
- Newfoundland and Labrador Correctional Services Act (**assented to May 31, 2011, yet to be proclaimed**)
- The Department of Justice and Public Safety, Corrections and Community Services: Vision, Mission and Values.

Very often, the terms solitary confinement and segregation are used interchangeably and their definitions vary across the literature. For the purpose of this report the Review Committee defined segregation as:

a form of imprisonment in which an inmate is isolated for 22–24 hours a day with a maximum disposition of 15 days.

Segregation is mostly employed as a form of punishment, usually for violations of prison regulations. However, it is also used as an additional measure of protection for vulnerable inmates. In the case of prisoners at high risk of suicide, when space is unavailable in the special handling unit (SHU), the camera cells in segregation are often used to prevent access to items that could allow prisoners to self-harm.

There are two types of segregation utilized by NL Adult Custody and they are referred to as Disciplinary Segregation and Administrative Segregation. The rules and policies pertaining to each vary.

(a) *“Administrative segregation is used to separate a prisoner from general population when his/her continued presence in the general population would pose a serious threat to life, property, self, staff, other inmates or to the security and good order of the institution.”*
(Policy 8-05-02)

(b) Disciplinary segregation is generally known as a form of separation from the general population for a specified period of time. The Prison’s Regulations under The Prison’s Act states:

27(1) “If a prisoner violates a provision of these regulations applicable to him/her or fails to comply with the lawful direction given to him/her by the superintendent or officer, he/she shall in addition to or instead of the punishment of deduction or withholding remission provided for in the Act be liable to one or more of the following punishments:

(a) Reprimand;

- (b) *Temporary or permanent loss of one or more privileges;*
- (c) *Assignment to special work detail during non-working hours; or*
- (d) *Confinement in an isolation cell for a period not exceeding 15 days.*

28(1) A prisoner who is sentenced to confinement in an isolation cell shall, if the period of confinement exceeds 5 days, be permitted to exercise himself/herself outside the cell for a period of one hour for each day of confinement in excess of 5 days.”

While the preceding information discusses both disciplinary and administrative segregation, for the purposes of this review, the committee was only tasked with the review of the use of disciplinary segregation. ***The committee is strongly recommending a review of administrative segregation at a future date because of the current problematic practice of placing individuals in administrative segregation for indefinite periods.***

(1) Review of the Existing Guidelines

The Department of Justice and Public Safety has Vision, Mission and Values statements which have been reflected upon in the preparation of this report and are relevant to consider in the area of proposed alternatives to the use of segregation. These statements are:

- ***Vision:*** *A dynamic service of distinction.*
- ***Mission:*** *Corrections and Community Services provides an integrated and supportive service to those who engage in or have been affected by crime. We foster recovery, rehabilitation and reintegration for the benefits of victims; adults and youth involved with criminal justice system; families and communities.*
- ***Values: Integrity:*** *Quality of adhering to high moral principles and professional standards;* ***Respect:*** *A positive regard for another’s worth;* ***Human Dignity:*** *The innate right of all individuals to be valued and to receive ethical treatment that is fair, compassionate, equitable, and without judgement;* ***Professionalism:*** *knowledge, skills, and character expected from a person trained to do a job well.*

Segregation occurs when the Superintendent, Assistant Superintendent, or a disciplinary panel consisting of three correctional officers, one of whom must be a commissioned officer, orders disciplinary segregation for inmates who have committed serious violations of prison rules.

The authority of the disciplinary panel is derived from Prison Regulations which states the superintendent shall:

4(f) "Investigate or cause to have investigated by summary trial either by himself/herself (superintendent), the assistant superintendent or by disciplinary panel consisting of three officers appointed by him or her, one of whom shall be a commissioned officer, every charge against a prisoner of a breach of the act or these regulations."

The sanction of disciplinary segregation may be imposed if it is determined that no other available course of action will adequately discipline that inmate to deter him or her from violating prison rules again. Inmates suspected of committing serious violations of prison rules may be placed in disciplinary segregation while awaiting a disciplinary hearing.

While a definition of disciplinary segregation was not found in policy, the current Adult Custody Policy, Section 18 – 'Inmate Discipline' permits the use of disciplinary segregation up to fifteen days, for serious violations (section 18.10.01) or intermediate violations (section 18.10.02). The current regulations found in the Prison Regulations, under the Prisons Act, Section 28, Isolation Cells state:

(1) A prisoner who is sentenced to confinement in an isolation cell shall, if the period of confinement exceeds five days, be permitted to exercise himself/herself outside the cell for a period of one hour each day of confinement in excess of five days.

(2) The Superintendent shall ensure that a prisoner who is punished by being confined in an isolation cell is medically fit. On being satisfied that the prisoner is not sufficiently fit for the punishment, may impose an alternative punishment.

In 2008, a review of the prison system in Newfoundland and Labrador, titled Decades of Darkness, was released with recommendations on system improvements. Four of the recommendations relate to this review of segregation. Three of the recommendations have yet to be implemented. They are:

Recommendation 50: *It is recommended that policy be developed to outline two distinct categories of inmate offences – serious and minor, and that serious violations hearings be conducted by an independent chairperson.*

Recommendation 51: *It is recommended that all present policies on discipline be combined into one policy document.*

Recommendation 63: *It is recommended that a comprehensive strategy be developed to address the mental health issues of offenders so that the quality of care and support is based on professionally accepted standards.*

One other recommendation related to segregation from the report has been implemented:

Recommendation 37: *It is recommended that the segregation areas be visited every day by the Duty Captain to ensure that inmates' rights are being respected and that they are being provided with showers and exercise.*

The Department of Justice and Public Safety, Adult Custody Division operates five correctional and two lockup facilities. Within the correctional facilities, all have segregation cells with the exception of Bishop Falls Correctional Centre. The number of segregation cells at each of the NL Adult Custody institutions is as follows:

- Her Majesty's Penitentiary - 5 cells
- West Coast Correctional Centre - 3 cells
- Labrador Correctional Centre - 4 cells
- Newfoundland and Labrador Correctional Centre for Women - 2 cells.

Male inmates who cannot be managed at satellite institutions are transferred to segregation cells at HMP when necessary. Institutional staff members have advised the committee that over recent years, the length of time individuals have been placed in segregation has been decreasing. The women's institution (NLCCW) uses segregation for administrative confinement while disciplinary matters are usually dealt with through loss of privileges and confinement to cell.

The Committee reviewed "Disciplinary Offences, Punishments and Dispositions Guidelines" currently in practice and agreed that improvements and advancements are needed to reflect the national and international trends, specifically the Mandela Rules.

(2) Review of Use of Segregation for Pre-disciplinary Court Detention

The Review Committee found there were no statistics available for the use, frequency and seriousness of charges resulting in the pre-disciplinary use of segregation. A 2013 Directive from the Superintendent of Prisons distributed within HMP stated that a disciplinary hearing must occur within 96 hours of receiving a disciplinary charge.

This directive was an attempt to reduce the extended periods of time that offenders were sometimes being held in segregation or cells awaiting a disciplinary hearing.

Neither the Prisons Act nor Prisons Regulations address pre-disciplinary court detention. Adult Custody Policy, section 18.15.02 – Pre-Hearing Detention states:

It shall be the policy of the Division of Corrections & Community Services to detain an inmate before a disciplinary hearing only if there is reasonable cause to believe that the inmate:

- (a) Constitutes a threat to staff, other inmates or himself/herself; or*
- (b) The inmate will likely subvert the investigative process.*

It is the Committee's understanding the practice is to place individuals who are alleged to have committed serious breaches of prison regulations in segregation while awaiting a disciplinary hearing. Many times it appears that the immediate response of correctional staff is to move inmates to segregation instead of looking for other viable options, such as cell/unit confinement.

(3) Jurisdictional Scan

Due to the numerous concerns raised around the use of segregation and the damaging effects of solitary confinement and deaths in custody, the use of segregation is being examined internationally, nationally and provincially.

International Review

The United Nations (UN) Committee Against Torture – the expert international body responsible for ensuring compliance with the UN Convention Against Torture – has explicitly criticized Canada's use of solitary confinement and called upon Canada to:

- (1) 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; and
- (2) Abolish the use of solitary confinement for persons with serious or acute mental illness.

In December 2015, the United Nations General Assembly approved revisions to the UN Standard Minimum Rules for the Treatment of Prisoners. The revised Rules, also known as the Nelson Mandela Rules, place specific limits on the use of segregation. In particular:

Rule 44 requires prohibitions on indefinite solitary confinement and prolonged solitary confinement. Prolonged solitary confinement is defined as segregation in excess of 15 consecutive days.

Rule 45 further states that “solitary confinement shall be used only in exceptional cases as a last resort, for as short a time as possible and subject to independent review.” It also prohibits the use of solitary confinement for women, children, and prisoners with mental or physical disabilities that would be exacerbated by the use of segregation.

The United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has also expressed concern regarding the use of solitary confinement. In his opinion, prolonged segregation may amount to cruel, inhuman or degrading treatment or punishment. Under certain conditions, it may amount to torture.

The European Court of Human Rights has also found, in several cases, that the use of solitary confinement violates the European Convention for the Protection of Human Rights and Fundamental Freedoms. For example, in a 2009 case against the government of France, the court ruled, “Solitary confinement was not a disciplinary measure and mere reference to organised crime or some unsubstantiated risk of escape was insufficient. Likewise, the classification of a detainee as a dangerous prisoner, or his committing even a serious disciplinary offence did not justify placing him in solitary confinement” (Civil Liberties Association, 2016).

Provincial & Territorial Review

Canada’s use of segregation has been criticized by international experts. In June 2012, the UN Committee Against Torture concluded its sixth periodic review of Canada and expressed concern about the following:

- *The use of solitary confinement, in the forms of disciplinary and administrative segregation, often extensively prolonged, even for persons with mental illness.*
- *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”.*
- *Abolish the use of solitary confinement for persons with serious or acute mental illness.*

These recommendations were recently echoed by the UN Committee for Human Rights. In July 2015 the UN Committee urged that Canada minimize the use of administrative segregation in prisons, use disciplinary segregation only as a measure of last resort, and avoid segregation for individuals with mental health issues.

Similarly, the Correctional Investigator of Canada, who is the ombudsman for federally sentenced offenders and provides independent oversight of the Correctional Service of Canada (CSC), has called on government to prohibit long-term solitary confinement for the seriously mentally ill and for prisoners who are at risk of suicide or self-injury.

In a submission to the Ontario Ministry responsible for the review of segregation in 2016, the Canadian Civil Liberties Association (CCLA) expressed concern about the overuse of segregation, which it suggested is symptomatic of other issues with corrections that include overcrowding and challenges to managing inmates with mental health issues. The CCLA also said that some of the negative impacts of segregation include anxiety, insomnia, chronic depression and suicidal ideation. The organization went on to state that studies show segregation in excess of 10 days can result in negative impacts on physical and emotional health, and on an offender's re-integration back into general population and the community.

Many provinces are examining their own practices relating to the use of segregation, with some making very recent changes. For example, on October 17, 2016 the province of Ontario announced new measures for segregation including:

- (A) 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.*
- (B) A limit of 15 consecutive days in disciplinary segregation will be established, reduced from the current maximum of 30 consecutive days.*
- (C) A weekly segregation review committee will be created at each institution to conduct case reviews of all inmates in segregation.*
- (D) 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.*
- (E) 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.*
- (F) 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.*
- (G) An assessment of existing capital infrastructure relating to segregation will be conducted, including any opportunities for improvements and appropriate alternatives regionally.*

Segregation maximums in other provinces include:

- **Alberta**, 14 days (Correctional Institutional Regulation, Section 46(c), 2015)
- **British Columbia**, 30 days (Section 27(1)(d))
- **Manitoba**, 15 days (Manitoba Correctional Services Act, Section 13(1)(e), 1999)
- **New Brunswick**, indefinite but requiring approval of Director of Correctional Services after 5 days (New Brunswick Corrections Act, Section 16(1)(e), 1984)
- **Northwest Territories**, 14 days (Department of Justice, Government of Northwest Territories)
- **Nova Scotia**, 10 days (NS Corrections Services Policies & Procedures, section 8)
- **Nunavut**, 15 days, (Department of Justice, Government of Nunavut)
- **Prince Edward Island**, indefinite but requiring approval of the Director for any one violation exceeding 4 days (PEI Correctional Services Act Regulations, Section 24 6(d) 2002)
- **Quebec**, unable to retrieve information
- **Saskatchewan**, 10 days and under review (Correctional Services Act, Section 27(1)(b)(iii), 2003)
- **Yukon**, 30 days (Yukon Corrections Act, Section 33(3)(b)(i) and 33(3)(b)(ii), 2009)

(4) Recommendations with Emphasis upon Alternatives to Segregation

The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules) Rule 38.1 states “Prison administration are encouraged to use, to the extent possible, conflict prevention, mediation or any other alternative dispute resolution mechanism to prevent disciplinary offences or to resolve conflicts.”

Segregation must only be used as a measure of last resort and must only be used under the least restrictive conditions available while still maintaining inmate and staff safety.

“A 2014 review by the (*federal*) Office of Correctional Investigator found segregation placement to be an independent factor that elevated suicidal risk among inmates” (Schizophrenia Society of Ontario, p 4).

Alternative dispute resolution such as programming, mediation, conflict resolution, and peer mentoring should be utilized as a preferred method of changing negative behaviour and encouraging pro social activities.

To gain the perspective of inmates who have experienced segregation, focus groups were held with 15 men at HMP in October 2016. During the discussions, those participating reported that segregation was not a deterrent to problem behaviour and they felt that spending time in segregation resulted in an increase in their anger and “hate.” They suggested rewards work better at changing behaviour and said access to work, counselling and other rehabilitative programming would be more helpful. The men also reported their mental health was negatively affected by time spent in segregation. They described the conditions of segregation cells as cold in winter, having daylight 24 hours a day, and noted there was access to shower facilities once per day but no recreation hour until the first five days had passed. They also expressed concern about the physical conditions of segregation, with human excrement on the walls and floor, prevalence of insects and unsanitary conditions. They said there are no personal telephone calls or contact with family permitted while in segregation and only occasional access to programming.

The National Segregation Strategy: For Corrections in Canada have established Guiding Principles for the effective management of segregation in Canadian correctional institutions. These principles have been established by the National Segregation Strategy: For Corrections in Canada, pp 5-6 (November 2016)

- *The safety and security of inmates, staff and the public is paramount.*
- *Reasonable alternatives to segregation shall be exhausted prior to placement.*
- *Where appropriate, segregated inmates will retain as many rights as possible as those of non-segregated inmates.*
- *Inmates are entitled to fair and humane treatment and to have access to timely and efficient redress mechanisms.*
- *Meaningful human contact is recognized as being integral to the wellbeing and successful reintegration of segregated inmates.*
- *Due diligence and procedural fairness are essential elements to an appropriate and comprehensive segregation process.*
- *Disciplinary segregation as a sanction will consider both mitigating and aggravating factors, be proportionate to the behavior, and will be authorized by law.*
- *Segregation policies, practices, programs and services will be respectful of gender, ethnic, cultural and linguistic differences and be responsive to the particular needs of women, as well as to the needs of other groups of inmates with special requirements.*
- *Segregation policies, practices, programs and services will be trauma-informed and responsive to the inmates’ mental and physical health needs.*
- *Inmates are encouraged to actively participate, to the best of their ability, in their rehabilitation and reintegration planning.*

- *Comprehensive reviews will occur at prescribed times, as well as when changing circumstances are identified, with the goal of reintegrating the inmate at the earliest opportunity while maintaining the safety and security of the institution.*
- *Effective oversight to ensure transparency and accountability in the administration of segregation by correctional management.*
- *Correctional institutions will ensure the continuous provision of training and education with a view to maintaining and improving the knowledge and professional capacity of its personnel.*

The Segregation Review Committee makes the following 18 recommendations based upon the extensive research and reviews conducted throughout the course of this review:

Recommendation # 1: It is recommended that inmates who experience or are suspected of experiencing Mental Illness/Mental Health concerns should not be placed in segregation.

Mental illnesses are defined by the Canadian Mental Health Association, as health challenges that impact thoughts, feelings, and behaviours and affect the way individuals think about themselves, relate to others, and interact with the world. Mental illnesses can disrupt a person’s life or create challenges. There are many different types of mental illnesses and levels of severity, including but not limited to mood disorders, anxiety disorders, psychotic disorders, personality disorders and eating disorders.

According to the Schizophrenia Society of Ontario, **“the use of segregation, especially for people with symptoms of mental illness, is a severe deprivation of liberty as evidenced by the *United Nations Committee against Torture’s* call on Canada to limit the use of solitary confinement as a measure of last resort, and to abolish its use for persons with serious or acute mental illness.”**

Placing inmates who have mental illness in segregation contradicts the principles of recovery. Segregation punishes a person for their mental illness and can further aggravate symptoms of illness (Schizophrenia Society of Ontario 2016, p 4).

The United Nations Standards and Norms in Crime Prevention and Criminal Justice Rule 45.2 also states,

“the imposition of solitary confinement should be prohibited in the case of prisoners with mental or physical disabilities when their conditions would be exacerbated by such measures.”

Rule 39.3 of the same document states,

“Before imposing disciplinary sanctions, prison administrations shall consider whether and how a prisoner’s mental illness or developmental disability may have contributed to his or her conduct and the commitment of the offence or act underlying the disciplinary charge. Prison administration shall not sanction any conduct of a prisoner that is considered to be the direct result of his or her mental illness or intellectual disability.”

Recommendation # 2: It is recommended that there should be a maximum disposition of 10 days in segregation with the ability to earn remission on all disciplinary dispositions.

There is evidence to suggest that people who have experienced segregation are at risk of experiencing long term effects, which may further impact their successful reintegration upon release (Schizophrenia Society of Ontario, p 5). The Canadian Civil Liberties Association reported in its 2016 Submission to the Ontario Ministry that various studies have revealed some of those impacts to be nightmares, hallucinations, self-harm and anxiety.

With heightened concerns around segregation, several provinces are currently reviewing its use and maximum time in isolation. Granting earned remission gives control to the inmate in determining ultimate length of stay in segregation.

The ability to earn remission may motivate offenders to conduct themselves in a pro-social manner, thereby reducing time spent in segregation. With earned remission, the maximum amount of time an inmate would serve in segregation would generally be 7 days. The Vera Institute, in its Recommendations to Safely Reduce Pennsylvania Department of Corrections’ Use of Segregation (January 2014) also recommended that graduated privileges can help inmates more successfully return to general population.

Recommendation # 3: It is recommended that physical conditions in the segregation cells and area must be humane.

Mandela Rule 42 states, “General living conditions addressed in these rules, including those related to light, ventilation, temperature, sanitation, nutrition, drinking water, access to open air and physical exercise, personal hygiene, health care and adequate personal space, shall apply to all prisoners without exception.”

The Committee recommends that every effort shall be made to ensure the cleanliness and humanity of the area known as segregation and this shall include access to natural lighting and windows.

Mandela Rule 43(1) states, “In no circumstances may restrictions or disciplinary sanctions amount to torture or other cruel, inhuman or degrading treatment or punishment.” In particular this rule also states that the practice of a placement of a prisoner in a dark or constantly lit cell be prohibited.

Mattresses need to be cleaned on a regular basis and repaired as required. Sheets and blankets must be provided adequate to the temperature of the area. In the event an inmate in segregation is not physically, mentally or cognitively able to maintain cleanliness of their cells, someone else must be assigned to perform these tasks.

Recommendation # 4: It is recommended that every effort should be made to offer inmates in segregation the same frequency and variety of activities that are available to the rest of the prison population.

Regardless of placement in the prison, it is the responsibility of the officials to maintain the inherent dignity and worth of all inmates, to provide mental stimulation and continue to promote rehabilitation. Therefore, all these activities shall be offered daily, commencing within twenty-four (24) hours of placement in the segregation unit. Access to television, books, newspapers, etc. should be made available to increase mental stimulation. Outdoor recreation and exercise equipment should be available daily. Inmates should be able to attend programming while housed in segregation to meet their rehabilitative needs.

Mandela Rule 42 states, “general living conditions addressed in these rules, including those related to light, ventilation, temperature, sanitation, nutrition, drinking water, access to open air and physical exercise, personal hygiene, health care and adequate personal space, shall apply to **all** prisoners without exception.”

Recommendation # 5: It is recommended that periods of placement in segregation should not include loss of visiting privileges.

Currently inmates placed in segregation are not permitted family contact and are not consistently given the opportunity to notify their family of their status in advance of the placement. In keeping with Mandela Rule 43.3, it is recommended that disciplinary sanctions or restrictive measures shall not include the prohibition of family contact.

A Vera Institute study published in October 2012, found that incarcerated men and women who maintain contact with supportive family members are more likely to succeed after their release. Another Institute report published in 2011, indicated that those who maintain supportive relationships with family have better housing and employment outcomes post-release.

Many corrections practitioners and policy makers intuitively understand the positive role families can play in the re-entry process but they often do not know how to help people in prison draw on these social supports (Prison Legal News 2014).

Recommendation # 6: It is recommended that inmates facing disciplinary charges be maintained on their unit until appearing in disciplinary court. Placement in segregation for pre-hearing detention must be authorized by the Officer in Charge as per Policy section 18.15.02.

Instead of using segregation cells for pre-hearing detention, inmates should be confined to their cells in their living units. This practice is considered to be an alternative to the use of segregation and allows for less isolation and more accessibility to programs and services.

Access to rehabilitative services and human contact is more likely to result in positive outcomes and provides the offender with a “cooling down” period rather than the most restrictive measure of segregation.

Recommendation # 7: It is recommended that disciplinary hearings must be held within forty-eight (48) hours.

As per the Guiding Principles, established by the National Segregation Strategy, “inmates are entitled to fair and humane treatment and to have access to timely and efficient redress mechanisms.” The current system allows for up to 96 hours and it is therefore recommended that a disciplinary hearing should be held without delay and within 48 hours.

Recommendation # 8: It is recommended that inmates in segregation should have improved access to physical and mental health services.

Inmates in segregation should have access to mental and physical health services at all times, equivalent to other inmates in the prison, regardless of placement. In the event an inmate remains in segregation in excess of seven days (7), mental and physical health assessments must occur on day eight (8). This should be a requirement for all inmates in segregation in excess of seven (7) days and not have to be initiated by the inmate.

Mandela Rule 46.2 states, “Health-care personnel shall report to the director, without delay, any adverse effect of disciplinary sanctions or other restrictive measures on the physical or mental health of a prisoner subjected to such sanctions or measures and shall advise the director if they consider it necessary to terminate or alter them for physical or mental health reasons.”

It also goes on to say in Rule 46.3 “Health-care personnel shall have the authority to review and recommend changes to the involuntary separation of a prisoner in order to ensure that such separation does not exacerbate the medical condition or mental or physical disability of the prisoner.”

Recommendation # 9: It is recommended that additional areas be established in each adult correctional facility to enable the placement of inmates with complex mental health needs who require direct observation (camera).

The current practice for inmates who are experiencing acute mental health needs and/or suicide ideation is to be placed in Living Unit 1 - SHU. However, when SHU is at capacity, the practice is to utilize Segregation cells where they can be observed more closely via camera.

Due to the damaging effects of the isolation of segregation for those experiencing mental health concerns, it is recommended that additional areas within each correctional institution be established to prevent the unnecessary use of segregation.

Recommendation # 10: It is recommended that inmates serving in excess of thirty days in segregation during a term of incarceration be referred to the Complex Needs Committee.

Due to the detrimental effects of serving long periods of time in segregation, all inmates who are sentenced to multiple periods of segregation totalling more than 30 days in any one term of incarceration should be referred to the Complex Needs Committee. The committee which is comprised of security, case management and program staff consults on individuals with complex needs within adult custody.

Recommendation # 11: It is recommended that there be policy and procedures developed and updated for disciplinary segregation.

Policy and Procedures play a very important role by defining an organization’s guiding principles, providing for detailed task instructions while forming the basic structure of business operations. It is therefore recommended policy and procedures be developed and updated for disciplinary segregation.

It is hoped the recommendations contained in this report will be adopted so as to create significant positive changes to disciplinary segregation and reflect a more humane way of treating inmates who exhibit disciplinary problems within the prison system. New policy and procedures will be essential to reflect a new and consistent process for disciplinary segregation.

Recommendation # 12: It is recommended that there be policy and procedures developed and updated for disciplinary hearings.

In addition to recommending policy and procedures be established and updated for disciplinary segregation, it is further recommended that the same be developed for disciplinary hearings. This will provide legitimacy, give direction and establish governance.

The **Decades of Darkness** report and the *New Correctional Services Regulations* under the *New Correctional Services Act* states, that an independent person be appointed to adjudicate disciplinary hearings. Furthermore policy needs to be written to address these changes including the formalization of Disposition and Sentencing Guidelines. The *Correctional Services Regulations* under the *Correctional Services Act* provides changes to the disciplinary procedures including inmate grievance procedures and policy should be developed to reflect same.

Recommendation # 13: It is recommended that Adult Custody Policy's regarding Inmate Discipline be made available to all correctional staff members.

In addition to recommending policy and procedures be established and updated for disciplinary segregation and hearings, it is further recommended that these policy's be made available to all correctional staff members. Currently, Section 18 – Inmate Discipline of Adult Custody Policy is not available to staff via Drive 'M'. This will provide legitimacy, give direction and establish governance.

Recommendation # 14: It is recommended that a formal process of data collection and statistics should be implemented immediately for the use of segregation.

It is recommended that a formalized process for data collection and statistics be implemented. Data collection should include information such as: violations of the Prisons Act; internal dispositions; reasons for the use of segregation; length of stay in the segregation unit; and time from initial charge to hearing.

These statistics shall then be used to generate reliable data about trends relating to the use of segregation including occupancy rates, in order to create a basis for evidence-based decision-making (Ontario Human Rights Commission Report 2017).

Good data can gain trust, develop effective, respectful consultations, and secure the support of key decision-makers and stakeholders. It can also reduce exposure to possible legal action and human rights complaints.

Recommendation # 15: It is recommended that the Correctional Services Act (2011) be implemented immediately.

The Committee recommends the Correctional Services Act which received Royal Assent on May 31, 2011 be proclaimed. For the purpose of this review, the Act will establish independent adjudicators to oversee and decide disciplinary court matters as recommended in the 2008 **Decades of Darkness, Recommendation 50**. The current practice does not allow for independent, autonomous, impartial decision making, which is integral to procedural fairness.

Recommendation # 16: It is recommended that a thorough and complete review of administrative segregation should be conducted.

The Committee appreciates the invitation to complete a review of disciplinary segregation and recommends a similar extensive review occur for the use of administrative segregation. It is our understanding that policy and practice for the use of administrative segregation has not been updated. Periods of administrative placement may extend far beyond that of disciplinary segregation and long periods of isolation result in detrimental effects on inmates' physical and mental health.

Recommendation # 17: It is recommended that the report, *A Review of the Use of Disciplinary Segregation*, should be shared with all stakeholders.

A strategic communications and training strategy should be developed and implemented to facilitate the exchange of information and ideas among all correctional staff, executive and relevant stakeholders. These recommendations represent a progressive shift from current practices and therefore will allow all correctional staff, justice officials and community stakeholders to understand the document and the rationale for subsequent change in the use of disciplinary segregation.

Recommendation # 18: It is recommended that an Oversight Segregation Committee be established.

It is recommended an Oversight Segregation Committee be established to ensure the Vision, Mission, and Values of Corrections and Community Services are being promoted specifically regarding the use of disciplinary segregation.

This committee should be comprised of community, security, program and health personnel who would meet on a quarterly basis to provide oversight, make recommendations and ensure the integrity of disciplinary segregation is upheld. This committee shall be an independent body, be given authority to receive information, and report directly to the Superintendent of Prisons.

(5) Bibliography

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(6) Appendix

Disciplinary Court Memo (via e-mail)

September 24, 2013

Re: Disciplinary Court

To All Permanent and Acting Captains / Lieutenants,

As you are aware currently there is no time frame on when an inmate must appear in disciplinary court after being charged. We have experienced problems with inmates being held in segregation for extended periods without appearing before a disciplinary panel. In order to bring consistency and fairness to this process the following will be effective immediately.

All inmates must appear before a disciplinary panel within ninety six hours (96) hours of being served with a notice of allegation. In extenuating circumstances this time limit can be extended by the Asst. Supt.

This process will bring us in line with what will be in the new Correctional Services Act which will be in place in the near future.

If you have any questions or concerns please contact me.

Thanks,
Owen

Owen Brophy
Assistant Superintendent
Her Majesty's Penitentiary
St. John's, NL
p (709) 729-3128
f (709)729-4312
owenbrophy@gov.nl.ca