

# COALITION ON REFORMING SEGREGATION IN ONTARIO'S CORRECTIONAL INSTITUTIONS

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## EFFECTING MEANINGFUL CHANGE KEY MESSAGES

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## **About the Coalition**

The Coalition is made up of organizations and individuals concerned with supporting the health and well-being of people who are incarcerated by promoting mental health, health equity and restorative justice.

The Coalition will work to call attention to the damaging practice of segregation and to the immediate reforms needed to mitigate associated harms across provincial correctional facilities for incarcerated persons.

In addition, following the introduction of corrections legislation in early 2018, the Coalition will work to ensure that critical reforms from the Independent Advisor on Corrections Reform's interim report are being implemented consistently across correctional facilities and are not undone if there is a change in government.

## The Issues<sup>1</sup>

- Segregation can amount to a prison within a prison. It can cause or exacerbate significant psychological distress, especially if prolonged or indefinite.
- On any given day over the last 10 years, between 5% and 7% of people in Ontario's correctional facilities were in segregation.
- In 2016, segregation terms ranged from 1 day to over 1,500 days.
- Vulnerable groups are disproportionately impacted by segregation; for instance:
  - In 2016, individuals with mental health and/or suicide risk alerts spent on average approximately 30% more time in segregation compared to the rest of the segregated population.
  - 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 those admitted to segregation had a suicide risk alert.
  - In 2016, 7 out of 10 individuals in segregation were on remand, awaiting trial or bail determination.
  - In light of their unique experiences and needs, other groups, including LGBTQ groups, people on immigration hold, people requiring close medical supervision, people with physical disabilities and people at risk of suicide or self-harm, may also be disproportionately impacted by the use of this practice.
- A lack of reliable and consistent data collection across institutions, particularly prior to 2015, undermines the ability to fully understand the extent of this issue, and in turn, effectively act on it.

## Guiding Principles

The following principles underlie the Coalition's key messages and objectives:

- Respect for the inherent dignity and human worth of all people who are incarcerated must be upheld.
- Segregation is counter-productive to goals of rehabilitation and reintegration of people who are incarcerated.
- Segregation should be reserved for exceptional circumstances and used as a last resort and for as short a time as possible.
- Safety for all impacted groups, including correctional staff, can be achieved without resorting to segregation.
- Harms associated with the use of segregation must be mitigated.
- Reforms to laws, regulations and policies must be informed by evidence, including evidence of harm, evidence of misuse and overuse, input from people with lived experience, data on the use of segregation and best practices from other jurisdictions and must be in accordance with Canadian law, specifically the *Ontario Human Rights Code* and the *Canadian Charter of Rights and Freedoms*.
- Reforms to the use of segregation in Ontario's correctional facilities must take place within a broader context recognizing the systemic challenges in hospital and community mental health, including the use of seclusion practices in psychiatric facilities.
- The experiences of being incarcerated or being placed in segregation can themselves cause or exacerbate existing mental health problems.

## Early Intervention and Prevention

To strengthen and support segregation reform by diverting vulnerable groups from entering the correctional system when possible, the Coalition calls for investment in:

- Early intervention through the mental health and addictions system, including well-resourced and accessible community mental health and addictions treatment(s) and peer supports;
- Programs that divert vulnerable people out of the criminal justice system entirely, including pre- and post-charge diversion programs, mental health courts, drug treatment courts and alternatives to detention for people on immigration hold;
- Initiatives that target the intersection of criminal justice system involvement and social determinants of health, including poverty and income inequality, lack of housing and homelessness, and gaps in employment and volunteer opportunities;
- Programs and initiatives that address stigma and discrimination related to mental health, police records and past justice involvement;
- Implementation of the Truth and Reconciliation Commission recommendations; and
- Collaboration between community organizations and government aimed at addressing overrepresentation of racialized groups in the criminal justice system, including inequitable outcomes at bail, disproportionate policing practices and application of Gladue principles.

## Key Messages

### Legislation: Defining Segregation

- There is currently no functional definition of “segregation” in provincial legislation or regulations and current policy refers to segregation as a physical area without considering the conditions of confinement.
- Currently, Ministry of Community Safety and Correctional Services policies contain a general statement that people 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 (to the point of undue hardship).<sup>2</sup>
- In anticipation of forthcoming legislation, a definition of segregation – both administrative and disciplinary – that complies with international standards must be legislated and should at minimum:
  - Define segregation not in relation to a physical space, but rather the conditions, including the deprivation of meaningful human contact.
- In accordance with recommendations from the Independent Review of Ontario Corrections (IROC), the broad definition of segregation must also:
  - Ban segregation for longer than 15 consecutive days;
  - Limit segregation to no more than 60 days for any individual within a 365-day period;
  - Establish baseline conditions of confinement for people in segregation. These should be as least restrictive as possible including among other things: allowing continued engagement in activities and programs; ensuring uninterrupted access to medications; providing open contact visits and access to phone calls with family supports; allowing people to be out of their cell for at least two hours a day; offering daily showers and providing personal effects in one’s cell within 24 hours of being placed in segregation; allowing the same access to reading and writing materials as all other incarcerated people; and
  - Standardize definitions and baseline conditions of confinement for all housing units and types and update policy to provide standards for the minimum operational routine in all housing units and types.

### Legislation: Vulnerable Groups

- Current available evidence, including national and international standards, points to the need to immediately prohibit the use of segregation for certain groups:

- The Human Rights Tribunal of Ontario recently issued a Consent Order mandating that the province end the use of segregation for people with mental health “disabilities” across its 26 correctional institutions barring exceptional circumstances.
- A recent British Columbia Supreme Court ruling found that prolonged and indefinite administrative segregation in Canadian prisons is unconstitutional and that laws surrounding administrative segregation discriminate against people with “mental illness” and/or disability and Indigenous people insofar as they fail to respond to the needs of these groups and in effect reinforce or perpetuate the disadvantages they experience.
- Recognizing the unique vulnerabilities of women who are incarcerated, the United Nations *Bangkok Rules* specify that "punishment by close confinement or disciplinary segregation shall not be applied to pregnant women, women with infants and breastfeeding mothers in prison".<sup>3</sup>
- IROC’s March 2017 report recommends that those in need of medical observation or seclusion for health reasons must be housed in medical units, infirmaries or sent to outside hospitals.
- **The use of segregation must immediately be prohibited for: pregnant women or those who have recently given birth; people with mental health problems, including people who are chronically self-harming and people who are suicidal; and people with developmental disabilities.**
- **Segregation should not be used for medical observation or for protective custody.**

## Mental Health

- Changes to segregation policies, which include mandated mental health screening upon admission, ongoing mental health assessments, the development of Care Plans and Treatment Plans and regular assessments by physicians for people with mental health problems, have not translated into practice consistently across institutions.
- Immediate policy reform to address the needs of people with mental health problems in segregation is critical, starting with:
  - Defining and instituting standardized screening and ongoing mental health assessments for people in segregation; and
  - Updating all relevant policies and forms to identify who is responsible for initiating, monitoring and updating Care Plans and Treatment Plans.

## Oversight Mechanisms and Transparency

- Ontario's segregation placement, adjudication and review framework currently operates almost entirely within the institution.<sup>4</sup>
- The Ontario Ombudsman found that periodic segregation reviews are sometimes not completed or are completed in a perfunctory way.<sup>5</sup>
- A recent Superior Court of Ontario ruling found the practice of administrative segregation beyond five days to be unconstitutional because of the lack of procedural fairness and proper safeguards.
- **Legislation should establish the following oversight mechanisms:**
  - Independent Corrections Inspectorate (appointed by Order-in-Council) to oversee and evaluate implementation of reforms, highlight systemic or institution-specific issues and to support Canada's anticipated ratification of the Optional Protocol to the Convention Against Torture;
  - Independent Chairpersons who are appointed to be the decision-makers regarding placement in disciplinary segregation; and
  - Independent Hearing Officers who are appointed to adjudicate continued segregation placement beyond five days.
- **Regulations should include the rights of people placed in segregation such as:**
  - Informing individuals of the reasons they are placed in segregation and the duration, and of any changes affecting these conditions as well as what is required for them to leave segregation;
  - Proactively offering access to the "Inmate Information Guide" and the "Segregation Handout Information" sheet in a format that is easily understood and accessible; and
  - Informing people of their right to make a submission(s) to the superintendent or designate in writing or in person and that they should receive timely follow-up on any submission(s) made.



## Coalition Members

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<sup>1</sup> Statistics from: Independent Review of Ontario Corrections (IROC). (2017). *Segregation in Ontario*, (March 17 report). Ottawa, ON: Queen's Printer for Ontario.

<sup>2</sup> IROC, 2017.

<sup>3</sup> United Nations Office on Drugs and Crime. (2011). *The Bangkok Rules: United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders with their Commentary*, rule 22. Retrieved from [https://www.unodc.org/documents/justice-and-prison-reform/Bangkok\\_Rules\\_ENG\\_22032015.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf).

<sup>4</sup> IROC, 2017.

<sup>5</sup> Ombudsman of Ontario. (2017). Out of oversight, out of mind. Retrieved from [https://www.ombudsman.on.ca/Files/sitemedia/Documents/Resources/Reports/SORT/Out\\_of\\_Oversight-EN-accessible.pdf](https://www.ombudsman.on.ca/Files/sitemedia/Documents/Resources/Reports/SORT/Out_of_Oversight-EN-accessible.pdf)