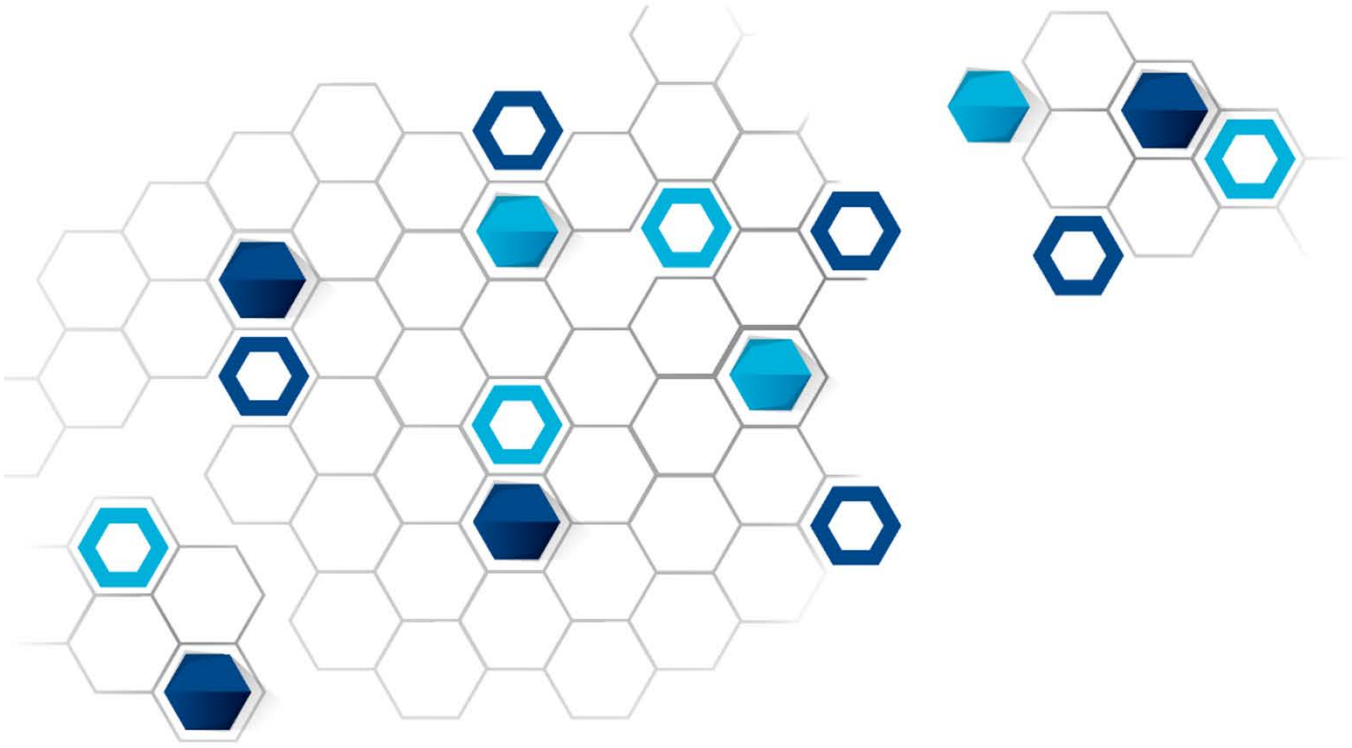

SUBMISSION

MCSCS Segregation Policy Review Consultation

NOVEMBER 24, 2015

CENTRE OF RESEARCH, POLICY & PROGRAM DEVELOPMENT

John Howard SOCIETY OF ONTARIO

About the John Howard Society of Ontario

The John Howard Society of Ontario (JHSO) is dedicated to creating genuinely safer communities by helping to foster a truly effective criminal justice system. We help achieve this goal in a variety of ways and with a suite of programs and services that we offer through our 19 local offices across Ontario. We provide over 80 different programs and services that help over 100,000 individuals across Ontario annually. Services range from prevention programs for high risk youth through to housing and reintegration services for those who have been released from prison back into our communities. Founded in 2003, the Centre of Research, Policy & Program Development (the Centre) is the research and policy arm of JHSO, and is the only organization of its kind in Ontario. It facilitates interdisciplinary innovation by combining partnerships with front-line service providers and creative and academically qualified researchers and analysts. This results in research that helps people. The Centre is a leader in non-partisan research, evidence-based programming, and policy development in the justice sector.

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JHSO's Submission in Response to the MCSCS Segregation Policy Review Consultation

Defining Segregation

There are a number of different terms used to refer to segregation: solitary confinement, close confinement, and the "hole" to name a few. Regardless of the nomenclature, segregation involves the removal of a prisoner from the general population into a separate unit. It entails isolating prisoners alone in a cell with minimal human contact – either with fellow prisoners or correctional officers - and facing escalated deprivation of liberties, programming and privileges. Typically segregation entails being fed through a slot in one's cell door, being confined in one's cell for most of the day, and receiving minimal services. Regardless of whether a placement in segregation is for administrative or disciplinary purposes, it is an inherently punishing experience. Research has shown that prolonged periods of isolation can cause a variety of negative physical and mental health effects.[1] Hallucination, cognitive disabilities, insomnia, self-mutilation, paranoia, and suicidal tendencies are only some of the reported effects of prolonged segregation.[2] Segregation is especially damaging for those with pre-existing mental health issues, as it can aggravate or lead to other psychiatric symptoms.

Even cells that are not technically designated as segregation cells/units, such as those designated "protective custody" or others that are at times referred to as "segregation-lite" can function in practice as segregation, and should be considered under the purview of a segregation policy review.

Segregation in Ontario: Key Challenges

There are several significant challenges that give rise to or flow from the use of segregation in Ontario, which will be briefly highlighted below.

Systemic Correctional Issues

The first challenge is the current context in provincial correctional and detention facilities which in turn increases the use and misuse of segregation. That segregation is relied upon as a population management tool, or as an overflow option, is a symptom of larger problems and trends: namely, overcrowding in provincial institutions, high remand rates

[1] Smith, P.S. (2006). The effects of solitary confinement on prison inmates: A brief history and review of the literature. Crime and Justice, 34, 1, 441-528.
[2] Arrigo, B. A. and Bullock, J.L. (2008). The Psychological Effects of Solitary Confinement on Prisoners in Supermax Units Reviewing What We Know and Recommending What Should Change. International Journal of Offender Therapy and Comparative Criminology, 52, 6, 622-640; and, Kupers, T. (2008). What to do with the survivors? Coping with long-term effects of solitary confinement. Criminal Justice and Behavior. 35, 8, 1005–1016

and the associated resourcing pressures. Provincial jails have been overcrowded for years; two or three prisoners often sleep in cells designed for one. If these larger systemic issues were meaningfully addressed, it is our view that the use of segregation – and its perceived utility - would be reduced. In order to address these issues, the influx of prisoners into provincial correctional facilities, especially remand prisoners, must be addressed by meaningfully tackling issues related to bail and front-end diversion.

The Use of Segregation for Prisoners with Mental Health Issues

Another very serious concern is the use of segregation for individuals with mental health issues (either at their own request or as determined by the institution, for their safety or the security of the institution).[3] Prisoners do not generally cope well with overcrowding; however, for persons with mental health issues, the impact is more pronounced and creates risk for the most vulnerable prisoners. Ontario is increasingly utilizing segregation as a means of managing an increasing number of individuals with physical and mental health concerns.[4] The segregation of prisoners with serious mental health issues is an issue that has been raised and challenged in inquests, academic studies and legal challenges. The evidence is clear that prolonged segregation exacerbates pre-existing mental health conditions, and creates mental health issues where there were none before.

Need for Research, Monitoring and Reporting

There is a need for research and data tracking the prevalence of segregation in Ontario's correctional facilities, the profile of those who are placed in segregation and the impacts. Ideally these statistics would be made public in annual reports.

Segregation: Charting the Way Forward

Canada has come under increased pressure in recent years to re-evaluate and limit the use of segregation (i.e. solitary confinement) in our prisons and jails. The United Nations Committee Against Torture called upon 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

[3] See John Howard Society of Ontario report, *Unlocking Change: Decriminalizing Mental Health Issues in Ontario* for a more in-depth discussion of the prevalence of mental health issues in the criminal justice and correctional systems. http://www.johnhoward.on.ca/wp-content/uploads/2015/07/Unlocking-Change-Final-August-2015.pdf

[4] Dempsey, A. (2014, December 22). Ontario Ombudsman: Get Sick Inmates out of Solitary. The Toronto Star. Retrieved from: http://www.thestar.com/news/gta/2014/12/22/ontario_ombudsman_get_sick_inmates_out_of_solitary_confinement.html

a possibility of judicial review; and, to abolish the use of solitary confinement for persons with serious or acute mental illness.[5]

In addition, the United Nations Standard Minimum Rules for the Treatment of Prisoners provide that:

> 32. (1) Punishment by close confinement or reduction of diet shall never be inflicted unless the medical officer has examined the prisoner and certified in writing that he is fit to sustain it.
> (2) The same shall apply to any other punishment that may be prejudicial to the physical or mental health of a prisoner. In no case may such punishment be contrary to or depart from the principle stated in rule 31 [that punishment must not be cruel and unusual].
> (3) The medical officer shall visit daily prisoners undergoing such punishments and shall advise the director if he considers the termination or alteration of the punishment necessary on grounds of physical or mental health.[6]

The Standard Minimum Rules also require that prisoners with mental health issues be placed under medical management or supervision in specialized units, that they should be transferred to hospitals where appropriate, and that psychiatric after-care be provided.

Other jurisdictions take different approaches to the use of segregation and solitary confinement. For instance, 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.[7] As outlined in a Vera Institute report: "By statute, this kind of disciplinary detention cannot exceed in any given year four weeks in Germany and two weeks in the Netherlands per individual offender."[8] Correctional staff learn about the negative effects of segregation, and are instructed to minimize the impact of isolation wherever possible. They are taught to always treat prisoners with respect and dignity, even when they are facing discipline.

Some jurisdictions have piloted alternatives to segregation for specific subsets of prisoner populations. With the agreement of Irish Prison Service staff and a forensic in-reach

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[5] United Nations Committee Against Torture. (2012). Consideration of reports submitted by States parties under article 19 of the Convention Concluding observations of the Committee against Torture. Retrieved from: http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.CAN.CO.6.doc

[6] United Nations. Standard Minimum Rules for the Treatment of Prisoners. Retrieved October 2015 from: https://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf

[7] Vera Institute. (2013). Sentencing and Prison Practices in Germany and the Netherlands: Implications for the United States. Retrieved from: http://www.vera.org/sites/default/files/resources/downloads/european-american-prison-report-v3.pdf

[8] Ibid, p. 13.

mental health team, an Irish correctional institution established a "High Support Unit" (HSU) for prisoners with mental health issues. This specialized unit was intended for prisoners with mental health issues not acute enough to warrant transfer to hospital, but still serious enough to present risk of harm to self or others. These prisoners were identified as requiring closer monitoring and specialized treatment outside of the general prisoner population. The goal of this pilot was to minimize the use of segregation for prisoners with mental health issues while improving access to psychiatric care and services. As the evaluation study notes, one of the key challenges was shifting correctional culture: "The prison authorities need to be aware that a HSU is not just an area where prisoners are contained. It should be viewed as a functional and dynamic unit whose success will be influenced by increased relational security (staff to inmate ratios) in addition to improved environmental security."[9] The results of the HSU pilot were positive: there was a significant reduction in the frequency of use of segregation in the prison. The HSU also improved communication and continuity of care between the prison and the hospital where prisoners with mental health issues were sometimes transferred. Economic analysis found that the HSU pilot was cost neutral. The evaluation authors conclude that creating designated units within correctional facilities for prisoners with mental health issues is critical to ensuring human-rights compliant and effective management: "Prisons remain unsuitable places for people with severe mental illness. While much can be achieved by court liaison and diversion at the remand stage, once a severely mentally ill person has been sentenced the options available are limited and must focus on reducing the negative impact of the prison environment on mental health."[10]

In Canada, the recommendations emanating from the Ashley Smith inquest[11] echo those from the United Nations Committee Against Torture, and offer concrete and serviceable policy recommendations. Our national office, the John Howard Society of Canada, passed a resolution calling for restrictions on the use of solitary confinement, segregation, and seclusion in all Canadian penitentiaries, correctional facilities, jails and detention centres and specifically that:

> (a) consistent with the recommendations of the Coroner's jury in the Ashley Smith Inquest, periods of solitary confinement be limited to a maximum of 15-day periods separated by at least 5 days not in solitary confinement and no more than a total of 60 days be spent in solitary confinement in a calendar year;
> (b) solitary confinement be prohibited for those with serious or acute mental illness; and

[9] Giblin, Yvette et al. (2015). "Reducing the Use of Seclusion for Mental Disorder in a Prison: Implementing a High Support Unit in a Prison Using Participant Action Research." International Journal of Mental Health Systems 6 (2012): 2, p. 7.
[10] Ibid.
[11] Ashley Smith Inquest Jury Verdict and Recommendations. (2013). Accessed from: http://www.hsjcc.on.ca/Resource%20Library/Corrections/Corrections%20-%20Federal/Ashley%20Smith%20-%20Verdict%20of%20the%20Coroner's%20Jury%20-%202013-12.pdf

(c) access to judicial review of a prisoner's solitary confinement be provided.[12]

Consistent with the direction provided by international human rights bodies and rules, best practices, as well as the above noted JHS Canada resolution, we submit that banning the use of segregation for those with acute and serious mental illness as well as banning indefinite segregation and placing strict limits on the amount of time prisoners can be held in segregation (consistent with the Ashley Smith Inquest jury recommendations) are two changes that should be adopted following this MCSCS policy review. We offer further details below on how to implement meaningful segregation policy change (in the short-term, mid-term and long-term) and how to ensure appropriate monitoring and evaluation of the process and outcomes.

Immediate and Short-term Action Items (<2 years):

- Immediately change the MCSCS segregation policy to reflect The United Nations Committee Against Torture's call to abolish the use of solitary confinement for prisoners with "serious or acute mental illness." To this end, it is also necessary that all prisoners be screened for a wide spectrum of mental health issues upon admission to provincial correctional facilities.
- Develop policy language that prescribes the maximum permissible amount of time in segregation for prisoners without serious or acute mental illness, as recommended in the Ashley Smith Inquest. We support a ban on indefinite segregation and placing hard limits on segregation stays: prisoners should not be placed in isolation for more than 15 consecutive days at a time, and never for more than a total of 60 days in a year; there must be a mandatory wait period - 5 consecutive days as a minimum - between each placement in segregation. Transfers to a different institution will not constitute a "break" in seclusion. The Ashley Smith jury recommendations further call for the minimal reduction of privileges and programs while prisoners are in segregation, which we also endorse.
- Explore, pilot and evaluate alternative options to administrative segregation, especially for prisoners with mental health issues. This would require also exploring the possibility of increased transfers of very ill prisoners to forensic hospitals if they cannot be appropriately managed in a correctional environment.
- Create an evaluation framework that measures changes pre- and post- policy implementation.
- Using the data gleaned from the new mandatory mental health screening at admission, explore the impact of expanding the prohibition of the use of segregation to *all* persons with identified mental health issues (not just limited to acute or serious mental illness).
- There should be intensive and recurring training for correctional officers on the new segregation policy and on appropriate alternatives to segregation.

[12] John Howard Society of Canada. (2014). Resolution Regarding Solitary Confinement. Accessed from: http://johnhoward.ca/media/Special-Resolution-Solitary-Confinement.pdf

Accountability or performance measures for correctional officers and/or institutions that over rely on segregation should be considered and implemented.

- At the same time, it is essential to begin implementing strategies to reduce overcrowding and increase gradual release and parole. This will require working closely with the Ministry of the Attorney General to improve front-end systemic issues around access to reasonable bail.[13] Similarly, implementing better screening at admission for mental health issues and ensuring prisoner access to more robust mental health services in institutions is essential.[14]
- When placed in segregation, prisoners should receive daily visits from a psychologist/psychiatrist or medical professional to monitor their mental health and to ensure that they are fit to remain in segregation.
- Establish an office or body that provides independent review of all segregation stays.

Mid-term Action Items and Deliverables (Years 2-3):

- Prepare an interim/short-term report that outlines the impact of the policy change to date and highlight areas for improvement. Outcome measures should include the number of placements in and the duration of stay in segregation; and the number of transfers to hospitals for individuals with serious and/or acute mental illness. It should also capture incidents of self-harm, violence and other indicators of population management issues. Measures capturing the continuity and efficacy of transfers to (and from) hospitals should also be crafted. Success would be marked by a reduction in the use of segregation.
- Review the outcomes of pilot programs testing alternatives to segregation. Depending on the results, craft scalable plan for expansion across institutions.
- Consider implementing a second phase of change to the segregation policy expanding the definition of pre-existing mental health conditions that preclude someone from segregation.

Long-term Action Items and Deliverables (Years 4+):

- The Ministry should witness a decline in the number of admissions to and the average length of stay in segregation.
- The alternative options to segregation are continuously evaluated for efficacy and adherence to policy.
- Effective monitoring and accountability of institutions or correctional officers who do not comply with new policy is in place.
- There will be strengthened relationships with hospitals.

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[13] See our 2013 report, *Reasonable Bail?* for recommendations to this end: http://www.johnhoward.on.ca/wp-content/uploads/2014/07/JHSO-Reasonable-Bail-report-final.pdf

[14] See aforementioned JHSO report, *Unlocking Change: Decriminalizing Mental Health Issues in Ontario*: http://www.johnhoward.on.ca/wp-content/uploads/2015/07/Unlocking-Change-Final-August-2015.pdf

We recognize that the above timelines and deliverables have potentially significant policy, practice and resource implications. However, it is our view that the Ministry must address the underlying factors associated with segregation use, in addition to placing safeguards against its misuse. Ultimately, the provincial government must put in place strategies that reduce the number of people inside our provincial jails; in particular those on remand/awaiting bail and those serving short jail sentences. This would free up valuable correctional resources to allocate to programming, more robust mental health services, optimal correctional staffing ratios and minimize any reliance on segregation as a population management tool.

When is Segregation Appropriate?

We acknowledge that there is a role for segregation to play – albeit a limited and prescribed one – in correctional practice. Circumstances where use of segregation may be appropriate include separating prisoners for very short durations to dissipate the immediate threat of a conflict or violence. In the youth custody context in Ontario, youth are placed in secure isolation (i.e. segregation) only as an absolute last resort and should generally remain there for very short "cool down" periods. The Provincial Advocate for Children and Youth recently released a report on secure isolation in youth custody; its recommendations can also be instructive for adult corrections.[15]

The Perils of Maintaining the Status Quo

In addition to remaining out of sync with international human rights standards, best practice, and inquest recommendations, should MCSCS continue its current practices with respect to segregation, it is fair to expect more human rights claims, lawsuits and legal challenges, and worsening of outcomes for those in custody and those discharged who endured segregation; especially those with mental health issues.

[15] Office of the Provincial Advocate for Children and Youth of Ontario. (2015). It's A Matter of Time Systemic Review of Secure Isolation In Ontario Youth Justice Facilities. Accessed from: http://provincialadvocate.on.ca/documents/en/SIU_Report_2015_En.pdf