

October 26 2016

**Open Letter to the Province of Ontario from John Howard Society of Ontario  
Re: Segregation Reform 2016**

Segregation reform in the Province of Ontario has been overdue for some time. The recent case of [Adam Capay](#) from a jail in Thunder Bay highlights the significant deficiencies in policy and practice which can lead to the overuse, misuse, and harmful use of segregation in the Province. This case highlights the urgent need for segregation reform, with particular attention to mental health concerns, review processes, limits on stays in segregation, and the overrepresentation of indigenous persons in segregation.

We echo the concerns expressed by many Ontarians over the past few days – that the treatment of Mr. Capay is far from effective, just, and humane. The John Howard Society of Ontario (JHSO) wonders how many other Adam Capays there are in Ontario.

**On the Province's Plan to Reform Segregation**

With regards to the practice of segregation, or solitary confinement as it is also referred, in Ontario the Ministry of Community Safety and Correctional Services (MCSCS) has recently outlined some [important first steps](#). It appears that the Ministry has listened to some of the concerns from justice stakeholders. We look forward to working closely with the Ministry as these and other reforms are rolled out.

For example, we support the Ministry's plan to identify and implement alternatives to segregation. Identifying viable, sustainable alternatives, built on best practices – which JHSO has done in [recent submissions to the Province](#) – is a step towards mitigating the overreliance and overuse of segregation.

JHSO also supports the greater involvement of the Ministry of Health and Long-Term Care (MOHLTC) in provincial correctional institutions, as MCSCS has suggested in their proposed reforms. Our recent Report [Fractured Care](#) illustrates the gaps in health care delivery in Ontario's correctional institutions, and how MOHLTC could fill those gaps, enhancing the health care of some of Ontario's most marginalized populations. We hope that the Province explores equitable ways to address the vital health needs – especially mental health needs – of prison populations, because the current approach is not serving these individuals, nor our communities, well.

**While important, the first steps taken by MCSCS are few on details. Moreover, there are still crucial gaps that must be addressed. Below are a few of JHSO's concerns.**

One of the more glaring gaps in the Ministry's approach is that the limitations on duration in segregation will only apply to inmates in *disciplinary* segregation. We know that the vast majority - upwards of 90% - of segregated individuals are in *administrative* segregation, such as Adam Capay.

There is incontrovertible evidence that segregation is harmful, physically and psychologically, and amounts to torture for extended periods of time. We continue to call on the Ministry to place hard limits on all forms of segregation.

The John Howard Society of Ontario has [called for](#) an immediate ban on the segregation of individuals with serious or acute mental health issues. The problem is that many individuals may not outwardly display common mental health issues such as depression or anxiety. That is why wide-spectrum mental health screening is crucial for all individuals admitted to the Province's correctional institutions. The implementation of screening efforts and the aggregate results must be made public.

Individuals suffering from mental health issues should never be in segregation. Unfortunately, our jails have become repositories for people suffering from mental health issues. These individuals should not be in jail to begin with – they should be diverted out of the criminal justice system whenever possible. As JHSO has noted, a [preventative lens](#) is required in this Province – one that reduces the health inequities across socioeconomic groups and communities that give rise to both justice involvement and mental health issues.

[Recent data from the Ontario Human Rights Commission](#) confirms what justice stakeholders have known for a while: segregation is overused and misused in Ontario, especially for individuals who may be suffering from mental health issues. Despite regulations purporting to limit the use of segregation, segregation is clearly very far from a “last resort” in Ontario.

Without alternatives to segregation, without sufficient and transparent screening, without data collection and analysis by the institutions, segregation will continue to be used as a population management tool for hard-to-manage populations, such as individuals suffering from mental health issues.

We hope that the recent OHRC statistics on mental health alerts, and the well-documented psychological harms of administrative segregation, will be considered crucial to informing the Province's next steps.

### **The Proposed “Review Committee”**

MCSCS intends to create an external segregation review committee to review all cases of segregation. The approach sounds good in theory but is currently short on details.

- Review processes are meant to inject transparency, accountability, and due process. The problem is that current review practices in correctional institutions are quite hollow. A “Review Committee” would currently have very little documentation to review. This is because, as the Ontario Ombudsman has [pointed out](#), mandated reviews at various time thresholds, which require paper documentation, simply are not happening. Where they do happen, reviews are often “meaningless” and do not provide reviewable reasoning for continued placements in segregation. Reviews must be rigorous and meaningful and that starts with proper documentation and proper information about the circumstances warranting segregation. Without access to accurate documentation and reviews, the Review Committee will not have the tools to perform its functions adequately.

- The composition of this proposed Committee is not yet clear, though the reform suggests that internal staff are being contemplated. In our opinion, the Committee must be independent and impartial, and this means that members must be external. If a purpose of a review committee is to ensure that regulation criteria are applied objectively, and that segregated individuals are afforded substantial due process, we believe that the Committee must be external to the culture of the correctional institution. Removing conflicts of interest will ensure the actions of the Review Committee are truly independent.
- We are left with lingering questions regarding this proposed Committee: What are the powers of the Committee? Do they make recommendations or can they force correctional authorities to release segregated individuals? What does the review process actually look like? When will it take place? Are individuals in segregation getting daily visits from psychiatrists and doctors to monitor health and will these assessments be part of that review? Do individuals in segregation even know their rights? These questions and the points above are what the Province needs to address as they think through this particular proposed reform.

### The Proposed Data Reform

The Ministry intends to review its data collection techniques, but again is short on details. John Howard Society of Ontario has called for data to track the prevalence of segregation in Ontario's correctional facilities, the profiles of those who are placed in segregation, lengths of placements, and the impacts on individuals, among other suggestions. These basic measures must inform the Ministry's approach to data collection.

Data is about monitoring trends. Data is about informing policy change. Data is also a measure of transparency and accountability. The harmful practice of segregation has shaken public confidence in the justice system. Transparency and accountability through *public* data releases and *public* reporting are essential. We encourage the Ministry to strongly consider this in its "review" of data collection.

### Alternatives to segregation

The John Howard Society of Ontario has called for alternatives to segregation, especially for individuals who may suffer from mental health issues. We understand that MCSCS has committed to a "Reviewer" to assess alternatives. We stress that without viable, sustainable, and workable alternatives, segregation units will continue to be filled with very vulnerable and unhealthy individuals.

Alternatives to segregation must not amount to segregation by another name. The issue with alternatives is that their successful implementation depends, in part, on significant investment. Whichever alternatives are explored, they cannot be seen as simply a new place to put incarcerated

individuals. These alternatives need to be understood by corrections officials as functional and dynamic and as legitimate efforts to address an issue, such as mental health.

We also recognize that correctional officers are dealing with systemic issues beyond their control – overcrowding, for example, which contributes to the use of segregation as population management.

### **Involvement of the Ministry of Health and Long-Term Care (MOHLTC)**

Delivery of and access to health care in prisons remain the top reasons why incarcerated individuals make complaints to the provincial Ombudsman. These complaints [illuminate a parallel yet unequal system of health care](#).

The competing mandates of corrections in Ontario – to deliver health care but also restrict liberties – result in inequities in access to health care. Transferring health care to MOHLTC will, in our opinion, improve access to and quality of health care for incarcerated individuals. The treatment of individuals with mental and physical health issues is a medical decision.

The John Howard Society of Ontario continues to offer its assistance to the Province as it moves forward with reforms. We look forward to working with all Ministries to effect these much needed policy and practice changes.

Sincerely,

John Howard Society of Ontario  
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