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This Fact Sheet was produced by the Centre of Research, Policy & Program Development, at the John Howard Society of Ontario.

# FactSheet

## SOLITARY CONFINEMENT

The common perception of solitary confinement or segregation is that it is an extreme measure only used for the most dangerous and uncontrollable incarcerated individuals. The reality in Ontario, however, is that the practice is widespread, and the law places few limits on its use. Prolonged solitary confinement has been called a form of torture. In Ontario, segregation (the term used by the government for solitary confinement) is often imposed on the most vulnerable members of the incarcerated population. The 2016 Ontario case of Adam Capay – an indigenous man held in segregation for over 1500 days and with 24hr light – suggests how even advanced correctional systems can use solitary confinement in harmful and unrestrained ways. The use of around-the-clock light is unprecedented in the contemporary Canadian context, and the lack of any reasonable justification for permanent light underscores how solitary can be used in a highly punitive fashion that denies the human dignity of those subject to it.



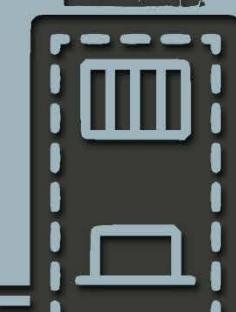
These are images of federal solitary confinement cells obtained from the Office of the Correctional Investigator

**SOLITARY CONFINEMENT**, which is also referred to as segregation, isolation or separation, is the practice of confining an individual in custody to a cell by themselves for 22 hours or more a day, often for prolonged periods at a time. An incarcerated individual is removed from the general population and placed in a ‘prison within the prison,’ where they have little to no contact with correctional staff, other prisoners or the outside world. Food is provided through a slot in the door and access to programs and amenities, such as library, showers, fresh air, and exercise, is restricted or prohibited.

# SOLITARY by the numbers

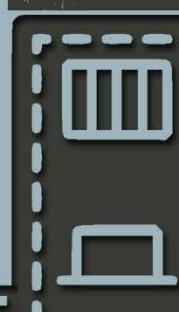
Days spent in segregation by an indigenous person in Thunder Bay Jail

14

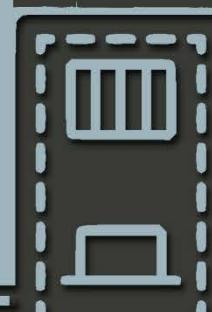


Suicides occurred in segregation cells in federal correctional facilities between 2011-2014

1500+

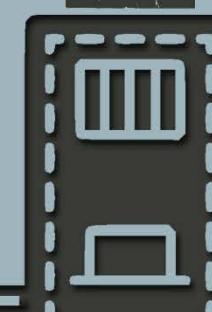


38%

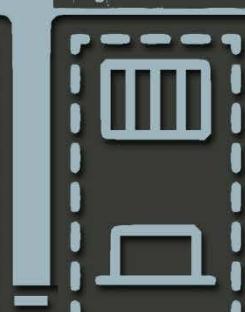


Days beyond which placement in solitary can constitute cruel, inhuman, or degrading treatment according to the United Nations

15

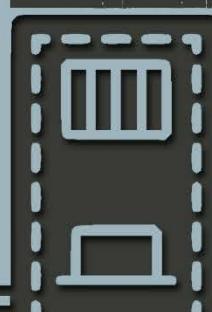


1,383



Hours per day an individual might be in a segregation cell

22-24



Of individuals in segregation in Ontario with a mental health alert in their file (during three-month time period in 2016)\*

Segregation placements in Ontario longer than 15 days (during three-month time period in 2016)\*\*

## ONTARIO REGULATION SPECIFIES TWO

### CATEGORIES OF SOLITARY CONFINEMENT

**ADMINISTRATIVE SEGREGATION** is only to be used for: incarcerated individuals who need protection, those who present as a risk to the safety of others, an individual who has been accused but not yet found guilty of serious misconduct within the facility, or those who request segregation. The Regulation permitting administrative segregation has no time limits in terms of the number of days that an individual can be confined in this way. The Regulation does not impose particular due process requirements, such as the ability for the individual to dispute the given reasons for their placement in segregation.

**CLOSE CONFINEMENT**, in contrast cannot exceed 30 days, though in 2016 the Ministry of Community Safety and Correctional Services publicly committed to changing this to 15 days. It is used as a disciplinary measure for incarcerated individuals who have been found guilty of institutional misconduct of a “serious nature.” While the Regulations define particular instances of “misconduct”, there is no definition in law of what amounts to a “serious misconduct.”

# REGARDLESS OF THE REASON CITED FOR ITS USE, OR THE NOMENCLATURE, SEGREGATION IS AN INHERENTLY PUNISHING EXPERIENCE..

Despite official government statements that mandate using segregation only as a last resort, it is clear that there is a troubling misuse and overuse of the practice in Ontario. Many incarcerated individuals across the province are held in solitary confinement for months or years at a time. Solitary confinement is often used as population management tool, in lieu of lack of resources at facilities and chronic overcrowding. Recent statistics suggest that administrative segregation may also be used outside of its legally permitted uses. Clearly, segregation is not being used as a last resort or an exceptional practice by correctional authorities. There are several notable facts/trends associated with the practice.

## 1 HARM

The propensity for psychological harm to some individuals caused by prolonged solitary confinement and isolation from human contact has been noted in studies. It may lead to the onset of conditions like depression, anxiety, paranoia, delusions and psychosis and either worsen or create insomnia, anorexia and palpitations. Periods of solitary confinement may also lead to self-injury, assaults and suicide. The rates for self-harm may be higher amongst individuals suffering from mental health issues and amongst indigenous women.

## 2 MISUSE

Often those suffering from mental illnesses have a harder time adjusting to incarceration and act out in ways that are interpreted as intentional defiance. According to Ontario's policy, segregation is not meant to be used for managing or disciplining prisoners with mental health concerns unless the Ministry has considered and dismissed all alternatives to segregation to the point of undue hardship. Practice suggests this is not happening. In addition to the potential harms mentioned above, individuals with mental health issues are more likely to be placed in some form of solitary confinement.

Data from a 2016 Access to Information request revealed that Correctional Officers are using mental illness as a reason to place individuals in segregation for months or years at a time. An analysis of over 600 individuals incarcerated in Ontario in 2014 found that 40% of those held in segregation for 30 or more straight days had mental health issues or special needs. Recent statistics reveal that segregation continues to be used at a very high rate for individuals who have "mental health alerts" in their files.

The Ontario Human Rights Commission has also identified that segregation has been disproportionately used on vulnerable populations such as Black and Indigenous people, women, and people with mental health issues in Ontario correctional facilities.

# 3

## LOSS OF ACCESS TO PROGRAMS AND PRIVELIGES

According to Ontario Regulation and practice, individuals placed in administrative segregation are supposed to be afforded, as far as practicable, the same rights and privileges as those in the “general population.” In other words, individuals should not generally lose access to rights, programs and privileges when they are placed in segregation. Unfortunately, practices do not seem to mirror what is prescribed by law. The Ontario Ombudsman receives numerous complaints from individuals who have been deprived access to programs due to their placement in segregation. In segregation, individuals may lose access to phone calls/visitation with their family, exercise, showers, and the programs and services that are designed to rehabilitate.

# 4

## USE THAT IS INCONSISTENT WITH PRESCRIBED GUIDELINES

The Ashley Smith inquest resulted in a series of recommendations for the federal prison system to remedy the failure of prisons to provide individuals who are incarcerated, particularly those with mental health issues, those deemed high risk, and/or those with complex needs, with the appropriate care, treatment and support. The United Nations has stated that placements in solitary for longer than 15 days could constitute cruel, inhuman or degrading treatment and that lengthy stays in isolation can constitute torture. Multiple experts have called for placing limits on all forms of isolation and banning the practice for individuals with serious and acute mental health issues. Despite these recommendations and the UN guidelines on the use of solitary confinement, the practice is still used on vulnerable individuals for indefinite periods: incarcerated individuals in Ontario still endure extremely long periods of solitary confinement lasting months or years.

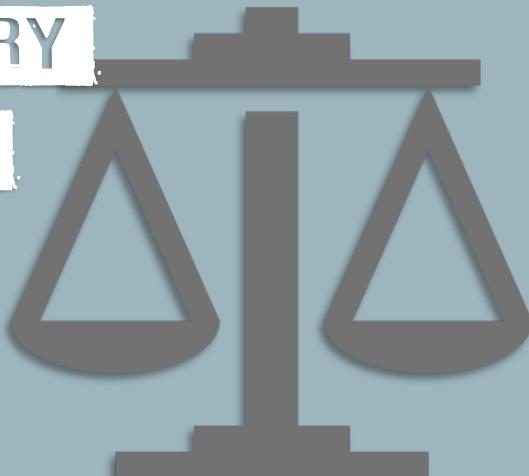
As the result of a 2013 Ontario Human Rights Tribunal case, the Ministry of Community Safety and Correctional Services was ordered to enforce a number policy changes regarding segregation practice in the province, including: mandatory reporting to the Minister when segregation is used for prolonged periods of time; substantial mental health screening; and identifying alternatives to segregation for individuals with identified mental health issues. As of 2016, it is questionable whether these requirements have been fully implemented and are being followed in practice.

# COURTS ON SOLITARY CONFINEMENT AND SEGREGATION

Lawsuits have emerged challenging the use of solitary confinement or segregation in Canada, though to date no court has adjudicated the constitutionality of legislation permitting administrative segregation on the basis of a full evidentiary record. Largely for that reason, no court has been in a position to rule that the practice is unconstitutional.

In one case, a constitutional challenge on behalf of an incarcerated indigenous woman, BobbyLee Worm, resulted in the abolishment of a program called "Management Protocol," which had given correctional officials the power to place "high risk" women in solitary confinement for months or years at a time.

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In 2016, Matthew Hamm, a prisoner suffering from mental health issues, argued before an Alberta court that his placement in solitary confinement was unlawful and asked the court to order his release from solitary. The court agreed and released Hamm and three others, saying that the prison authorities had not provided sufficient levels of fairness to the individuals and had failed to consider the mental health and Aboriginal backgrounds of the men.

As cases progress through the courts, judicial decisions may contribute to reform of solitary confinement practices in Ontario and across Canada. Section 12 of the Charter of Rights and Freedoms provides protection against cruel, inhumane, and degrading treatment or punishment. The application of this constitutional provision to the treatment of prisoners is emerging in court cases, and may provide an opportunity for constitutional scrutiny of an otherwise hidden practice.



# RETHINKING THE USE OF SEGREGATION

- ❖ Ontario's segregation practices should align with international human rights bodies and best practices in order to promote the safety and dignity of all individuals who are incarcerated.
- ❖ Segregation should be prohibited for individuals with serious or acute mental health issues.
- ❖ Indefinite segregation should be banned and strict limits should be in place.
- ❖ Alternatives to segregation must be explored and evaluated in order to determine what other models would achieve the desired goals while minimizing negative effects.
- ❖ Data on the practice of segregation and the mental health of all incarcerated individuals must be collected and used to inform reform.
- ❖ Using the collected data, officials should explore the impact of expanding the prohibition of the use of segregation to all persons with any identified mental health issues.

## JHS ONTARIO POSITION

Current practices of solitary confinement or segregation undermine the goals of rehabilitation and the dignity and rights of individuals who are subject to this type of incarceration. Given the risks to an individual's health and wellbeing associated with solitary confinement, especially when used indefinitely and on vulnerable populations, significant reforms are required. These would include developing alternatives to segregation, legislative reforms, oversight mechanisms, ongoing training for Correctional Officers and changes in institutional protocols. Reform is needed to ensure the health and safety of incarcerated individuals and staff and the proper functioning of the correctional system as a whole.

The use of solitary confinement or segregation must also be understood within the context of issues in the criminal justice system like overcrowding, high remand rates, resourcing pressures, and health care. Segregation is used as a population management tool, and a large proportion of individuals who end up in segregation are those suffering from mental health issues. Segregation has the additional negative consequence of inhibiting an individual's access to health care or potentially making health issues worse. For more information on mental health and health care in correctional institutions, see John Howard Society of Ontario's Reports *Unlocking Change* and *Fractured Care*.

# REFERENCES

## Notes from Infographic Data (page 2)

- \*Mental health alerts do not necessarily mean diagnosis of mental illness or disabilities.
- \*\*MCSCS noted limitations with its collected data. For more information, see:  
<http://ohrc.on.ca/en/supplementary-submission-ohrc-mcscs-provincial-segregation-review>.

## Regulation

- RRO 1990, Regulation 778, under Ministry of Correctional Services Act, RSO 1990, c M.22 [Regulation 778], sections 32(2), 34, 34(1), 34(4).

## Cases

- *In the matter of Christine Nadine Jahn v Her Majesty the Queen in Right of Ontario as represented by the Minister of Community Safety and Correctional Services before the Human Rights Tribunal of Ontario* (24 September 2013). Online: [http://www.ohrc.on.ca/sites/default/files/jahn%20Schedule%20A\\_accessible.pdf](http://www.ohrc.on.ca/sites/default/files/jahn%20Schedule%20A_accessible.pdf)
- *Hamm v Attorney General of Canada (Edmonton Institution)* 2016 ABQB 440.

## Reports, Policy Documents and Submissions

- British Columbia Civil Liberties Association. Worm v Canada: Working to End Solitary Confinement. Online: [https://bccla.org/our\\_work/worm-v-canada/](https://bccla.org/our_work/worm-v-canada/)
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- Ontario Human Rights Commission. Supplementary Submission to MCSCS Provincial Segregation Review (2016). <http://ohrc.on.ca/en/supplementary-submission-ohrc-mcscs-provincial-segregation-review>
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- United Nations. United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules) (21 May 2015). E/CN.15/2015/L.6/Rev.1.

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- Paperney, Anna Mehler and Patrick Cain. "A Severely Sick Man Spent 400 Days in Solitary. This Isn't an Anomaly: in Canada, It's Common." Global News. April 29, 2016.
- White, P. "Documents Reveal Troubling Details About Long-Term Solitary Confinement." Globe and Mail. April 24, 2016. Online: <http://www.theglobeandmail.com/news/national/documents-reveal-troubling-details-about-long-term-solitary-confinement/article29746902/>

## Scholarly Resources

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- Parkes, D. (2014). The Punishment Agenda in the Courts. *The Supreme Court Law Review: Osgoode's Annual Constitutional Cases Conference* 67.
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