

**MINISTRY OF PUBLIC SAFETY AND SOLICITOR GENERAL
CORRECTIONS BRANCH
BRIEFING NOTE**

PURPOSE: For INFORMATION for Mike Farnworth, Minister of Public Safety and Solicitor General

ISSUE: Meeting with Prisoners' Legal Services (PLS)

SUGGESTED RESPONSE:

- BC Corrections has been reviewing both its use of segregation and the disciplinary process, taking recent federal court rulings in Ontario and BC and international guidelines into account.
- s.13
- s.13
- I have been assured that a solution is imminent that meets everyone's needs.
- I have had discussions with BC Corrections' managers and I know that they value your meaningful input. I have heard that you have had success working together in the past and they look forward to involving you in this very important initiative within the next few weeks.

BACKGROUND:

- BC Corrections is committed to meeting and consulting with PLS to gather their input into the review of segregation.
- s.14
-
- PLS is now raising concerns that this consultation process will not take place.
- BC Corrections has developed a plan to proceed with consultation on the segregation review, s.13,s.22
s.13,s.22

Prepared by:
Amy Lapsley
Analyst
Strategic Services
BC Corrections
250-356-7465

Approved by:
Stephanie Macpherson
A/Assistant Deputy Minister
BC Corrections
250-387-5363

**MINISTRY OF PUBLIC SAFETY AND SOLICITOR GENERAL
CORRECTIONS BRANCH
BRIEFING NOTE**

PURPOSE: For **INFORMATION** for the Honorable Mike Farnworth, Minister of Public Safety and Solicitor General

ISSUE: Review of the use of segregation in BC correctional centres

SUMMARY:

- BC Corrections is currently conducting a review of its segregation, separate confinement and disciplinary processes. The review examines BC Corrections current use of segregation and the actions underway both nationally and internationally to reform segregation.

- s.13

-

-

s.16

-

-

-

BACKGROUND:

- Segregation refers to the separation of an inmate from the general correctional population for administrative or disciplinary reasons.
- Segregation is sometimes referred to as solitary confinement by stakeholders, the media and the public.
- In recent years, the use of segregation within correctional institutions has been subject to scrutiny by international human rights bodies, inquests, inquires and provincial and federal courts.
- Two recent court decisions have addressed the use of segregation by Correctional Service of Canada (CSC):
 - On December 18, 2017, the Supreme Court of Ontario ruled that CSC did not allow sufficient opportunity for an independent review of administrative segregation decisions and gave CSC 12 months to amend the *Corrections and Conditional Release Act (CCRA)* to reflect the court's decision.
 - On January 17, 2018, the Supreme Court of British Columbia ruled that the *CCRA* violated the *Canadian Charter of Rights and Freedoms* by authorizing prolonged solitary confinement, allowing the institutional head to be the judge and prosecutor of the decision, not including sufficient review mechanisms, and not allowing sufficient inmate access to legal counsel. This decision also found that the *CCRA* allows for segregation decisions that are discriminatory to Indigenous inmates and inmates with mental health needs. The court gave CSC 12 months to amend the *Corrections and Conditional Release Act (CCRA)* to reflect the court's decision.
- Prime Minister Justin Trudeau's Mandate Letter to federal Justice Minister Judy Wilson-Raybould included the "implementation of recommendations from the inquest into the death of Ashley Smith regarding the restriction of the use of solitary confinement".

s.16

OTHER MINISTRIES IMPACTED/CONSULTED:

- None

Prepared by:

Erin Gunnarson
Director, Policy and Programs
Corrections Branch
250 356-8733

Approved by:

Elenore Arend
Assistant Deputy Minister
Corrections Branch
250 387-5364

Attachment: Current status and reasons for segregation

Current status and reasons for segregation

Current Length of Time in Segregation

- The average¹ daily count for all ten BC correctional centres is 2,734.
- The average¹ daily count for segregation² at all ten BC correctional centres is 123. (Representing approximately 4% of the overall daily count).
- The average³ length of stay in segregation² is seven days.
- 84%³ of stays in segregation² are ten days or less.
 - While these statistics provide a broad picture of the use of segregation in the province, BC Corrections is also working with national counterparts on a long-term plan to develop a consistent and accurate method to measure and track the use of segregation.

Extended Periods of Time in Segregation

- The average³ length of stay in segregation² is seven days, however, in certain circumstances stays in segregation may be reviewed and extended to ensure safe and secure custody for all inmates and the protection of staff.
- Inmates who are reviewed and have their segregation extended are generally defined by their complex and repetitive problematic behaviours which may include but are not limited to:
 - Attempted suicides
 - Assaultive tendencies towards other inmates and/or staff
 - Significant behavioural issues jeopardizing, or likely to jeopardize, the management, operation or security of the centre
- Extended time in segregation may also be voluntary if the inmate self-identifies concern of serious harm if placed on a regular living unit.
- BC Corrections ensures inmates housed in segregation are offered access to health care professionals at least once in every 24 hour period. Furthermore, a mental health professional reviews the impact of segregation during every 30 day period that an inmate is on segregation.

Reasons for Segregation

- An inmate may be housed in segregation if:

¹ For fiscal year 2016/2017.

² "Segregation" is defined as inmates confined within the segregation unit. This includes inmates who are separately confined (Corrections Act Regulation (CAR) 17, 18 and 19), inmates pending a disciplinary hearing (CAR 24) and inmates serving a disposition (CAR 27).

³ For fiscal year 2016/2017. Note: Inmates that commenced but did not complete a segregation term prior to April 1, 2016 were included in the average.

- Awaiting a disciplinary hearing for breaching a rule or serving a disposition as a result of a disciplinary hearing for breaching a rule
 - On “separate confinement⁴”— a temporary measure for removing particular inmates from some or all inmates for security or safety reasons. This may occur on their assigned living unit where they remain in their own cell with access to all of their personal items, including television
- 1) Segregation pending a disciplinary hearing or resulting from a disposition for breach of a rule:
- An inmate who is suspected of having breached a rule may be held in segregation pending a disciplinary hearing if the person in charge (assistant deputy warden [ADW] or higher) believes on reasonable grounds that:
 - The inmate is likely to endanger himself/herself or another person if not housed in segregation
 - The inmate is likely to jeopardize the management, operation and security of the correctional centre
 - Segregation is necessary to preserve evidence for the disciplinary hearing
 - Any order to place an inmate on segregation status pending a disciplinary hearing must be reviewed by the warden or designate within 24 hours of being made, and must be reviewed at least every following 24 hours until the conclusion of the hearing.
 - If an inmate is found guilty of breaching a rule during a disciplinary hearing, the chairperson presiding over the disciplinary hearing may impose one or more penalties, including confinement in segregation. A penalty of confinement in the segregation unit must not exceed 15 days for minor charges and must not exceed 30 days for more serious charges (eg. assault, possession of contraband).
 - Inmates have the right to consult with legal representation at any stage of the disciplinary process and have that representation attend the hearing.
- 2) Separate Confinement:
- Separate confinement is an option under CAR sections 17, 18, and 19 and may be used when the inmate:
 - is endangering himself or herself or is likely to endanger himself or herself
 - is endangering another person or is likely to endanger another person
 - is jeopardizing the management, operation or security of the correctional centre or is likely to jeopardize the management, operation or security of the correctional centre

⁴ Separate confinement may take place within the segregation unit when no other reasonable option exists.

- would be at risk of serious harm or is likely to be at risk of serious harm if not confined separately
 - must be confined separately for a medical reason
 - if the person in charge has reasonable grounds to believe that the inmate has contraband hidden in the inmate's body
- Separate confinement is not punitive and is only used to provide the correctional centre or inmate an opportunity to remedy the inmate's behaviour or circumstances that led to the separate confinement.
- Inmates placed on separate confinement are housed on a living unit unless no other option exists at which point the inmate will be placed on a segregation unit.
- Inmates placed on separate confinement retain the rights and privileges of inmates in the general population identified in section 2(1) of the CAR.
- One or more privileges and access to specified cell effects and canteen items may be withdrawn due to limitations of the area where the inmate is housed, operational requirements of the centre, or the protection of inmates or staff. Privileges and access to specified articles are not withdrawn for punitive reasons.
- Within 24 hours of making a decision with respect to placement in separate confinement, the warden or designate ensures that the inmate is provided written notice of the decision and reasons.
- Under CAR, the length of stay for short-term separate confinement must be no longer than 72 hours and for long-term separate confinement, no longer than 15 days. Following a detailed review, long-term confinement may be renewed if some or all of the circumstances justifying separate confinement continue to exist.
- If separate confinement continues for more than 30 days, further reviews will take place, including a review by the deputy warden and a mental health professional to review the impact of separate confinement.

Segregation Counts:

- Inmates can be placed on segregation or separate confinement within other areas of the centre.
- Currently BC Corrections does not have the technology to extract information through its business intelligence system outside of the segregation unit, although changes will be made in the future to enable gathering that information.

- On January 19, 2018, a scan was conducted at each custody centre to provide a one-day snapshot of the number of inmates in separate confinement or segregation within all areas of the centre (including the segregation unit) resulting in a total of 243 inmates, broken down as follows:

	KRCC	PGRCC	FRCC	ACCW	OCC	VIRCC	FMCC	SPSC	NCC	NFPC	Total (per CAR Section)
CAR 17 (short term)	0	6	4	4	2	9	0	6	2	8	41
CAR 18 (longer term)	5	8	7	3	18	16	0	14	0	14	85
CAR 19 (voluntary)	20	5	1	0	13	0	0	18	0	4	61
Total per centre	25	19	12	7	33	25	0	38	2	26	187

	KRCC	PGRCC	FRCC	ACCW	OCC	VIRCC	FMCC	SPSC	NCC	NFPC	Total (per CAR section)
CAR 24 (segregation pending)	1	0	1	0	4	1	0	1	0	3	11
CAR 27 (segregation disposition)	7	5	4	0	7	4	0	10	0	8	45
Total per centre:	8	5	5	0	11	5	0	11	0	11	56

**MINISTRY OF PUBLIC SAFETY AND SOLICITOR GENERAL
CORRECTIONS BRANCH
BRIEFING NOTE**

PURPOSE: For INFORMATION for the Honorable Mike Farnworth, Minister of Public Safety and Solicitor General

ISSUE: Status update on the review of segregation in BC correctional centres

SUMMARY:

- BC Corrections is close to completing an in-depth review of its segregation, separate confinement and disciplinary processes. The review examines BC Corrections past and current use of segregation, and considers recent court rulings and the actions underway both nationally and internationally related to segregation reform.
- The BC Corrections' review outlines the following key considerations as guiding principles for segregation reform:

s.13

- In addition to being consistent with these key considerations, solutions must also take into account a fundamental priority to provide a safe and secure correctional centre for staff and inmates. s.13

s.13

- s.13

- BC Corrections has consulted with other Canadian jurisdictions throughout the review process and will continue to consult as a detailed work plan is formed.
- In addition, BC Corrections has engaged with a variety of interested and partner agencies, including the Office of the Ombudsperson, the Investigation and Standards Office, Prisoners' Legal Services, Provincial Health Services Authority, the BC Government Employees Union, WorkSafeBC and the Ministry of Attorney General, Justice Services Branch.
- Further engagement is anticipated with the, BC Civil Liberties Association, Aboriginal Justice Council and First Nations Health Authority.

- s.16

- s.13

-

- BC Corrections will provide regular progress updates to staff and stakeholders on the implementation of the action items.

BACKGROUND:

- Segregation refers to the separation of an inmate from the general correctional population for administrative or disciplinary reasons and confinement to a cell for up to 22 hours a day.
- Segregation is sometimes referred to as solitary confinement by stakeholders, the media and the public.
- In recent years, the use of segregation within correctional institutions has been subject to scrutiny by international human rights bodies, inquests, inquiries and courts.
- Two recent court decisions have addressed the use of segregation by Correctional Service of Canada (CSC):
 - On December 18, 2017, the Supreme Court of Ontario ruled that CSC did not allow sufficient opportunity for an independent review of administrative segregation decisions and gave CSC 12 months to amend the *Corrections and Conditional Release Act (CCRA)* to reflect the court's decision.
 - On January 17, 2018, the Supreme Court of British Columbia ruled that the *CCRA* violated the *Canadian Charter of Rights and Freedoms* by authorizing prolonged solitary confinement, allowing the institutional head to be the judge and prosecutor of the decision, not including sufficient review mechanisms, and not allowing sufficient inmate access to legal counsel. This decision also found that the *CCRA* allows for segregation decisions that are discriminatory to Indigenous inmates and inmates with mental health needs. The court gave CSC 12 months to amend the *CCRA* to reflect the court's decision.
- Prime Minister Justin Trudeau's Mandate Letter to federal Justice Minister Judy Wilson-Raybould included the "implementation of recommendations from the inquest into the

death of Ashley Smith regarding the restriction of the use of solitary confinement".
s.16

•

- BC Corrections will monitor practices that are put in place across Canada^{s.16}
s.16 to ensure best practices are adopted.

OTHER MINISTRIES IMPACTED/CONSULTED:

Ministry of Attorney General

Prepared by:

Erin Gunnarson
Director, Policy and Programs
BC Corrections
250-356-8733

Approved by:

Elenore Arend
Assistant Deputy Minister
BC Corrections
250 387-5364

Attachments:

Appendix A: Action Items
Appendix B: Review of Segregation Practices draft report

Page 012 to/à Page 044

Withheld pursuant to/removed as

s.13

Page 045 to/à Page 087

Withheld pursuant to/removed as

s.12;s.13

Page 088 to/à Page 094

Withheld pursuant to/removed as

s.16

Page 095 to/à Page 172

Withheld pursuant to/removed as

s.12;s.13