

# **LEARNING FROM NELSON MANDELA**

**A REPORT ON THE USE OF SOLITARY CONFINEMENT AND  
PEPPER SPRAY IN MANITOBA YOUTH CUSTODY FACILITIES**

**LEARNING FROM NELSON MANDELA**  
**Manitoba Advocate for Children and Youth 2019**



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### *Who We Are*

The Manitoba Advocate for Children and Youth is an independent, non-partisan office of the Manitoba Legislative Assembly. We represent the rights, interests, and viewpoints of children, youth, and young adults throughout Manitoba who are receiving, or should be receiving, provincial public services. We do this by providing direct advocacy support to young people and their families, by reviewing public service delivery after the death of a child, and by conducting child-centred research regarding the effectiveness of public services in Manitoba. The Manitoba Advocate is empowered by legislation to formally review matters affecting young people and to make recommendations to improve the effectiveness and responsiveness of services provided to children, youth, and young adults. We are guided by the *United Nations Convention on the Rights of the Child* (UNCRC) and act according to the best interests of children and youth.

### *Our Vision*

A safe and healthy society that hears, includes, values, and protects all children, youth, and young adults.

### *Our Mission*

We amplify the voices and champion the rights of children, youth, and young adults.

## Acknowledgements

The mandate of the Manitoba Advocate for Children and Youth (MACY) extends throughout the province of Manitoba, across a number of treaty areas. Our southern office buildings in Winnipeg are on Treaty 1 territory and the homeland of the Métis Nation. Our northern office is on Treaty 5 land, and the services we provide to children, youth, young adults, and their families extend throughout the province and throughout Treaty areas 1, 2, 3, 4, 5, 6, and 10. The land on which we work is the traditional territory of Anishnaabeg, Cree, Oji-Cree, Dakota, Ojibwe and Dene peoples, and the homeland of the Métis nation.

This report would not have been possible without our collaborative partnership with the office of the Manitoba Ombudsman, and the expertise of clinical psychologists and Indigenous spiritual caregivers. We thank Dr. Dan Chateau for his valuable statistical analysis advice, the Public Interest Law Centre for sharing their helpful unpublished report, and Dr. Sharon Shalev, founder of Solitary Confinement International, for providing direction on the definitions of *solitary confinement* and *meaningful human contact*. We also recognize Manitoba Justice for their cooperation throughout this review process and for their participation in meetings to discuss our findings and recommendations. Every day, hundreds of correctional employees in our province face challenging situations and play an essential role in the rehabilitation and reintegration of youth in Manitoba.

Most importantly, we want to acknowledge the contributions of youth to this report. This report would not have been possible without the courage and generosity youth demonstrated in sharing their stories to improve the circumstances of others. Thank you.

## Why Nelson Mandela?

Nelson Mandela was born in 1918, and spent his life fighting against apartheid, a system of racial segregation in South Africa. As a result of his work to redress historical injustices, Mr. Mandela was a political prisoner for 27 years, during which he experienced solitary confinement. In 1993, he won the Nobel Peace Prize for his role in negotiating the end of apartheid and ushering in the beginning of democracy in South Africa, a feat he accomplished largely from prison. In 1994, he became the first democratically elected president of South Africa. He has been described as “an emblem of reconciliation”<sup>1</sup> for his work in peacefully dismantling a system of oppression. Nelson Mandela died on December 5, 2013, leaving a global legacy that continues to be known today. In 2015, the *United Nations Standard Minimum Rules for the Treatment of Prisoners* were revised and renamed “The Nelson Mandela Rules” to honour his commitment to the promotion of global human rights, equality, democracy, and peace. Among its 122 rules and principles for the humane treatment of individuals in custody, *The Nelson Mandela Rules* also define solitary confinement and prohibit the use of solitary confinement for youth and individuals with mental illness.

### Cover image

Paul Emsley, 2010. *Nelson Mandela*. Chalk and pencil on paper. Part of the collection of The Nelson Mandela Foundation, South Africa. Used by permission from the artist.

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## Executive Summary



The legacy of Nelson Mandela is one that continues to endure and inspire. Having spent his life dedicated to the fights for freedom, for equality and justice, and for dignity and respect for all, Mandela's life and his words serve as beacons for many people around the world. In his autobiography, *The Long Walk to Freedom* (1994), Mandela wrote:

**It is said that no one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens, but its lowest ones.**

As Manitoba Advocate for Children and Youth and a lifelong public servant, including time spent working within the Department of Justice, I know that it is the ways in which children and youth are treated that have always revealed important lessons about the public services that operate in Manitoba. As young people are often less empowered or encouraged to speak up and voice their opinions, sometimes their voices can become lost in discussions of future funding models, strategic partnerships, and jurisdictions. When we listen to children and youth, their voices can remind us to be aware of what effects our decisions are having in the present.

As adults, we sometimes forget that decisions made at legislative, systemic, or policy levels can have large impacts on children and youth. For public systems designed to deliver services to young people, it is important that children are centred in decisions where they will be affected. Children and youth need each of us to stand up for them in recognizing that young voices sometimes need our help to be heard. When we learn that our actions are having negative impacts on children and youth, it is incumbent on all of us as public servants to make changes.

As many Manitoba citizens are aware, the legal mandate of my office was strengthened and expanded in 2018, by the proclamation of *The Advocate for Children and Youth Act*. Under the new law, my team and I are empowered to review, investigate, and advocate in many child-serving public systems, including: child and family services, disabilities, education, mental health, addictions, victim supports (including domestic violence and sexual exploitation), and youth justice. Any young person under the age of 21 who needs support in any of those systems can ask us for help. It also means that my office is able to conduct investigations and make formal recommendations to public systems and the government about any matter within those systems that come to my attention.

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In December 2016, the Office of the Children’s Advocate (now known as the Manitoba Advocate for Children and Youth) announced the beginning of an investigation into the uses of segregation and pepper spray in Manitoba youth custody facilities. We made this announcement alongside the Manitoba Ombudsman, as together we had determined the need for a joint investigation, which stemmed from a number of complaints from members of the public who were concerned about these two issues and their impacts on youth in Manitoba custody facilities. The Ombudsman’s office and my office partnered on this investigation owing to our similar but unique roles in the public service. The Ombudsman’s focus was to examine compliance with existing legislation, regulations, policies, and procedures. The focus of my office was to look at whether using pepper spray and segregation in youth populations is justified and whether the justice system is reflecting the best interests of youth while they are responsible for their care. In addition, my team analyzed the data against the backdrop of human rights and the rights of children, specifically.

To read this report and reflect on its findings and necessary recommendations, it is important to understand the youth who are involved with the justice system, specifically those youth who are being held in custody. Youth do not come to the attention of the justice system because things are going well in their lives. The vast majority of youth in custody live with mental illness, cognitive disabilities, and childhood trauma. Indigenous youth are overrepresented in Manitoba’s youth justice system, a persistent legacy of colonization and residential schools. Studies presented in this report and experts we interviewed estimate:

- 92 percent have endured trauma such as physical or sexual abuse prior to custody
- 80 percent have been sexually exploited by adults before entering custody
- Between 11% and 22% have Fetal Alcohol Spectrum Disorder, believed by experts to underestimate the prevalence of the issue
- Nearly half of youth have borderline to lower intellectual functioning, with 14% having extremely low functioning (IQ below 70)

In a study from British Columbia, nearly all youth in custody have at least one mental disorder. It cannot be a coincidence that Manitoba has the highest numbers of children in care of child and family services and in custody with the justice system. In fact, nearly one out of every four youth in Canada who are in custody are in Manitoba, and the province, per capita, places more youth in jail than any other province or territory in the country. These should be the systems of last resort, but instead have become the default systems of care when other needed public services are not accessible, or are not provided in timely and effective ways. Social and financial costs will continue to be profound if, as a province, we don’t demand immediate focus on early intervention and prevention services for children, youth, and their families.



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The lack of mental health and other cognitive developmental supports when youth are held in custody are glaring. While this report shows that youth in custody have significantly elevated needs as compared to their non-custody peers, mental health professionals working in justice are not empowered to lead decision-making processes to ensure youth receive the support they need to be rehabilitated and then reintegrated upon their eventual release. The Manitoba government must respond to the behaviours of youth with mental illnesses, cognitive disabilities, and childhood trauma as a health problem, not a security problem.

The report that I am releasing stands alongside the report that the Ombudsman is also releasing today.<sup>1</sup> They are separate reports, in alignment with our different public mandates, and yet, the common message in our findings is that youth in custody need us all to care about what is happening inside our provincial custody facilities. Reliance on solitary confinement and pepper spray must end and investments must be made to improve mental health and other health-related supports during the time youth are being held in custody. What you will see in the report from my office is our serious concern that practices in Manitoba Justice related to segregation and pepper spray are harming youth and must change. You will read that youth in custody are some of the most traumatized people in our province and that the majority of them are living with profound disabilities, cognitive delays, and mental illnesses. The data in this report show that restricting and denying a traumatized child their basic needs can have significant, long-lasting, and in some cases, irreversible impacts on that child. As part of this report, you will read the snapshot stories of five youth who have also been involved with my office's advocacy services program. In some cases, these youth came to be involved with the justice system directly because of their complex developmental vulnerabilities and trauma histories, and what they needed was compassion and therapeutic services.

I know this report will be challenging for some Manitobans to read and support. Narratives surrounding individuals who come to the attention of the justice system can sometimes leave the public nervous about issues of personal safety. We all want our communities to be safe and our families to be protected. Some youth who are being held in custody have been convicted of committing serious and violent acts against other people and public safety must be protected. However, this report asks us to consider what we expect from our systems of justice, and whether denying an individual their freedom is punishment enough. For the majority of youth, their time in custody presents a vital opportunity for society to rehabilitate and then reintegrate youth so that they can be reclaimed into our communities in a good way. These are the principles on which the federal *Youth Criminal Justice Act* is built. Indeed, rehabilitation and reintegration are the core *responsibilities* of the justice system. At the end of their sentences, all youth eventually exit custody. We must ensure their time inside a facility has worked to identify and address the issues that caused them to come to the attention of the justice system in the

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<sup>1</sup>Manitoba Ombudsman (2019, February). Investigation report on use of pepper spray and segregation in Manitoba's youth correctional facilities.

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first place. It is a critical opportunity that we cannot miss if we want to see youth be supported to live up to their potential and if we want to see public safety increase. I want to be very clear that the evidence demonstrates that methods such as segregation and pepper spray do not make the public safer. It is indisputable that therapeutic approaches work, can lower re-offending, and increase public safety.

Having historically worked in, with, and alongside many professionals in justice, I believe that the majority of people working in the justice department, its community-based offices, and custody facilities do the work with good intentions and a desire to help reduce crime and increase community safety. During the course of this investigation, my team and I visited both youth custody facilities in Manitoba and encountered good people doing important work. The youth who populate the custody facilities come to those institutions with profound needs in many areas. We recognize that the staff who are tasked with their custodial care are not provided with the training required to properly manage the complex needs of these youth. I acknowledge that it is not easy to be reviewed by an independent body like the Manitoba Advocate, and especially when that review is then shared publicly. However, the lessons that emerge from the data we are presenting today are of vital importance and, as Manitoba Advocate, I know that sharing this information is in the best interests of the public. My intention is to explain what is happening and to encourage citizens to support the changes that are needed.

Today, I am making six formal recommendations to the Manitoba government. First, I am recommending the ending of solitary confinement, which is what segregation is called when it lasts longer than 24 hours. Some youth in Manitoba have been confined in solitary, denied their basic needs, and refused meaningful human contact for days and weeks on end. In the 12 month-period we examined, youth were subjected to 1,455 incidents of segregation, which amounts to nearly four incidents of segregation each day. As the pie chart on page 43 shows, in one year, there were 957 incidents of segregation, 399 incidents of solitary confinement (greater than 24 hours), and 99 incidents of prolonged solitary confinement (15 days and longer). One youth, for example, whose story we highlight in this report, **was kept in solitary confinement for 400 consecutive days in a cell smaller than a parking stall**. This youth, who was not able to be kept in the general population of the custody facility, lives with profound cognitive disabilities and his story is one of compounded trauma, from his early childhood through to his time spent confined in a cell. This is a clear violation of human rights, of international standards, and is a practice banned in many other jurisdictions. My first recommendation calling on the government to ban solitary confinement for youth is consistent with *The Nelson Mandela Rules*, which affirms the prohibition of solitary confinement for youth under 18 years old and for individuals with mental or physical disabilities.

My second recommendation is to enhance restrictions and better monitoring of the practice of segregation under 24 hours in a day. According to provincial law, segregation is supposed to be used on

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youth only as a last resort; however, custody facilities are relying on this practice too commonly. In the 12-month period we studied, there were 1,455 incidents of segregation, nearly four incidents every day.

The third recommendation I make today is for better record keeping and monitoring of data in youth custody facilities. One of the reasons this report has taken more than two years to compile and release is because the Manitoba Ombudsman's staff had to do a hand count and analysis of each incident of segregation in a 12-month period to create our dataset. Many long hours analyzing boxes of files were necessary, as Manitoba Justice did not track or monitor data at facility or systemic levels. Manitoba Justice was unable to provide us with aggregate numbers on the incidents of segregation. For the purposes of transparency and accountability, this must change.

My fourth recommendation is to change regulations to reflect the changing practice already underway in custody facilities, by banning the use of pepper spray on youth, except in situations of immediate risk to life. Use of pepper spray on youth was one of the complaints received by my office that initiated this systemic investigation. As you will see in this report, incidents of pepper spray use on youth have dropped drastically since 2016, which was also the time at which Manitoba Justice was advised that this review would be conducted. Over the seven years between 2010 and 2017, the use of pepper spray in Manitoba youth custody facilities has decreased by 89 per cent, from 46 incidents to five. Their use of alternative responses and de-escalation techniques is encouraging.

The fifth recommendation that I am making today is to call on Manitoba Justice to work with Manitoba Health and Manitoba Families to implement evidence-informed and culturally safe therapeutic behavioural management alternatives to solitary confinement and pepper spray in recognition of the profound trauma histories, cognitive disabilities, and mental illnesses that youth in custody are living with. I want to again emphasize the critical role for Manitoba Health in relation to this recommendation.

And finally, I am calling for the relevant government departments to work together so that youth in custody receive the health care they require by recommending the immediate development of a specialized health facility led and run by mental health professionals to provide evidence-informed programming for youth with mental illnesses or cognitive vulnerabilities, including youth who are found not criminally responsible. Therapeutic alternatives are more effective at reducing re-offending rates than control-based approaches like solitary confinement and pepper spraying youth.

While the data is stark here in our province, the underlying challenges are not unique to Manitoba. In August 2018, Alberta provincial court judge, the Honourable Geoffrey Ho, ruled that the practice of segregating young persons was not lawful under *The Corrections Act* and contravened the *United Nations Convention on the Rights of the Child* and the *Youth Criminal Justice Act*. Justice Ho echoes other

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experts in recognizing that segregation practices can be damaging to youth and result in youth being a greater risk to the public.

Nelson Mandela's life and legacy is an important lens through which to view what is happening here in Manitoba, and what changes need to occur within our youth justice system. As a province, we have the profound opportunity to deliver public services in ways that show us to be global leaders for how to respond compassionately and effectively to the deepest needs of our province's children and youth. Mandela's commitment to children, in particular, inspired some of his greatest achievements. Indeed, as Mandela stated on May 8, 1995, as he launched the Nelson Mandela Children's Fund, "There can be no keener revelation of a society's soul than the way in which it treats its children."



Daphne Penrose, MSW, RSW  
Manitoba Advocate for Children and Youth

## Background

### The Youth Criminal Justice Act

In Canada, the federal *Youth Criminal Justice Act* (YCJA) governs the provincial youth justice system. It applies to youth who are at least 12, but under 18 years old, and who are alleged to or have committed criminal offences. The YCJA recognizes that youth are less culpable than adults and more responsive to rehabilitation. In accordance with its Declaration of Principles, the YCJA is intended to protect the public by:

- (1) holding young people accountable through measures that are proportionate to the offence and the degree of responsibility of the young person;
- (2) promoting rehabilitation and reintegration of young persons; and
- (3) supporting crime prevention by referring youth to community programs that address the circumstances underlying their offending behaviour.

The YCJA recognizes that Canada is a party to the *United Nations Convention on the Rights of the Child* (UNCRC) and that youth in custody have the same the rights of other youth, including those enshrined by the *Canadian Charter of Rights and Freedoms*, such as:

- The right to life, liberty and security of the person and the right not to be deprived thereof except in accordance to the principles of fundamental justice (Section 7);
- The right not to be arbitrarily detained or imprisoned (Section 9); and
- The right not to be subjected to any cruel and unusual treatment or punishment (Section 12).

Under the YCJA, custody facilities for youth in Manitoba have the responsibility to ensure the safety of youth in custody and work to rehabilitate and reintegrate them into the community while protecting their rights.

In Manitoba, youth charged under the YCJA are held primarily in two youth custody facilities: the Manitoba Youth Centre (MYC) and Agassiz Youth Centre (AYC). These facilities hold youth who have been sentenced and youth awaiting trial. There are significant differences in the types of programs, approaches, and resources available at each centre. MYC is located in Winnipeg. It is the largest of the two youth custody centres with a capacity to house 90 males and 60 females. Young people deemed to be under the influence of drugs or alcohol may also be held at MYC under *The Intoxicated Persons Detention Act*, a provincial Act. MYC has ten “cottages” divided into three centres: remand custody, open custody, and secured custody. AYC is located in Portage la Prairie and has a capacity to house 128 male youth. AYC has a “high security special handling unit” for males, termed Lakewood.

### Youth Incarceration In Manitoba

Overall, Canada’s rate of youth incarceration has been steadily declining since 2012.<sup>2</sup> On average, jurisdictions have decreased the rate of youth incarceration by 12 per cent; however, Manitoba’s rate of

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youth incarceration has only decreased by eight per cent since 2015/2016.<sup>3</sup> Manitoba has the highest rate of youth incarceration in Canada.<sup>4</sup> Nearly one out of every four youth in Canada who are in custody are in Manitoba, and the province, per capita, places more youth in jail than any other province or territory in the country. Contrary to common misconceptions of adolescents in custody, youth in correctional facilities are a population of young people who are more traumatized, vulnerable, and marginalized than youth in the general population.<sup>5</sup> **Many of these youth have significant cognitive or developmental disabilities and are living with significant childhood trauma and mental illnesses.** It is essential to understand the issues of solitary confinement and pepper spray use through the eyes, experiences, and needs of youth in custody.

**Indigenous youth are overrepresented in Manitoba's justice system.** Nationally, Indigenous youth comprise 47 per cent of the male youth, and 60 per cent of the female youth in custody, while in Manitoba the numbers are significantly greater at 81 per cent and 82 per cent, respectively.<sup>6</sup> Indigenous youth in Manitoba are 16 times more likely to be incarcerated than non-Indigenous youth.<sup>7</sup> This overrepresentation signals the persistent legacy that colonization and residential schools have had on Indigenous Peoples. The Truth and Reconciliation Commission (TRC) of Canada explained:

*“The convictions of Aboriginal offenders frequently result from an interplay of factors, including the intergenerational legacy of residential schools. Aboriginal overrepresentation in prison reflects a systemic bias in the Canadian justice system. Once Aboriginal persons are arrested, prosecuted, and convicted, they are more likely to be sentenced to prison than non-Aboriginal people.”<sup>8</sup>*

In recognition of this intergenerational legacy, the TRC called for the elimination of the overrepresentation of Indigenous youth in custody by the year 2025, and the development of realistic alternatives to imprisonment that respond to the underlying causes of offending behaviour, including cognitive vulnerabilities and intergenerational trauma.<sup>9</sup>

**Youth in the justice system are more likely to have experienced trauma during their childhoods.**

Estimates indicate that 92 per cent of youth in custody report having one traumatic experience such as sexual or physical abuse, with 11 per cent meeting the criteria for post-traumatic stress disorder.<sup>10</sup> A staff person at a youth custody facility in Manitoba reported that youth commonly disclose past child sexual abuse:

*“80 per cent of kids [in custody] have been sexually exploited...they share their horror stories, and it saddens me.” – Indigenous spiritual caregiver interview*

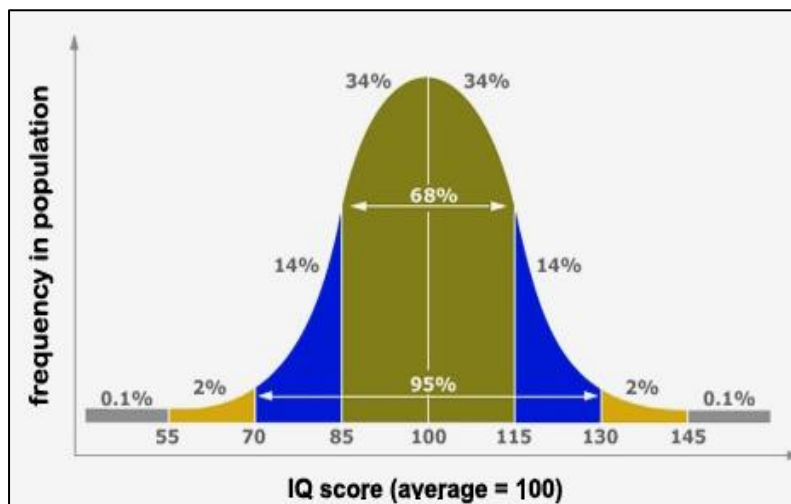
High levels of toxic stress during childhood can result in permanent damage to the brain.<sup>11</sup> Studies on adults and children have found that trauma in childhood is associated with injury to the hippocampus, an area responsible for learning and emotional regulation.<sup>12</sup> Experiencing high levels of trauma can make youth more likely to exhibit difficult and violent behaviours that are criminalized as they age.<sup>13</sup>

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**Many youth in custody have significant intellectual and cognitive vulnerabilities.** Estimates of the number of youth in custody with Fetal Alcohol Spectrum Disorder (FASD) in Canada range from 10.9 per cent to 22.3 per cent.<sup>14</sup> However, this is likely a low estimate due to difficulties associated with diagnosing FASD, including confirmation of alcohol consumption by the mother during pregnancy.

Youth in custody are also more likely to live with an intellectual disability. One study estimated that almost half of young people in custody had borderline to lower intellectual functioning, and 14 per cent had an IQ in the extremely low range (under 70).<sup>15</sup> As shown in Figure A<sup>16</sup> below, this level of impairment is found in 2 per cent of the population. It leads to significant difficulties in the areas of perceptual reasoning, working memory, abstract reasoning, problem solving, impulsivity, and social adaptation. Moreover, youth with FASD have particular difficulties in the justice system, including being *unable* (rather than willfully unwilling) to comply with court orders and being easily influenced under police questioning.<sup>17</sup> Experts suggest, “The usual approaches of the police and the justice system are meaningless, even counterproductive, when dealing with accused persons with a severe cognitive impairment.”<sup>18</sup>

**FIGURE A – IQ SCORE BELL CURVE DISTRIBUTION FOR THE GENERAL PUBLIC**



SOURCE: MIND WARE

**Youth in the justice system have higher rates of mental illness than youth in the general population.**<sup>19</sup> A survey of male and female youth in Canada concluded that nearly all youth met the criteria for at least one mental disorder (91.9 per cent of males and 100 per cent of females).<sup>20</sup> In particular, young females have been repeatedly found to have more mental health difficulties, worse outcomes, and a higher need for services, despite comprising a smaller proportion of the incarcerated population.<sup>21</sup> Further, youth in custody are 10 times more likely to suffer from psychosis than the general population.<sup>22</sup>

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Due to complex social, historical, neurobiological, and structural factors, youth who are Indigenous, experienced trauma, and live with mental illness or cognitive vulnerabilities are more likely to enter the justice system.

### **Youth Justice: The Default System for Youth with Complex Vulnerabilities**

The persistent and universal overrepresentation of youth with cognitive vulnerabilities, childhood trauma, and mental illnesses has led experts to describe the youth justice system as the “default system” for youth with complex vulnerabilities.<sup>23</sup> However, the youth criminal justice system is not solely responsible. This issue is the product of gaps in public service delivery and supports further upstream, including gaps in early intervention supports that would prevent youth with cognitive vulnerabilities and mental illness from entering the justice system. Importantly, this reflects the lack of safe placements with intensive supports for youth with complex needs. In the case of Kaitlyn, the correctional system was deemed her only housing option.

### **Kaitlyn’s Story<sup>24</sup>**

**\*Note: Names of each youth whose stories are included in this report have been changed to protect their identities.**

Kaitlyn is a permanent ward of Child and Family Services. She has significant cognitive vulnerabilities and diagnoses of Fetal Alcohol Spectrum Disorder (FASD), Attention Deficit Hyperactivity Disorder (ADHD), and PTSD.

She also suffers from symptoms of trauma related to experiences of childhood sexual abuse and sexual exploitation. Because of these conditions, her behaviour was described as impulsive, erratic, and unpredictable. She has faced chronic struggles with self-harming behaviours and substance misuse.

Since 2007, she had 38 different child welfare placements, including numerous periods of incarceration at the Manitoba Youth Centre. Despite completing her sentence, she was again remanded due to pending non-violent charges to remain in custody for an additional 270 days because there was no placement available that was able to manage her complex needs and behaviours. While in custody, she was placed in solitary confinement.

The Manitoba Advocate for Children and Youth (MACY) frequently receives requests to attend sentencing conferences, in some cases where youth have pending charges; youth are held in custody because there are no alternative placements that can meet their complex needs. This practice is in direct violation of Section 29(1) (Detention as a Social Measure Prohibited) of the YCJA, which explicitly



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prohibits the use of custody prior to sentencing as a substitute for appropriate child protection, mental health, or other social measures.<sup>25</sup>

Nevertheless, once in custody, youth struggling with mental illnesses or cognitive vulnerabilities have the right to health services, and the Manitoba government has a corresponding obligation to make appropriate health services available. The obligation to respond to mental health needs is particularly incumbent upon the Manitoba Youth Centre (MYC), a “hybrid” institution that is legislated both as a custody centre and as a mental health facility responsible for the “observation, assessment, diagnosis and treatment of persons who suffer from mental disorders” according to Manitoba Regulation 135/99 (Facilities Designation Regulation).<sup>26</sup> The Manitoba Advocate for Children and Youth office interviewed three forensic psychologists who spoke of the lack of mental health resources at both institutions, explaining that correctional officers are often under resourced and undertrained for the job they face. Furthermore, they spoke of a climate where mental health intervention is secondary to safety concerns, and, as such, mental health providers are not the main decision-makers on a youth’s case.

In light of this report’s findings, the Manitoba Advocate believes that some youth are particularly vulnerable and do not belong in a custody setting. These youth should be transferred to mental health facilities that are better equipped to accommodate and care for acute and complex mental health needs, while ensuring public safety. Unfortunately, no such setting exists in Manitoba at this time.

Hence, Manitoba Justice is currently tasked with responding to the housing and support needs of youth who live with mental illnesses or cognitive vulnerabilities once they enter custody. Youth with complex needs are confined in custody facilities that are ultimately not designed or sufficiently resourced to address their needs. According to the Manitoba Justice website, correctional officers are primarily tasked with “ensuring safety and security of youth/adult offenders (...).”<sup>27</sup> However, they must respond to significant mental health emergencies such as attempted suicides, depression, psychosis, violence, or other rapid changes in behaviour. As a result, the symptoms of youths’ cognitive vulnerabilities and mental illnesses are sometimes managed through the lens of safety and security using the limited methods available including solitary confinement and pepper spray.

## Methods

The research that informed this special report is the product of a joint initiative between the Manitoba Advocate for Children and Youth (MACY) and the Manitoba Ombudsman. The decision to conduct this investigation arose from complaints received by the Office of the Children’s Advocate (now MACY) from youth and from other members of the public regarding the uses of pepper spray and solitary confinement in Manitoba youth custody facilities. MACY did not have jurisdiction to investigate the justice system in 2015/2016. As such, MACY collaborated with the Manitoba Ombudsman to coordinate an investigation. The coordinated investigation on pepper spray use and solitary confinement in youth custody facilities was announced publicly in December 2016.

**The purpose of this Special Report is to understand the nature, extent, and conditions of segregation, solitary confinement, and pepper spray use in Manitoba’s youth custody facilities, and to make recommendations to improve the effectiveness and responsiveness of services for youth in the province pursuant to Section 31 of *The Advocate for Children and Youth Act*. (Appendix E)**

This research strategy included:

1. **Literature review** of relevant research, academic literature, international law, and legal decisions on solitary confinement and pepper spray;
2. **Analysis of quantitative data** from Manitoba Justice of segregation and pepper spray incidents;
3. **Qualitative interviews and case reviews** of six youth with lived experience of solitary confinement and pepper spray; interviews were also conducted with Manitoba Justice employees, forensic psychologists, and Elders with experience in the justice system.
4. **Literature review of alternative approaches** to solitary confinement and pepper spray, as well as consultations with MACY’s Youth Ambassador and Advisory Squad (YAAS) were undertaken to inform recommendations

Administrative records were received and collected throughout an 18-month period by the Manitoba Ombudsman. Of note, when requested, Manitoba Justice was unable to provide a list of youth who had been in solitary confinement, the length of stay in solitary confinement, or reason for its use. Aggregate information on the use of solitary confinement in Manitoba youth custody facilities required the manual review of thousands of incident reports cross-referenced with records which tracked movement between units. These records were entered manually into a database for analysis on prevalence and trends.

During the investigation, Manitoba Justice did not have the capacity to track the length of stay in solitary confinement units for individual youth, the frequency of use, the reasons for use, or any trends associated with its use. The Manitoba Advocate of Children and Youth is concerned that this lack of

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comprehensive and systematic data collection and analysis decreases the ability to ensure accountability and transparency of practices in youth custody facilities.

Descriptive analysis of over 1,400 incidents during which youth were placed in solitary confinement cells and 98 incidents of pepper spray use was conducted using data sources provided by Manitoba Justice. Details on the methods of statistical analysis employed by MACY are found in Appendix D.

MACY conducted interviews and case reviews of youth that experienced solitary confinement and/or pepper spray and came to the attention of the Manitoba Advocate. Central to this report are the stories of five youth: Kaitlyn, Colton, Jackson, Dylan, and Jordyn, whose names have been changed to protect their identities. Four out of the six youth are male. Five of the six youth are Indigenous. All youth were under the care of Child and Family Services. Four of the five youth became involved with Community Disability Services during their time in custody or after. All youth have significant vulnerabilities and experienced trauma during childhood. Five out of six were diagnosed with FASD or alcohol-related neurodevelopmental disorder (ARND), and all live with significant mental health issues. Their stories and experiences enhance the findings of the literature review and data analysis.

Simultaneously, the Manitoba Ombudsman conducted key informant interviews with eight correctional staff. Interviews and data were shared with MACY in accordance with the legislative delegation of authority from the Ombudsman to MACY. The names of the youth and correctional employees have been changed and identifying information has been withheld to protect their identities. While Manitoba Justice uses the term “juvenile counselors” to distinguish correctional officers working in youth custody facilities, this report uses the term “correctional officer” as it is the language used in *The Correctional Services Act*. Finally, a comprehensive review of the literature on alternative approaches and three focus groups with MACY’s Youth Ambassador and Advisory Squad (YAAS), an advisory body consisting of experiential youth, were undertaken to inform recommendations.

A draft of the report with preliminary findings was shared with Manitoba Justice, Manitoba Families, and Manitoba Health, Seniors and Active Living in December 2018, and discussed at a meeting that month. Officials provided supplemental information, which was assessed following that meeting. A second meeting to discuss additional information was held in January 2019, with Manitoba Justice, Manitoba Families, and Manitoba Health, Seniors and Active Living.

### **Limitations and Strengths**

There are limitations to the data used in this report. First, due to a lack of documentation, it was not possible to examine the qualitative conditions of solitary confinement. This has two important implications. Firstly, some youth housed in solitary confinement units may have had some peer contact. Anecdotal reports by Manitoba Justice employees claim that some youth housed in solitary confinement

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units have occasional access to group activities. However, no records or youth testimonials were available to corroborate this assertion. Further, it's important to remember that the definition of solitary confinement is not the *absolute absence* of meaningful human contact but *the restriction and minimization* of this contact. Secondly, the Manitoba Advocate for Children and Youth office was made aware of instances where youth were isolated in conditions that met the definition of solitary confinement, but were placed in units designed to house multiple youth. This study did not include these instances.

Third, there is a disproportionate number of Indigenous youth and young people living with mental illnesses and cognitive vulnerabilities in the criminal justice system. However, we do not have enough information to determine how often these populations were placed in solitary confinement or subjected to pepper spray in Manitoba youth custody facilities. Fourth, the study was unable to determine the reasons for the use of solitary confinement units as reasons were not clearly identifiable from the records provided by Manitoba Justice.

Fifth, MACY included the voices of six youth in the analysis to contextualize the experience of solitary confinement and pepper spray. While intrinsically valuable, the small number of youth represented in the report limits generalization to all youth in custody. And finally, a limitation of the current report is that this data is from September 2015- August 2016. There have been some significant changes in the policies of youth custody facilities in Manitoba since it was gathered and analyzed in 2017 and 2018. Nevertheless, this data provides a snapshot of segregation and pepper spray practices over a 12-month period and we have included updated information where available.

The strength of this study is in its ability to combine sources, including incident reports and mobility records, with in-depth interviews and case histories of youth with lived experiences to create a picture of the use of solitary confinement and pepper spray on youth in Manitoba. This study had the ability to track individual youth who have been repeatedly placed in solitary confinement and account for instances where youth were transferred between solitary confinement units and custody facilities. The study allowed for the understanding of the length of stay in situations of repeated and continued placements. This is the first study of its kind to estimate the period prevalence of solitary confinement in Manitoba youth custody facilities, offering a baseline to evaluate efforts to reduce and eradicate the practice.

**SECTION I: SEGREGATION & SOLITARY CONFINEMENT**

## SECTION I: SOLITARY CONFINEMENT

“There’s nothing to do but sit there and sleep.” – Youth interview

### Definitions of Segregation & Solitary Confinement

Internationally, solitary confinement is defined in *The Nelson Mandela Rules* as the confinement of prisoners for 22 to 24 hours per day without meaningful human contact.<sup>28</sup>

For the purposes of the data analysis in this report, the Manitoba Advocate for Children and Youth defines solitary confinement as the confinement of youth in custody for 24 hours per day where *meaningful human contact* is reduced to a minimum.<sup>29</sup> The term, segregation is used as the larger, catch-all term and will be used to refer to any restriction of *meaningful human contact* for less than 24 hours per day.

Solitary confinement is known by many names including segregation, isolation, administrative segregation, observation, special handling, or secured housing. Manitoba Justice uses the word “segregation” defined in *The Correctional Services Regulation* (The Regulation) as a restriction imposed on an inmate that prevents their physical contact with another inmate.<sup>30</sup> Manitoba Justice prefers the use of the term observation to refer to youth segregation.

What is meaningful human contact?

Voluntary, normal, and empathetic social contact. In order for contact to be meaningful, it must be meaningful for the youth.

Regardless of the term used, the central feature of segregation or solitary confinement is that it deprives individuals of the positive environmental stimulation and meaningful human interactions needed to sustain human health and wellbeing.<sup>31</sup> During solitary confinement, socially and psychologically meaningful contact, including physical contact, is reduced to a minimum. In most cases, individuals are deprived of contact with peers and sometimes from having contact with family or friends through restrictions on visitations.<sup>32</sup> The limited social interactions “are seldom freely chosen, generally monotonous, and often not empathetic.”<sup>33</sup> Examples include hygiene or administrative tasks such as receiving meals, gaining access to washroom facilities, check-ins, or practical conversations with correctional staff.<sup>34</sup>

Since the announcement of this public special report, Manitoba Justice has developed a policy that defines meaningful human contact as “in-person interaction with a staff member that is significant, relevant, purposeful and individualized for the young person, intended to contribute to their rehabilitation and reintegration.”<sup>35</sup> The policy further requires that “The Superintendent or designate (typically another manager) will have daily meaningful contact with each young person in observation and assess his/her condition.”<sup>36</sup> While the definition and development of a policy that sets out standards

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is a good start, Dr. Sharon Shalev, an international expert on solitary confinement, cautions that regular contact with correctional staff who are performing their normal, administrative tasks does not constitute meaningful contact.<sup>37</sup> Further, guidance developed for the interpretation and implementation of the Nelson Mandela Rules states that meaningful human contact:

...requires the human contact to be face to face and direct (without physical barriers) and more than fleeting or incidental, enabling empathetic communication. Contact must not be limited to those interactions determined by prison routines, the course of (criminal) investigations or medical necessity.<sup>38</sup>

**FIGURE B – DEFINITIONS OF SEGREGATION AND SOLITARY CONFINEMENT**

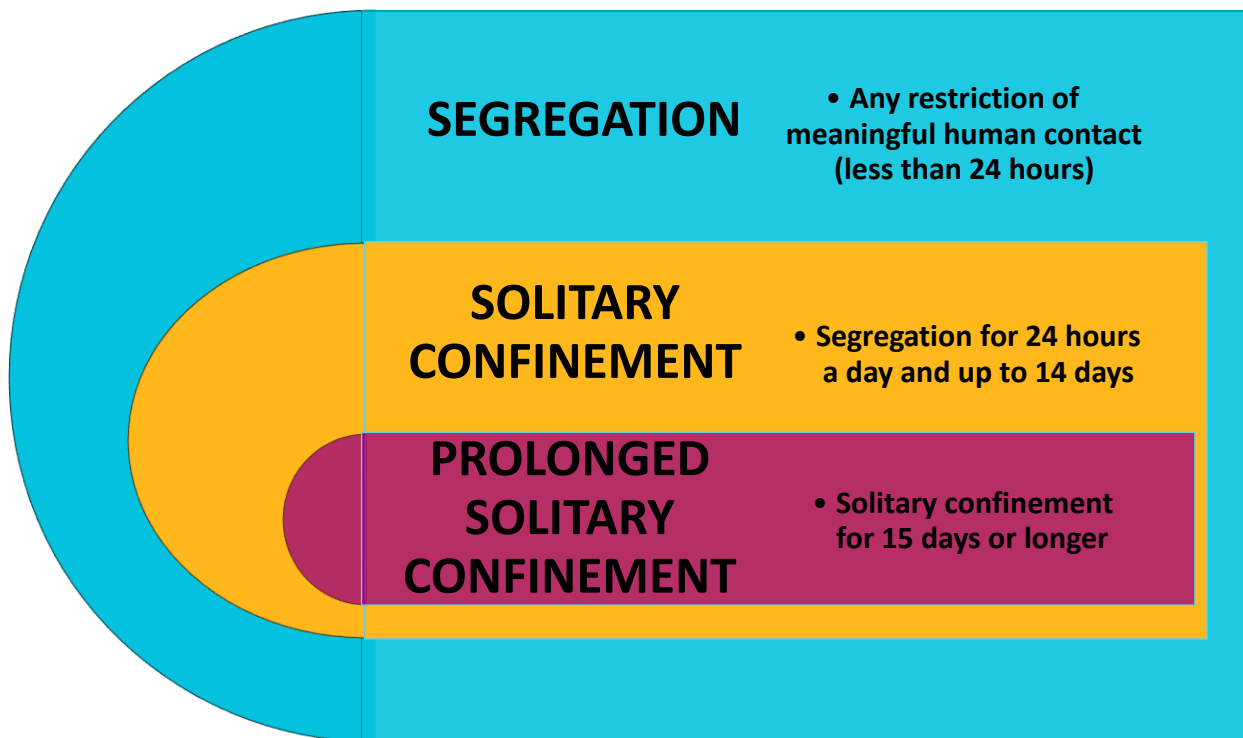


Figure A visually represents the definitions used in this report. **Segregation** refers to any restriction of meaningful human contact, including solitary confinement and prolonged solitary confinement. If segregation lasts 24 hours, it constitutes **solitary confinement**. If solitary confinement lasts 15 consecutive days or longer, it constitutes **prolonged solitary confinement**.

**For an interaction to be meaningful, it must be meaningful to the youth.**

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As advocates for children and youth, some of whom are involved with the justice system, we know that many correctional officers develop meaningful relationships with youth in custody, and that these connections are beneficial to both the youth and the staff. This investigation did not set out to examine the quality of interactions between youth and staff. However, it may be misleading to suggest that **any** interaction between staff members and youth is meaningful. As noted above, in order for it to be meaningful, it should be meaningful **for the youth**, not solely for employees at the facility or to satisfy administrative responsibilities.

Of additional concern to the Manitoba Advocate is the issue of **prolonged solitary confinement**, which is defined as any period of solitary confinement in excess of 15 consecutive days.<sup>39</sup> This delineates the point at which research demonstrates that the harmful psychological effects of solitary confinement can become irreversible.<sup>40, 41</sup>

### Manitoba's Rules on Segregation

“There are some instances where there’s an immediate safety and security risk. But, 90 percent of the time, it’s behaviour leading up to being a risk.” – Correctional officer interview

#### A Measure of Last Resort

The authority to use segregation in youth custody facilities is detailed in *The Correctional Services Regulation* (The Regulation). The Regulation is law authorized under *The Correctional Services Act* (The Act) and provides details on how to apply The Act. According to Section 5 of The Regulation, “segregation may be used to control a young person whose behaviour is disruptive or jeopardizes the safety of a person or the security of a custodial facility, but **should be applied only as a last resort and only to the extent necessary, and should not be applied as punishment.**”<sup>42</sup>

#### Criteria for Use

The facility head of a custodial facility or designate may order an inmate be placed in ‘preventive segregation’ if the facility head or designated person believes on reasonable grounds that:

- (a) the inmate is acting or intends to act in a manner that could jeopardize the security of the custodial facility or safety of a person,
- (b) the inmate may direct or counsel others to jeopardize the safety of a facility,
- (c) the inmate might interfere with an investigation of a criminal or disciplinary offence,
- (d) the inmate’s safety is at risk,
- (e) to carry out a search, *and*

**there is no reasonable alternative** to segregation (Section 20(1) of The Regulation).

#### Review of Use

The facility head must conduct a hearing **no later than seven days** after the inmate is placed in segregation to determine whether any of the grounds for keeping an inmate in preventive segregation



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continue to exist (Section 20(2) of The Regulation). Subsequent hearings should take place within 14 days of the inmate's segregation, and if the inmate has been in segregation for over 60 days, every 30 days (Section 20(2) of The Regulation). Hearings must be conducted with the inmate present, barring some exceptions (Section 20(3) of The Regulation).

#### **Release**

The person or persons conducting the review can recommend that the inmate be released if they are satisfied that the grounds for segregation no longer exist, or may decide that the inmate remains in segregation (Section 20(4) of The Regulation). The inmate must be notified of the recommendation, and of their right to appeal the decision. Inmates can be released on medical and humanitarian grounds by the facility head or a designate despite any order stating otherwise (Section 21(2) of The Regulation).

#### **Right to Appeal**

According to The Regulation, the inmate, including youth, can appeal the decision within 48 hours of being notified of the recommendation through a written submission setting out the reasons why they oppose the recommendation (Section 20(5) of The Regulation). The facility head makes the final decision in accordance to the recommendation of the review and the submission by the inmate. (Section 20(6) of The Regulation). If an inmate has been in segregation for a period of more than 60 days, the facility head shall provide a report of the hearing to the commissioner (Section 20 (9) of The Regulation).

#### **Rights, Privileges, and Conditions**

The Regulation states that inmates – including youth – who are in segregation must be visited by the correctional facility head daily and at least weekly by a nurse (Section 21(1)), and shall be given the same rights, privileges, and conditions while in solitary confinement as non-segregated individuals subject to certain exceptions (Section 22).

#### **Maximum Length of Stay**

**Currently, there is no prescribed time limit in Manitoba's regulations for the use of solitary confinement, or 'segregation' on youth.** According to Section 13(1)(e) of *The Correctional Services Regulation* (The Regulation) if an individual is found responsible by the discipline board for a disciplinary offence they may be subject to no more than 15 days of segregation. However, according to Section 6 of The Regulation this limit does not apply to youth.

#### **Temporary Restrictions**

The only mention of an applicable limitation to the solitary confinement of youth in custody can be found in Section 18(1) of The Regulation on the use of Restrictions, not on the Part 5 Sections 20-22 on Segregation. This section states that "Despite any other provision of this regulation, a correctional officer may take immediate preventive action to ensure safety, security or order in a custodial facility by

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restricting, for up to 24 hours, an inmate’s privileges, movement or interaction with other inmates” (Section 18(1) of The Regulation). This means that without pre-approvals, correctional officers may place a youth in solitary confinement cells for up to 24 hours. The facility head or any other person responsible for the supervision of a correctional officer “may revoke or modify any restriction or impose any additional restrictions that the officer could have imposed under that subsection” (Section 18(2) of The Regulation). This limitation does not offer any limits on consecutive temporary restrictions. Further it refers to ‘restrictions’ and does not limit the length of time a facility head or designate can place a youth in ‘segregation’.

“At MYC there’s one room they call “the dungeon”- that’s where the noisy kids go so staff don’t have to hear them and you don’t have to come out of your room for nothing because they have a toilet in the room. You just stay in your room until they let you out.” – Youth interview

**What Manitoba’s Regulations Do Not Say**

Manitoba’s regulations offer clear parameters for the use of segregation: it must only be used as a measure of last resort, only to the extent that is necessary, and only when no other reasonable alternative exists. In this aspect, the regulations are clear.

However, while correctional officers have a limit on their ability to unilaterally set the length of a restriction which can include segregation, facility heads or designates have no limit on the length of time they can segregate youth. **The Regulation offers no maximum time on the use of segregation on youth in Manitoba youth custody facilities.** The facility head of a youth custody facility or designate may order an inmate be placed in ‘preventive segregation’ for over 24 consecutive hours. Importantly, according to the regulation, youth may be kept in solitary confinement for up to a week without a review of the decision made.

The Manitoba Ombudsman has investigated Manitoba Justice’s compliance with The Regulation. Their report concludes that neither AYC nor MYC fully complied with their standing orders or The Regulation on the review and removal of youth from segregation (p.61). Further, they found that **none** of the segregation incidents reviewed referenced review recommendations or the opportunity for youth to appeal the decision to be segregated to the facility head (p.44, **emphasis added**). Youth are kept in a ‘prison within a prison’ without the procedural safeguards guaranteed by principles of fairness and Manitoba law.

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## Conditions of Segregation and Solitary Confinement in Manitoba

“I hit rock bottom at Lakewood” – Youth interview

There are 32 units used to segregate youth in Manitoba youth custody facilities:

- The Manitoba Youth Centre (MYC) has four (4) Observation Units;
- Agassiz Youth Centre (AYC) has Quiet Rooms in each cottage (4); Quiet Rooms in Echo and Foxtrot (4); and twenty (20) Lakewood Units.

**TABLE 1 – CONDITIONS OF CONFINEMENT**

	AGASSIZ YOUTH CENTRE			MANITOBA YOUTH CENTRE	
	Alpha/Beta/ Charlie/Delta Quiet Rooms	Echo/ Foxtrot Quiet Rooms	Lakewood Units	Observation Unit Room #1	Observation Unit Rooms #2-4
<b>Number of Units</b>	<b>4</b>	<b>4</b>	<b>20</b>	<b>1</b>	<b>3</b>
<b>Physical Isolation</b>					
Enclosed physical space	x	x	x	x	x
Separate from other youth	x	x	x	x	x
<b>Duration</b>					
Extensive confinement in room	x	x	x	x	x
<b>Physical Conditions</b>					
No outside window or natural light				x	x
Sealed air quality	x	x	x	x	x
No in-room access to toilet and washbasin <sup>2</sup>					x
No access to shower	x				
<b>Social Isolation</b>					
Restricted interaction with peers	x	x	x	x	x
Restriction on visits with family and friends	x	x	x	x	x
<b>Reduced Activity and Stimulation</b>					
Restrictions on work, education and activities	x	x	x	x	x
Restrictions on fresh air and exercise	x	x	x	x	x
No access to fresh air or exercise	x				
<b>Restricted Access to Supports</b>					
Restrictions on access to legal counsel	x	x	x	x	x
Restricted access to the Manitoba Advocate for Children and Youth	x	x	x	x	x
Restricted access to the Manitoba Ombudsman	x	x	x	x	x

<sup>2</sup>In this respect, observation unit rooms #2-4 are not different from most rooms at MYC, which do not have a toilet in the room. However, unlike youth in MYC’s general population, youth segregated in observation unit rooms #2-4 are dependent on the availability of reception staff to access the washroom.

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As shown above, important qualitative measures such as outdoor facing windows, size of the room, and toilet access vary significantly between institutions and amongst units (Table 1). At present, there is no stand-alone specialized mental health facility to treat youth with complex needs in youth custody. Some of the youth exhibiting the most challenging and complex behaviours are housed at Lakewood, a high-security special-handling unit for males. Manitoba Justice refers to placement at Lakewood as *youth observation*, and not as segregation or solitary confinement. In this report, the Manitoba Advocate includes Lakewood Units in the analysis of solitary confinement. This is because youth placed in Lakewood meet the commonly agreed conditions that define solitary confinement.<sup>43</sup> Indeed, while held in Lakewood, youth are isolated from their peers within an enclosed space, lack mental stimulation, have restricted access to fresh air and hygiene facilities, and have minimal human contact (Table 1).

### Size of Solitary Confinement Units

Manitoba Justice provided the Manitoba Advocate for Children and Youth with dimensions for the units used to place youth in segregation or solitary confinement. The average size of units is 6.88m<sup>2</sup> with a range of 4.71 m<sup>2</sup> to 11.80 m<sup>2</sup>. As a point of reference, the average size of a parking stall is identified below (Table 2). The majority of units are smaller than the estimated size of a parking stall, with the Delta Quiet Room at AYC and Quiet Room 3 at MYC exceeding the size of a parking stall.

**TABLE 2 – SIZE OF SOLITARY CONFINEMENT UNITS**

Size of Unit (m <sup>2</sup> )	Name	Facility
4.71	Quiet Room 3	MYC
5.11	Quiet Room 1	MYC
5.28	Quiet Room 4	MYC
5.70	Lakewood	AYC
6.87	Echo Quiet Room	AYC
8.05	Parking Stall	
8.72	Delta Quiet Room	AYC
11.80	Quiet Room 2	MYC

“...[youth] can’t run from it. They lock up an individual in a room, basically in his own head” – MACY’s Youth Ambassador Advisory Squad

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**Hailey's Story**

In early childhood, Hailey experienced physical and sexual abuse, neglect, domestic violence, and parental addictions. She was born with Fetal Alcohol Spectrum Disorder and was sexually exploited.

Over a period of one year, she was placed in isolation 13 times while at the Manitoba Youth Centre. Incidents ranged in length from one hour to more than 39 hours. She described, "They carry you out...by putting you in a wrap, a blue suicide wrap." She explained that her feet and knees were tied together and arms were handcuffed behind her back. They placed her in "a small square room [with] a skinny mat and a thin blanket." She stated that one of the observation units had a bathroom, but the others did not. If she had to go to the washroom, she would bang on the window for staff, but sometimes they would take a long time.

When asked, Hailey could not identify a benefit to solitary confinement, and said that afterwards she felt "much more bad."



**FIGURE C – OBSERVATION UNIT #4 – MANITOBA YOUTH CENTRE**

## The Impacts Of Solitary Confinement

“[Solitary confinement is] depressing, lonely, gross, not good and not positive.” – Youth interview

The evidence of the harmful effects of solitary confinement on individuals in custody is well established.<sup>44</sup> Between one-third to as many as 90 per cent of all people experience harms while in solitary confinement.<sup>45</sup> There are clear reasons for this: social isolation and exclusion, together with lack of positive mental stimulation, produces pain and suffering for humans in contexts other than prison.<sup>46</sup> Negative effects of solitary confinement occur after a day and increase by length of time dramatically.<sup>47,48</sup> While the effects can affect anyone, harms can be intensified for vulnerable populations, including individuals suffering from mental illnesses, cognitive vulnerabilities, and youth.<sup>49</sup> Youth are particularly vulnerable since they do not have the coping mechanisms to deal with the effects of solitary confinement, and they are most likely to be irreversibly affected by the experience.<sup>50</sup>

## Psychological Impacts

“Youth [in custody] are in the care of CFS, not loved, not nurtured...

You are putting youth in segregation that have already been abused and beat up.

How are you going to change his mind? You are not.” – Indigenous spiritual caregiver interview

Individuals placed in solitary confinement experience a range of symptoms, sometimes referred to as “isolation syndrome,” including: anxiety; depression; anger; cognitive disturbances such as confusion; perceptual distortions, such as hallucinations; paranoia and psychosis, and self-harm.<sup>51</sup> In some instances, prolonged solitary confinement can intensify pre-existing psychological disorders, or contribute to the development of psychological symptoms not previously observed.<sup>52,53</sup> Indeed, solitary confinement is independently associated with Post Traumatic Stress Disorder (PTSD) symptoms.<sup>54</sup>

The psychological effects of solitary confinement may have long-term and permanent effects on children and youth. Although the effects of solitary confinement on children have not been extensively studied, the science on brain development and adverse childhood experiences suggests that youth may be particularly vulnerable.<sup>55</sup> As the brains of young people are still developing, the traumatic experience of solitary confinement rewires the brain in ways that may have profound and lasting harmful influence on their ability to rehabilitate, grow, and reintegrate successfully.<sup>56</sup>

Youth who experience mental illness are overrepresented in solitary confinement units.<sup>57</sup> For these youth, solitary confinement is especially harmful. Some youth placed in solitary confinement report that it triggered memories and experiences of past trauma, further adding to their psychological harm.<sup>58</sup>

## **The Increased Risks of Self-Harm and Suicide**

“Can't be here anymore...Can't be alone.” – Youth interview

Solitary confinement was found to increase the risk of self-harm and suicide, even for individuals without a known mental illness.<sup>59</sup> Multiple countries report high rates of self-harm and suicide for youth in solitary confinement.<sup>60</sup> One study estimated that individuals held in solitary confinement were 6.9 times more likely to commit acts of self-harm, even after accounting for the length of stay in prison, serious mental illnesses, age, race, and ethnicity.<sup>61</sup> Psychological experts explain that youth self-harm while in solitary confinement to cope with painful feelings and, sometimes, to force human contact with medical professionals.<sup>62</sup> The risk of self-harm and suicide is higher for youth with mental illness.<sup>63</sup>

Youth are also more likely to die by suicide in solitary confinement. A national study of youth suicide in correctional facilities in the United States found that half of all suicides occurred while in solitary confinement.<sup>64</sup> In Canada, the Office of the Correctional Investigator found that **almost half of suicides in adult facilities in 2014-2015 took place in solitary confinement cells.**<sup>65</sup> Five of the 14 individuals that died by suicide had been segregated for more than 120 days.<sup>66</sup>

The research not only raises concern about the impacts of solitary confinement, but also suggests that solitary confinement is an inadequate and harmful response for youth with mental illness, self-harming, or suicide-related behaviour. Further, the 2012 Inquest with The Associate Chief John P. Guy presiding on the deaths by suicide of two youth in Manitoba youth custody facilities included a report by a forensic psychologist. This report stated that “It would be completely inappropriate to place a suicidal youth in a maximum security isolation unit.”<sup>67,68</sup> Instead, the report recommends placing suicidal youth with a compatible and healthy roommate that can provide informal supports, counter feelings of isolation, and assist in monitoring the young person.<sup>69</sup> Research suggests that placing youth who are suicidal or have mental illness in solitary confinement increases their risk of self-harm and death by suicide. *Jackson's Story* (below) demonstrates how his mental health deteriorated culminating in a serious self-harm incident while in solitary confinement.

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**Jackson's Story**

Jackson entered the care of Child and Family Services when he was an infant. He was described as a strong and capable student in elementary school, but he struggled with regulating emotions and was easily misled. In middle childhood, a family member passed away, which intensified already difficult anger outbursts. The next year, he attempted suicide and began to misuse drugs and alcohol. His aggressive behaviour intensified, culminating in his arrest. Once incarcerated, Jackson continued to struggle with aggression against other youth and residents.

Over the period of one year, as a teenager, he spent over 98 days in solitary confinement. Psychologists reported that his mental health severely deteriorated during this time. He had a major self-harm incident while in solitary confinement that required intensive medical intervention.

Once stabilized, Jackson requested a transfer to an adult facility where he could attend programming with other residents and engage with peers. His psychologists state that Jackson feared for his mental health in solitary confinement and thought transferring to an adult facility was his best option. His application to transfer to an adult facility was approved.

While incarcerated, he was diagnosed with Fetal Alcohol Spectrum Disorder (FASD).



**FIGURE D – OBSERVATION UNIT #1 – MANITOBA YOUTH CENTRE**



## Denied Access to Basic Necessities

“All my privileges were withheld for some reason or another. It was really tough on me – some of the things that happened to me weren’t really necessary.” – Youth interview

The denial of rights, necessities, and services has been found to be a common feature of the experience of solitary confinement around the world.<sup>70,71</sup> Although social deprivation and lack of stimulation are the main culprits of psychological harm, solitary confinement is associated with additional forms of deprivation which exacerbate suffering, including: increased forms of repressive control and physical and material deprivation.<sup>72</sup>

Despite provincial legislation to the contrary, youth informed us that when placed in solitary confinement they are sometimes denied access to services provided to non-segregated peers.<sup>73</sup> In the sample of youth that provided testimonials for this report, four out of the five youth were at one time not allowed to shower or brush their teeth daily. They also stated that they were not always allowed to use the bathroom when needed.

“Sometimes I wasn’t allowed to shower or brush my teeth. I couldn’t always use the bathroom when I needed to. At MYC, staff would get mad if you asked to go to the bathroom. They thought you just wanted to get out. And when they said no I would bang on the door to ask to get out to use the bathroom and they would just yell back that I’d have to wait another ten minutes because of my behaviour. But, they were making me this way.” – Youth interview

One youth reported that he was only given a mattress and bedding if he gave up his book.

“I had a bed and a blanket but they wouldn’t give it to me unless I gave up my book [programming book or reading book]. So, if I didn’t give them my book I had to sleep on the floor without anything else.” – Youth interview

Further, two out of five youth reported not having enough clothing and feeling cold while in solitary confinement.

“When I was in Lakewood I had to wear this thing called a smock – it’s like a dress. They used to make me sleep in this smock if I wasn’t listening. I was always cold when I had to wear it.” – Youth interview

Further, solitary confinement deprives youth of exercise and other opportunities required for physical health. For example, one youth we interviewed, Hailey, reported that she was rarely taken to the gym. Another youth, Jackson, told our team that his ability to be physically active was extremely limited by solitary confinement, causing him to gain a significant amount of weight.

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According to the Canadian Guidelines for Physical Activity, youth aged 12-17 should accumulate at least 60 minutes of physical activity every day.<sup>74</sup> However, youth in solitary confinement are only mandated to have a minimum of 30 minutes of physical activity at MYC or 60 minutes at AYC. The Manitoba Advocate attended MYC and AYC, including Lakewood, on a number of occasions while this research was ongoing. During one of those visits to AYC in 2018, correctional staff informed the Manitoba Advocate that the ability for them to have contact with youth placed in Lakewood was dependant on the number of admissions and discharges and the number of staff available. In some cases, a correctional staff reported that they were unable to provide youth with the programming and 30 minutes of out-of-cell time required under youth corrections policy. The lack of access to normal and necessary human activities increases the potential for negative psychological impacts.

“I only got two calls a day and only if on good behaviour. But, there were other times I asked to use the phone and I was told there was never enough staff to let me call. And I know that I tried to call you guys (MACY) from MYC a few times and they wouldn't let me” – Youth interview

Importantly, two youth reported that they were refused when they requested to speak to the Manitoba Advocate for Children and Youth while in segregation. A child or youth being denied access to the Manitoba Advocate is a violation of the rights of youth as enshrined in *The Advocate for Children and Youth Act* (ACYA). Section 33(2) of the ACYA states that **“If a child in a facility asks to communicate with the Advocate, the person in charge of the facility must forward the request to the Advocate or must assist the child to contact the Advocate directly. The child is entitled to communicate with the Advocate privately and in confidence.”**<sup>75</sup> Additionally, denying a youth access to an Advocate is contrary to the rights enshrined in the *Youth Criminal Justice Act*, the *Canadian Charter of Rights and Freedoms*, and the *United Nations Convention on the Rights of the Child* (UNCRC). Article 37(d) of the UNCRC states, “(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance.”<sup>76</sup> Similar protections and requirements were previously described in *The Child and Family Services Act*. It is unacceptable that youth are being denied their legal right to speak to MACY.

### Missed Opportunities for Rehabilitation

“I just want to be in with other people..[I have been in] in segregation for 10 months. Alone in a cell 23 out of 24 hours. In a pod with 4 guys [but I] don't get to see them.” – Youth interview

All youth who are held in Manitoba youth custody facilities will be released back into their communities. As a result, they require the skills to reintegrate successfully, including social skills, education, and training. However, youth placed in solitary confinement have limited access to social and educational opportunities. For example, a study on adult males in solitary confinement found that over a period of four years, adults in general population improved in functioning; however, those in solitary confinement did not.<sup>77</sup> The authors concluded, “segregation is a barrier to opportunities for continued growth.”<sup>78</sup>

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While in solitary confinement, youth are restricted from gaining the prosocial skills they need to succeed. In Canadian federal corrections, solitary confinement has been associated with difficulty solving interpersonal problems.<sup>79</sup> A psychologist interviewed for this report confirmed research findings:

...segregation placement assisted [Anonymous Youth] to avoid and manage conflict as it limited his physical access to other individuals, however it prevented him from learning how to encounter conflict and manage it in a positive way without external restraints.

The use of solitary confinement practices is counterproductive to the rehabilitation and reintegration of youth into communities where they will be faced with interpersonal problems and conflict.

Solitary confinement, and prolonged solitary confinement in particular, is associated with lasting psychological effects, including post-traumatic stress disorder (PTSD) and intolerance to social interaction.<sup>80</sup> As a way to cope with the lack of or restrictions on social contact, some individuals withdraw further, and others become disoriented, uncomfortable, anxious and sometimes even frightened of social interaction.<sup>81</sup> An expert termed this condition “social death” defined as the loss of a meaningful connection with the social world and any hope of regaining this connection.<sup>82</sup> One of the youth interviewed for this report, who had spent long periods at Lakewood, was profoundly impacted by solitary confinement. In the words of his psychologist:

“[He] reported feeling frustrated being confined to a small space...  
He felt he did not know how to interact with others anymore.” – Clinical psychologist interview

As Colton’s story reveals on the next page, youth who have been placed for long periods in solitary confinement can struggle to function in social settings outside of solitary confinement. This phenomenon was described in an adult facility where individuals in solitary confinement “lost the sense of how to behave in the absence of constantly enforced restrictions, tight external structure, and the ubiquitous physical restraints.”<sup>83</sup>

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**Colton's Story**

Colton entered the care of child and family services as an infant. He had little contact with relatives during his childhood. He was **diagnosed with extremely low cognitive functioning**, FASD, and ADHD. Colton entered custody following a violent incident.

Since then, **he has spent over 650 days in solitary confinement, including 400 consecutive days.** Correctional staff have attempted to return him to a group setting. However, he was found to intentionally behave in ways that returned him to solitary confinement at Lakewood.

During an interview with our office, Colton stated, "I kind of grew up in Lakewood [solitary confinement unit]... so it's a safe place for me."



**FIGURE E – LAKEWOOD UNIT – AGASSIZ YOUTH CENTRE**

Some of these patterns of thinking, behaving, and feeling that help individuals cope in solitary confinement cells can persist even after the social isolation has ended. When applied in a real world setting, the coping strategies become "highly dysfunctional" and interfere "with the capacity to live a remotely normal or fulfilling social life."<sup>84</sup>

## Solitary Confinement Impacts on Public Safety

Evidence points to the negative impacts of solitary confinement on public safety. Individuals who have spent time in solitary confinement are more likely to reoffend, commit new crimes sooner, and exhibit violent behaviour after release.<sup>85,86</sup> A study found that individuals held in solitary confinement increased violent recidivism at a rate 20 per cent higher than prisoners not in solitary confinement with similar age, gender, race, and criminal histories.<sup>87</sup> While this is not necessarily a reflection of a cause-and-effect relationship, it contributes to a body of knowledge suggesting that solitary confinement is an ineffective tool for the rehabilitation and reintegration of youth. Indeed, youth subjected to extended periods of solitary confinement might place a higher risk to society upon release.

As noted above, solitary confinement is not consistent with the Declaration of Principles of the *Youth Criminal Justice Act* (YCJA), which emphasizes rehabilitation and reintegration. The serious and established harms of solitary confinement suggest that solitary confinement also constitutes a violation of youth rights as per the *Canadian Charter of Rights and Freedoms*, and specifically: the right not to be subjected to any cruel and unusual treatment or punishment (Section 12).<sup>88</sup>

“I found solitary confinement the most forbidding aspect of prison life. There is no end and no beginning; there is only one’s mind, which can begin to play tricks. Was that a dream or did it really happen? One begins to question everything.”

– Nelson Mandela, from his 1994 autobiography *The Long Walk to Freedom*

## Solitary Confinement and Human Rights

“Considering the severe mental pain or suffering solitary confinement may cause, it can amount to torture or cruel, inhuman or degrading treatment or punishment when used as a punishment, during pre-trial detention, indefinitely or for a prolonged period, for persons with **mental disabilities or juveniles.**”

– Juan E. Mendez, UN Special Rapporteur on Torture (October 18, 2011, **emphasis added**)<sup>89</sup>

Human rights reflect the basic goods, opportunities, and standards of treatment to which all peoples are entitled in virtue of their status as human beings. International human rights treaties transform these rights into state obligations. Signatories to international human rights treaties, including Canada, have committed to respecting and upholding the basic human rights of youth. For example, Canada has ratified the *Universal Declaration of Human Rights*; the *United Nations Convention on the Rights of the Child*; the *United Nations Convention on the Rights of Persons with Disabilities*; and the *United Nations*

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*Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment*. Under these agreements, Canada has committed itself to ensuring that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”.<sup>90</sup>

Given the overrepresentation of Indigenous youth in youth custody facilities in Manitoba, it is also important to recognize the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP), which reinforces and reaffirms state obligations to ensure the rights of Indigenous youth. Article 1 of UNDRIP states that “Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.” The continued use of solitary confinement in youth custody facilities, given its known harm, is inconsistent with Canada’s commitment to the protection of human rights and has a potential to constitute cruel, inhuman, or degrading treatment.

### International Consensus

Solitary confinement is subject to international prohibitions. Notably, the *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*, adopted 28 years ago by Canada, prohibits the use of solitary confinement for anyone under the age of 18, stating that:

All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or **solitary confinement** or any other punishment that may compromise the physical or mental health of the juvenile concerned.<sup>91</sup>

This affirmation was endorsed in 2007, through the Istanbul Statement, which called for an absolute prohibition on solitary confinement for prisoners that have a mental illness and youth under the age of 18 years.<sup>92</sup> The Istanbul Statement was followed by a statement in 2011, by the United Nations Special Rapporteur on Torture who called for a categorical ban on subjecting juveniles and people with mental illness to solitary confinement.<sup>93</sup>

### The Nelson Mandela Rules (2015)

In 2015, the *United Nations Standard Minimum Rules for the Treatment of Prisoners* (the “Nelson Mandela Rules”) reaffirmed the prohibition of solitary confinement for youth under 18 years old and for individuals with mental or physical disabilities, when their conditions would be exacerbated by such measures.<sup>94</sup> It also prohibited the use of indefinite solitary confinement and prolonged solitary confinement, which is solitary confinement exceeding 15 consecutive days in length.<sup>95</sup>

The Nelson Mandela Rules, which Canada assisted in drafting, include 122 rules that reflect major developments in human rights and criminal justice. Their purpose is to provide international minimum

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standards for prison management to guide correctional staff and administrators, and provide a framework to assess the treatment of prisoners. While these rules are not law, they represent an international consensus on the fair treatment of prisoners, including youth.<sup>96</sup> Since the adoption of the Mandela Rules, a number of jurisdictions have implemented a ban on solitary confinement for youth under the age of 18, including the states of West Virginia, Connecticut, Mississippi, New York, Ohio, and North Carolina in the United States.<sup>97</sup> Uruguay, Uganda, Brazil, and France have also instituted some form of prohibition on the use of solitary confinement on youth.<sup>98</sup>

However, many of the policies and legal bans enacted have significant loopholes, allowing the practice of placing youth in solitary confinement to continue. A jurisdictional review and survey by the Lowenstein Sandler Center for the Public Interest in the United States concluded, “Of the 29 states that ban punitive solitary confinement, at least 25 continue to use solitary confinement for other purposes” and many allow for indefinite extensions of time limits.<sup>99</sup> Anecdotal reports from advocates around the United States suggest that reliance on the practice is still common in the youth justice system.<sup>100</sup>

In 2015, the Office of the Ontario Provincial Advocate for Children and Youth called on the Ontario government to amend the *Child and Family Services Act* to prohibit the placement of a young person in secure isolation for over 24 hours without exception, in line with the Nelson Mandela Rules.<sup>101 102</sup> Since then, Ontario’s *Child and Family Services Act* was amended to state that “in no event shall a child or young person be kept in secure de-escalation room for a period or periods that exceed an aggregate of **eight hours in a given 24 hour period** or an aggregate of 24 hours in a given week” (173 (8)). This section applies for children under the age of 16. For youth 16 years of age or older, the young person must not be kept in a secure de-escalation room for a continuous period in excess of 24 hours or for a period or periods that exceed an aggregate of 24 hours in a seven-day period (Section 173 (9)). However, secure de-escalation may be extended by the provincial director, and the legislation offers no time limit on these extensions. Effectively, indefinite extensions of time limits are allowed for youth 16 years of age or older in Ontario.<sup>103</sup> Clear and robust legislation together with oversight is essential to ending the solitary confinement of children and youth permanently.

Canada and Manitoba lag behind in recognizing and addressing the harms and human rights violations associated with the use of solitary confinement on youth, and particularly youth living with mental illness. In November 2018, the Committee Against Torture at the United Nations published a report on the implementation of the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* which expressed concern over the continued use of prolonged and indefinite solitary confinement in the form of disciplinary and administrative segregation in Canada.<sup>104</sup> Manitoba has the opportunity to learn from the work of previous jurisdictions and legislate responses that are effective and humane.

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## **Solitary Confinement in Canada**

The recognition of solitary confinement as a human rights violation has been growing in Canada. A number of public inquiries across Canada on the deaths of young persons while placed in solitary confinement have reinforced the long-established relationship between solitary confinement, mental illness, and death by suicide.

In 2013, the *Coroner's Inquest Touching the Death of Ashley Smith* concluded that the self-inflicted choking death of Ashley Smith (19 years old) after spending more than 11 months in isolation in Ontario was a homicide.<sup>105</sup> This inquest called for a ban on indefinite solitary confinement, and a prohibition on the practice of placing female individuals in solitary confinement for a period in excess of 15 days.<sup>106</sup> The Correctional Service of Canada initially rejected the recommendations.<sup>107</sup> However, the Prime Minister has since directed the federal Justice Minister to implement them.<sup>108</sup>

The next year, in 2014, the report on the *Public Inquiry into the Death of Edward Christopher Snowshoe* was published. Similarly, Edward Snowshoe (24 years old) died by suicide while segregated for over five months at the Edmonton Institution. The inquiry concluded that he “fell through the cracks of a system and no one was aware of how long he had been in solitary confinement even though that information was readily available.”<sup>109</sup> The inquiry recommended that persons with mental health needs in solitary confinement be transferred to a special handling unit.

On June 3, 2015 Christopher Roy (33 years old) died by suicide after spending 60 days in solitary confinement in British Columbia. The inquest that followed called again on the Canadian government to legislate limits on the duration of solitary confinement for individuals with mental illness or histories of self-harm, and that correctional facilities be provided with ‘sufficient resources’ to hire and provide mental health services.<sup>110</sup> However, according to a report of the West Coast Prison Society, mental health resources remain underfunded.<sup>111</sup>

In December 2017, the Ontario Superior Court of Justice ruled on a case by the Canadian Civil Liberties Association. The decision stated that solitary confinement practices in adult federal corrections were harmful, and that the current procedural safeguards failed to meet the requirements of the principles of fundamental justice, violating the *Canadian Charter of Rights and Freedoms*.<sup>112</sup> Particularly, “the fifth working day review fails to provide the procedural safeguards required by the principles of fundamental justice...Any continued use of administrative segregation that relies on the fifth working day review is unconstitutional.”<sup>113</sup> Notably, for youth in Manitoba, The Regulation on segregation requires a review hearing within seven days. The judge provided parliament with 12 months to develop and implement an appropriate legislative response.<sup>114</sup> In December 2018, an extension was granted until April 30, 2019.<sup>115</sup>



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Almost simultaneously, in January 2018, the Supreme Court of British Columbia ruled on the British Columbia Civil Liberties Association case that prolonged and indefinite solitary confinement are unconstitutional and thus, solitary confinement must include time limits.<sup>116</sup> The court also concluded that solitary confinement constituted discrimination against Indigenous and mentally ill persons, stating that: "the law...fails to respond to the actual capacities and needs of mentally ill individuals and instead imposes burdens in a manner that has the effect of reinforcing, perpetuating, or exacerbating their disadvantage."<sup>117</sup> The appeal was heard by the Court of Appeal for British Columbia.<sup>118</sup> As of the writing of this report, the decision is under reserve.<sup>119</sup>

On August 31, 2018, the *Report on Inquest and Recommendations of the Honorable Judge Brian Corrin* was completed on the deaths by suicide of Devon Sampson and Dwayne Mervin Flett, individuals at Stony Mountain Institution in Manitoba. At the time of his death, Devon Sampson (34 years old) had been placed in solitary confinement and his mental health needs, including schizophrenia and suicidality, were ignored. The Inquest determined, "Mr. Sampson should have been designated as an individual/individual with 'intensive needs'...he should not have been subjected to punitive segregation."<sup>120</sup> According to testimony by the Correctional Services Canada (CSC) Senior Project Officer for Segregation, unlike in 2013, inmates with mental illnesses as assessed by a mental health professional can no longer be placed in administrative segregation at Stony Mountain Institution.<sup>121</sup> However, the report made no recommendations to limit solitary confinement practices.

That same month, in the case of Her Majesty the Queen vs. CCN, a *Canadian Charter of Rights and Freedoms* challenge against the solitary confinement of an Alberta youth over the period of two years was successful.<sup>122</sup> Provincial court judge, the Honourable Geoffrey Ho, ruled that the practice of segregating young persons was not lawful under *The Corrections Act* and contravened the *United Nations Convention on the Rights of the Child* and the *Youth Criminal Justice Act*. Further, he concluded:

Canada is a democratic society based on the rule of law. The actions of corrections officials in placing [the youth] in solitary confinement for approximately two years, without lawful, authority, is offensive to societal notions of decency and fair play. The unlawful imprisonment of [the youth] in a "prison within a prison" contravened Canada's international obligations under the United Nations Convention on Rights of the Child as well as the purposes and principles of the YCJA. Corrections officials chose to place [the youth] in solitary confinement rather than provide appropriate programs to assist in his rehabilitation and reintegration. The likely result of this approach was to make [the youth] a greater risk to the public.<sup>123</sup>

On October 16, 2018, the Public Safety Minister of Canada tabled Bill C-83, which proposes to end the use of solitary confinement for adults in federal prisons. It presents alternative structured intervention units (SIU) to house individuals separately, while allowing access to two hours a day of "meaningful human contact" and access to rehabilitation and mental health programs.<sup>124</sup> The Bill has been criticised

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internationally as it does not provide a maximum length of stay in SIUs; does not prohibit the use of SIUs on persons with cognitive vulnerabilities or mental illness; and does not offer provisions requiring independent external reviews of the practice.<sup>125</sup> Notably, Bill C-83 does not extend this legislation to any provincial facility, including custody facilities for youth.

Most recently, on December 17, 2018 a class action lawsuit was allowed to proceed on behalf of children placed in solitary confinement conditions for more than six hours at youth custody facilities between 2004 and 2018, citing violations to the *Canadian Charter of Rights and Freedoms*.<sup>126</sup>

Canada has begun to face the human rights violations that solitary confinement inherently poses, particularly in adult federal corrections. However, despite recommendations and inquiries on the death of young people, the practice continues for adults and for youth. The continued use of solitary confinement on youth in Canada and Manitoba runs contrary to the YCJA, the *Canadian Charter of Rights and Freedoms*, and the *United Nations Convention on the Rights of Children*.

## Data Analysis of Segregation and Solitary Confinement

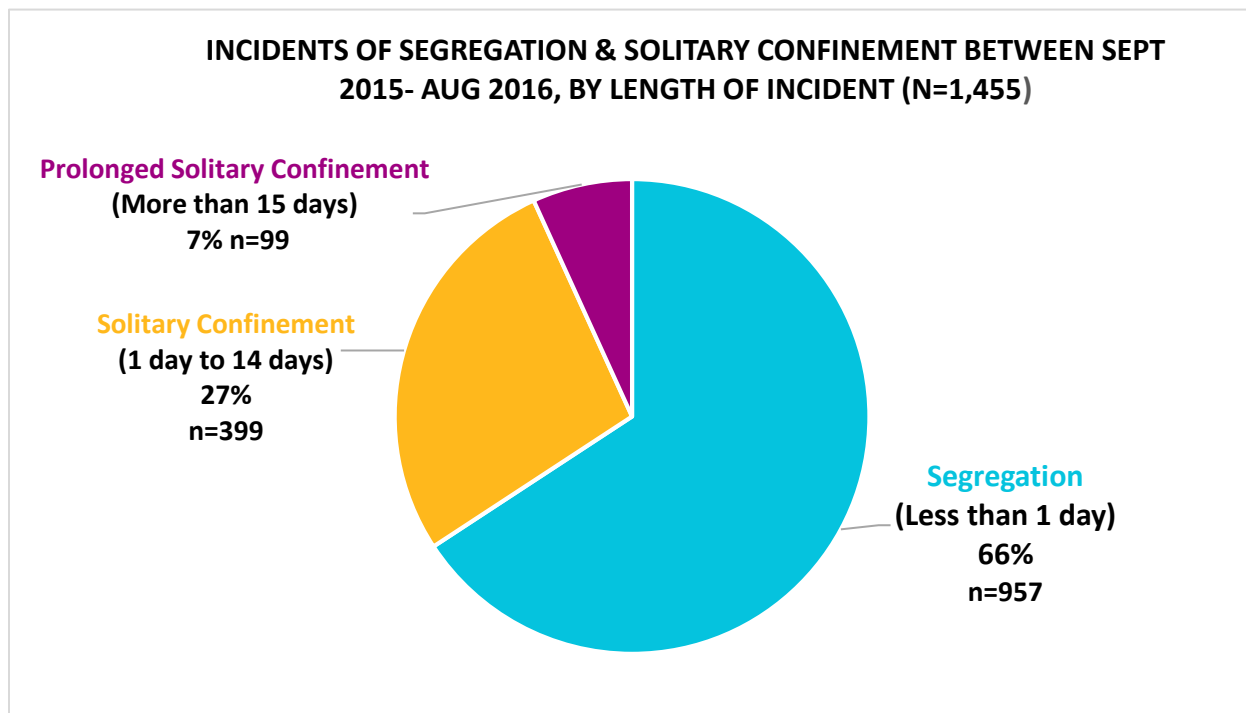
“I can’t even count the number of times I was placed in the OU [solitary confinement]” – Youth interview

Data on segregation and solitary confinement was gathered from incident reports and running records between September 1, 2015 and August 31, 2016. Details on the statistical methodology can be found in Appendix (D). Our descriptive analysis of this data sought to understand the prevalence of solitary confinement over 24 hours in Manitoba youth custody facilities, the prevalence of prolonged solitary confinement, and the characteristics of youth that are subjected to solitary confinement.

### Incidents of Segregation and Solitary Confinement

Between September 1, 2015 and August 31, 2016 there were a total of 1,455 incidents of segregation. This means that there were nearly four incidents of segregation each day between September 2015-August 2016. 66 per cent of incidents were less than one day in length. However, 34 per cent of incidents meet the definition of solitary confinement since they exceeded 24 hours in length (n=498). Further, 7 per cent of all stays in solitary confinement units exceeded 15 days in length, meeting the definition of prolonged solitary confinement (n=99) (Figure F).

FIGURE F – INCIDENTS OF SEGREGATION & SOLITARY CONFINEMENT, BY LENGTH OF INCIDENT



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**TABLE 3 – LENGTH OF STAY IN SOLITARY CONFINEMENT UNITS (SEPTEMBER 2015- AUGUST 2016)**

	Length of Incidents	Incidents	
	Days	Number	Percentage
<b>Segregation</b>	Less than 1	957	66%
<b>Solitary Confinement</b>	1-8	355	24%
	8-15	44	3%
<b>Prolonged Solitary Confinement</b>	15-22	37	2%
	22-31	23	2%
	31-60	31	2%
	61+	8	1%
	<b>Total</b>	<b>1,455</b>	<b>100%</b>

The most common length of stay in solitary confinement units was 30 minutes, with 12 incidents of that length. Incidents are highly varied in length, meaning that few incidents had similar lengths of time. The median length of stay in a solitary confinement unit was 13 hours and 50 minutes. This means that half of all incidents were under 13 hours and 50 minutes, and half were over 13 hours and 50 minutes.

### **Youth in Segregation and Solitary Confinement**

Prevalence rates tell us how many youth experienced segregation and solitary confinement. They are important because they reveal how common a social problem is in a population. Between September 1, 2015, and August 31, 2016, there were an estimated 1,028 youth incarcerated at MYC and AYC (Appendix D). During that same period, 367 youth were segregated, of which, 167 youth were segregated for over 24 hours. Of those youth, 52 were segregated for more than 15 days (Table 4 below).

From September 2015- August 2016, 36 per cent of youth in Manitoba youth custody facilities experienced at least one incident of segregation (n=367). This means that more than one in three youth entering custody experienced segregation.

**From September 2015- August 2016, 16 per cent of youth in Manitoba youth custody facilities experienced solitary confinement (n=167).** This means that approximately one in six youth in Manitoba youth custody facilities were placed in solitary confinement for over 24 hours. Furthermore, the prevalence of prolonged solitary confinement is 5 per cent (Table 4 below).

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**TABLE 4 – PREVALENCE OF SEGREGATION AND SOLITARY CONFINEMENT (SEPTEMBER 2015- AUGUST 2016)**

		Number	Percentage
<b>All youth in custody</b>		1,028	100%
<b>Segregation</b>	<b>All</b>	<b>367</b>	<b>36%</b>
<b>Segregation</b>	Under 1 day	294	<b>29%</b>
<b>Solitary Confinement</b>	Over 1 day	167	<b>16%</b>
<b>Prolonged Solitary Confinement</b>	Over 15 days	52	<b>5%</b>
<b>Note: The number of youth in segregation under one day, over one day, and over 15 days exceeds the total number of youth in segregation. This is because in a number of cases the same youth experienced more than one form of segregation and/or multiple incidents of the same form of segregation.</b>			

Data on the prolonged solitary confinement of youth in Canada is scarce, and given the different regulatory regimes, terminology, and custody conditions, comparison between provinces should be interpreted with caution. Nevertheless, a 2015 report of the Office of the Provincial Advocate for Children and Youth in Ontario on the use of isolation practices on youth, found that between 2009 and 2014 there were only three instances of isolation beyond 15 days.<sup>127</sup> **In just a 12-month period, Manitoba had 99 incidents of prolonged solitary confinement.**

That same publication reported that over a one-year period there were 164 placements in secure isolation that lasted beyond 24 hours in Ontario.<sup>128</sup> Manitoba’s total number of incidents of solitary confinement for September 2015- August 2016 is nearly three times higher at 489 incidents. Comparison between Manitoba and Ontario is telling because despite the former having a population approximately 10 times smaller, Statistics Canada reports that Manitoba had similar average counts of youth in custody facilities than Ontario from September 2015- August 2016.<sup>129</sup>

### **Characteristics of Youth In Solitary Confinement**

The ages of the youth who experienced solitary confinement over 24 hours ranged from 12 to 21 years old. The average age of youth in solitary confinement is 16 years old. On average, youth experienced approximately three incidents of solitary confinement. However, 13-year-old youth experienced an average of 4.3 incidents per youth. Further, the majority of youth in solitary confinement were male (76 per cent, n=127). This proportion is reflective of the proportion of males in custody. According to Statistics Canada, in 2015-2016 males accounted for 73 per cent of youth admitted into custody in Canada.<sup>130</sup>

## **Prolonged Solitary Confinement (Longer Than 15 Days In Solitary Confinement)**

Prolonged solitary confinement is solitary confinement that lasts 15 days or longer. Prolonged solitary confinement has been shown to have the potential to constitute cruel, inhuman, or degrading treatment due to the possibility of lasting psychological harm.<sup>131</sup>

In no circumstances may restrictions or disciplinary sanctions amount to torture or other cruel, inhuman or degrading treatment or punishment. The following practices, in particular, **shall be prohibited**: (a) Indefinite solitary confinement, (b) Prolonged solitary confinement.

- Rule 43, Nelson Mandela Rules, **emphasis added**

### **Youth in Prolonged Solitary Confinement**

Between September 1, 2015, and August 31, 2016, **52 youth** experienced at least one period of prolonged solitary confinement in Manitoba youth custody facilities. There were 99 incidents of prolonged solitary confinement, an average of 1.9 incidents per youth.

Youth in prolonged solitary confinement were between 14 and 19 years of age, with an average age of 17 years old. All of the youth were male. The overrepresentation of males in prolonged solitary confinement is consistent with findings from studies in the United States.<sup>132</sup>

While the number of youth in prolonged solitary confinement (52) represents 30 per cent of all youth who experienced solitary confinement (167), those 52 youth experienced 70 per cent (78,830 hours) of the total number of hours (112,187 hours) in solitary confinement (see Table 5).

**TABLE 5 – SOLITARY CONFINEMENT AND PROLONGED SOLITARY CONFINEMENT (SEPTEMBER 2015- AUGUST 2016)**

	<b>Youth</b>	<b>Incidents</b>	<b>Length of Stay</b>	
	<b>Number</b>	<b>Number</b>	<b>Hours</b>	<b>Years</b>
<b>Solitary Confinement (1 to 14 days)</b>	167	498	112,187	13
<b>Prolonged Solitary Confinement (15 days or longer)</b>	52	99	78,830	9

## **Mental Health and Cognitive Vulnerability**

While current data did not allow analysis on the Indigeneity, mental health, and cognitive vulnerabilities of youth in Manitoba who experienced solitary confinement, research studies have consistently demonstrated that a youth's race, sexual orientation, gender identity, mental health, and disability status influences the likelihood of being placed in solitary confinement.<sup>133</sup> Importantly, a study estimated that approximately one-third of individuals in solitary confinement live with a mental illness.<sup>134</sup> Individuals with mental illness can be up to four times more likely to be in solitary confinement than their peers.<sup>135</sup>

Further, of the small sample of anonymous youth that experienced solitary confinement included in this report, 100 per cent had diagnosed mental illnesses or cognitive vulnerabilities, including Fetal Alcohol Syndrome Disorder, Attention Deficit Hyperactivity Disorder, and Oppositional Defiance Disorders. There is no stand-alone specialized facility in Manitoba to respond clinically to the needs of vulnerable youth. Some of the most challenging and complex cases are managed at Lakewood. An employee from Manitoba Justice confirmed that:

*Working at Lakewood [solitary confinement unit] is one of the most challenging positions at AYC for sure...[They have the] highest risk and most behaviourally challenged youth in Manitoba there.*  
– Correctional staff interview

It is important to understand the high prevalence of solitary confinement in the context of the overrepresentation of youth with childhood trauma, mental illnesses, and cognitive vulnerabilities who are in the justice system, and the lack of alternative clinical facilities for youth with complex needs in Manitoba.

### **Myths About Solitary Confinement**

The high rates of mental illness and cognitive vulnerability of youth in the justice system present a serious challenge for youth custody facilities. Correctional officers in Manitoba have the difficult job of responding to behavioural issues rooted in cognitive disabilities and mental illnesses with sometimes inadequate and limited resources. Some may believe that solitary confinement effectively manages violent behaviour, that it is the only way to protect vulnerable youth, and that it can be an effective response to self-harm and suicidal gestures. In reality, these views are not supported by research.

#### **Myth #1: Solitary Confinement Effectively Manages Violent Behaviour**

Proponents for the use of solitary confinement maintain that it increases the safety of youth and correctional staff.<sup>136</sup> As peace officers, correctional officers have the responsibility to ensure the peace

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and protect youth in custody. However, the use of solitary confinement with youth does not promote positive behaviour and foster safety. Contrary to this commonly held belief, some studies suggest it does nothing to address violent behaviour and others suggest that solitary confinement can exacerbate violence against correctional staff.<sup>137,138,139</sup>

There are three mechanisms cited in the literature. First, some individuals may purposely commit violent acts in order to be placed in solitary confinement.<sup>140</sup> Second, two studies suggest that upon release from solitary confinement individuals may commit acts of violence as a result of their rage, sometimes termed the “rage hypothesis.”<sup>141,142</sup> Third, placement in solitary confinement can result in violence in the general population if it is perceived to be unjust or unfair on the part of correctional officials.<sup>143</sup> The use of solitary confinement is therefore shown to be damaging to the relationships between correctional staff and youth in custody, resulting in potential harms to staff.<sup>144</sup>

Solitary confinement increases antisocial tendencies among inmates, increasing tension and stress between staff and inmates.<sup>145</sup> Conversely, individuals in custody who are involved in work programs or therapeutic activities are less likely to assault staff.<sup>146</sup> The Office of the Correctional Investigator of Canada found that solitary confinement of adult females often exacerbated distress and lead to an increase in combative behaviours.<sup>147</sup> In one case, a female with a history of chronic self-harm and violence against correctional staff was transferred to a forensic psychiatric hospital where incidents of violence were significantly reduced.<sup>148</sup> Ensuring the safety of correctional officers and youth in Manitoba youth custody facilities is paramount. However, there are more effective and less harmful methods to address violent behaviours than solitary confinement.

### **Myth #2: Solitary Confinement Is the Only Way to Protect Vulnerable People**

Correctional officials use solitary confinement as a way to keep vulnerable people safe from violence. Youth in custody who may be at risk of violence due to gang affiliations, or due to their gender identity or sexual orientation are commonly placed in solitary confinement. These are cases where separation from the general population might be warranted; however, it does not follow that youth being protected should be subject to the restrictions and the potential harms of solitary confinement.

Youth who need protection have the right to have meaningful human contact, access to services, mental and physical stimulation, and all other human requirements for well-being. Jessie McAdam (22 years old) died by suicide in the Edmonton Institution while in solitary confinement in 2013, after being placed there for his own protection. According to the public inquiry report that followed, his placement in solitary confinement was “based primarily on vague, unsupported, and unproven associations with Security Threat Groups.”<sup>149</sup> The report concludes, “If the institution is incapable of managing threats of violence that might be visited upon inmates, the placement of the threatened inmate in segregation is



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not a satisfactory solution to institutional defects.”<sup>150</sup> Placing youth in solitary confinement for protection may be a measure that prevents physical harm, but exposes youth to psychological harm.

In recognition of this harm, jurisdictions are taking a different approach to ensure safety. For example, in the United States, Washington and Pennsylvania have created specialized units that house vulnerable people together and provide them with the same privileges and programs available to the general population.<sup>151</sup>

### Myth #3: Solitary Confinement Protects Youth from Self-Harm or Suicide

At times, youth that are deemed to be at risk of suicide are placed in solitary confinement or “observation.” In correctional facilities, solitary confinement is sometimes perceived as a tool for monitoring youth at risk of self-harm. However, there is a strong association between room confinement and death by suicide.<sup>152</sup> As stated previously, nearly half of all suicides in custody in Canada occur while the individual is in solitary confinement conditions.<sup>153</sup>

Research has found that solitary confinement is perceived as a punitive measure, which increases negative emotions and, in turn, increases the risk of self-harm.<sup>154</sup> Adults with psychiatric disorders deteriorate further when placed in solitary confinement.<sup>155</sup> This has led experts to describe solitary confinement as a “mental health hazard.”<sup>156</sup>

Therapeutic alternatives are more effective. The New York City Department of Corrections announced a ban on the practice of placing inmates with mental illness and histories of self-harm in solitary confinement; instead, they are placed in clinical settings where they receive individual and group therapy aimed at fostering pro-social behaviour.<sup>157</sup> “This exchange of a punishment model for a treatment approach will result in clinical staff making decisions about how best to respond to problematic behaviour among inmates with SMI [serious mental illness]”<sup>158</sup>

### Myth #4: Alternatives to Solitary Confinement Are Costly

As shown earlier, solitary confinement is a violation of human rights, which is itself a sufficient reason for prohibition; there is also a significant financial cost associated with the use of solitary confinement. According to a Canadian Parliamentary Budget Report released in March 2018, “individuals who are in or who cycle through solitary confinement account for a disproportionate share of [the] costs” of incarceration.<sup>159</sup> This financial accounting suggests that while the annual cost of incarcerating a youth in the general population is \$73,632, the annual cost of federal incarceration in solitary confinement conditions is **six times larger**, at \$463,045.

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Arguably, the costs presented in this report are likely underestimated because they do not consider the cost of medical responses to incidents of self-harm, which are known to be higher in solitary confinement units.<sup>160</sup> Further, estimates neglect the long-term social costs that solitary confinement may have on society given the added difficulties it places on reintegration and its impact on recidivism (e.g., costs to the healthcare system, costs related to unemployment, and costs related to re-incarceration).

According to the same report, a Regional Treatment Centre, which houses individuals with mental illness or cognitive vulnerabilities, is a third of the cost of solitary confinement at \$139,218 per year per individual.<sup>161</sup> This suggests that shifting the response from ineffective and costly control-based approaches to humane and effective alternatives is common sense.

Due to the lack of available data, this report is unable to make a comparison to the average cost of incarceration for youth in Manitoba youth custody facilities. Nevertheless, the staggering cost of solitary confinement has been repeatedly demonstrated through numerous studies across North America.<sup>162</sup> Ultimately, it's clear based on evidence-informed research that the biggest savings for Manitobans would come from preventing youth from entering the youth justice system, diverting youth from the justice system, and providing therapeutic responses for youth while in custody instead of relying on solitary confinement.

### **Can Youth Choose To Be In Solitary Confinement Units?**

In some cases, youth voluntarily requested time away from the general population. Separating youth in this case may prove to be a positive preventative strategy. However, while separation may be a reasonable response, there is no justification for the restrictions that define solitary confinement. Further, when youth request separation as a break from the general population, there must be a limit on the length of their confinement, and they must be able to exit voluntarily.

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## **Dylan's Story**

Dylan was diagnosed with Alcohol Related Neurodevelopmental Disorder (ARND), which relates to being unable to understand cause and effect. He entered the care of Child and Family Services in middle childhood. During the development of this report, he was in custody on remand, meaning he was awaiting trial.

Dylan reported that he had requested to go into "OU" (also known as the "observation units," or solitary confinement units) when he was upset and struggling. He explained that this would last only an hour and he would return to his unit when he was ready. One time, he was upset over a conflict with his mother and requested time in solitary confinement.

Dylan's story suggests that very short periods of separation from the general population in custody could be beneficial, particularly when youth recognize a need to "cool down." This strategy has been used effectively for women placed in correctional facilities who experience stress to address behaviour before it escalates.<sup>163</sup> However, voluntary requests to be isolated can also be an indication of mental illnesses and simultaneous lack of mental health support alternatives to solitary confinement. A Manitoba correctional staff stated "[I] get a number of requests for bedtime [overnight] time-outs...it is lack of proper coping skills." As stated by the Ontario Human Rights Commission: "That any prisoners... would request being housed in conditions as harsh as segregation suggest few meaningful alternatives to segregation or mental health treatment options are actually being made available."<sup>164</sup>

Voluntary and short separations are not necessarily harmful, particularly when persons in custody can voluntarily exit those situations.<sup>165</sup> However, the underlying reasons behind requests to be isolated must be explored and addressed, including reasons related to mental health and safety. Experts suggest that individuals requesting time in isolation be provided with additional mental health and socialization supports.<sup>166</sup>

## **What about Cases of Imminent Harm?**

In rare occasions, the behaviours of youth, often resulting from vulnerabilities and complex needs, may endanger the lives of youth or staff in custody facilities. Separating youth that exhibit serious behaviours that endanger the lives of others from the general population may be a necessary tool for short periods. The Manitoba Advocate for Children and Youth recognizes that there is a perceived tension between ensuring safety and well-being of youth, and ensuring that facility staff or others are protected from harm. It is important to get this difficult balancing act right and consider the perspective of staff, most of whom are thoughtful and caring individuals who enter the youth corrections field with good intentions.

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However, it is in everybody's interest to assess violent incidents through an understanding of the high prevalence of mental illness, cognitive vulnerabilities, and childhood trauma in Canada's youth correctional facilities. Youth that present ongoing behavioural challenges for staff must be viewed through the lens of mental health, and must undergo comprehensive clinical assessment and treatment by licenced professionals. Ultimately, youth are entitled to receive the mental health services they need to successfully rehabilitate and reintegrate into communities. Warehousing youth in solitary confinement, and particularly for extended periods, is not in the interest of the youth, the staff, or the public. Separations exceeding 24 hours which may exacerbate youths' distress, psychological harm, and anti-social behaviour, while violating their human rights, are not justifiable for reasons detailed above and may, in fact, lead to behaviour that is more difficult in the end.

### POSITION OF THE MANITOBA ADVOCATE

As the Manitoba Advocate for Children and Youth, it is my legislated role to champion the rights of children, youth, and young adults receiving services in Manitoba. I fulfill this duty, empowered by *The Advocate for Children and Youth Act*, and in accordance with the principles and intent of provincial laws, while promoting the best interests and rights of young people through such agreements as the *United Nations Convention on the Rights of the Child* (UNCRC).

Manitoba's *Correctional Services Regulation* states that segregation be applied only as a last resort, only to the extent necessary, and only when no reasonable alternatives are available (Section 5). However, data provided by Manitoba Justice to my office for this review reveal that the uses of segregation and solitary confinement are common. Indeed, between September 2015 and August 2016, youth were subjected to 1,455 incidents of segregation, which amounts to nearly four incidents of segregation each day. As the pie chart on page 42 shows, in one year, there were 957 incidents of segregation, 399 incidents of solitary confinement (greater than 24 hours), and 99 incidents of prolonged solitary confinement (15 days and longer). Solitary confinement, or when segregation lasts for 24 hours or longer, was used on 167 youth in the one-year period, which is equal to one in every six youth in custody experiencing solitary confinement, a violation of international standards and is a practice banned in many other jurisdictions. Given these numbers, I do not accept that segregation and solitary confinement are being used as "measures of last resort"; this is unacceptable treatment of children and this practice must end.

What is especially troubling about confining youth and denying them their basic necessities is when we look at who are the youth who are being subjected to such measures. Data from Manitoba Justice reviewed during this investigation confirms what the larger international body of research says, which is that the majority of youth in custody are profoundly disabled, live with mental illnesses, and have emerged from significantly traumatic childhoods. Research further shows that segregation and solitary confinement can cause extreme psychological and psychiatric harms to youth who are already

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significantly vulnerable. I am also disturbed to learn that children as young as 12, 13, and 14 are being subjected to solitary confinement for longer than 24 hours at a time. This cannot be the way forward for our province.

The United Nations' Nelson Mandela Rules state that solitary confinement for longer than 24 consecutive hours should never be used on youth or individuals with mental illnesses or disabilities, and that prolonged solitary confinement extending over 15 consecutive days should be prohibited. In order to fulfill their obligations and international commitments under the UNCRC, Canada and Manitoba have an obligation to protect and ensure the rights of children and youth. After a careful review of the evidence throughout this investigation, it is my position that **solitary confinement, for longer than 24 hours per day, must be prohibited for youth in Manitoba custody facilities.** As an immediate measure and while changes are being made, I am calling on Manitoba Justice to notify my office every time confinement is used beyond 24 hours. I am also recommending that all instances of segregation under 24 hours be further restricted, and that Manitoba Justice develop processes to continuously monitor its use of segregation to ensure accountability and transparency. Lastly, a plan of action must be put in place to end this current practice in a manner that considers the safety of all youth and the safety of correctional staff, by providing appropriate mental health settings for youth in custody who require them, and the implementation of evidence-informed therapeutic alternatives to segregation and solitary confinement.

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**Recommendation 1: Ending Solitary Confinement**

**FINDING 1:** Manitoba's *Correctional Services Regulation* provides no maximum time limit on the use of segregation or solitary confinement in Manitoba youth custody facilities.

**FINDING 2:** Solitary confinement is harmful for youth and has negative effects on their ability to rehabilitate and reintegrate into communities. Ultimately, solitary confinement may increase recidivism and compromise public safety.

**FINDING 3:** According to the Nelson Mandela Rules, the use of solitary confinement on youth and individuals with mental disabilities should be prohibited. In Canada, solitary confinement has been found to contravene the Declaration of Principles of the *Youth Criminal Justice Act*, and to be discriminatory against Indigenous Peoples and individuals with mental illness.

**RECOMMENDATION ONE**

**The Manitoba Advocate for Children and Youth recommends that the Manitoba government and Manitoba Justice amend *The Correctional Services Act* to prohibit the solitary confinement of youth for a period exceeding 24 hours, per the Nelson Mandela Rules.**

**DETAILS:**

- That Manitoba Justice establish a maximum time limit on the use of segregation of 24 hours without exception, thereby prohibiting solitary confinement by amending *The Correctional Services Act*.
- That Manitoba Justice immediately identify all youth that are currently in solitary confinement conditions and develop a youth-centred and trauma-informed transitional process to ensure they successfully exit from the conditions of solitary confinement. This shall include:
  1. Engaging a team of licensed mental health professionals to conduct and document a comprehensive mental health re-evaluation of all youth held in solitary confinement, including a confidential face-to-face out of cell interview by a licensed mental health professional;
  2. A plan for substantial re-socialization of youth in a group setting;
  3. Offering and documenting regular mental health counseling and culturally appropriate spiritual care, if requested, to assist in the transition; and
  4. Including the participation of youth in the process and, if requested, the youth's legal counsel and/or a representative of the Manitoba Advocate for Children and Youth in the development of this transition plan.
- As per the practices of other Canadian provinces, and until the above recommendation is fully implemented to ban the practice, Manitoba Justice notify the Manitoba Advocate for Children and Youth of any incident of segregation extending over 24 hours and collaborate with the Manitoba Advocate on the development of a plan to address such incidents going forward. This measure should begin immediately.
- That Manitoba Justice conduct consultations with relevant stakeholders, including the Manitoba Advocate for Children and Youth, in preparation for amending *The Correctional Services Act*.

## Recommendation 2: Restricting the Use of Segregation

**FINDING 4:** Provincial regulations state that segregation be applied only as a last resort, only to the extent necessary, and only when no reasonable alternatives are available. However, data provided by Manitoba Justice reveal that the use of segregation is common. In one year, segregation was used 1,455 times, affecting more than one in three youth entering custody.

### **RECOMMENDATION TWO**

The Manitoba Advocate for Children and Youth recommends that the Manitoba government and Manitoba Justice restrict the use of any form of segregation under 24 hours in youth custody facilities through an amendment to *The Correctional Services Regulation*.

#### **DETAILS:**

- That Manitoba Justice restrict the use of any form of segregation for the purposes of discipline, punishment, coercion, convenience, or retaliation.
- That Manitoba Justice restrict the use of segregation by legislating maximum time limitations for these vulnerable populations and communicate clear expectations of what is required from the youth to be removed from segregation.
- That Manitoba Justice track and require comprehensive mental health assessments for youth subjected to any period of segregation.
- That Manitoba Justice conduct consultations with relevant stakeholders, including the Manitoba Advocate for Children and Youth, in preparation for amending *The Correctional Services Regulation*.

### Recommendation 3: Data Collection and Monitoring

**FINDING 5:** Manitoba Justice was unable to provide clear information about who, when, for what reason(s), and for how long youth were held in segregation and solitary confinement. Incident reports had to be manually cross-referenced with movement records in a time-consuming and lengthy process. To increase transparency and accountability, it is important this information be clear, accurate, and easily available.

#### **RECOMMENDATION THREE**

The Manitoba Advocate for Children and Youth recommends that Manitoba Justice collect, track, analyse, and report on incidents of segregation across youth custody facilities to ensure transparency and accountability.

##### **DETAILS:**

- That Manitoba Justice invest in the development of a centralized information management system to implement a process to aggregate data and analyse trends on the use of segregation by youth, reflecting transfers between institutions.
- That Manitoba Justice submit a report quarterly to the Manitoba Advocate for Children and Youth on the number of youth placed in any form of segregation; the length of time each youth was in segregation, the race, ethnicity, age, and gender of each youth; facility staffing levels at the time of confinement; the reason each youth was placed in segregation; any knowledge of mental health (illness or cognitive vulnerability), and services provided while in confinement.
- That Manitoba Justice report publicly on aggregated data of the use of segregation practices in youth custody facilities through their Annual Report.



**SECTION II: PEPPER SPRAY**

## SECTION II: PEPPER SPRAY

### Introduction

In addition to examining the use of segregation and solitary confinement, this report examined the use of pepper spray at MYC and AYC. Analysis of data revealed that while pepper spray was used with high frequency between 2010 and 2015, the rate of use has significantly declined. Interviews with correctional officers suggest that the decrease is associated with the introduction of alternative methods such as de-escalation techniques and training. The Manitoba Advocate for Children and Youth is encouraged by these findings and acknowledges the work of Manitoba Justice with respect to their use of pepper spray.

### Background

Pepper spray, also known as oleoresin capsicum (OC) spray, is a chemical weapon that is illegal for civilian use. It contains an extract found in hot peppers called capsaicin. Pepper spray is subject to international and national restrictions. *The Chemical Weapons Convention*, signed and ratified by Canada in 1993, is an arms control treaty that prohibits the use of chemical weapons such as pepper spray during war.<sup>167</sup> In Canada, pepper spray is a “Prohibited Weapon” according to Criminal Code Regulations.<sup>168</sup> It is illegal to sell and carry pepper spray for use against people, with the exception of legal use as an animal repellent. A prohibited weapon is defined as:

Any device that is designed to be used for the purpose of injuring, immobilizing or otherwise incapacitating any person by the discharge therefrom of (a) tear gas, Mace or other gas, or, (b) any liquid, spray, powder or other substance that is capable of injuring, immobilizing or otherwise incapacitating any person.<sup>169</sup>

Sprays available commercially are typically under one per cent capsaicin, but sprays used by law enforcement have higher concentrations. Manitoba youth custody facilities use SABRE Red®, a brand of pepper spray used commonly by law enforcement.<sup>170,171</sup> Heat levels are measured in Scoville Heat Units (SHU) with sweet peppers scoring 100 SHUs or less, and jalapeno peppers scoring between 2,500 and 5,000 SHUs.<sup>172</sup> According to the brand’s website, SABRE Red® measures 2,000,000 SHUs.<sup>173</sup> This means that pepper spray used in Manitoba youth custody facilities is nearly one thousand times stronger than jalapeno peppers.<sup>174,175</sup>

### Why is it Used?

“We don’t have to use physical force so it’s a good tool.” – Correctional officer Interview

Pepper spray is a pain compliance technique used in the military, law enforcement, and correctional settings to control subjects. Pepper spray temporarily disables people by causing pain, blindness,

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burning, gagging, and intense coughing.<sup>176</sup> Almost instantly, it causes involuntary closure of the eyes, shortness of breath, and loss of body motor control.<sup>177</sup>

The use of pepper spray by law enforcement and corrections in Canada began in the early 1990s.<sup>178</sup> Along with tasers and stun guns, the adoption of pepper spray was part of a trend towards safer alternatives to restraint techniques such as batons, police dogs, or firearms.<sup>179</sup> Pepper spray is often described publicly and in research publications as “non-lethal” and “natural.” Its use is widely accepted by law enforcement and adult correctional communities as an important tool for compliance and subject control.<sup>180</sup>

### **When is it Used?**

Law enforcement and peace officers rely on the use of force continuum to guide the degree of force needed to respond to different situations. There are five overlapping options, including: (1) officer presence; (2) officer commands; (3) physical force, which can be soft or hard, such as hand strikes; (4) intermediate weapons; and (5) deadly use of force. Pepper spray is considered an intermediate weapon by the RCMP and the Canadian Association of Chiefs of Police.<sup>181</sup>

However, some encourage the deployment of pepper spray prior to the use of physical force. One study has found that officers and suspects are most likely to be injured when officers attempt to use physical force including low-level force such as pushing. This finding suggests that officers can avoid injuries if they avoid hands on-physical force.<sup>182</sup> As a result, some have argued that pepper spray therefore prevents injuries and should be considered an appropriate use of force against verbal resistance. This conclusion lowers the threshold for the deployment of pepper spray in the use of force continuum. However, this conclusion downplays the physical and psychological impact of pepper spray by refraining from counting the effects of pepper spray as ‘injuries’.<sup>183</sup>

### **Is Pepper Spray Safe?**

Pepper spray is considered safe compared to lethal force, such as guns. In spite of its ongoing use, research on the safety and effectiveness of pepper spray has significant limitations. For instance, a report by the Federal Bureau of Investigations (1990), which led to the rapid and widespread adoption of pepper spray by police and correctional officers in North America, was subject to significant conflict of interest violations.<sup>184</sup> Further, research on the safety and effectiveness of pepper spray is often carried out with a small sample of physically and mentally healthy volunteers under controlled conditions.<sup>185</sup> Thus, claims about the health and safety of pepper spray are not often relevant for the real-world conditions and the population that is most likely to be subjected to these methods. Hence, despite its widespread use, few high-quality clinical studies have been undertaken. Lastly, no studies were found that recommended pepper spray as safe for use on children and youth.<sup>186</sup>

## **The Impact of Pepper Spray**

*“She was coughing and saying, ‘Help me’” – Youth interview*

### **Physical Impact**

Existing studies on the safety, effectiveness, and impact of pepper spray have not focused on youth in custody facilities.<sup>187</sup> Pepper spray is typically used on the face and affects the eyes, nose, and mouth where it reacts with nerves of the mucus membranes. The effects are fast and intense. It can cause swelling and blistering on contact, allergic responses, sweating, wheezing, an inability to breathe or speak, and inhalation can cause acute hypertension.<sup>188</sup> Other effects include disorientation, panic, and loss of control of motor activity.

Most adults exposed to pepper spray are symptom-free within 30 to 60 minutes of exposure.<sup>189,190</sup> However, medical intervention is sometimes required. A large 10-year study of pepper spray incidents reported that medical attention was needed in one out of 15 cases (6.8 per cent), with serious injuries typically involving the eyes, lungs, and the skin.<sup>191</sup> Further, a review found that 1.7 per cent of individuals suffered permanent disabilities from injuries by chemical irritants including pepper spray.<sup>192</sup> Serious injuries are more likely if spray is discharged at close range and in enclosed areas, such as cells in correctional facilities.<sup>193</sup> A report produced for the Correctional Service of Canada concluded that “evidence suggests that OC spray has occurred proximate to both injuries and deaths.”<sup>194</sup>

### **Pepper Spray Fatalities**

Fatalities from pepper spray are considered rare. While deployment of pepper spray occurs prior to injuries and deaths, pepper spray is rarely listed as a factor in causing the injuries or deaths.<sup>195</sup> As a result, experts have argued that current mortality rates underestimate fatalities because medical examiners fail “to adequately consider pepper spray’s role in the factors causing death.”<sup>196</sup> Fatalities following pepper spray use are instead attributed to lack of oxygen due to the position of the body (positional asphyxia) or aggressive behaviour causing sudden death (excited delirium).<sup>197</sup> For instance, the United States Department of Justice studied the deaths of suspects following pepper spray, and concluded that pepper spray was a contributing cause of death in two of the 63 fatalities of suspects following pepper spray; however, the study excluded seven incidents of positional asphyxia and six incidents deemed ‘uncategorizable’. Similarly, the American Civil Liberties Union reported 26 deaths after pepper spray use in Southern California in the period between January 1, 1993 and June 1, 1995; however, none of the autopsy reports listed pepper spray in the cause of death.

Multiple studies have found that the risk of death following pepper spray is more likely for individuals with asthma or other respiratory diseases, heart conditions, or individuals with prescription drugs or

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illicit drugs in their system, particularly cocaine.<sup>198</sup> Furthermore, repeated exposure to pepper spray increases the risk of death.<sup>199</sup>

In May of 2015, Matthew Ryan Hines (33 years old), an individual struggling with mental illness at Dorchester Penitentiary in New Brunswick, died after being repeatedly pepper sprayed. The *Pathologist's Final Post Mortem Report* linked the death to the pepper spray incident stating that, "the cause of death appears to be acute asphyxia due to extensive pulmonary edema following administration of pepper spray."<sup>200</sup> The Commissioner of Corrections from the Correctional Service of Canada concluded that the use of force against Matthew Ryan was "disproportionate and unnecessary."<sup>201</sup> As a result of this investigation, correctional officers were charged.<sup>202</sup> Fatalities related to pepper spray use in custody facilities have lead researchers to argue that the common use of the word "non-lethal" to describe pepper spray is inaccurate; instead, they suggest the use of "less lethal" when compared to other methods.<sup>203</sup>

Given the risk of death, some jurisdictions, including Manitoba, require medical approval before the discharge of pepper spray.<sup>204</sup> However, the health risk factors for complications cannot always be known. Correctional staff cannot predict who will have a potentially severe or deadly reaction to pepper spray use. Further, even when policies are in place, they are not always followed. According to the Manitoba Ombudsman's investigation, health cautions were rarely checked and health services rarely notified prior to the deployment of pepper spray on youth. As noted, pepper spray is a prohibited weapon under Canada's *Criminal Code*. Given the evidence that links pepper spray with fatalities in custody, it should be treated as a potentially lethal use of force.

### Psychological Impact

The psychological impact of pepper spray has not been rigorously studied. However, there is some indication that the use of chemical irritants, like pepper sprays, is associated with acute stress disorder, post-traumatic stress disorder, and depression.<sup>205</sup> Youth exposed to traumatic and abusive experiences in childhood, particularly girls and young women, were re-traumatized by use of force and restrictions while under the care of institutions.<sup>206</sup> Thus, youth may be re-traumatized by witnessing or experiencing pepper spray use. Indeed, the youth we interviewed for this report described feelings of distress from pepper spray use in Manitoba youth custody facilities. This was the case for Hailey.

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## Hailey's Story

Hailey was diagnosed with FASD, ADHD, and her cognitive functioning is extremely low. Hailey had a difficult childhood, and experienced physical and sexual abuse. Prior to entering her teen years, she suffered from substance misuse and nearly overdosed many times. She was sexually exploited by adults and struggled with self-harm and suicidal ideation.

Hailey witnessed an occasion where pepper spray was used on another youth while incarcerated. This incident was described by Hailey as “traumatic.” She explained that a youth refused to stop her behaviour despite verbal warnings. Staff placed curtains on individuals’ cells, but Hailey watched through a crack. She described that staff brought out a machine and sprayed the youth. Hailey heard the youth fall to the ground, gasping for air. Staff dragged the youth out of her cell, placing “the kind of mask that doctors wear” on her.

Hailey could hear her friend coughing and saying, “Help me.”

Pepper spray use on individuals with mental illness is thought to have an exacerbating effect on anger and trauma and to be “detrimental to young people with emotional and behavioural disorders or those with histories of maltreatment.”<sup>207</sup> Many youth in custody have significant trauma histories, mental illnesses, and cognitive vulnerabilities. The youth who are most likely to be pepper sprayed in correctional facilities are also most likely to be adversely impacted. According to a Manitoba correctional officer:

“Most of the kids [who are sprayed] are kids who have cognitive difficulties - they get so worked up all they see is red. Most kids are sprayed only once.” – Correctional officer interview

As investigated by the Manitoba Ombudsman, Manitoba Justice recognizes the potential for psychological distress of pepper spray use on staff through *Standing Orders on the Use of Force*, which require that the institutional response team leader address the staff’s “emotional feelings related to the extraction plan, events or results” of pepper spray use. However, there is no requirement to assess the psychological effects on youth or youth witnesses after the use of pepper spray. The Manitoba Advocate for Children and Youth agrees with the conclusion of the Manitoba Ombudsman: “The result is that divisional policy and the standing orders give more importance to the mental and emotional health of the staff who deploy OC spray than to the youth who are exposed to it”.<sup>208</sup>

## Bystander and Officer Effects

Bystander youth and staff are also susceptible to the risks and effects of pepper spray. When pepper spray is discharged, it is difficult to limit the exposure to a single individual. Accidental exposure is common and difficult to avoid.<sup>209</sup> Research found that unintended bystanders were affected in five per

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cent of instances where pepper spray was deployed by police.<sup>210</sup> However, officers can also be affected directly or indirectly through the cloud of pepper spray or by touching contaminated objects. For example, two correctional officers reported instances where pepper spray accidentally hit the staff.

Staff wear goggles and a mask, but there are always effects. There have been occasions where staff have been sprayed and required decontamination. Air circulation can be shut down which helps prevent spray from affecting other youth. Using spray affects the whole cottage.

– Correctional staff interview

### Pepper Spray Misuse

Despite staff training and regulations restricting pepper spray use, disproportionate discharge of pepper spray has been reported in custody facilities and elsewhere. According to the YCJA, the purpose of the youth custody and supervision system is to protect society through the safe, fair, and humane custody and supervision of youth, and through the use of the **least restrictive measures** to protect staff and youth.<sup>211</sup> Three youth reported incidents to the Manitoba Advocate where pepper spray use appeared disproportionate, including a report of a pepper spray discharge on a vulnerable youth at risk of death by suicide.

### Jordyn's Story

In addition to a history of childhood trauma, Jordyn has cognitive vulnerabilities and mental illness. Jordyn shared with staff of the Manitoba Advocate that most often when she is feeling suicidal or threatening staff, a team of staff would try to enter her room to speak with her. This often works. Staff help her deescalate and take their time with her. Jordyn shared that, in general, staff give her a lot of chances and warnings. She did recall; however, that on two occasions she had been sprayed.

During one of these times, she was tying objects around her neck and was sprayed while in her room.

She recalled that the spray made it hard to breathe.

As Jordyn's story illustrates, pepper spray is sometimes used to respond to self-harm incidents in Manitoba youth custody facilities. The use of pepper spray as a response to self-harming behaviour is not uncommon for adults in Canadian federal institutions. If a person in custody does not comply with verbal orders to stop the self-injury behaviour, correctional officers may respond by discharging pepper spray. The Office of the Correctional Investigator of Canada found that pepper spray was used in over half of all use of force incidents involving the self-harm of adults in 2015-2016.<sup>212</sup>

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However, the use of pepper spray on individuals to prevent or halt self-harm in custody is not consistent with the principle of least restrictive measure stated in the YCJA. In 2013, the Office of the Correctional Investigator of Canada published a report on the treatment and management of chronic self-injury among federally sentenced women. The investigation found that the use of control interventions such as pepper spray was disproportionate to the risk of self-harm and altogether inappropriate from a mental health needs perspective. The Office of the Correctional Investigator recommended that “chronic self-injury should be treated and managed first and foremost as a mental health concern, not a security, compliance, behavioural or control issue.”<sup>213</sup> According to the report, all self-injurious persons in custody should have a clinical management plan to address intervention, treatment, and prevention. It also recommends that complex and chronic cases, such as would be the case of Jordyn’s, should be transferred to external and specialized provincial health care providers.

Experts argue that in correctional facilities control techniques such as pepper spray tend to be misused and overused as responses to behaviour rooted in mental illness or cognitive vulnerabilities.<sup>214</sup> For example, the Centre for Children’s Law and Policy in the United States notes that chemical agents, such as pepper spray have been used in response to non-threatening conduct or behaviours resulting from mental illness or developmental disabilities. Investigations in the United States have found inappropriate or excessive use of spray, including on youth who had a disability, who were exhibiting suicidal gestures, or who were in a secure cell but who would refuse direction.<sup>215</sup>

In 1994, the Los Angeles County made pepper spray available to staff in three juvenile detention facilities. By 2000, an investigation found that, despite training, staff had sprayed youth without sufficient warnings; when the youth was already in control; for minor issues such as talking back; because staff lacked skills to deescalate a youth; when youth engaged in self-harming behaviours; and when youth were not to be sprayed due to their health conditions.<sup>216</sup> Another study found that having access to pepper spray increased the number of use of force incidents, suggesting, “If it is there, they will use it.”<sup>217</sup> These findings demonstrate that pepper spray requires stringent oversight.

### **Oversight Required**

In adult federal correctional facilities in Canada, the use of pepper spray is considered a use of force incident. All use of force incidents which occur in Correctional Services of Canada (CSC) facilities are reviewed by The Office of the Correctional Investigator of Canada (OCI), who is mandated as the Ombudsman for federal offenders. However, the OCI does not have provincial jurisdiction and does not review the use of pepper spray in Manitoba youth facilities. It is concerning that the level of oversight offered to federal adult inmates in Canada is not afforded to youth in Manitoba.



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As described, pepper spray use is painful, harmful, and potentially fatal. It is simultaneously subject to misuse, yet there is little oversight of its use in youth custody facilities in Manitoba. In 2014, the European Court of Human Rights found that the use of pepper spray on an adult in custody amounted to inhumane and degrading treatment, violating the European Convention on Human Rights. It further recommended that pepper spray should never be used in confined spaces, should never be used against prisoners who have already been brought under control, and that an adequate reporting and inspection mechanism should be in place with respect to the use of pepper spray.<sup>218</sup>

**Data Analysis of Pepper Spray Use in Manitoba**

In the past, we jumped the gun on spray use. Now there are a lot more alternatives, even crisis negotiators. – Correctional officer interview

According to Manitoba youth and adult correctional facility policy, pepper spray should be used only if failure to do so is likely to jeopardize the safety of staff, offenders, or others, or result in damage to government property. Pepper spray incidents were reported by Manitoba Justice to the Manitoba Ombudsman. In addition to quantitative data, interviews with correctional officers were conducted by the Manitoba Ombudsman. The Manitoba Advocate for Children and Youth conducted descriptive analysis of the data.

Between 2010 and 2018, there were 168 incidents of pepper spray at AYC and MYC (Table 7). This represents an average of 18.66 incidents of pepper spray use annually. The highest rate was 46 times in a year in 2010, and the lowest was two in 2018.

**TABLE 6 – PEPPER SPRAY INCIDENTS AT MYC AND AYC (2010-2017)**

Year	2010	2011	2012	2013	2014	2015	2016	2017	2018	Total	Average
<b>AYC</b>	29	8	0	2	7	5	9	2	1	62	7
<b>MYC</b>	17	11	3	6	24	30	10	3	1	104	11.66
<b>Total</b>	<b>46</b>	<b>19</b>	<b>3</b>	<b>8</b>	<b>31</b>	<b>35</b>	<b>19</b>	<b>5</b>	<b>2</b>	<b>168</b>	<b>18.66</b>

**NOTE: DATA FROM 2018 WAS PROVIDED ANECDOTALLY BY MANITOBA JUSTICE AND HAS NOT BEEN CONFIRMED BY OUR OFFICE.**

**Comparison Across Canada**

Data on the use of pepper spray in youth custody facilities across Canada is difficult to obtain and corroborate. Comparative information presented in Table 8 below was gathered through information requests with provincial justice departments, media sources, and literature reviews. When possible, this information was corroborated with provincial children and youth advocacy offices.

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In Canada, only Alberta, Ontario, Nova Scotia, and Manitoba allow for the discharge of pepper spray in youth custody facilities. Among Canadian jurisdictions that allow pepper spray use in youth custody facilities, **Manitoba had the highest rate of pepper spray incidents of youth in custody facilities** between 2012 and 2017 (Table 8). Manitoba’s prevalence rate of pepper spray incidents against youth in custody is four times higher than in Alberta, the second leading user of pepper spray in youth custody facilities (Table 8). Nova Scotia began to allow pepper spray discharge in September 2017 and had no reported discharges from 2012 until 2017.<sup>219</sup>

**TABLE 7 – PEPPER SPRAY USE IN CANADIAN YOUTH CUSTODY FACILITIES (2012-2017)**

Province	Pepper Spray Allowed	Pepper Spray Incidents (2012-2017)	Daily Average Incarceration (2012-2017) <sup>a</sup>	Incident Rate
<b>Manitoba</b>	Yes	98	242	0.40
<b>Alberta</b>	Yes	14 <sup>b</sup>	141 <sup>c</sup>	0.10
<b>Ontario</b>	Yes	1	265	0.003
<b>Nova Scotia</b>	Yes	0	23	-
<b>Saskatchewan</b>	No			
<b>Newfoundland and Labrador</b>	No			
<b>Nova Scotia</b>	-			
<b>Prince Edward Island</b>	No			
<b>British Columbia</b>	No			

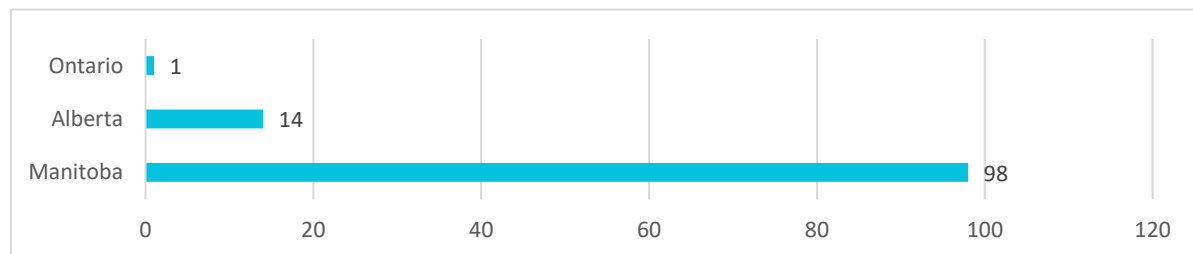
Notes:

<sup>a</sup> Average daily incarceration rates for each province between 2012-2013 and 2016-2017 as reported by Statistics Canada. No decimal places.

<sup>b</sup> Incidents are gathered from media resources and include 2012-2016 (n=1), Jun-Jul 2016 (n=3), and the first eight months of 2017 (n=10) [source: CBC News<sup>220221</sup>] Numbers were confirmed with the Alberta Office of the Child and Youth Advocate during personal communication.

<sup>c</sup> Alberta was excluded from the Youth custody Statistics Report 2013-2014 by Statistics Canada. That year’s daily incarceration rate was thus, excluded from the daily average incarceration calculations.

**FIGURE G – PEPPER SPRAY INCIDENTS – COMPARISON OF SELECTED PROVINCES (2012-2017)**



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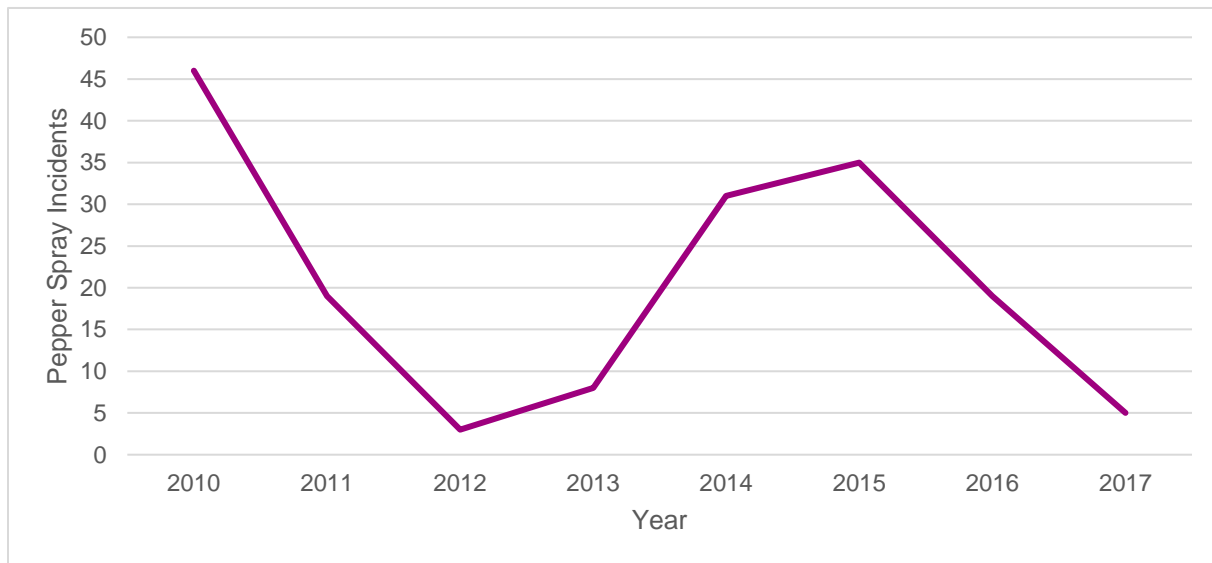
Pepper spraying youth in custody is not common practice in Canada or elsewhere. **Nearly 90 per cent of juvenile correctional facilities in the United States prohibit staff from carrying chemical sprays, and 71 per cent prohibit the use of pepper spray in their facilities altogether.**<sup>222</sup>

**Declining Trend of Pepper Spray Use: A Good Start**

Over the seven years between 2010 and 2017, **the use of pepper spray in Manitoba youth custody facilities has decreased by 89 per cent**, from 46 incidents to five. Manitoba Justice reported to our office that between January 1<sup>st</sup>, 2018 and December 19<sup>th</sup>, 2018 there were two pepper spray incidents, one at each institution. This is the same number of times that the Winnipeg Police Service discharged pepper spray in 2016.<sup>223</sup>

The descending trend has not been linear (Figure K below). While the use of pepper spray sharply decreased between 2010 and 2012, it increased between 2012 and 2014 at both youth custody facilities. Between 2014 and 2017, the use of pepper spray remained under 10 incidents per year at AYC. However, pepper spray incidents peaked at MYC in 2015, with 30 incidents. The difference in the number of pepper spray incidents between AYC and MYC could be explained by differences in total annual youth populations. AYC is a long-term facility with low turnover, which could explain static use of pepper spray. However, MYC has a higher turnover of youth. Per-capita rates would allow for a better comparison between institutions.

**FIGURE H – PEPPER SPRAY INCIDENTS – AYC AND MYC (2010-2017)**



## **Why Has Pepper Spray Use Decreased?**

The data analysis points to a decline in the use of pepper spray at MYC and AYC between 2010 and 2017. Interviews with staff from Manitoba youth custody facilities suggest that the reduction of pepper spray use may be due to the implementation of alternative de-escalation methods to manage youth behaviour. All correctional officers interviewed discussed changes in policy and practices on pepper spray use.

### **Perspectives of Correctional Officers**

- The times OC spray [pepper spray] is used has changed. There used to be a focus on getting situations resolved immediately. Now, staff wait a youth out. The use of spray is rare.
- Spray is the extreme end. You want to de-escalate the situation at the lowest level.
- Most youth will comply when given a warning, and staff have become smarter and a lot more patient. They will try to talk with a kid.
- Staff try really hard to talk with youth instead.
- There are several warnings and they try to de-escalate the kid. They use time to de-escalate kids now.
- 99 per cent of time, they can talk the kid down.

Increasing public attention and news reporting on the issue of pepper spray in youth custody facilities might also have had an effect on the use of pepper spray from 2014 to 2017.<sup>224</sup> Notably, the Manitoba Ombudsman and the Manitoba Advocate for Children and Youth announced the beginning of this investigative report in December 2016.<sup>225</sup> Further, the Community Safety Division advised that during this time doors which can be opened despite barricades were installed.<sup>226</sup> It was suggested that the installations of these doors may have reduced the need to use pepper spray to extract a youth from their cell. Installing these doors in all units was stated to be a priority for capital expenditures. The sharp reduction of pepper spray incidents due to the adoption of non-violent alternative approaches, and the lack of pepper spray use across Canadian youth custody facilities suggest that pepper spray discharge is unnecessary in most instances, can be prevented, and should be exceptionally rare.

## **Parameters for the Justifiable Use of Pepper Spray on Youth**

Correctional officers are essential to the youth justice system in Canada. They may face stressful, adversarial, and challenging situations that threaten the safety of the institution, their colleagues, and other youth. The Manitoba Advocate for Children and Youth does not intend on taking away a tool that, at rare times, may be needed in the fulfillment of their duties. The *United Nations Convention on the*

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*Rights of the Child* (UNCRC) and the *Youth Criminal Justice Act* (YCJA) offer important parameters to guide the use of force in Manitoba's youth custody facilities.

The YCJA recognizes that "Canada is a party to the United Nations Convention of the Rights of the Child and recognizes that young persons have rights and freedoms."<sup>227</sup> Article 37 of the UNCRC states that: (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. Further, the YCJA clearly states that measures used during custody and supervision must be "the least restrictive measures consistent with the protection of the public, of personnel working with young persons, and of young persons be used."<sup>228</sup>

The use of pepper spray for youth in custody to halt self-harming behaviour, barring no other serious and imminent risks to the lives of other youth or correctional officers, contradicts Article 37 of the UNCRC and Section 83.2(a) of the YCJA. The use of pepper spray in the case of a psychiatric emergency, such as suicide, is unheard of in other contexts such as hospitals and psychiatric facilities. Youth at risk of self-injury who come into contact with health facilities are typically treated through de-escalation and therapeutic responses. In rare cases, health facilities might use physical restraints, but this is regarded as inappropriate and only used in extreme cases.<sup>229</sup> Nevertheless, whether it is the use of de-escalation or physical force, these are considered to be below the use of force continuum of pepper spray, and an intermediate weapon. Thus, if less force is effective, the use of pepper spray to cease a self-harm incident is not the least restrictive measure available.

Notwithstanding, there is little doubt that pepper spray can be an asset in the rare situations where a youth has an impact weapon or behaves in a way that may risk the lives of others. In this case, the deployment of pepper spray may be the least restrictive measure consistent with the protection of personnel working with young persons, and young persons, as per Section 83.2(1) of the YCJA.

However, consideration must be given to the potential for physical and psychological harms to youth, including the risk of serious injury or death. The policy must be clear that pepper spray must be used only if all other methods have been exhausted and, given the known vulnerabilities of youth in custody, only in the case of an imminent and objective risk of life-threatening bodily harm to the peace officer or other youth.

## **POSITION OF THE MANITOBA ADVOCATE**

Pepper spray use in Manitoba youth custody facilities presents significant risks of physical and potential psychological harm to youth. Due to the introduction of alternative de-escalation practices, pepper spray use in Manitoba youth custody facilities has decreased significantly since 2010. Manitoba Justice reported anecdotally to my office during this investigation that it used pepper spray only twice during 2018. Nevertheless, Manitoba is one of a handful of Canadian provinces that still allows for the use of pepper spray in youth custody facilities. Given that pepper spray use on youth in custody facilities can

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be subject to misuse without stringent oversight, including deployment as a response to youth's self-harm, additional limits must be placed on the deployment of this use of force.

As the Manitoba Advocate, I acknowledge that the use of pepper spray by AYC and MYC correctional officers has been significantly reduced since 2010, and I am encouraged by this progress. It is my position that pepper spray use should be restricted to a last resort and only if there is an immediate risk to life, and its use must be subject to strict oversight given its potential for harm and misuse.

## Recommendation 4: Ending the Use of Pepper Spray Except in Life-Threatening Situations

**FINDING 6:** Pepper spray use in Manitoba youth custody facilities presents significant physical risks and potential psychological risks to youth.

**FINDING 7:** Pepper spray use in Manitoba youth custody facilities can be subject to misuse without stringent oversight.

**FINDING 8:** Manitoba's use of pepper spray in youth custody facilities is high compared to other provinces across Canada. However, pepper spray use in Manitoba youth custody facilities has decreased significantly since 2010. This is likely due to the introduction of alternative de-escalation practices.

### **RECOMMENDATION FOUR:**

The Manitoba Advocate for Children and Youth recommends that Manitoba Justice immediately prohibit the use of pepper spray in youth custody facilities except in situations of immediate risk to life\* to correctional staff or other youth in custody by amending *The Correctional Services Regulation*.

#### **DETAILS:**

- That Manitoba Justice prohibit the use of pepper spray to halt self-harming behaviour, barring no other serious and imminent risks to the lives of other youth or correctional officers
- That Manitoba Justice consider the funding of cell doors which open both ways and can prevent the deployment of pepper spray due to forced entries.
- That Manitoba Justice immediately notify the Manitoba Advocate for Children and Youth of any incident where pepper spray was discharged. Notification must include the full incident report, age of the youth, race, ethnicity, reasons for use, number of times pepper spray was deployed, and follow-up medical and psychological treatment.
- That Manitoba Justice appoint an external and independent body to review and investigate every incident of pepper spray use, and provide recommendations of how the incident could be prevented.

**\*For the purpose of this recommendation, 'immediate' shall be defined as proximate danger to life as perceived by an objective third party in the circumstances.**

## **SECTION III: A REVIEW OF ALTERNATIVES**



### SECTION III: A REVIEW OF ALTERNATIVES

“There has to be more we can do for kids.” – Correctional officer interview

The majority of youth in Manitoba’s custody facilities have cognitive vulnerabilities, mental illnesses, and childhood trauma. The use of control-based approaches such as solitary confinement and pepper spray have significant negative effects on the well-being of youth and are counterproductive to the goals of rehabilitation and reintegration.<sup>230,231</sup> Importantly, these practices do not exemplify value for money; indeed, extended stays in solitary confinement are more costly than investments in methods that can effectively and efficiently address the root causes of crime. The good news is that feasible and cost-effective alternatives are available that will ensure the humane treatment of youth while simultaneously reducing recidivism and enhancing public safety.

This section presents an overview of evidence-informed therapeutic alternatives to the use of solitary confinement and pepper spray, and highlights existing best-practices in Manitoba:

- (1) **Prevention Strategies through a Decolonizing Lens:** Youth with confirmed or suspected mental illnesses and cognitive vulnerabilities should be prevented from entering the juvenile justice system;
- (2) **Diversion and Community Based Approaches:** Youth who enter the justice system should be diverted to effective treatment in the community that engages youth and their families; and
- (3) **Therapeutic Interventions within Correctional Facility Settings:** Youth in custody must receive evidence-informed therapeutic approaches.

#### **Prevention Strategies Through A Decolonizing Lens**

Manitoba data show that 81 per cent and 82 per cent of youth, for male and females, respectively, placed in correctional facilities, are Indigenous.<sup>232</sup> As detailed in the *Truth and Reconciliation Commission (TRC) Calls to Action*, in order to address the overrepresentation of youth with mental illness and Indigenous youth in Manitoba’s criminal justice system, we must first “respond to the underlying causes of offending.”

An in-depth Australian study into the impacts of colonization reveals that Indigenous youth are 28 times more likely than non-Indigenous youth to be arrested, and 25 times more likely to be detained in custody than non-Indigenous youth.<sup>233</sup> Some suggest this is connected to the over-policing of Indigenous youth, as well as other factors of inequity, such as the disproportionate numbers of Indigenous youth affected by significant poverty. Important efforts to decolonize the service systems in Australia suggest a complete re-imagining of the youth justice system is required, including a shift away from mainstream institutions, such as courts and detention centres, toward sites and spaces that are of cultural significance and healing for Indigenous Peoples.<sup>234</sup> Central to the decolonizing of Australia’s youth

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justice system is an emphasis on community-owned programs (versus community-based programs), that provide a safe space for Indigenous cultural practices to be delivered, including Elder-led and land-based healing ceremonies and teachings.

Australia's approach is consistent with the *Calls to Action* of Canada's TRC. These have urged provincials governments "to provide sufficient and stable funding to implement and evaluate community sanctions that will provide realistic alternatives to imprisonment" for Indigenous youth. In particular, the TRC emphasizes the importance of providing supports to address the needs of youth with FASD by working collaboratively with communities, and of undertaking reforms to the criminal justice system to better address the needs of youth with FASD.

### Diversion and Community Based Approaches

Given the backgrounds and mental health needs of the youth we interviewed, there is a clear population of youth currently in custody whose needs could have been addressed earlier to identify, prevent, and address behaviour that could later lead to their involvement in the criminal justice system. Importantly, diversion efforts in Manitoba must incorporate a decolonizing lens. An example from Australia shows that when diversion efforts do not take into account the needs of Indigenous youth, the result could inadvertently contribute to an even greater disproportionate number of Indigenous youth, compared to non-Indigenous youth, who end up incarcerated.<sup>235</sup> Findings from a suite of diversionary programs, including alternatives such as intensive supervision, family conferencing, and community service orders, found that while these approaches were very successful for non-Indigenous youth, they led to the increased incarceration of Indigenous youth. In light of this important finding, we recommend that all approaches to diversion reflect a decolonizing lens to avoid causing additional disadvantage to Indigenous youth.

### Examples of Evidence-Based Diversion and Community Based Approaches

- **Functional Family Therapy program.**<sup>236</sup> Its focus is on enhancing pro-social behaviour among youth. With highly trained therapists, the program is used when youth are in the care of their family. Evaluation of this model demonstrates its effectiveness in reducing risk-taking and drug-abusing behaviours, and reducing recidivism.
- **Multi Systemic Therapy.**<sup>237</sup> Again, this highly individualized program is delivered to youth who are able to remain in their family or foster home. It provides intensive therapeutic treatment by highly trained and specialized therapists. Key to the model is the inclusion of multiple systems that support youth, including the school, other support systems, family, extended family, and community. In addition to involving multiple systems, it is an intensive treatment, with small caseloads. This program has demonstrated effectiveness in reducing recidivism.

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- **The Good Lives Model.**<sup>238</sup> This is a strengths-based program that demonstrates proven effectiveness in increasing youth's motivation to treatment.<sup>239</sup> The treatment model has demonstrated its effectiveness in helping youth to develop psychological and social capacities to improve their quality of life.

Further, diversion efforts must also attend to the unique needs and considerations of youth with FASD. Typically, diversionary practices favour least intrusive interventions, commensurate with the offense. However, findings have shown that while minimalist versions of diversion may work for youth without cognitive impairment, they do not work for youth with cognitive impairment, including FASD, because of their difficulty in making connections between cause and effect, learning new skills, and forming healthy relationships.<sup>240</sup> Rather, youth with FASD require a more intensive approach to diversion; that which promotes positive behavior by channeling them into therapeutic alternatives, including cultural programs for Indigenous youth.

The Manitoba Advocate is particularly encouraged about the development of a FASD Youth Court in Manitoba, which will provide youth with an FASD diagnosis or suspected of having FASD with a chance to understand the YCJA, their conditions, and for their suspected or confirmed FASD diagnosis to be taken into consideration during sentencing. We are optimistic about the continued role of the Manitoba FASD Youth Justice Program, and hope that diversion programs such as this one emphasize the importance of meeting the needs of FASD youth in the community, rather than in correctional facilities.

### Therapeutic Interventions Within Correctional Facility Settings

*“We must start by assuming that mental health issues are there for all youth in custody.”*  
– Forensic psychiatrist interview

Given the overrepresentation of youth with mental illnesses, trauma, and cognitive vulnerabilities, youth custody facilities in Manitoba must assume that all youth entering custody are in need of a comprehensive mental health evaluation. Psychologists and psychiatrists interviewed for this report confirmed this is key to their rehabilitation. They stressed the need for ongoing thoughtful, systematic, strategic mental health assessment, treatment, resources, monitoring, and planning by trained mental health professionals. This necessitates specialized programming and therapeutic care that currently does not exist in Manitoba.

There is strong evidence that demonstrates the effectiveness of therapeutic approaches in meeting the outcomes of rehabilitation.<sup>241</sup> Throughout hundreds of studies, rehabilitation treatment was found to be superior at reducing reoffending compared to punitive approaches.<sup>242</sup> When implemented with fidelity and in a controlled environment, mental health treatment and therapeutic alternatives have been shown to **reduce recidivism rates by 20 to 60 per cent.**<sup>243</sup> Simply put, therapeutic approaches are not only consistent with the Declaration of Principles in the *Youth Criminal Justice Act*, they work.

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Importantly, following interviews with psychologists and psychiatrists working in the youth corrections service in Manitoba, the Manitoba Advocate believes this is the area where improvement is paramount.

Examples of evidence-informed alternatives to this effect include:

- **Relevant Reparation:** Research demonstrates that punitive measures that are unconnected to the disruptive/behavioural situation are ineffective. Rather, relevant reparation, or consequences, must be connected to the context or situation, and reflective of the youth's rehabilitation goals and their individual therapeutic plan. Such approaches are shown to improve youth's internal control and subsequent motivation for change and are reflective of restorative justice principles.<sup>244</sup>
- **Transparent Rules and Practices:** External control, including rewards, loss of privileges, or threatened sanctions may increase youth's perceived powerlessness and dependency on caregivers, which can then lead to demotivation for change and the increased likelihood for recidivism. This is why it is imperative to facilitate an environment wherein youth perceive the rules and practices to be fair and transparent. Democratic environments, whereby privileges are tied to expectations of responsibility, are fundamental to fostering a safe environment within which youth can learn pro-social skills and traits necessary to successful rehabilitation.<sup>245</sup>
- **Relevant Recreational Activities:** It is not enough to keep youth busy. Such an approach reflects a custodial view and value of youth custody. A rehabilitation framework, with the goal of successful rehabilitation, calls for activities and recreational opportunities that align with youth's therapeutic individualized planning.<sup>246</sup>
- **Life skills learning opportunities:** A key component of rehabilitation and reintegration for youth who will eventually exit custody is the need for skills training. In spring 2018, the Manitoba Advocate for Children and Youth was contacted by a group of youth in custody who were concerned about the elimination of skills training programs at AYC. As part of their rehabilitation, youth in custody had previously participated in programs including woodworking, meat cutting, and agricultural training; however, all of those programs were being ended. When they contacted MACY, these youth in custody had already been actively self-advocating in an attempt to see these important programs continue. They had written letters to a number of government officials and local decision-makers, and were discussing how to create a media campaign to help the public understand why skills training programs for youth in custody are so vital to their future success. The Manitoba Advocate met with these youth on their request, and they took representatives from MACY on a tour of the carpentry program area. The youth shared their positive experiences from participating in the carpentry program, including how the program was providing them with insight into their behaviour, changing their thinking patterns, and helping them set goals they had not previously considered with respect to their futures outside of custody. The youth spoke about how the program taught them to think of others,

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support one another, and was helping them realize the importance of mentorship: within the group and upon their release from custody. They expressed multiple times throughout the visit that they understood the carpentry program offered them more than learning carpentry skills. In facing the threat of elimination, the youth laid out proposals for how the skills training programs might consider a new funding structure so these programs could continue to be offered. Their comments reflected confidence building, development of healthy coping skills, learning to use their voices in a positive way, acquiring problem solving skills, and the importance of using manners, exercising patience, and personal accountability. Corrections staff echoed the voices of youth in telling the Manitoba Advocate how important these programs are for the facility's objectives of rehabilitating and reintegrating. Sadly, the skills programs were subsequently eliminated in 2018. Given their previous success, it is our hope that they will be relaunched.

- **De-escalation Training:** There are a number of techniques that can successfully prevent or de-escalate a potentially violent situation. Further, when youth are exhibiting disruptive and potentially violent behaviours, these are good opportunities for trained staff to teach youth positive coping and self-calming techniques, such as the techniques of Cognitive Behavioural Therapy and Mindfulness Meditation as referenced above.<sup>247</sup>
- **Comprehensive Staff Training:** Given the previously-described evidence that reveals the high numbers of youth with FASD and/or significant mental illness who are placed in correctional facilities, it is imperative that staff receive comprehensive training to understand the impact that FASD and mental illness can have on a youth's cognitive ability to understand and adapt to rules and procedures. Youth custody staff may not connect behavioural issues to a youth's FASD or mental illness diagnosis, and, as a result, may misinterpret such behavior as noncompliance or disruptive. As FASD and mental illness are considered "invisible disabilities," it is important for youth custody workers to recognize the signs and symptoms of these disorders so that they may respond with more effective and appropriate de-escalating and communication techniques.

"10 years ago if a child was acting out...there would be someone who had a relationship with that individual who would calm the person down...it worked well....I've talked many kids down, you're being preventative" – Indigenous spiritual caregiver interview

### Best Practice Principles of Therapeutic Approaches

Therapeutic approaches reflect a **prevention and rehabilitation lens** to safety and security because fostering and promoting an environment that promotes pro-social behaviour in youth not only increases the safety and security of youth and staff, it also supports the rehabilitation of youth and their successful transition to community.<sup>248</sup> There are a number of evidence-based programs that have been shown to reduce recidivism in Canada.<sup>249</sup> These programs share a number of best practice principles:

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- The **risk principle** calls for therapeutic interventions to be matched based on a youth's risk to re-offend. In other words, the greater risk a youth poses for re-offending, the stronger the dose of a therapeutic intervention they must receive. Unfortunately, the opposite tends to occur: often the most aggressive and disruptive youth offenders are more likely excluded from treatment because they are considered unsafe to participate for security reasons. In this way, youth who are most at risk of re-offending are most often denied therapeutic intervention, and, as a result, are most often denied the opportunity for successful rehabilitation.<sup>250</sup>
- The **need principle** calls for therapeutic interventions to be based on a youth's needs to prevent crime (e.g., literacy skills, job training, financial planning, and life skills).<sup>251</sup>
- The **responsivity principle** calls for therapeutic approaches that are highly individualized to a youth's needs, unique abilities, and learning styles.<sup>252</sup>
- The **strengths-based principle** calls for therapeutic approaches that build on a youth's strengths and interests. Indeed, research shows that interventions based on strengths and interests are more effective than interventions focused on risks and dangers.<sup>253</sup>

## **Evidence-Based Therapeutic Approaches Within Correctional Facility Settings**

“Mental health providers should be equal at the table, if not steering the ship.”  
– Forensic psychologist interview

Implementing evidence-based and effective approaches in youth custody facilities requires close collaboration between mental health experts and correctional staff, and a climate where mental health intervention is valued and recognized as the key to ensuring the rehabilitation and reintegration of youth in custody.

Examples of evidence-informed alternatives to this effect include:

- **The Mendota Juvenile Treatment Center**<sup>254</sup> program is a highly individualized therapeutic intervention delivered by highly trained mental health professionals. This program is operated in correctional facility; however, the program itself is delivered by staff of an adolescent psychiatric unit. The therapeutic treatment is highly individualized, tailored to the youth. Included in this therapeutic model is the focus on the needs principle: a program that offers youth an array of supports based on their unique needs (e.g., educational supports, jobs training, and family therapy). Evaluation of this program demonstrates its effectiveness in reducing disruptive behaviour and reducing recidivism, including violent recidivism.<sup>255</sup>
- **Cognitive-Behavioural Therapy and Relapse Prevention** are considered the gold standard in corrections treatment.<sup>256</sup> Mindfulness Meditation is a very promising adjunct approach to therapy given its effectiveness at increasing self-regulation, a key predictor of recidivism.<sup>257</sup> Other adaptations of Mindfulness Meditation, including Mindfulness Behavioural Cognitive Therapy and Mindfulness Based Relapse Prevention, demonstrate promise within the

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corrections context, as they increase psychological well-being; decrease substance use; and reduce recidivism.<sup>258</sup>

## **The Stages of Therapeutic Intervention**

In addition to these best practice principles and models of therapeutic intervention is the recognition of staged treatment. The first stage highlights the importance of assessment and the identification of individual needs. At this first stage, treatment plans are tailored, reflective of a youth's individualized needs, abilities, interests, and strengths. Second, treatment plans are continuously reviewed by the youth and the therapist through weekly reflection in order to better understand barriers to success and risk factors to relapse. Last, in order to ensure successful transitions toward independence, it is imperative that treatments include aftercare planning.<sup>259</sup> It is essential for therapeutic intervention that all youth in custody receive a comprehensive mental health evaluation and ongoing assessment by qualified mental health professionals. As emphasized by mental health experts, an initial assessment is insufficient.

## **Indigenous Models of Therapy and Culturally-Safe Programs**

*“It's only through our culture that we are going to heal” – Indigenous spiritual caregiver interview*

There are a number of Indigenous-led therapeutic models that are considered promising practices in the rehabilitation of Indigenous youth involved in the youth justice system. A number of these, studied and profiled in the academic literature, come from the Australian context and they warrant further study given the positive outcomes they could have in Manitoba.<sup>260</sup> Central to crime prevention and the promotion of positive outcomes for Indigenous youth is the Indigenous concept of Mental Wellness. As defined within the *First Nations Mental Wellness Continuum Framework*, mental wellness is:

*A balance of the mental, physical, spiritual, and emotional. This balance is enriched as individuals have purpose in their daily lives whether it is through education, employment, care-giving activities, or cultural ways of being and doing; hope for their future and those of their families that is grounded in a sense of identity, unique Indigenous values, and having a belief in spirit; a sense of belonging and connectedness within their families, to community, and to culture; and finally a sense of meaning and an understanding of how their lives and those of their families and communities are part of creations and a rich history.<sup>261</sup>*

The adoption and promotion of Indigenous models of therapy and culturally safe programs is paramount to crime prevention efforts and is an essential component for the needed decolonizing of Manitoba's youth justice system. It is worth recognizing that Manitoba Justice has made significant improvements by investing in the Indigenous spiritual caregiver program.

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“[MYC] has come a long way culturally and spiritually – now we have a culture room, powwows, a Kookum...lots of good stuff” – Indigenous spiritual caregiver interview

As seen above, Manitoba has the opportunity to build on this progress by implementing evidence-informed therapeutic alternatives to increase prevention through a decolonizing lens, increase diversion and community based approaches, and improve therapeutic interventions for youth in custody.

## **POSITION OF THE MANITOBA ADVOCATE**

The rehabilitation and reintegration of youth in Manitoba custody facilities requires the collaboration of multiple systems, including Manitoba Justice, Manitoba Health and Manitoba Families. Youth who come to the attention of the justice system are invariably also in need of support from these other public systems, and for some youth that needed support was required but not delivered long before the involvement of the justice system. Once a youth is involved with justice, time in custody and time while connected to community-based programming, can present important opportunities to engage youth in ways that help them heal and encourage them to turn to a better path. Measures such as segregation, solitary confinement, and pepper spray, may gain short-term compliance but has been shown repeatedly to further separate youth from what can support and heal them. As Manitoba Advocate, I strongly endorse innovation in the youth justice system where therapeutic methods have been shown to increase public safety for the long term. However, what is needed from government is a commitment to funding promising and proven methods that are comprehensive and evidence-informed. Importantly, therapeutic methods must promote individualized treatment, based on the needs, abilities, strengths, and interests of the youth; and these approaches must be delivered by highly trained mental health professionals. These interventions, such as the ones highlighted in this report, are humane alternatives to manage the behaviour of vulnerable youth that can be challenging and necessary to address for safety and other reasons.

Following from the evidence from my investigation, it is my position that multiple youth-serving public systems must work together to expand and enhance the implementation of therapeutic interventions for youth in correctional facilities, given the demographics of the youth custody population. Central to this need are the departments of Justice, Health, and Families. What is needed in Manitoba is an appropriate health facility to support youth in custody that offers specialized psychiatric, psychological, and other mental health supports to youth who have been convicted of a crime but who cannot be housed safely in the general population.



## Recommendations 5 & 6: Developing Therapeutic Interventions & Alternatives

**Finding 9:** Most youth in custody live with mental illness, cognitive vulnerabilities and childhood trauma.

**Finding 10:** Therapeutic approaches are more humane and effective at ensuring rehabilitation and public safety than control-based punitive approaches such as solitary confinement and pepper spray. Evaluations of mental health treatment programs in custody facilities have shown to reduce recidivism by 25-60% compared to conventional approaches.

### **RECOMMENDATION FIVE**

The Manitoba Advocate for Children and Youth recommends that Manitoba Justice respond to the overrepresentation of youth with mental illnesses, cognitive vulnerabilities, and childhood trauma by developing an action plan with Manitoba Health, Seniors and Active Living and Manitoba Families for the implementation of evidence-informed and culturally-safe therapeutic behavioural management alternatives to solitary confinement and pepper spray, with the goals of enhancing the rehabilitation and successful reintegration of youth into Manitoba communities, reducing recidivism, and improving the public safety of all Manitobans.

### **RECOMMENDATION SIX**

The Manitoba Advocate for Children and Youth recommends that Manitoba Justice and Manitoba Health, Healthy Living and Seniors immediately embark on the development of a specialized health facility led and run by mental health professionals to provide evidence-informed programming for youth with mental illnesses or cognitive vulnerabilities in custody, including youth who are found not criminally responsible.

#### **DETAILS:**

- That Manitoba Justice conduct comprehensive mental health assessments, followed by ongoing treatment and assessments by mental health professionals within 72 hours of youth entering custody.
- That Manitoba Health, Seniors and Active Living, with the full cooperation of Manitoba Justice, evaluate the ability and capacity for the Manitoba Youth Centre to serve as a mental health facility as provided by *Facilities Designation Regulation* for the purposes of *The Mental Health Act*.
- That Manitoba Justice collaborate with Manitoba Families, Manitoba Health, Seniors and Active Living, youth with lived and living experience in correctional facilities, subject-matter experts, correctional officers, and Indigenous Knowledge Keepers as well as representatives with critical perspectives from the juvenile justice, health care, advocacy, and legislative arenas in the development of a detailed action plan with timelines and measurable outcomes to address the mental health and wellness of youth in custody.
- That Manitoba Justice identify, measure, and publicly report on the therapeutic alternative outcomes of the action plan annually, including rates of recidivism and the proportion of Indigenous youth in custody as outlined by the Truth and Reconciliation Commission of Canada's Calls to Action.

## Our Commitment

The Manitoba Advocate for Children and Youth (MACY) is empowered through *The Advocate for Children and Youth Act*, and guided by the *United Nations Convention on the Rights of the Child*. This report emerges from the voices and experiences of youth who, everyday, share their stories, ideas, and opinions. In turn, the Advocate works to ensure that the services that children, youth, and young adults are receiving in this province are accessible, effective, value their cultural backgrounds, respect their rights, interests, and viewpoints and, importantly, encourage their development and protect them from harm.

Findings from this report are extremely concerning, including the finding that youth in custody are not always provided with access to the services of MACY, which is a legislated right in Manitoba. That particular finding has inspired the following commitment, for the well-being of Manitoba's children and youth is everyone's responsibility. As such, the Manitoba Advocate for Children and Youth commits to:

- **Increasing knowledge of human rights among youth in custody.** This office commits to the development of a youth-driven education and outreach strategy that informs and empowers youth in custody.
- **Monitoring the conditions of youth in custody and recommendations of this report.** This office commits to monitoring the recommendations outlined in this report.

The provincial systems of justice and health became reviewable domains under the new *Advocate for Children and Youth Act* when that legislation came into force in March 2018. This report is the first systemic report to be released under this legislation. *Learning from Nelson Mandela* provides an important baseline from which change and growth can occur within provincial youth-serving systems, and, ultimately, in the lives of youth who need all of us to work collaboratively to help youth build strong futures where they are safe, engaged, and well-supported as part of our communities.

This report has also brought to the forefront important issues that, while beyond the scope of this report, will continue to frame and direct the work of the Manitoba Advocate for Children and Youth. These issues include: the overrepresentation of Indigenous youth in Manitoba youth custody facilities, the need for increased collaboration between Manitoba Health and Manitoba Justice to provide mental health care and resources for youth in custody, and the lack of services for vulnerable youth with complex needs.

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## Moving Forward

While this report's analysis, findings, and recommendations primarily focused on the better protection of children's rights and best practices when youth are held in correctional facilities, it is the mandate of the Manitoba Advocate for Children and Youth to examine Manitoba's service systems to ensure all youth are afforded fair and timely access to the supports they need to participate fully in society. The interviews conducted with youth in corrections point to the need for a continuum of mental health supports and treatment, including early intervention programs that address the mental health needs of youth that, when untreated, often manifest into behavioural problems that then lead to involvement in the justice system, and ultimately may lead to incarceration. This is a key issue on which the Manitoba Advocate continues to be active and vocal at every level of government and community. Further, Manitoba is in desperate need of a comprehensive youth addictions and mental health strategy and plan, which must include consideration of youth involved with the justice system. The Advocate recognizes the disproportionate number of youth with FASD who are in youth custody, and calls for a system that is responsive to the unique needs of this vulnerable population. The Manitoba Advocate believes every youth, if given the chance, can and will grow into adulthood with the skills and abilities to fully participate in society, including education, employment, and community. Enhanced efforts to prevent crime through mental health support for youth will create a healthier, safer Manitoba for all.

## A Note about Recommendations

With the proclamation of the Advocate's new mandate provided by *The Advocate for Children and Youth Act (ACYA)*, the Manitoba Advocate is empowered to monitor and report publicly on the level of *compliance* with recommendations made by the Advocate. This new mandate includes provincial public services, including: child welfare, adoption, disabilities, education, mental health, addiction, victim support, and youth justice.

The Manitoba Advocate is also committed to improving public awareness and opportunities for public education. To that end, the Manitoba Advocate has initiated processes whereby systems, which receive recommendations for change, will be required to report their progress to the Advocate every six months. Those updates will be analysed by our office and this analysis will be shared publicly so that Manitobans can further monitor improvements in publicly funded, child-serving systems.

## APPENDICES

### Appendix A: Definitions

#### **Lakewood**

Lakewood is a high security special-handling unit for youth located at Agassiz Youth Centre, a youth correctional centre for sentenced youth and youth awaiting trial in Portage la Prairie, Manitoba. Lakewood operates in segregation conditions, as youth are kept separate from each other, can only leave their cell with a staff escort, and have restricted access to services and programming available to youth in other units.

#### **Meaningful human contact**

Meaningful social contact is commonly understood to be voluntary, normal, and empathetic social contact. Manitoba Justice has defined meaningful human contact as “in-person interaction with a staff member that is significant, relevant, purposeful and individualized for the young person, intended to contribute to their rehabilitation and reintegration.” However, as emphasized by Penal Reform International, meaningful contact requires the human contact to be face-to-face and direct (without physical barriers) and more than fleeting or incidental, enabling empathetic interpersonal communication. Contact must not be limited to those interactions determined by prison routines, the course of (criminal) investigations, or medical necessity. The Advocate considers that for contact to be meaningful, the youth must view it as such.

**The Nelson Mandela Rules:** Formally known as the *United Nations Standard Minimum Rules for the Treatment of Prisoners* (“the Nelson Mandela Rules”), the Nelson Mandela Rules were adopted by the United Nations General Assembly in 2015. The Mandela Rules describe rules and principles for the treatment of individuals being held in custody. They provide international standards to guide corrections and a framework to evaluate the treatment of individuals in custody, including youth.

**Segregation:** Segregation is the physical isolation of individuals where meaningful human contact is restricted for any length of time. Segregation is the broad term, which also includes solitary confinement (segregation over 24 hours) and prolonged solitary confinement (segregation over 15 consecutive days).

**Solitary Confinement:** Solitary confinement is defined in the Nelson Mandela Rules as the confinement of prisoners for 22 to 24 hours per day without meaningful human contact. In many jurisdictions prisoners are allowed out of their cells for one hour of solitary exercise. Meaningful contact with other people is typically reduced to a minimum. The reduction in stimuli is not only quantitative but also qualitative. The available stimuli and the occasional social contacts are seldom freely chosen, are generally monotonous, and are often not empathetic.

**Prolonged Solitary Confinement:** If solitary confinement exceeds 15 consecutive days, it constitutes prolonged solitary confinement.

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**Appendix B: Acronyms**

- ACYA: The Advocate for Children and Youth Act
- ARND: Alcohol-Related Neurodevelopmental Disorder
- AYC: Agassiz Youth Centre
- CSC: Correctional Services Canada
- FASD: Fetal Alcohol Spectrum Disorder
- MYC: Manitoba Youth Centre
- OCI: Office of the Correctional Investigator of Canada
- OU: Observation Unit
- RCMP: Royal Canadian Mounted Police
- TRC: Truth and Reconciliation Commission
- UNCRC: United Nations Convention on the Rights of the Child
- YCJA: The Youth Criminal Justice Act

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**Appendix C: Table of Findings and Recommendations**

FINDINGS	RECOMMENDATIONS
<b>Ending Solitary Confinement</b>	
<p>1. Manitoba's <i>Correctional Services Regulation</i> provides no maximum time limit on the use of segregation or solitary confinement in Manitoba youth custody facilities.</p> <p>2. Solitary confinement is harmful for youth and has negative effects on their ability to rehabilitate and reintegrate into communities. Ultimately, solitary confinement may increase recidivism and compromise public safety.</p> <p>3. According to the Nelson Mandela Rules, the use of solitary confinement on youth and individuals with mental disabilities should be prohibited. In Canada, solitary confinement has been found to contravene the Declaration of Principles of the <i>Youth Criminal Justice Act</i>, and to be discriminatory against Indigenous Peoples and individuals with mental illness.</p>	<p>1. The Manitoba Advocate for Children and Youth recommends that the Manitoba government and Manitoba Justice amend <i>The Correctional Services Act</i> to prohibit the solitary confinement of youth for a period exceeding 24 hours, per the Nelson Mandela Rules.</p>
<b>Restricting the Use of Segregation</b>	
<p>4. Provincial regulations state that segregation be applied only as a last resort, only to the extent necessary, and only when no reasonable alternatives are available. However, data provided by Manitoba Justice reveal that the use of segregation is common. In one year, segregation was used 1,455 times, affecting more than one in three youth entering custody.</p>	<p>2. The Manitoba Advocate for Children and Youth recommends that the Manitoba government and Manitoba Justice restrict the use of any form of segregation under 24 hours in youth custody facilities through an amendment to <i>The Correctional Services Regulation</i>.</p>
<b>Data Collection and Monitoring</b>	
<p>5. Manitoba Justice was unable to provide clear information about who, when, for what reason(s), and for how long youth were held in segregation and solitary confinement. Incident reports had to be manually cross-referenced with movement records in a time-consuming and lengthy process. To increase transparency and accountability, it is important this information be clear, accurate, and easily available.</p>	<p>3. The Manitoba Advocate for Children and Youth recommends that Manitoba Justice collect, track, analyse, and report on incidents of segregation across youth custody facilities to ensure transparency and accountability.</p>
<b>Ending the Use of Pepper Spray Except in Life-Threatening Situations</b>	
<p>6. Pepper spray use in Manitoba youth custody facilities presents significant physical risks and potential psychological risks to youth.</p> <p>7. Pepper spray use in Manitoba youth custody facilities can be subject to misuse without stringent oversight.</p> <p>8. Manitoba's use of pepper spray in youth custody facilities is high compared to other provinces across Canada. However, pepper spray use in Manitoba youth custody facilities has decreased significantly since 2010. This is likely due to the introduction of alternative de-escalation practices.</p>	<p>4. The Manitoba Advocate for Children and Youth recommends that Manitoba Justice immediately prohibit the use of pepper spray in youth custody facilities except in situations of immediate risk to life to correctional staff or other youth in custody by amending <i>The Correctional Services Regulation</i>.</p>
<b>Developing Therapeutic Interventions and Alternatives</b>	
<p>9. Most youth in custody live with mental illness, cognitive vulnerabilities and childhood trauma.</p> <p>10. Therapeutic approaches are more humane and effective at ensuring rehabilitation and public safety than control-based punitive approaches such as solitary confinement and pepper spray. Evaluations of mental health treatment programs in custody facilities have shown to reduce recidivism by 25-80% compared to conventional approaches.</p>	<p>5. The Manitoba Advocate for Children and Youth recommends that Manitoba Justice respond to the overrepresentation of youth with mental illnesses, cognitive vulnerabilities, and childhood trauma by developing an action plan with Manitoba Health, Seniors and Active Living and Manitoba Families for the implementation of evidence-informed and culturally-safe therapeutic behavioural management alternatives to solitary confinement and pepper spray, including mental health and wellness resources, with the goals of enhancing the rehabilitation and successful reintegration of youth into Manitoba communities, reducing recidivism, and improving the public safety of all Manitobans.</p> <p>6. The Manitoba Advocate for Children and Youth recommends that Manitoba Justice and Manitoba Health, Healthy Living and Seniors immediately embark on the development of a specialized health facility led and run by mental health professionals to provide evidence-informed programming for youth with mental illnesses or cognitive vulnerabilities in custody, including youth who are found not criminally responsible.</p>

## **Appendix D: Detailed Statistical Methodology**

The following secondary analysis was derived from records provided by Manitoba Justice, which included incidents of segregation from the Manitoba Youth Centre (MYC) and the Agassiz Youth Centre (AYC). Data on segregation was gathered by comparing information found in incident reports and movement records, or MART records, between September 1, 2015 and August 31, 2016. 28 records, or 2 per cent, included in the analysis could not be compared to MART records. The information was entered manually into Excel by representatives of the Manitoba Ombudsman.

### **Data Preparation**

Incidents from each institution were combined to identify the overlap in individuals across institutions and conduct a person-centered analysis. Incidents of segregation that were less than two hours apart were combined into a single incident. There were two reasons for this:

- (1) The Mandela Rules define solitary confinement as between 22-24 hours without meaningful human contact.<sup>262</sup> Hence, if within a 24 hour period, the youth had a two hour break from isolation conditions their experience still falls within the internationally accepted definition of solitary confinement;
- (2) Youth were sometimes transferred from solitary confinement at MYC to AYC and vice versa. These were clearly continuous events. They are approximately 80 minutes apart, which accounts for transportation, and should be regarded – through the eyes of the youth—as a single and continuous experience.

There were 59 combinations of incidents that were less than 2 hours apart, constituting 4 per cent of the sample (n=1,455). This operation reduced the number of individual incidents but increased the average length per incident. The cumulative time youth spent in segregation is the same.

As stated previously, MYC also holds youth under the age of majority who are intoxicated under *The Intoxicated Persons Detention Act* (IPDA).<sup>263</sup> Incidents of segregation under the IPDA range from 30 minutes to 2 days and 16 hours (average of 11 hours). There were 11 incidents over 24 hours in length. Incidents of IPDA that are under the threshold of 24 hours were excluded from analysis. However, incidents exceeding 24 hours meet the definition of solitary confinement and were included in the analysis. Pursuant to Section 3(1) of the IPDA, a person shall be released within 24 hours. A person can remain beyond 24 hours with their consent to “be cared for in the detoxification centre” under Section 3(2). There is no documentation or record of consent given by youth or a guardian for any of the 11 incidents exceeding 24 hours.

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## Outliers

Incidents were checked for outliers in length of time, frequency, and age visually by plotting the data using Excel. Extreme scores were deemed legitimate. However, one case was deleted because the individual was not a member of the population from which we intended to sample due to their age.<sup>264</sup>

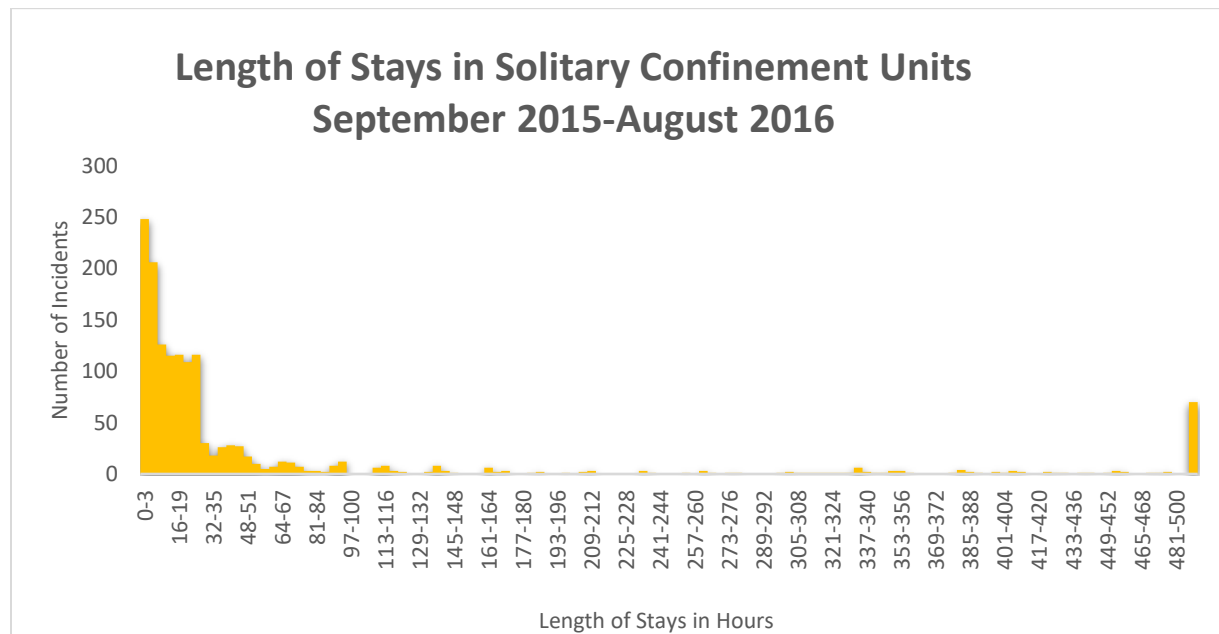
## Missing Data

There were 15 incidents where the length of stay could not be determined, which represent 1 per cent of the sample (n=1,455). The missing data is likely MNAR (missing not at random) and thus nonignorable.<sup>265</sup> Due to unavailability of computer software, which would allow for complex imputation methods such as regression, and the non-parametric nature of the frequency distribution, mode imputation was carried out. The missing data was estimated (imputed) with the mode for length of time, which was 30 minutes. Given the small number of missing values, this is considered to be a reasonable procedure.<sup>266</sup> One incident was missing the length of stay in segregation and the dates of segregation. As such, this incident was excluded from analysis. Five double entries were identified and combined.

## Descriptive Analysis

### LENGTH OF STAYS IN SOLITARY CONFINEMENT UNITS (SEPTEMBER 2015-AUGUST 2016)

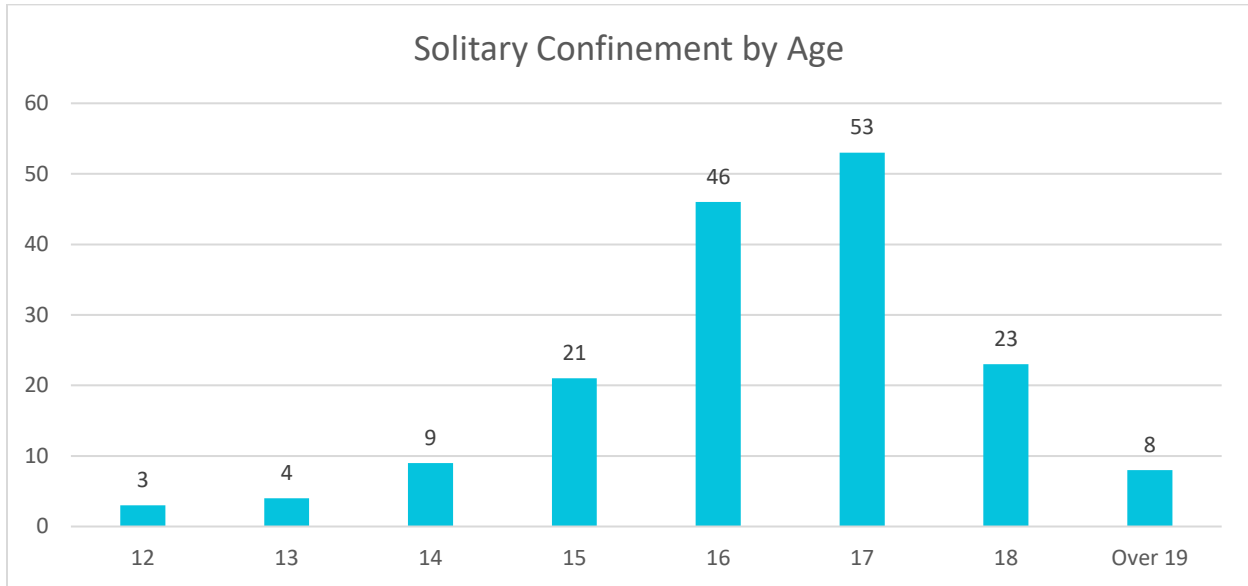
The length of stays in solitary confinement units were visually checked for distribution. The median was calculated instead of the mean (average) because the length of time in segregation is not normally distributed. The distribution is positively skewed with 8.10 and with a kurtosis of 108.6.





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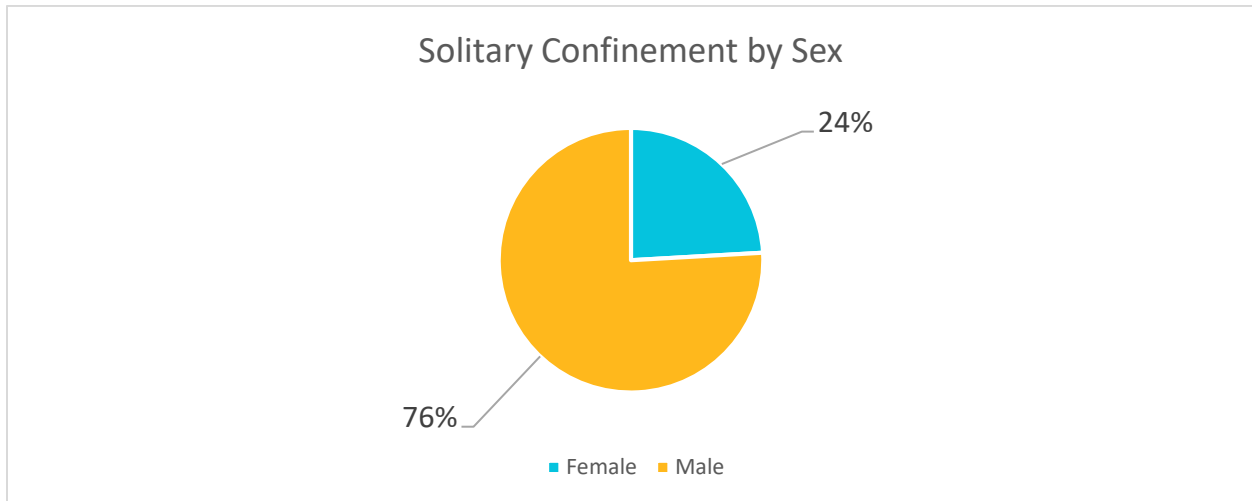
**SOLITARY CONFINEMENT BY AGE (SEPTEMBER 2015-AUGUST 2016)**



Age	Youth		Incidents of Solitary Confinement		Average Number of Incidents by Age
	Number	Percentage	Number	Percentage	
<b>12</b>	3	2%	7	1%	2.3
<b>13</b>	4	2%	17	3%	4.3
<b>14</b>	9	5%	35	7%	3.9
<b>15</b>	21	13%	68	13%	3.2
<b>16</b>	46	27%	133	27%	2.9
<b>17</b>	53	32%	143	29%	2.7
<b>18</b>	23	14%	63	13%	2.7
<b>Over 19</b>	8	5%	32	6%	4.0
<b>Total</b>	<b>167</b>	<b>100%</b>	<b>498</b>	<b>100%</b>	<b>3.0</b>

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**SOLITARY CONFINEMENT BY SEX (SEPTEMBER 2015- AUGUST 2016)**



Sex	Youth		Incidents of Solitary Confinement		Average Number of Incidents by Sex
	Number	Percentage	Number	Percentage	
<b>Female</b>	40	24%	109	23%	2.7
<b>Male</b>	127	76%	389	78%	3.1
<b>Total</b>	<b>167</b>	<b>100%</b>	<b>498</b>	<b>100%</b>	<b>3.0</b>

**Prevalence Analysis**

Manitoba Justice reported 955 unique youth at MYC and 298 at AYC between September 1, 2015 and August 31, 2016. Unfortunately, Manitoba Justice was unable to provide information on the overall count, which would account for individuals that were both at AYC and MYC. The overlap of youth between the two institutions was estimated with the sample of segregated youth. 67 of the 367 unique individuals segregated were at both institutions. This represents 18.11 per cent of the sample. The percentage of overlap identified in our sample was used to estimate the overlap of the total population of youth incarcerated between September 1, 2015 and August 31, 2016. This calculation resulted in an estimate of the total population of 1,028 individual youth incarcerated between this time. This population estimate was then used to calculate the prevalence rate of solitary confinement over 24 hours (16 per cent) and prolonged solitary confinement (5 per cent).

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**Appendix E: Terms Of Reference**

As of March 15, 2018, the Manitoba Advocate may make special reports public about any matter dealt with under the ACYA. Section 31 of the ACYA describes this responsibility and its limits:

**Special reports**

**31(1)** In order to improve the effectiveness and responsiveness of designated services, the Advocate may publish special reports.

**31(2)** Subject to section 32 (limits on disclosure of personal information), a special report may

(a) Include recommendations for

- (i) A minister responsible for the provision of a designated service, and
- (ii) Any public body or other person providing a designated service that the Advocate considers appropriate;

(b) Refer to and comment on any matter the Advocate has reviewed or investigated under Part 4; and

(c) Include information the Advocate considers necessary about any matter for which the Advocate has responsibility under this Act.

The purpose of special reports is to examine the services provided to children to identify ways in which those services may be improved to enhance the safety and well-being of children. Special reports are intended to give voice to the experience of the child or young adult. As such, they are conducted “through the eyes of the child,” that is, with a primary focus on the needs of the child, youth, or young adult. In carrying out the investigations that inform special reports, investigators are authorized to examine records and to make necessary confidential copies as required; to interview staff, service recipients, and other service providers; and to exercise any other investigative powers under the ACYA. As such, special reports may include factual information relevant to the events preceding the death of the child, youth, or young adult, may include analysis of those events, and may make formal recommendations to a reviewable body or any other public body or person that the Manitoba Advocate considers appropriate.

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- <sup>2</sup> Jamil Malakieh, "Adult and youth correctional statistics in Canada, 2016/2017," Juristat: Canadian Centre for Justice Statistics (June 19, 2018), 5, accessed December 5, 2018, <https://www150.statcan.gc.ca/n1/en/pub/85-002-x/2018001/article/54972-eng.pdf?st=obBoOKVD>. As noted on page five, youth incarceration has decreased by approximately 33% from 2012/2013 to 2016/2017.
- <sup>3</sup> *Ibid.*, "Adult and youth correctional statistics," 5 and 18.
- <sup>4</sup> *Ibid.*, 6.
- <sup>5</sup> Daniel Rothman, "The Mental Health Services for Youth in Correctional Facilities in Manitoba: Recommendations for Best Practices," Unpublished Report, (Winnipeg: Forensic Psychological Services, April 2012).
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- <sup>13</sup> Kathleen M. Heide and Eldra P. Solomon, "Biology, childhood trauma, and murder: rethinking justice," *International Journal of Law and Psychiatry* 29:3 (May-June, 2006), 220-233.
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- <sup>16</sup> Mind Ware, "The IQ Score Bell Curve – A Normal Distribution," accessed January 7, 2019, <http://www.highiqpro.com/WHAT-IS-AN-IQ-TEST-HOW-TO-TEST-IQ>.
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