



Breaking the Cycle

An update on the use of segregation and solitary confinement in Manitoba youth custody facilities

**A SPECIAL REPORT BY THE MANITOBA ADVOCATE
FOR CHILDREN AND YOUTH, 2021**



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This document is available in alternative formats upon request. The cover image is a stock photo, while images used throughout are file photos of units used to segregate youth inside Manitoba youth custody facilities.

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ABOUT OUR OFFICE

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 make recommendations to improve the effectiveness and responsiveness of services provided to children, youth, and young adults. We are mandated through *The Advocate for Children and Youth Act (ACYA)* and guided by the *United Nations Convention on the Rights of the Child (UNCRC)*, and we act in accordance with 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.

Our Values: Child-Centredness; Equity; Respect; Accountability; Independence

Our Commitment to Reconciliation

The mandate of our office extends throughout the province of Manitoba. We therefore travel and work on a number of treaty areas. Our offices in southern Manitoba are on Treaty 1 land, and our northern office is on Treaty 5 land. 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, which are the traditional territories of the Anishnaabeg, Cree, Oji-Cree, Dakota, and Dene peoples, and the beautiful homeland of the Metis Nation.

As an organization, we are committed to the principles of decolonization and reconciliation. We strive to contribute in meaningful ways to improve the lives of all children, youth, and young adults, especially to the lives of First Nations, Metis, and Inuit young people who continue to be disproportionately impacted by systemic inequalities and other barriers in our communities. With a commitment to social justice and through a rights-based lens, as an office we integrate the *United Nations Convention on the Rights of the Child*, the *United Nations Declaration on the Rights of Indigenous Peoples*, and the national Truth and Reconciliation Commission's *Calls to Action* into our practice. Our hope is that the scope of our work on behalf of children, youth, young adults, and their families contributes to amplifying First Nation, Metis, and Inuit voices and results in tangible improvements to their lives and life outcomes.

Table of Contents

Our Commitment to Reconciliation	3
Message from the Manitoba Advocate	4
Background and Context	6
Segregation Update	8
Youth Perspectives	15
Service Providers' Perspectives	16
Changing Perspectives on Behaviour	17
Summary and Conclusion	19
Recommendations	20
References	21

Message from the Manitoba Advocate

Youth in custody have rights.

These include the right to quality mental health care, the right to culture and identity, and the right to respectful and fair treatment. Many youth involved in justice and placed in custody facilities live with unresolved and sometimes intergenerational trauma, cognitive disabilities, or mental illnesses. The purpose of the youth justice system in Canada is to protect the public by rehabilitating and reintegrating young people. This purpose can only be met when custody facilities are resourced appropriately so youth in custody can be provided with a trauma-informed and safe environment that addresses their mental health, cultural, and many other needs. With the right supports, all youth can be supported to walk a good path.

In 2019, my office released a special report titled *Learning from Nelson Mandela: A Report on the Use of Solitary Confinement and Pepper Spray in Manitoba Youth Custody Facilities*, which included six recommendations for system change. Only one of these recommendations — increasing oversight of pepper spray use — has been completed by the government so far. Today's report is an update on what has been happening for youth in custody since 2019.



Ainsley Krone
A/Manitoba Advocate for Children
and Youth

Solitary confinement of youth in custody facilities continues. Since our 2019 report was released there have been a further 1,367 incidents of segregation, of which 525 exceeded 24 consecutive hours, meeting the definition of solitary confinement (38%). There also were significant increases in the length of time youth were being isolated in 2020. The average length of incidents in 2015/16 was 85 hours and this declined significantly in 2019 to 25 hours. In 2020, however, the average length per incident increased to an unprecedented 132 hours, or 5 and a half days.

According to data provided by Manitoba Justice, 94% of the youth placed in isolation were Indigenous and 63% were identified as having a known mental health concern in 2019 and 2020. Some of the youth placed in solitary confinement were not yet convicted or were held for administrative reasons: breaching probation or bail conditions. Youth were as young as 12 at the time they were placed in solitary confinement.

The COVID-19 pandemic has led to an increase in the number and length of segregation and solitary confinement incidents since 2019. Admission protocols now require that youth be isolated for 14 days upon entry and the conditions mimic solitary confinement. Although it is meant to be a public health measure, youth in COVID-19 segregation reported having limited and inconsistent access to educational, mental health, and cultural supports.

Throughout 2020, we saw a concerning ten-fold increase in the number of incidents over 15 consecutive days, considered prolonged solitary confinement, compared to 2019. This is problematic as prolonged solitary confinement can lead to irreversible psychological trauma, may constitute torture or cruel treatment, and is prohibited under minimum international standards for the care of incarcerated persons.

Research is clear that segregating youth for an extended period of time, **regardless of the reason**, is harmful and may have lasting impacts on youths' mental health. As one youth we interviewed made clear: "The way they do it, they're not helping us."

An especially concerning finding from our consultations with youth was that cultural supports are not protected for all youth in custody. Importantly, cultural supports are a fundamental human right guaranteed to Indigenous youth and cannot be removed as punishment. We include a story here from a youth we call Michael, whose regular access to an Elder was denied when he was placed in segregation.

Data analyzed by our office show that the primary reason for segregation use is to manage youths' behaviours. This method of behaviour management contradicts the goals of "rehabilitation and reintegration of young persons who have committed offences" as set forth in the declaration of principles of the *Youth Criminal Justice Act* (YCJA). Youth are entitled to fair treatment and the tools to cope with their emotions. This will also ensure safe reintegration into our communities.

Manitoba Justice has an important opportunity to shift their custody model and invest in a humane youth justice system based on effective trauma-informed and culturally-safe programs. Interviews with youth corrections staff demonstrate that staff are caring individuals who entered their professions with the intent of supporting marginalized youth. The special report and update I am releasing today will demonstrate why I am reiterating the call to the Manitoba government and Manitoba Justice to:

- prohibit segregation over 24 consecutive hours by amending the law;
- ensure segregation incidents under 24 hours are further restricted to protect vulnerable populations;
- enhance therapeutic, cultural, and mental health supports for youth in custody; and
- create a stand-alone medical facility for youth in custody, led and run by mental health professionals.

I am encouraged by recent conversations my office and I have had with the leadership of Manitoba Justice. The department acknowledges that changes are needed and that a lens of innovation is required. Changes to the system of youth custody will require collaboration across departments, including the Department of Health and Seniors Care and the newfound Department of Mental Health, Wellness and Recovery. I expect also that the Government of Manitoba will engage in meaningful consultations with Indigenous leadership given the disproportionate number of Indigenous youth in solitary confinement.

We were particularly concerned about restrictions to access cultural supports imposed on an Indigenous youth in segregation and the rights violations associated with this practice. Empowered by *The Advocate for Children and Youth Act*, my office will continue to monitor the use of segregation and associated restrictions through the monitoring of segregation use and by providing advocacy supports to youth in custody.

Respectfully,

Ainsley Krone MA PC-IIC, RSW
A/Manitoba Advocate for Children and Youth

“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)

Background and Context

In February 2019, the Manitoba Advocate for Children and Youth (MACY) released a special report called *Learning from Nelson Mandela: A report on the use of solitary confinement and pepper spray in Manitoba youth custody facilities*. The special report made six recommendations, including increasing oversight of pepper spray use, ending the use of segregation for over 24 consecutive hours, and enhancing therapeutic alternatives to manage behaviour in custody.

Since then, the Manitoba Advocate has continued monthly monitoring of the use of pepper spray and segregation in Manitoba youth custody facilities and tracking progress on recommendations. More than two years after MACY's special report, we are glad to report that Manitoba Justice has fully complied with the recommendation to increase oversight of pepper spray use. According to Manitoba Justice, there have been no incidents of pepper spray use in Manitoba youth custody facilities since June 2019.

Still, progress has been slow on the implementation of recommendations to end the use of segregation over 24 consecutive hours and enhance therapeutic alternatives in youth custody facilities. In data shared monthly with MACY by Manitoba Justice, we continue to see the regular use of segregation at the Manitoba Youth Centre (MYC) and Agassiz Youth Centre (AYC), Manitoba's two youth custody facilities. A detailed summary of the actions reported by Manitoba Justice and our analysis can be found on our website.

Pandemic protocols

The COVID-19 pandemic has increased the use of segregation in youth custody facilities. As a public health measure, all youth admitted into custody facilities are being isolated for 14 days (Manitoba Justice, 2021). Isolated youth move to a non-isolation unit after their 14 days and after having a negative test for COVID-19 on day 11 of their isolation.

In April 2020, youth were being placed in solitary confinement in the Winnipeg Remand Centre, an adult facility, for up to 14 consecutive days. The Youth Criminal Justice Act (YCJA) requires that young persons in custody "shall be held separate and apart from any adult who is detained or held in custody" (section 84). When the Manitoba Advocate learned of the inappropriate treatment, the issue was raised immediately with the government and a letter of concern was sent to the Minister of Justice. The department then ended the practice. Youth are now held for 14 days in isolation at MYC, a youth custody centre.

Conditions of confinement for youth in segregation for pandemic or behavioural reasons are similarly restrictive. MACY has provided advocacy supports to youth in segregation due to COVID-19 admission protocols who reported having limited and inconsistent access to educational, mental health, and cultural supports. Youth held for COVID-19 isolation reported having only 15 to 30 minutes of free time per day in which they were allowed to phone supports and get fresh air.

Aaron's Story

Aaron was residing in Northern Manitoba when he was arrested in April 2020 for breaching bail and other new charges. Aaron was 12-years old and in the care of child and family services. Because of COVID-19 pandemic protocols, he was held at the Winnipeg Remand Centre, an adult institution, in isolation for 9 days.

He was not the only one. Throughout April 2020, 35 youth were held at the Winnipeg Remand Centre. Of them, 7 youth were isolated for 1-14 days and 28 were isolated for less than one day. Of the 35 youth, 16 (45.7%) did not have new charges and were held due to administrative breaches of probation and/or bail conditions.

Aaron was transferred to MYC and received advocacy services from our office, in part, because he had questions about the justice system and his shoes were being "held together by tape."

Definitions

SEGREGATION is defined by Manitoba law as the confinement of inmates in a manner that prevents their physical contact with other inmates (Correctional Services Regulation, Man. Reg. 128/99). Manitoba Justice uses the term “observation” to describe segregation incidents. In this report we use “segregation” to include periods of isolation up to 24 consecutive hours in length.

SOLITARY CONFINEMENT is defined in the United Nation’s *Nelson Mandela Rules* as the segregation of prisoners for 22 to 24 hours per day where meaningful human contact is reduced to a minimum (UN General Assembly, 2016). For the purpose of this special report, solitary confinement incidents are 24 consecutive hours in length or longer.

PROLONGED SOLITARY CONFINEMENT is defined in the United Nation’s *Nelson Mandela Rules* as solitary confinement exceeding 15 consecutive days (UN General Assembly, 2016). Prolonged solitary confinement has been shown to have the potential to constitute torture or cruel, inhuman, or degrading treatment due to the possibility of lasting psychological harm (UN General Assembly, 2016). It is prohibited under minimum international standards for youth and people with cognitive vulnerabilities or mental illness.

MEANINGFUL HUMAN CONTACT is voluntary, normal, and empathetic social contact. It requires the human contact to be face-to-face and without physical barriers, facilitating empathetic communication. It is essential for the wellbeing of all people, but especially for children and youth as they develop. Contact must not be limited by interactions determined by prison routines or medical necessity (Penal Reform International, 2016). In order for contact to be meaningful, it must be meaningful for the youth.

Purpose

The purpose of this special report is to provide Manitobans with an update on the Government of Manitoba’s use of segregation and solitary confinement in youth custody facilities and comment on the effect pandemic protocols have had on the use of segregation. This special report is also intended to amplify the voices of youth who experienced segregation in Manitoba youth custody facilities.

Empowered by *The Advocate for Children and Youth Act* and guided by the *United Nations Convention on the Rights of the Child*, MACY’s objectives are to make recommendations to increase the effectiveness and responsiveness of youth justice services and urge the aligning of current practices with national and international standards for the treatment of incarcerated youth, including the *Youth Criminal Justice Act (YCJA)*, the *Canadian Charter of Rights and Freedoms*, the *Manitoba Human Rights Code*, the *Universal Declaration of Human Rights*, the *United Nations Convention on the Rights of the Child*, and the *United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules)*.

Process

This special report presents information from multiple sources:

- Data on all segregation incidents for the two years between 2019 and 2020 reported by Manitoba Justice. To assess progress, these data are compared to the segregation incidents in the 12 months between September 2015 and August 2016, published in *Learning from Nelson Mandela*.
- Analysis of the case records of three youth who experienced prolonged solitary confinement.
- Group interviews with five youth about their lived experiences with segregation.
- Consultation with the Manitoba Advocate’s Youth Ambassador Advisory Squad (YAAS!).
- In-depth interviews with three service providers working at youth custody facilities in Manitoba.

The Manitoba Advocate met with Manitoba Justice to present preliminary findings in March 2020, April 2021, May 2021, and June 2021. Manitoba Health and Manitoba Mental Health, Wellness and Recovery also attended the June 2021 meeting. In acknowledgement of their inherent right to self-determination, the Manitoba Advocate extended invitations to the Assembly of Manitoba Chiefs, Manitoba Keewatinowik Okimakanak, Southern Chiefs Organization Inc., and the Manitoba Metis Federation prior to the public release of this special report to discuss this special report and its findings. Invitations were likewise extended prior to release to members of the opposition parties of the Legislative Assembly.

Segregation Update

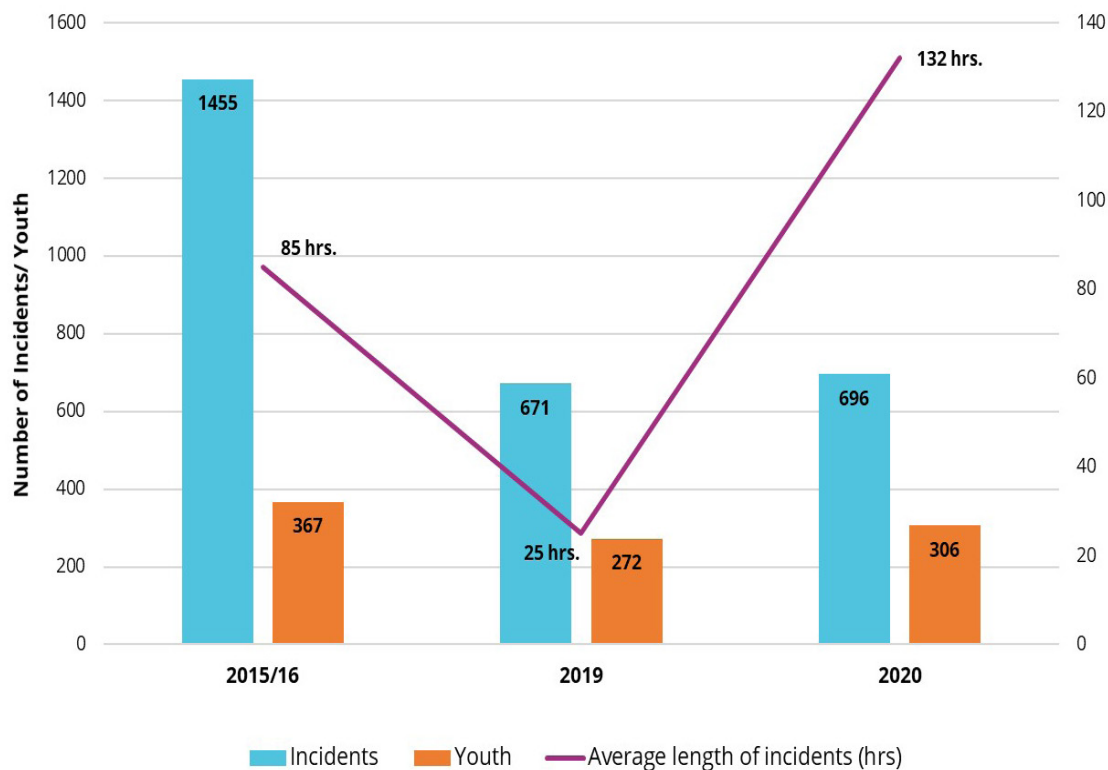
Key findings

- There were 1,367 incidents of segregation in 2019 and 2020. Of them, 525 exceeded 24 continuous hours in length (known as solitary confinement).
- The length of segregation incidents declined significantly in 2019 from 2015-16, but increased to unprecedented levels in 2020.
- 94% of youth that experienced segregation were Indigenous.
- 63% of segregated youth had known mental health concerns.

How many youth experience segregation in Manitoba?

In the one-year period from September 2015 to August 2016, 367 youth were segregated. In 2019, that number decreased to 272 youth. The number of youth segregated increased slightly in 2020 to 306 youth (Figure 1). The number of incidents of segregation decreased significantly in 2019, from 1,455 to 671. They have, however, increased slightly in 2020. The increase in the number of segregation incidents and youth affected seen in 2020 is likely due to COVID-19 admission protocols.

Figure 1. Number of segregation incidents and youths segregated by time period



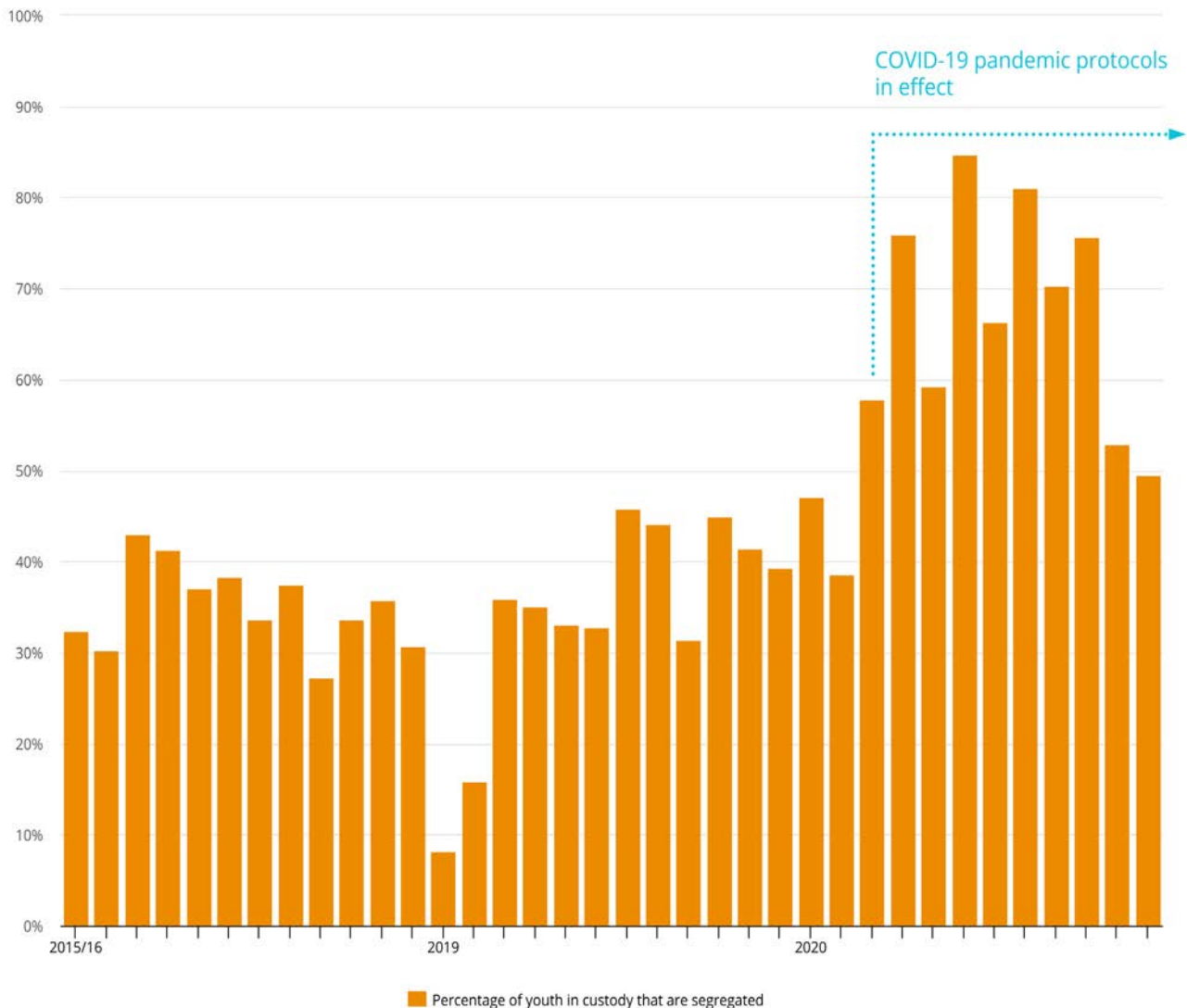
What are the monthly rates of segregation?

Since 2015-16 the youth custody population across Canada and in Manitoba has declined (Malakieh, 2020). To understand the use of segregation over time we needed to account for this important change by calculating the rate of segregation, that is, the number of youth in custody that experienced segregation as a proportion of all youth in custody that month.

The percentage of youth in custody that experience segregation has increased since 2015-16 (Figure 2). In 2020, the estimated monthly rate of youth segregated ranged from 39% of the population to 80% of the population. The increases after March 2020 may be explained by COVID-19 pandemic protocols and the decision to isolate all youth entering custody.

Manitoba Justice officials met with the Manitoba Advocate and shared that a reduction in the total number of youth in custody and the diversion of non-violent offenders to community programs has led to a change in the population of youth in custody. Manitoba Justice advised that since 2019, youth are in custody due to more violent offences, which they noted may explain the increased rates of segregation use. No evidence was provided by Manitoba Justice to verify this explanation.

Figure 2. Percentage of segregated youth in custody in 2015-16, 2019, and 2020



Notes: The number of youth segregated in January and February of 2019 are incomplete and underestimated.

Who is segregated in Manitoba?

For 2019 and 2020, youth who were segregated were most often male, Indigenous, and had known mental health concerns. Youth in segregation were as young as 12 years old. The average age of youth in segregation was 16 years old.

Indigenous youth account for 94% of youth in segregation. Data on the Indigenous identity of youth in custody, including breakdown by First Nations, Metis, or Inuit ancestry were requested for 2019 and 2020 from Manitoba Justice but were not received in time for publication. The majority of youth in segregation have a known mental health concern (63%). These statistics point to the importance of trauma-informed practices that address mental health issues and are culturally-safe for youth while in custody.

It is critically important to shift the current response in Manitoba so that it is consistent with principles of non-discrimination and the *Calls to Action* of the Truth and Reconciliation Commission (TRC) of Canada. *Call to Action 38* specifically focuses on youth in custody, calling on all governments, including the Government of Manitoba, to “commit to eliminating the overrepresentation of Aboriginal youth in custody over the next decade” (Truth and Reconciliation Commission of Canada, 2015, p.3). One way Manitoba could work to achieve this would be to ensure a focus on rehabilitation by surrounding youth with therapeutic and cultural supports during the time youth are in their legal custody.



Note: Percentage calculations exclude youth where information was missing in files.

Michael's Story

Michael is a First Nations youth. During his time in custody, he was segregated multiple times. Like the other youth interviewed for this special report, he discussed having limited and inconsistent access to educational, mental health, and cultural supports because such access was considered a “privilege.” He told us:

“I asked for help. I asked an Elder. I had never spoken to an Elder before. I learned how to sing, stuff like that. He used to give me help. I found myself that way. And I didn’t want to lose that. But it was taken away [in segregation].”

Under provincial regulations, a youth in segregation should be given the same rights, privileges, and conditions as non-segregated youth in custody (Correctional Services Regulation, Man. Reg. 128/99, s.22). Importantly, access to cultural and spiritual guidance is a protected and guaranteed right for Indigenous youth in Canada, as articulated in the ratified UNCRC and UNDRIP.

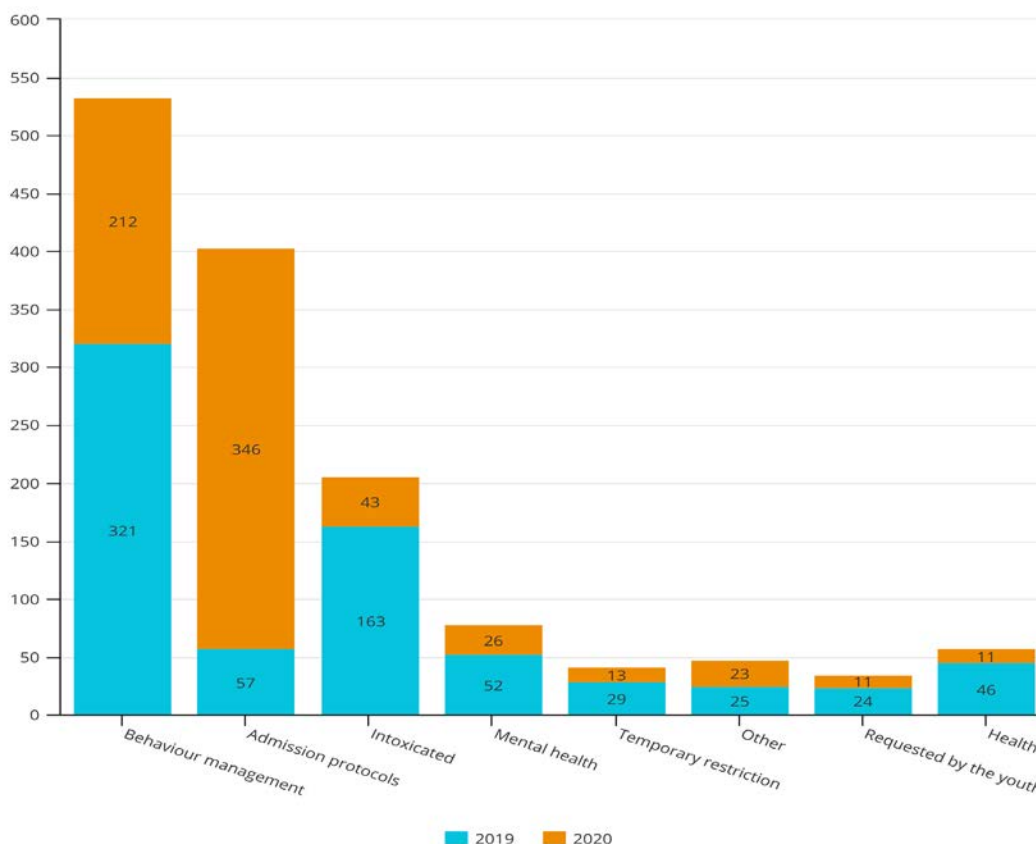
What are the reasons for segregation?

Manitoba Justice documented reasons for segregation for each incident. These reasons were organized by MACY analysts into eight categories (Figure 3). Occasionally, multiple reasons for a segregation incident were recorded. Most youth who reached out to our office with concerns about conditions they experienced while they were being segregated under Manitoba Justice’s COVID-19 protocol told us that they had been informed at admission of the facility’s isolation protocols and youth told us they understood the reason for the measure. Importantly, most youth told us that they received regular checks by mental health professionals and corrections staff during their COVID-19 isolation periods.

In 2019, behaviour management was the most common reason for an incident of segregation (45%). Examples of behaviour management incidents included disobeying an order, assaulting a peer or staff, causing a disturbance, possessing contraband, being sexually inappropriate, trying to escape, and destroying property. According to Manitoba law, “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**” (Correctional Services Regulation, Man. Reg. 128/99, s.5(g)).

Youth told us that the way segregation and solitary confinement are used it does sometimes feel like punishment. In the information we receive monthly, we have observed incidents of solitary confinement (over 24 hours in segregation) where the reasons stated are “altercation with peer, deemed as aggressor” and where the youth is segregated for over 36 hours. In another case, we saw that the reason for segregation was listed as “threats to assault an adult” and the youth was placed in and was kept in solitary confinement for 14 days. It is understandable how these segregation incidents could be perceived as punishment by youth, particularly after the immediate risk is addressed or subsides. For example, if a weapon was found and confiscated or an escalating peer conflict diffused or resolved.

Figure 3. Reasons for segregation incident 2019 and 2020



Notes: **Admission protocols** include placement due to the COVID-19 pandemic protocols. **Intoxicated** includes youth placed in segregation under *The Intoxicated Persons Detention Act*. **Mental health** placements include placement due to suicide ideation and monitoring, self-harm, anxiety attack, and placement for psychiatric assessment. **Temporary restrictions** include placements labeled as “time outs.” The **Other** category includes placements marked “no incident” and “use of quiet room.” Placement for **Health** reasons include illness and medical observation.

Placement in segregation is sometimes referred to as a “prison within a prison” in case law which has been found to deprive people of any “residual liberty” – imposing upon youth a further level of imprisonment beyond the sentence imposed by the Courts (*R v CCN*, 2018). This is because there is a lack of procedural safeguards awarded to the youth.

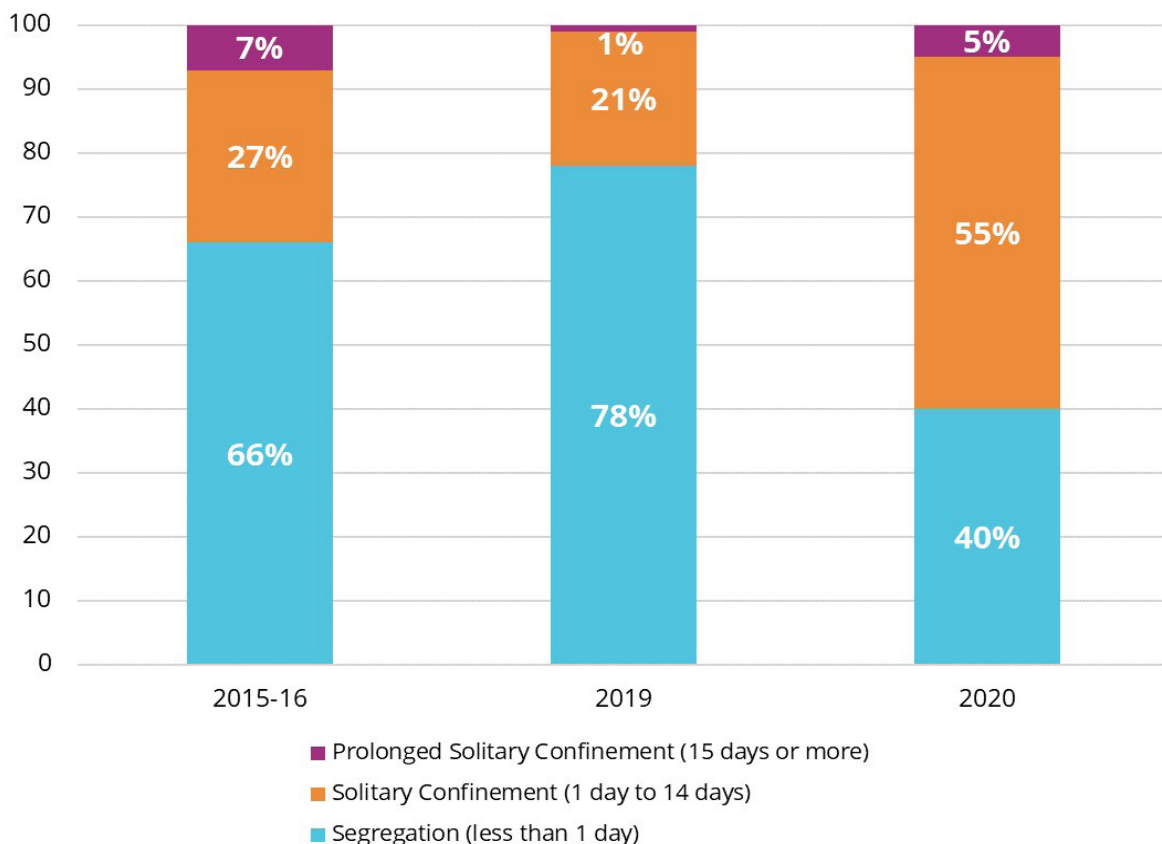
Under the YCJA in making sentencing decisions judges are restricted and must justify the use of custody on youth. It follows that a similarly high threshold should be set for correctional officers and officials, that while they have the authority to preserve the peace, are also bound to the YCJA (*R v CCN*, 2018). Further, if charged under the YCJA, youth are entitled to legal representation and a hearing. None of these important requirements of procedural fairness occur when a youth is placed in segregation for extended periods of time while in custody in Manitoba. This practice is inconsistent with the right not to be deprived of liberty except in accordance to the principles of fundamental justice, a Charter right (Canadian Charter of Rights and Freedoms, 1982).

In 2020, admission protocols were the most common reason for segregation, accounting for 346 (51%) of all segregation incidents. This significant increase is due to COVID-19 isolation protocols. The second most common reason for segregation in 2020 was behaviour management (31%). Despite pandemic protocols, over the two years, behaviour management remains the primary reason for segregation use in Manitoba.

How long are youth segregated?

There were significant increases in the length of segregation incidents in 2020. The average length of incidents in 2015/16 was 85 hours and this declined significantly in 2019 to 25 hours. In 2020, however, the average length per incident increased to an unprecedented 132 hours, or 5 and a half days. Of concern, the number and percentage of prolonged solitary confinement incidents increased significantly in 2020. In 2015-2016, 99 incidents (7%) were 15 or more days in length; this was reduced to 3 incidents (less than 1%) in 2019. In 2020, there were 36 reported incidents (5%) that were 15 days or longer (Figure 4). The total number of prolonged solitary confinement incidents decreased drastically in 2019, but increased ten-fold in 2020.

Figure 4. Percentage of incidents of segregation by length of time in 2015-16, 2019, and 2020



Any incident of prolonged solitary confinement is particularly problematic because confinement for over 15 consecutive days can lead to irreversible psychological trauma and may constitute torture or cruel treatment, according to the *Nelson Mandela Rules* and a consensus of psychological experts (International Psychological Trauma Symposium, 2007). Prolonged solitary confinement is inconsistent with the right not to be subjected to any cruel and unusual treatment or punishment, a Charter right (Canadian Charter of Rights and Freedoms, 1982).

Prolonged solitary confinement and mental illness

The Manitoba Advocate requested and reviewed the legal file, unit file, and health progress notes of all youth who experienced prolonged solitary confinement in 2019. Every youth placed in prolonged solitary confinement had complex mental health needs, cognitive disabilities, and histories of childhood trauma. In custody they were provided with some mental health assessments and supports. As a result of their conditions, they exhibited challenging behaviours that were difficult to manage, which led to being placed in segregation.

There is a correlation between prolonged stays in solitary and mental health issues. Youth who are placed in segregation for mental health reasons spend more time in segregation. Following admission protocols related to COVID-19, the next longest median length of time in segregation in 2020 was for mental health reasons with a median of 37 hours, closely followed by behavioural management reasons at 18 hours. The following is an anonymized case of one youth who was placed in segregation six times in 2019, including periods of solitary confinement that lasted beyond 15 days. We have called this youth Dylan to protect his identity.

Dylan's Story

Dylan was involved with the justice system from the time he was 12 years old. Dylan is reported to have stated that: "The police and CFS [child and family services] don't treat me well and don't do anything for me."

One of Dylan's parents died at a young age and his other parent dealt with illnesses throughout his upbringing. Growing up, Dylan witnessed violence in the home. He attended many different schools. Due to aggressive behaviour toward other students, Dylan's access to regular education was impacted and he was offered one hour of daily instruction off of the school grounds only.

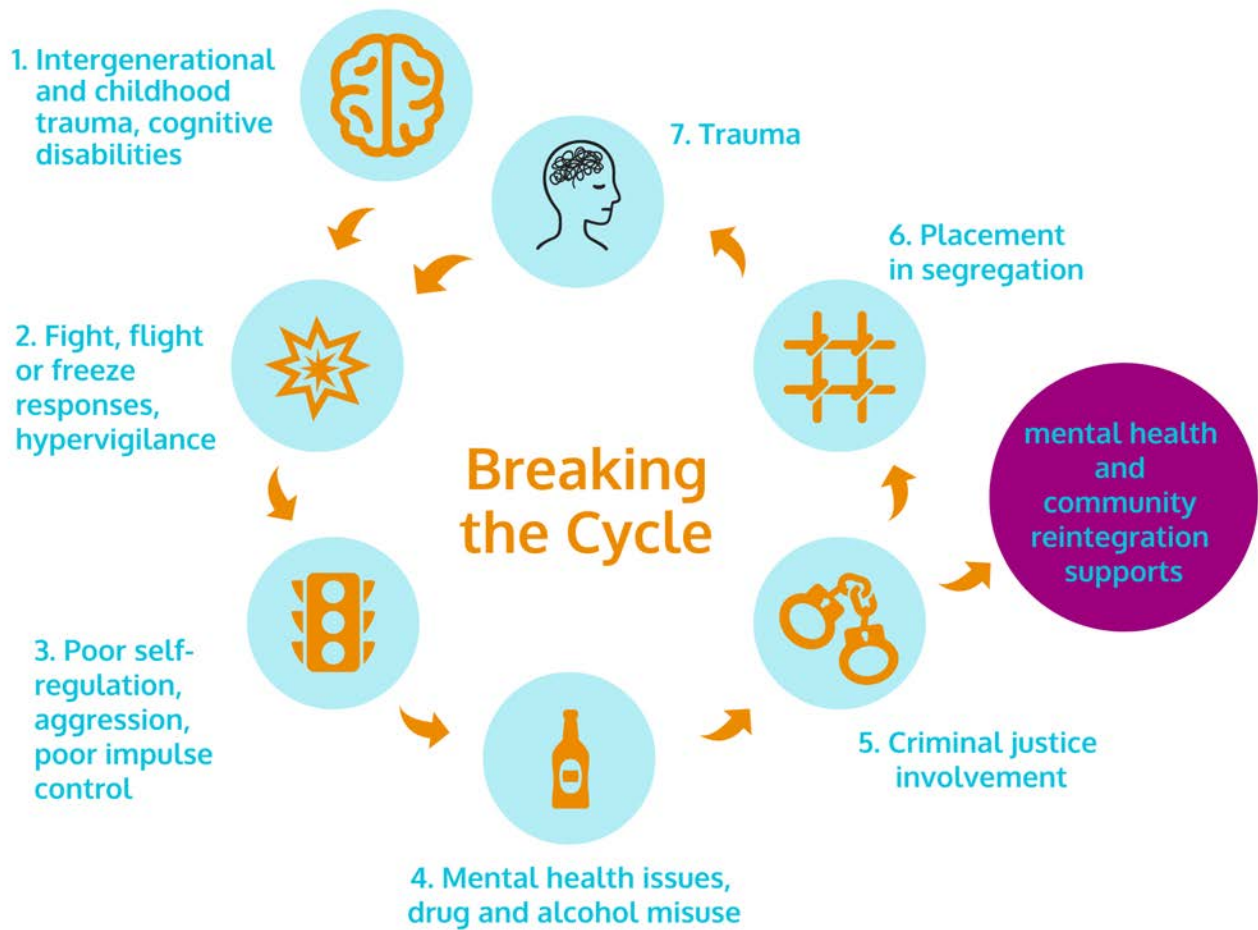
Dylan was assessed by several professionals to have cognitive challenges, including struggling with comprehension and memory. Dylan was also noted to have difficulty with emotional and behavioural regulation, marked by a short temper and angry outbursts. He was described as having high needs and as experiencing difficulty forming emotional and trusting attachments with adults.

As a teen, Dylan was worried about being a target for bullies and joined a gang because he believed it would offer him protection. Dylan struggled with mental illness, including experiencing paranoid thoughts and a fear of being harmed while in custody. Dylan also had re-occurring nightmares and suicidal thoughts while in custody.

Files from Manitoba Justice described Dylan as being assaultive, violent, unpredictable, and someone who was dangerous to be around for staff and other youth in the institution. Dylan was given Cognitive Behavioural Therapy booklets related to pro-criminal attitude, alcohol and drug problems, anti-social patterns, and companions. In custody, he had mental health assessments and supports for mental health.

In a one-year period while in custody, Dylan was placed in segregation six times for a cumulative total of 1,699 hours, or 71 days. The nature of the incidents that led to Dylan being placed in segregation included self-harm, planned assaults against other youth, bullying other youth, and what was described as "gang-driven" behaviour. Dylan continues to be involved with the justice system.

Figure 5. The cycle of trauma for incarcerated youth in segregation



“People that have mental illnesses, you have to treat them differently. Some of the staff didn’t really understand that, they would take their behaviours as really negative...Someone could act out when they come back from OU [observation unit] and it’s a cycle all over again until that person is released.”

- Youth Interview

Youth Perspectives

Staff from the office of the Manitoba Advocate held two focus groups with five youth to discuss their experiences in custody and in segregation. Overall, youth told us they wanted meaningful connection and caring relationships with the staff at custody facilities.

"Be straight up with me... That would honestly go a long way."

Communication

"More communication instead of punishment. You can't fix someone if you don't know what the problem is."

– Youth Interview

Youth want clear and respectful communication. Youth said they were sometimes teased by staff while in segregation and told they "will be back". Youth reported that they feel they can trust staff if they feel staff are being sincere.

"There's no one to talk to about these thoughts."

Meaningful Human Contact

"[Segregation is] one of the worst experiences I've ever had." – Youth Interview

Lack of meaningful contact increased the sense of distance between the youth and staff, which affected how youth were able to manage their mental health. Youth told us some staff were skilled at connecting with them, which they appreciated.

"They put you in the room when you have suicidal thoughts."

Mental Health and Cultural Supports

"If someone just listened and asked me where I come from, it would've been fine. They're not supportive with suicide thoughts. There's not a lot of mental health supports." – Youth Interview

The transition of leaving segregation was stressful after being in such a quiet environment. Youth advised it was helpful to have a behaviour plan, art therapy, as well as access to cultural programs and supports in custody.

"Instead of just dealing with a sad kid, they just put them in a room."

Service Providers' Perspectives

Staff from the office of the Manitoba Advocate held in-depth interviews with three service providers, representing each youth custody facility. Staff emphasized that trauma is pervasive in the lives of youth in custody, which can have real and lasting vicarious effects on staff who oversee their rehabilitation.

“I don’t know one youth that doesn’t have a trauma story.” - Service Provider

Interviewees stated that a trauma lens needs to be applied in everything staff do, including when supporting youth. They noted that existing staff supports, including Road to Mental Readiness and the Employee and Family Assistance Program, were insufficient for what staff require to process vicarious trauma.

“I think we can do better and we need to do better, because if our folks [juvenile counsellors] aren’t healthy then they aren’t going to do what we need them to do and that causes some grief, and it is not because they don’t want to, it is because they are spent.” - Service Provider

Service providers stated that youth request placements in segregation as a result of their trauma. While it is important to recognize that sometimes youth may request time apart from their peers in an environment with less stimulation, the data show that this is not a frequent reason for the use of segregation. In the two years between 2019 and 2020, there were 35 incidents where youth requested placement in isolation, accounting for only 2.6% of all segregation incidents.

“We have youth who request to sleep there because of their trauma, [they are] especially affected at night. The OU [observation unit] has a higher level of lighting so the youth with trauma often feel safer.” - Service Provider

Staff interviewed agreed that relationship-building between staff and youth requires time for trust to be established. Staffing shortages were cited as a source of concern. Service providers stated that youth needs are unprecedented, requiring more – not less – staff support.

“Our best resource is the human resource. If you want to be effective in making those human connections, you need more people. It’s having smaller ratios of staff to youth – the right folks.” - Service Provider

Service providers stated that youth are not sentenced long enough to become “program-ready.” This is an indication that programs have not adjusted to the recent decrease in the length of custodial sentences. Programs must be better adapted to meet youth where they are at and strengthen transitions to community-based supports. Transitions in and out of custody were noted as requiring additional resources. Service providers suggested establishing a designated social worker who could connect with families and support a wrap-around service. They stated this position could support reintegration into community and ensure programming from custody continues during this transition.

“As a custody facility, we have what we have. There has got to be partnerships among different departments ... we are trying to be more responsible to mental health needs.” - Service Provider

Service providers and youth both noted the need for more mental health supports and programs. Staff noted negative impacts on youth related to the elimination of a meat cutting program, animal husbandry, carpentry group, volunteering with the elderly, and potato picking days. A designated mental health building was also identified as a need in addition to a therapeutic unit specific to the needs of female youth. This reflects a recommendation made by our office in 2019, that urged Manitoba Justice to work with Manitoba Health and Seniors Care to develop a separate facility for youth in custody that is therapeutic and run by mental health professionals. Importantly, the Manitoba Youth Centre is already designated and licensed as a health facility in Manitoba meaning increasing health and mental health resources can occur without significant hurdles. In addition, with the reported lower numbers of youth in custody, there may be opportunities for the department to repurpose existing units for the specialized care of youth who need additional supports.

Changing Perspectives on Behaviour

The impacts of childhood trauma as experienced by Dylan (see pg. 13) and the majority of youth in custody are pervasive, affecting the youths' life trajectories. When seeking alternative approaches to segregation and solitary confinement, the role and influence of correctional staff in the well-being of youth in custody is significant. The relationship between youth and staff is essential in responding to the needs of youth in custody and ensuring the goals of rehabilitation and reintegration are supported.

The quality of relationships between staff and youth serves an important rehabilitative purpose (Cesaroni & Peterson-Badali, 2016). Staff members who show respect, empathy, and fairness can foster meaningful human contact with youth in custody. Respectful and therapeutically-minded custodial relationships can also serve an important function in improving outcomes for justice-involved youth and in breaking the trauma cycle, thereby reducing rates of recidivism and increasing public safety (ibid.). All youth eventually exit custody and return to the community.

Equipping staff with knowledge on conflict resolution, human rights, dispute resolution, problem solving, and effective communication is of paramount importance, as these skills have been proven to be vital to both the safety of the institution and how youth in custody perceive their experience (West Coast Prison Justice Society, 2016). Providing adequate tools and resources to staff will mean they consistently feel able to manage the diverse and complex youth population. Finally, requiring trauma-informed approaches, which focus on the prevalence of trauma and how it affects youth in custody, can be effective in shifting perspectives on youth behaviours (Brown et al., 2021; Kubiak et al., 2017).

The following graphic (see Iceberg, next page) represents the tension that can exist between the labels which are sometimes applied to youth, and the lived experiences of youth which are at the root of their justice involvement. The terms in quotes on the visible iceberg are excerpts taken from Manitoba Justice documentation about youth who experienced segregation. Phrases over the bottom part of the iceberg reflect the lived experiences and known diagnoses of those same youth.

The purpose of this graphic is to illustrate the different ways youth and their behaviours may be perceived. Certainly, youth in custody can present significant challenges to staff in terms of behaviours, levels of engagement, and compliance with expectation or direction. Without an understanding of youths' histories of trauma, their behaviour might be identified only as a safety risk and not a symptom of unresolved trauma or an unmet emotional need. Reframing youth behaviour in the context of childhood trauma might hold the key to reducing segregation and improving conditions and outcomes for youth and staff alike.

“I think what helped me through my time there, it was when I went to drumming. I felt really at peace. I was finally getting to know myself going to that drumming group. Just being around other young and talented people, made you feel you weren't actually in jail. That felt good.”

– Youth Interview

**“SELFISH”
“IMPULSIVE”
“ASSAULTIVE”
“ANTI-SOCIAL”
“EASILY MISLED”
“DISRESPECTFUL”
“UNPREDICTABLE”
“GANG-ENTRENCHED”
“PRE-CONTEMPLATIVE”
“PRO-CRIMINAL ATTITUDE”
“LACKS THE MOTIVATION TO CHANGE”
“THE OTHER YOUTH ARE AFRAID OF THEM”**

**WAS DIAGNOSED WITH POST TRAUMATIC STRESS DISORDER
HAS SUSPECTED FETAL ALCOHOL SPECTRUM DISORDER
HAS ATTACHMENT DISORDER DUE TO EARLY TRAUMA
HAS ATTENTION DEFICIT HYPERACTIVITY DISORDER
EASILY TRIGGERED BY MEN DUE TO PAST ABUSE
WAS DIAGNOSED WITH AN ANXIETY DISORDER
IS CARRYING INTERGENERATIONAL TRAUMA
SELF-HARMS AS A COPING MECHANISM
HAS A LACK OF POSITIVE ROLE MODELS
EXPERIENCING SUICIDAL THOUGHTS
IS MANAGING CLINICAL DEPRESSION
DOES NOT EASILY TRUST ADULTS
IS A CHILD ABUSE SURVIVOR
LIVING WITH AN ADDICTION
FEELS TRAPPED IN A GANG
IS LIVING IN POVERTY**

Source: Manitoba Advocate for Children and Youth

Summary and Conclusion

Despite some noted improvements in the number of incidents of segregation since 2015-16, solitary confinement and prolonged solitary confinement continue to be a major human rights issue in Manitoba youth custody facilities (Table 1).

Table 1. Summary of Human Rights Standards and Findings

Human Rights Standard	Findings (2019 and 2020)
Segregation used as a last resort, to the extent necessary, never as punishment (Correctional Services Regulation, 1999, s.5(g))	1,367 incidents of segregation in 2019 and 2020. Between 35-80% of youth in custody every month experience segregation. The primary reason for segregation incidents is behaviour management.
Solitary confinement prohibited on children (under 18 years old) and persons with mental illness (UN Nelson Mandela Rules, 2015, Rule 45.2)	525 incidents of solitary confinement, 142 in 2019 and 383 in 2020.
Prolonged solitary confinement is prohibited, could constitute torture or other cruel treatment or punishment (UN Nelson Mandela Rules, 2015, Rule 43)	39 incidents of prolonged solitary confinement. 3 incidents in 2019 and 36 incidents in 2020.
Non-discrimination of Indigenous children or youth. Non-discrimination of children with mental illness or cognitive vulnerabilities. (UNCRC, Article 2; UNDRIP, Article 2)	Indigenous youth and youth with mental health concerns are disproportionately affected. 94% of segregated youth were Indigenous and 63% of youth in segregation had known mental health concerns.

Changing the way we think about youth in custody is necessary and possible. We have seen the justice system in Manitoba enhance oversight of pepper spray use and virtually eradicate the practice since the release of our report two years ago (Manitoba Advocate for Children and Youth, 2019). We are also encouraged by the implementation of the FASD disposition docket which takes into account FASD diagnosis during sentencing. The justice system has the ability to innovate from current practices towards a rehabilitative approach that can result in safer institutions and is consistent with protecting the public. We are encouraged by recent conversations with leaders in the department who reflect an open and innovative approach to youth justice in ways that can lead to system transformation and improved outcomes for youth that are focused on rehabilitation. A key to those outcomes is ensuring that the mental health of youth in custody is viewed as a priority. What is needed are increased resources that reflect the government’s universal understanding of their obligations to provide programs and supports that protect the rights and support needs of youth in their legal custody.

We know there are many dedicated staff working in youth custody facilities who care about youth and who build strong relationships with youth in custody. When staff are given the support, training, and resources they need to respond to the complex care needs of youth in their facilities, the justice system will ultimately be able to decrease its use of segregation and solitary confinement.

Nelson Mandela, following years of imprisonment and solitary confinement, ushered a nation to democracy. His legacy can inspire Manitoba’s work to ensure that youth in custody, many of whom carry significant childhood trauma and live with mental health and cognitive challenges, have a real opportunity for rehabilitation and improved lives as they grow towards adulthood.

“It always seems impossible until it’s done.”

-Nelson Mandela

Recommendations

The following recommendations were issued in the 2019 special report, *Learning from Nelson Mandela*. They remain open and relevant to this updated special report and the Acting Manitoba Advocate is therefore reaffirming their importance towards a goal of improved effectiveness of the youth justice system in Manitoba.



Prohibit the solitary confinement of youth for a period exceeding 24 hours by amending Manitoba law, per the Nelson Mandela Rules.



Restrict any use of segregation for vulnerable populations, including youth with cognitive disabilities and mental illness.



Enhance culturally safe therapeutic and mental health supports, including cultural supports, for youth in custody.



Create a specialized mental health facility led and run by mental health professionals for youth in custody.

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