



## **“Transforming the Conditions of Confinement”**

Submission to the  
Standing Committee on Justice Policy  
regarding Bill 6,  
*Correctional Services Transformation Act, 2018*

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## Overview

- 1 The Ontario Ombudsman has a long history of independently and impartially resolving and investigating concerns about Ontario's provincial correctional facilities. Of the more than 21,000 complaints we receive each year, close to 4,000 are about correctional facilities.<sup>1</sup> In addition to resolving countless individual matters, my Office has actively monitored and, when necessary, investigated serious systemic issues within the correctional system.
- 2 In 2013, my Office issued *The Code*, an investigative report on the Ministry of Community Safety and Correctional Services' response to allegations of excessive use of force against inmates. Many of the report's 45 recommendations focused on eradication of a cultural "code of silence," which had sometimes led to the coverup of incidents of excessive force by correctional officers against inmates.<sup>2</sup> The Ministry accepted all of the report's recommendations, leading to significant improvements in training and transparency regarding the use of force, as well as a commitment to install closed-circuit video at all institutions.
- 3 In recent years, my Office has also received hundreds of complaints about the use of segregation. On any given day, about 590 of some 7,000 inmates in Ontario's correctional facilities are isolated in their cells – "segregated" – for 22 hours or more per day. Segregation, also known as solitary confinement, isolation, or separation, is one of the most restrictive methods of imprisonment the government can impose. Some, including the United Nations, have said that placing inmates in solitary confinement for longer than 15 days is a form of cruel, inhuman or degrading treatment.<sup>3</sup>

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<sup>1</sup> We received 3,998 complaints about correctional facilities in 2016-2017, out of a total 21,328 complaints. Ombudsman of Ontario, *Annual Report 2016-2017*, (June 2017), online: <<https://www.ombudsman.on.ca/resources/reports-and-case-summaries/annual-reports/2016-2017-annual-report>>.

<sup>2</sup> Ombudsman of Ontario, *The Code*, (June 2013), online: <<https://www.ombudsman.on.ca/resources/reports-and-case-summaries/reports-on-investigations/2013/the-code>>.

<sup>3</sup> For more information on these statistics and the stories that follow, see: Ombudsman of Ontario, *Out of Oversight, Out of Mind*, (April 2017), online: <<https://www.ombudsman.on.ca/resources/reports-and-case-summaries/reports-on-investigations/2017/out-of-oversight,-out-of-mind>>.

- 4 Our Office closely monitors and resolves individual complaints about segregation. Between 2013 and 2016, we received more than 550 complaints from segregated inmates.
- 5 One inmate at Central East Correctional Centre was held in segregation for almost three months without a valid reason. Another who had spent more than three years in segregation at various facilities complained to us that he was depressed and “sick of life.” In another case, when we tried to follow up with an inmate who complained he was “distressed” at being told he would serve his entire sentence in segregation, we learned he had taken his own life. As we looked into each of these complaints, we consistently identified issues with how the Ministry tracked and reviewed segregation placements. We found some senior staff were not even aware of the regulatory and policy requirements relating to segregation. One manager even attempted to fabricate missing documentation after we requested it.
- 6 Based on these disturbing stories and the concerns we identified, our Office prepared a written submission in response to the comprehensive review of segregation launched by the Ministry in 2015.<sup>4</sup> My submission, *Segregation: Not an Isolated Problem*, published in May 2016, contained 28 recommendations to reform the use of segregation.<sup>5</sup> Although I was encouraged by the Ministry’s commitment to reform and several incremental changes that were introduced in the wake of my recommendations, I continued to believe the Ministry’s use of segregation was a serious, systemic problem that required further investigation.
- 7 The use of prolonged segregation placements persisted, despite the severe effects known to be associated with it. In October 2016, we learned that 24-year-old Adam Capay of Lac Seul First Nation had been in segregation – in a Plexiglas-fronted cell where incessant bright lights blurred the line between night and day – for four years; one of many inmates who had languished in segregation for extended periods. Accordingly, in December 2016 I launched an investigation into how the Ministry tracks the admission and continued placement of inmates in segregation, and the adequacy and effectiveness of the review

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<sup>4</sup> “Statement by Minister Yasir Naqvi on review of segregation policy in Ontario correctional system,” Ministry of Community Safety and Correctional Services (26 March 2015), online: <<https://news.ontario.ca/mcscs/en/2015/3/yasir-naqvi-minister-of-community-safety-and-correctional-services-made-the-following-statement-toda.html>>.

<sup>5</sup> Ombudsman of Ontario, *Segregation: Not an Isolated Problem* (27 April 2016), online: <<https://www.ombudsman.on.ca/Files/sitemedia/Documents/Segregation-ENfinal-May-10linked.pdf>>.

process of such placements. My report – *Out of Oversight, Out of Mind* (April 2017) – made 32 recommendations for reform, finding that the Ministry’s tracking and review of segregation placements was unreasonable, wrong, oppressive and contrary to law.<sup>6</sup>

- 8 Today, I am pleased to see many of my key recommendations – which have been echoed by others, including the Ontario Human Rights Commission, and Howard Sapers’ Independent Review of Ontario Corrections,<sup>7</sup> reflected in Bill 6, the *Correctional Services Transformation Act, 2018*. These provisions include:
- Abolition of indefinite segregation, limiting it to 15 consecutive days and 60 aggregate days in a calendar year;
  - A clear legislative definition of segregation, consistent with international standards, defining it as any type of custody where an inmate is isolated for more than 22 hours a day;
  - Creation of an independent panel to review all segregation placements within the first five days, and at regular intervals thereafter;
  - Provision for alternative housing and programming to meet the needs of vulnerable inmates; and
  - Publication of segregation data in an anonymized form.
- 9 Bill 6 also limits the use of segregation for certain vulnerable inmates, including those who are pregnant or have recently given birth, and those who are chronically self-harming, suicidal or have significant mental illnesses or developmental disabilities. In addition, it provides for inmates in segregation to receive regular visits by health care professionals, including by a member of the mental health care service team at least once every five days.
- 10 The bill introduces many other reforms relating to the conditions of confinement. For instance, it would establish new procedures for reviewing allegations of

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<sup>6</sup> Ombudsman of Ontario, *Out of Oversight, Out of Mind*, (April 2017), online: <<https://www.ombudsman.on.ca/resources/reports-and-case-summaries/reports-on-investigations/2017/out-of-oversight,-out-of-mind>>.

<sup>7</sup> Ontario Human Rights Commission, *Submission of the OHRC to the Ministry of Community Safety and Correctional Services Provincial Segregation Review*, online: <http://www.ohrc.on.ca/en/submission-ohrc-ministry-community-safety-and-correctional-services-provincial-segregation-review>> and Independent Review of Ontario Corrections, *Segregation in Ontario*, (March 2017), online: <<https://www.mcscs.jus.gov.on.ca/english/Corrections/IndependentReviewOntarioCorrections/IndependentReviewOntarioCorrectionsSegregationOntario.html>>.

inmate misconduct. Serious misconduct allegations will now be referred to a Disciplinary Hearings Officer to conduct a hearing, ensuring greater accountability and independence in decision-making.

- 11 The bill also establishes a Chief of Investigations to investigate employee code of conduct matters and security-related issues, as well as an Inspector General whose duties include monitoring and inspecting the Ministry's compliance with corrections legislation, regulation, policies and procedures.
- 12 Although Bill 6 creates an important and transformative legislative framework governing the conditions of confinement in Ontario's correctional institutions, it will ultimately require substantial work, including extensive planning and resource commitment, to operationalize its intent. It is an ambitious step forward, and I eagerly anticipate working with the Ministry and the government to ensure that the reforms it introduces are implemented in practice.

## Remaining Gaps in Bill 6

- 13 While I commend the government for the tremendous changes to Ontario's correctional system envisioned by Bill 6, I have identified several gaps in the bill that could prevent truly comprehensive and effective reform.

### Important provisions left to regulation

- 14 Critical details about important provisions, including the definitions of "serious misconduct" and "restrictive confinement," as well as the procedure for inmate complaints, are not included in the draft legislation. They will be established later by regulation instead. The bill contains numerous other examples where key details will be "as prescribed." Relegating this important information to future regulations means that my Office and the general public cannot evaluate or provide input about these matters. In addition, these provisions will have a major impact on inmates' liberty interests and would greatly benefit from legislative guidance.

## Counting days in segregation, phasing in provisions

- 15 My Office's *Out of Oversight, Out of Mind* report identified serious issues with how correctional facilities calculate the length of time that an inmate has spent in continuous segregation. I made numerous recommendations to address these deficiencies, including that the Ministry should clearly define what constitutes a break from segregation. Subsection 58(4) of the bill provides that transfers from one institution to another do not count as breaks in segregation, but the legislation does not address other common scenarios, such as court appearances and medical visits. Allowing these events to "reset" the segregation clock could undermine the province's commitment to end the use of indefinite segregation.
- 16 In addition, section 145 of the proposed legislation provides that the days an inmate spends in segregation prior to the relevant provision of the Act coming into force will not be counted. This means that inmates who have been in long-term segregation will not immediately benefit from the new legislation's limits on segregation.
- 17 I am also concerned about transitional provisions providing that important segregation oversight mechanisms do not apply to inmates held in prescribed correctional facilities. For instance, a regulation can prescribe that the 15-day consecutive and 60-day aggregate limits on segregation do not apply to certain correctional institutions. The regulation can also prescribe that the prohibition on segregating uniquely vulnerable inmates (e.g., those who are pregnant, chronically self-harming, or have a significant mental illness or developmental disability) does not apply at specified facilities.
- 18 While I understand the need for transitional provisions, even short segregation placements can have severe impacts on inmates' well-being. The government's aim must be to eliminate indefinite segregation as soon as possible for all inmates at all correctional facilities. Allowing any institution to be exempted from the Act's new safeguards undermines its impact and may result in unintended consequences. For instance, the Ministry could avoid the new segregation safeguards by moving all inmates it wishes to place in long-term segregation to facilities exempted by regulation. I encourage the government to amend the legislation to remove or limit these transitional provisions.

## Independent review panel

- 19** Although the proposed legislation implements my Office's core recommendation regarding the creation of an independent panel to review segregation placements, it does not fully reflect my recommendations. For instance, I twice recommended that segregation review hearings occur in a neutral setting and that inmates have access to duty counsel to allow them to participate meaningfully in the hearing process.<sup>8</sup> Neither of these recommendations is reflected in the legislation.
- 20** I also recommended that inmates in segregation be provided with access to an advisor who can provide information about their rights, including the right to obtain legal representation.<sup>9</sup> The bill does not address this recommendation and instead provides that inmates will receive rights information in writing. This may not be an effective substitute for inmates with literacy and comprehension issues.
- 21** In addition, the draft legislation does not incorporate my recommendation that the independent panel be empowered to recommend that superintendents initiate investigations and discipline proceedings, as appropriate, for staff found in violation of segregation rules and procedures.<sup>10</sup>
- 22** I strongly urge the government to revisit these outstanding recommendations and incorporate them into the bill's provisions regarding the Independent Review Panel.

## Role of Inspector General

- 23** The bill states that the mandate of the Inspector General is to monitor and conduct inspections related to the Ministry's compliance with the Act, regulations, as well as correctional policies and procedures. From the legislation, it is unclear whether the Inspector General is empowered to accept and act on complaints from individual inmates, or how the Inspector General's oversight role intersects with my oversight. I invite the government to further clarify this in legislation.

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<sup>8</sup> See *Out of Oversight, Out of Mind*, supra Note 6, recommendation 31.

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

## Ombudsman's powers

- 24 I am also concerned by an omission in the proposed legislation that would eliminate my authority to investigate the administrative conduct of contractors within the correctional system. At present, section 57.7 of the *Ministry of Correctional Services Act* provides that “a contractor shall be deemed to be a public sector body for the purpose of sections 19 and 25 of the *Ombudsman Act*.” The absence of any similar provision in Bill 6 could compromise my ability to effectively investigate certain correctional matters when contractors are involved. It is unclear why this provision is absent from the proposed legislation.
- 25 Section 84 of the bill provides that members of the Legislative Assembly and judges can visit correctional facilities at any time. My Office can only do so through agreement with the institutions or when we launch formal investigations. The government may wish to consider providing my Office and other Officers of the Legislature with the same visiting privileges provided to MPPs and judges.
- 26 Lastly, I am deeply troubled by sections 104(9) and (10) of the proposed legislation, which allow the superintendent of a correctional facility, in accordance with yet-to-be issued regulations, to intercept telephone calls and emails between my Office and inmates. Confidentiality of the complaint process is key to the Ombudsman's mandate and function, and the legislation should explicitly state that communications with my Office cannot be intercepted. While the regulations may address this in future, it would be preferable for this to be specifically addressed in the bill, as is the case with inmates' letters to my Office, which are specifically exempted from review by facility superintendents.

## Conclusion

- 27 Bill 6 represents a pivotal step towards transforming Ontario's correctional system, and I particularly commend the government for its commitment to enhanced review and oversight of segregation placements. To further these aims, I encourage the government to address the concerns identified in this submission and implement the outstanding recommendations from my recent submission (*Segregation: Not an Isolated Problem*) and my report, *Out of Oversight, Out of Mind*.
- 28 It is often said that societies are measured by how they treat their most vulnerable members. Consistent with its preamble, Bill 6 reflects a concerted

effort on the part of the province to introduce greater fairness, accountability and transparency into Ontario's correctional system. In that spirit, I urge the committee to incorporate the improvements I have proposed, based on my Office's long experience with that system.



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