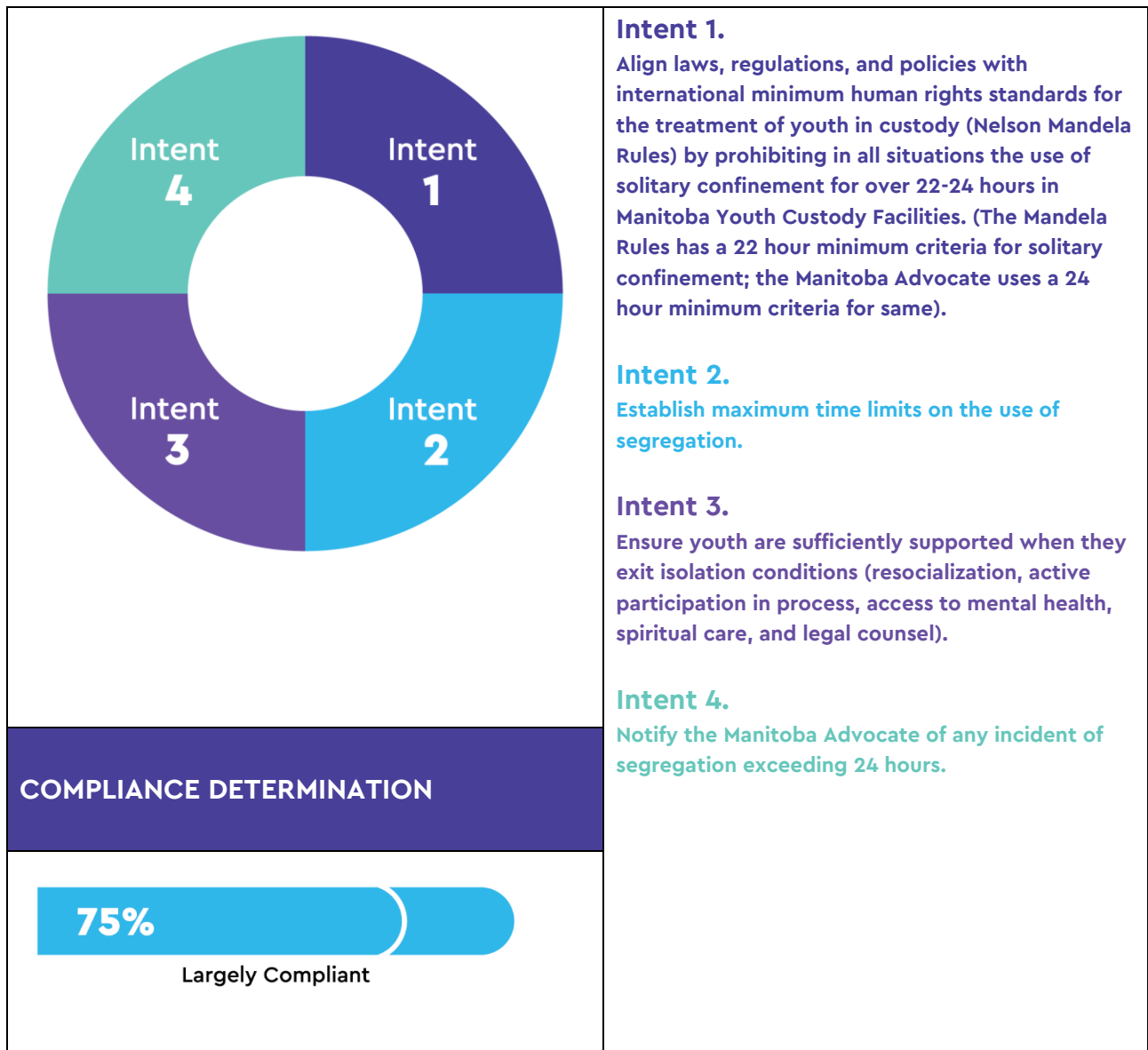


COMPLIANCE DETERMINATION

Mandela – Recommendation 1

Recommendation Summary: Prohibit the use of segregation over 24 hours.

Primary Public Body: Manitoba Justice



Recommendation Compliance Summary



This form details the assessment of compliance with recommendations made under Section 27 and Section 31 of *The Advocate for Children and Youth Act*. MACY assesses recommendations for compliance once a year but receives updates from the public bodies every six months.

1. Recommendation Information	
Report Name:	Learning from Nelson Mandela: A Report on the Use of Solitary Confinement and Pepper Spray in Manitoba Youth Custody Facilities
Date Released:	2/21/2019
Full Recommendation: (including details)	<p>Recommendation One: 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> <p>DETAILS:</p> <ul style="list-style-type: none"> • That Manitoba Justice establish a maximum time limit on the use of segregation of 24 hours without exception, thereby prohibiting solitary confinement by amending <i>The Correctional Services Act</i>. • 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: <ol style="list-style-type: none"> 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

	<p>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.</p> <ul style="list-style-type: none"> That Manitoba Justice conduct consultations with relevant stakeholders, including the Manitoba Advocate for Children and Youth, in preparation for amending <i>The Correctional Services Act</i>.
Intent(s) of Recommendation:	<ol style="list-style-type: none"> Align laws, regulations, and policies with international minimum human rights standards for the treatment of youth in custody (Nelson Mandela Rules) by prohibiting in all situations the use of solitary confinement for over 22-24 hours in Manitoba Youth Custody Facilities. (The Mandela Rules has a 22 hour minimum criteria for solitary confinement; the Manitoba Advocate uses a 24 hour minimum criteria for same). Establish maximum time limits on the use of segregation. Ensure youth are sufficiently supported when they exit isolation conditions (resocialization, active participation in process, access to mental health, spiritual care, and legal counsel). Notify the Manitoba Advocate of any incident of segregation exceeding 24 hours.
Issue:	Solitary Confinement
Public Body	Manitoba Justice
Dates of Previous Official Updates from Public Body:	May 31, 2023
	June 30, 2022
	May 31, 2021
	June 30, 2020
	December 31, 2019
	June 26, 2019
2. Compliance Determination	
Largely Compliant 0.75	Actions taken meet the majority of requirements for implementation, only negligible requirements remain.
Self-Assessment	Complete through Alternate Solution
Previous Compliance Determination	Limitedly Compliant
3. Rationale for Determination (How did you reach this compliance determination)	

Intent 1: Align laws, regulations, and policies with international minimum human rights standards (Nelson Mandela Rules) by prohibiting the use of solitary confinement for over 22-24 hours in Manitoba Youth Custody Facilities. (The Mandela Rules has a 22 hour minimum criteria for solitary confinement; the Manitoba Advocate uses a 24 hour minimum criteria for same).

2023

- Of note, Agassiz Youth Centre (AYC) closed in July 2022, so findings as originally reported in *Mandela* related to AYC are no longer applicable for consideration.
- The Department reported collaboration between MACY and the new Executive Director and Director of the Youth Justice Branch commenced in August 2022 to come to an understanding of how actions in practice are not accurately reflected in the definitions utilized in the *Mandela* report.
- To this aim, Manitoba Justice reiterates solitary confinement need not be prohibited as it is not a current practice at the Manitoba Youth Centre (MYC). The Department reported it is necessary to highlight the inconsistencies in language, definition, and understanding of terms used, with equal importance placed on ensuring context and awareness of the current processes with youth housed at MYC. The Department maintains the use of the term 'observation' is not interchangeable with the terms defined in the *Mandela* report. Manitoba Justice maintains laws, regulations, and policies align with international minimum human rights standards for the treatment of youth in custody (Nelson Mandela Rules). The Department maintains youth are not placed in solitary confinement as intended and written in the *Mandela* report, and are not placed in administrative or punitive segregation.
- Manitoba Justice reports youth are placed in the least restrictive, non-punitive environment to ensure safety and maintain overall security of the facility. During an observation period, staff continually assess circumstances to determine best plans for all youth, which include placement compatibility, safety of the individual, and staff safety. Young people are placed in observation in consideration of multiple reasons such as safety, medical requirements, admission for placement, or voluntary request by the youth. According to the Department, the restriction of meaningful human contact, which qualifies the practices of segregation/solitary confinement, does not occur as was written in the *Mandela* report. Per Manitoba Justice, while in observation, there is meaningful and continued engagement with supports including juvenile counselors, spiritual care, mental health professionals, teachers, and external supports, which is congruent with laws, policies, and procedures, and aligned with international minimum human rights standards for the treatment of youth in custody (Nelson Mandela Rules).
- The Department's Standing Order dated 2019, pertaining to observation policies at MYC, was previously provided and reviewed at length by MACY. MACY's requests for clarification of policy wording/content were responded to by the Department, and demonstrate youth wellness is consistently monitored. MACY has made

suggestions for policy amendments to ensure clarified/consistent understanding for staff interpreting the directives. Manitoba Justice advised suggestions from MACY have been taken under advisement with some amendments in place and others to be determined.

- At this time, documentation templates used within MYC have been requested in order to better ascertain how a youth's well-being is assessed upon release from observation in daily practice, and how meaningful human contact is required to be documented/considered. Manitoba Justice maintains staff are trained to be attuned to young people's needs and are directed to document observations/assessments/interventions accordingly.

2022

- Manitoba Justice advised, as reported last year, that "As it will take considerable time to assess the need for any regulatory or legislative change, and further time to conduct the change if needed, current focus will be on intent 3."
- The department committed to working with MACY to "determine acceptable alternatives for working with youth to help limit the need for Observation," which will guide further work on the need for changes to legislation.
- In addition, the department reported ongoing contact with youth when they are in Observation as well as therapeutic interventions upon leaving Observation.

2021

- As per discussions with the department and confirmed in their May 2021 written response, Manitoba Justice will focus on this Intent once Intents 2 and 3 have been implemented.

2020

- This recommendation calls for the amendment of *The Correctional Services Act* to prohibit the solitary confinement of youth for a period exceeding 24 hours. To date, no such amendment has been made. At the July 13, 2020 pre-assessment meeting, the department representative explained that there is no uptake within the department to change the legislation. This was further reinforced by the department on September 2, 2020: "adjustments to how observation is used can be accomplished without a change to *The Correctional Services Act*" (Confidential Information).
- Data reported under Intent 4 of this recommendation indicate that youth continue to be placed in segregation for periods exceeding 24 hours in Manitoba youth custody facilities.

Intent 2: Establish maximum time limits on the use of segregation.

2023

- Similar to the details noted under intent 1, in proposing an alternate solution,

Manitoba Justice maintains the necessity to differentiate language between their current practices and those presented in the *Mandela* report. The Department advised there is not a need to establish maximum time limits on segregation, as segregation, as was defined, is not current practice in MYC. Manitoba Justice expressed time limits on observation use vary on an individual basis.

- The Department provided Divisional Policies and Facility Standing Orders to MACY, which outline and direct the need for consideration of the use of observation. The Department reported observation consideration examples, including unanticipated medical requirements, a young person's choice to remain in observation, to allow for a period of stabilization if under the extreme influence of substances, and gang entrenched youth. The Department indicated the ultimate goal is to see a youth removed from observation as soon as it is safe to do so.
- Manitoba Justice indicated there is no standardized minimum/maximum time limits, with youth being managed in the least restrictive means feasible. Within existing policy, there are stipulated time requirements where reviews of the young person's circumstances are to occur, to which Manitoba Justice maintains can also occur at any time. Length of time in observation, reasons for placement, behavioural expectations for release, the condition of youth (e.g., behaviour, eating/sleeping patterns, exercise, visits, etc.), any alternatives to observation considered viable, and plans/recommendations to facilitate/support release for observation, including interventions/activities to mitigate adverse effects of observation, are required to be documented during reviews.
- Manitoba Justice confirmed youth in observation have the same rights and privileges (e.g., phone use, gym, fresh air, recreational activity, etc.) as other youth in MYC, unless where circumstances require altered routines/restrictions.

2022

- Manitoba Justice advised, as reported last year, that "As it will take considerable time to assess the need for any regulatory or legislative change, and further time to conduct the change if needed, current focus will be on intent 3."
- The department committed to working with MACY to "determine acceptable alternatives for working with youth to help limit the need for Observation," which will guide further work on the need for changes to legislation. Meetings have taken place and this work is in progress.

2021

- As per discussions with the department and confirmed in their May 2021 response, Manitoba Justice will focus on this Intent once Intent 3 has been implemented.

2020

- Both Standing Order 03-965 and Standing Order 997 were provided and reviewed. They demonstrate that Manitoba Justice does not have a maximum time limit on the use of segregation:

- The Youth Observation Policy for both youth custody facilities allows for youth to be “secured alone in a cell for 18 hours or more each day.” While there is a minimum time for observation (18 hours), the policy is not explicit about the maximum time a youth can be secured alone in a cell (i.e., it does not give a maximum time for observation as 24 hours). Thus, segregation for more than 24 hours can – and does – still occur.
- Section 3 of the policy, on Observation Reviews and Appeals, outlines that reviews may occur at 7-day intervals after a youth is placed in observation.
- Section 5 of the policy, on Alternatives to Observation, outlines that “[r]estrictions that extend beyond 24 hours will transition to observation.”
- The standing orders do not meet the intent of the recommendation. Both policies continue to allow for the use of solitary confinement, which is being alone in a cell for a period exceeding 22 hours, in youth custody facilities.
- Using a child-centred approach, the Manitoba Advocate interprets “meaningful human contact” as determined or assessed by the youth. Conversely, Manitoba Justice, as provided in its responses to MACY’s June 2020 questions and confirmed at the July 13, 2020 pre-assessment meeting, asserts that youth might not consider when staff are talking to them as meaningful, even if staff have been trained in effective communication skills to ensure meaningful interactions with youth.

Intent 3: Ensure youth are sufficiently supported when they exit isolation conditions (resocialization, active participation in process, access to mental health, spiritual care, and legal counsel).

2023

- Manitoba Justice reported youth in MYC are held in the least restrictive environment possible to ensure their and others safety, and to maintain security of the facility. MYC utilizes its resources available internally (which include Juvenile Counselors, Program Facilitators, Mental Health Professionals, Spiritual Care Providers), and consults/collaborates with internal and external agencies. These practices are to best support youth in relation to addressing the level of risk, meeting their needs, and ensuring areas of responsibility are met while in observation and upon exiting. The department reflected this is child/youth-centred, based on expressed needs and wishes of the youth, and their needs presented at the time.
- Manitoba Justice reported all young people admitted to MYC are advised of/provided resources upon admission, including access to legal representation and support/advocacy available through the Office of the Ombudsman and MACY. Visual reminders of these supports are available through the use of signage in living areas and common areas. MYC continues to support advocacy for youth from MACY as requested by youth or required (staff request) to enhance outcomes for youth in custody.
- As noted under intent 2, within existing policy there are stipulated time

requirements after which reviews (and documentation) of the young person's circumstances are to occur when in observation, although Manitoba Justice maintains these reviews can occur at any time. In addition, the Department confirmed a supplementary incident report is required to be compiled once a youth is transitioned out of observation.

- MACY has requested the case management policy which was noted as addressing adequate youth support areas. Manitoba Justice indicated this policy is currently in revision, and can be provided once approved/finalized. This was requested as it was viewed as potentially helpful to confirm sufficient supports are consistently required to be afforded to all youth in custody, as was verbally confirmed occurs during meetings between MACY and Justice.

2022

- At the department's request, MACY provided a literature review about therapeutic alternatives for the department's consideration. The department reported that therapeutic interventions are being provided (e.g., by spiritual advisors, mental health workers, and juvenile counsellors) and its intention to participate in further work with MACY to develop options and ways to document these supports before moving on this intent.

2021

- Manitoba Justice continues to work with MACY to look into types of therapeutic programming that can be implemented to support youth when they exit observation as well as to mitigate placement in the first place.

2020

- In further information provided on September 2, 2020, Manitoba Justice described that health care professionals are involved with youth when they are placed in observation and when a plan is developed with the youth to transition out of observation. Health care staff also follow-up as required after the youth has exited observation.
- Manitoba Justice is open to discussing with the Manitoba Advocate types of therapeutic alternatives that can be applied for youth once they are released from observation after 22 hours, in lieu of keeping them in observation past that time.
- The department is working with MACY to look into types of therapeutic programming that can be implemented to support youth when they exit observation as well as to mitigate placement in the first place.

Intent 4: Notify the Manitoba Advocate of any incident of segregation exceeding 24 hours.

2023

- Manitoba Justice provides quarterly reports (i.e., three months' worth of data four

times per year) of observation incidents which are 24+ hours.

- Manitoba Justice and the Manitoba Advocate have collaborated on the creation of a data spreadsheet to track the use of observation, which is to include demographics, supports provided to, and reasoning for youth observation use. Since a refined spreadsheet was created, it has been utilized for the 2023 year. January to March data contained within were assessed as meeting this intent in full; however, the information provided for April-June is deemed insufficient as Manitoba Justice has since opted to remove the names of the young people involved in observation incidents. While the act of notification continues, simply being advised observation is occurring does not benefit youth, or MACY's overarching aim of ensuring right fulfillment. The removal of names within the notification form inhibits MACY's ability to track patterns and follow-up with young people, if deemed necessary. Further meetings are anticipated to occur between MACY and Manitoba Justice to offer explanation for this recent shift in practice.

2022

- Complete. The department continues to provide monthly/quarterly reporting of segregation. Work is underway with MACY to improve quality assurance of this data.

2021

- No new information was provided, as the department is complying with this intent.

2020

- Manitoba Justice has reported incidents of segregation, including incidents of segregation exceeding 24 hours, on a quarterly basis. Upon request, the department has increased its reporting to monthly beginning in June 2020. Manitoba Justice is complying with Intent 4.

Analysis Summary: MACY is open to Manitoba Justice's submission of an alternate solution, as it is recognized the language utilized within the *Mandela* report is not reflective of current practice. As such, the wording of the recommendation and associated intents as they are written require discretion and larger consideration of ultimate aims in order to conduct a fulsome assessment of compliance. Within meetings between MACY and Manitoba Justice, context has been verbally described, ample information has been shared, and staff practices summarized. Together, it is deemed intents 1, 2, and 3 are met. This stance is due to the notion segregation as defined in *Mandela* is not practiced, so there is no need to prohibit it, establish maximum standards, or require (exiting 'isolation') supports beyond what are already afforded to all youth in MYC. It is notable a detailed review of the existing observation policy has been conducted by MACY, and there are suggested points the Department is encouraged to refine, which would further lend MACY to deeming this recommendation fulfilled. Intent 4 (now understood as 'incident of observation'), which has been previously met, has since

been downgraded due to the removal of youth names from the provided spreadsheets. Notification in and of itself is redundant without a youth-centred understanding of the circumstances and identification of young people actually impacted by observation. As has been relayed, youth warranting observation conditions have a multitude of varied needs. In order to meet this intent, all incidents of observation use exceeding 24 hours will be required ongoing, which is to include the names of youth. This will permit MACY to identify any youth who may require advocacy supports, as is the responsibility of the Manitoba Advocate per *The Advocate for Children and Youth Act*. Discussions are to occur to determine whether the quarterly notifications are sufficient, or if notification should occur shortly after a youth's observation period has exceeded 24 hours. In sum, and until Manitoba Justice provides the additional information required, this recommendation is deemed Largely Compliant.