

# COMPLIANCE DETERMINATION

## Mandela – Recommendation 1

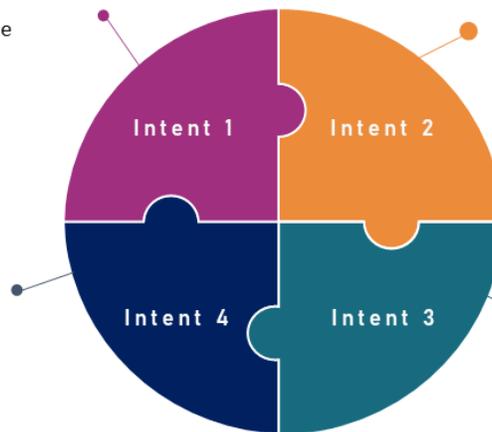
**Recommendation Summary:** Prohibit the use of segregation over 24 hours.  
**Primary Public Body:** Manitoba Justice

### 1. Prohibit, in all situations, the use of solitary confinement for over 22-24 hours in Manitoba Youth Custody Facilities (The Mandela Rules)

Manitoba Justice advised they will continue to focus on Intent 3 given the considerable amount of time it will take to assess and conduct legislative change.

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

Currently, Manitoba Justice notifies MACY of all segregation incidents on a monthly basis (changed from quarterly, due to COVID-19).



### 2. Establish maximum time limits on the use of segregation

Standing Orders still need to be amended to establish maximum time limits. This will be done once Intent 3 is met.

### 3. Ensure youth are sufficiently supported when they exit isolation conditions

Manitoba Justice reported its intention to participate in further work with MACY to identify types of therapeutic programming to support youth exiting isolation conditions.

## COMPLIANCE DETERMINATION

0.25

Limitedly Compliant

## Recommendation Compliance Summary

In accordance with subsection 11(1) clause (d) of *The Advocate for Children and Youth Act (ACYA)*, the Advocate retains the responsibility "to monitor the implementation of recommendations included in reports made under section 27 (investigation) or special reports made under section 31."

This form details the assessment of implementation of compliance made under the referenced subsection of the ACYA. MACY assesses implementation of compliance with recommendations once a year but receives updates from public bodies every six months.

<b>1. Recommendation Information</b>	
<b>Special Report Name:</b>	<b>Learning from Nelson Mandela: A Report on the Use of Solitary Confinement and Pepper Spray in Manitoba Youth Custody Facilities</b>
<b>Date Released:</b>	2/21/2019
<b>Full Recommendation:</b> (including details)	<p><b>Recommendation One:</b> 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><b>DETAILS:</b></p> <ul style="list-style-type: none"> <li>• 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>.</li> <li>• 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"> <li>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;</li> <li>2. A plan for substantial re-socialization of youth in a group setting;</li> <li>3. Offering and documenting regular mental health counseling and culturally appropriate spiritual care, if requested, to assist in the transition; and</li> <li>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.</li> </ol> </li> <li>• 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.</li> <li>• 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>.</li> </ul>

<b>Intent(s) of Recommendation:</b>	<p>The intents of the recommendation are to:</p> <ol style="list-style-type: none"> <li>1. <b>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).</b></li> <li>2. <b>Establish maximum time limits on the use of segregation.</b></li> <li>3. <b>Ensure youth are sufficiently supported when they exit isolation conditions (resocialization, active participation in process, access to mental health, spiritual care, and legal counsel).</b></li> <li>4. <b>Notify the Manitoba Advocate of any incident of segregation exceeding 24 hours.</b></li> </ol>
<b>Issue:</b>	Solitary Confinement
<b>Public Body</b>	Manitoba Justice Government of Manitoba
<b>Dates of Previous Official Updates from Public Body</b>	June 30, 2022 May 31, 2021 June 30, 2020 December 31, 2019 June 26, 2019
<b>2. Compliance Determination</b>	
<b>Limitedly Compliant 0.25</b>	Actions taken only implement a small part of the recommendation, requirements are only fulfilled to a limited degree by actions taken, resulting in significant deficiency in implementation.
<b>Self-Assessment</b>	Fully Compliant (for Intent 4) Partially Compliant (for Intent 3) Limitedly Compliant (for Intents 1 and 2)
<b>Previous Compliance Determination</b>	Limitedly Compliant
<b>3. Rationale for Determination</b> (How did you reach this compliance determination)	
<p><b>Intent 1: Align laws, regulations, and policies with international minimum human rights standards (Nelson Mandela Rules) by prohibiting the use of solitary confinement or 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).</b></p> <p><b>2022</b></p> <ul style="list-style-type: none"> <li>• 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.”</li> <li>• 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.</li> <li>• In addition, the department reported ongoing contact with youth when they are in Observation as well as therapeutic interventions upon leaving Observation.</li> </ul> <p><b>2021</b></p>	

- 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.

### 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).**

**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.**

**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:** As reported last year, Manitoba Justice is fully compliant with Intent 4, and has developed a strategy to implement the remaining intents of this recommendation. This fall, , preliminary meetings have occurred to determine a strategy for implementing Intents 1, 2, and 3, which bodes well for next year. Given Intents 1, 2, and 3 remain in early stages, Manitoba Justice remains limitedly compliant with this recommendation.