

Learning from Nelson Mandela	Recommendation One	Reported Status: (not reported)
Report Sent: February 21, 2019	Public Body: The Government of Manitoba; Manitoba Justice	
<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 Children and Youth of any incident of segregation extending over 24 hours and collaborate with the Manitoba Advocate on the development of a plan to address such incidents going forward. This measure should begin immediately. • That Manitoba Justice conduct consultations with relevant stakeholders, including the Manitoba Advocate for Children and Youth, in preparation for amending <i>The Correctional Services Act</i>. 		



Response from the Manitoba Government on June 27, 2019:

Summary of activities completed since report was released

Manitoba Justice does not practice solitary confinement, according to the accepted definition of solitary confinement and meaningful human contact. Youth interaction with staff are meaningful and intended to address the issues that led to placement in segregation.

Segregating youth for periods exceeding 18 hours is prohibited in current provincial policy, which was implemented in April 2018. While the policy exceeds expectations outlined in the Nelson Mandela Rules, the department continues to strive for minimizing the use of segregation as much as possible.

The department will be considering appropriate legislative changes in the course of our continued work on the youth justice review with Manitoba Families.

(continued below)

Analysis of Manitoba Government's Response by the Manitoba Advocate for Children and Youth:

Activities Completed:

- Manitoba Justice states that:
 - a) the department does not practice solitary confinement, according to the “accepted definition of solitary confinement and meaningful human contact,” – but acknowledges the practice of segregation;
 - b) youth interactions with staff are meaningful and intended to address the issues that led to placement in segregation.

- A Youth Observation Custodial Policy was implemented by Manitoba Justice’s Community Safety Division in April 2018, 10 months before the release of the special report, that prohibits segregating youth for longer than 18 hours.

- Manitoba Justice “strive[s]” to minimize the use of segregation “as much as possible”.

Level of Compliance

This response does not provide enough information to determine when or how the intent of this recommendation or its details will be met.

Analysis of Response

- Regardless of whether the terms ‘solitary confinement’ or ‘segregation’ are used, this recommendation calls for an end to the use of isolation or separation of youth from general population for more than 24 hours.

- This recommendation calls for a blanket prohibition of the practice, whereas the Youth Observation policy from April 2018 only applies to certain situations – therefore segregation for more than 18 hours can still occur:
 - Section IV of the policy: “this does not include a temporary restriction, ...temporary lock-down..., or seclusion for purpose of medical treatment, quarantine, or stabilization”

- The April 2018 policy does not set a maximum allowable limit on the use of segregation for youth, therefore it does not meet the intent of this recommendation.
 - The policy defines observation as “Secured alone in a cell for 18 hours or more each day” – thus, it applies a minimum number of hours and does not set a maximum limit on the number of hours a youth may be segregated.

- What are the current numbers of instances of segregation use in youth custody facilities, and how long are youth kept in segregation currently? (This information is needed in order to measure whether there has been a decrease in the number of instances of segregation use and segregation has indeed been minimized since the policy was implemented.)

- The MACY-RAP committee’s response to Recommendation 3 states that Manitoba Justice currently tracks incidents of segregation across youth custody facilities, including the time in and out of segregation, Indigenous status, gender, mental health, and reason for placement in segregation. The Manitoba Advocate will be seeking from Manitoba

<ul style="list-style-type: none"> • The policy implemented in April 2018 “exceeds expectations outlined in the Nelson Mandela Rules”. • Manitoba Justice will be considering legislative changes as it works on the youth justice review with Manitoba Families. 	<p>Justice the data that has been collected from this tracking system, from the time of the special report’s public release (February 2019) until present, which would be the current numbers for the past six months.</p> <ul style="list-style-type: none"> • The April 2018 policy does not align with the Mandela Rules, as the Mandela Rules prohibit the use of solitary confinement on children under the age of 18, yet the policy applies to segregation of children for 18 or more hours, including allowing for instances of over 24 hours of segregation. <ul style="list-style-type: none"> - Section V.3 of the policy states that youth may be kept in ‘observation’ (segregation) for 7 days, after which a review may be made. - Section V.3.i of the policy mentions that a young person may be subject to observation for 30 days. - Section V.5 of the policy states that Temporary Placements/Restrictions “that extend beyond 24 hours will transition to observation”. • How will the youth justice review work to meet the intent of this recommendation? • What kinds of legislative changes might Manitoba Justice be considering? • What is the timeline for the youth justice review? • To be addressed in the short term*: <ul style="list-style-type: none"> ○ Status of implementation ○ Information indicating a timeline for implementation
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Recommendation 1: The Government of Manitoba should ensure that the current policy on segregation of children in youth justice is aligned with the Nelson Mandela Rules.

*On September 30, 2019, the Manitoba Advocate sent a letter to the members of the government’s MACY-RAP committee and working group requesting additional information regarding the government’s progress on recommendations made by the Advocate. The Advocate communicated to the government representatives short-term questions for information that could be provided quickly. Additionally, the Advocate sent long-term questions for the government to address in future progress reports. The questions are designed to seek clarification on activities, seek evidence or documentation to support the activities, or to determine how the government’s responses are meeting the intent of the recommendations made by the Advocate. All of this information will be used by the Advocate to determine the levels of compliance with implementation, in accordance with s.11(1)(d), s.30(2)(d), and s.30(4), of *The Advocate for Children and Youth Act*.

