

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, that 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>.

Intent(s) of Recommendation:	<p>The intent of the recommendation is to:</p> <ol style="list-style-type: none"> 1. To 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). 2. To establish maximum time limits on the use of segregation. 3. To ensure youth are sufficiently supported when they exit isolation conditions (resocialization, active participation in process, access to mental health, spiritual care, and legal counsel). 4. To notify the Manitoba Advocate of any incident of segregation exceeding 24 hours.
Theme:	Solitary Confinement
Primary Department:	Manitoba Justice
Dates of Previous Official Updates from Public Body:	June 30, 2020
	December 31, 2019
	June 26, 2019
2. Compliance Determination	
Limitedly Compliant 0.25	The requirements have been fulfilled to a limited degree, resulting in a significant deficiency in the implementation.
3. Rationale for Determination	
<i>(How did you reach this compliance determination)</i>	
<ol style="list-style-type: none"> 1. To align laws, regulations, and policies with international minimum human rights standards (Nelson Mandela Rules) by prohibiting the use of solitary confinement over 22-24 hours: <ul style="list-style-type: none"> • This recommendation calls for the amendment of <i>The Correctional Services Act</i> 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 explained that there is no uptake to change the legislation; this was further reinforced by the department on September 2, 2020, that “adjustments to how observation is used can be accomplished without a change to <i>The Correctional Services Act</i>.” • Data reported under Intent #4 of this recommendation indicates that youth continue to be placed in segregation for periods exceeding 24 hours in Manitoba youth custody facilities. 2. To establish maximum time limits on the use of segregation <ul style="list-style-type: none"> • Both Standing Order 03-965 and Standing Order 997 were provided in response to this recommendation and reviewed. They demonstrate that Manitoba Justice does not have a maximum time limit on the use of segregation: <ul style="list-style-type: none"> ○ 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-centered approach, the Manitoba Advocate interprets “meaningful human contact” as determined or assessed by the youth. Conversely, Manitoba Justice, as provided in their 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.
- 3. To ensure youth are sufficiently supported when they exit isolation conditions**
- 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.
- 4. To notify the Manitoba Advocate of any incident of segregation exceeding 24 hours**
- Manitoba Justice has reported incidents of segregation, including incidents of segregation exceeding 24 hours on a quarterly basis. Upon request, they have increased their reporting to monthly beginning in June 2020. Manitoba Justice is fully compliant with Intent #4.

Manitoba Justice has been compliant only with Intent #4 of the recommendation. As a result, this recommendation is considered limitedly compliant since almost none of the requirements have been met, even if steps have been taken towards implementation.