

Learning from Nelson Mandela

A Report on the Use of Solitary Confinement and Pepper Spray in Manitoba Youth Custody Facilities

In 2015, the Manitoba Advocate for Children and Youth (MACY) received complaints on the use of solitary confinement and pepper spray in Manitoba youth custody facilities. The office collaborated with the Manitoba Ombudsman to investigate and report on the subject.

This report examines the use of solitary confinement, segregation, and pepper spray at the Manitoba Youth Centre and Agassiz Youth Centre. The purpose of this report is to increase the effectiveness and responsiveness of services for children, youth, and young adults in Manitoba.

Background

Manitoba has the highest rate of youth incarceration in Canada. The vast majority of youth in custody live with mental illness, cognitive vulnerabilities, and childhood trauma. Indigenous youth are overrepresented in Manitoba's justice system, a legacy of colonization and residential schools. Many of the difficult behaviours of youth in custody are rooted in their complex needs and histories of trauma.

Under the *Youth Criminal Justice Act* (YCJA), youth custody facilities have the responsibility to promote the rehabilitation and reintegration of youth, while respecting their human rights as enshrined by the *United Nations Declaration on the Rights of the Child* (UNCRC) and the *Canadian Charter of Rights and Freedoms*. This is a crucial responsibility since all youth in Manitoba youth custody facilities will return to communities upon completion of their sentences.

Key findings

Solitary Confinement

Being alone in a cell for more than 24 hours without meaningful human contact or mental stimulation, as defined by international experts and the Nelson Mandela Rules.

1. Manitoba's Correctional Services Regulation provides no maximum time limit on the use of segregation or solitary confinement in Manitoba youth custody facilities.
2. Solitary confinement is harmful for youth and has negative effects on their ability to rehabilitate and reintegrate into communities. Ultimately, solitary confinement may increase recidivism and compromise public safety.
3. According to the Nelson Mandela Rules, the use of solitary confinement on youth and individuals with mental disabilities should be prohibited. In Canada, solitary confinement has been found to contravene the Declaration of Principles of the *Youth Criminal Justice Act*, and to be discriminatory against Indigenous Peoples and individuals with mental illness.

Segregation

Any length of time when a youth in custody is prevented from having physical contact with other youth in custody.

4. Provincial regulations state that segregation be applied only as a last resort, only to the extent necessary, and only when no reasonable alternatives are available. However, data provided by Manitoba Justice reveal that the use of segregation is common. In one year, segregation was used 1,455 times, affecting more than one in three youth entering custody.

Data Collection and Monitoring

5. Manitoba Justice was unable to provide clear information about who, when, for what reason(s), and for how long youth were held in segregation and solitary confinement. Incident reports had to be manually cross-referenced with movement records in a time-consuming and lengthy process. To increase transparency and accountability, it is important this information be clear, accurate, and easily available.

Pepper Spray

The type of pepper spray used on youth in custody contains capsicum, an extract from hot peppers that causes intense pain, coughing, and temporary blindness. It is illegal for civilians to use pepper spray against people, as it is considered to be a chemical weapon.

6. Pepper spray use in Manitoba youth custody facilities presents significant physical risks and potential psychological risks to youth.
7. Pepper spray use in Manitoba youth custody facilities can be subject to misuse without stringent oversight.
8. Manitoba's use of pepper spray in youth custody facilities is high compared to other provinces across Canada. However, pepper spray use in Manitoba youth custody facilities has decreased significantly since 2010. This is likely due to the introduction of alternative de-escalation practices.

Alternatives

Therapeutic approaches that ensure safety without compromising the rights of children and youth, and their rehabilitation and reintegration into society. In Manitoba, these prevention strategies must be implemented through a decolonizing lens.

9. Most youth in custody live with mental illness, cognitive vulnerabilities, and childhood trauma.
10. Therapeutic approaches are more humane and effective at ensuring rehabilitation and public safety than control-based punitive approaches such as solitary confinement and pepper spray. Evaluations of mental health treatment programs in custody facilities have shown to reduce recidivism by 25-60 per cent compared to conventional approaches.

Recommendations

- (1) **END SOLITARY CONFINEMENT.** The Manitoba Advocate for Children and Youth recommends that the Manitoba government and Manitoba Justice amend *The Correctional Services Act* to prohibit the solitary confinement of youth for a period exceeding 24 hours, per the Nelson Mandela Rules.

- (2) RESTRICT SEGREGATION.** The Manitoba Advocate for Children and Youth recommends that the Manitoba government and Manitoba Justice restrict the use of any form of segregation under 24 hours in youth custody facilities through an amendment to *The Correctional Services Regulation*.
- (3) TRACK AND REPORT ON SEGREGATION INCIDENTS.** The Manitoba Advocate for Children and Youth recommends that Manitoba Justice collect, track, analyze, and report on incidents of segregation across youth custody facilities to ensure transparency and accountability.
- (4) LIMIT PEPPER SPRAY TO EXCEPTIONAL CIRCUMSTANCES.** The Manitoba Advocate for Children and Youth recommends that Manitoba Justice immediately prohibit the use of pepper spray in youth custody facilities except in situations of immediate risk to life to correctional staff or other youth in custody by amending *The Correctional Services Regulation*.
- (5) WORK COLLABORATIVELY TO ENHANCE THERAPEUTIC AND MENTAL HEALTH SUPPORTS.** The Manitoba Advocate for Children and Youth recommends that Manitoba Justice respond to the overrepresentation of youth with mental illnesses, cognitive vulnerabilities, and childhood trauma by developing an action plan with Manitoba Health, Seniors and Active Living and Manitoba Families for the implementation of evidence-informed and culturally-safe therapeutic behavioural management alternatives to solitary confinement and pepper spray, including mental health and wellness resources, with the goals of enhancing the rehabilitation and successful reintegration of youth into Manitoba communities, reducing recidivism, and improving the public safety of all Manitobans.
- (6) CREATE A MENTAL HEALTH FACILITY FOR YOUTH IN CUSTODY.** The Manitoba Advocate for Children and Youth recommends that Manitoba Justice and Manitoba Health, Healthy Living and Seniors immediately embark on the development of a specialized health facility led and run by mental health professionals to provide evidence-informed programming for youth with mental illnesses or cognitive vulnerabilities in custody, including youth who are found not criminally responsible.

Conclusion

Change is needed in Manitoba youth custody facilities. The use of solitary confinement and pepper spray as a response to youth behaviour is harmful to youth and counterproductive to the goals of rehabilitation and reintegration.

Manitoba Justice, in collaboration with Manitoba Health, Seniors and Active Living and Manitoba Families, has the opportunity to shift their response by ending current practices, and investing in a youth justice system based on effective therapeutic responses.

The evidence clearly demonstrates that methods such as solitary confinement and pepper spray do not make the public safer. It is indisputable that therapeutic approaches work and address challenging behaviours more humanely, while also lowering re-offending and increasing public safety.

Ending the reliance on solitary confinement and pepper spray and investing in mental health treatment for youth in custody is common sense.