



# Youth in Segregation

Own Motion Investigation

If you have any questions about the Alberta Ombudsman, or wish to file a complaint with us, please get in touch. We are here to help.

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# Ombudsman's Message

An important part of the Ombudsman's role in countries around the world is ensuring vulnerable communities retain their voice against unfair and unjust treatment.

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Incarcerated individuals, while subject to the authority of the correctional facility, are still entitled to confinement standards that take into account basic human rights. The government institutions responsible for housing society's incarcerated populations hold a difficult assignment. They must ensure incarcerated individuals' complex needs and behaviours meet the requirements necessary for a safe and secure environment for the inmate population as a whole.

In Alberta, youth accused or found guilty of breaking the law may be required to spend time in a provincial correctional facility. Our office receives a fair amount of complaints from inmates including from incarcerated youth in the Edmonton Young Offender Centre and Calgary Young Offender Centre.

We received a complaint about the Behaviour Incident Review process and segregation as a means to control behaviour. Youth in provincial correctional centres are guaranteed the right to make a complaint to the Ombudsman. While a single complaint is sufficient to spark an investigation by my office, the potential for misuse of segregation in a correctional setting holds greater implications. As such, we monitor closely issues of a systemic nature that transcend individual complaints and look deeper at the rights, interests and fair treatment of vulnerable Albertans.

In December 2019, I initiated an own motion investigation that looked broadly into the fairness of administrative processes and decisions that result in a young person's placement in segregation. This report describes our investigative process, provides background and context for this complex issue and outlines our findings and recommendations for improvements.

In this report, we look deeper into the adherence of Alberta's young offender centres to legislation and policy in the enforcement of a young person's placement in segregation. We investigated the adequacy of the appeal and review process related to that enforcement and the young person's access to representation during an appeal and review process of their placement in segregation.

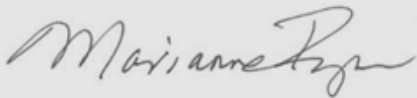
Our findings align with several conclusions made on this topic by other provincial Ombuds, advocates, independent advisors and segregation review committees across Canada. Namely, that

processes related to decisions for placement of a young person in segregation must be made in accordance with clearly articulated policy and provincial legislation.

As I conclude this investigation, I remain concerned that there is no legislative basis for the use of segregation in young offender centres in Alberta. At the time of this reporting, the practice of segregating a young person is based solely on division and centre policy. This is a deviation in that most other Canadian provinces include reasons for segregation in their relevant provincial legislation.

I believe it is in Alberta's best interest to develop legislation and put to paper laws defining and governing the use of segregation. We noted several examples from across Canada from which to learn.

We appreciate the open and collaborative approach adopted by the Young Offenders Branch within the Alberta Ministry of Justice and Solicitor General throughout this investigation. I would also like to acknowledge the professionalism and expertise of my own motion investigators whose dedication will lead to positive, long-term solutions for a complex issue.

A handwritten signature in dark ink, appearing to read 'Marianne Ryan', is positioned above the printed name.

**Marianne Ryan**  
**Alberta Ombudsman**


Marianne Ryan  
Alberta Ombudsman  
9925 – 109 Street, NW Suite 700  
Edmonton, AB T5K 2J8

Dear Marianne Ryan:

Thank you for the opportunity to respond to the report from your Own Motion Investigation on Youth in Segregation. I am grateful to you, your investigative team, and the Correctional Service Division staff who worked collaboratively in support of this investigation.

The Correctional Service Division has reviewed, and supports the recommendations made in the report. We are committed to providing open and transparent updates when requested by the Alberta Ombudsman to ensure that a timely response to the recommendations is made.

Yours truly,



Dennis Cooley, PhD  
Associate Deputy Minister,  
Solicitor General

### 3. Executive Summary

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The Young Offender Branch (YOB), within the Correctional Services Division (the division) of the Ministry of Justice and Solicitor General, is responsible for overseeing young persons who are accused or found guilty of breaking the law. These young persons are between the ages of 12 and 17 and may be held in a secure or open custody facility or sentenced to a community supervision order. Young persons can be housed at a young offender centre until they reach 20 years of age.

There are two secure custody facilities in Alberta, the Calgary Young Offender Centre (CYOC) and the Edmonton Young Offender Centre (EYOC). Each facility is managed by a director, with support from correctional staff as well as employees of Alberta Education and Alberta Health Services.

This report examines the use of segregation in the CYOC and EYOC (the centres).

The term *segregation* is commonly referred to by staff, the public and incarcerated individuals by various terms such as “seg”, time out, out-alone, placement, lock-up, solitary confinement and the “hole”. The Merriam-Webster Dictionary<sup>1</sup> defines segregation as:

*“The separation for special treatment or observation of individuals or items from a larger group.”*

**Unlike most other provinces in Canada, Alberta’s legislation is silent with respect to the use of segregation in young offender centres.**

For the purposes of this report, we define segregation as:

*A period of confinement or any condition which involves the separation of a young person from their peers.*

Although we define segregation as any separation of a young person, we recognize there are times a young person may be apart from other young persons for short periods of time, such as awaiting an appointment or visit. We do not consider this to be segregation unless the timeframe was for a prolonged period of time or the timeframe formed part of a longer period of separation for other purposes.

Our investigation found that in practice, time actually spent in segregation is difficult to measure. The centres generally capture *where* a young person is housed when it is in a location other than a regular unit and refer to this as a “placement”. However, the time spent in segregation without some type of meaningful human contact, or more specifically *what* the young person did and with *whom*, was much more difficult to analyze. Ultimately, we found that there can be a placement without segregation and conversely, segregation without a change in placement.

Based on our review, we identified four key findings and made eight recommendations for improvements to ensure young persons are treated fairly with respect to the use of segregation in secure custody facilities. The division has supported the recommendations made in this report.

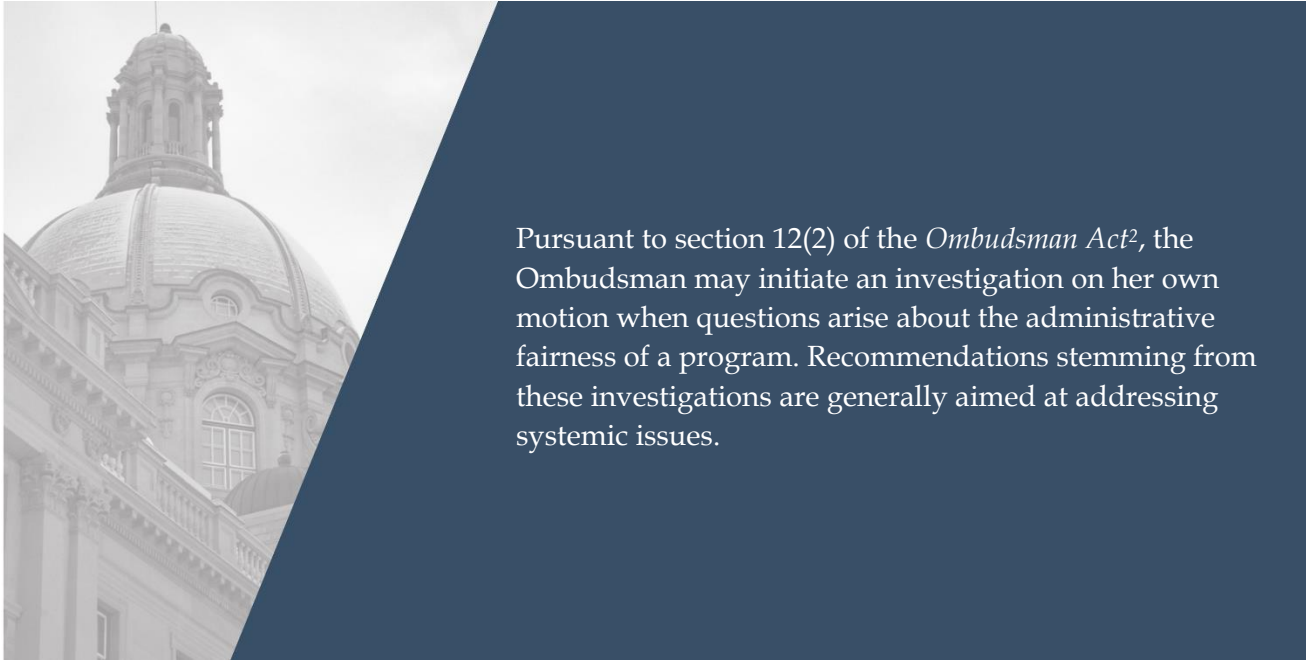
We recognize that change will take time. Our office will continue to monitor the implementation of our recommendations and will provide an update by March 2022.

### 3.1 Our mandate

Every Albertan has the right to be treated fairly in the delivery of public services. This includes young persons housed in secure custody facilities. The Ombudsman protects this right by investigating concerns and promoting standards of fairness.

As an Officer of the Legislative Assembly of Alberta, the Ombudsman reports directly to the Legislative Assembly and operates independently from the Alberta government, political parties, and elected officials. The Ombudsman has jurisdiction over Alberta government departments, agencies, boards, commissions, municipalities, designated professional organizations, and the Patient Concerns Resolution Process of Alberta Health Services. The Ombudsman is not an advocate for complainants nor a representative for government departments or professional organizations.

Through impartial and independent investigations, recommendations, and education, the Ombudsman ensures administrative fairness. People affected by an administrative decision, action or recommendation of an authority may present their concerns to the Ombudsman and she may investigate. The Ombudsman is an office of last resort. Complainants must try to resolve their complaint first through all other avenues of review or appeal before the Ombudsman can consider an investigation.



Pursuant to section 12(2) of the *Ombudsman Act*<sup>2</sup>, the Ombudsman may initiate an investigation on her own motion when questions arise about the administrative fairness of a program. Recommendations stemming from these investigations are generally aimed at addressing systemic issues.



## 3.2 Our process

This own motion investigation began as a complaint from a young person to our office about segregation. Initially we chose to open a full investigation to consider the young person's specific concerns. However, our office was aware that the issue of segregation had been a notable topic in the media<sup>3,4</sup> and in legal commentaries in Alberta<sup>5</sup>.

The Alberta Office of the Child and Youth Advocate had recently published a report, *Care in Custody - A Special Report on OC Spray and Segregation in Alberta's Young Offender Centres*<sup>6</sup>. The report included recommendations around the use of OC spray, or more commonly known as pepper spray, updated policies and standards for segregation (to include a reduction of hours that a young person be segregated), development of an impartial complaints review process, and more monitoring and public reporting of the use of OC spray and segregation.

In light of the potential systemic issues, the Ombudsman decided that segregation should be considered in a greater overall context rather than limiting our review to complaint-specific concerns. Thus as per section 12(2) of the *Ombudsman Act*, an own motion investigation was commenced on December 6, 2019 with the purpose of reviewing the administrative fairness of the decision making process for a young person's placement in segregation.

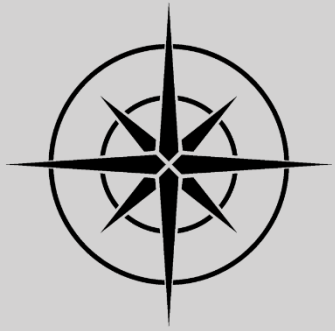
The issues we identified for the own motion investigation were as follows:

- the centres' adherence to legislation and policy in the enforcement of a young person's placement in segregation;
- the adequacy of the appeal and review process for a young person's placement in segregation; and
- a young person's access to representation during an appeal and review process of their placement in segregation.

As part of our investigation, the following was completed:

- background research including a review of relevant court cases, recently published reports related to segregation of young persons in Alberta and other Canadian provinces, and a jurisdictional scan of the segregation of young persons across Canada;
- tours of both facilities to establish an understanding of the setup for each centre;
- legislation and policy review including:
  - Alberta's *Youth Justice Act*
  - Canada's *Youth Criminal Justice Act*
  - Adult Centre Operations Branch Policies and Procedures related to segregation
  - Young Offender Branch Policies
  - CYOC Standard Operating Procedures
  - EYOC Standing Operating Procedures
  - centre forms;

- analysis of placement statistics from both centres;
- case studies of complaints submitted to our office related to segregation of young persons;
- file review of 25 incidents at CYOC and 33 incidents at EYOC;
- distribution of a questionnaire to young persons at both centres and review of feedback;  
and
- interviews with the centre directors.



**As a result of our investigation, we developed a set of balanced and fair recommendations that not only take into consideration best practices, but also those that can be reasonably implemented in Alberta.**

## 4. Background and Context

### 4.1 Demographics of young persons in custody

According to Statistics Canada's latest data (2018-2019)<sup>7</sup>, the incarceration of young persons is decreasing with 716 young persons in custody on average per day in the 12 reporting jurisdictions across Canada (excluding Quebec). In Alberta specifically, the daily count averaged 93 young persons in custody for the same reporting period. More recent statistics provided by the Young Offender Branch in Alberta demonstrate a significant decline in the daily population rate to 42 young persons in custody for the period of April 2019 to March 2020.

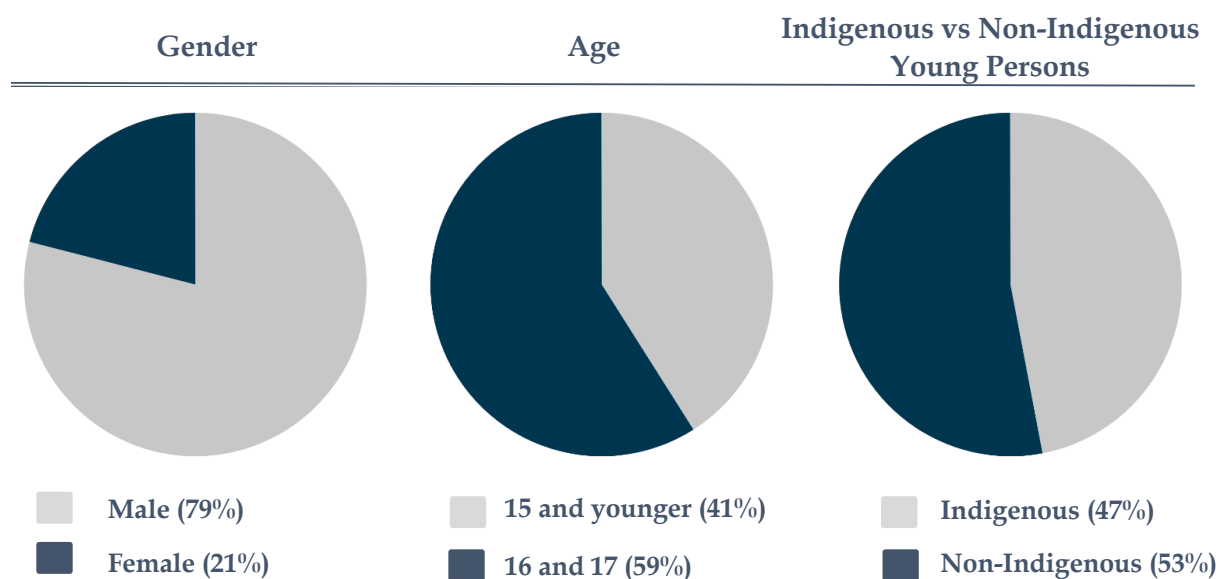
Reliable statistics on the rate of recidivism (reoffending) in Canada are lacking.<sup>8</sup> Both centre directors reported that many young persons housed in their facilities have previously been involved in the correctional system, as well as with other provincial agencies. With respect to charges that lead to incarceration, 2014 Statistics Canada data has shown that sexual offences, robbery, uttering threats, break and enter, motor vehicle theft, and theft are offences most commonly committed by young persons.<sup>9</sup>

The directors explained that young persons may bring with them a complex history and special needs due to past trauma, criminal behaviour, drug use, intellectual delays, and mental health concerns. Upon admission, many young persons in Alberta report living outside their family home (for instance on the street or in a group home) and being victims of abuse.

Statistics Canada found that provinces (excluding Quebec and Alberta) reported the following in relation to young offenders in 2018-2019<sup>10</sup>:

- over three quarters (79%) of young persons admitted into custody were male; and
- most (59%) young persons admitted to custody were aged 16 to 17 years at the time of admission.

Indigenous young persons were overrepresented. They represent close to 9% of the Canadian young person population in 2018, but constitute 47% of admissions into custody. According to Statistics Canada 2018-2019 data:



Alberta's data for fiscal year 2019-2020 mirrors Statistics Canada in terms of the overrepresentation of Indigenous young persons being admitted into custody. For the 2019-2020 reporting period, Indigenous young persons represented 48% of admissions into a secure custody facility in Alberta.

## 4.2 Unit placement and impact on privileges

Both centres are broken down into smaller living units, where young persons are "placed" or assigned for housing, as follows:

EYOC	CYOC
1 Female general population (GP) unit 2 Male GP units 1 Unit for younger and first time offenders* 1 Intensive services unit (Driftwood) 1 Isolated cells unit (Zama)	1 Female GP unit 2 Male GP units 1 Behavioural or more structured unit (Blackrock) 1 Isolated cells unit (Kitchener)

\*Since completing this investigation, the EYOC no longer has a separate unit for younger and first time offenders.

Because of the small population at both centres, most young persons are single-celled regardless of their unit. Quiet rooms, individual rooms situated close to the control desk on each unit, and "Admission and Discharge" rooms may also be temporarily used as a placement area for a young person.

While both centres have what would be considered regular general population units, a young person's privileges may still be subject to restrictions through the use of "levels". For instance, access to the unit courtyard with peers, TV, extra personal phone calls, a later bedtime, extra bedding, and snacks at the canteen could be limited or restricted based on the young person's level. A young person may be "leveled-up" or "level-dropped" based on their behaviour.

### 4.2.1 Placement of young persons with mental health concerns

If staff identify concerns about a young person's mental health or if a young person is considered to be a suicide active/risk (SA), they may remain on their regular unit or be placed in a specialized cell with a camera. If a young person is deemed SA, they are normally given specialized clothing for their safety.

Alberta Health Services staff make decisions regarding the frequency of observation checks, use of security clothing and suitable housing placement. Centre managers will only make these decisions when medical staff are not immediately available to conduct an assessment. Any decisions made by centre managers are considered to be temporary until they are reviewed by Alberta Health Services staff.

Young persons placed on a regular general population unit generally have access to the same privileges and activities as other young persons on the same unit. Young persons placed on one of the more secure units generally have many of the same privileges and restrictions as those young persons placed on the unit for disciplinary reasons, though with consideration to their unique health and safety concerns.

#### 4.2.2 Placement of young persons before and after a Behavioural Incident Review

Each centre has written procedures which define a progressive disciplinary process to address situations requiring some form of corrective action. Examples of progressive interventions are:

- verbal cue or reprimand;
- issue specific consequences;
- time out—a brief period of room or Quiet Room confinement;
- assessment of an early bedtime;
- assignment of reasonable work duties;
- loss of privileges;
- assessment of a level-drop;
- referral to a BIR;
- placement on specialized behavioural management unit; or
- referral of incident to a police agency for investigation and criminal charges.

While the first several interventions are those most frequently employed and the least formalized, the Behavioural Incident Review process or “BIR” is a formalized disciplinary process conducted at the centre level. A BIR process is initiated when there is a serious incident (an assault on staff or on another young person, for instance) or a prolonged pattern of disruptive behaviour. To initiate the BIR process, a centre staff member completes a form requesting a panel be convened to review the incident with the young person and to assign consequences, refer to programming, or other interventions to address the behaviour. A young person is usually moved to a more secure unit while awaiting review by a panel of staff members. Pictured below are cells from the secure units Kitchener at CYOC (left) and Zama at EYOC (right).



Centre procedures require that within 24 hours of the event or initiation of the request for a BIR, a panel will meet with the young person to review the incident. This panel is made up of (usually three) staff from the centre, chaired by the designated deputy director or shift supervisor. According to centre directors, panel reviews last approximately 20-30 minutes on average and normally take place in the young person's room on the secure unit.

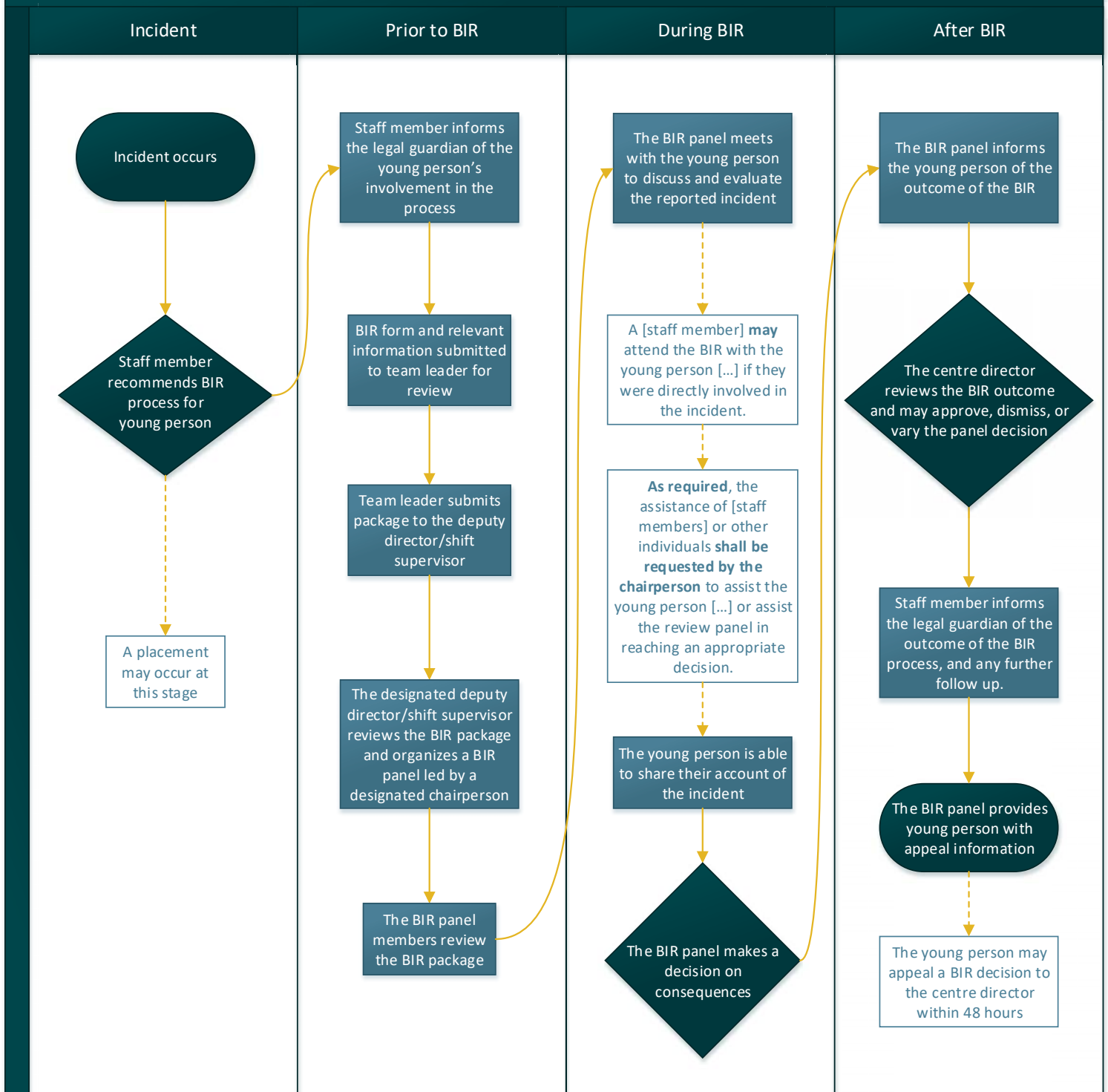
During the BIR process, staff is to ensure a young person understands why they are appearing before the panel, and the young person is to be given the opportunity to provide their version of what occurred. The consequences assessed by the panel, before issuing a decision, are determined by taking into consideration such things as the circumstances of the incident, the young person's participation during the process, and the history of the young person.

As a result of the BIR process, the panel may determine consequences such as: additional placement time on the secure unit, a drop in level upon return to the general population unit, a loss of other privileges (for example, a period of recreation), a discussion with any other young person involved, or a referral to programming or a psychologist. It is worthwhile noting that Young Offender Branch policy specifically prohibits segregation as a form of discipline.

At the conclusion of the process, a young person is to be advised they may appeal a BIR decision to the centre director who is provided a copy of the panel's report and findings, a copy of the incident report, and any other documentation for review. The director may accept the panel's recommended outcomes or may vary the decision. Centre directors explained that if not already referred by the panel, they often refer the young person to additional programming in an attempt to address the underlying issues of the behaviour.

The graphic on the following page describes the Young Offender Branch Behavioural Incident Review (BIR) process.

## Young Offender Branch Behavioural Incident Review (BIR) Process



### 4.2.3 Placement of young persons in specialized programs and units

Both centres have specialized programs and units (Driftwood at EYOC and Blackrock at CYOC) for young persons whose ongoing behaviour presents a threat to the safety and security of other young persons or staff. These programs or living units may also be used for young persons who are considered to be highly disruptive to centre operations. While participating in one of the specialized programs or when housed on one of the behaviour units, an individualized plan is developed specific to that young person, with an outline of expected behaviour and scheduled reviews. A young person is not required to be housed on one of the special units to have an individualized plan.

The division does not maintain overall statistics with respect to the length of time a young person is part of one of these specialized programs or placed on a specialized unit.

### 4.2.4 Summary of impact on privileges based on placement

Outlined below is a summary of the layout and privileges for the rooms, cells and units for both centres. This only includes the general principles and does not account for special circumstances, such as changes in placement due to COVID-19. As a reminder, a young person's privileges may be impacted without a change in placement, such as in the case of a level-drop or an individualized plan, both of which can occur on regular general population units.

Layout for rooms outside regular unit rooms						
	Calgary Young Offender Centre (CYOC)			Edmonton Young Offender Centre (EYOC)		
	Quiet Rooms (Generally not used)	Kitchener (Isolated Camera Cells)	Blackrock* (Behavioural Unit)	Quiet rooms (Separate cell on the unit)	Zama (Isolated Camera Cells)	Driftwood** (Intensive Services Unit)
Enclosed space		✓	✓	✓	✓	✓
Access to shower		✓	✓	✓	✓	✓
Toilet in room		✓	✓		✓	✓
Room is camera monitored		✓		✓	✓	
Outside window		✓	✓		✓	✓

\*Now utilizing Assinboine Unit for this purpose

\*\* While not part of the regular programming, if a young person requires, as part of a successful transition back to a GP unit, EYOC will arrange for a young person to participate in recreation, school and other programs with the regular GP units while continuing to reside on Driftwood.



## Privileges for rooms outside regular unit rooms

	Calgary Young Offender Centre (CYOC)			Edmonton Young Offender Centre (EYOC)		
	Quiet Rooms (Generally not used)	Kitchener (Isolated Camera Cells)	Blackrock* (Behavioural Unit)	Quiet rooms (Separate cell on the unit)	Zama (Isolated Camera Cells)	Driftwood** (Intensive Services Unit)
Interaction with peers			✓ (unless specific safety concern)			✓ (unless specific safety concern)
Visits with family and friends		✓ (unless specific safety concern)	✓	✓	✓	✓
Phone calls with family and friends		✓	✓	After 24 hours for disciplinary; permitted for suicide active/risk	After 24 hours for disciplinary; permitted for suicide active/risk	✓
Canteen			Items permitted level dependent			Items permitted level dependent
Radio			✓	✓	✓	✓
Books		✓	✓	✓	✓	✓
In person school			Instruction on unit			Instruction on unit
Out-of-unit community programming			✓			Programming on unit
Out-of-unit religious programming		One-on-one programming on unit	✓			Programming on unit
Recreation with peers		No peers	✓	No peers	No peers	(Unless specific safety concern)
TV			✓			
Special food		If attempting to use cutlery to self harm		✓	✓	
Special bedding		Mattress at bedtime; permitted for suicide active/risk	✓	Mattress at bedtime; permitted for suicide active/risk	Mattress at bedtime; permitted for suicide active/risk	✓
Special clothing		✓		✓	✓	

\*Now utilizing Assinboine Unit for this purpose

\*\* While not part of the regular programming, if a young person requires, as part of a successful transition back to a GP unit, EYOC will arrange for a young person to participate in recreation, school and other programs with the regular GP units while continuing to reside on Driftwood.

### 4.3 Tracking Placements and Care in Placement Records

In order to track a young person's change in status (which also normally means a change in placement), both centres enter the change into the Justice and Solicitor General's electronic inmate record management system, called the Offender Records and Correctional Administration (ORCA) program. The status changes are called "care in placement" or CIP records and are used for recording events such as a pending BIR, placements after the BIR process, suicide active or mental health concerns, medical placements or dry cell. CIPs are not entered for individualized plans or placement in a specialized unit for ongoing behaviour concerns. Each CIP has a different set of standards to be met by staff, such as specific documentation requirements, frequency of observations or changes to privileges.

The combined statistics for both centres' CIP records are provided below.

#### Care in Placement (CIP) Statistics from April 1, 2016 – March 31, 2020

	2016/2017	2017/2018	2018/2019	2019/2020
<b>Total CIP Records</b>	1147	994	1410	1132
<b>Number of Young Persons</b>	339	333	302	249
<b>Most Common Reasons for CIP</b>				
<b>Pending Youth BIR</b>	191	167	243	231
<b>Suicidal Active</b>	423	381	380	230
<b>Youth Behaviour</b>	142	116	229	177
<b>Youth BIR Outcome</b>	169	139	171	176

## 5. Our Findings and Recommendations

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With respect to our investigation, the information we obtained and cases we reviewed demonstrated that staff in Alberta's young offender centres do some things exceptionally well. Files we reviewed confirmed that centre directors are genuinely concerned about the welfare and needs of young persons in their custody and staff make substantial efforts to support young persons in accessing the services they need. We found that mental health and suicide concerns are taken seriously and that Alberta Health Services staff are actively involved in processes developed to keep young persons safe. However, we also heard from directors that mental health is a major concern for their centres and they continue to search for additional supports and programming to meet the ever growing needs of young persons in custody.

We reviewed several Canadian reports<sup>11</sup> exploring the notion of segregation. These reports outlined several conclusions on the matter, including:

- segregation should be considered as a last resort after alternative measures are considered and explored;
- adequate reasons should be provided to young persons to explain the rationale for their segregation and the length of time the segregation will last;
- adequate resources and comprehensive mental health reviews should be made available to young persons;
- timely and fair review or appeal processes be offered for segregation;
- extensive documentation, tracking and reporting requirements must be required to ensure transparency and accountability of segregation;
- clearly articulated policies should be developed to define segregation, which is sometimes misidentified as a specific physical area, rather than the condition experienced when segregated; and
- there should be set time limits for segregation and a method to manage consecutive segregations.

These reports were helpful in guiding the scope of the review by our office as we came to our own conclusions. For ease of reference, our key findings and recommended actions will be discussed in further detail and are grouped according to the issues identified for our investigation:

- 5.1 The centres' adherence to legislation and policy in the enforcement of a young person's placement in segregation;
- 5.2 The adequacy of the appeal and review process for a young person's placement in segregation; and
- 5.3 A young person's access to representation during an appeal and review process of their placement in segregation.

## 5.1 Adherence to legislation and policy in the use of segregation

### **Key Finding #1**

**There is no legislative basis for the use of segregation in young offender centres in Alberta.**

Alberta's *Youth Justice Act (YJA)*<sup>12</sup> does not reference segregation, nor by necessary implication does it authorize its use. The practice of segregating young persons in Alberta is based solely on division and centre policy. In fact, as will become apparent later in this discussion, segregation is inconsistent with the purposes and principles of Canada's *Youth Criminal Justice Act (YCJA)*<sup>13</sup>.

Alberta's *Youth Justice Designation Regulation* (the Regulation)<sup>14</sup> defines two levels of custody: secure (in a centre under direct supervision) and open custody (in the community under supervision of a youth worker or peace officer). With respect to secure custody facilities, the Regulation stipulates there will be only one level of custody in accordance with section 85(2)(a) of Canada's YCJA.

The lack of legislative authority for the use of segregation in Alberta was noted as an issue of concern in a 2018 Provincial Court of Alberta case, *R v. CCN*.<sup>15</sup> In this case, the court considered charges stemming from an incident that occurred at EYOC whereby the young person (CCN) was criminally charged. In reviewing the circumstances of the young person's custody, the court determined CCN had been housed up to 23 hours per day in the Zama and Behavioural Management Unit (now called Driftwood).

The crown prosecutor argued section 85 of the YCJA authorized different levels of custody. The defense counsel did not challenge the constitutionality of any legislation per the decision as there was no applicable legislation to challenge given the YCJA does not authorize the use of segregation.

The court determined there is no legislation related to the use of segregation for a young offender in Alberta. The judge relied on the "Nelson Mandela Rules" (*United Nations Standard Minimum Rules for the Treatment of Prisoners*)<sup>16</sup>, which give guidance on all aspects of prison management, from admission and classification to the prohibition of torture and limits on segregation. In accordance with the Nelson Mandela Rules, segregation (or solitary confinement) means the confinement of a prisoner for 22 hours or more a day without meaningful human contact. Additionally, the court considered section 9 of the *Canadian Charter of Rights and Freedoms*<sup>17</sup>, which states everyone has the right not to be arbitrarily detained or imprisoned.

The court found that CCN was essentially placed in "*a prison within a prison*," without a review before an independent tribunal and the assistance of counsel or a guardian (in contravention of the *United Nations Convention on the Rights of the Child*<sup>18</sup>). The judge also stated the segregation contravened the principles and purposes of the YCJA by failing to focus on rehabilitation and reintegration. The charges against CCN were stayed.

Our office conducted a jurisdictional scan of the legislation of other provinces regarding young persons in segregation. We found that there was a legislative basis for segregation in most provinces. The terminology used in legislation varied from segregation to secure de-escalation, close confinement, separate confinement, and secluded room time.

The content of young offender legislation across Canada in relation to segregation can be organized into the following general categories:

- who is authorized to make the decision for segregation;
- timeframes for segregation and release;
- whether reasons for segregation are provided to young persons, by whom, and in what form;
- the ability to appeal or request a review of a segregation decision;
- reporting information on the number and duration of a segregation;
- observation of, and contact with, a young person while in segregation; and
- whether rights and privileges are restricted during segregation.

Most legislation includes the basic reasons for segregation to be endangering others, the facility and its operations. Other reasons for segregation outlined in legislation include instances of intent to harm, counselling others, being a danger to one's self, threatening or likely to threaten others, use of intoxicants, or medical reasons, as well as at the inmate's request. The general purposes for segregation are stated to be to regain control and safety in a facility, though some legislation states that segregation can be used as punishment. Most legislation also mandates segregation may only be used in instances when no other less restrictive method is practical.

In relation to observation of, and contact with, a young person while in segregation, Saskatchewan's *Youth Justice Administration Act* has the most detail. Saskatchewan's legislation specifically mandates a facility must maintain "meaningful human contact" during segregation and defines that term as:

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*"...interaction with the young person that is significant, relevant, purposeful and individualized, and that goes beyond the daily operational routine of the custody facility to contribute to the young person's rehabilitation and successful reintegration into the general facility population or the community."*

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In Alberta, the *Youth Justice Act* does not provide a legislative basis for the segregation in use at young offender centres in the province. While our jurisdictional scan found that legislation did not necessarily speak to each of the above categories, most other provinces do have some sort of legislative basis for segregating a young person. Each approach to codifying the use of segregation is unique and varies in level of detail. Alberta should acknowledge the use of segregation at the legislative level and there are several noteworthy examples to use as a framework.

Our office recognizes centre directors are required to balance the safety and security of the centre with the well-being of a young person in custody. Likewise, a young person's behaviour can require the use of creative and sometimes complex solutions to ensure their safety and security, the safety and security of other young persons in custody and the staff who work in the centres.

The use of segregation on a young person's overall physical and mental well-being cannot be overlooked.



According to the John Howard Society of Alberta (JHSA)<sup>19</sup>, the risks associated with segregation include: exacerbating mental health issues, PTSD, anxiety, developmental immaturity in adolescents, chronic headaches, hallucinations, shifting sleep patterns, cardiovascular and respiratory issues, and lack of adequate exercise.

Further, research obtained by the JHSA<sup>20</sup> suggests that young persons are more susceptible to the effects of segregation because they are in a developmental stage that requires constant stimulation.

The federal government, recognizing the need for a revised program in relation to segregation tabled Bill C-83, *An Act to amend the Corrections and Conditional Release Act and another Act*, which received royal assent on June 21, 2019<sup>21</sup>. The new legislation overhauled the use of segregation within facilities under the jurisdiction of the Correctional Service of Canada. Bill C-83 establishes a new “structured intervention unit” or SIU, where inmates are given a minimum of four hours a day outside their cell, with at least two of those hours dedicated to “meaningful human contact”, such as social programs or mental health care that could help them return to the general population.

In addition, Bill C-83 requires:

- the SIU be only considered when required for safety and security reasons and no reasonable alternative exists;
- reasons be provided (orally in one day and in writing within two days);
- inmates placed in SIU are afforded the same rights “...except for those that cannot be exercised due to limitations specific to the structured intervention unit or security requirements,”;
- that a minimum of four hours outside cell between hours of 7 a.m. – 10 p.m. (to include minimum of two hours meaningful contact) be provided;
- ongoing health and mental health assessments;

- the establishment of an external decision maker to conduct a case review when SIU does not follow timeframes outlined in the Bill, at other regular intervals, and if the Committee allows the inmate to remain in SIU after a medical professional has recommended alteration to placement in SIU; and
- the correctional plan be updated when placed in SIU, “...in consultation with the offender, in order to ensure that they receive the most effective programs at the appropriate time during their confinement in the structured intervention unit and to prepare them for reintegration into the mainstream inmate population as soon as possible.”

In the case of the Correctional Service of Canada, “meaningful human contact” is defined as the opportunity to interact with others, for a minimum of two hours daily, through programs, interventions and services that make progress towards the objectives of a correctional plan or that support reintegration into general population and leisure time.

Examples of meaningful human contact include:

- visits and phone calls;
- educational, social, correctional, cultural and spiritual programs and services, including those in conjunction with community partners;
- leisure activities (structured and unstructured that encourage a healthy, pro-social lifestyle and constructive use of time);
- court or medical visits outside the facility; and
- time out of cell spent with others.

Bill C-83 provides exceptions when the requirement for meaningful contact may not be met such as: the inmate’s refusal, and lack of compliance with reasonable instructions to ensure safety and security, including in the case of riots, fires and natural disasters. These instances are to be clearly documented.

In accordance with the *R v. CCN* court case:

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***[72] “If judges are so restricted under the YCJA following a sentencing hearing, it logically follows that any capacity of corrections officials to confine a young person in solitary confinement should be narrowly interpreted, and does not exist in the absence of clear and specific legislation.”***

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When amending policies on segregation, the division must consider the definition of segregation or “solitary confinement” as defined by the Nelson Mandela Rules and referenced by *R v. CCN* in its use. It is the position of our office that there be a legislative basis for the use of segregation in Alberta.



### Recommended Action #1

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**The division work with the Ministry with the goal of amending the *Youth Justice Act* to define the use of segregation in young offender centres.**

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### Recommended Action #2

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**The division amend their policies and processes to mandate that no young person be segregated for longer than 22 hours in a 24-hour period without meaningful human contact.**

**These policies and processes should include, at a minimum:**

- **a clear definition of meaningful contact, to reflect the types of contact that promote the principles and purposes of the YCJA, with a focus on rehabilitation and reintegration;**
  - **exceptions to the minimum meaningful contact requirement should be well defined, be limited in time and scope, and be documented;**
  - **guidelines for regular, comprehensive, and documented reviews of the use segregation at the EYOC and CYOC; and**
  - **a requirement to report exceptions and the outcome of centre reviews to the YOB.**
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During our investigation, we further noted that Young Offender Branch policies are silent on schooling and there are no standards concerning segregation impacts on schooling. Our file review determined that young persons placed on units such as Zama and Kitchener were typically not attending regular schooling. During our interviews with centre directors, it was clarified that if a young person is unable to attend school in person, a teacher may visit with the student on their unit. We found that documentation related to schooling during segregation was often lacking.



Young persons reported to our investigative team that although they were able to continue their learning in some subjects while segregated, at times they were restricted from attending in-person classes, potentially impacting their timelines to graduate and in turn future employability.

Alberta's *Education Act* (the Act)<sup>22</sup> stipulates that a resident of Alberta between the ages of 6 and 18 has the right to an education program. In fact, the Act makes it compulsory for students up to age 16 to attend school or be subject to an appearance before the Attendance Board. While schooling in a provincial centre obviously presents unique challenges, the importance of a young person attending school cannot be overlooked.

Our office recognizes that there are situations where it is not possible for a young person in custody to attend school. However, Alberta legislation clearly states that schooling is a right, not a privilege. As such, unless a decision is made by the school board to officially remove a student from a program, it is the position of our office that centre staff should not be preventing a young person from attending school except in limited and defined circumstances.

### **Recommended Action #3**



**The division mandate that school attendance shall not be withheld from a young person by centre staff. Exceptions to this requirement should be well defined in policy, be limited in time and scope, and be well documented.**

### **Key Finding #2**

**While there is policy and procedure for the use of different placements, policies are inconsistent and the use of segregation is not well defined, tracked or documented.**

Young Offender Branch policy states the purpose of placements are to maintain an appropriate level of security and safety, and mandates they are not used for disciplinary reasons. Our team was advised that placement is only used as a behaviour intervention tool and not for disciplinary reasons.

However, branch and centre policies' terminology is inconsistent as it relates to placement and whether it is used for disciplinary purposes. As an example, we noted a centre SOP's subject to be "*Placement Authority for Disciplinary Reasons*". Further, centre care in placement types include "Disciplinary Segregation" as a data entry option. While we recognize that the ORCA database is shared between youth and adult corrections, between April 1, 2019 and March 31, 2020, the use of a placement for a disciplinary reason was reported approximately 130 times at EYOC, and approximately 120 times at CYOC.

Our investigation found other inconsistencies in the application of policy particularly in relation to the BIR process. For example, we noted that the Young Offender Branch's policy states that a staff member inform the legal guardian of the young person's involvement in the process, the outcome, and any further follow up. While the process form includes an area to document that a guardian has been contacted, our file review determined that the contact being documented is occurring after the incident, but before the BIR panel hearing. Throughout our file review, we could not locate any documentation to confirm if guardians were being contacted after the process was completed to notify them of the outcome.

During our interviews, centre directors spoke to the importance of an impartial BIR panel. However, we found that division policies and centre procedures were inconsistent concerning this standard. Our file reviews found several cases in which staff involved in an incident acted as a member of the panel which contradicts the notion of impartiality.

It is the position of our office that Young Offender Branch and centre specific policies should be consistent in their approach and congruent with each other.

#### **Recommended Action #4**

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**In conjunction with Recommended Action #2, the division should:**

- **clearly define segregation and its intended use in policy; and**
  - **undertake a full review of YOB and centre policies related to segregation and placement and make amendments as appropriate, where inconsistencies are found.**
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In order to consider the amount of time a young person is segregated, our office analyzed the care in placement (CIP) data maintained by the centres. We found that while CIP records are tracked, it was difficult to draw conclusions from the data we received. CIPs that occurred back-to-back had to be manually counted to capture instances in which placement continued under different categories. Additionally, concurrent CIPs for one young person cannot be captured.

As previously indicated, the ORCA system is a shared database between adult corrections and the young offender centres. The branch advised our team that this accounts for some inaccuracies in the CIP data. Specifically, instances in which a disciplinary CIP was recorded for a young person are a result of staff incorrectly selecting a CIP type intended for use in adult corrections. Further, Young Offender Branch policy does not explicitly define each type of CIP or dictate which type and reason should be selected in ORCA for different circumstances. Centre directors indicated that staff are trained on selecting CIP types however, we heard that there may be simply too many options in the ORCA pull down menu, which also contributes to inconsistency.

See below a summary of the different care in placement types and reasons recorded by centre staff:

Type	Reason
Administrative	Behaviour
Administrative	Pending Youth BIR
Administrative	Pending OIC
Administrative	Administrative Decision
Administrative	Unit Discipline
Disciplinary	Youth Behaviour
Disciplinary	Youth BIR Outcome
Disciplinary	OIC Hearing Result
Youth Placement	Pending Youth Behaviour
Youth Placement	Youth Behaviour
Youth Placement	Youth BIR Outcome

Between April 1, 2019 and March 31, 2020, there was a total of 249 young persons involved in 1,132 CIP instances. EYOC had 218 young persons admitted to the centre, 136 of which were involved in some sort of placement. CYOC had 214 young persons admitted to the centre, 113 of which were involved in some sort of placement.

With respect to back-to-back placements, drawing conclusions becomes even more complicated. An example of a back-to-back placement we noted is as follows:

- first, a CIP is initiated as “Pending Youth BIR” to reflect the time spent in placement while the young person awaits their BIR process;
- after the process is completed, the first CIP is ended and a second CIP is initiated as “BIR Outcome” to reflect the remaining time spent in placement after the BIR process has been completed; and
- then, if during the “BIR Outcome” time, the young person is determined to be a suicide risk, the second CIP will be ended and a third CIP will be initiated as “Suicide Active” to reflect these mental health concerns (because we learned that a Suicide Active CIP will always take priority over other types of CIPs).

As such, while all of these placements are recorded as separate incidents, they contribute to a larger, single instance of a young person being separated from their peers. We found over 500 back-to-back incidents resulting in placements over 24 hours.

We found that in practice the centres considered a placement in a specific area of the facilities to meet the definition of segregation, rather than focusing on the experience of being segregated. Since the centres maintain statistics on young persons' care in placements, ultimately the centres are not tracking the actual time a young person is segregated – they are generally tracking the location but are missing the purpose and in turn, the time period.

While the centres advised that the specialized behaviour units operate more closely to a regular general population unit rather than segregation, it was difficult for our office to review this information as these placements are not tracked and documented under the current CIP types, as previously indicated.

In the court case, *R v. CCN*, it is noted that although staff:

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*[43] "... testified that the 23 hours a day is a maximum because of generous opportunities provided to youth in segregation to meet with or telephone professionals and other persons, the Crown did not provide any evidence substantiating that CCN was ever provided any such 'generous' opportunities."*

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Despite Young Offender Branch policy providing standards for documentation, our file review mirrored the conclusions of the *R v. CCN* case; time spent out of cell and meaningful human contact are not being adequately documented.

Our investigation also determined that despite existing Young Offender Branch policies, information being documented in ORCA case notes is inconsistent within and between centres for care in placement records.

Further, our review found that the documentation was often being duplicated in multiple locations (ORCA case notes, observation reports, off-unit case notes and shift logs).

While it is not reasonable to expect zero errors in manually collected information, some of the errors may be related to differences in policies and processes for each centre, as well as the duplication of documentation for parallel information. In conjunction with the recommended change to policy for the definition of segregation and meaningful contact, we suggest the overall use of CIPs and related documentation should be reviewed in order to address these findings.

#### **Recommended Action #5**

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**The division should develop a tracking process that captures the amount of time a young person is segregated, regardless of the CIP or housing placement, and the time spent by day engaging in meaningful human contact.**

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#### **Recommended Action #6**

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**The division should conduct a needs assessment regarding the documentation captured in an effort to streamline the type and amount of documentation kept for each young person.**

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## 5.2 Adequacy of the appeal and review process for the segregation of young persons

### **Key Finding #3**

**Current policy does not provide adequate appeal or review processes for instances of segregation. There is a lack of documentation to confirm that young persons are being advised of the appeals and reviews that are provided in policy.**

Our review of current policy determined that the only type of segregation with a formal appeal process is when a young person is involved in a Behavioural Incident Review (BIR). While policy provides that young persons have the right to appeal any imposed disciplinary action and to be advised of this right, there is no documentation that suggests young persons are being advised of this appeal option.

Additionally, policy only speaks to the appeal of a “disciplinary action” and there does not appear to be an appeal process available to young persons segregated for reasons unrelated to behaviour. For example, if a young person is segregated as a result of being deemed ‘Suicide Active’, there does not appear to be any policy which speaks to their right to request an appeal or review of a segregation for this reason. We recognize the segregation decision in this example is typically made by Alberta Health Services, not centre staff. However, policy could provide guidance to staff on referring young persons to appropriate resources for further assistance or to discuss this decision (in the case of a decision made by Alberta Health Services staff, centre staff could advise the young person to contact the Patient Concerns Resolution Process).

With respect to a BIR, policy requires that a young person be advised of their right to appeal at the conclusion of the process. While the appeal information appears to be included in the Centre Orientation Manual kept at each unit desk, it is the position of our office that the most important time for a young person to be informed of their right to appeal is at the conclusion – when this information is pertinent. Our file review found no documentation to confirm young persons are being advised of their right to appeal the BIR outcome and notably, of the files we reviewed, it was not apparent that any young person exercised the right to request an appeal or review.

Our office also observed that policy requires the panel to inform a young person of the BIR outcome. Of the files that we reviewed, we found that some BIR forms included a detailed summary of the discussion with the young person, confirming that the outcome was explained. However, in other cases, we found documentation was lacking in this regard and we were often unable to confirm if the outcome was explained to the young person. In fact, some documentation made it unclear whether the young person participated in the BIR process at all.

## **Recommended Action #7**

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**The division should amend their policies to:**

- **afford a young person the right to request a review of any segregation decision made by the centre staff and explain when and how a young person is advised of their right;**
- **explain the process to provide referral to a young person who wishes to request a review of a decision not made by centre staff; and**
- **require that information concerning appeals and reviews be readily made available on all units and within the centre and unit manual.**

**The division should ensure that the BIR form is updated to require the documentation of the panel's explanation to the young person of their right to appeal the BIR outcome. Staff should be reminded of the importance of documenting the explanation of the consequences provided to the young person.**

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### 5.3 Access to representation during the appeal and review process of a decision that results in segregation

#### **Key Finding #4**

**Current policy does not adequately explain a young person's access to representation during the appeal and review process of a decision that results in segregation.**

Overall, there is no clear policy on whether a young person is to be afforded access to representation during any appeal or review of segregation. This includes the review afforded by policy of a BIR decision, as well as segregation where currently a review or appeal is not outlined, to include for example mental health or dry cell.

In the court case, *R. v. CCN*, the judge references Article 37 of the United Nations *Conventions on the Rights of the Child* (the Convention) which states:

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*[79] "Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action."*

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The judge concluded that in this case,

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*[80] "CCN was not provided with a review before an independent tribunal and the assistance of counsel or a guardian."*

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Further to a review or appeal of a BIR decision, it is unclear whether a young person is to be afforded the opportunity to have some form of representation during the process. According to policy, a chairperson may request assistance from elders, psychologists, a key staff member, intervention workers, or other individuals, to assist the young person in understanding the proceedings. Centre policies permit a centre staff member to attend the BIR process and provide support to the young person. Policy does not explicitly state whether a young person has the right to be informed of, and request, representation (counsel, advocate, or guardian), prior to the commencement of the process.



During *R. v. CCN*, EYOC staff explained that at that time:

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[34] *“Youth are not advised of any right to have an advocate or lawyer present before a behavioural incident review panel, and the panel consists of the shift manager and corrections staff.”*

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We received information about centre expectations regarding notifying young persons about a right to representation prior to a BIR. At one centre we heard there was an expectation that staff inform young persons of this right during the BIR process. At the other, we were advised young persons are not informed about their access to representation. The policy does not speak to a right to representation and our file review elicited no documented examples from either centre related to information about representation or a support person being shared by staff, or utilized by a young person.

It is our position that a young person should be afforded the opportunity to speak to a trusted representative or guardian who may assist them during the process, as well as other applicable instances of segregation as defined in policy. However, we recognize that the Young Offender Branch must weigh the young person’s access to representation with the potential of a lengthy delay in a process, such as a BIR panel, while attempting to contact the young person’s representative. This delay could result in a longer period of segregation for that young person. In order to address this, we suggest that the Young Offender Branch consider incorporating language in the policy that considers these circumstances and how delays will be mitigated.

#### **Recommended Action #8**

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**The division’s policy in Recommended Action #7 should:**

- **clearly explain that a young person may have a representative to assist them during a BIR process, which would not only include the BIR panel process, but also the appeal process, when applicable;**
- **define who may act as a representative for a young person and provide guidelines to mitigate delays when a young person has requested representation; and**
- **require that information concerning representation be readily made available on all units and within the centre and unit manual.**

**The BIR form should be amended to require that staff document when a young person is informed about access to representation, as well as the young person’s decision on whether to request representation.**

**The division should also review and subsequently outline in policy, when access to representation is available to young persons in relation to other decisions resulting in segregation.**

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## 6. Summary of Recommendations

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**Recommended Action #1:** The division work with the Ministry with the goal of amending the *Youth Justice Act* to define the use of segregation in young offender centres.

**Recommended Action #2:** The division amend their policies and processes to mandate that no young person be segregated for longer than 22 hours in a 24-hour period without meaningful human contact.

These policies and processes should include, at a minimum:

- a clear definition of meaningful contact to reflect the types of contact that promote the principles and purposes of the YCJA, with a focus on rehabilitation and reintegration;
- exceptions to the minimum meaningful contact requirement should be well defined, be limited in time and scope and be documented;
- guidelines for regular, comprehensive and documented reviews of the use segregation at the EYOC and CYOC; and
- a requirement to report exceptions and the outcome of centre reviews to the YOB.

**Recommended Action #3:** The division mandate that school attendance shall not be withheld from a young person by centre staff. Exceptions to this requirement should be well defined in policy, be limited in time and scope, and be well documented.

**Recommended Action #4:** In conjunction with Recommended Action #2, the division should:

- clearly define segregation and its intended use in policy; and
- undertake a full review of YOB and centre policies related to segregation and placement, and make amendments as appropriate, where inconsistencies are found.

**Recommended Action #5:** A tracking process that captures the amount of time a young person is segregated, regardless of the CIP or housing placement and the time spent per day engaging in meaningful human contact should be developed.

**Recommended Action #6:** The division should conduct a needs assessment regarding the documentation captured in an effort to streamline the type and amount of documentation kept for each young person.

**Recommended Action #7:** The division should amend their policies to:

- afford a young person the right to request a review of any segregation decision made by centre staff and explain when and how a young person is to be advised of this right;
- explain the process to provide a referral to a young person who wishes to request a review of a decision not made by centre staff; and
- require that information concerning appeals and reviews be readily made available on all units and within the centre and unit manual.

The division should ensure that the BIR form is updated to require the documentation of the panel's explanation to the young person of their right to appeal the BIR outcome. Staff should be reminded

of the importance of documenting the explanation of the consequences provided to the young person.

**Recommended Action #8:** The division's policy in Recommended Action #7 should:

- clearly explain that a young person may have a representative to assist them during a BIR process, which would not only include the BIR panel process, but also the appeal process, when applicable;
- define who may act as a representative for a young person and provide guidelines to mitigate delays when a young person has requested representation; and
- require that information concerning representation be readily made available on all units and within the centre and unit manual.

The BIR form should be amended to require that staff document when a young person is informed about access to representation, as well as the young person's decision on whether to request representation.

The division should also review and subsequently outline in policy, when access to representation is available to young persons in relation to other decision resulting in segregation.

## 7. Endnotes

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<sup>1</sup> Merriam-Webster Dictionary, definition of *segregation*.

<sup>2</sup> *Ombudsman Act*, RSA 2000, c O-8.

<sup>3</sup> Kathleen Harris, CBC news article *Court orders new rules for holding prisoners in solitary confinement*.

<sup>4</sup> Andrea Huncar, CBC news article *2,000 days in solitary and counting: Federal reforms to segregation flawed, say prisoner rights advocates*.

<sup>5</sup> University of Calgary, Faculty of Law, *Administrative Segregation and the Charter of Rights and Freedoms*.

<sup>6</sup> Alberta's Office of the Child and Youth Advocate, *Care in Custody – A Special Report on OC Spray and Segregation in Alberta's Young Offender Centres*, September 2019.

<sup>7</sup> Statistics Canada, *Adult and youth correctional statistics in Canada*, 2018/2019.

<sup>8</sup> Uswah Ahsan, *Is Our Justice System Working? The Case for Recidivism Data*, 2019.

<sup>9</sup> Statistics Canada, *Young adult offenders in Canada*, 2014.

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<sup>11</sup> Office of the Provincial Advocate for Children and Youth, *It's a Matter of Time: Systemic Review of Secure Isolation in Ontario Youth Justice Facilities*, 2015.

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<sup>12</sup> *Youth Justice Act*, RSA 2000, c Y-1.

<sup>13</sup> *Youth Criminal Justice Act*, SC 2002, c 1.

<sup>14</sup> Youth Justice Designation Regulation, Alberta Regulation 322/2009.

<sup>15</sup> R v CCN, 2018 ABPC 148 (CanLII).

<sup>16</sup> United Nations, *United Nations Standard Minimum Rules for the Treatment of Prisoners (The Nelson Mandela Rules)*, 2016.

<sup>17</sup> *The Constitution Act*, 1982, Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11.

<sup>18</sup> United Nations Human Rights, Office of the High Commissioner, *Convention on the Rights of the Child*, 1990.

<sup>19</sup> The John Howard Society of Alberta, Infographic: Solitary Confinement, 2020.

<sup>20</sup> The John Howard Society of Alberta, Fact Sheet: Solitary Confinement, 2019.

<sup>21</sup> Parliament of Canada, Bill C-83, *An Act to amend the Corrections and Conditional Release Act and another Act*, June 2019.


<sup>22</sup> *Education Act*, SA 2012, c E-0.3.

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