

Solitary Confinement for Incarcerated Youth: Further Exacerbating the Problem

By: Sarah Thiessen

Two reports have recently been released about the treatment of incarcerated youth. The reports were created by the Manitoba Advocate for Children and Youth and the Manitoba Ombudsman. The focus of these reports relates to the province's two youth correctional facilities.

There was a consistent finding of the use of segregation, this affected more than one in three youths entering custody. (1) There are reported cases of youth being held in solitary confinement for 400 consecutive days. Other reported case described the use of solitary confinement for weeks on end.

The central issue to this is that there is currently no maximum time limit for how long a youth can be kept in solitary confinement in Manitoba's youth custody facilities. (2)

A former Manitoba Justice employee commented on how heartbreaking the situation is "they go from the [Child and Family Services] system to the youth centre to segregation...this is the beginning laying the foundation for their adult life, and it's been nothing but a struggle". (3)

Manitoba Justice made statements that they intend to follow the recommendations from the ombudsman. However, the most essential recommendations such as limiting segregation and offering more mental health supports were ignored.

To fully understand the difficulties of young individuals who are incarcerated, an understanding of their past upbringing and current life situations need to be examined. Studies contained in the Manitoba Advocate's Report estimated the following statistics:

- 92 percent of youth incarcerated have endured trauma such as physical or sexual abuse prior to custody
- 80 percent have been sexually exploited by adults before entering custody
- Between 11% and 22% have Fetal Alcohol Spectrum Disorder, believed by experts to underestimate the prevalence of the issue
- Nearly half of youth have borderline to lower intellectual functioning, with 14% having extremely low functioning (IQ below 70) (4)

In comparison to other Canadian provinces, per capita Manitoba places more youth in jail than any other province or territory in the country. (5) From this report, there are six formal recommendations made to the Manitoba government.

First, the recommendation is to end solitary confinement of youth. The second recommendation is to enhance restrictions and better monitoring of segregation under 24 hours in a day. The third recommendation is for better records and monitoring of the data for youth in custody. The fourth recommendation is the ban of the use of pepper spray on youth unless there is an immediate risk to someone's life. The fifth recommendation entails a partnership between Manitoba Justice and Manitoba Health and Manitoba Families for more informed and culturally safe therapeutic behavioural management alternatives instead of the use of solitary confinement or pepper spray. The final recommendation is for the government to work together for youth in custody to receive health care they require. (6)

The *Youth Criminal Justice Act* (YCJA) is federal legislation that governs the provincial youth justice system. (7) The YCJA explicitly states that youth correctional facilities “have the responsibility to ensure the safety of youth in custody and work to rehabilitate and reintegrate them into the community while protecting their rights”. (8) Manitoba has the highest rate of youth incarceration in Canada. (9) With such a high rate of incarceration it becomes challenging to assist each individual with rehabilitation and reintegration. When youth are subjected to solitary confinement, opportunities such as programming and rehabilitation become non-existent because of the limitations of such confinement.

As things stand now, the reports released remain as recommendations. Nothing is set to substantially change. To individuals not familiar with the system the issues of youth incarcerated remains out of sight and out of mind. Without a full understanding of the disadvantages, life circumstances and potential mental health issue or disabilities that youth face prior to committing crimes—the complete picture is not understood. The overuse of solitary confinement has been criticized throughout the years, but most of the criticism is directed towards the negative effects on adult confinement.

In 2015, there was an adoption of the Revised Standard Minimum Rules for the Treatment of Prisoners, this was also known as the Mandela Rules. (10) These *Mandela Rules* stipulate a prohibition on solitary confinement for certain types of individuals and hold a fifteen-day maximum on solitary confinement overall. (11) “Social science evidence shows that solitary confinement often has harmful physical and psychological effects on prisoners, with stronger evidence of harm for cases of prolonged periods of confinement”. (12) There has been significant movement or advocacy in regards to solitary confinement with the negative effects that it has had on adults well-being and mental health, with little attention to the difficulties that youth face.

Youth are recognized as being less morally blameworthy than adults. This in principle is discussed within the YCJA. Clearly, being incarcerated as a youth would rank amongst the highest of traumatic lifetime stressors that young individuals may face. (13) “Younger prisoners are less able to cope with the stress of imprisonment and experience much higher levels of anxiety as a result of having been deprived of their families and social networks”. (14)

Another consideration is that a youth sentence may be ordered longer in duration than the individual is able to stay within a youth custody facility. Often in those circumstances, once the individual youth turns 18 and there is time left to serve their sentence, they are transferred to an adult facility.

Youth and adult facilities differ in many respects, but there is no intermediate stage of incarceration. Many reports and recommendations have been investigated to assist or look at preventative measures for young adult offenders within adult correctional facilities. (15) Unfortunately, Canada remains silent in this respect.

Solitary confinement is bound to have profound effects on any individual. In any type of facility, it should be used as a last resort. The 15-day cap on solitary confinement for adults still is a large extended period of time. Manitoba Justice needs to re-think the reliance of solitary confinement for youth who are incarcerated. Most often, those youth are the most vulnerable in society to begin with. Subjecting them to extended periods of solitary confinement will only continue to exacerbate the problems these youth already face.

1. Laychuk Riley, "Fear doesn't rehabilitate our youth: Southern chiefs call for changes after reports on youth in custody" Feb 23 2019 CBC News.
2. *Ibid*
3. *Ibid*
4. Manitoba Advocate for Children and Youth, (2019), *Learning from Nelson Mandela: A report on the use of solitary confinement and pepper spray in Manitoba youth custody facilities*. Winnipeg, MB: Manitoba Advocate for Children and youth at pg 8.
5. *Ibid*.
6. *Ibid* at pgs 10-11.
7. YCJA
8. *Supra* note 4, at pg 13.
9. *Ibid* at pg 14.
10. Peirce Jennifer (2018) "Making the Mandela Rules: Evidence, Expertise, and Politics in the Development of Soft Law International Prison Standards" 43 Queen's LJ 263.
11. *Ibid* at pg 3.
12. *Ibid* at pg 10.
13. Peterson-Badali, Michele and Cesaroni Carla, (2017) "Ashley Smith and Incarcerated Young Women: Marginalized at Any Age" 32 No 2 Can LJ & Soc' 249 at pg 3.
14. *Ibid*.
15. *Ibid* at pg 12.