

18th Legislative Assembly of the Northwest Territories

Standing Committee on Social Development

Report on the Review of
Bill 45: *Corrections Act*

Chair: Mr. Shane Thompson

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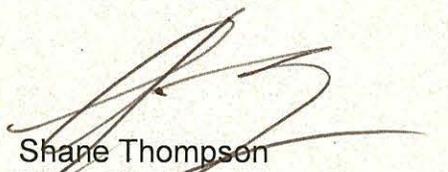
Legislative Assembly
Assemblée législative

AUG 20 2019

SPEAKER OF THE LEGISLATIVE ASSEMBLY

Mr. Speaker:

Your Standing Committee on Social Development is pleased to provide its Report on the Review of Bill 45: *Corrections Act*.



Shane Thompson
Chair, Standing Committee on
Social Development

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

REPORT ON THE REVIEW OF BILL 45: *CORRECTIONS ACT*

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STANDING COMMITTEE ON SOCIAL DEVELOPMENT

REPORT ON THE REVIEW OF BILL 45: *CORRECTIONS ACT*

INTRODUCTION

Bill 45: *Corrections Act*, sponsored by the Department of Justice, received Second Reading in the Legislative Assembly on March 11, 2019 and was referred to the Standing Committee on Social Development (Committee) for review, the results of which are reported below.

Bill 45 is intended to repeal and replace the existing *Corrections Act*. The Bill intends to focus less on punishment and more on the rehabilitation and reintegration of offenders into their communities, and to reflect various operational improvements in the Northwest Territories' (NWT) corrections system.

WHAT WE HEARD & WHAT WE DID

Public Review of Bill 45

To assist in our review of Bill 45, Committee invited input from an extensive list of stakeholders, including community governments and Indigenous organizations, as well as individuals and non-governmental organizations specializing in civil liberties, criminal law or corrections.

Between May 13 and May 17, 2019, Committee traveled to the communities of Fort Smith, Hay River, Fort Providence, Behchokò, Inuvik and Tuktoyaktuk to hold public hearings on Bill 45, followed by a public hearing in Yellowknife on May 23, 2019. In addition to these meetings, Committee received five written submissions on Bill 45, copies of which are attached in Appendix B.

General Comments

Upon first review, Committee was concerned Bill 45 did not adequately reflect the unique cultural background, historic legacy, and experience of offenders in the NWT and the reforms expected in the current era of Truth and Reconciliation and after forty years of evolving approaches in the field of corrections.

The Bill did not appear as thorough as recent comprehensive reforms elsewhere in Canada,¹ including in Newfoundland and Labrador, Ontario and most recently Nunavut. These Acts, while not yet in force, went much further than Bill 45 in aspiring to provide for the rehabilitation and reintegration of inmates so that they may go on to lead productive lives, inmates and victims may heal, and residents and communities may be safer.

Committee also heard that aspects of Bill 45, specifically its provisions relating to the confinement of inmates, were not reflective of recent case law.² Principles of procedural fairness were also absent from the Bill, including a mechanism for inmate complaints.³ Other submissions advised that international standards relating to incarceration should be incorporated into Bill 45.⁴

Committee was concerned about not only the content of Bill 45, as outlined below, but also how the Bill was developed. The Department of Justice received limited input into Bill 45, resulting in a bill that was framed from the perspective of the persons operating and administering the corrections system rather than that of persons who are directly impacted by the system, including inmates, victims and Indigenous peoples. A lack of engagement by members of the public and Indigenous and other organizations does not equal a lack of concern, Committee believes, and this was reflected in the submissions Committee received.

In addition, with substantive details missing from Bill 45, the structure of the Bill was a concern for Committee as well as experts.⁵ While the Department planned to address these details in regulations and policies, matters such as separate confinement, the use of force and discipline or corrective measures are not merely operational or practical details. Instead they relate to essential rights and responsibilities that should be subject to the full legislative process, including public debate, consultation and accountability for elected officials.

On bringing our concerns to the Minister of Justice, departmental and Committee officials commenced a collaborative effort to develop several substantive amendments, including reducing the Bill's reliance on regulations, policies and procedures and capturing substantive rights and responsibilities in the Bill. We can say with confidence that our combined efforts have resulted in a vastly improved bill, one that looks much

¹ Submission of Mary E. Campbell (June 20, 2019).

² Submission of CBA-NT (June 28, 2019).

³ Submission of CBA-NT (June 28, 2019).

⁴ Submission of Mary E. Campbell (June 20, 2019).

⁵ E.g. Submission of Mary E. Campbell (June 20, 2019); Submission of BCCLA (July 4, 2019).

less like a framework for operations and much more like a modern framework for legal obligations and protections reflective of the NWT.

Purpose and Principles

On reviewing Bill 45, it was not clear to Committee what the Bill was trying to achieve.⁶ In collaboration with the Minister, Committee developed Motion 3 in Appendix A to articulate clear aspirations for the NWT correctional system and to establish principles for guiding the Correctional Service.

Community Advisory Boards

Sections 4 and 5 of Bill 45 authorized the Director of Corrections to establish community advisory boards and appoint members (CAB). Among other things, CABs are meant to provide observations and advice on the day-to-day operations of correctional centres and liaise between facilities and the public to facilitate responsiveness to inmates' needs.

It appeared to Committee that appointments to CABs by the Director of Corrections, a member of the public service, may have the unintentional effect of compromising their independence. For that reason, Committee felt it would be more appropriate for the Minister to establish CABs and appoint their members, as reflected in Motions 5 and 6 in Appendix A. Committee suggests that membership of CABs be determined using an existing model, such as that used for Regional Wellness Councils.

Correctional Centres

Corrections Staff

Section 10 authorizes the Director of Corrections to adopt a code of professional conduct for all staff members. Committee and the Minister agreed that the adoption of a code of professional conduct should be an obligation rather than a discretionary power, as reflected in Motion 7 in Appendix A. We also agreed that the guiding principles created under Motion 3 should highlight the importance of staff training and the importance of a positive work environment.⁷

Committee heard concerns from the public about the suitability of personnel working in the corrections system. Non-Indigenous persons working in front-line service positions may lack an understanding of the experience of Indigenous people, including the legacy

⁶ Submission of Mary E. Campbell (June 20, 2019).

⁷ Submission of Mary E. Campbell (June 20, 2019).

of the residential school system,⁸ and a resident made the point that inmates should be working with people they can trust.⁹

Committee believes that the personnel working in our corrections institutions should have the background and skills necessary to be able to address the challenges and needs underlying the unique circumstances of their inmates. We encourage the Department to offer the relevant training anticipated under Bill 45 to its corrections staff on an ongoing basis. We also urge the Department to increase its efforts towards filling corrections positions with candidates who reflect the demographics of the inmates they oversee.

Volunteers

Section 17 of Bill 45 allowed the Director of Corrections to appoint volunteers to provide or assist in the provision of correctional services for offenders, inadvertently excluding other inmates such as those remanded in custody from working with volunteers. Motion 11 in Appendix A remedies this error.

Probation Officers

Section 16 sets out the duties and responsibilities of probation officers, mostly in relation to their role with respect to the courts and in correctional centres. The Canadian Bar Association Northwest Territories Branch – Criminal Justice Section (CBA-NT) recommended Bill 45 detail the specific responsibilities of probation officers vis-à-vis their clients.¹⁰ Motion 10 in Appendix A elaborates on the role of probation officers in assisting offenders post-release.

Programs and Services

The public expressed their support for programming and services that reflect local culture, languages and experiences to support the reintegration of inmates into their families and communities.¹¹ Residents told Committee that inmates should be able to interact with people they can trust¹² and on-the-land programs should be a priority.¹³

⁸ Dorothy Liske, Public Hearing on Bill 45, Behchokò (May 15, 2019).

⁹ Maddie McNeil, Public Hearing on Bill 45, Hay River (May 14, 2019).

¹⁰ Submission of Canadian Bar Association Northwest Territories Branch – Criminal Justice Section (June 28, 2019) (hereinafter “CBA-NT”).

¹¹ Jane Groenewegen, Maddie McNeil, Ray Levesque, Public Hearing on Bill 45, Hay River (May 14, 2019); Dorothy Liske, Public Hearing on Bill 45, Behchokò (May 15, 2019); Roger Sanderson, Shirley Gargan, Betty Anne Minoza and Joyce McLeod, Public Hearing on Bill 45, Fort Providence (May 15, 2019); Dolly Loreen, Public Hearing on Bill 45, Tuktoyaktuk (May 17, 2019).

¹² Maddie McNeil, Public Hearing on Bill 45, Hay River (May 14, 2019).

Committee felt Bill 45 should go further to account for these concerns. Among other improvements, Motion 14 clarifies that programs and services may be offered in a facility, a community or on the land. This motion, developed in collaboration with the Minister, also provides for the services of an Indigenous elder or spiritual advisor to support the healing, rehabilitation and reintegration of inmates. In addition, Motion 19 amends section 30 of the Bill to allow for the eventual possibility that communications between an inmate and Indigenous elder or spiritual advisor under Motion 14 could be made privileged.

Recommendation 1

The Standing Committee on Social Development recommends that the Department of Justice explore the possibility of allowing for private interviews between an inmate and a facility's Indigenous elder or spiritual advisor, subject to reasonable restrictions.

Residents told Committee that programming should be available to all inmates, including those remanded in custody, who make up more than half the inmate population in the NWT. Remanded persons, including those who are eventually convicted, are frequently released without having accessed rehabilitative programs. Even of those who are sentenced, the Auditor General of Canada found that for inmates with sentences of less than 120 days, only 36% had access to general rehabilitation programs and none had access to offence-specific programs.¹⁴ For those with sentences longer than 120 days, 87% had access to general rehabilitation programs, but only 63% had access to offence-specific programs.¹⁵

In an effort to promote the uptake of programming by remanded persons, Committee worked with the Minister to develop Motion 14 in Appendix A. This motion amends the programs and services provisions in section 21 of the Bill to make a distinction between general programs aimed at all inmates and rehabilitation programs targeted at convicted offenders. Motion 14 specifies that all inmates are entitled to participate in these various programs and services.

Committee would like to see the correctional needs and appropriate programs to meet those needs as set out in section 29 of the Bill identified for every inmate rather than only for offenders, to ensure their time in custody is as constructive as possible. Further, needs-based assessments should be delivered in a timely manner.

¹³ E.g. Glenna Emaghok, Public Hearing on Bill 45, Tuktoyaktuk (May 17, 2019).

¹⁴ Auditor General of Canada, *Report to the Northwest Territories Legislative Assembly: Corrections in the Northwest Territories – Department of Justice*, at p. 7.

¹⁵ *Ibid.*

While we recognize it may be a challenge to engage remanded individuals in programming, as they are presumed innocent and cannot be compelled to participate, Committee recommends the Department provide adequate incentives to promote the development and betterment of all inmates.

Recommendation 2

The Standing Committee on Social Development recommends that the Department of Justice conduct needs-based assessments for all inmates, that the assessments be conducted in a manner that is timely relative to an inmate's release eligibility, that the assessments take into account Gladue and other factors such as an inmate's disabilities, and that the Department explore additional measures to encourage all inmates to participate in suitable programming, including offering new incentives.

Living Conditions

Section 26 of Bill 45 contained few references to living conditions, and experts advised Committee that Bill 45 did not go far enough to ensure inmates receive living conditions reflective of Canadian human rights standards.¹⁶ Committee and the Minister developed Motion 15 in Appendix A to establish minimum living conditions and standards and to ensure inmates have the rights to peaceful assembly and religious expression, subject to reasonable limits.

Motion 24, discussed below, prohibits the deprivation of food, water and healthcare as punishment for disciplinary offences.

Inmate Communications

Committee heard that Bill 45 should include provisions requiring corrections centres to guarantee inmates reasonable access to adequate means of communications with the outside world, as reflected in Motion 15. In addition, Committee worked with the Minister on Motion 19 to expand the list of individuals with which an inmate may engage in "privileged communication" under subsection 30(1). The list would include individuals with the Office of the Ombud, the Human Rights Commission and the Human Rights Adjudication Panel, as well as other prescribed persons.

¹⁶ Submission of Mary E. Campbell (June 20, 2019); Submission of BCCLA (July 4, 2019).

Work Programs

Residents told Committee they want to see corrections centres offering work programs, and for these work programs to operate in communities.¹⁷ Committee recognizes the challenges that work programs pose for the Department, including in relation to high risk offenders, but Committee sees the value in providing inmates with work skills and reacquainting them with society to assist in their rehabilitation and reintegration.

Recommendation 3

The Standing Committee on Social Development recommends that the Department of Justice prioritize work programs that are responsive to community needs, subject to necessary safety and security restrictions.

Services at Correctional Centres

Section 50 of Bill 45 authorized the Minister to provide inmates with services for personal phone calls, entertainment, canteen and other services. Motion 28 clarifies that the Minister is required to provide these services in all correctional facilities, subject to reasonable restrictions on individual inmates.

Rules and Information for Inmates

Bill 45 requires the Person in Charge to make rules respecting inmate conduct, inmate activities and other matters. Motion 16 replaces section 27 of Bill 45 with a new section to provide that, on an inmate's admission to a facility and in a form he or she understands, the Person in Charge must inform the inmate of the institution's rules and the inmate's rights and responsibilities, to assist the inmate with adapting to his or her surroundings.

Security Assessments

Knowing an inmate's risks is essential to effective safety, security, rehabilitation and reintegration. Motions 17 and 18 in Appendix A clarify the distinction between the security classification process and the enhanced supervision program used by the Correctional Service. The security classification process is used for assessing and reassessing inmates and determining the level of security required for an inmate and their appropriate placement within a facility. Inmates may be assigned to an enhanced

¹⁷ Town of Fort Smith, Public Hearing on Bill 45, Fort Smith (May 13, 2019); Jane Groenewegen, Public Hearing on Bill 45, Hay River (May 14, 2019); Dolly Loreen, Public Hearing on Bill 45, Tuktoyaktuk (May 17, 2019).

supervision program, where they may be assigned to a specific level of security, access restrictions and other conditions of confinement.

Committee received several suggestions to make the risk assessment process as it relates to security classification effective and fair to Indigenous inmates.

Recommendation 4

The Standing Committee on Social Development recommends that the security assessment tools used by the Correctional Service be objective, structured and empirically defensible, and that a risk assessment tool that considers the unique realities of Indigenous inmates be developed and used.

Searches

The Information and Privacy Commissioner outlined several privacy-related concerns with Bill 45 for Committee.¹⁸ A specific area of concern we shared with the Information and Privacy Commissioner was the lack of detail in Bill 45's search provisions. We agreed with the Information and Privacy Commissioner that sections 33 through 35 of the Bill did not do enough to protect the privacy and dignity of those subject to search. For this reason, Committee worked with the Minister to develop Motions 21, 22 and 23, set out in Appendix A, to specify that strip searches of inmates, staff and visitors must be conducted by staff of the same gender and in a place and manner that respects the person's dignity.

Use of Force

Section 19 of Bill 45 included broad parameters for the use of force on inmates, authorizing certain persons to use a "reasonable degree and means of force on any inmate" to prevent injury or death, prevent property damage, prevent an inmate from escaping and maintain inmate custody and control. Committee agreed with a submission that more detail around the use of force was needed. Motion 17, developed in collaboration with the Minister and set out in Appendix A, serves to replace section 19 in Bill 45. This motion clarifies that de-escalation techniques must be employed where possible and force may be used only as a last resort.¹⁹ The means and the amount of force must be reasonable and not excessive, and they must have regard to the nature of the threat posed and other circumstances of the particular case.

¹⁸ Submission of Information and Privacy Commissioner (June 28, 2019).

¹⁹ Submission of Mary E. Campbell (June 20, 2019).

Also contained in Motion 17 are clear restrictions on the use of physical restraints. Section 19 left decisions such as the devices that may be used to physically restrain an inmate and the manner and circumstances in which they may be used to the discretion of a sole individual. Due to the highly intrusive nature of these devices and the risk they pose for causing injury, pain and humiliation to inmates, Committee believes the circumstances in which physical restraints may be used such as the length of time and procedures for their use should be prescribed in regulations and subject to independent scrutiny. As an additional safeguard, Motion 24 specifically prohibits the use of restraint devices as punishment for disciplinary offences.

In those instances where force is used, Motion 17 requires corrections employees to report the pertinent details of the incident to senior staff.²⁰

Adjudicators

While Committee was pleased to see the introduction in Bill 45 of concepts such as community advisory boards, an Investigations and Standards Office and adjudicators, experts in the fields of corrections and civil liberties shared our concerns that the oversight structures established in Bill 45 were not fully impartial or independent.²¹ While we recognize the need to ensure a measure of corrections expertise in the Bill's oversight processes, we believe the degree of impartiality and independence necessary for serious and high risk matters such as separate confinement or disciplinary segregation must be higher than that initially established in Bill 45. To that end, Motion 26 in Appendix A enhances the independence of adjudicators by having the Minister rather than the Director of Corrections appoint adjudicators and prohibiting the appointment of corrections staff as adjudicators.

Committee had concerns about the independence held by the Director of Investigations and Standards, as a member of the public service pursuant to section 2 of the Bill with the power to review the decisions of adjudicators under section 38. Elsewhere, public officers in a similar role appear to have more independence than that anticipated for the Director of Investigations and Standards under Bill 45.

Committee encourages the Department to continually underscore the independence of the Director of Investigations and Standards and the adjudicators.

²⁰ Submission of Mary E. Campbell (June 20, 2019).

²¹ Submission of Mary E. Campbell (June 20, 2019); Submission of CBA-NT (June 28, 2019); Submission of BCCLA (July 4, 2019).

Separate Confinement

Several submissions advised Committee that they believed the separate confinement provisions set out in sections 32 and 40 of Bill 45 were vague and not consistent with recent case law.²² The separate confinement provisions appeared to permit prolonged, indefinite confinement²³ and failed to distinguish between the confinement practices envisioned under Bill 45 and the practice of solitary confinement.²⁴

A matter as serious and high risk as confinement requires substantive treatment in legislation, including hard caps on duration, provisions for independent adjudication, and guaranteed access to programs and services, with more specific, operational details going into regulations.

Motion 2 in Appendix A creates a category of confinement referred to as “separate confinement,” referring to the holding of an inmate apart from other inmates for the purposes of safety and security rather than for disciplinary or corrective purposes. Motion 20 further clarifies the meaning of separate confinement, specifying that inmates in separate confinement get to maintain their living conditions and standards as well as access to programs and services, adapted to the circumstances of separate confinement. Motion 20 also clarifies the decision-making process in relation to separate confinement and the role of the adjudicator in the case of separate confinements exceeding 96 hours. Motion 27 sets out a process for those adjudicative reviews including inmates’ procedural rights.

Discipline or Corrective Measures

The CBA-NT advised Committee that they believed the process set out in section 38 of Bill 45 with respect to the imposition of discipline or corrective measures against an inmate violated the inmate’s rights to procedural fairness.²⁵ Improvements to section 38 by way of Motion 24, developed in collaboration with the Minister and set out in Appendix A, include:

- making a distinction between disciplinary segregation and separate confinement;
- setting parameters around the use of discipline and corrective measures, including providing for the use of informal resolutions and setting hard caps on consecutive and aggregate days in disciplinary segregation;

²² Submission of BCCLA (July 4, 2019); Submission of CBA-NT (June 28, 2019); Submission of Lydia Bardak (July 4, 2019); Submission of Mary E. Campbell (June 20, 2019).

²³ Submission of CBA-NT (June 28, 2019).

²⁴ Submission of BCCLA (July 4, 2019).

²⁵ Submission of CBA-NT (June 28, 2019).

- changing the powers of the Director of Investigations and Standards with respect to an appeal of an adjudicator's decision to impose a disciplinary or corrective measure so that he or she may confirm, quash or reduce but not increase that disciplinary or corrective measure; and
- establishing additional obligations and rights with respect to disciplinary hearings.

Complaints

The CBA-NT pointed out that Bill 45 failed to establish a clear grievance procedure or guidance on how complaints will be handled.²⁶ Committee collaborated with the Minister to develop Motion 30, set out in Appendix A, to enshrine a fair and expeditious grievance mechanism to adjudicate grievances raised by inmates, offenders or persons on probation, conditional sentence or judicial interim release.

Victims

Section 11 of Bill 45 required the Director of Corrections to establish, administer and maintain a victim notification program consistent with the principles of the *Canadian Victims Bill of Rights*.

In reviewing Bill 45, Committee determined Bill 45's provisions related to the notification of victims could be strengthened to protect victims of crime.²⁷ For this reason, Committee collaborated with the Minister to develop Motion 8, set out in Appendix A, to provide clear obligations on the part of the corrections system and clear entitlements on the part of victims or their designates to have access to certain information about their perpetrators, such as the date of their release from custody, where the disclosure would benefit the victim and their interest in disclosure outweighs any invasion of privacy that could result from the disclosure.

While the notification of the public in similar circumstances will continue to be under the purview of the Royal Canadian Mounted Police, Committee shares the concern we heard about the risks faced by victims whose perpetrators have not been convicted.²⁸

²⁶ Submission of CBA-NT (June 28, 2019).

²⁷ Submission of Mary E. Campbell (June 20, 2019).

²⁸ Town of Fort Smith, Public Hearing on Bill 45, Fort Smith (May 13, 2019).

Recommendation 5

The Standing Committee on Social Development recommends that the Department of Justice invest adequate resources into Victim Services to ensure public awareness of these programs and that Victim Services staff are in a position to inform victims of details pertinent to their well-being and safety, including cases where a person remanded in custody is released by the courts.

Motion 8 also authorizes the Minister to establish programs that employ restorative justice principles, such as victim-offender mediation,²⁹ to help address root causes of violence, reduce recidivism and support healing.³⁰

Special AccommodationsPersons with Disabilities

Various experts submitted that the Bill did not adequately provide and protect offenders with specific mental health needs or disabilities.³¹ Committee agreed that the Bill should go further to address some of the challenges faced by inmates. Motions 9, 14, 16, 20 and 24 in Appendix A, developed in collaboration with the Minister, each contain provisions that provide for additional services or the reasonable accommodation of inmates with specific needs, such as those with illnesses, injuries, disabilities or for whom the English language or literacy is a challenge.

Female Inmates

Bill 45 contained little in the way of acknowledgment of the unique circumstances of female inmates, including that women are more susceptible to abuse and sexual misconduct by corrections staff and other inmates, have reproductive healthcare needs and may have children for whom they are the primary caregiver. Committee felt new corrections legislation should reflect international standards in this area, namely the *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders* (the Bangkok Rules) adopted by the UN General Assembly in 2010, as well as the recent Calls for Justice arising from the Missing and

²⁹ Submission of Mary E. Campbell (June 20, 2019).

³⁰ E.g., see Call for Justice #17.27, National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls* (2019).

³¹ Submission of CBA-NT (June 28, 2019); Submission of BCCLA (July 4, 2019); Submission of Mary E. Campbell (June 20, 2019).

Murdered Indigenous Women and Girls Inquiry.³² In collaboration with the Minister, we developed Motions 15, 17, 21, 22 and 23 in Appendix A to provide additional standards addressing the specific characteristics, needs and susceptibility of female inmates in relation to physical restraints, healthcare, strip searches and where they may be housed.

Reporting

Pursuant to Motion 31, Committee is pleased with the addition of an annual report provision developed in collaboration with the Minister and set out in Appendix A. The motion requires the Minister to table a report each year outlining important details relating to the administration of the Act, such as the number of inmates held in disciplinary segregation and the number of inmate complaints.

CLAUSE-BY-CLAUSE REVIEW OF BILL

The clause-by-clause review of Bill 45 was held on August 15, 2019. At this review, Committee moved a total of 32 motions, attached in Appendix A. Committee thanks the Minister for his concurrence with the motions to amend Bill 45 that were moved during the clause-by-clause review.

Following the clause-by-clause review, a motion was carried to report Bill 45, as amended and reprinted, as ready for consideration in Committee of the Whole.

CONCLUSION

Committee wishes to thank every individual and organization who participated in the review process for Bill 45. Committee also again wishes to acknowledge the collaborative efforts of the Department and Committee officials in the development of Bill 45.

Rule 100(5) of the *Rules of the Legislative Assembly of the Northwest Territories* requires Cabinet, in response to a motion by Committee, to table a comprehensive response that addresses the Committee report and any related motions adopted by the House. As required by this rule, Committee usually includes a recommendation in each

³² E.g., see Calls for Justice #14.6 and #14.8, National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls* (2019).

report, which is moved as a motion in the House, requesting a response from government within 120 days.

Given that the 18th Legislative Assembly will dissolve prior to the conclusion of the 120 day time period allowed by the Rules, Committee has opted to forego this recommendation. Committee nonetheless requests, to the extent it is possible before the dissolution of the 18th Assembly and for the public record, that government provide a response to the recommendations contained in this report, even of a preliminary nature, that Committee may publicly disclose.

This concludes Committee's report on Bill 45: *Corrections Act*.

Committee reports are available on the Legislative Assembly website at www.assembly.gov.nt.ca.

APPENDIX A
MOTIONS ON BILL 45

Committee moved the following motions on Bill 45:

MOTION 1

MOTION

CORRECTIONS ACT

That the English version of Bill 45 be amended by

- (a) striking out "Investigation and Standards Office" wherever it appears in each of the following provisions and substituting "Investigations and Standards Office":**
 - (i) the definition "Investigation and Standards Office" in clause 1,**
 - (ii) paragraph 2(4)(a),**
 - (iii) clause 12 and the preceding heading,**
 - (iv) subclause 13(1);**
- (b) striking out "Investigation and Standards office" in subclause 13(3) and substituting "Investigations and Standards Office"; and**
- (c) striking out "Director of Investigation and Standards" in paragraph 53(d) and substituting "Director of Investigations and Standards".**

MOTION

LOI SUR LES SERVICES CORRECTIONNELS

Il est proposé que la version anglaise du projet de loi 45 soit modifiée par :

- a) suppression de «Investigation and Standards Office», à chaque occurrence des dispositions suivantes, et par substitution de «Investigations and Standards Office» :**
 - (i) la définition de «Investigation and Standards Office» à l'article 1,**
 - (ii) l'alinéa 2(4)a,**
 - (iii) l'article 12 et l'intertitre qui le précède immédiatement,**
 - (iv) le paragraphe 13(1);**
- b) suppression de «Investigation and Standards office», dans le paragraphe 13(3), et par substitution de «Investigations and Standards Office»;**
- c) suppression de «Director of Investigation and Standards», dans l'alinéa 53d, et par substitution de «Director of Investigations and Standards».**

MOTION 2

MOTION

CORRECTIONS ACT

That clause 1 of Bill 45 be amended by deleting the definitions "Aboriginal peoples" and "staff member", and adding the following definitions in alphabetical order:

"health professional" means a health professional as defined in subsection 1(1) of the *Mental Health Act*; (*professionnel de la santé*)

"Indigenous peoples" means aboriginal peoples of Canada as defined in subsection 35(2) of the *Constitution Act, 1982*; (*peuples autochtones*)

"separate confinement" means holding an inmate apart from other inmates, but does not include disciplinary segregation as defined in subsection 38(1); (*détention séparée*)

"staff member"

- (a) includes
 - (i) the Director of Corrections and the Director of Investigations and Standards,
 - (ii) probation officers, correctional officers and other officers appointed under paragraph 2(1)(c), and
 - (iii) employees of the Department of Justice who exercise powers and perform duties under this Act, but
- (b) does not include
 - (i) volunteers, or
 - (ii) persons engaged to provide services or agents or employees of those persons. (*membre du personnel*)

MOTION

LOI SUR LES SERVICES CORRECTIONNELS

Il est proposé que l'article 1 du projet de loi 45 soit modifié par suppression de la définition de «membre du personnel» et par substitution de ce qui suit, selon l'ordre alphabétique :

«détention séparée» S'entend de tenir un détenu à l'écart des autres détenus, mais ne comprend pas l'isolement disciplinaire au sens du paragraphe 38(1). (*separate confinement*)

«membre du personnel»

- a) Comprend les personnes suivantes :
 - (i) le directeur du Service correctionnel et le directeur des enquêtes et des normes,
 - (ii) les agents de probation, les agents du service correctionnel et les autres agents nommés en vertu de l'alinéa 2(1)c),
 - (iii) les employés du ministère de la Justice qui exercent leurs attributions en vertu de la présente loi;
- b) mais ne comprend pas les personnes suivantes :
 - (i) les bénévoles,
 - (ii) les personnes engagées à fournir des services ou les mandataires ou les employés de ces personnes. (*staff member*)

«professionnel de la santé» Professionnel de la santé au sens du paragraphe 1(1) de la *Loi sur la santé mentale*. (*health professional*)

MOTION 3

MOTION

CORRECTIONS ACT

That Bill 45 be amended by adding the following after clause 1:

Purpose of
correctional
system

1.1. The purpose of the Northwest Territories correctional system is to contribute to the maintenance of a just, peaceful and safe society by

- (a) carrying out sentences imposed by courts;
- (b) providing for the safe, secure and humane custody and supervision of inmates and offenders; and
- (c) assisting the rehabilitation of inmates and offenders and their reintegration into the community with a view to enabling them to satisfactorily adjust to community living.

Principles
guiding the
Corrections
Service

1.2. The following principles guide the Corrections Service in achieving the purpose described in section 1.1:

- (a) protect the public, hold inmates and offenders responsible and accountable, and promote the healing and rehabilitation of inmates and offenders and their reintegration into the community;
- (b) ensure inmates are provided with a healthy, safe, secure and humane living environment;
- (c) ensure that the policies, programs and practices developed or used under this Act are respectful of the dignity of individuals and take into account age, gender, cultures and abilities of inmates and offenders, wherever appropriate, including being responsive to the particular needs of women and other individuals with special requirements;
- (d) ensure that members of the Corrections Service conduct themselves lawfully, ethically and professionally;
- (e) ensure that staff members are given

MOTION

LOI SUR LES SERVICES CORRECTIONNELS

Il est proposé que le projet de loi 45 soit modifié par insertion, après l'article 1, de ce qui suit :

Object du
système
correctionnel

1.1. Le système correctionnel des Territoires du Nord-Ouest vise à contribuer au maintien d'une société juste, vivant en paix et en sécurité, à la fois :

- a) en assurant l'exécution des peines imposées par les tribunaux;
- b) en fournissant des mesures de garde et de surveillance sécuritaires et humaines aux détenus et aux contrevenants;
- c) en aidant à la réadaptation des détenus et des contrevenants ainsi qu'à leur réintégration dans la collectivité dans le but de leur permettre de s'adapter de façon satisfaisante à la vie en société.

Principes
directeurs

1.2. Les principes directeurs suivants guident le Service correctionnel dans l'achèvement de l'objet énoncé à l'article 1.1 :

- a) protéger le public, responsabiliser et imputabiliser les détenus et les contrevenants, et promouvoir leur guérison et leur réadaptation ainsi que leur réintégration dans la collectivité;
- b) veiller à ce que les détenus aient un environnement de vie sain, sûr, sécuritaire et humain;
- c) veiller à ce que les politiques, programmes et pratiques développés ou utilisés en vertu de la présente loi respectent, lorsque possible, la dignité des individus et prend en considération l'âge, le genre, la culture et les capacités des détenus et des contrevenants, y compris s'adapter aux besoins spécifiques des femmes et d'autres individus ayant des besoins particuliers;
- d) veiller à ce que les membres du service correctionnel se conduisent de manière légale, éthique et professionnelle;
- e) veiller à ce que les membres du

- (i) training opportunities wherever possible, including training respecting the cultural heritage and history of the Indigenous peoples of the Northwest Territories,
 - (ii) working conditions that encourage integrity and personal accountability,
 - (iii) opportunities to effectively work with inmates and offenders, and
 - (iv) opportunities to participate in the development of corrections policies and programs;
- (f) ensure that any restrictive measures imposed on a person under this Act are the minimum necessary for the protection of the public and other persons;
- (g) ensure that disciplinary and corrective measures or other restrictive measures imposed on inmates under this Act are applied in accordance with the law and respect procedural fairness;
- (h) encourage opportunities by departments and public agencies of the Government of the Northwest Territories, other governments including governments of Indigenous peoples, organizations and members of the public, to assist with the healing, rehabilitation of inmates and offenders and their reintegration into the community.

personnel reçoivent :

- (i) dans la mesure du possible, des opportunités de formation, y compris des formations concernant l'héritage culturel et l'histoire des peuples autochtones des Territoires du Nord-Ouest,
 - (ii) des conditions de travail qui supporte l'intégrité et la responsabilité personnelle,
 - (iii) des opportunités de travailler efficacement avec les détenus et les contrevenants,
 - (iv) des opportunités de participer au développement des politiques et programmes correctionnels;
- f) veiller à ce que les mesures restrictives imposées à une personne en vertu de la présente loi correspondent au minimum nécessaire pour assurer la protection du public et d'autres personnes;
- g) veiller à ce que les mesures disciplinaires et correctives ou les autres mesures restrictives imposées aux détenus en vertu de la présente loi s'appliquent conformément à la loi et respectent l'équité procédurale;
- h) encourager les ministères et les organismes publics du gouvernement des Territoires du Nord-Ouest, les autres gouvernements, notamment les gouvernements des peuples autochtones, les organisations et les membres du public à saisir les possibilités pour aider les détenus et les contrevenants dans leur guérison, leur réadaptation ainsi que leur réintégration dans la collectivité.

MOTION 4

MOTION

CORRECTIONS ACT

That English version of clause 3 of Bill 45 be amended by striking out "Aboriginal peoples" wherever it appears in each of the following provisions and substituting "Indigenous peoples":

- (a) that portion of subclause 3(1) preceding paragraph (a);**
- (b) subclause 3(3).**

MOTION

LOI SUR LES SERVICES CORRECTIONNELS

Il est proposé que la version anglaise de l'article 3 du projet de loi 45 soit modifiée par suppression de «Aboriginal peoples», à chaque occurrence des dispositions suivantes, et par substitution de «Indigenous peoples»:

- a) le passage introductif du paragraphe 3(1);**
- b) le paragraphe 3(3).**

MOTION 5

MOTION

CORRECTIONS ACT

That Bill 45 be amended in that portion of clause 4 preceding paragraph (a) by striking out "Director of Corrections" and substituting "Minister".

MOTION

LOI SUR LES SERVICES CORRECTIONNELS

Il est proposé que le passage introductif de l'article 4 du projet de loi 45 soit modifié par suppression de «directeur du Service correctionnel» et par substitution de «ministre».

MOTION 6

MOTION

CORRECTIONS ACT

That clause 5 of Bill 45 be amended by

- (a) striking out "Director of Corrections" in subclause (1) and substituting "Minister";**
- (b) striking out "Aboriginal peoples" in the English version of subclause (2) and substituting "Indigenous peoples"; and**
- (c) striking out "Director of Corrections" in subclause (3) and substituting "Minister".**

MOTION

LOI SUR LES SERVICES CORRECTIONNELS

Il est proposé que l'article 5 du projet de loi 45 soit modifié par :

- a) suppression de «directeur du Service correctionnel», au paragraphe (1), et par substitution de «ministre»;**
- b) suppression de «Aboriginal peoples», dans la version anglaise du paragraphe (2), et par substitution de «Indigenous peoples»;**
- c) suppression de «directeur du Service correctionnel», au paragraphe (3), et par substitution de «ministre».**

MOTION 7

MOTION

CORRECTIONS ACT

That Bill 45 be amended by deleting subclause 10(1) and substituting the following:

Code of
professional
conduct

10. (1) The Director of Corrections shall adopt a code of professional conduct for all staff members.

MOTION

LOI SUR LES SERVICES CORRECTIONNELS

Il est proposé que le projet de loi 45 soit modifié par suppression du paragraphe 10(1) et par substitution de ce qui suit :

10. (1) Le directeur du Service correctionnel peut adopter un code de déontologie pour tous les membres du personnel.

Codes de
déontologie

MOTION 8

MOTION

CORRECTIONS ACT

That clause 11 of Bill 45 be deleted and the following substituted:

Program respecting rights of victims

11. (1) The Director of Corrections shall, subject to the regulations, establish, administer and maintain a program respecting the rights of victims.

Information subject to disclosure

(2) The Director of Corrections shall, subject to subsection (3) and on the request of the victim of an offence for which an offender has been found guilty and imprisoned, disclose the following information about the offender to the victim or to the victim's designated representative:

- (a) location of the correctional centre of imprisonment;
- (b) length of sentence;
- (c) any changes to sentence;
- (d) any temporary absences;
- (e) details about any transfer of the offender from the correctional centre;
- (f) details about the offender escaping or otherwise being unlawfully at large and any subsequent apprehension;
- (g) release date from custody;
- (h) the community where the offender is to be released;
- (i) any other information that may be disclosed in accordance with the regulations.

When disclosure may be made

(3) A disclosure of information under subsection (2) may be made for any purpose, if the Director of Corrections concludes that

- (a) the victim's interest in disclosure outweighs any invasion of privacy that could result from the disclosure; and
- (b) disclosure would benefit the victim.

MOTION

LOI SUR LES SERVICES CORRECTIONNELS

Il est proposé que l'article 11 du projet de loi 45 soit supprimé et remplacé par ce qui suit :

Programme respectant les droits des victimes

11. (1) Sous réserve des règlements, le directeur du Service correctionnel élabore, administre et maintient un programme dont le but est de respecter les droits des victimes.

Renseignements assujettis à la divulgation

(2) Sous réserve du paragraphe (3) et à la demande d'une victime d'une infraction pour laquelle un contrevenant a été déclaré coupable et est emprisonné, le directeur du Service correctionnel divulgue à la victime, ou à son représentant, les renseignements suivants à propos du contrevenant :

- a) le lieu du centre correctionnel de l'emprisonnement;
- b) la durée de la peine;
- c) tout changement à la peine;
- d) toutes absences provisoires;
- e) tout renseignement à propos du transfert du contrevenant du centre correctionnel;
- f) tout renseignement à propos du contrevenant qui s'est échappé ou qui se trouve illégalement en liberté, et d'une arrestation ultérieure;
- g) la date de libération;
- h) la collectivité dans laquelle le contrevenant sera mis en liberté;
- i) tout autre renseignement pouvant être divulgué conformément aux règlements.

Justification pour la divulgation

(3) Le directeur du Service correctionnel peut divulguer des renseignements au titre du paragraphe (2), peu importe la raison de la divulgation, pourvu qu'il estime que :

- a) d'une part, les intérêts de la victime à recevoir ces renseignements justifient nettement une éventuelle violation de la vie privée;
- b) d'autre part, la divulgation aurait un effet bénéfique sur la victime.

*Access to
Information
and Protection
of Privacy Act*

(4) If a provision of this section is inconsistent with or in conflict with a provision of the *Access to Information and Protection of Privacy Act*, the provision of this section prevails to the extent of the conflict.

(4) Les dispositions du présent article l'emportent sur les dispositions incompatibles de la *Loi sur l'accès à l'information et la protection de la vie privée*.

*Loi sur l'accès
à l'information
et la protection
de la vie privée*

Victim-
offender
mediation
programs

(5) The Minister may establish other programs that employ the principles of restorative justice, including victim-offender mediation programs.

(5) Le ministre peut élaborer d'autres programmes qui appliquent les principes de la justice réparatrice, notamment des programmes de médiation entre les victimes et les contrevenants.

Programmes
de médiation

MOTION 9

MOTION

CORRECTIONS ACT

That clause 15 of Bill 45 be amended by

- (a) striking out "alternate measures" in the English version of paragraph (2)(c) and substituting "alternative measures"; and**
- (b) adding the following after subclause 15(2):**

Reasonable efforts to accommodate inmates

(3) If an inmate is unable to participate in programs or work under this Act or requires special accommodation due to illness, disability or injury, the Person in Charge shall make all reasonable efforts to accommodate the circumstances of the inmate.

MOTION

LOI SUR LES SERVICES CORRECTIONNELS

Il est proposé que l'article 15 du projet de loi 45 soit modifié par :

- a) suppression de «alternate measures», dans la version anglaise de l'alinéa (2)c, et par substitution de «alternative measures»;**
- b) adjonction, après le paragraphe 15(2), de ce qui suit :**

(3) Si un détenu ne peut participer à des programmes ou ne peut travailler en application de la présente loi, ou s'il a besoin de mesures d'adaptation spéciales en raison d'une maladie, d'une invalidité ou d'une blessure, le responsable déploie tous les efforts raisonnables afin de tenir compte des circonstances du détenu.

Efforts raisonnables d'accommodement

MOTION 10

MOTION

CORRECTIONS ACT

That Bill 45 be amended by deleting paragraphs 16(1)(f) and (g) and substituting the following:

- (f) shall assist in programming and post-release planning to support the community reintegration of offenders who will be supervised by probation officers in the community on release;
- (g) shall provide offenders in the community with correctional intervention and rehabilitative programming, with a view to assisting them to make a satisfactory adjustment to community living; and
- (h) has such additional powers and duties as may be prescribed.

MOTION

LOI SUR LES SERVICES CORRECTIONNELS

Il est proposé que les alinéas 16(1)f) et g) du projet de loi 45 soient supprimés et remplacés par ce qui suit :

- f) collabore à la programmation et la planification postlibératoire pour faciliter la réintégration des contrevenants dans la collectivité; ceux-ci seront surveillés, dès leur mise en liberté par des agents de probation dans la collectivité;
- g) offre aux contrevenants en collectivité des interventions correctionnelles et des programmes de réadaptation, en vue de les aider à s'adapter de façon satisfaisante à la vie en société;
- h) est investi des attributions supplémentaires prévues par règlements.

MOTION 11

MOTION

CORRECTIONS ACT

That subclause 17(1) of Bill 45 be amended by striking out "offenders" and substituting "inmates and offenders".

MOTION

LOI SUR LES SERVICES CORRECTIONNELS

Il est proposé que le paragraphe 17(1) du projet de loi 45 soit modifié par suppression de «contrevenants» et par substitution de «détenus et des contrevenants».

MOTION 12

MOTION

CORRECTIONS ACT

That Bill 45 be amended by deleting clause 19 and the preceding heading.

MOTION

LOI SUR LES SERVICES CORRECTIONNELS

Il est proposé que le projet de loi 45 soit modifié par suppression de l'article 19 et de l'intertitre qui le précède.

MOTION 13

MOTION

CORRECTIONS ACT

That subclause 20(2) of Bill 45 be amended by striking out "the corrections service of the Northwest Territories" and substituting "the Corrections Service".

MOTION

LOI SUR LES SERVICES CORRECTIONNELS

Il est proposé que le paragraphe 20(2) du projet de loi 45 soit modifié par suppression de «des services correctionnels des Territoires du Nord-Ouest» et par substitution de «du Service correctionnel».

MOTION 14

MOTION

CORRECTIONS ACT

That clause 21 of Bill 45 be deleted and the following substituted:

Definitions 21. (1) In this section,

"general program" includes any program for educational, preventative, developmental or similar activities that would assist or support an inmate's development or reintegration into their community, but does not include a rehabilitation program;
(programme général)

"rehabilitation program" means an evidence-based program designed to address underlying criminogenic factors. *(programme de réadaptation)*

Programs and services (2) The Director of Corrections shall
(a) develop and offer general programs and rehabilitation programs and other services; and
(b) provide inmates and offenders with the opportunity to participate in those programs and services.

Location of programs and services (3) Programs and services developed and offered under this section may be operated
(a) within a correctional centre;
(b) in a community; or
(c) on the land.

Participation mandatory (4) An offender shall, subject to the regulations, participate in programs and services, including work programs, as directed by the Person in Charge.

Rehabilitation programs (5) Rehabilitation programs must encourage offenders to develop an awareness of the consequences of their behaviour and a sense of accountability so that they may be healed, rehabilitated and reintegrated into the community.

MOTION

LOI SUR LES SERVICES CORRECTIONNELS

Il est proposé que l'article 21 du projet de loi 45 soit supprimé et substitué par ce qui suit :

21. (1) Les définitions qui suivent s'appliquent au présent article. Définitions

«programme de réadaptation» Programme fondé sur des données probantes qui vise à traiter des facteurs criminogènes sous-jacents. *(rehabilitation program)*

«programme général» Tout programme pédagogique, préventif, de développement ou activités semblables qui pourraient aider le développement d'un détenu ou sa réintégration dans la collectivité. La présente définition exclut les programmes de réadaptation. *(general program)*

(2) Le directeur du Service correctionnel, à la fois : Programmes et services
a) élabore et offre des programmes généraux, des programmes de réadaptation et d'autres services;
b) offre aux détenus et aux contrevenants la possibilité de participer à ces programmes et services.

(3) Les programmes et services développés et offerts en vertu du présent article peuvent se dérouler, selon le cas : Lieu des programmes et services
a) dans le centre correctionnel;
b) dans la collectivité;
c) sur les terres.

(4) Sous réserve des règlements, un contrevenant participe aux programmes et services, notamment les programmes de travail, suivant les instructions du responsable. Participation obligatoire

(5) Les programmes de réadaptation encouragent les contrevenants à développer une sensibilisation aux conséquences de leur comportement et les responsabiliser afin qu'ils puissent se réadapter, guérir et réintégrer la collectivité. Programmes de réadaptation

| | | | |
|---|--|---|--|
| Consent | (6) For greater certainty, the Person in Charge shall ensure that an inmate who is not sentenced to imprisonment gives his or her consent before being assigned to a rehabilitation program. | (6) Il est entendu que le responsable veille à ce que le détenu non condamné à l'emprisonnement donne son consentement avant d'être affecté à un programme de réadaptation. | Consentement |
| Characteristics of programs | (7) Programs and services under this Act must (a) reflect the needs of the culture of inmates and offenders who are Indigenous peoples; (b) take into account the literacy or disability of inmates and offenders; (c) take into account the diversity and needs of inmates and offenders, including the needs of groups over-represented in correctional centres; (d) provide for the needs of inmates and offenders by gender; and (e) provide for the needs of other classes of inmates and offenders identified by the Director of Corrections. | (7) Les programmes et les services au titre de la présente loi : a) tiennent compte des besoins et de la culture des contrevenants qui sont autochtones; b) tiennent compte de l'alphabétisation ou de déficiences des détenus et des contrevenants; c) tiennent compte de la diversité et des besoins des détenus et des contrevenants, notamment les besoins des groupes surreprésentés dans les centres correctionnels; d) répondent aux besoins des contrevenants selon leur genre; e) répondent aux besoins des autres catégories de contrevenants identifiées par le directeur du Service correctionnel. | Caractéristiques des programmes |
| Indigenous elder or spiritual advisor | (8) A Person in Charge shall, subject to the regulations, make the services of an Indigenous elder or spiritual advisor available to inmates. | (8) Sous réserve des règlements, le responsable rend disponible aux détenus les services d'un aîné autochtone ou d'un conseiller spirituel. | Aîné autochtone ou conseiller spirituel |
| Role of Indigenous elder or spiritual advisor | (9) An Indigenous elder or spiritual advisor under subsection (8) shall support the healing and reconciliation of inmates and share traditional knowledge and culture with inmates to encourage their healing, rehabilitation and reintegration into the community. | (9) Un aîné autochtone ou un conseiller spirituel au titre du paragraphe (8) aide le processus de guérison et de réconciliation des détenus et partage les connaissances et la culture traditionnelles avec ceux-ci afin de favoriser leur guérison, réadaptation et réintégration dans la collectivité. | Rôle de l'aîné autochtone ou du conseiller spirituel |
| Translation services | (10) The Director of Corrections shall ensure that inmates, offenders and persons on judicial interim release have access to translation services. | (10) Le directeur du Service correctionnel veille à ce que les détenus, les contrevenants et les personnes bénéficiant d'une mise en liberté provisoire par voie judiciaire ont accès à des services de traduction. | Services de traduction |

MOTION 15

MOTION

CORRECTIONS ACT

That Bill 45 be amended by adding the following after clause 26:

Living Conditions and Standards

Conditions and standards

26.1. (1) The Person in Charge shall ensure that inmates are provided with the following minimum living conditions and standards:

- (a) regular meals of the type ordinarily served to inmates;
- (b) a daily exercise period of at least one hour, in the open air if weather and security conditions allow;
- (c) clothing, a mattress and bedding;
- (d) reasonable access to mail and telephone;
- (e) postage for
 - (i) all privileged communications made by the inmate using mail, and
 - (ii) up to seven letters each week for other communications made by an inmate using mail;
- (f) access to reading materials;
- (g) access to personal visits;
- (h) access to health care services;
- (i) access to personal washing or showering facilities at least once each day;
- (j) access to articles of toiletry necessary for the inmate's health and cleanliness;
- (k) any other living conditions and standards that may be prescribed.

Exceptions

(2) With the exception of those living conditions and standards described in paragraphs (1)(a) and (h), subsection (1) does not apply if the Person in Charge decides to limit the provision of those other living conditions and standards as is reasonable and necessary for the protection of security and the safety

MOTION

LOI SUR LES SERVICES CORRECTIONNELS

Il est proposé que le projet de loi 45 soit modifié par insertion, après l'article 26, de ce qui suit :

Conditions et niveaux de vie

26.1. (1) Le responsable veille à ce que tout détenu bénéficie des conditions et niveaux de vie minimaux suivants :

- a) des repas réguliers de type normalement servi aux détenus;
- b) une période d'activités physiques quotidienne d'au moins une heure, à ciel ouvert si les conditions météorologiques et de sécurité le permettent;
- c) des vêtements, un matelas et de la literie;
- d) un accès raisonnable au service postal et de téléphonie;
- e) des timbres :
 - (i) d'une part, pour toutes les communications privilégiées postales faites par le détenu,
 - (ii) d'autre part, jusqu'à un maximum de sept lettres par semaine pour les autres communications postales d'un détenu;
- f) un accès à du matériel de lecture;
- g) un accès à des visites personnelles;
- h) un accès à des services de soins de santé;
- i) un accès à des installations pour leur hygiène personnelle ou des douches au moins une fois par jour;
- j) un accès aux articles de toilette nécessaires à la santé et la propreté du détenu;
- k) toute autre condition ou niveau de vie minimal prévu par règlement.

Conditions et niveaux de vie

Exceptions

(2) À l'exception des conditions et niveaux de vie prévus aux alinéas (1)a) et h), le paragraphe (1) ne s'applique pas si le responsable est d'avis qu'il est raisonnable et nécessaire de limiter l'octroi de ces conditions et niveaux de vie afin d'assurer la sécurité des personnes se trouvant au centre correctionnel.

of persons at the correctional centre.

| | | | |
|--|--|---|--|
| If living conditions and standards limited | (3) If the Person in Charge decides to limit the provision of living conditions and standards under subsection (2), he or she shall (a) prepare written reasons for the decision; and (b) provide those reasons to the inmate as soon as is reasonably possible. | (3) Si le responsable est d'avis de limiter les conditions et niveaux de vie en vertu du paragraphe (2) : a) d'une part, il rédige les motifs écrits justifiant sa décision; b) d'autre part, il donne ces motifs au détenu dès que raisonnablement possible. | Conditions et niveaux de vie limités |
| Right to assemble and associate | (4) Every inmate has the right to assemble peacefully and associate with others within the correctional centre, subject to such limits as are reasonable and necessary for the protection of security and the safety of persons at the correctional centre. | (4) Dans les limites raisonnables et nécessaires pour assurer la sécurité des personnes se trouvant au centre correctionnel, tout détenu a le droit de se réunir et de s'associer pacifiquement avec d'autres personnes se trouvant dans le centre correctionnel. | Droit de se réunir et de s'associer |
| Right to participate in religious and spiritual programs | (5) Every inmate has the right to freely and openly participate in religious and spiritual programs and expressions within the correctional centre, subject to such limits as are reasonable and necessary for the protection of security and the safety of persons at the correctional centre. | (5) Dans les limites raisonnables et nécessaires pour assurer la sécurité des personnes se trouvant au centre correctionnel, tout détenu a le droit de participer librement et ouvertement à des programmes et modes d'expression religieux et spirituels au centre correctionnel. | Droit de participer à des programmes religieux et spirituels |
| Housing female inmates | (6) Female inmates must be (a) housed in separate living units from male inmates; and (b) provided cells that are not in use by male inmates. | (6) Les femmes détenues : a) d'une part, sont hébergées dans des unités distinctes que celles des hommes détenus; b) d'autre part, bénéficient de cellules qui ne sont pas utilisées par les hommes détenus. | Hébergement de femmes détenues |
| Healthcare | (7) Inmates must be (a) provided with all necessary prenatal and post natal care; (b) provided with the opportunity to give birth in a medical or birthing facility outside of the correctional centre if necessary for the inmate's health; and (c) given access to articles of feminine hygiene that are reasonable and necessary for the inmate's health and cleanliness notwithstanding subsection (2). | (7) Les détenues, à la fois : a) reçoivent les soins et les traitements prénatals et postnatals nécessaires; b) se voient offrir la possibilité de donner naissance dans un établissement médical ou un centre d'accouchement situé à l'extérieur du centre correctionnel s'il est nécessaire à leur santé; c) ont accès aux produits d'hygiène féminine raisonnables et nécessaires à leur santé et propreté malgré paragraphe (2). | Soins de santé |

MOTION 16

MOTION

CORRECTIONS ACT

That clause 27 of Bill 45 be deleted and the following substituted:

Rules and Information for Inmates

Rules 27. (1) A Person in Charge shall, subject to the regulations and with the approval of the Director of Corrections, make rules respecting

- (a) the conduct of inmates;
- (b) the activities of inmates; and
- (c) other matters necessary or advisable for the maintenance of order in, and the good management of, the correctional centre.

Provision of rules and information (2) The Person in Charge shall ensure that an inmate, on his or her admittance to the correctional centre, is

- (a) provided with a copy of the rules, in writing or by some other means to ensure that the inmate understands the rules; and
- (b) provided with information about the following, in writing or by some other means to ensure that the inmate understands the information:
 - (i) the rights and privileges of inmates,
 - (ii) the making of complaints by inmates,
 - (iii) discipline,
 - (iv) programs and services,
 - (v) any other matters reasonably necessary to enable the inmate to adapt to the operation of the correctional centre.

Compliance (3) Inmates shall comply with rules made under this section.

Non-compliance with rules (4) Section 38 applies if an inmate fails to comply with a rule made under this section.

MOTION

LOI SUR LES SERVICES CORRECTIONNELS

Il est proposé que l'article 27 du projet de loi 45 soit supprimé et remplacé par ce qui suit :

Règles et renseignements des détenus

27. (1) Sous réserve des règlements et avec l'accord du directeur du Service correctionnel, le responsable établit des règles portant sur :

- a) la conduite des détenus;
- b) les activités des détenus;
- c) les autres questions nécessaires ou souhaitables pour le maintien de l'ordre et la saine gestion du centre correctionnel.

(2) Au moment de l'admission du détenu au centre correctionnel, le responsable veille à ce qu'il reçoive, à la fois :

- a) une copie des règles, par écrit ou d'une autre manière afin de s'assurer qu'il comprend les règles;
- b) les renseignements suivants, par écrit ou d'une autre manière afin de s'assurer qu'il les comprend :
 - (i) les droits et privilèges des détenus,
 - (ii) la façon dont les détenus peuvent présenter une plainte,
 - (iii) la discipline,
 - (iv) les programmes et services,
 - (v) toute autre question raisonnablement nécessaire pour permettre au détenu de s'adapter au fonctionnement du centre correctionnel.

(3) Les détenus respectent les règles établies en vertu du présent article.

(4) L'article 38 s'applique si un détenu est en défaut de se conformer à une règle établie en vertu du présent article.

MOTION 17

MOTION

CORRECTIONS ACT

That Bill 45 be amended by adding the following after clause 27:

Use of Force

| | |
|---|--|
| Reasonable force | 27.1. (1) An authorized person may, subject to the regulations and where no other alternatives are reasonably available, use a reasonable degree and means of force on an inmate to (a) prevent injury or death; (b) prevent property damage; (c) prevent an inmate from escaping; (d) maintain custody and control of an inmate; or (e) maintain order within a correctional centre. |
| Restrictions on use of force | (2) No authorized person shall (a) use force in a circumstance other than described in subsection (1); (b) use force unnecessarily on inmates; and (c) use more force than is reasonably necessary. |
| Physical restraints | (3) The Director of Corrections may approve a device that may be used to physically restrain inmates. |
| Prescribed circumstances and procedures | (4) A device that is approved by the Director of Corrections under subsection (3) may only be used in prescribed circumstances and in accordance with prescribed procedures. |
| Minimum and non-excessive use of force | (5) An authorized person who uses force against an inmate shall use only a degree of force that is reasonable and that is not excessive, having regard to the nature of the threat posed and all other circumstances of the incident. |
| Duty of | (6) If an authorized person uses force in |

MOTION

LOI SUR LES SERVICES CORRECTIONNELS

Il est proposé que le projet de loi 45 soit modifié par insertion, après l'article 27, de ce qui suit :

Recours à la force

| | | |
|--|--|--|
| | 27.1. (1) Toute personne autorisée peut, sous réserve des règlements et lorsqu'aucune autre alternative ne s'avère raisonnablement disponible, utiliser un degré de force et des méthodes raisonnables pour l'une ou l'autre des fins suivantes : a) empêcher qu'une personne soit blessée ou tuée; b) empêcher que des biens soient endommagés; c) empêcher qu'un détenu s'échappe; d) maintenir la garde et le contrôle d'un détenu; e) maintenir l'ordre dans le centre correctionnel. | Force raisonnable |
| | (2) Il est interdit à quiconque d'avoir recours : a) à la force dans une circonstance autre que celles mentionnées au paragraphe (1); b) à la force inutilement envers des détenus; c) à la force plus qu'il n'est raisonnablement nécessaire. | Interdictions de recours à la force |
| | (3) Le directeur du Service correctionnel peut approuver qu'un moyen de contention puisse servir pour maîtriser physiquement des détenus. | Contrainte physique |
| | (4) Un moyen de contention qui est approuvé par le directeur du Service correctionnel en vertu du paragraphe (3) peut seulement être utilisé dans les circonstances et selon les procédures prévues par règlements. | Circonstances et procédures prévues par règlements |
| | (5) Toute personne autorisée qui a recours à la force envers un détenu utilise un degré de force raisonnable et non excessif, eu égard à la nature de la menace présentée et de toute autre circonstance qui entoure l'incident. | Recours à la force minimale et non-excessive |
| | (6) Si une personne autorisée utilise la force | Devoir de la |

| | | | |
|--|---|---|--|
| authorized person after use of force | <p>prescribed circumstances against an inmate, the authorized person shall</p> <p>(a) file, subject to subsection (7) and without delay, a written report to the Person in Charge that</p> <p>(i) indicates the nature of the threat posed by the inmate,</p> <p>(ii) provides relevant details of the incident, and</p> <p>(iii) includes any other information that is required by the regulations; and</p> <p>(b) comply with any other requirements that may be prescribed.</p> | <p>envers un détenu dans les circonstances prévues par règlement, la personne autorisée :</p> <p>a) d'une part, dépose, sous réserve du paragraphe (7) et sans délai, auprès du responsable, un rapport écrit comprenant les éléments suivants :</p> <p>(i) la nature de la menace présentée par le détenu,</p> <p>(ii) les détails pertinents de l'incident,</p> <p>(iii) tout autre renseignement prévu par règlement;</p> <p>b) d'autre part, se conforme aux autres exigences prévues par règlement.</p> | personne autorisée après l'utilisation de la force |
| If Person in Charge used force | <p>(7) If the authorized person under subsection (6) is a Person in Charge, the Person in Charge shall, without delay, file the written report referred to in paragraph (6)(a) with the Director of Corrections.</p> | <p>(7) Si la personne autorisée au titre du paragraphe (6) est le responsable, il dépose, sans délai, le rapport écrit visé à l'alinéa (6)a) auprès du directeur du Service correctionnel.</p> | Recours à la force par le responsable |
| When a physical restraint must not be used | <p>(8) No device may be used to physically restrain an inmate</p> <p>(a) if a prescribed health care practitioner considers that the use of such a device during labour or delivery would compromise the health of the inmate or baby; or</p> <p>(b) for 48 hours or such other longer period of time after delivery as may be recommended by a prescribed health care practitioner who considers that the use of such a device within that period of time would compromise the health of the inmate or baby.</p> | <p>(8) Aucun moyen de contention ne peut être utilisé pour maîtriser physiquement une détenue, dans l'un ou l'autre des cas suivants :</p> <p>a) sur l'avis d'un professionnel de la santé prescrit, l'utilisation d'un tel moyen de contention pendant le travail ou l'accouchement compromettrait la santé de la détenue ou du bébé;</p> <p>b) pendant 48 heures ou tout autre délai plus long après l'accouchement tel que recommandé par un professionnel de la santé prescrit qui est d'avis que l'utilisation d'un tel moyen de contention pendant ce délai compromettrait la santé de la détenue ou du bébé.</p> | Non-utilisation d'un instrument de maîtrise physique |
| Exception | <p>(9) Subsection (8) does not apply if there is imminent risk of harm or serious injury to any person, including the baby.</p> | <p>(9) Le paragraphe (8) ne s'applique pas s'il existe un danger imminent de dommage ou de blessures graves à une personne, y compris un bébé.</p> | Exception |
| Security Classifications | | Classification de sécurité | |
| Assessment and assignment on admission | <p>27.2. (1) When admitting an inmate to a correctional centre the Person in Charge shall, subject to the regulations,</p> <p>(a) assess the inmate using an approved security classification process for the purposes of determining the level of security required for the inmate and his or her appropriate placement within the correctional centre; and</p> <p>(b) assign a security classification to the inmate.</p> | <p>27.2. (1) Au moment de l'admission d'un détenu dans un centre correctionnel, le responsable, sous réserve des règlements :</p> <p>a) d'une part, évalue le détenu à l'aide d'un processus de classification de sécurité approuvé afin de déterminer le niveau de sécurité requis pour le détenu et son placement approprié au sein du centre correctionnel;</p> <p>b) d'autre part, attribue au détenu une cote de sécurité.</p> | Évaluation et attribution |
| Review | <p>(2) A Person in Charge shall ensure that each</p> | <p>(2) Le responsable veille à ce que chaque cote de</p> | Réévaluation |

security classification assigned to an inmate is reviewed in accordance with the regulations.

sécurité attribuée aux détenus soit réévaluée conformément aux règlements.

MOTION 18

MOTION

CORRECTIONS ACT

That Bill 45 be amended by deleting clause 28 and the preceding heading and substituting the following:

Enhanced Supervision Program

Enhanced supervision program

28. (1) In order to ensure the safety, security and order of a correctional centre, the Director of Corrections may, subject to the regulations, establish an enhanced supervision program for the purposes of determining the level of security, program and area limitations, access restrictions and other conditions of confinement required for an inmate.

Assignment

(2) An authorized person may, subject to the regulations, assign an inmate to an enhanced supervision program.

Inmate compliance required

(3) An inmate shall comply with the requirements of an enhanced supervision program to which he or she is assigned.

Level of security, access restrictions or conditions of confinement

(4) An authorized person may, subject to the regulations, assign an inmate within an enhanced supervision program to a specific level of security, access restrictions and other conditions of confinement.

Notice of assignment and opportunity to contest

(5) An authorized person who assigns an inmate to an enhanced supervision program under subsection (2) or who assigns a specific level of security, access restrictions and other conditions of confinement under subsection (4), shall

- (a) provide the inmate with a notice of the assignment, including reasons for the assignment; and
- (b) give the inmate an opportunity to make representations, should he or she decide to contest the assignment.

Considerations of representations

(6) The authorized person shall, after considering any representations made by the inmate under

MOTION

LOI SUR LES SERVICES CORRECTIONNELS

Il est proposé que le projet de loi 45 soit modifié par suppression de l'article 28 et de l'intertitre qui le précède immédiatement et par substitution de ce qui suit :

Programmes de surveillance renforcée

28. (1) Afin d'assurer la sécurité et l'ordre d'un centre correctionnel, le directeur du Service correctionnel peut, sous réserve des règlements, élaborer un programme de surveillance renforcée afin de déterminer le niveau de sécurité, les limites de programme et de zone, les restrictions d'accès et les autres conditions de détention requises pour un détenu.

Programmes de surveillance renforcée

(2) Sous réserve des règlements, une personne autorisée peut attribuer à un détenu un programme de surveillance renforcée.

Évaluation

(3) Tout détenu est tenu de se conformer aux exigences d'un programme de surveillance renforcée auquel il a été attribué.

Obligation de se conformer

(4) Une personne autorisée peut, sous réserve des règlements, attribuer à un détenu dans un programme de surveillance renforcée un niveau spécifique de sécurité, des restrictions d'accès et toute autre condition de détention.

Niveau de sécurité, restriction d'accès et conditions de détention

(5) Toute personne autorisée qui attribue à un détenu un programme de surveillance renforcée en vertu du paragraphe (2) ou qui attribue un niveau spécifique de sécurité, des restrictions d'accès et toute autre condition de détention en vertu du paragraphe (4), donne au détenu, à la fois :

Avis d'attribution et possibilité de contester

- a) un avis d'attribution, y compris les motifs de l'attribution;
- b) la possibilité de présenter ses observations, s'il décide de contester l'attribution.

(6) La personne autorisée, après considération des observations présentées par le détenu en vertu de

Considération des observations

paragraph (5)(b),

- (a) confirm, quash or vary the assignment;
and
- (b) provide the inmate with the decision,
with reasons.

l'alinéa (5)b) :

- a) confirme, annule ou modifie l'attribution;
- b) donne au détenu la décision motivée.

Appeal

(7) An inmate may, subject to the regulations, appeal a decision by an authorized person under this section to the Director of Corrections.

(7) Un détenu peut, sous réserve des règlements, interjeter appel de la décision d'une personne autorisée au titre du présent article auprès du directeur du Service correctionnel. Appel

MOTION 19

MOTION

CORRECTIONS ACT

That the definition "privileged communication" in subclause 30(1) of Bill 45 be amended by

(a) adding the following after paragraph (e):

(e.1) the Ombud or staff of the Ombud, a member or staff of the Human Rights Commission, or a member of the Human Rights Adjudication Panel appointed under the *Human Rights Act*,

(b) striking out "or" at the end of the English version of paragraph (f);

(c) striking out the period at the end of paragraph (g) and substituting ", or"; and

(d) adding the following after paragraph (g):

(h) other persons of a prescribed class.

MOTION

LOI SUR LES SERVICES CORRECTIONNELS

Il est proposé que la définition de «communication privilégiée» au paragraphe 30(1) du projet de loi 45 soit modifiée par :

a) insertion, après l'alinéa e), de ce qui suit :

e.1) le protecteur du citoyen ou un employé du protecteur du citoyen, un membre ou un employé de la Commission des droits de la personne, ou un membre du tribunal d'arbitrage des droits de la personne nommé en vertu de la *Loi sur les droits de la personne*;

b) suppression de «or» à la fin de la version anglaise de l'alinéa f);

c) suppression du point à la fin de l'alinéa g) et par substitution d'un point-virgule;

d) adjonction, après l'alinéa g), de ce qui suit :

h) toute autre catégorie de personnes prévue par règlement.

MOTION 20

MOTION

CORRECTIONS ACT

That clause 32 of Bill 45 be deleted and the following substituted:

Separate
confinement

32. (1) A Person in Charge may, subject to the regulations, require that an inmate be held in separate confinement, if the Person in Charge

- (a) believes on reasonable grounds that the inmate
 - (i) is endangering or is likely to endanger himself or herself or another person,
 - (ii) is jeopardizing or is likely to jeopardize the management, operation or security of the correctional centre, or
 - (iii) must be held in separate confinement for a medical reason;
- (b) has requested an examination of the inmate under the *Mental Health Act*; or
- (c) believes on reasonable grounds that the inmate has contraband concealed on his or her person.

Most living
conditions and
standards
retained

(2) Inmates held in separate confinement retain all the living conditions and standards of inmates under section 26.1, except those that

- (a) can only be enjoyed in association with other inmates; and
- (b) cannot be enjoyed due to the application of subsection 26.1(2).

Access to
programs and
services

(3) Inmates held in separate confinement must be given access to all programs and services, individually or as a group, adapted to the circumstances only as is reasonable and necessary for the protection of security and the safety of persons at the correctional centre.

Limits on
confinement
in cell

(4) An inmate who is held in separate confinement under this section must not be confined in

MOTION

LOI SUR LES SERVICES CORRECTIONNELS

Il est proposé que l'article 32 du projet de loi 45 soit supprimé et remplacé par ce qui suit :

Détention
séparée

32. (1) Le responsable peut, sous réserve des règlements, exiger qu'un détenu soit placé en détention séparée dans l'un ou l'autre des cas suivants :

- a) le responsable a des motifs raisonnables de croire que le détenu, selon le cas :
 - (i) présente un danger ou est susceptible de présenter un danger pour sa propre personne ou une autre personne,
 - (ii) met en péril ou est susceptible de mettre en péril la gestion, le fonctionnement ou la sécurité du centre correctionnel,
 - (iii) doit être placé en détention séparée pour des raisons médicales;
- b) le responsable a demandé l'évaluation du détenu en application de la *Loi sur la santé mentale*;
- c) le responsable a des motifs raisonnables de croire qu'un objet interdit est dissimulé dans le corps du détenu.

(2) Les détenus placés en détention séparée bénéficient de toutes les conditions et des niveaux de vie des détenus énoncés à l'article 26.1, à l'exception de ceux :

- a) liés à la fréquentation des autres détenus;
- b) dont ils ne peuvent bénéficier en raison de l'application du paragraphe 26.1(2).

Conditions et
niveau de vie
des détenus

(3) Les détenus placés en détention séparée ont accès à tous les programmes et services, individuellement ou en groupe, adaptés aux circonstances seulement de façon à ce qu'il soit raisonnable et nécessaire à la protection de la sécurité des personnes au centre correctionnel.

Accès aux
programmes et
services

(4) Un détenu placé en détention séparée en vertu du présent article ne doit pas être détenu dans une

Limites à la
détention dans
une cellule

a cell for more than 20 hours in a 24-hour period, unless required for the protection of security and the safety of persons at the correctional centre.

cellule pendant plus de 20 heures sur une période de 24 heures, sauf pour des raisons de sécurité.

Requirement to provide reasons to inmate

(5) Where the Person in Charge requires that an inmate be held in separate confinement under subsection (2), the Person in Charge shall, within 24 hours after making the requirement,

- (a) give the inmate written reasons for the requirement for separate confinement; and
- (b) direct that the inmate be examined by a health professional within three days after the confinement, if the Person in Charge has reasonable grounds to believe that the inmate may have a mental health condition that would benefit from a treatment plan.

(5) Lorsqu'il exige que le détenu soit placé en détention séparée en vertu du paragraphe (2), dans les 24 heures de la prise de cette exigence, le responsable :

- a) d'une part, donne au détenu les motifs écrits de l'exigence de la détention séparée;
- b) d'autre part, ordonne que le détenu soit examiné par un professionnel de la santé dans les trois jours suivant la mise en détention, s'il a des motifs raisonnables de croire que le détenu peut avoir des troubles de santé mentale et qu'il bénéficierait d'un plan de traitement.

Exigence de fournir les motifs

96-hour separate confinement

(6) An inmate may be held in separate confinement for a period not exceeding 96 hours, and for greater certainty, subsection (4) still applies.

(6) Un détenu peut être placé en détention séparée pour une période maximale de 96 heures, et il est entendu que le paragraphe (4) s'applique.

Période de 96 heures

Exceeding 96-hour confinement

(7) An inmate may be held in separate confinement for a period exceeding 96 hours only if an adjudicator has reviewed a requirement by the Person in Charge for such a confinement and has confirmed the requirement or varied it to a period exceeding 96 hours under section 40.1.

(7) Un détenu peut être placé en détention séparée pour une période de plus de 96 heures que si un arbitre a révisé l'exigence de détention prise par le responsable et a confirmé l'exigence de plus de 96 heures, ou l'a modifiée pour une période de plus de 96 heures, en vertu de l'article 40.1.

Période de plus de 96 heures

Review by adjudicator

(8) If an inmate is held in separate confinement for a period exceeding 96 hours under subsection (7), the Person in Charge shall forward to the adjudicator a request for a review of the requirement under section 40.1.

(8) Si un détenu est placé en détention séparée pour une période de plus de 96 heures en vertu du paragraphe (7), le responsable transmet à l'arbitre une demande de révision de l'exigence en vertu de l'article 40.1.

Révision par l'arbitre

Person in Charge may terminate separate confinement

(9) The Person in Charge may, at any time, terminate a requirement that an inmate be held in separate confinement if the Person in Charge considers that such termination is conducive to the inmate's healing, rehabilitation and community reintegration, and that any risk to any person at the correctional centre is minimal.

(9) Le responsable peut en tout temps mettre fin à l'exigence qu'un détenu soit placé en détention séparée s'il estime qu'y mettre fin est favorable à la guérison du détenu, sa réadaptation ou sa réintégration dans la collectivité, et que tout risque aux personnes au centre correctionnel est minime.

Fin de la détention séparée par le responsable

Appeal to Director of Corrections

(10) An inmate may, subject to the regulations, appeal a requirement that he or she be held in separate confinement to the Director of Corrections.

(10) Sous réserve des règlements, un détenu peut interjeter appel de l'exigence d'être tenu en détention séparée au directeur du Service correctionnel.

Appel

Continuing limit on confinement

(11) For greater certainty, subsection (4) continues to apply where a period of separate confinement under this section exceeds 24 hours.

(11) Il est entendu que le paragraphe (4) continue de s'appliquer lorsque la période de détention séparée au titre du présent article excède 24 heures.

Application continue

MOTION 21

MOTION

CORRECTIONS ACT

That Bill 45 be amended by adding the following after subclause 33(4):

Authorized person must be same gender as inmate

(5) An authorized person who conducts a strip search under this section must be of the same gender as the inmate, unless the Person in Charge believes, on reasonable grounds, that any delay necessary in order to comply with this requirement would result in danger to human life or safety.

Dignity

(6) A strip search conducted under this section must be conducted in a place and manner that

- (a) respects the dignity of the inmate; and
- (b) does not subject the inmate to embarrassment or humiliation.

MOTION

LOI SUR LES SERVICES CORRECTIONNELS

Il est proposé que le projet de loi 45 soit modifié par adjonction, après le paragraphe 33(4), de ce qui suit :

(5) La personne autorisée qui effectue une fouille à nu en vertu du présent article est du même genre que le détenu, sauf si le responsable a des motifs raisonnables de croire que tout retard nécessaire pour se conformer à cette exigence entraînerait un danger pour la vie ou la sécurité humaine. Genre

(6) La fouille à nu au titre du présent article est effectuée dans un lieu ou de manière qui, à la fois : Dignité

- a) respecte la dignité du détenu;
- b) ne soumet pas le détenu à l'embarras ou l'humiliation.

MOTION 22

MOTION

CORRECTIONS ACT

That Bill 45 be amended by adding the following after subclause 34(8):

Authorized person must be same gender as visitor

(9) An authorized person who conducts a strip search under this section must be of the same gender as the visitor.

Dignity

(10) A strip search conducted under this section must be conducted in a place and manner that

- (a) respects the dignity of the visitor; and
- (b) does not subject the visitor to embarrassment or humiliation.

MOTION

LOI SUR LES SERVICES CORRECTIONNELS

Il est proposé que le projet de loi 45 soit modifié par adjonction, après le paragraphe 34(8), de ce qui suit :

(9) La personne autorisée qui effectue une fouille à nu en vertu du présent article est du même genre que le visiteur. Genre

(10) La fouille à nu au titre du présent article est effectuée dans un lieu ou de manière qui, à la fois : Dignité

- a) respecte la dignité du visiteur;
- b) ne soumet pas le visiteur à l'embarras ou l'humiliation.

MOTION 23

MOTION

CORRECTIONS ACT

That Bill 45 be amended by adding the following after subclause 35(6):

Authorized person must be same gender as staff member

(7) An authorized person who conducts a strip search under this section must be of the same gender as the staff member.

Dignity

(8) A strip search conducted under this section must be conducted in a place and manner that

- (a) respects the dignity of the staff member; and
- (b) does not subject the staff member to embarrassment or humiliation.

MOTION

LOI SUR LES SERVICES CORRECTIONNELS

Il est proposé que le projet de loi 45 soit modifié par adjonction, après le paragraphe 35(6), de ce qui suit :

(7) La personne autorisée qui effectue une fouille à nu en vertu du présent article est du même genre que le membre du personnel. Genre

(8) La fouille à nu au titre du présent article est effectuée dans un lieu ou de manière qui, à la fois : Dignité

- a) respecte la dignité du membre du personnel;
- b) ne soumet pas le membre du personnel à l'embarras ou l'humiliation.

MOTION 24

MOTION

CORRECTIONS ACT

That clause 38 of Bill 45 be deleted and the following substituted:

Definition:
"disciplinary segregation"

38. (1) In this section, "disciplinary segregation" means the separation of an inmate from the general population of the correctional centre as a disciplinary or corrective measure imposed on the inmate, and does not mean separate confinement.

Objectives

(2) The objectives of inmate disciplinary or corrective measures include

- (a) the maintenance of law;
- (b) the protection, personal safety and security of inmates, staff members and other persons at correctional centres;
- (c) the maintenance of security at correctional centres;
- (d) the promotion of the orderly operation and effective delivery of programs and services at correctional centres; and
- (e) the protection of personal property and the property of correctional centres.

No cruel or inhumane treatment or punishment

(3) A staff member shall not administer, instigate, or allow cruel, inhumane or degrading treatment or punishment of an inmate.

Prohibitions

(4) For greater certainty, no staff member shall

- (a) apply an instrument of restraint to an inmate as a disciplinary or corrective measure;
- (b) impose restrictions on food, water or the provision of health care as a punishment for an inmate; or
- (c) impose conditions on an inmate that constitute disciplinary segregation except in accordance with this Act.

MOTION

LOI SUR LES SERVICES CORRECTIONNELS

Il est proposé que l'article 38 du projet de loi 45 soit supprimé et remplacé par ce qui suit :

38. (1) Dans le présent article, «isolement disciplinaire» s'entend de la séparation d'un détenu de la population générale du centre correctionnel comme mesure disciplinaire ou corrective imposée au détenu, mais ne s'entend pas de la détention séparée.

Définition :
«isolement disciplinaire»

(2) Les mesures disciplinaires ou correctives imposées aux détenus ont notamment comme objectifs :

Objectifs

- a) le maintien de l'ordre;
- b) la protection, la sûreté et la sécurité des détenus, des membres du personnel et de toute autre personne dans les centres correctionnels;
- c) le maintien de la sécurité dans les centres correctionnels;
- d) la promotion d'un fonctionnement efficace et de la prestation efficace de programmes et de services dans les centres correctionnels;
- e) la protection des biens personnels et des biens des centres correctionnels.

(3) Il est interdit aux membres du personnel d'infliger un traitement ou une peine cruel, inhumain ou dégradant aux détenus, ou d'en être l'instigateur ou de l'y autoriser.

Aucun traitement ou peine cruel ou inhumain

(4) Il est entendu qu'il est interdit à tout membre du personnel, selon le cas :

Interdictions

- a) d'utiliser un moyen de contention envers un détenu comme mesure disciplinaire ou corrective;
- b) d'infliger des restrictions sur la nourriture, l'eau ou la prestation de soins de santé comme sanction envers un détenu;
- c) de soumettre un détenu à des conditions qui constituent un isolement disciplinaire, sauf conformément à la

présente loi.

| | | | |
|---|---|--|---|
| Informal addressing of inmate misconduct | (5) A staff member shall take reasonable steps, to the extent possible, to informally address inmate misconduct before imposing discipline or corrective measures in accordance with this Act. | (5) Les membres du personnel, dans la mesure du possible, prennent des mesures raisonnables pour traiter les actes de mauvaise conduite des détenus de façon informelle avant d'imposer une mesure disciplinaire ou corrective en conformité avec la présente loi. | Traitement informel de la mauvaise conduite des détenus |
| Report | (6) A staff member who alleges that an inmate has contravened the rules of a correctional centre made under section 27 or any other prescribed inmate rules of conduct shall, subject to the regulations, file a written report with the Person in Charge in respect of the alleged contravention. | (6) Le membre du personnel qui allègue qu'un détenu a enfreint les règles d'un centre correctionnel établies en vertu de l'article 27 ou toute autre règle de conduite des détenus prévue par règlement, dépose un rapport écrit au responsable concernant l'infraction alléguée. | Rapport |
| Disciplinary hearing | (7) On receiving a written report under subsection (6) the Person in Charge may, subject to the regulations, convene a disciplinary hearing in respect of the inmate and the alleged contravention. | (7) Dès réception du rapport écrit en application du paragraphe (6), le responsable peut, sous réserve des règlements, tenir une audience disciplinaire concernant le détenu et l'infraction alléguée. | Audience disciplinaire |
| Notice of intention to convene disciplinary hearing | (8) If the Person in Charge intends to convene a disciplinary hearing under subsection (7), he or she shall, subject to the regulations and as soon as is possible, give the inmate notice of that intention, setting out (a) the rule the inmate is alleged to have contravened; (b) the circumstances of the alleged contravention; (c) the right of the inmate to retain a lawyer; and (d) the proposed date and time of the disciplinary hearing. | (8) Si le responsable a l'intention de tenir une audience disciplinaire en application du paragraphe (7), il donne au détenu, sous réserve des règlements et dès que possible un avis de cette intention qui comprend les renseignements suivants : a) la règle à laquelle le détenu est présumé avoir contrevenu; b) les circonstances de la contravention alléguée; c) le droit du détenu d'avoir recours à l'assistance d'un avocat; d) la date et l'heure proposées de l'audience disciplinaire. | Avis d'intention de tenir une audience disciplinaire |
| Adjudicator | (9) An adjudicator shall, subject to the regulations, conduct a disciplinary hearing and make a determination of the guilt of the inmate in respect of the alleged contravention. | (9) Sous réserve des règlements, un arbitre préside une audience tenue en vertu du présent article et détermine la culpabilité du détenu quant à l'infraction alléguée. | Arbitre |
| Mitigating factors to be considered | (10) An adjudicator shall, before imposing any disciplinary or corrective measure, take into consideration how an inmate's mental health or developmental disability may have contributed to his or her conduct. | (10) Avant d'imposer une mesure disciplinaire ou corrective, l'arbitre tient compte de l'influence qu'aurait pu avoir la santé mentale du détenu, ou sa déficience développementale, sur sa conduite. | Circonstances atténuantes sont considérées |
| Disciplinary or corrective measures | (11) On making a finding of guilt, an adjudicator (a) may, subject to the regulations, impose such disciplinary or corrective measures as he or she considers necessary in respect of the inmate; (b) shall, if the inmate is facing disciplinary segregation, review plans for the inmate to have meaningful contact with others; and | (11) Lorsqu'il conclut à la culpabilité, l'arbitre : a) peut, sous réserve des règlements, imposer au détenu toute mesure disciplinaire ou corrective qu'il juge nécessaire; b) dans le cas où le détenu fait face à l'isolement disciplinaire, révisé ce qui est planifié pour le détenu afin que celui-ci ait des rapports significatifs avec autrui; | Mesures disciplinaires ou correctives |

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| | (c) shall provide written reasons for the disciplinary or corrective measures imposed. | c) fournit par écrit les motifs des mesures disciplinaires ou correctives imposées. | |
| Disciplinary segregation | (12) If an adjudicator makes a finding of guilt and orders that the inmate be held in disciplinary segregation to a cell, room or unit, that segregation must not exceed (a) 20 hours in a 24-hour period, unless required for reasons of safety; and (b) 13 consecutive days. | (12) Si l'arbitre conclut à la culpabilité et ordonne au détenu d'être mis en isolement disciplinaire dans une cellule, pièce ou unité, cet isolement ne doit pas excéder : a) d'une part, 20 heures sur une période de 24 heures, sauf pour des raisons de sécurité; b) d'autre part, 13 jours consécutifs. | Isolement disciplinaire |
| Aggregate maximum for disciplinary segregation | (13) A Person in Charge shall, subject to subsection (14), ensure that no inmate is held in conditions that constitute disciplinary segregation for more than 60 aggregate days in a 365-day period. | (13) Sous réserve du paragraphe (14), le responsable veille à ce qu'aucun détenu ne soit placé dans des conditions qui constituent un isolement disciplinaire pour une durée totale de 60 jours sur une période de 365 jours. | Durée maximale en isolement disciplinaire |
| Exception | (14) An inmate may be held in conditions that constitute disciplinary segregation for more than 60 aggregate days in a 365-day period, if (a) the Person in Charge has determined that no other less restrictive placement or disciplinary or corrective measures are appropriate for the inmate; and (b) an adjudicator has reviewed the matter and authorized the Person in Charge to exceed that 60-day limit. | (14) Un détenu peut être placé dans des conditions qui constituent un isolement disciplinaire pour une durée totale de plus de 60 jours sur une période de 365 jours, si les conditions suivantes sont respectées : a) le responsable a déterminé qu'aucun autre placement moins restrictif ou mesure disciplinaire ou corrective n'était approprié pour le détenu; b) un arbitre a révisé la question et a autorisé le responsable à excéder la période limite de 60 jours. | Exception |
| Transfers do not constitute break in disciplinary segregation | (15) For the purposes of this section, the transfer of an inmate who was held in conditions that constitute disciplinary segregation in one correctional centre to a different correctional centre does not affect the calculation of the aggregate number of days he or she has been held in conditions that constitute disciplinary segregation. | (15) Pour l'application du présent article, le transfert d'un centre correctionnel à un autre d'un détenu placé dans des conditions qui constituent un isolement disciplinaire n'a pas d'effet sur le calcul du nombre total de jours où il est placé dans des conditions qui constituent un isolement disciplinaire. | Transfert du détenu |
| Dismissal of charges | (16) If an adjudicator does not make a finding of guilt, he or she shall dismiss the charges. | (16) S'il ne conclut pas à la culpabilité, l'arbitre rejette l'accusation. | Rejet de l'accusation |
| Compliance | (17) An inmate shall comply with any disciplinary or corrective measure imposed under subsection (11). | (17) Un détenu se conforme aux mesures disciplinaires ou correctives imposées en application du paragraphe (11). | Conformité |
| Appeal | (18) An inmate who is found guilty by an adjudicator at a disciplinary hearing may, in accordance with the regulations, appeal the finding in a manner approved by the Director of Investigations and Standards. | (18) Une personne déclarée coupable par un arbitre lors d'une audience disciplinaire peut, conformément aux règlements, interjeter appel de la conclusion de la manière approuvée par le directeur des enquêtes et des normes. | Appel |
| Power to confirm, quash or reduce | (19) On an appeal under subsection (18) the Director of Investigations and Standards may confirm, quash or reduce any disciplinary or corrective measure | (19) Lors d'un appel interjeté en application du paragraphe (18), le directeur des enquêtes et des normes peut confirmer, annuler ou alléger toute | Pouvoir de confirmer, d'annuler ou |

imposed.

mesure disciplinaire ou corrective imposée.

d'alléger

Decision final (20) A decision made by the Director of Investigations and Standards on appeal is final.

(20) La décision du directeur des enquêtes et des normes en appel est définitive.

Décision définitive

MOTION 25

MOTION

CORRECTIONS ACT

That Bill 45 be amended by

- (a) striking out "subsection 38(6)" in subclause 39(5) and substituting "subsection 38(11)"; and**
- (b) striking out "Subsections 38(8) to (10)" in subclause 39(7) and substituting "Subsections 38(18) and (20)".**

MOTION

LOI SUR LES SERVICES CORRECTIONNELS

Il est proposé que le projet de loi 45 soit modifié par :

- a) suppression de «du paragraphe 38(6)», au paragraphe 39(5), et par substitution de «du paragraphe 38(11)»;**
- b) suppression de «Les paragraphes 38(8) à (10)», au paragraphe 39(7), et par substitution de «Les paragraphes 38(18) et (20)».**

MOTION 26

MOTION

CORRECTIONS ACT

That Bill 45 be amended by deleting clause 40 and substituting the following:

| | |
|--------------------------|---|
| Adjudicators | 40. (1) The Minister may appoint adjudicators. |
| Restriction | (2) An adjudicator must not be employed at a correctional centre. |
| Powers and duties | (3) An adjudicator shall, subject to the regulations, (a) preside over disciplinary hearings; (b) review alleged breaches by inmates of this Act, the regulations or the rules of a correctional centre; (c) make a determination respecting an inmate at a disciplinary hearing; (d) determine appropriate disciplinary or corrective measures for breaches of this Act, the regulations or the rules of a correctional centre; (e) review instances where a Person in Charge authorizes the disciplinary segregation of an inmate for more than 60 aggregate days in a 365-day period under subsection 38(14); and (f) review the separate confinement of inmates under section 32 and determine whether such periods of confinement may be varied. |
| Honorariums and expenses | (4) Subject to the regulations, adjudicators may be (a) paid honorariums; and (b) reimbursed for reasonable expenses incurred in the exercise of powers and in the performance of duties under this Act. |

MOTION

LOI SUR LES SERVICES CORRECTIONNELS

Il est proposé que le projet de loi 45 soit modifié par suppression de l'article 40 et par substitution de ce qui suit :

| | |
|------------------------|--|
| Arbitres | 40. (1) Le ministre peut nommer des arbitres. |
| Limites | (2) L'arbitre n'est pas un employé au centre correctionnel. |
| Attributions | (3) Sous réserve des règlements, l'arbitre a les attributions suivantes : a) présider les audiences disciplinaires; b) examiner les contraventions alléguées des détenus à la présente loi, aux règlements ou aux règles d'un centre correctionnel; c) prendre une décision concernant le détenu lors d'une audience disciplinaire; d) déterminer les mesures disciplinaires ou correctives appropriées lors d'une violation à la présente loi, aux règlements ou aux règles d'un centre correctionnel; e) réviser les cas où le responsable autorise l'isolement disciplinaire d'un détenu pour une période totale de plus de 60 jours sur une période de 365 jours en vertu du paragraphe 38(14); f) réviser la détention séparée des détenus prévue à l'article 32 et déterminer si la période de détention séparée peut être modifiée. |
| Honoraires et dépenses | (4) Sous réserve des règlements, les arbitres peuvent recevoir, à la fois : a) des honoraires; b) le remboursement de leurs dépenses raisonnables engagées dans l'exercice des attributions que leur confère la présente loi. |

MOTION 27

MOTION

CORRECTIONS ACT

That Bill 45 be amended by adding the following after clause 40:

Review of Separate Confinement by Adjudicator

Application 40.1. (1) This section applies where an adjudicator receives a request to review a requirement that an inmate be held in separate confinement for a period exceeding 96 hours under subsection 32(8), and carries out the review under paragraph 40(3)(f).

Extensions to separate confinement (2) If, on review of the request, the adjudicator decides to extend the period of separate confinement for the inmate, the adjudicator may extend the period for one or more periods, each of which must not exceed seven days.

What adjudicator must do prior decision (3) Before making a decision on a review under this section, the adjudicator shall

- (a) give the inmate a copy of the request for the review and the details of the requirement that the inmate be held in separate confinement;
- (b) give the inmate a reasonable opportunity to retain legal counsel and to make oral or written submissions to the adjudicator about why the requirement should be rejected or varied; and
- (c) consider any examination report from a health professional made under paragraph 32(5)(b).

Power to terminate (4) An adjudicator may, after carrying out a review under this section, terminate a requirement that an inmate be held in separate confinement if the adjudicator considers that such termination is conducive to the inmate's healing, rehabilitation and community reintegration, and that any risk to any

MOTION

LOI SUR LES SERVICES CORRECTIONNELS

Il est proposé que le projet de loi 45 soit modifié par insertion, après l'article 40, de ce qui suit :

Révision de la détention séparée par l'arbitre

Application 40.1. (1) Le présent article s'applique lorsqu'un arbitre reçoit une demande de révision d'une exigence qu'un détenu soit tenu en détention séparée pour une période qui excède 96 heures en vertu du paragraphe 32(8), et lorsque l'arbitre fait une révision en vertu de l'alinéa 40(3)f.

Prolongation de la détention séparée (2) Suite à la révision de la demande, s'il décide de prolonger la période de détention séparée du détenu, l'arbitre peut prolonger celle-ci d'une ou plusieurs périodes, chacune ne pouvant excéder sept jours.

Responsabilité de l'arbitre avant de prendre sa décision (3) Avant de rendre sa décision en vertu du présent article, l'arbitre, à la fois :

- a) fait parvenir au détenu une copie de la demande de révision ainsi que les renseignements à l'appui de l'exigence que le détenu soit tenu en détention séparée;
- b) donne au détenu une possibilité raisonnable d'avoir recours à l'assistance d'un avocat et de présenter ses observations à l'oral ou l'écrit à l'arbitre, à savoir pourquoi l'exigence devrait être rejetée ou modifiée;
- c) tient compte de tout rapport d'évaluation provenant d'un professionnel de la santé au titre de l'alinéa 32(5)b).

Compétence à mettre fin à la détention séparée (4) Après avoir complété une révision en vertu du présent article, l'arbitre peut mettre fin à une exigence qu'un détenu soit tenu en détention séparée s'il estime qu'y mettre fin favorise la guérison, la réadaptation et la réintégration sociale du détenu dans la collectivité, et que tout risque envers toute personne au centre

person at the correctional centre is minimal.

correctionnel est minime.

Appeal

(5) An inmate may appeal a decision of the adjudicator to the Director of Corrections within seven days after receiving notice of the decision from the adjudicator.

(5) Un détenu peut interjeter appel de la décision de l'arbitre au directeur du Service correctionnel dans les sept jours de la réception de l'avis de la décision de l'arbitre. Appel

MOTION 28

MOTION

CORRECTIONS ACT

That clause 50 of Bill 45 be amended by

- (a) striking out "Minister may provide any" in subclause (1) and substituting "Minister shall authorize the provision";**
- and**
- (b) adding the following after clause (3):**

(4) A Person in Charge may limit an inmate's access to any service referred to in subsection (1) if the Person in Charge considers it is reasonable and necessary for the protection of security and the safety of persons at the correctional centre.

Limit on inmate's access to services

MOTION

LOI SUR LES SERVICES CORRECTIONNELS

Il est proposé que l'article 50 du projet de loi 45 soit modifié par :

- a) suppression de «ministre peut fournir les services», au paragraphe (1), et par substitution de «ministre autorise la prestation des services»;**
- b) adjonction de ce qui suit après le paragraphe (3) :**

(4) L'accès aux services visés au paragraphe (1) peut être restreint par le responsable s'il estime qu'il est raisonnable et nécessaire de protéger la sécurité des personnes au centre correctionnel.

Accès restreint des services du détenu

MOTION 29

MOTION

CORRECTIONS ACT

That Bill 45 be amended in the English version of subclause 51(2) by striking out "Materiel" and substituting "Material".

MOTION

LOI SUR LES SERVICES CORRECTIONNELS

Il est proposé que la version anglaise du paragraphe 51(2) du projet de loi 45 soit modifiée par suppression de «Materiel» et par substitution de «Material».

MOTION 30

MOTION

CORRECTIONS ACT

That Bill 45 be amended by adding the following after clause 53:

Complaints

Definition: "complainant" 53.1. (1) In this section, "complainant" means an inmate, offender or person on probation, conditional sentence or judicial interim release who makes a complaint under this section.

Process for complaints (2) The Director of Corrections shall, subject to the regulations, establish a process for making complaints about

- (a) the operation of a correctional centre, including procedures for reporting and addressing complaints and reviews; and
- (b) the provision of correctional programs and services at a correctional centre or elsewhere.

Rights (3) A complainant or potential complainant is, subject to the regulations, entitled to

- (a) make a complaint;
- (b) receive timely information about the complaint and review processes;
- (c) receive a response to the complaint within a reasonable period;
- (d) have a timely investigation into the complaint;
- (e) make submissions;
- (f) receive written reasons for decisions made in respect of the complaint; and
- (g) have the complaint reviewed.

MOTION

LOI SUR LES SERVICES CORRECTIONNELS

Il est proposé que le projet de loi 45 soit modifié par insertion, après l'article 53, de ce qui suit :

Plaintes

53.1. (1) Dans le présent article, «plaignant» s'entend d'un détenu, d'un contrevenant, ou d'une personne qui est mise en probation, qui purge une peine d'emprisonnement avec sursis, ou qui a été mis en liberté provisoire par voie judiciaire, qui porte plainte en vertu du présent article.

(2) Sous réserve des règlements, le directeur du Service correctionnel élabore un processus de plaintes qui porte sur :

- a) d'une part, la gestion d'un centre correctionnel, y compris la façon de rapporter et de traiter les plaintes et les révisions;
- b) d'autre part, la prestation des programmes et des services correctionnels offerts à un centre correctionnel ou ailleurs.

(3) Sous réserve des règlements, un plaignant ou un plaignant potentiel a les droits suivants :

- a) porter plainte;
- b) recevoir des renseignements concernant une plainte et le processus de révision;
- c) recevoir une réponse à sa plainte dans un délai raisonnable;
- d) avoir une enquête sur sa plainte menée en temps opportun;
- e) faire des observations;
- f) recevoir les motifs écrits d'une décision rendue sur sa plainte;
- g) faire examiner sa plainte.

MOTION 31

MOTION

CORRECTIONS ACT

That Bill 45 be amended by adding the following after clause 55:

ANNUAL REPORT

Report

55.1. (1) The Director of Corrections shall, within four months after the end of each fiscal year, make a report to the Minister on the administration of the Act for that fiscal year, including

- (a) the number of inmates admitted to and released from each correctional centre;
- (b) the number of offenders participating in rehabilitation programs as defined in section 21;
- (c) the number of instances of use of force under section 27.1;
- (d) the number of inmates held in separate confinement under section 32, including details about how long they were so held;
- (e) the number of inmates held in disciplinary segregation under section 38, including details about how long they were so held;
- (f) the number of hearings presided over by adjudicators;
- (g) the number of complaints made under section 53.1; and
- (h) details about any judicial review where the decision of a staff member or an adjudicator was quashed, confirmed or varied or returned for reconsideration.

Report before
Legislative
Assembly

(2) The Minister shall lay a copy of the report referred to in subsection (1) before the Legislative Assembly at the earliest opportunity after receiving the report.

MOTION

LOI SUR LES SERVICES CORRECTIONNELS

Il est proposé que le projet de loi 45 soit modifié par insertion, après l'article 55, de ce qui suit :

RAPPORT ANNUEL

55.1. (1) Dans les quatre mois suivant la fin de chaque exercice, le directeur du Service correctionnel présente au ministre un rapport sur l'administration de la présente loi lors de cet exercice, qui comprend les renseignements suivants :

- a) le nombre de détenus admis à chaque centre correction, ainsi que ceux qui ont reçu leur mise en liberté;
- b) le nombre de contrevenants qui participent à des programmes de réadaptation au sens de l'article 21;
- c) le nombre de cas où il y a eu un recours à la force en vertu de l'article 27.1;
- d) le nombre de détenus placés en détention séparée en vertu de l'article 32, y compris la durée de leur placement;
- e) le nombre de détenus placés en isolement disciplinaire en vertu de l'article 38, y compris la durée de leur placement;
- f) le nombre d'audiences présidées par des arbitres;
- g) le nombre de plaintes déposées en vertu de l'article 53.1;
- h) tout renseignement concernant les révisions judiciaires dans le cas où la décision d'un membre du personnel ou d'un arbitre a été annulée, confirmée, modifiée ou renvoyée pour réexamen.

Rapport
annuel

(2) Le ministre fait déposer une copie du rapport annuel visé au paragraphe (1) devant l'Assemblée législative dès que possible après sa réception.

Dépôt du
rapport devant
l'Assemblée
législative

MOTION 32

MOTION

CORRECTIONS ACT

That clause 56 of Bill 45 be amended by

(a) adding the following after paragraph (e):

- (e.1) respecting the establishment, administration and maintenance of programs respecting the rights of victims under subsection 11(1);
- (e.2) respecting other information that the Director of Corrections may disclose under subsection 11(2);

(b) striking out "paragraph 16(1)(g)" in paragraph (i) and substituting "paragraph 16(1)(h)";

(c) deleting paragraphs (l) and (m) and substituting the following:

- (l) respecting the participation in programs and services by offenders under subsection 21(4);
- (m) respecting the services provided by Indigenous elders and spiritual advisors under subsection 21(7);

(d) adding the following after paragraph (p):

- (p.1) prescribing other living conditions and standards for the purposes of subsection 26.1(1);

(e) adding the following after paragraph (s):

- (s.1) respecting the use of force under section 27.1, including
 - (i) the use of a reasonable degree of force by authorized persons under subsection 27.1(1),
 - (ii) prescribing circumstances when a

MOTION

LOI SUR LES SERVICES CORRECTIONNELS

Il est proposé que l'article 56 du projet de loi 45 soit modifié par :

a) insertion, après l'alinéa e), de ce qui suit :

- e.1) régir l'élaboration, l'administration et le maintien de programmes concernant les droits des victimes en vertu de paragraphe 11(1);
- e.2) régir les autres renseignements que le directeur du Service correctionnel peut divulguer en vertu du paragraphe 11(2);

b) suppression de «l'alinéa 16(1)g)», à l'alinéa i), et par substitution de «l'alinéa 16(1)h)»;

c) suppression des alinéas l) et m) et par substitution de ce qui suit :

- l) régir la participation des détenus aux programmes et services au titre du paragraphe 21(4);
- m) régir les services d'un Aîné autochtone ou d'un conseiller spirituel fournis en vertu du paragraphe 21(7);

d) insertion, après l'alinéa p), de ce qui suit :

- p.1) prévoir les autres conditions et niveaux de vie pour l'application du paragraphe 26.1(1);

e) insertion, après l'alinéa s), de ce qui suit :

- s.1) régir le recours à la force au titre de l'article 27.1, notamment :
 - (i) l'utilisation d'un degré raisonnable de force par les personnes autorisées au titre du paragraphe 27.1(1);

- device may be used to physically restrain an inmate and prescribing the procedures applicable to its use under subsection 27.1(4),
- (iii) the filing of a written report under paragraph 27.1(6)(a),
- (iv) prescribing other requirements to be complied with by the authorized person under paragraph 27.1(6)(b), and
- (v) prescribing classes of persons who are health care practitioners under subsection 27.1(8);
- (s.2) respecting security classifications under section 27.2, including
 - (i) the assessment and assignment of an inmate on admission under subsection 27.2(1), and
 - (ii) the reassessment or reassignment of an inmate under subsection 27.2(2);

(f) deleting paragraph (t) and substituting the following:

- (t) respecting the enhanced supervision program under section 28, including
 - (i) the establishment of an enhanced supervision program under subsection 28(1),
 - (ii) the assignment of inmates to an enhanced supervision program under subsection 28(2),
 - (iii) the assignment of an inmate within an enhanced supervision program to a specific level of security, access restrictions and other conditions of confinement under subsection 28(4), and
 - (iv) appeals to the Director of Corrections under subsection 28(7);

(g) deleting paragraph (u) and substituting the following:

- (u) respecting inmate communications under section 30, including
 - (i) prescribing other means of

- (ii) les circonstances selon lesquelles un moyen de contention peut être utilisé pour maîtriser physiquement un détenu et prévoir les procédures applicables à son utilisation au titre du paragraphe 27.1(4),
- (iii) le dépôt de rapports écrits au titre de l'alinéa 27.1(6)a),
- (iv) toute autre exigence à laquelle la personne autorisée doit se conformer au titre de l'alinéa 27.1(6)b),
- (v) les catégories de personnes qui sont des professionnels de la santé au titre du paragraphe 27.1(8);
- s.2) régir la classification de sécurité au titre de l'article 27.2, notamment :
 - (i) l'évaluation et l'attribution d'un détenu lors de son admission au titre du paragraphe 27.2(1),
 - (ii) la réévaluation ou la réattribution d'un détenu au titre du paragraphe 27.2(2);

f) suppression de l'alinéa t) et par substitution de ce qui suit :

- t) régir le programme de surveillance renforcée au titre de l'article 28, notamment :
 - (i) l'élaboration d'un programme de surveillance renforcée au titre du paragraphe 28(1),
 - (ii) l'affectation de détenus à un programme de surveillance renforcée au titre du paragraphe 28(2),
 - (iii) l'attribution d'un détenu dans un programme de surveillance renforcée à un niveau spécifique de sécurité, à des restrictions d'accès et à d'autres conditions de détention au titre du paragraphe 28(4),
 - (iv) l'interjection d'appels au directeur du Service correctionnel au titre du paragraphe 28(7);

g) suppression de l'alinéa u) et par substitution de ce qui suit :

- u) régir les communications des détenus au titre de l'article 30, notamment :
 - (i) prévoir les autres méthodes de

communication for the purposes of the definition "inmate communication" in subsection 30(1), and

- (ii) prescribing classes of persons who may receive privileged communications for the purposes of the definition "privileged communication" in subsection 30(1);

(h) deleting paragraph (w) and substituting the following:

- (w) respecting separate confinement under section 32, including
 - (i) the circumstances when the Person in Charge may require an inmate to be held in separate confinement under subsection 32(1), and
 - (ii) appeals under subsection 32(10);

(i) deleting paragraph (z.3) and substituting the following:

- (z.3) respecting disciplinary and corrective measures under section 38, including
 - (i) the filing of written reports under subsection 38(6),
 - (ii) the convening of disciplinary hearings by the Person in Charge under subsection 38(7),
 - (iii) the giving of notice of the intention to convene a disciplinary hearing under subsection 38(8),
 - (iv) the conduct of disciplinary hearings by adjudicators under subsection 38(9), and
 - (v) appeals to the Director of Investigations and Standards under subsection 38(18);

(j) striking out "alternate measures panels" in the English version of each of paragraphs (z.4) and (z.5) and substituting "alternative measures panels"; and

(k) adding the following after paragraph (z.17):

communication établies aux fins de la définition de «communication d'un détenu» prévue au paragraphe 30(1),

- (ii) prévoir les catégories de personnes qui peuvent recevoir une communication privilégiée aux fins de la définition de «communication d'un détenu» prévue au paragraphe 30(1);

h) suppression de l'alinéa w) et par substitution de ce qui suit :

- w) régir la détention séparée au titre de l'article 32, notamment :
 - (i) les circonstances selon lesquelles le responsable peut exiger qu'un détenu soit placé en détention séparée au titre du paragraphe 32(1),
 - (ii) les appels au titre du paragraphe 32(10);

g) suppression de l'alinéa z.3) et par substitution de ce qui suit :

- z.3) régir les mesures disciplinaires et correctives au titre de l'article 38, notamment :
 - (i) le dépôt de rapports écrits au titre du paragraphe 38(6),
 - (ii) la convocation à une audience disciplinaire par le responsable au titre du paragraphe 38(7),
 - (iii) la communication de l'avis d'intention de tenir une audience disciplinaire au titre du paragraphe 38(8),
 - (iv) la présidence de l'arbitre aux audiences disciplinaires au titre du paragraphe 38(9),
 - (v) l'interjection des appels au directeur des enquêtes et des normes au titre du paragraphe 38(18);

j) suppression de «alternate measures panels», dans la version anglaise des alinéas z.4) et z.5), et par substitution de «alternative measures panels»;

k) insertion de ce qui suit après l'alinéa z.17) :

(z.17.1) respecting complaints under section 53.1, including the establishment of a process for the making of complaints under subsection 53.1(2);

z.17.1) régir les plaintes au titre de l'article 53.1, incluant la mise en place d'une procédure de plaintes au titre du paragraphe 53.1(2).

APPENDIX B

SUBMISSIONS ON BILL 45

In addition to the presentations heard by Committee at the public hearings for Bill 45, Committee received written submissions from the following parties, as attached:

- Mary E. Campbell (June 20, 2019)
- Information and Privacy Commissioner (June 28, 2019)
- Canadian Bar Association NT Branch – Criminal Justice Section (June 28, 2019)
- British Columbia Civil Liberties Association (July 4, 2019)
- Lydia Bardak (July 4, 2019)

BILL 45

NEW CORRECTIONS ACT

A. A FEW BACKGROUND WORDS:

1. Model Acts

Two model Corrections Acts were recently drafted by this writer, and can be useful resources for NWT. One is a revised federal Act – “CCRA 2.0”, released in 2019 by the Correctional Investigator of Canada as a discussion document. <https://www.oci-bec.gc.ca/cnt/rpt/pdf/oth-aut/oth-aut20190514-eng.pdf>

The second was drafted for the Ontario government. It obtained Royal Assent but was not proclaimed in force before the provincial election of 2018, nor has it subsequently been proclaimed in force. See *Correctional Services and Reintegration Act*, S.O. 2018, c.

6. <https://www.ontario.ca/laws/statute/18c06#BK67>

2. Structure

Statutes should be the foundation of the legislative scheme.

- They articulate the core rights and responsibilities.
- They are public documents and are subject to public debate and consultation.
- They pass through the full legislative process and elected officials are accountable.
- They are subject to judicial interpretation and oversight.

Regulations should flesh out the operational details of statutory provisions.

- They fill out more practical dimensions of core rights and responsibilities – for example, if the Director shall by statute provide a library for inmates’ use, the regulations might specify the hours of operation of the library, any limits on the number of materials that may be borrowed at any one time, responsibility for loss or damage, etc.
- They are public documents, open to consultation.
- They are created by public servants and are usually approved by legislatures.

Policies should provide only the most minimal operational guidance that will enhance efficiency but not affect substantive rights.

- They should not exceed or contradict statutory provisions.
- They should be public, but are too often closely held.
- They are created and approved only by public servants.

- They are subject to internal compliance mechanisms, but only a minimal amount of independent scrutiny.

When too much appears in policy in particular, legislatures have abdicated one of their core functions to the public servants. Neither staff nor prisoners nor the public have ready access to correctional expectations or means to measure their achievement. The validity of staff decisions is often measured against compliance with policy rather than compliance with the law.

Some examples to NOT follow: The current Ontario Act (*Ministry of Correctional Services Act*, R.S.O. 1990, c. M-22 <https://www.ontario.ca/laws/statute/90m22>) has almost nothing in it other than a few organizational details. The Regulations provide little more. Virtually everything of substance is in policies, most of which are considered non-public documents.

At the federal level, both Correctional Service of Canada (CSC) and the Parole Board of Canada (PBC) have drifted back to pre-1992 days, with a great deal of substantive rights and responsibilities in policy rather than statute. In addition, many of their policies contradict the statute – and staff repeatedly cite policy compliance as their main benchmark.

3. Evidence base

The measures in the statute should be comprehensive and adaptable to local culture and norms, reflecting:

- Caselaw
- International standards (such as the Nelson Mandela Rules (standard minimum rules for prisoners), the Bangkok Rules (standard minimum rules for females in particular), the Tokyo Rules (community corrections rules), and the Optional Protocol to the Convention against Torture)
- The Charter of Rights and Freedoms
- Research and evidence-based practices
- Recommendations from accepted studies and reports
- Reforms in other jurisdictions.

With a revised, modernized Act:

- ✓ NWT has the opportunity to become a P/T leader in in correctional law and operations.
- ✓ Costs can be focused and streamlined.
- ✓ Staff morale can be improved.
- ✓ Public safety can be increased.

B. STRUCTURE OF THE ACT

First: As this is a major reform of your corrections legislation, you may wish to consider beginning with a **Preamble**. You have all the elements articulated in page 1 of your Legislative Summary document.

Second: I strongly urge you to begin the Act with a **statement of purpose and principles**. I cannot overstate how important this is for everyone involved – staff, the public, persons under sentence, legislators, and courts.

This would normally follow the Definition section.

As it is currently drafted, opening with **sections 2 and 3** is a bureaucrat's dream and a reader's snooze. It doesn't say "why are we here today", "what are we all about", "what are our aspirations for our corrections system" – it says "here is some necessary but boring detail".

Sections 4 through 18 continue in much the same vein. I recommend that you review these sections to see what needs to be in the Act and what could be covered in Regulations.

Section 19 et. seq. – I'm tempted to say a non-lawyerly Whoa Nelly! From the detailed organizational structure right into Use of Force. I strongly recommend going more in the order of the correctional experience, and perhaps using a Part I for institutional matters and a Part II for community matters. You have sort of done this starting at section 24. It just makes for a more orderly understanding of the correctional process.

C. SUBSTANTIVE ELEMENTS

In general, I find the Act heavy on responsibilities and a bit light on rights. Some subjects are not covered at all.

(i) Omissions

In particular, I think the Act could benefit from some mention of the following. I think they are too substantive to be left to Regs or policies (though I see that some of them are covered in current Regs):

Victims. There could be a provision to specify what kind of information should be provided to victims, especially particular offenders. There could also be some provision for victim-offender mediation.

Information to offenders. Subsection 27(2) requires that inmates shall be informed as to the institutional rules, but I don't see any other provision for informing inmates of their rights and responsibilities.

Health care. I don't see anything regarding the provision of health care, whether mental or physical, or preventive or treatment, nor specific to women's health care needs.

Religion/spirituality. Access to such programs and services is a fundamental right.

Living conditions. Again, there are a few references in the Regs, but fundamental provisions should be in statute. Things like clean living conditions with access to fresh air and sunlight, access to leisure and law books, access to in-person visits.

Staff training and support. I think the Act could benefit from some reference to the importance of staff training (ongoing) and support, and the importance of a healthy workplace.

(ii) Use of Force

More detail is needed, including a definition of "force". For example, we could agree with striking a person with a baton is force. But what about waving a baton menacingly while shouting at the inmate to comply? There should also be some reference to use of force as a last resort and perhaps the use of de-escalation techniques where possible. And what types of use of force should be reportable to senior officers? What about use of restraint equipment, particularly in relation to women who are pregnant or who have recently given birth?

(iii) Programs and services

You could add to section 21 that programs and services should be offered in a timely manner relative to release eligibilities for all inmates, and based on evidentiary principles such as Risk-Need-Responsivity.

(iv) Living conditions

Subsections 26(c) and (d) make oblique reference to living conditions, but these should be far more explicit in the Act.

(v) Discipline

The Act should contain a list of disciplinary offences (s. 27), as well as the range of possible sanctions (ss. 38(6)). The adjudicative process (s. 40) is also rather thin – there are no timeframes, and no mention of an assistant or lawyer for the inmate. As well, I'm not sure that having staff members as adjudicators (even though from another institution) provides sufficient appearance or reality of independence.

(vi) Assessments

Seems to me that ss. 28(1) should not be "may establish" an assessment program but rather "shall establish". You can't do anything effectively without knowing what the offender's risks and needs are. Subsection 28(4) should include some reference to the assessments being regularly updated, not just a one-time deal. Ditto for 29(2).

(vii) Communication

Section 30 should somewhere make it explicit that inmates have a right to communicate with the non-inmate world, subject to security concerns. And that the access must be reasonable, i.e. not just 1 phone for 30 people, or 1 piece of stationery per week.

If NWT wanted to vastly outshine CSC, it could implement non-internet based email. This was established in the US Bureau of Prisons years ago (all security levels). The service is provided by private companies and the cost is born by the inmate users (eg. 5 cents per online minute). Security staff love it because the email is electronically scanned and staff do not have to decipher handwriting (escape? escargot?).

(viii) Separate confinement

Obviously a very topical issue. The provision in Bill 45 is very skeletal, and does not contain any of the matters generally considered essential such as duration (hard caps), independent adjudication, access to programs, prohibitions on placement of certain inmates (eg. those with mental disorders), etc.

(ix) Searches

Provisions for strip searches should generally contain a bit more detail than ss. 33(4), for example that the strip search will be conducted by a person of the same gender identity as the inmate, and conducted in a manner that respects individual dignity.

(x) Searches of visitors

My only question here is not to do with searches but rather to suggest that somewhere there be a section that addresses inmates' entitlements to visitors, and that deprivation of visits not be allowed as a punishment for a disciplinary offence.

(xi) Temporary Absences

Subsection 43(2) uses a test of "appropriateness" in the imposition of conditions on TAs. In the federal public service, we always considered "appropriate/ness" as a weasel word in legislative drafting.....It would mean either the public servants had no idea what the test should be, or the authorities wanted to leave the test wide open for maximum discretion. As with parole conditions, TA conditions should be imposed on a test of only what is reasonable and necessary and the least restrictive consistent with public safety.

(xii) Work programs

Subsection 46(1) says the Director "may" establish work programs. I would suggest this should be "shall". Providing inmates with work skills is essential.

(xiii) Services at correctional centres

This goes back to my previous comments about the importance of specifying the living conditions. Subsection 50(1) provides that the Minister “may” provide the listed services, which I don’t think is adequate. It should be “shall”, as the items are fundamental.

D. CONCLUSION

Bill 45 provides a good basis for a modern legislative framework for NWT. With a re-ordering of the sections, and some amplification in noted sections, NWT will have a far more progressive and effective correctional statutory framework than most other P/Ts.

Mary E. Campbell LL.B., LL.M.

June 20, 2019



OFFICE OF THE
INFORMATION
AND PRIVACY
COMMISSIONER
NORTHWEST TERRITORIES

P.O. Box 382
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June 27, 2019

Legislative Assembly of the NWT
P.O. Box 1320
Yellowknife, NT
X1A 2L9

Attention: Shane Thompson
Chair, Standing Committee on Social Development

RE: Bill 45 - Corrections Act
Our file: 19-145-4

Thank you for your invitation to provide feedback on Bill 45 repealing and replacing the Corrections Act.

I am pleased to provide my comments insofar as the legislation affects the access and/or privacy rights of residents of the Northwest Territories, including the privacy of inmates. As a preliminary comment, I acknowledge that when it comes to the privacy of inmates, there must be some limits to the right to privacy that do not apply to the rest of society. This does not, however, mean that inmates do not have any rights to privacy. Those provisions in the legislation which limit privacy rights, therefore, must be proportional and necessary to meet the goals of the legislation.

1. Generally

Generally, this legislation directly strips inmates of their right to privacy in a number of significant ways (for example, Sections 13(7), 16(3), 16(4), 23, 30, and 33). These provisions include the ability to demand biological samples, the right to monitor inmate communications, and the right to physically search the individual, all without the consent of the inmate. While these may be necessary tools for the management of a correctional facility, these provisions represent serious incursions into the privacy rights of inmates and should be exercised sparingly and only in circumscribed circumstances. If left to the sole discretion of one individual in any particular situation, the risk of abuse is extreme. For example, Section 33(2) allows for the physical search of an inmate "for the purpose of detecting contraband" "without individualized suspicion". An unconsented to physical search of a person is the most serious breach of privacy



possible and when such searches can be done “without individualized suspicion”, the risk of abuse is clear and significant.

I strongly recommend that the use of these provisions all be circumscribed by regulation to specific and serious situations. I further recommend that provisions be added, preferably in the Act itself, for clear and specific oversight on the use of these provisions by an independent party. This would require reports to be prepared whenever these provisions are used (other than on intake) and provided to the oversight body to avoid abusive use of these provisions.

2. Section 3

Section 3 gives the Minister and others the ability to enter into agreements with other governments (including indigenous governments) and others (including private business) to provide “correctional services”. To the extent that these services involve the collection, use and disclosure of personal information of any party (inmate, employee, visitor), I recommend that the regulations under this section require that any such Agreement include provisions which require the third party to comply with the Northwest Territories *Access to Information and Protection of Privacy Act* and, where applicable, the *Health Information Act* so as to maintain the right of those individuals to request and receive information as well as to protect privacy rights of inmates, employees and visitors.

3. Sections 4 to 8.

The Act contemplates the establishment of Community Advisory Boards. It appears that it is contemplated that these Advisory Boards will have access to the personal information of inmates. By definition, these boards will not be made up entirely of GNWT employees. For this reason, the members of these advisory boards must be explicitly made subject to both the access and the privacy provisions of the *Access to Information and Protection of Privacy Act*, and, to the extent applicable, the *Health Information Act*.

Because this comment applies in more than one circumstance under the Bill, perhaps the way to address this is to add a new section under the “GENERAL” provisions of the Act which provides that all individuals appointed to positions under this Act are subject to and must comply with ATIPPA and HIA. (See also Section 17, 39 and 40)

4. Section 17

This section allows the Director of Corrections to appoint volunteers to provide or assist in the provision of correctional services. Again, because these individuals are, by definition, not GNWT employees, volunteers must be made explicitly subject to the *Access to Information and*

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Protection of Privacy Act and, where applicable, to the *Health Information Act*. I refer you to my comments as set out with respect to sections 4 to 8.

5. Section 23

This section allows an authorized person to demand a "biological sample" of urine, breath or other prescribed bodily fluid or substance in certain circumstances. As noted above, this section represents a significant incursion into the privacy of the inmate and use of the section should require clear monitoring and oversight.

6. Section 30

This section allows for the monitoring of an inmate's communications apparently with or without "individualized suspicion". Once again, while I appreciate that this may be a necessary tool for running a correctional facility, when such monitoring is done without individualized suspicion of wrongdoing, it is significantly invasive and should be allowed only in prescribed circumstances. There should also be a clear requirement to monitor the use of this tool and oversight to prevent abusive use of it.

7. Section 31

This section allows an authorized person to disclose that an inmate communication originates from a correctional centre, subject to the regulations, which are currently unknown. Again, this is a highly privacy invasive practice and should be allowed only in prescribed circumstances.

8. Section 33

This section, as noted above, deals with searches of the person and the property of inmates. My comments under Item 1 above should be considered.

9. Section 34

This section allows authorized persons to conduct routine searches of visitors entering or leaving, or within the correctional centre, "without individualized suspicion" for safety or security reasons. Again, though I understand the need for such a tool, this provision is not aimed at inmates, but at visitors. There are different considerations that should apply to a visitor who has not been convicted of any crime and, therefore, has not done anything to truncate his/her right to privacy. The ability to search individuals should, therefore, be exercised with great care and only in accordance with strict regulations, policies and guidelines. Such searches should be conducted only with the knowledgeable consent of the visitor which

includes being properly and fully informed of the consequences of compliance and/or non-compliance. In no circumstances should correctional staff be allowed to strip search a visitor to a correctional centre.

I note that, as currently drafted, the visitor's consent is required where there is a belief on reasonable grounds that the visitor is in possession of contraband. This is, presumably, because any "evidence" found could lead to criminal charges and contravene the individual's right not to incriminate him/herself. However, this requirement for consent is easily avoided simply by saying "I had no reasonable grounds to believe that the individual was in possession of" and the possible repercussions for the individual should something be found are the same (i.e. - possible criminal charges).

Again, I would suggest that any search of a visitor be conducted only after giving knowledgeable consent and that it be made clear the specific purpose for the searches and how the information collected through such searches may be used and/or further disclosed. In no circumstances should correctional employees be conducting strip searches of visitors.

Section 35

This section deals with the ability of an authorized person to search its own employees with or without "individualized suspicion". My comments with respect to the ability to search visitors apply equally to employees. Searches should be conducted only with the knowledgeable consent of the employee and in no circumstance should correctional facilities be conducting strip searches of employees.

Section 36

This section allows for the stopping and searching of vehicles on the property of the correctional centre, again with or without "individualized suspicion". The section does not provide any guidance as the purpose of such searches or what the information gathered as a result of such a search might be used for or in what circumstances that information might be further disclosed. There must be a stated purpose for such searches and, because vehicles do not have "direct contact" with either staff or inmates, the use of these searches should be restricted to specific and defined circumstances.

Section 39

This section contemplates the establishment of an "alternative measures panel". Subsection (2) of Section 39 indicates that this panel is to be made up of "one or more persons who are not employed at the correctional centre". To the extent that this panel is not made up of GNWT employees, it should be made clear that they are subject to the provisions of the *Access*

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to Information and Protection of Privacy Act and, to the extent applicable, of the Health Information Act in terms of the members' responsibility to keep records and ensure they are available in the case of an access to information request and also to protect the privacy of those involved in the process of the alternative approach in accordance with the ATIPP Act.

Section 40

This section deals with the appointment of adjudicators. Once again, if an adjudicator is not an employee of the correctional facility, it should be made clear that he/she is subject to the *Access to Information and Protection of Privacy Act and, to the extent applicable, to the Health Information Act.*

Section 51

In the version of the Bill provided to me, it appears that there is a misspelling of the word "material" under the definition of "non-public property" in 51(1) and again in 51(2), first word. (materiel)

I trust these comments will assist you in the review of Bill 45. Should you wish further clarification or to discuss these comments further, please feel free to contact my office.

Yours truly

Elaine Keenan Bengts
Information and Privacy Commissioner
/kb



THE CANADIAN
BAR ASSOCIATION
Northwest Territories Branch

Feedback on Bill 45: *Corrections Act*

**CANADIAN BAR ASSOCIATION – NORTHWEST TERRITORIES BRANCH
CRIMINAL JUSTICE SECTION**

June 2019

I. PREFACE

The Canadian Bar Association is a national association representing 36,000 jurists, including lawyers, notaries, law teachers and students across Canada. The Association's primary objectives include improvement in the law and in the administration of justice.

This submission was prepared by the **CBA - Northwest Territories Branch (CBA-NT) Criminal Justice Section**, which represents criminal lawyers, including both Defence Counsel and Crown Counsel, who practice criminal law in the Northwest Territories.

II. INTRODUCTION

In January 2018, the CBA-NT Criminal Justice Section filed written submissions regarding proposed revisions to the current NWT *Corrections Act*. Bill 45, the newly proposed Corrections Act for the Northwest Territories, has adopted many recommendations put forward by the CBA-NT, particularly with regard to programming and community reintegration. However, there are several areas that warrant further consideration and development, which we have highlighted below.

III. SOLITARY CONFINEMENT

Bill 45 fails to provide sufficient safeguards for the review and usage of solitary confinement and does not adequately protect the rights of inmates.

Section 32 of Bill 45 sets out the parameters for the use of solitary or 'separate' confinement in the Northwest Territories. Section 32(2) details grounds for the usage of solitary confinement and section 32(3) establishes that an inmate must not be confined in a cell for more than 20 hours in a 24-hour period. Section 32(4) indicates an inmate may appeal a decision under this section to the Director of Corrections.

Section 40 also details that one of the adjudicators' powers is to review separate confinement of inmates under section 32 and determine whether periods of confinement should be varied.

Sections 32 and 40 fail to set out a defined time limit in terms of days that an inmate can be kept in separate confinement, or a standardized period upon which an inmate's detention in separate confinement is reviewed by an adjudicator. Furthermore, the Act fails to protect inmates' rights to procedural fairness, including the right to be informed of the reason for separate confinement, and the opportunity to respond to such a decision. While section 40(3) indicates that one of the adjudicators' duties is to review the separate confinement of inmates, it does not specify what triggers such a review. Finally, it is unclear why an appeal pursuant to section 40(4) of a decision regarding separate confinement is to the Director of Corrections instead of the Director of Investigations and Standards, who appears to be better placed to conduct an independent and thorough review of the separate confinement.

In *British Columbia Civil Liberties Association v. Canada (Attorney General)*, 2019 BCCA 228

(*BCCLA v AG*), the British Columbia Court of Appeal, confirmed that indefinite segregation violates inmates' section 7 rights under the *Canadian Charter of Rights and Freedoms*, in that it permits prolonged, indefinite solitary confinement and also fails to provide an independent review of segregation placements. The Court also confirmed that inmates have a constitutional right to be represented by counsel at segregation review hearings. The Court emphasized that the use of segregation has extreme psychological harm and increases risk of suicide and self-harm. Segregation for extended periods of time not only harms inmates, it ultimately undermines institutional security.¹

As currently drafted, Bill 45 does not comply with the guidance provided by *BCCLA v AG* as it currently allows prolonged and indefinite detention in separate confinement.

See Sections 22-23 of the *Nunavut Corrections Act*, which adequately address the abovementioned issues:

- 22.** (1) Subject to subsection (2) and (3), a Warden may order that an inmate be segregated from other inmates if the Warden believes on reasonable grounds that the inmate
- (a) is endangering or is likely to endanger another person;
 - (b) is jeopardizing or is likely to jeopardize the management, operation or security of the correction centre;
 - (c) would be or is likely to be at a risk of serious harm, including self-harm, if not segregated;
 - (d) must be segregated for medical or public health reasons; or
 - (e) has hidden in their body anything they are prohibited from possessing under subsection 17(2).
- Alternatives
- (2) An inmate shall not be segregated under this section if there exist other safe and reasonable alternatives for addressing the circumstances for which the inmate may be segregated.
- Least restrictive
- (3) Segregation under this section shall be only as restrictive as is necessary to address the circumstances for which the inmate has been segregated, and in particular consideration must be given to allowing
- (a) participation in programs with other inmates or a subgroup of other inmates; or
 - (b) otherwise interacting with a subgroup of other inmates.
- Reasons
- (4) The Warden shall, within 24 hours after making an order under subsection (1), provide the inmate the reason for their segregation in writing.
- Initial period
- (5) An order made under subsection (1) is valid for an initial period of three days.
- Extension
- (6) The Warden may extend an order made under subsection (1) for up to seven days at a time if the Warden
- (a) reviews the circumstances of the segregation before the expiry of
 - (i) the initial period referred to in subsection (5), or
 - (ii) an extension made under this subsection;

¹See *Canadian Civil Liberties Association v R*, 2017 ONSC 7491, in which the court found that the "fifth working day review" for administrative segregation was inconsistent with the principles of fundamental justice and breached s. 7 of the Charter, because s. 33(1) of the CCRA did not provide for meaningful independent review of administrative segregation decisions. See Also *Brazeau v Attorney General (Canada)*, 2019 ONSC 1888- a class action granting damages for violations of mentally ill inmates breach of section 7 and 12 rights due to being kept for long periods of time in solitary confinement.

(b) determines that one of the circumstances referred to in paragraphs (1)(a) to (d) exists at the time of review; and

(c) determines that the segregation should continue.

Start date of extension

(7) An extension made under subsection (6) begins on the day after the Warden makes the order to extend.

Reasons for extension

(8) The Warden shall, within 24 hours after making an order to extend under subsection (6), provide the inmate, in writing,

(a) the reason for their continued segregation;

(b) the period of time during which they will be segregated;

(c) the reason for the length of time in segregation;

(d) inform the inmate of their right to request a review under subsection (9);

(e) if applicable, inform the inmate that the order has been forwarded to the Investigations Officer for review under section 23.

Review by Warden

(9) An inmate subject to an order to extend under subsection (6) may request a review of the extension by submitting to the Warden, in writing, reasons why the segregation should

(a) not continue;

(b) be for a shorter period of time; or

(c) be less restrictive.

Same

(10) The Warden shall consider any review request made under subsection (9) and may confirm, vary or quash the order.

Review of administrative segregation by Investigations Officer

23. (1) When a Warden makes an order to extend under subsection 22(6) that would have the effect of an inmate being segregated under section 22 for a total at least five days, including the initial period of three days, or the Warden makes any subsequent order to extend, the Warden shall immediately forward a copy of the order and the written reasons for it to the Investigations Officer.

Forwarding request for review

(2) If a Warden receives a request for review from an inmate under subsection 22(9), the Warden shall

(a) immediately forward a copy of the request to the Investigations Officer; and

(b) immediately upon making a decision under subsection 22(10), forward a copy of the decision to the Investigations Officer

Director's input

(3) The Director may provide to the Investigations Officer any submissions and evidence the Director considers pertinent to the review of an order by the Investigations Officer under this section.

Same

(4) The Investigations Officer shall, in making a decision under this section, consider any submissions and evidence provided by the Director.

Decision of Investigations Officer

(5) The Investigations Officer shall, as soon as practicable but in any case no more than five working days after receiving an order forwarded under subsection (1),

(a) review the circumstances surrounding the segregation; and

(b) confirm, vary or quash the order with written reasons.

Remaining seized

(6) When the segregation of an inmate under this section continues after the Investigations Officer has made a decision under subsection (5), the Investigations Officer remains seized of the matter for the duration of the segregation, and shall, at least every five working days,

- (a) review the circumstances surrounding the segregation; and
- (b) confirm, vary or quash the order of segregation with written reasons.

Notice

(7) The Investigations Officer shall ensure a copy of a decision made under subsection (5) or (6) is provided to

- (a) the inmate subject to the decision;
- (b) the Warden;
- (c) the Director.

Decision binding

(8) A decision of the Investigations Officer under this section is binding.

Warden's discretion during review

(9) The Warden may, at any time while the Investigations Officer is seized of an order of segregation under this section, quash the order or vary it to be less restrictive.

Notice

(10) The Warden shall immediately forward a copy of any decision made under subsection (9) to the Investigations Officer.

RECOMMENDATION: Bill 45 should adopt provisions similar in nature to Sections 22-23 of the *Nunavut Corrections Act*, which require an inmate to be informed of the reason for their detention in separate confinement within 24 hours in writing (section 22(4) *Nunavut Corrections Act*), and that the Person in Charge must apply for renewal of separate confinement every three days (section 22(5) *Nunavut Corrections Act*), and that any extension where the total time in separate confinement would equal 5 days or more must be reviewed by the Director of Investigations (section 23 *Nunavut Corrections Act*). Any appeal of a decision regarding separate confinement should also be to the Director of Investigations and Standards.

IV. DISCIPLINARY PROCESS

The disciplinary process established in Bill 45 violates inmates' right to procedural fairness.

Sections 38-39 establish a new disciplinary process for inmates in correctional centres. Section 39 sets out an Alternative Measures Panel to potentially divert disciplinary breaches instead of requiring a corrective measure. This is a very positive new development that should be applauded.

Section 38 also establishes a new disciplinary process that centres on the use of adjudicators. The adjudicators' independence is sufficiently protected by subsections that govern their remuneration, appointment and term (see section 40 Bill 45).

Unfortunately, the disciplinary process as currently envisioned fails to adequately guarantee procedural fairness. First, section 38(2) indicates that a staff member who reasonably believes that an inmate has contravened a rule is not required to author a written report, instead he or she 'may' author one. Second, even upon receipt of a report, the Person in Charge is not required to convene a disciplinary hearing, he 'may' convene one. The optional nature of a written report and convening a disciplinary hearing violates inmates' right to procedural fairness due to the arbitrary

nature of the procedure. This is also inconsistent with disciplinary processes in other jurisdictions (see sections 17-18 of *Nunavut Corrections Act*).

Section 38(4) requires an adjudicator to make a determination of guilt or innocence with regard to the alleged breach, however the section does not indicate on what evidentiary basis this finding is made (eg. beyond a reasonable doubt or on a balance of probabilities).

Section 38 also fails to establish any right for the inmate to participate in their own disciplinary hearing. There is no provision protecting the inmate's right to be represented by a lawyer or to make submissions on their own behalf, further undermining their right to participate (see section 18(6) of the *Nunavut Corrections Act* for possible statutory language).

Finally, Section 38 does not set out any time limits or notice requirements for the filing of a breach report, convening of a disciplinary hearing or for informing the inmate regarding the disciplinary process.

See Sections 17-18 of the *Nunavut Corrections Act*, which adequately address the abovementioned issues:

Duty to intervene

17. (1) If an employee believes on reasonable grounds that an inmate has breached or is breaching a rule referred to in subsection 16(1) or the regulations, the employee shall,

(a) if the circumstances allow

(i) stop the breach from occurring, or

(ii) give the inmate an opportunity to stop the breach from occurring or give the inmate an opportunity to correct the breach if the person aggrieved by the breach consents; and

(b) as soon as practicable, inform the inmate

(i) of the rule under subsection 16(1) or the regulations that was breached, and

(ii) what the breach consists of.

Designated employees

(2) The Director shall designate employees, either individually or by class, to receive charge reports and issue charges.

Written charge report

(3) If, in the opinion of the employee referred to in subsection (1), the breach has not been or cannot be satisfactorily resolved by the actions described in that subsection, the employee shall, as soon as practicable, file a written charge report with an employee designated under subsection (2), setting out

(a) the rule that is alleged to have been breached;

(b) the circumstances surrounding the alleged breach; and

(c) the action taken, if any, under paragraph (1)(a).

Forwarding alleged breaches

18. (1) An employee designated under subsection 17(2) who receives a report under subsection 17(3) shall issue and forward to the Warden charges for any breaches of subsection 16(1) or the regulations that are alleged in the report that, in the opinion of the employee, warrant disciplinary action against the inmate.

Disciplinary Board

(2) On receipt of charges under subsection (1), the Warden shall constitute a Disciplinary Board composed of either

(a) the Warden and one to two other employees of the centre designated by the Warden; or

(b) two to three employees of the centre designated by the Warden.

Hearing

(3) Subject to subsections (4) and (5), within 72 hours after charges are forwarded under subsection (1), but in any case no more than 10 working days after the alleged breach, the Disciplinary Board shall hold a hearing with respect to the charges.

Request for extension

(4) An inmate subject to hearing under this section may, in writing, request the Director to extend the 10 working day time limit in subsection (3) by up to five working days.

Approval by Director

(5) The Director may extend the 10 working day time limit in subsection (3), in accordance with a request under subsection (4).

Rights of inmate

(6) No finding shall be made against an inmate charged with a breach of subsection 16(1) or the regulations unless the inmate

(a) has received written notice of

(i) the charge, and

(ii) a summary of the evidence alleged against the inmate;

(b) has been given an opportunity to appear personally at the hearing; and

(c) has been given an opportunity to make a full answer and defence to the charge, including being given an opportunity to

(i) be represented by a lawyer or other representative,

(ii) subject to subsection (7), examine and cross-examine witnesses, and (iii) introduce witnesses and written material in denial of the breach or in mitigation of corrective measures.

Examination of witnesses

(7) If the Discipline Board has reason to believe that allowing the inmate or the inmate's representative to examine or cross-examine a witness would result in the witness being harmed or intimidated, the Discipline Board shall

(a) not allow the inmate or representative to examine or cross-examine the witness; and

(b) give the inmate the opportunity to name a lawyer or another representative to examine or cross-examine the witness.

RECOMMENDATION: Bill 45 should adopt provisions similar in nature to Sections 17-18 of the *Nunavut Corrections Act*, which establish procedural fairness requirements for the disciplinary process including informing the inmate of an alleged disciplinary breach, setting out the details of the alleged breach in written format, protecting inmates' right to participate in the disciplinary hearing, including representation by a lawyer, and providing timelines for the disciplinary process.

V. GRIEVANCE PROCESS

Bill 45 creates an important new role of Director of Investigations and Standards, whose responsibilities include handling complaints made by inmates and persons on probation, conditional sentences or judicial interim release (section 12(2) Bill 45). This is a very positive development that will foster greater impartiality and independence in the handling of complaints made by inmates. However, unfortunately Bill 45 fails to establish any clear grievance procedure or guidance on how complaints will be handled by the Director.

It is our submission that the *NWT Corrections Act* must provide for a fair, expeditious and independent grievance mechanism that adjudicates grievances raised by inmates without fear of negative consequences. The basic framework for such a grievance mechanisms should be enshrined in Bill 45 in order to best protect inmates' rights.

Furthermore, the Person in Charge should also be responsible for ensuring that inmates are adequately informed of the grievance process, including their right to seek legal guidance and be represented (see section 13 of the *Nunavut Corrections Act* as an example of the informational duty that should be imposed on the Person in Charge).

Sections 57-60 of the *Nunavut Corrections Act* provide a comprehensive model for the handling of grievances in correctional centres:

Designated employees

57. (1) The Director shall designate employees, either individually or by class, to receive grievances.

Presenting grievances

(2) An inmate may, in writing, present a grievance,

(a) with respect to a decision affecting the terms and conditions of the inmate's incarceration, within seven days after being notified of the decision; and

(b) with respect to any matter that is causing the inmate distress or dissatisfaction, at any time.

Who receives grievance

(3) A grievance under subsection (2) may be presented to

(a) an employee designated under subsection (1); or

(b) the Warden.

Response

(4) A person referred to in subsection (3) receiving a grievance under subsection (2) shall, in writing, provide a response to the inmate within seven working days after receiving the grievance, detailing any action that has been or will be taken as a result of the grievance.

Appeal to Warden

58. (1) An inmate may, in writing, appeal a response given under section 57 by an employee designated under subsection 57(1) to the Warden.

Response

(2) The Warden shall, in writing, provide a response to the inmate within five working days after receiving an appeal under subsection (1), detailing any action that has been or will be taken as a result of the grievance.

Duties

(3) Prior to providing a response under subsection (2), the Warden

(a) shall review the response provided under section 57; and

(b) shall consider any arguments put forth by the inmate.

Request for review

59. (1) An inmate who receives a response from the Warden under section 57 or 58 may, in writing, request the Investigations Officer to review the matter within seven days after being provided the response.

Grievance respecting Warden

(2) If an inmate wishes to present a grievance referred to in subsection 57(2) that relates to the action or inaction of the Warden, the inmate may present the grievance directly to the Investigations Officer in writing.

Review and recommendations

(3) The Investigations Officer shall review the matter referred to in subsection (1) or the grievance presented under subsection (2) and provide recommendations concerning the matter to the Deputy Minister and the Director.

Decision of Director

(4) After receiving the recommendations of the Investigations Officer, the Director may accept or reject the recommendations of the Investigations Officer.

Accepted recommendation binding

(5) A recommendation of the Investigations Officer under this section that is accepted by the Director is binding.

Varying decision

(6) Following the decision made under subsection (4) and subject to subsection (5), the Director may vary or quash any part of the response referred to in subsection (1).

Response

(7) Within seven working days after the decision made under subsection (4) and subject to subsection (5), the Director shall provide a response to the inmate, detailing any action that has been or will be taken as a result of the grievance presented under subsection (2).

Notice

(8) The Director shall inform the Deputy Minister, the Warden and the inmate of a decision made under subsection (4) or (6) or a response made under subsection (7).

Protections Against Reprisals

Giving evidence or providing assistance

60. (1) No person shall take a reprisal against any person for giving evidence or providing assistance in a review or investigation, unless the person, without a valid excuse,

- (a) interferes with or impedes the investigation or prosecution of an offence;
- (b) reveals the substance of deliberations of the Executive Council; or
- (c) reveals information that is subject to solicitor-client privilege.

Grievances, appeals and reviews

(2) No person shall take a reprisal against an inmate for presenting a grievance, appealing a decision or requesting a review under this Act, unless the reprisal is a disciplinary measure and the Investigations Officer finds that the grievance, appeal or request is

- (a) made in bad faith; or
- (b) frivolous or vexatious.

Reprisal defined

(3) For the purposes of this section, reprisal includes

- (a) a disciplinary measure;
- (b) any measure adversely affecting the employment or working conditions of a person, including a reprimand, suspension, demotion, dismissal or denial of appropriate work;
- (c) intimidation or coercion;
- (d) commencement of legal action;
- (e) terminating a contract;
- (f) a pecuniary or other penalty; and
- (g) a threat to take any of the measures referred to in paragraphs (a) to (f).

Offences

(4) A person is not guilty of an offence under another Act by reason of complying with a request or requirement of the Investigations Officer or Deputy Investigations Officer to give evidence or provide assistance in a review or investigation.

RECOMMENDATION: Bill 45 should include sufficient provisions to establish an independent, fair and expeditious grievance mechanism that is two-tiered in nature. In the first tier, inmates may submit a written application detailing their grievance to the Person in Charge, or their appointee,

who will review the grievance and make a decision. If the inmate is not satisfied with the decision, in the second tier, the inmate may refer their grievance to the Director of Investigations and Standards, or their appointee, who will review the decision. If still dissatisfied the inmate may apply for the judicial review of the Director of Investigation's decision. The Person in Charge should have a further informational duty under section 26 to ensure that inmates are informed of their right to present a grievance and the procedural protections afforded to them.

V. PROGRAMMING AND COMMUNITY

The most robust component of Bill 45 is its emphasis on programming, community reintegration, indigenous partnerships and well-being.

Sections 4-8 of Bill 45 create a new Community Advisory Board to review issues and make recommendations to the Director of Corrections. This is a very positive development that will provide insight and oversight in correctional centres.

Section 3 also provides a legal framework to enter into an agreement with Aboriginal peoples. This will allow increased partnerships with local communities and Indigenous governments, which are necessary to facilitate inmates' meaningful rehabilitation and to protect Northwest Territories communities.

Sections 20-22 establish a new framework for community reintegration and programming that takes into consideration the particular needs and culture of Aboriginal peoples, while also considering gender.

Section 26 also requires that the Person in Charge ensure the well-being of inmates in the centre (section 26(c) Bill 45), make reasonable accommodation of inmates taking into account their gender (section 26(d) Bill 45) and operate programs established in sections 21 and 46.

Overall, Bill 45 offers a great improvement for programming and community reintegration, particularly for indigenous offenders. However, one class of offenders that also require particular consideration in both programming objectives and accommodation are offenders with mental health issues. Currently Bill 45 fails to adequately provide and protect offenders with specific mental health needs.

RECOMMENDATION: Bill 45 should adopt specific provisions in section 21(2) and section 26 that provide for the needs and reasonable accommodation of offenders with mental health issues.

VI. PROBATION OFFICERS

Bill-45 sets out the duties and responsibilities of probation officers in section 16 of the Act. As it currently reads, section 16(2) does not include the supervision of youth serving certain types of community-based sentences, which are provided for in section 42 of the *Youth Criminal Justice*

Act, including deferred custody and supervision orders and intensive support and supervision orders.

Furthermore, the Act does not detail specific responsibilities of probation officers vis-à-vis their clients.

Section 8 of the *Nunavut Corrections Act* offers a thorough guideline of duties that could be further detailed in the Act:

Officer of court

8. (1) A probation officer is an officer of every court in Nunavut.

Duties of probation officer

(2) A probation officer shall

(a) take reasonable measures to ensure that a probationer understands

(i) the probation order,

(ii) the substance of subsections 732.2(3) and (5) and section 733.1 of the Criminal Code, and

(iii) the procedure for applying under subsection 732.2(3) of the Criminal Code for a change to the probation order;

(b) supervise the conduct of a probationer in accordance with the conditions contained in the probation order;

(c) provide guidance to a probationer;

(d) if it appears to the probation officer that a probation order requires modification, make an application to the court under subsection 732.2(3) of the Criminal Code;

(e) plan and carry out probation programs under the direction of the Director; and

(f) perform other duties imposed by the Director.

RECOMMENDATION: Bill 45 should adopt a further provision under 16(2) to also include the supervision of youth serving community-based sentences provided for under section 42 of the *Youth Criminal Justice Act*, as well as further detailing of probation officer's responsibilities, similar in nature to section 8 of the *Nunavut Corrections Act*.

VII. CONCLUSION

Bill 45 provides a strong new framework for the Northwest Territories *Corrections Act*, however there remain several areas that require further consideration and development, particularly with regards to solitary confinement, the disciplinary process and grievance procedure. The *Nunavut Corrections Act* offers a useful model of how to address these areas and continue to build on the foundation laid out by Bill 45. If the Government of the Northwest Territories were to combine Bill 45's strong emphasis on programming and community reintegration, with improved sections on the disciplinary process, grievances and solitary confinement, it would greatly enhance the effectiveness, security and fairness of the corrections system in the Northwest Territories.



Recommendations for Northwest Territories Bill 45: Corrections Act

July 4th, 2019

Introduction to the BCCLA

The BCCLA's mandate is to preserve, defend, maintain and extend civil liberties and human rights in Canada. As Canada's oldest active civil liberties association, the BCCLA has a long history of work in prisoners' rights and relationships with Indigenous peoples and communities.

The BCCLA has significant expertise in the law and policy governing correctional facilities in Canada. The work that the BCCLA has done regarding prisoners' rights and corrections services, through litigation and with oversight agencies, include the following:

- We have led the constitutional challenge to the practice of solitary confinement in prisons across Canada, which the BC Court of Appeal has held to be an unconstitutional practice in its current form.
- We have authored a report opposing mandatory minimum sentencing, as they are ineffective, costly, and unjust.

- We have intervened with the Union of BC Indian Chiefs at the Supreme Court of Canada in the *Ewert v. Canada* case, which challenges the use of prisoner risk assessment tests that can be culturally biased against Indigenous prisoners.
- We have called for transparency and accountability in a number of prison deaths, including the case of Soleiman Faqiri's in an Ontario correctional facility; and the case of Christopher Robert Roy, who committed suicide in his prison cell after spending two months in solitary confinement.
- We are an original member of The Coalition on Murdered and Missing Indigenous Women and Girls which came together in response to the Missing Women Commission of Inquiry in British Columbia overseen by Commissioner Wally Oppal.
- We have made submissions and commented on Bill C-83, which amends the federal *Corrections and Community Reintegration Act's* provisions on solitary confinement.
- We have spoken publicly in favour of improved health services and human rights in prisons.
- We participated in a report on arbitrary imprisonment and cruel treatment of migrants with mental health issues in Canada.

In modernizing correctional law, the Northwest Territories ("NWT") has the opportunity to become a leader in the human rights of prisoners by placing limits on the use of solitary and restrictive confinement. Your jurisdiction can also provide exemplary living conditions and oversight mechanisms in order to create a correctional system that best provides safety for inmates and corrections officers, while also best preparing inmates for re-integration.

All of the recommendations included in this submission are collated in Appendix A. All of the resources that we refer to are included in Appendix B.

Part 1: Separate Confinement

1) Impacts of Solitary Confinement and how they relate to Separate Confinement

The *United Nations Standard Minimum Rules for the Treatment of Prisoners* (“Mandela Rules”) defines solitary confinement as “22 hours or more a day without meaningful human contact,” and prolonged confinement as solitary confinement for a time period of over 15 consecutive days. This type of treatment is considered torture under international law.¹

Over the years, a lot of evidence has accumulated on the many negative effects of solitary confinement. Health effects of solitary confinement include weight loss, weakness, and loss of vocal power. Inmates may also suffer from hallucinations and illusions in numerous senses, becoming intensely paranoid, confused, and fearful. Health effects also include boredom, loneliness, and a range of long-term, non-psychotic psychiatric conditions. The most common conditions are: depression, anxiety, insomnia, learning disabilities, attention deficit hyperactivity disorder, and posttraumatic stress disorder. Symptoms of confinement can also include antisocial and borderline personality disorders, manifestations of interpersonal and behavioural problems, and major psychotic mental illnesses, which can leave prisoners severely incapacitated on their exit from prison and/or solitary confinement. Solitary confinement thus decreases the chances that prisoners will be able to effectively transition back into society. The

¹ Office of the Correctional Investigator (May 2019). Strategic Planning Exercise: Legislative Framework Consistent with Evidence-Based Policy and Best Practices: CCRA 2.0 [CCRA 2.0].

mental effects of prolonged or solitary confinement are extremely detrimental to inmates and society alike.

Bill 45 contemplates separate confinement, which is defined as “holding an inmate apart from other inmates.” It is unclear whether inmates would still have access to meaningful human interaction during that period of confinement, albeit not with other inmates. In addition, the legislation places a limit on separate confinement, establishing that inmates may not be held in separate confinement for more than 20 hours in a 24-hour period. It is unclear, however, what setting or activities inmates would have access to outside of the 20 hours of separate confinement. We recommend that this time period be mandated to include meaningful human interaction, without which the effects of separate confinement on prisoners would not differ significantly from solitary confinement under the Mandela Rules. This topic is explored in greater detail later in our submission. In addition, separate confinement may still have the negative effects of solitary confinement if it is prolonged, with poor attention to living conditions or prisoners’ health. Thus, we have several recommendations for a more comprehensive regime regarding section 32 on separate confinement in Bill 45.

2) Purpose, Use, and Duration of Separate Confinement

Bill 45 should clarify that separate confinement should only be used as a last resort.

It should be clear in the Bill that separate confinement should only be used when absolutely necessary. This principle should also be included in Bill 45, both as a general principle and in the provisions on separate confinement.

Bill C-83, which amends the federal *Corrections and Conditional Releases Act* (“CCRA”), the recently passed Ontario *Correctional Services Transformation Act* (“CSTA”), and the Legislative Framework Consistent with Evidence-Based Policy and Best

Practices: CCRA 2.0 (“CCRA 2.0”) law drafted by the Office of the Correctional Investigator, all include a provision which states that separate confinement should be administered for as short a period as possible. One example of a general clause is the recently enacted Bill C-83 include “(d) that the Service use the least restrictive measures consistent with the protection of the public, staff members and offenders.” The CSTA also limits non-disciplinary segregation to “exceptional cases and as a last resort if all other options to manage the inmate without segregation have been exhausted.”

We suggest that the NWT Legislature include such language in Bill 45. This will help minimize the number of inmates negatively affected by separate confinement and ensure that less damaging alternatives are considered.

Bill 45 should clarify that solitary confinement, as defined by the UN Mandela Rules, is prohibited.

We encourage the Legislature of the NWT to add a prohibition on the use of solitary and prolonged confinement in the Bill. More specifically, the legislation should prohibit any type of confinement for 22 hours or more in a day without meaningful human contact. Sample language for this can be found in section 70(1) of the model CCRA 2.0 law, and the Mandela Rules 43 and 44.²

Remove section 32(2) (c) from Bill 45, which allows separate confinement when an inmate has concealed contraband.

Inmates should not be held in separate confinement on the grounds that the Person in Charge has reasonable grounds to believe that the inmate has contraband concealed on their person. Bill 45 defines contraband very broadly, and includes alcohol or any drug,

² *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), Resolution Adopted by the General Assembly on 17 December 2015. 8 January 2016. General Assembly Seventieth Session, A/RES/70/175.*

cannabis, tobacco, anything else 'prescribed to be contraband' and anything threatening the management or security of the correctional center. Separate confinement is a disproportionate punishment for concealing contraband, especially since much of this contraband would be legal outside of the penitentiary. The other criteria included for separate confinement (i.e. harm to others or harm to the inmate themselves) are sufficient to address the harms that contraband may cause. Separate confinement remains similar to solitary confinement, an internationally condemned condition of imprisonment, and so should not be the punishment of choice for concealing, possessing or potentially trafficking, contraband in the penitentiary. Other punishments are more appropriate to disincentives the concealment and traffic of contraband in the penitentiary. Thus, s. 32(2) (c) should be removed from the legislation altogether.

Include provisions stating that inmates with serious mental health conditions should not be placed in separate confinement.

- *Remove section 32(2) (c) from Bill 45.*
- *Individuals with untreated mental health conditions should be sent to specialized health facilities to obtain adequate treatment.*

Inmates should not be placed in separate confinement when a Person in Charge has "requested an examination of the mental condition of the inmate under the *Mental Health Act*." Evidence shows that individuals with mental health problems are likely to suffer greater negative impacts from solitary confinement than those without a mental health conditions. In addition, they are discriminated against with respect to separate confinement and are more likely to be placed in higher levels of security, supervision, and control. Solitary confinement does not respond to the particular needs of individuals

with mental health conditions, and may only worsen their situation.³ Mandela Rules recommend that such individuals be placed in specialized facilities with the supervision of qualified health-care professionals.⁴ Separate confinement, especially if it were to be prolonged, would likely have a negative impact on individuals with mental health, and would not be an appropriate way to treat their condition.

The model CCRA 2.0 law recommends that inmates that are chronically self-harming, suicidal, or need medical observation should not be held in conditions like separate confinement. The *CSTA* also includes prohibitions on solitary confinement for a person who is “self-harming or suicidal; has a mental disorder, or an intellectual disability, that meets the prescribed conditions; [and] needs medical observation.” In addition, inmates with a mental disorder, intellectual disability or emotional disability should not be kept in these conditions if a health care professional believes separate confinement would exacerbate their conditions. We endorse these recommendations, and suggest that similar provisions be implemented in Bill 45 for separate confinement. At the very least, corrections officers must ensure that those with mental health conditions have regular access to adequate healthcare and counselling.

3) Meaningful Human Contact

Bill 45 should include a requirement that the hours outside of separate confinement are marked by meaningful human interaction.

We welcome the efforts to limit separate confinement of inmates to no more than 20 hours in a 24-hour period. This is an important step towards protecting the well-being of prisoners, and helping to prepare them for life outside of the penitentiary. However,

³ *BCCLA v Canada (AG)* 2019 BCCA 228, at 134.

⁴ *Treatment of Prisoners, supra.*

those four hours must be marked by 'meaningful human interaction' as per the Mandela Rules.

Meaningful human interaction has been defined in a variety of contexts. Bill C-83 requires "an opportunity for meaningful human contact and an opportunity to participate in programs and to have services that respond to the inmate's specific needs" and establishes a few additional requirements of meaningful interactions, including that:

- 1) reasonable efforts shall be made to ensure that the opportunity to interact through human contact is not mediated or interposed by physical barriers such as bars, security glass, door hatches or screens;
- 2) an inmate's transfer or shower time does not count as meaningful interaction; and
- 3) an opportunity to interact, for a minimum of two hours with activities that include but are not limited to programs, interventions, and services that encourage the inmate to make progress towards the objectives of their correctional plan or that support the inmate's reintegration into the mainstream inmate population, and leisure time.

The BCCLA recommends that Bill 45 mandate an opportunity for meaningful human interaction for the hours outside of separate confinement, and to use a definition that mirrors the above. Without meaningful human interaction, separate confinement does not differ significantly from solitary confinement.

4) Additional Limits to Separate Confinement

Bill 45 should state that an inmate should not be kept in separate confinement for longer than 15 days, and for no more than a total of 60 calendar days over a 365 day period, until and unless an independent and impartial oversight body approves it.

We recommend that there be a cap on the number of days prisoners are kept in separate confinement. Inmates should not be placed in separate confinement for indefinite periods, and there should be a limit to how many days they are kept in separate confinement. Mandela Rules limit prolonged confinement of prisoners to 15 days. Since 15 days in separate confinement is similar to prolonged confinement, this should be the default maximum detention period for an inmate. This limit developed because evidence shows segregation for any longer can have irreversible psychological effects, interpreting the evidence generously.⁵ Negative health effects nevertheless occur after just a few days in segregation.

Bill 45 should prohibit the separate confinement of vulnerable populations.

In addition, separate confinement for vulnerable populations such as for minors should be abolished altogether, as recommended by organizations such as the Canadian Bar Association. The model CCRA 2.0 law and the *CSTA*, also recommend excluding certain groups from restrictive confinement.⁶ These groups include individuals with mobility challenges and pregnant individuals.

⁵ Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, at 9.

⁶ CCRA 2.0, *supra* note 1, at article 70 (6) on Restrictive Confinement: Prohibitions.

5) Independent Oversight of Decisions Regarding Separate Confinement

Separate confinement decisions must be appealed or justified to an independent and impartial oversight body

Even with the rules we recommend regarding separate confinement in place, proper oversight is needed to ensure they are properly implemented. There must be impartial and independent oversight over decisions to place or maintain an inmate in separate confinement. Inmates must have the right to appeal a decision to be put in separate confinement, or to continue their separate confinement without their express approval. However, an appeal procedure to the Director of Corrections is not sufficiently independent from the inmate to be an adequate or independent review body.

Adequate review bodies could include: 1) the Investigation and Standards Office mentioned in sections 12 to 14 of Bill 45; or 2) the NWT Courts. Several organizations have suggested that a superior court judge is best positioned for this role.⁷

Include a provision that inmates have the right to an impartial oral hearing, the right to counsel, disclosure of relevant documents, and the ability to present or cross-examine witnesses.

The burden of proof must be on the corrections officers to show that they did not breach an inmate's rights and to justify the use or extension of separate confinement.

Corrections officers should be required to provide reasons and rationales for any decision to place an inmate in separate confinement. In addition, the onus should be on corrections officers to justify any stay in separate confinement that is longer than 15 days to an

⁷ David Asper Centre for Constitutional Rights, (18 November 2018). Submissions to the Standing Committee on Public Safety and National Security. Online at: <https://www.ourcommons.ca/Content/Committee/421/SECU/Brief/BR10205343/br-external/DavidAsperCentreForConstitutionalRights-e.pdf>

independent and impartial oversight body. Such justification should require evidence that separate confinement is being used as a last resort, and that all other options have been considered to protect other inmates, staff members, or the inmate themselves.

Part 2: Reintegration & Correctional Programs

1) Structure & Purpose

Include a provision about the establishment and operation of correctional programs

The BCCLA suggests that there be a provision that outlines the purpose, scope, and relevance of correctional programs. We recommend a provision that parallels the elements described in Section 33 of the *Nunavut Corrections Act*. In particular, we suggest considering where correctional programming can be operated (i.e. at the correctional center, in a community, or on the land). As with s. 33(3) of the *Nunavut Correctional Act*, we also suggest that the Bill 45 provision consider the cultural and possible linguistic relevance of its programming.

Any provisions related to correctional plans and reintegration plans should come under one heading.

The BCCLA suggests that the legislative provisions be presented in order of the correctional experience. To do this, we suggest that any provisions related to correctional plans and reintegration plans come under one heading.

As an example, the draft CCRA 2.0 presents all provisions relating to reintegration and correctional planning under one group of sections entitled “Correctional and Reintegration Plans.”

2) Inmate Involvement in Correctional and Reintegration Plans

Include provisions that offenders must be involved in making their own correctional and reintegration plan.

One vital element of a reintegration process is the involvement of the offender in making their own plan. We suggest that the language in the Act specifically mention the involvement of offenders in their correctional and reintegration planning. Section 23 of the model CCRA 2.0 law provides sample language on objectives for offenders' behavior in reintegration.

3) Indigenous Inmates

Systemic and Individual Circumstances

Include a provision that considers an Indigenous offender's personal and systemic history in considering options for reintegration. Gladue factors must be considered during the development of reintegration and correctional plans.

To ensure cultural relevance and appropriate healing plans, the BCCLA suggests that Gladue factors be considered during the development of reintegration and correctional plans. This would require the correctional staff member and the inmate to work together to create a plan that will work for that inmate given their unique history and social reality.

The BCCLA further suggests that, where possible, an Indigenous offender be given the option to do in-community programming or, alternatively, programming on the land. To do this, it would be appropriate, where possible, to have an Elder from that individual's community and/or culture involved in the planning process for that individual's reintegration plan. Sample language is available in section 23 of the model

CCRA 2.0 law, which also considers social factors for Indigenous offenders in developing their reintegration plan.

Elders and Spiritual Leaders

Bill 45 should include provisions that traditional Indigenous knowledge and cultures should be made accessible to Indigenous offenders throughout their involvement in the system.

In the spirit of reconciliation and considering the overrepresentation of Indigenous peoples in the criminal justice system throughout Canada, we believe that the incorporation of traditional Indigenous knowledge and cultures should be accessible to Indigenous offenders throughout their involvement in the system. For this reason, we suggest that Bill 45 include a special provision similar to s. 83 of the federal CCRA that recognizes the vital role of Elders and Spiritual Leaders for the purpose of cultural preservation and healing for Indigenous offenders.

First Nations, Métis and Inuit Healing

Bill 45 should recognize and prioritize access to culturally appropriate healing traditions for Indigenous inmates.

Keeping in line with the recommendation for Elders and Spiritual Leaders, we recommend that Bill 45 recognize and prioritize the accessibility to culturally appropriate healing traditions for Indigenous inmates. Section 31 of Bill 6, the Ontario CSTA, has similar provisions.

Release to Indigenous Community

Include protocols for Indigenous inmates who wish to be released into an Indigenous community.

Similarly to s. 84 of the *CCRA*, we believe that Bill 45 should have procedures in place for Indigenous inmates who wish to be released into an Indigenous community. Taking into consideration the importance of community and cultural connection, efforts should be made for such arrangements.

4) Women Inmates

Health

Include provisions that are specific to health concerns of women inmates as they can differ from male inmates. These provisions should consider things such as menstrual products, pregnancy care, childcare, etc.

Reintegration

Include specific protocols for women's re-integration into the community.

Bill 45 should include procedures to address the reintegration challenges that are uniquely faced by women inmates. The John Howard Society of Ontario has identified that women have a more difficult time with reintegrating into the community than men do, specifically when it comes to finding adequate housing.⁸ The Office of the Auditor General of Canada also identified the issue of reintegration for women offenders in a 2003 report. The Correctional Services Canada "Reintegration of Women Offenders" report identifies the specific needs of women at all stages of the reintegration process;

⁸ John Howard Society, p. 11

assessment, programs, community reintegration, as well as the specific needs of Indigenous women offenders.

Indigenous Women

Bill 45 should require penitentiaries to provide intensive and comprehensive mental health, addictions, and trauma services for incarcerated Indigenous women and girls, and give special consideration to the reintegration and rehabilitation of Indigenous women inmates.

The BCCLA recognizes that Indigenous women are a vulnerable group within Canadian society and are overrepresented within correctional systems. For these reasons, special consideration should be made to the reintegration and rehabilitation of Indigenous women inmates.

Recommendation 14.6 of the recently published Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls calls on Correctional Services Canada and provincial and territorial services “to provide intensive and comprehensive mental health, addictions, and trauma services for incarcerated Indigenous women, girls, and 2SLGBTGGIA people, ensuring that the terms of care are needs-based and not tied to the duration of incarceration.”⁹

5) Assessment for discharge and discharge plan

Set out specific provisions to address discharge and discharge plans.

In their report on community reintegration, the John Howard Society of Ontario stresses the importance of discharge planning, especially for “specific populations such as those

⁹ Reclaiming Power and Place, p. 27

dealing with mental illness, addictions, substance abuse issues, co-occurring disorders, and HIV/AIDS.”¹⁰ We endorse these recommendations by the John Howard Society.

Part 3: Gladue Principles, Risk Assessment & Planning

The BCCLA recognizes that Indigenous offenders “tend to score significantly higher than non-Indigenous offenders on most risk factors.”¹¹ Public Safety Canada also reports that Indigenous offenders are disadvantaged at virtually every stage of decision-making in the justice system—including security placements and parole grant rates.¹² Their report suggests that one of the best ways to protect Indigenous offenders against bias in these processes “is to rely on objective, structured, and empirically defensible methods.”¹³

It is our recommendation that the NWT Correctional Facilities develop a risk assessment tool that considers the unique realities for Indigenous offenders.

Until then, we recommend that Bill 45 use the language of “objective, structured, and empirically defensible” as a commitment to unbiased risk assessments.

Security Classification

To ensure that the risk assessment process as it relates to security classification is fair to Indigenous inmates, the BCCLA suggests that a separate Indigenous-specific assessment be established and used. This would ensure that Gladue principles would be integrated into the assessment in a way that would act as mitigating factors for inmate assessment as opposed to aggravating factors. As stated in the previous section, the risk assessment tool was not created for Indigenous inmates and considering Gladue factors in the current

¹⁰ *Ibid.*

¹¹ Public Safety Canada, at p. 5

¹² *Ibid.*, at p. 10

¹³ *Ibid.*

assessment may be aggravating for Indigenous inmates. For example, Indigenous inmates tend to have a longer criminal record than non-Indigenous inmates and this would be seen as a higher risk factor in the current assessment. Instead, as mentioned in the previous section, a risk assessment method that is created with Indigenous inmates in mind should be developed.

Assessments—General

Include provisions on risk assessments, such as: when they will be conducted, when they will be updated who will conduct them, and what method will be used.

Parole

Bill 45 should ensure that indigenous inmates should have the right to involve Elders in their parole hearings.

Similarly to security classifications, there is the danger that parole evaluations are inherently biased against Indigenous inmates. We recommend establishing a risk assessment method for parole consideration, as well, that is made with Indigenous offenders and their unique social and historical realities in mind. Additionally, the parole process would benefit from the involvement of an Elder in cases involving Indigenous inmates. Information and examples of this practice can be found in the Parole Board of Canada's website, where they conduct and share examples of Elder-Assisted Hearings.

Part 4: Living Conditions

Include provisions requiring penitentiaries to provide adequate living conditions.

Subsections 26(c) and (d) of Bill 45 contain some reference to living conditions, but requirements on living conditions are not explicit. It is useful to expressly outline the entitlements of inmates in the statute, and to ensure these are adequate to Canadian

human rights standards. We therefore suggest adding provisions which guarantee adequate housing, access to natural light and fresh air, adequate bedding, cleanliness and repair of the facilities, nutritious food and water on a daily basis which complies with spiritual, religious and dietary needs, clothes that fits and is suitable to their personal dignity, access to a toilet, necessary toiletries and feminine hygiene products, access to a shower and sufficient equipment for bathing. Sample provisions can be found in the model CCRA 2.0 law, and in the Mandela Rules.

Include provisions requiring penitentiaries to provide inmates with access to adequate means of communications.

Inmates should have the right under the legislation to have reasonable contact with people outside the penitentiary, subject to security concerns. This should include being permitted to send and receive letters, access to a telephone, and visits from family and friends in person. Sample language can be found in the model CCRA 2.0 law.¹⁴

Include provisions requiring penitentiaries to provide inmates with access to adequate services and activities.

Section 50(1) of Bill 45 includes discretionary language about the provision of services and activities. However, we submit that language used should be mandatory (i.e. use “shall” instead of “may”) as the items listed are fundamental services for prisoners. Corrections services should also be required to maintain libraries with a sufficient number of books and computers.

¹⁴ CCRA sections to 45

Include provisions requiring penitentiaries to provide inmates with adequate healthcare.

Bill C-45 should be more explicit about inmates' rights to healthcare. We suggest including provisions outlining minimum healthcare standards. For example, the corrections service must provide inmates with essential health care, annual check-ups upon request, and reasonable access to non-essential health care. This must include mental health and physical health treatments. There should also be an area of the penitentiary that is designated to be the healthcare unit. In addition, treatment should be clinically sound and in conformity with accepted ethical standards, and must not be given to an inmate unless they have consented to it. The corrections services must also ensure a process whereby an inmate, including inmates giving birth, can be conveyed to a nearby hospital if the need arises. The model CCRA 2.0 law provides more detailed sample provisions that should be included in a Corrections Act, including the meaning of 'informed consent'.

Healthcare means therapeutic medical, dental and mental health care provided by registered healthcare professionals. It should include, but not be limited to, prevention of disease or injury, medication, addictions and substance abuse care, Indigenous medicine, and mental health care. None of these should be withheld as punishment, or while in separate confinement.

Include provisions requiring penitentiaries to provide inmates in separate confinement with access to and visits from healthcare professionals.

Members of a healthcare team should have access to visit, or be visited by, inmates in separate confinement on a daily basis. Inmates in separate confinement should be afforded proper healthcare, and should have regular healthcare check-ins to ensure their health is not worsening in separate confinement.

Include provisions requiring penitentiaries to provide equal services to inmates with disabilities.

All individuals with physical or mental disabilities must be provided with adequate treatment and reasonable accommodation in order to have equitable and full access to prison life, as mandated by the Mandela Rules. Services should include accessible mobility options, mobility service devices, hearing services and visual aids.

Appendix A: List of Recommendations

Part 1: Separate Confinement

Use and Purpose

- *Bill 45 should clarify that separate confinement should only be used as a last resort.*
- *Bill 45 should clarify that solitary confinement, as defined by the UN Mandela Rules, is prohibited.*
- *Remove section 32(2) (c) from Bill 45, which allows separate confinement when an inmate has concealed contraband.*
- *Include provisions stating that inmates with serious mental health conditions should not be placed in separate confinement.*
- *Remove section 32(2) (c) from Bill 45.*
- *Individuals with untreated mental health conditions should be sent to specialized health facilities to obtain adequate treatment.*

Meaningful Human Contact

- *Bill 45 should include a requirement that the hours outside of separate confinement are marked by meaningful human interaction.*

Additional Limits to Separate Confinement

- *Bill 45 should state that an inmate should not be kept in separate confinement for longer than 15 days, and for no more than a total of 60 calendar days over a 365 day period, until and unless an independent and impartial oversight body approves it.*

- *Bill 45 Should Prohibit the Separate Confinement of Vulnerable Populations.*

Independent Oversight of Decisions Regarding Separate Confinement

- *Separate confinement decisions must be appealed or justified to an independent and impartial oversight body*
- *Include a provision that inmates have the right to an impartial oral hearing, the right to counsel, disclosure of relevant documents and the ability to present or cross-examine witnesses.*
- *The burden of proof must be on the corrections officers to show that they did not breach an inmate's rights and to justify the use or extension of separate confinement.*

Part 2: Reintegration & Correctional Programs

- *Include a provision about the establishment and operation of correctional programs.*
- *Any provisions related to correctional plans and reintegration plans should come under one heading.*
- *Include provisions that offenders must be involved in making their own correctional and reintegration plan.*
- *Set out specific provisions to address discharge and discharge plans.*

Indigenous Inmates

- *Include a provision that considers an Indigenous offender's personal and systemic history in considering options for reintegration. Gladue factors must be considered during the development of reintegration and correctional plans.*

- *Bill 45 should include provisions that traditional Indigenous knowledge and cultures should be made accessible to Indigenous offenders throughout their involvement in the system.*
- *Bill 45 should recognize and prioritize access to culturally appropriate healing traditions for Indigenous inmates.*
- *Include protocols for Indigenous inmates who wish to be released into an Indigenous community.*

Women Inmates

- *Include provisions that are specific to health concerns of women inmates as they can differ from male inmates. These provisions should consider things such as menstrual products, pregnancy care, childcare, etc.*
- *Include specific protocols for women's re-integration into the community.*
- *Bill 45 should require penitentiaries to provide intensive and comprehensive mental health, addictions, and trauma services for incarcerated Indigenous women and girls, and give special consideration to the reintegration and rehabilitation of Indigenous women inmates.*

Part 3: Gladue Principles, Risk Assessment & Planning

- *It is our recommendation that the NWT Correctional Facilities develop a risk assessment tool that considers the unique realities for Indigenous offenders.*
- *Include provisions on risk assessments, such as: when they will be conducted, when they will be updated who will conduct them, and what method will be used.*
- *Bill 45 should ensure that indigenous inmates should have the right to involve Elders in their parole hearings.*

Part 4: Living Conditions

- *Include provisions requiring penitentiaries to provide adequate living conditions.*
- *Include provisions requiring penitentiaries to provide inmates with access to adequate means of communications.*
- *Include provisions requiring penitentiaries to provide inmates with access to adequate services and activities.*
- *Include provisions requiring penitentiaries to provide inmates with adequate healthcare.*
- *Include provisions requiring penitentiaries to provide inmates in separate confinement with access to and visits from healthcare professionals.*
- *Include provisions requiring penitentiaries to provide equal services to inmates with disabilities.*

Appendix B: Resources

Legislation

Bill 1, *Corrections Act*, 2nd Sess, 5th Leg, Nunavut, 2019 (Assented to June 6, 2019).

Bill 6, *Correctional Services Transformation Act*, Ontario, 2018 (Assented to May 7, 2018).

Bill C-83, *An Act to amend the Corrections and Conditional Release Act and another Act*, 1st Sess, 42nd Parl, Canada, (Passed by House of Commons March 18, 2019)

United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), Resolution Adopted by the General Assembly on 17 December 2015. *General Assembly Seventieth Session*, A/RES/70/175 (8 January 2016).

Reports

“Chapter 4: Correctional Services Canada—Reintegration of Women Offenders.” *Report of the Auditor General of Canada to the House of Commons* (2003).

Gutierrez, Letica, L. Maiike Helmus, and R. Karl Hanson. “What We Know and Don’t Know About Risk Assessment with Offenders of Indigenous Heritage.” *Public Safety Canada* (2017).

Parole Board of Canada. *Elder-Assisted Hearings and Community-Assisted Hearings*. Last updated June 28, 2018. <https://www.canada.ca/en/parole-board/corporate/publications-and-forms/elder-assisted-and-community-assisted-hearings.html>.

“Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls.” *National Inquiry into Missing and Murdered Indigenous Women and Girls* (2019).

“Reintegration in Ontario: Practices, Priorities, and Effective Models” *John Howard Society of Ontario* (2016).

Office of the Correctional Investigator. Strategic Planning Exercise: Legislative Framework Consistent with Evidence-Based Policy and Best Practices: CCRA 2.0 (May 2019).

Proposed new NWT Corrections act – comments on Community Advisory Boards

Community Advisory Boards are being gently suggested in the proposed new Act.

Community Advisory Boards are essential in increasing transparency and accountability within corrections. They strengthen the links between facilities and the community. They highlight the essential role that correctional workers play in keeping our communities safe.

Community Advisory Boards can facilitate and encourage the reintegration process inside correctional facilities. Important concerns including the relationship between staff and offenders, program integrity, and staff morale can be reviewed by Community Advisory Boards. The use of control measures and the frequency of measures such as segregation would also be important when evaluating how well the system respects Canadian law and the "*Charter of Rights and Freedoms*".

Community Advisory Boards must reflect the diversity of the community in which they are located and have representation from all sectors of a community in order to serve their role as observers, advisors, and an impartial liaison to the community.

Federal Citizen Advisory Committee comments –

"Traditionally, correctional agencies have maintained isolation from other human service agencies. The general public has never been well informed about corrections and this lack of information has led to apathy and more often than not, to hostility." Report to Parliament, by the Sub-Committee on the Penitentiary System in Canada. *MacGuigan Report*, 1977, p 124

"At no time should the Citizens' Advisory Committee involve itself as a mediator in the investigation of individual offender or staff grievances, nor should it allow itself to be put in the position of mediator during a prison disturbance... These Committees are intended to function as observers and commentators on the operation of our institutions and they will not be able to fulfil such a role if they too become embroiled in struggles occurring inside the walls." Report to Parliament, by the Sub-Committee on the Penitentiary System in Canada. *MacGuigan Report*, 1977, p 126

Mental Health Act –

Recently, the GNWT adopted a new Mental Health Act and with it, created the Mental Health Act Review Board. This allows anyone who is involuntarily held in a psychiatric facility in the NWT (ie: Stanton Hospital) to apply to the Board to have their matter reviewed and to possibly cancel the involuntary order.

An application is reviewed by the independent Chair of the Board and if approved for review, it is referred to an independent panel who will hear the matter. The panel is made up of a lawyer, a doctor (with psychiatric specialization) and a lay person from the public.

The Mental Health Act Review Board provides a model that could be modified for corrections in matters of segregation.

Moving forward, it will be critical to adopt the Community Advisory Boards.

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Proposed new NWT Corrections Act – comments on separate confinement

A most disturbing piece missing in the proposed new NWT Corrections Act is the lack of a limit on the number of consecutive days an inmate can be in segregation. While the Ministry may want to cover this in the regulations, it is far too important not to address it in the Act.

The proposed new Act mirrors the Federal Corrections and Conditional Release Act (CCRA) in limiting the number of hours in a day to 20 out of 24 hours, but it does not limit the number of consecutive days in segregation. (Given that the number of hours in a day can be prescribed in the Act, so too can the number of days in year)

The United Nations calls solitary confinement (AKA separate confinement, AKA segregation), "a harsh measure which may cause serious psychological and physiological adverse effects on the individual" and "contrary to one of the essential aims of the penitentiary system, which is to rehabilitate offenders", making everyone in society safer.

The harm to an individual can occur in as little as two days in confinement.

The United Nations recommends a limit of no more than 15 consecutive days in solitary confinement, and no more than four times in a calendar year (for no more than 60 days in segregation, or separate confinement in any calendar year).

The BC Civil Liberties Association and the John Howard Society of Canada believe this to be so important, that, together in 2015, they launched a law suit against the Government of Canada for not adopting this practice.

The Supreme Court of Ontario, in 2017, ruled that long-term segregation is unconstitutional, saying that confinement must be limited to five days in order to prevent psychological harm.

The Supreme Court of BC, in 2018, also declared prolonged segregation as unconstitutional.

Since the closing of psychiatric hospitals in the 1970's, the numbers of people held in these institutions has decreased in the same amount that the prison population has increased.

Correctional centers have become warehouses for people with mental illness and cognitive disabilities, except without workers who are trained to work with these specific groups.

Staff in correctional facilities identify that they are not trained to work with a population experiencing psychiatric and cognitive disabilities.

Correctional workers typically use segregation as a means of managing those who are difficult.

As recently at 2014 at the North Slave Correctional Center, a 20 year old male, during an eight-month sentence, spent 132 days in an isolation cell, including more than one month straight. At times he was naked, handcuffed, and shackled. He was not offered a shower, was not given cutlery for his food, had no mattress, and had no meaningful contact with others.

In her written decision, the judge called his treatment "cruel and unusual", saying that he was shown a lack of respect and subject to "inhumane conditions".

"I cannot help but wonder how we can expect a person to behave in a respectful and civilized manner, when the state, the authorities, subject the person to inhumane and uncivilized conditions," she wrote.

"I do not see how depriving someone of a mattress for seven days is a necessary or an appropriate response, and I do not accept the assertion that the mattress is made of a tear proof material, but "anything can be torn" justifies this," she wrote.

"Further, it was not necessary to deprive this man of a shower or a toothbrush, and there is no relationship between an inmate being threatening or assaultive and turning off the water in an inmate's cell."

The judge concluded that this man's treatment weighed heavily in her decision.

Here in the North, we have a number of prisoners housed in federal correctional facilities in the South. There are instances where individuals who do not have a federal sentence of two years or more are in federal facilities because correctional workers here in the North are unable to manage their disabilities in facilities here.

More than ½ of the suicides in correctional custody occur in segregation.

In August 2010, Edward Snowshoe, a 24 year old from Fort MacPherson, NWT took his own life following 162 days in segregation.

If you do not have a mental illness going into segregation, you will likely have one going out.

The NWT needs to lead this country in adopting the United Nations recommendations on segregation and have it included in the Act.

In closing, Howard Sapers, the former Correctional Investigator for Canada and later for Ontario, in his report on segregation in Ontario had this to say, "Reconciliation, rehabilitation, reintegration and restoration are not nostalgic nods to the past or feel-good rhetoric. These words describe prime outcomes of a fair and functioning system of justice, of which corrections is a significant component.

Corrections is at the bottom of the social service and criminal justice funnel. When early intervention and prevention strategies fail; when health, social service and education programs, interventions and opportunities are inadequate, denied or rejected; when poverty, mental illness, addiction and trauma overwhelm individuals, there can be conflict with the law.

Decisions made by law enforcement, crown and defence lawyers and members of the bench then provide the human feedstock of correctional enterprise. Correctional authorities do not have the luxury of deciding who their clients will be or for how long they will stay. Others make those decisions, and many of those decision-makers have little true understanding of corrections. Notwithstanding, there are significant expectations that the men and women who are sent to jail will somehow come out better for their experience. [Ontario] Correctional Services is often expected to address a lifetime of trauma and dysfunction in the months, weeks and sometimes days, people are in its care and custody".

See also – https://www.who.int/mental_health/policy/mh_in_prison.pdf

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