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Bill 113

An Act to amend the Ministry of Correctional Services Act with respect to solitary confinement

Ms N. Des Rosiers

Private Member's Bill

1st Reading May 13, 2019

2nd Reading

3rd Reading

Royal Assent



EXPLANATORY NOTE

The Bill amends the *Ministry of Correctional Services Act* with respect to the humane treatment of inmates and ending solitary confinement.

The Bill prohibits any cruel, inhumane or degrading treatment or punishment. It prohibits holding an inmate under overly rigorous physical constraints or surveillance. It prohibits sensory deprivation or disorientation and punishments that withdraw things necessary for good health. It requires the superintendent to ensure the *Canadian Charter of Rights and Freedoms* is complied with. Violation of these rules is an offence.

The Bill requires the creation of a plan to phase out solitary confinement over five years. At the end of those five years, the Bill prohibits solitary confinement.

During those five years, the Bill imposes restrictions on the use of solitary confinement. It restricts who may be held in solitary confinement and for how long. The restrictions become more stringent over time. The Bill also provides for safeguards, including independent reviews, reviews by health professionals, and rights to exercise, to have visitors and to have darkness at night.

There is also provision for reviews of cases of inmates held in conditions that are highly restrictive but are not solitary confinement.

**An Act to amend the Ministry of Correctional Services Act
with respect to solitary confinement**

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1 (1) Section 1 of the *Ministry of Correctional Services Act* is amended by adding the following definition:

“solitary confinement” means any type of custody where an inmate is highly restricted in movement and association with others for 22 hours or more per day. (“isolement cellulaire”)

(2) The definition of “solitary confinement” in section 1 of the Act, as enacted by subsection (1), is repealed.

2 The Act is amended by adding the following section:

Prohibited treatment or punishment

Cruel, inhumane, degrading

13.1 (1) No person shall administer or instigate any cruel, inhumane or degrading treatment or punishment of an inmate.

Specific types of treatment or punishment

(2) No person shall administer or instigate any of the following treatments or punishments of an inmate, regardless of whether the treatment or punishment would constitute cruel, inhumane or degrading treatment or punishment:

1. Holding the inmate in physical circumstances that are more rigorous than is reasonably necessary to protect his or her safety or the safety of others.
2. Subjecting the inmate to surveillance that is more rigorous than is reasonably necessary to protect his or her safety or the safety of others.
3. Subjecting an inmate to sensory deprivation or disorientation.
4. Punishing the inmate by depriving him or her of food, exercise, periodic human contact or access to medical observation and treatment.

Offence

(3) Every person who contravenes subsection (1) or (2) is guilty of an offence and on conviction is liable to a fine of not more than \$50,000 or imprisonment for a term of not more than two years, or both.

3 (1) Subsection 20 (2) of the Act is repealed and the following substituted:

Duties

(2) The superintendent shall,

- (a) receive into the institution every person delivered under lawful authority for detention in the institution;
- (b) be responsible for the custody and supervision of such person until his or her term of imprisonment is completed or until the person is transferred or otherwise discharged in due course of law; and
- (c) ensure that such person is treated in compliance with the *Canadian Charter of Rights and Freedoms*.

(2) Section 20 of the Act is amended by adding the following subsection:

Offence

(6) Every person who contravenes clause (2) (c) is guilty of an offence and on conviction is liable to a fine of not more than \$50,000 or imprisonment for a term of not more than two years, or both.

4 The Act is amended by adding the following Part:

**PART II.1
SOLITARY CONFINEMENT**

PLAN TO END SOLITARY CONFINEMENT

Plan to end solitary confinement

30.1 (1) The Minister shall, in collaboration with superintendents, other correctional institution employees and the unions that represent correctional workers, develop and implement a plan to completely phase out the use of solitary confinement in Ontario within five years after the day the *Ministry of Correctional Services Amendment Act (Limits on Solitary Confinement), 2019* received Royal Assent.

Tiered reduction of use of solitary confinement

(2) The plan must provide for the holding of an inmate in solitary confinement to be restricted to,

- (a) within one year after the day the *Ministry of Correctional Services Amendment Act (Limits on Solitary Confinement), 2019* received Royal Assent, no more than 10 consecutive days and no more than 55 days in every 365-day period; and
- (b) within three years after the day the *Ministry of Correctional Services Amendment Act (Limits on Solitary Confinement), 2019* received Royal Assent, no more than five consecutive days and no more than 40 days in every 365-day period.

Publication of report

(3) The Minister shall publish an annual report on a website of the Government of Ontario that sets out the plan to phase out the use of solitary confinement and describes the progress made towards achieving that goal.

Publication date

(4) The annual report must be published in each year on or before the anniversary of the day the *Ministry of Correctional Services Amendment Act (Limits on Solitary Confinement), 2019* received Royal Assent.

LIMITS ON SOLITARY CONFINEMENT

No solitary confinement of certain inmates

30.2 An inmate shall not be held in solitary confinement if the inmate,

- (a) is pregnant or has recently given birth;
- (b) is chronically self-harming or suicidal;
- (c) has a mental disorder, or an intellectual disability, that meets the prescribed conditions;
- (d) needs medical observation; or
- (e) has a mobility impairment that meets the prescribed conditions.

15-day consecutive maximum

30.3 (1) A superintendent shall immediately remove an inmate from solitary confinement if he or she has been held in those conditions for more than 15 consecutive days.

Five-day interval

(2) If an inmate was recently held in solitary confinement, the superintendent shall not hold the inmate in solitary confinement again unless at least five days separate the end of the previous period of solitary confinement from the beginning of the new one.

Transfers do not constitute break

(3) For the purposes of this section, a transfer of an inmate who was held in solitary confinement in one correctional institution to a different correctional institution does not constitute a break in his or her consecutive days of being held in solitary confinement.

60-day aggregate maximum

30.4 (1) The superintendent shall ensure that no inmate is held in solitary confinement for more than 60 aggregate days in the most recent 365-day period.

Transfers do not constitute break

(2) For the purposes of this section, a transfer of an inmate who was held in solitary confinement in one correctional institution to a different correctional institution does not affect the calculation of the aggregate number of days he or she has been held in solitary confinement.

HEALTH CARE AND CONDITIONS OF CONFINEMENT

Regular evaluation of inmate in solitary confinement

Health care service team

30.5 (1) The Minister shall establish health care service teams consisting of at least one individual qualified to diagnose physical health issues and one individual qualified to diagnose mental health issues and assign each team to one or more correctional institutions.

Regular evaluation

(2) When an inmate is being held in solitary confinement, the superintendent shall ensure that a member of the health care service team qualified to diagnose physical health issues and a member of the health care service team qualified to diagnose mental health issues visit the inmate and evaluate his or her condition at least once every three days.

Visits and evaluation as necessary

(3) The superintendent shall ensure that the members referred to in subsection (2) are permitted to visit and evaluate the inmate whenever any of them considers it to be necessary.

Exercise

30.6 The superintendent shall ensure that every inmate held in solitary confinement is given the opportunity to participate in exercise outside of his or her cell for at least one hour every day.

Regular visits

30.7 (1) The superintendent shall ensure that every inmate held in solitary confinement is given the opportunity to have another person visit and converse with them for at least one hour every day.

Communication through a meal hatch insufficient

(2) Communication through a meal hatch does not constitute a visit or conversation for the purposes of subsection (1), unless there is a safety or security concern that cannot be addressed in any other manner.

Darkness at night

30.8 The superintendent shall ensure that every inmate held in solitary confinement is given an adequate amount of darkness for an adequate amount of sleep during the night.

INDEPENDENT REVIEW PANEL

Conditions of confinement review and recommendations

30.9 The Independent Review Panel shall,

- (a) review, in accordance with the regulations,
 - (i) the cases of inmates held in solitary confinement, and
 - (ii) the cases of inmates who,
 - (A) are held in any other type of custody in which the inmate is highly restricted in movement and association with others for a period of time that is longer than the standard in general population housing in the correctional institution, and
 - (B) meet the prescribed conditions; and
- (b) make recommendations concerning those inmates to the superintendent, including recommendations in relation to an inmate's conditions of confinement.

Solitary confinement reports and referral

30.10 (1) The superintendent shall create a report stating the reasons for holding the inmate in solitary confinement at each of the following times:

1. When the inmate has been held in solitary confinement for 72 consecutive hours.
2. When the inmate has been held in solitary confinement for five consecutive days.
3. When the inmate has been held in solitary confinement for 10 consecutive days.

Written report

(2) The superintendent shall provide a written copy of every report made under subsection (1) to the inmate and, at the inmate's request, shall provide the inmate with a reasonable number of copies.

Notice at 72 hours

(3) If the inmate is held in solitary confinement for 72 or more consecutive hours or if the superintendent plans to hold the inmate in solitary confinement for 72 or more consecutive hours, the superintendent shall immediately provide notice of the confinement to the Independent Review Panel.

Referral at five days

(4) If the inmate is held in solitary confinement for five consecutive days, the superintendent shall immediately refer the matter to the Independent Review Panel.

Referral at 10 days

(5) If the inmate is held in solitary confinement for 10 consecutive days, the superintendent shall immediately refer the matter to the Independent Review Panel.

Transfers do not constitute break in solitary confinement

(6) For the purposes of this section, a transfer of an inmate who was held in solitary confinement in one correctional institution to a different correctional institution does not constitute a break in his or her consecutive days of being held in solitary confinement.

Referral at 30 and 55 aggregate days

30.11 (1) The superintendent shall make a referral to the Independent Review Panel as soon as an inmate has been held in solitary confinement for,

- (a) 30 aggregate days in the most recent 365-day period; and
- (b) 55 aggregate days in the most recent 365-day period.

Notice to Minister

(2) The superintendent shall notify the Minister as soon as a referral is made under clause (1) (b).

Review hearings

30.12 (1) If a case is referred to an Independent Review Panel under subsection 30.10 (4) or (5) or section 30.11, the Panel shall initiate a review hearing of the matter no later than five days after the case is referred or such earlier time as may be prescribed.

Matter to be reviewed

(2) The Panel shall determine whether there are alternative arrangements to solitary confinement available in the institution for the inmate, and whether it is appropriate to continue holding the inmate in solitary confinement.

No concurrent review hearings

(3) If the Independent Review Panel is already in the process of conducting a review hearing respecting an inmate's case at the time it receives another referral to initiate a review hearing for the inmate, it shall combine the hearings into a single hearing.

Parties

(4) The parties to the review hearing are the superintendent and the inmate.

Notification of review hearing

(5) The Panel shall notify the inmate who is the subject of the review hearing, in writing, of,

- (a) the date, time and location of the review hearing;
- (b) the inmate's right to appear at the review hearing with or without a lawyer or other person to provide assistance;
- (c) the inmate's right to testify, present relevant documents, call witnesses and cross-examine witnesses; and
- (d) any other prescribed information.

Public hearing

(6) The review hearing shall be open to the public, subject to any prescribed limits.

Telephone and video conferences

(7) A review hearing is deemed to be open to the public if the public can access it by,

- (a) telephone;
- (b) videoconference; or
- (c) a prescribed method.

Rules

(8) The Panel may make rules governing the practice and procedure before it at the review hearing.

Submissions

(9) In making submissions to the Panel, the superintendent and the inmate, or their representative, may testify, present relevant documents, call witnesses and cross-examine witnesses.

Superintendent's representative

(10) The superintendent may present his or her case at the review hearing or may appoint a representative to present his or her case.

Superintendent's submissions

(11) The superintendent, or his or her representative, must,

- (a) advise the Panel of the steps the superintendent has taken, tried to take or will take to improve the inmate's conditions of confinement so that it is no longer necessary to hold the inmate in solitary confinement; and
- (b) provide the Panel with evidence from any health professionals who have recently assessed or treated the inmate, where available, including any reports or recommendations made by them.

Viewing of a correctional institution

(12) If, in the opinion of the Panel, a viewing of all or part of a correctional institution is necessary to determine the issues before the Panel, the Panel shall inform the superintendent of the correctional institution.

Same, superintendent

(13) The superintendent shall facilitate the viewing in accordance with such requirements as may be prescribed and subject to such conditions as may be prescribed.

Decision timing

(14) The Panel shall provide notice of its decision to the inmate and to the superintendent within 24 hours after conducting the review hearing and may order, subject to such conditions and limitations as the Panel may determine,

- (a) that the inmate's conditions of confinement be altered so as not to constitute solitary confinement;
- (b) that the inmate continue to be held in solitary confinement but that some of the conditions of their confinement be altered; or
- (c) that the inmate shall continue to be held in solitary confinement.

Written reasons

(15) The Panel shall,

- (a) provide the inmate and the superintendent with written reasons for the decision as soon as possible, but no later than four days after the day of the decision and, at the inmate's request, shall provide the inmate with a reasonable number of copies; and
- (b) send a written copy of the decision to a third party at the inmate's request.

Decision to continue solitary confinement

(16) If the Panel orders that an inmate shall continue to be held in solitary confinement, the Panel shall, in its decision,

- (a) include details regarding other options for the inmate that were considered and rejected and provide written reasons as to why solitary confinement is the only reasonable and necessary option; and
- (b) document all evidence relied upon and any conflicting evidence or opinions that were brought forward during the review hearing.

Superintendent's compliance

(17) The superintendent shall comply with a decision made under this section, including the timelines set out in the decision, as soon as possible after receiving notice of the decision, but is not required to comply with any portion of a decision if,

- (a) the superintendent would be required to use force on an inmate who does not intend to comply with the security measures that are necessary to safely implement that portion of the decision; or
- (b) it would require the superintendent to contravene section 30.3 or 30.4.

Does not prevent application for *habeas corpus*

(18) For greater certainty, a proceeding under this section does not prevent an inmate from making an application to the courts for relief in the nature of *habeas corpus*.

5 Sections 30.1 and 30.2 of the Act, as enacted by section 4, are repealed and the following substituted:

Prohibition on solitary confinement

30.1 The superintendent shall ensure that no inmate is held in any type of custody where the inmate is highly restricted in movement and association with others for 22 hours or more per day.

6 (1) Subsection 30.3 (1) of the Act, as enacted by section 4, is repealed and the following substituted:

10-day consecutive maximum

(1) A superintendent shall immediately remove an inmate from solitary confinement if he or she has been held in those conditions for more than 10 consecutive days.

(2) Subsection 30.3 (1) of the Act, as re-enacted by subsection (1), is repealed and the following substituted:

5-day consecutive maximum

(1) A superintendent shall immediately remove an inmate from solitary confinement if he or she has been held in those conditions for more than five consecutive days.

(3) Section 30.3 of the Act is repealed.

7 (1) Subsection 30.4 (1) of the Act, as enacted by section 4, is repealed and the following substituted:

50-day aggregate maximum

(1) The superintendent shall ensure that no inmate is held in solitary confinement for more than 50 aggregate days in the most recent 365-day period.

(2) Subsection 30.4 (1) of the Act, as re-enacted by subsection (1) is repealed and the following substituted:

40-day aggregate maximum

(1) The superintendent shall ensure that no inmate is held in solitary confinement for more than 40 aggregate days in the most recent 365-day period.

(3) Section 30.4 of the Act is repealed.

8 Sections 30.5 to 30.8 of the Act, as enacted by section 4, are repealed.

9 Clause 30.9 (a) of the Act, as enacted by section 4, is repealed and the following substituted:

- (a) review, in accordance with the regulations, the cases of inmates who,
 - (i) are held in a type of custody in which the inmate is highly restricted in movement and association with others for a period of time that is longer than the standard in general population housing in the correctional institution, and
 - (ii) meet the prescribed conditions; and

10 (1) Paragraph 3 of subsection 30.10 (1) of the Act, as enacted by section 4, is repealed.

(2) Subsection 30.10 (4) of the Act, as enacted by section 4, is repealed.

(3) Subsection 30.10 (5) of the Act, as enacted by section 4, is repealed.

(4) Section 30.10 of the Act, as enacted by section 4, is repealed.

11 (1) Subsection 30.11 (1) of the Act, as enacted by section 4, is amended by striking out “and” at the end of clause (a) and repealing clause (b).

(2) Section 30.11 of the Act is repealed.

12 (1) Subsection 30.12 (1) of the Act, as enacted by section 4, is amended by striking out “or (5)”.

(2) Subsection 30.12 (1) of the Act, as amended by subsection (1), is amended by striking out “subsection 30.10 (4) or”.

(3) Section 30.12 of the Act is repealed.

13 (1) Subsection 60 (1) of the Act is amended by adding the following clauses:

- (m) governing the calculation of the number of days an inmate has been held in solitary confinement for the purposes of this Act;
- (n) establishing and governing the process for making a referral to an Independent Review Panel;
- (o) governing the quorum and composition of Independent Review Panels;
- (p) governing the procedure for review hearings before an Independent Review Panel;
- (q) governing the review process referred to in section 30.9;

- (w) prescribing any other matter that this Act requires to be prescribed or refers to as being prescribed;
- (x) providing for any transitional matter that the Lieutenant Governor in Council considers necessary or advisable in connection with the implementation of the amendments made by the *Ministry of Correctional Services Amendment Act (Limits on Solitary Confinement), 2019*.

(2) Clauses 60 (1) (m), (n) and (p) of the Act, as enacted by subsection (1), are repealed.

Commencement

14 (1) Subject to subsections (2) to (4), this Act comes into force three months after the day it received Royal Assent.

(2) Subsections 6 (1), 7 (1), 10 (1) and (3), 11 (1) and 12 (1) come into force one year after the day this Act receives Royal Assent.

(3) Subsections 6 (2), 7 (2), 10 (2) and 12 (2) come into force three years after the day this Act receives Royal Assent.

(4) Subsection 1 (2), section 5, subsections 6 (3) and 7 (3), sections 8 and 9 and subsections 10 (4), 11 (2), 12 (3) and 13 (2) come into force five years after the day this Act receives Royal Assent.

Short title

15 The short title of this Act is the *Ministry of Correctional Services Amendment Act (Limits on Solitary Confinement), 2019*.