



Know your rights

Segregation

You Have Rights

Being in an SIU or segregation does not take them away.



Even when liberty is taken away (i.e., by being in prison), the duty to respect human rights and the Charter remains. Further deprivation of liberty has to be in accordance with law.



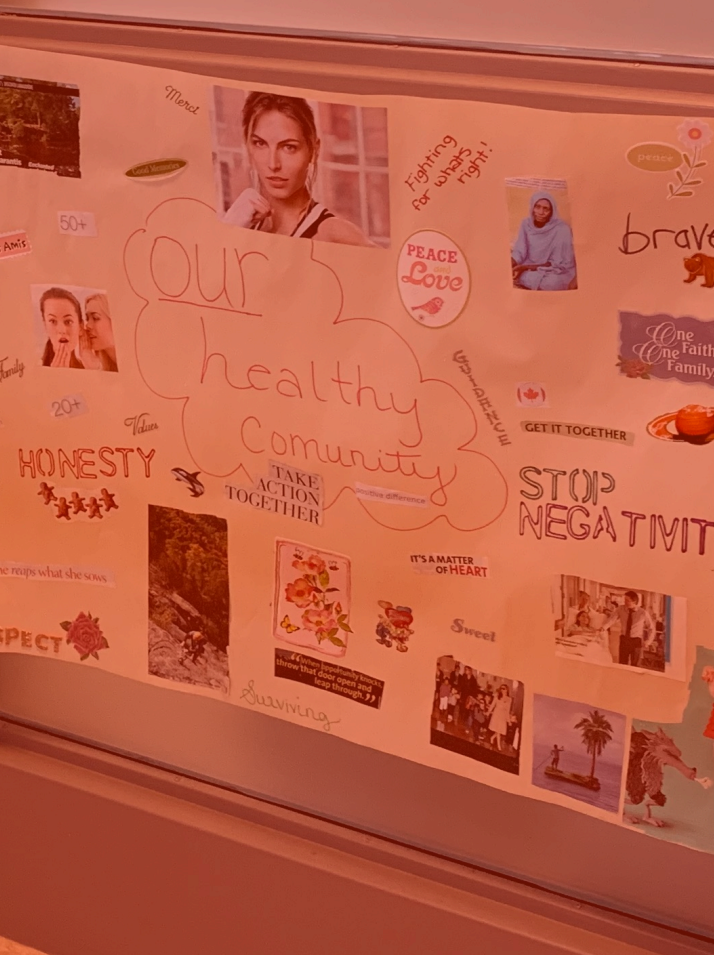
You have a right to live free from cruel and unusual punishment.



You have a right to mental and physical health.
You have a right to healthy human social connection.



You have the right to file a grievance or complaint to defend your rights – remember: a right that is not exercised can be lost.



Definitions:

Segregation goes by many names: “isolation”, “separation”, “solitary confinement”, “medical observation”, “mental health observation”, “COVID-distancing”, “administrative segregation”, “the hole”, or SIUs. Segregation often occurs in Special Handling Units (SHUs). It occurs where one is isolated or separated from the prison’s general population in more restrictive conditions.

Solitary confinement is spending more than 22 hours a day without meaningful interaction with another human being. If this continues for more than 15 days, this constitutes torture under the Nelson Mandela Rules. In any case, solitary confinement has a damaging and often irreversible mental health impact.

Structured Intervention Units (SIUs)

In November 2019, Structured Intervention units officially replaced Solitary Confinement in Canada. SIUs are supposed to provide four hours outside a cell a day and two hours of meaningful human interaction and better mental health supports. In practice however, SIUs are an exercise in “rebranding” as the evidence of implementation reveals; they are administrative segregation by another name, and often amount to torture and violations of constitutional rights.

Bill C-83: SIUs

Bill C-83, which came into force in 2019, replaces administrative segregation with SIUs (Structured Intervention Units). Public attention and court challenges caused the government to try to reform administrative segregation. Both the Ontario and the British Columbia Courts of Appeal found that administrative segregation was unconstitutional; that is, it was unlawful because it infringed on the basic rights of Canadians. The courts noted that the entire process of segregation was unfair and kept in the dark, away from public scrutiny and accountability.

What Bill C-83 does:

- It renames administrative segregation as “Structured Intervention Units”
- It requires CSC, if you are in an SIU, to give you time outside your cell (4 hours), and a minimum of 2 hours to interact with others and take part in programming
- It requires CSC to closely monitor your health on an ongoing basis while you are in the SIU



What Bill C-83 *doesn't* do:

- It doesn't stop CSC from putting you into conditions that are essentially solitary confinement
- It doesn't set defined limits on the overall time they can make you spend in the SIU
- It doesn't require CSC to provide alternatives to segregation or to find mental health supports
- It doesn't protect marginalized people
- It doesn't provide adequate oversight of CSC - that's where you come in

SIUs and segregation infringe your constitutional rights under Canadian law.

Section 12 of the *Canadian Charter of Rights and Freedoms*: “Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.”

Legal cases have supported the unconstitutionality of segregation:

Canadian Civil Liberties Association v. Canada (Attorney General), 2019 ONCA 243
“prolonged administrative segregation [more than 15 days] causes foreseeable and expected harm which may be permanent, and which cannot be detected through monitoring until it has already occurred.”

British Columbia Civil Liberties Association v. Canada (Attorney General), 2019 BCCA 228 ruled that prolonged administrative segregation violates Section 7 of the Canadian Charter of Rights and Freedoms because it deprives persons of life, liberty or security in a manner that is grossly disproportionate to the law’s objectives, and because there is no independent review of administrative segregation decisions.



“I reach this conclusion because prolonged administrative segregation causes foreseeable and expected harm which may be permanent and which cannot be detected through monitoring until it has already occurred...this outrages standards of decency and amounts to cruel and unusual treatment.”

— Justice Mary Lou Benotto

***Canadian Civil Liberties Association v. Canada (Attorney General)*, 2019 ONCA 243**

***Brazeau v. Canada (Attorney General)*, 2020 ONCA 184 [Brazeau]** found that there is no meaningful distinction between SIUs and solitary confinement or disciplinary segregation and that segregation causes severe mental distress which negatively impacts a prisoner's ability to return to community.

“Canada’s failure to alter its administrative segregation policies in the face of this mounting and concerted criticism from the medical profession, a Royal Commission, a coroner’s inquest, the Correctional Investigator, and various international agencies meets the standard of a ‘clear disregard for Charter rights’.” (*Brazeau* at para 100)

You have a right to mental health support. SIUs are not treatment for anyone's mental health.

Segregation does not treat or help mental health issues; instead, it exacerbates them. Prisoners who need proper mental health supports should receive them. SIUs are not an adequate solution for healthcare. People with disabilities or in need of mental health support should not be placed in SIUs but should receive proper medical care.

Recommendation 33 of the *Senate Standing Committee on Human Rights 2021 Final Report on Federally Sentenced Persons* calls on the government to ensure that Structured Intervention Units adhere to the most recent court decisions and respect Canada's human rights obligations and international commitments, including by:

- eliminating the use of solitary confinement for all federally sentenced persons; and immediately
- taking into account the different needs and experiences of particular groups, including LGBTQI2-S persons and women;
- eliminating solitary confinement in excess of 15 days;
- providing meaningful human contact and continued access to programming as well as 24-hour access to health and mental health services; and
- establishing judicial oversight to review all Structured Intervention Unit placements and decisions.

“Until the full exposure of what happened to Ash during the inquest into her death, the correctional services [of Canada] did not identify her as having mental health issues.” Coralee Cusack-Smith (Mother of Ashley Smith)



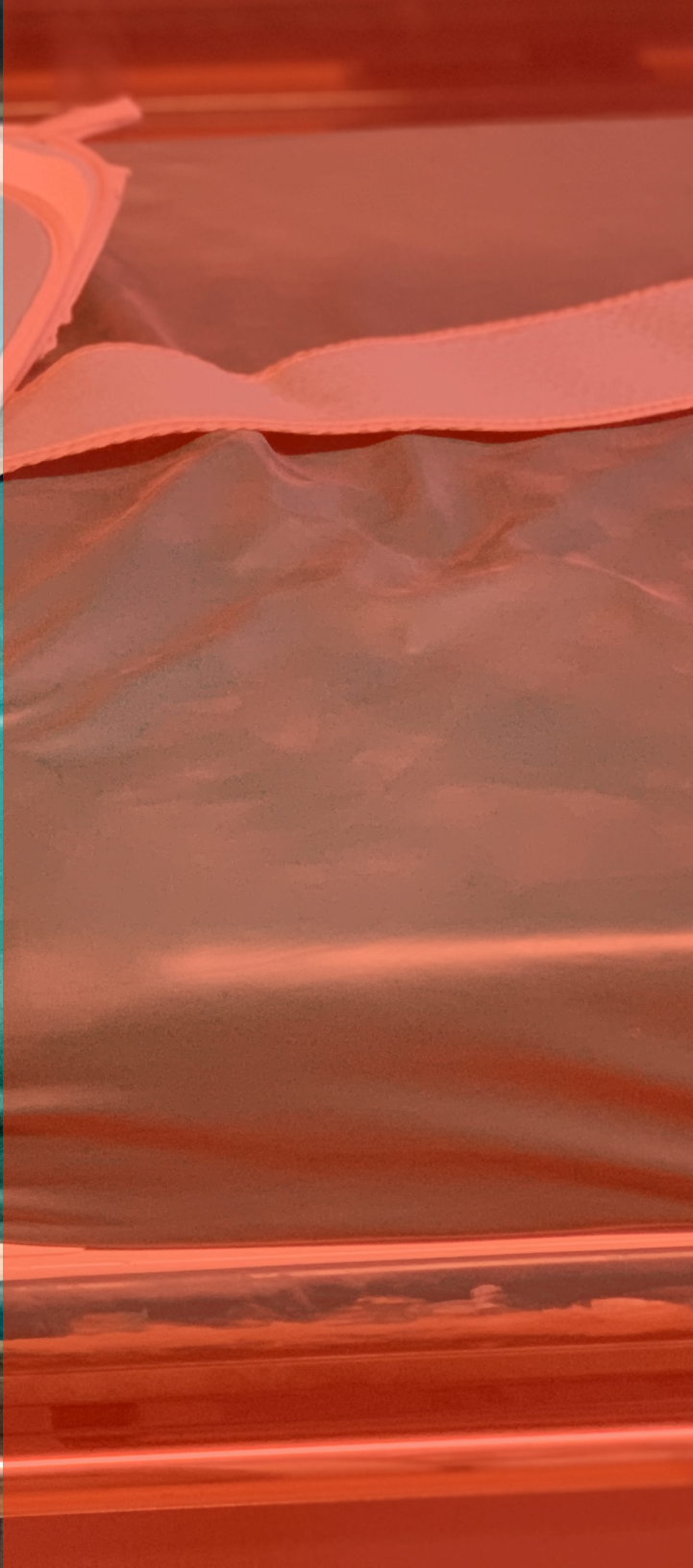


Canada's legacy of colonialism, racism, and genocide.

Canada has a long history of discrimination. CSC is required by law to consider the unique needs of Indigenous prisoners.

- Indigenous and Black prisoners are over-represented in segregation. Be sure to file a grievance or get in touch with advocates if you believe that there is discrimination in how you are being treated.
- You are entitled to always have access to cultural supports and programming according to the law. If you do not, and CSC has not provided any reasonable safety justification for keeping these from you, then you should file a grievance.
- Although it is sometimes used this way, segregation is not the way to keep LGBTQI2-S prisoners safe. CSC should be offering you alternatives to keep safe. If they are not, file a grievance.

“The road we travel is equal in importance to the destination we seek. There are no shortcuts. When it comes to Truth and Reconciliation, we are forced to go the distance.” - The Hon. Murray Sinclair, Truth and Reconciliation Commission



Recommendation 34 of the *Senate Standing Committee on Human Rights* says that the Correctional Service of Canada should immediately end the use of separation by any name, including SIUs, for youth, women, and those with disabling mental health issues, and implement mental health assessments and judicial oversight to eliminate the overrepresentation of federally-sentenced Indigenous Peoples, Black persons, other racialized persons and persons with mental health issues in Structured Intervention Units.

If you believe that you have been put into segregation because of reasons of sex, gender, race, or disability, you can file a complaint with the Canadian Human Rights Commission (CHRC). Write to them at:

**Address: Canadian Human Rights Commission
344 Slater St., 8th floor
Ottawa, ON
K1A 1E1
Email: info.com@chrc-ccdp.gc.ca
Toll-free: 1-888-214-1090; TTY: 1-888-643-3304
FAX: 613-996-9661**

See the Brochure on filing a CHRC complaint.

United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules)

The Nelson Mandela Rules uphold human rights standards for prisoners. Under these internationally recognized rules, CSC should be made to minimize suffering and to take care of the mental health and the well being of all prisoners, and of vulnerable prisoners especially.

Rule 1: All prisoners shall be treated with the respect due to their inherent dignity and value as human beings. No prisoner shall be subjected to, and all prisoners shall be protected from, torture and other cruel, inhuman or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as a justification.

Rule 43:

1. In no circumstances may restrictions or disciplinary sanctions amount to torture or other cruel, inhuman or degrading treatment or punishment. The following practices, in particular, shall be prohibited:

- (a) Indefinite solitary confinement;
- (b) Prolonged solitary confinement;
- (c) Placement of a prisoner in a dark or constantly lit cell;
- (d) Corporal punishment or the reduction of a prisoner's diet or drinking water;
- (e) Collective punishment.

2. Instruments of restraint shall never be applied as a sanction for disciplinary offences.

3. Disciplinary sanctions or restrictive measures shall not include the prohibition of family contact. The means of family contact may only be restricted for a limited time period and as strictly required for the maintenance of security and order.

Rule 45:

1. Solitary confinement shall be used only in exceptional cases as a last resort, for as short a time as possible and subject to independent review, and only pursuant to the authorization by a competent authority. It shall not be imposed by virtue of a prisoner's sentence.

2. The imposition of solitary confinement should be prohibited in the case of prisoners with mental or physical disabilities when their conditions would be exacerbated by such measures.

United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women (the Bangkok Rules)

Rule 1

In order for the principle of non-discrimination...to be put into practice, account shall be taken of the distinctive needs of women prisoners...Providing for such needs in order to accomplish substantial gender equality shall not be regarded as discriminatory.

Rule 5

The accommodation of women prisoners shall have facilities and materials required to meet women's specific hygiene needs, including sanitary towels provided free of charge and a regular supply of water to be made available for the personal care of children and women, in particular women involved in cooking and those who are pregnant, breastfeeding or menstruating.

Rule 12

Individualized, gender-sensitive, trauma-informed and comprehensive mental health care and rehabilitation programmes shall be made available for women prisoners with mental health-care needs in prison or in non-custodial settings.

Rule 13

Prison staff shall be made aware of times when women may feel particular distress, so as to be sensitive to their situation and ensure that the women are provided appropriate support.

Rule 22

Punishment by close confinement or disciplinary segregation shall not be applied to pregnant women, women with infants and breastfeeding mothers in prison.

Rule 23

Disciplinary sanctions for women prisoners shall not include a prohibition of family contact, especially with children.

Rule 41

The gender-sensitive risk assessment and classification of prisoners shall:

Take into account the generally lower risk posed by women prisoners to others, as well as the particularly harmful effects that high-security measures and increased levels of isolation can have on women prisoners;

If you believe any of these rights have been infringed, whether or not in a space called "segregation" this violates your rights and it should be challenged.

Record what is happening in SIUs and segregation

Help keep CSC accountable. Let us know what is going on inside the prison. Grievances about SIUs are considered “High Priority”, so you should go straight to filing a Final Grievance for any of the below:

- You are put into solitary confinement, a dry cell, or are transferred
- You undergo a strip-search or body cavity search
- You experience use of force against you
- You experience discrimination or harassment

Remember, seg/solitary confinement can occur outside SIUs. These points apply to other instances of segregation too.

- You can grieve if CSC fails to offer alternatives to segregation for those with diverse needs.
- Also, “meaningful human contact” should not just be with CSC personnel or the same small number of prisoners (e.g., maximum security pods for women): there should be contact with people from the community.

When should you file a grievance and what should you write about?

- Describe any harmful effects you suffered while in the SIU or other forms of segregation or separation.
- You should only be put into an SIU if based on your actions it is for your safety, the safety of others in prison with you, or because guards believe that you being in the general population could jeopardize a serious investigation.
- In one working day you should verbally be told the reason for the transfer, and within two days have this in writing, if not, file a grievance.
- If you do not receive your mandatory four hours outside of your cell (between 7am and 10pm), in conditions that are different from your cell, or you are kept in an SIU for more than 15 days, you should file a grievance.
- You should have access to your lawyer within the first few hours of being in an SIU and again when your placement is reviewed. If you do not, file a grievance.
- Journal, and keep track of other signs you see happening around you. Serious, sometimes permanent, negative consequences can happen within 48 hours of being put in segregation. Mental distress, aggression, trouble sleeping, confusion, hallucinations, rage, paranoia, self-mutilation, depression, loss of appetite, suicidal behaviours, or any other worsened mental health conditions. Let advocates know and file a grievance if you believe you have been wrongly put into segregation because of mental health issues you face.

Note: See the brochure on how to file a grievance.

- While in segregation, you should, according to the law, be able to access 24-hour medical supports. If this is not the case, file a grievance.
- If you suffer any provocation, harassment, or humiliation from prison guards, particularly if that leads to your being punished with segregation, file a grievance.
- The CSC claims that it provides prisoners with access to lawyers, support, even games and other entertainment, and basic services while in segregation. It is important that you share with us the conditions you experience when they put you in there, so that advocates outside prison can help ensure that CSC is able to live up to its commitments.



Independent External Decision Makers (“IEDMs”) are supposed to oversee the decisions made by CSC on SIUs.

- You should have access to meet with the IEDM or to write to them with information on review of your decision. If you do not, file a grievance.
- You should be kept in an SIU for as little time as possible. If you are not returned to the general population in a speedy manner, file a grievance.
- The decision to keep you in an SIU needs to be reviewed by the Warden or head of the prison every 5 working days you are held in there, and as soon as possible when you are not getting time outside, or you are suffering from mental health issues.

- You should see a difference between the former administrative segregation and SIUs. If you do not, file a grievance explaining what needs to be improved and why you feel no real changes have taken place.

Note: IEDMs are not adequate in terms of independent external oversight. They can usually only access information, documents and the SIUs themselves when CSC agrees to grant this access. This is why many, including the Senate of Canada, have agreed that reviews of conditions in SIUs and CSC’s decisions to put people in SIUs should be done by courts and prisoners should have remedies when corrections does not follow the law.

Where can I get additional help?

Office of the Correctional Investigator (OCI)

P. O. Box 3421, Station "D"
Ottawa, ON
K1P 6L4
Toll-free: 1-877-885-8848

Canadian Association of Elizabeth Fry Societies

190 Bronson Ave.
Ottawa, ON
K1R 6H4
T: 613-238-2422
Toll-free: 1-800-637-4606

John Howard Society of Canada

809 Blackburn Mews
Kingston, ON
K7P 2N6
T: 613-384-6272



Contact/copy your M.P. or Senator:

[Add your MP's name here]
House of Commons
Ottawa, ON
K1A 0A6

[Add Senator's name here]
Senate of Canada
Ottawa, ON
K1A 0A4