SENATE | SÉNAT
CANADA

FACTSHEET

Tona's Law:
Oversight, Remedies and Alternatives for Isolation in Federal Prisons

Senator Kim Pate
Ontario

Context

An Unfulfilled Promise to End Isolation in Federal Prisons

In 2018-19, Canada committed to ending segregation—including solitary confinement—in federal prisons. This commitment was in response to a series of court cases that ruled the existing system of segregation unconstitutional. These cases recognized the horrific physical, psychological and neurological harms of isolation. Canada has not fulfilled the promise to end segregation. Instead, the structured intervention units (SIUs) created to replace segregation have perpetuated and expanded its use. Those most harshly impacted by this ongoing human rights abuse include Indigenous Peoples, African Canadians, and those with mental health issues.

Senators' Work

Tona's Law builds on years of collective work by the Senate of Canada, including visits made by more than 30 Senators to prisons across the country. This bill proposes 4 measures to end isolation and uphold the human and Charter rights that protect all of us, including prisoners. Each measure in Tona's Law has already been endorsed by the Senate, in 2019, as amendments that the Senate proposed at the time SIUs were created and, in 2021, as recommendations of the Human Rights Committee in its *Report on the Human Rights of Federally-Sentenced Persons*.

Tona's Law

Members of the Senate Human Rights Committee met Tona, an Indigenous woman and survivor of the so-called 60s Scoop, during a visit to a forensic psychiatric hospital. Tona spent 10 years in federal custody, mostly in solitary confinement, resulting in a mental health system diagnosis of isolation-induced schizophrenia. Tona implored us to take legislative action to end solitary confinement and get people out of prisons and into appropriate mental health services. She suggested we could call this "Tona's Law".

@KPateontheHill
kim.pate@sen.parl.gc.ca
613-995-9220

PARL.CA/LEGISINFO

SIUs: Broken Promises, Ongoing Segregation

SIUs as Promised	SIUs as Delivered
End solitary confinement / segregation	• 1 in 3 people in SIUs meet the definition of being in solitary confinement (22 hours in cell without meaningful human contact) • For 1 in 10 people, solitary confinement is so prolonged (more than 15 days) that it is recognized by law as torture
Use of SIUs only where no reasonable alternative and ending as soon as possible	• Isolation lasts longer on average than under the previous segregation regime, with more than half of people held for more than 15 days and some stays as long as 552 days
Independent external oversight	• Independent external decision makers (IEDMs) only review cases that Corrections refers to them; there is no mechanism for prisoner initiated complaints • IEDM review is only guaranteed by law after 90 days in an SIU (15 days of isolation is recognized as torture) • 30% of the time, Corrections failed to refer cases to IEDMs within 90 days • Where IEDMs order people released from SIUs, Corrections takes longer on average to release them than others whose release was not ordered by an IEDM

SIU Implementation Advisory Panel:
https://www.crimsl.utoronto.ca/sites/www.crimsl.utoronto.ca/files/Torture%20Solitary%20SIUs%20%28Sprott%20Doob%2023%20Feb%202021%29.pdf
https://www.publicsafety.gc.ca/cnt/rsrcs/pblctns/2022-siu-iap-nnlrpt/index-en.aspx
https://www.publicsafety.gc.ca/cnt/rsrcs/pblctns/2022-siu-iap-nnlrpt-pdt/index-en.aspx
https://www.publicsafety.gc.ca/cnt/rsrcs/pblctns/2024-siu-iap-nnlrpt-2022-23/index-en.aspx

4 Measures to End Isolation in Federal Prisons

1. Court Oversight

Tona's Law would implement two vital forms of court oversight recommended nearly three decades ago, by Justice Louise Arbour in the *Commission of Inquiry into Certain Events at the Prison for Women in Kingston*, as a response to the ongoing and systemic overuse of segregation and resulting violations of human rights. This oversight would consist of the following:

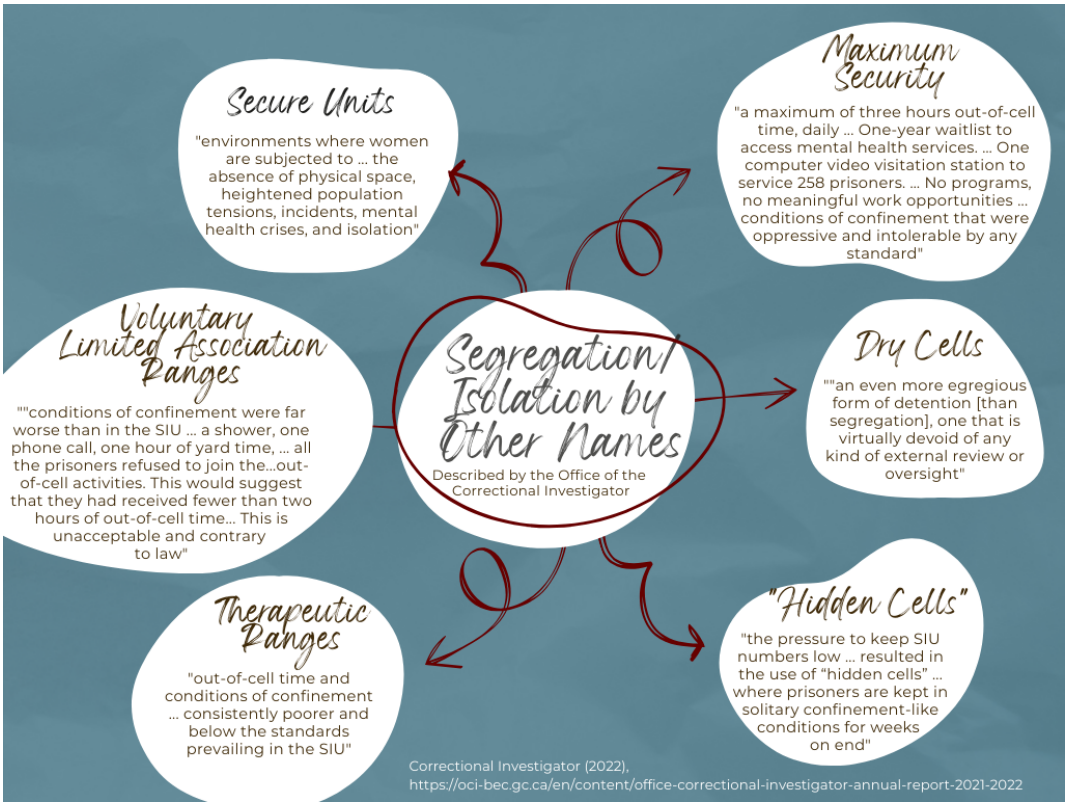
> *"I see no alternative to the current overuse of prolonged segregation but to recommend that it be placed under the control and supervision of the courts."*
>
> *- Justice Louise Arbour, Commission of Inquiry into Certain Events at the Prison for Women in Kingston (1996)*

- **Prison authorities seeking to isolate someone for longer than 48 hours must seek court approval, reflecting the timeframe in which irreversible harm can begin to occur.**
- **Prisoners may ask a court for a reduced sentence or reduced parole ineligibility period where conditions such as segregation make their sentence harsher than the sentence they were ordered to serve.**

2. Accountability for Isolation by Any Name

The Office of the Correctional Investigator (OCI) has documented the proliferation of conditions of isolation outside SIUs. Tona's Law seeks to address these conditions by broadening the definition of SIUs:

- **SIUs will be defined as including any separation from a prison's general population under more restrictive conditions, such that rules relating to SIUs, including court oversight, apply to everyone experiencing isolation.**

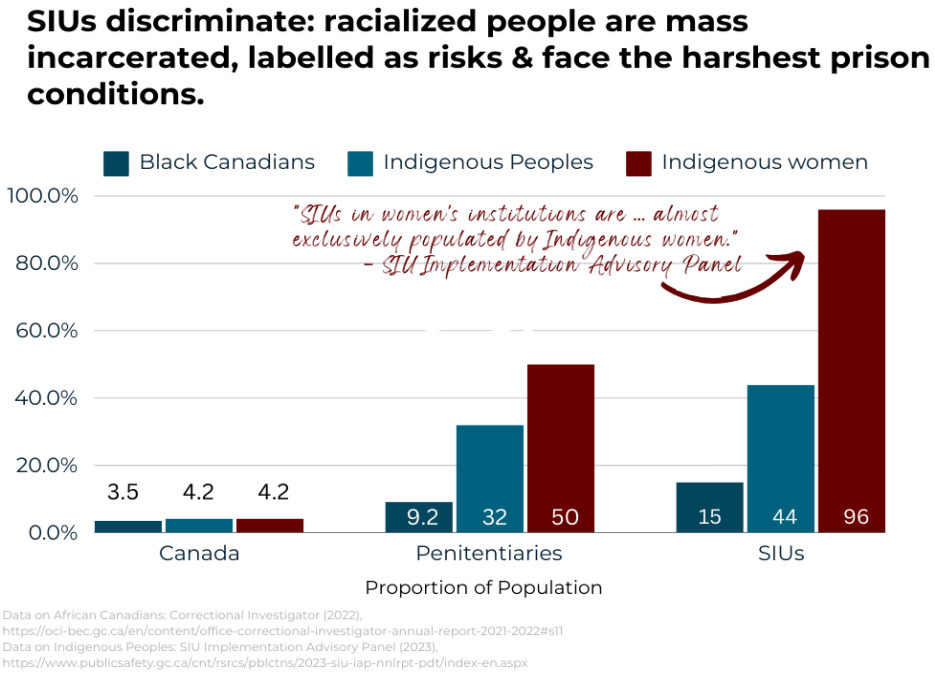


3. Prohibition on Isolation of Those with Disabling Mental Health Issues

Prison authorities currently have powers to transfer people out of prison to receive mental health care. The annual reports of the government's SIU Implementation Advisory Panel noted, however, that those identified by prison authorities as having mental health issues are more likely to be isolated repeatedly in SIUs and subjected to conditions akin to prolonged solitary confinement. Tona's Law seeks to uphold international and Canadian legal standards prohibiting solitary confinement of those with disabling mental health issues:

- **Prisoners must be transferred to provincial health systems, including forensic hospitals**
  - **for mental health treatment if they are found to have disabling mental health issues; and**
  - **for mental health assessment if a qualified mental health professional is not available in the prison to perform an assessment.**

4. Alternatives to Isolation for Indigenous Peoples, African Canadians, and Others Experiencing Mass Incarceration



Tona's Law recognizes that, as a result of systemic discrimination and colonialism, Indigenous women and others most in need of community support and connection often end up incarcerated, labelled as high risk, and locked in SIUs. This legislation will breathe life into sections 81 and 84 of the *Corrections and Conditional Release Act*, which allow people to serve sentences and be released into Indigenous communities. Tona's Law seeks to address underfunding and underuse by the government, as documented by the OCI as well as by countless other experts.

- **Options for serving sentences and being released into Indigenous communities could now also be offered by non-Indigenous community groups providing community-based supports.**
- **Prison authorities must seek out agreements with communities to receive prisoners and cannot oppose a person's transfer under such an agreement without a court order.**
- **Prison authorities must inform prisoners of opportunities for parole in communities, and if the Parole Board of Canada rejects such a plan for a person's parole that has been developed by a community, it must provide its reasons in writing.**

Key Sources & Further Reading

Reports of the government's SIU Implementation Advisory Panel:
https://www.publicsafety.gc.ca/cnt/cntrng-crm/crrctns/siuiap-ccuis-en.aspx
Reports of the Office of the Correctional Investigator: https://oci-bec.gc.ca/en/reports/annual