Bill C-83 and Changes to Administrative Segregation
Standing Senate Committee on Social Affairs, Science and Technology

Reason for the Brief

The proposal to eliminate administrative segregation and replace it with a regime of Structured Intervention Units is bad correctional practice. It will not promote safe and effectively managed penitentiaries, and it will compromise the liberty and rehabilitative prospects of inmates.

My background is in federal corrections. For 15 years I was the Associate Warden and Warden of Matsqui Institution, responsible for Administrative Segregation. Since leaving CSC I have been teaching Criminal Justice and Criminology at Langara College and Simon Fraser University. I focus on Canada’s Correctional system.

Administrative Segregation and risk for psychological harm

Courts in Ontario and British Columbia have equated the CSC administrative segregation regime with “solitary confinement” and have accepted the evidence of American clinicians associating solitary with psychological harm. In my opinion the courts have failed to understand conditions of administrative segregation in Canada and have not reasonably applied the research and evidence regarding the risk for psychological harm.

There is not a single research study confirming mental health infirmity arising from administrative segregation in CSC institutions. The few Canadian studies that do exist on this topic point to rather benign consequences.

In the most recent Ontario Court of Appeal decision the court places all their trust in a lawyer and a sociologist to help them understand the mental health implications of administrative segregation in Canada.

In the British Columbia decision, the court compares the validity of research claims by activist American clinicians with world renowned Canadian researchers, and ultimately dismisses the most relevant evidence with misapprehended views on research methodology.

The movement against solitary confinement in Canada is largely based on research produced by researchers/advocates like Professor Craig Haney. Haney is a US based correctional psychologist of some fame – having worked with Zimbardo on the infamous Stanford Prison Experiment. His research is based largely on inmate experiences at California’s Pelican Bay and other US Supermax Prisons.
It is important to note that the Pelican Bay solitary or SuperMax unit is one of extraordinary isolation and oppression, unlike anything that exists in Correctional Service of Canada.

Haney’s description of solitary is summed up in his 2012 testimony to the (USA) Senate Judiciary Committee on the Constitution, Civil Rights and Human Rights Hearing on Solitary Confinement. In the table below, I compare his characterization of the “conditions of solitary” with my experience managing segregation in a major CSC facility.

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<th>Haney View of “solitary”</th>
<th>Segregation at Matsqui</th>
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<td>Confined 23 hours per day</td>
<td>Although inmates participate in 1-hour exercise per day, many have additional time out of their cells for visits, meetings and appointments. Effort was made to provide employment to inmates with longer term stays (food service, cleaners etc) which provided additional time out of cell, and opportunity for interaction.</td>
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<td>(Note that CSC policy now provides for 2 hours exercise per day).</td>
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<td>Windowless or near windowless cells</td>
<td>All segregation cells have windows.</td>
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<td>Long term confinement, perhaps years</td>
<td>Many inmates are released from segregation no later than their 5th working day review. Almost all inmates are released from segregation prior to their 30-day review.</td>
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<td>In rare instances where segregation lasts beyond 30 days it is typically due to inter-regional transfer constraints OR the inmates’ refusal to accept the plan for release.</td>
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<td>Lack of meaningful social contact</td>
<td>• Inmates usually attend exercise yard with other inmates and have time in yard to socialize</td>
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<td>• Ongoing attendance in segregation by correctional officers, parole officers, health workers, chaplains, elders, and other institutional staff.</td>
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The nature of a segregation placement can be differentiated across a number of dimensions including interaction (human contact); cell amenities and features; activities and the regime for oversight and decision-making. There are substantial and meaningful differences between Haney’s characterization, and actual experiences in a Canadian penitentiary. The impacts of segregation can only be understood with a comprehensive review with multiple considerations.

Whether human interaction is meaningful for the inmates in segregation at Matsqui (or other CSC facilities) becomes a more subjective question. I interviewed every segregated inmate on a weekly basis – always face to face and not through a food slot. I consulted frequently with nurses and psychologists providing service to this group. The vast majority of inmates advised me of no psychological distress and displayed no symptoms. The major reason for this, in my view, has less to do with the physical conditions of confinement but more to do with the fact that inmates Matsqui worked actively with staff to develop alternatives to segregation – and that these efforts were open and transparent. Inmates knew what was going on, and when decisions would be made, even if they disagreed.
For inmates exhibiting signs of psychological distress referral could be made to one of almost 200 beds in the nearby Regional Treatment Centre (96 beds for offenders with cognitive and other functional impairments; and 96 beds for psychiatric treatment (designated under provincial legislation).

It is not just my view that mental health consequences of administrative segregation (for up to 60 days) are minimal. I would encourage the committee to review Canadian research by Bonta and Gendreau (1990) and Zinger and Wichmann (1999) as well as a more recent meta-analysis by Morgan and Gendreau (2016).

A critical piece of research is the Colorado study published in 2013 in the Journal of the American Academy of Psychiatry and the Law. It finds psychological health can even improve while in segregation. It is published in a refereed journal and is recognized by academics as the most sophisticated segregation study to date. Despite being the “gold standard” for research in this area the BC Court found it to be fatally flawed. More recently (and not considered by courts in Ontario or BC) is a 2018 study from Kansas which supports the Colorado findings which was published in the Journal of the British Psychological Society.

None of the research takes into account how differences in the physical environment and operational routines impact the segregation experience. Segregation units vary dramatically across jurisdictions. Individuals respond differently to their living conditions.

There simply is no scientific determination as to any consequence resulting from administrative segregation in Canada as it has not yet been sufficiently researched or evaluated.

**Charter risks associated with changes to administrative segregation**

The impetus for change, and recent court decisions, revolve around the charge that administrative segregation violates provisions of the Charter. The concern is mainly with Section 7 (right to life, liberty and security of the person) and Section 12 (the right not to be subjected to any cruel and unusual treatment or punishment).

The sad paradox in this is that the solutions that advocates and the courts propose actually infringe upon charter rights of inmates – directly and egregiously in some instances.

The most egregious infringement arises from the Ontario Court of Appeal decision to impose a 15-day “hard cap”. Involuntary transfers are often necessary and are a mechanism that can trigger a release from segregation. In these instances, segregated inmates may want to retain counsel in order to rebut the involuntary transfer. This arbitrary 15-day hard cap constrains the ability of inmate to adequately consult with counsel and could limit a robust response to the case for transfer. In complicated cases
more time might be required to develop a plan to reintegrate the inmate into the general populations, which would not be permitted with a hard cap. The 15-day limit unnecessarily precipitates a move to higher security which has liberty and personal security consequences. In fact, CSC has already implemented an operating practice at some institutions to use emergency involuntary transfer, rather than segregation, to remove an inmate from the population.

Although transfers are a necessary and appropriate solution in some instances, they do have consequences in addition to moving an inmate to a more secure setting. Transfers can move inmates away from family and visitors, disrupt social and staff connections in a particular setting, disrupt work and program gains, and provoke anxiety and worry associated with re-entry to a new population.

There have also been recommendations to increase use of specialized units (sub-populations) to create alternatives for persons in segregation. These too have consequences. Institutions will lose flexibility in managing common program and activity spaces meaning there will be an overall loss of liberty to the inmate population, and quite possibly reduced access to programs, which means few inmates will have the opportunity to earn conditional release and will serve longer portions of their sentence in custody.

**Structured Intervention Units**

The proposal to establish Structured Intervention Units (SIU) as an alternative to segregation does have some “street appeal”. After all, segregated inmates will presumably have increased access to social interaction, recreation and programming. However, C-83 describes SIUs in such broad and vague language, that the consequences of implementation are very uncertain.

A number of medium security institutions will not have SIUs, requiring inmates to be removed from the institution, case management team and other supports, when those supports need to be accessible in order to develop a reentry plan.

The Minister has suggested that most SIUs will be operated in existing segregation spaces. These spaces are poorly equipped for the stated SIU purpose with inadequate exercise space, usually no program space, and limited office or interview space.

Movement of inmates outside of the SIU to other areas for programming or activities will make those spaces concurrently unavailable to the general populations as comingling of these two groups is not very likely.

The emphasis on programming and socialization, along with the dedication of resources will result in units which will be attractive to many inmates for long term accommodation. The overall result may well be more inmates in restrictive housing for longer periods of time – in complete opposition to the overall objectives of this exercise.
Some of these new sub populations will have particular needs and will be best served by recruiting a team of staff ideally suited to work with that sub-population. The ability to properly staff these populations may be hampered by restrictions in the CX Global Agreement.

Costs associated with this initiative are huge. Minister Goodale identifies a total investment of $500 million; and the Parliament Budget Officer estimates $60 million per year in ongoing operating costs. About 900 new staff are needed, mostly correctional officers.

The review mechanism is complicated. At the same time, it reduces a Warden’s authority to effectively manage needed correctional interventions; and may not fully meet the requirements of recent court decisions.

The risks and costs are likely to outweigh the benefits.

**Alternative options to limit the use of administrative segregation**

Policy choices emerge on three fronts – time limits for segregation; independent review or external oversight; and major changes to the conditions of (segregated) confinement.

In finding solutions my recommendation is to embrace the Mandela rules; support a healthy correctional environment for both staff and offenders; seek to limit the use of segregation; and keep things simple.

Reviews need to be predictable and have a clear accountability structure. Wardens should have full authority through the first 15 days. Institutional (Warden) reviews should be required at the 24 hour; 5 day and 15 day marks; a regional review (Deputy Commissioner) at the 30-day mark; and independent external review at the 60 day mark.

The Independent External Review should be appointed by Governor-in-Council (not the Minister). The external review should involve a hearing. Decisions should be binding. The external reviewer should hold a hearing every 30 days while the inmate remains in segregation.

Investments should be made in improving activity and program space.

Additional resources should be provided to provide psychological monitoring of inmates in administrative segregation.

The Service should engage universities to increase relevant operational research (with a particular focus on staff and inmate experiences).

Glen Brown