



Mapping Solitary Confinement: Ontario, Canada country report

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Cite as: Barkway, K. and Turcotte, A. (2022). Solitary Confinement in Ontario, Canada. In: S. Shalev, *Mapping Solitary Confinement* (online). <https://www.solitaryconfinement.org/mapping-solitary-confinement>

1. Country general Criminal Justice System facts & numbers

Provincially, the Ontario Ministry of the Solicitor General is charged under *The Ministry of Correctional Service Act (MCSA)* with the care and custody of prisoners convicted and sentenced to 2 years less 1 day under sections 743.1(2) and 743.1(3) of *The Criminal Code* of Canada (CC).¹ The Ministry is also charged with the custody of prisoners on remand (pre-trial detention)² and all youth custody sentences. Additionally, provincial prisons may house immigration detainees, who are generally held alongside other provincial prisoners.³ In Ontario there are 8 correctional centres, which generally house prisoners serving sentences of 60 days to two years less a day; 8 detention centres, which act as a point of entry into the prison system and generally house prisoners on remand, prisoners serving sentences of approximately 60 days or less, and prisoners awaiting transfers to federal or provincial facilities; 8 jails, which are generally smaller facilities; and 4 correctional treatment centres.⁴

- In 2018/2019 the average daily count of adults in provincial custody in Ontario was 7,447. This represents a rate of 64 per 100,000 adults.⁵
- In 2018/2019 in Ontario the average daily count of prisoners on remand was 5,280. The average daily count of sentenced prisoners was 2,050.⁶
- In 2018/2019 there were 55,991 adult male prisoners admitted to custody. Of those, 6,441 were Indigenous and 49,550 were non-Indigenous.⁷

¹ *Criminal Code*, RSC 1985, c. 46, s 743.1(2)-(3) <https://laws-lois.justice.gc.ca/eng/acts/c-46/page-118.html#h-131837>

² *Ministry of Correctional Services Act*, RSO 1990, c. M.22, s 5 <https://www.ontario.ca/laws/statute/90m22#BK5>

³ Immigration detainees may be transferred by the Canadian Border Services Agency from an immigration holding centre to provincial jails when they are considered high risk.

⁴ Ministry of the Solicitor General. (2022). Correctional facilities. <https://www.ontario.ca/page/correctionalfacilities#section-3>

⁵ <https://www150.statcan.gc.ca/n1/pub/85-002-x/2020001/article/00016/tbl/tbl01-eng.htm>

⁶ <https://www150.statcan.gc.ca/n1/pub/85-002-x/2020001/article/00016/tbl/tbl02-eng.htm>

⁷ <https://www150.statcan.gc.ca/n1/pub/85-002-x/2020001/article/00016/tbl/tbl04-eng.htm>



- In 2018/2019 there were 8,827 adult female prisoners admitted to custody. Of those, 1,615 were Indigenous and 7,212 were non-Indigenous.⁸
- In 2018/2019 the average daily count of youth in custody was 267. This represents a rate of 3 per 100,000 youths (aged 12-17).⁹

2. Legislative and administrative bases for use of solitary confinement

In Ontario solitary confinement is called non-disciplinary segregation¹⁰ and disciplinary segregation¹¹ and these stipulations are governed by s.28.10 and s. 32(2) of the *MCSA Regulations*, respectively. It should be noted that a number of changes to the segregation legislation (regulations) are due to be implemented in 2023. Additional changes aimed at “...aligning with international standards” are also being implemented according to the new *Correctional Services and Reintegration Act*.¹² For example, the new legislation will reportedly provide a more precise definition of segregation.¹³ The answers contained here preclude these changes as they have yet to come into effect.

Other policies related to segregation are not publicly available.

In Ontario, the provision of youth custody is governed by the *Youth Criminal Justice Act* (federal) and Ontario’s *Child and Family Services Act*.¹⁴ The practice of solitary confinement for youth in custody is referred to as secure isolation. Secure isolation is permitted when the youth’s behaviour presents an imminent risk of serious harm to another person/property and when no less restrictive method is practicable to manage the behaviour. Secure isolation cannot be used as a punishment for youth. People younger than 16 cannot be held in secure isolation for more than 8 hours in any one day or 24 hours in a week. Youth older than 16 cannot be held in secure isolation for longer than 72 hours unless approved by a provincial director.¹⁵

3. Reasons for use and administrative regulations for each of the following:

a. Solitary confinement as punishment

- Provincially imprisoned individuals may be placed in disciplinary segregation on the authority of a correctional Superintendent as reprimand under s.32(2) when the Superintendent determines that the prisoner has committed a serious misconduct.¹⁶

⁸ <https://www150.statcan.gc.ca/n1/pub/85-002-x/2020001/article/00016/tbl/tbl04-eng.htm>

⁹ <https://www150.statcan.gc.ca/n1/pub/85-002-x/2020001/article/00016/tbl/tbl06-eng.htm>

¹⁰ *Ministry of Correctional Services Act Regulation 778*, RSO 1990, c. M.22, ss 28.10(1)a-c <https://www.ontario.ca/laws/regulation/900778#BK15>

¹¹ *Ministry of Correctional Services Act Regulation 778*, RSO 1990, c. M.22, s 32(2)1-2 <https://www.ontario.ca/laws/regulation/900778#BK15>

¹² Government of Ontario. (2018). Ontario Passes Legislation to Transform Adult Correctional System. <https://news.ontario.ca/en/release/49411/ontario-passes-legislation-to-transform-adult-correctional-system>

¹³ Ibid.

¹⁴ <https://www.ontario.ca/laws/statute/17c14#BK1>

¹⁵ <http://www.children.gov.on.ca/htdocs/English/professionals/childwelfare/residential/residential-review-panel-report/9secure.aspx>

¹⁶ *Ministry of Correctional Services Act Regulation 778*, RSO 1990, c. M.22, s.32(2)1-2 <https://www.ontario.ca/laws/regulation/900778#BK15>



Confinement in segregation under this rule is not to exceed 15 consecutive days.¹⁷ Prisoners who have committed a serious misconduct may be placed in disciplinary segregation for a definite or indefinite period, but neither period can exceed the 15 day maximum. Following a 2016 review of “hundreds of segregation placements,” the Ontario Ombudsman reported that “it is clear that segregation is a tool regularly used by managers to separate out and effectively punish the most “difficult” and vulnerable inmates.”¹⁸

- According to the legislation, prisoners placed in segregation should retain the rights and privileges they had prior to transfer except for rights that involve the prisoner’s association with other prisoners or that cannot be enjoyed as a result of a disciplinary measure under section 32.¹⁹
- The *MCSA* Regulations define segregation as “... any type of custody where an inmate is in highly restricted conditions for 22 to 24 hours or does not receive a minimum of two hours of meaningful social interaction each day, excluding in circumstances of an unscheduled lockdown...”²⁰ Beyond this, the *MCSA* Regulations fail to precisely prescribe the conditions and provisions of segregation.
- The legislation only specifies, under s.28.4(1), that segregated prisoners should maintain the same rights as other prisoners with the exception of “... those [rights] that can only be enjoyed in association with other inmates and those that cannot be enjoyed due to security requirements or as a result of the imposition of a disciplinary measure under section 32.”²¹ An online summary of the Ontario visitation policy states that visitations may be denied by an institution if “conduct is deemed to be disruptive to the security, safety, and good order of the institution.”²² The policy additionally explains that prisoners should “continue to receive visits according to the standard visiting policy, unless the superintendent determines otherwise.”²³
- Following section 28.5 of the regulations, every prisoner who is held in segregation is to be assessed by a health care professional at least once every 24 hours. If the healthcare professional finds evidence of increasing risk of adverse effects on the prisoner’s physical or mental health as a result of continued segregation, the health care professional shall report this to the Superintendent and may recommend that the conditions of custody be altered to minimize adverse effects on the prisoner’s

¹⁷ Ibid.

¹⁸ Ombudsman Ontario. (2016). Segregation: Not an Isolated Problem. <https://www.ombudsman.on.ca/resources/speeches-and-articles/speeches/2016/segregation-not-an-isolated-problem>

¹⁹ Ministry of Correctional Services Act Regulation 778, RSO 1990, c. M.22, ss 28.4(1) <https://www.ontario.ca/laws/regulation/900778#BK15>

²⁰ Ministry of Correctional Services Act Regulation 778, RSO 1990, c. M.22, s.1 <https://www.ontario.ca/laws/regulation/900778#BK15>

²¹ Ministry of Correctional Services Act Regulation 778, RSO 1990, c. M.22, s.28.4(1) <https://www.ontario.ca/laws/regulation/900778#BK15>

²² Ministry of the Solicitor General. (2022). Visiting policy for adult correctional facilities. <https://www.ontario.ca/page/visiting-policy-adult-correctional-facilities#section-6>

²³ Ibid.



health. If the Superintendent does not follow these recommendations, they must document their rationale and make it available to the person who made the recommendation and the person who conducts the reviews under section 28.6 of the Regulations.

- Secure isolation cannot be used as punishment for youth in custody.

b. Solitary confinement as management of prisoners labelled ‘difficult’ or ‘dangerous’

- Maximum duration

- Following section 28.10 of the Regulations, provincially imprisoned individuals may be placed in non-disciplinary segregation on the authority of a correctional Superintendent for the prisoner’s own protection, for the protection of other prisoners, for resisting a search, or for security reasons.²⁴ The legislation stipulates that non-disciplinary segregation should only be used in exceptional cases as a last resort,²⁵ and for as little time possible,²⁶ to a maximum of 15 consecutive days.²⁷ The prisoner must be released from non-disciplinary segregation if the Superintendent believes that holding the prisoner in segregation is no longer warranted.

- Which groups of prisoners

- The legislation does not make distinctions between prisoners except in cases of mental disorder. Under ss.28.2(1) and (2), prisoners with known mental disorder or any of a number of observed impairments are to have conditions of confinement varied so that they do not meet the threshold of the s.1 definition of segregation (stated above).²⁸

- Regime, time in cell and contact with the outside world

- Same as answer 3.a.
- Prisoners in segregation shall have access to all programs and services that were available outside of segregation, except for those that can only be enjoyed with other prisoners and those that cannot be enjoyed due to security requirements (section

²⁴ *Ministry of Correctional Services Act Regulation 778*, RSO 1990, c. M.22, ss 28.10(1)a-c
<https://www.ontario.ca/laws/regulation/900778#BK15>

²⁵ *Ministry of Correctional Services Act Regulation 778*, RSO 1990, c. M.22, ss 28.10(2)
<https://www.ontario.ca/laws/regulation/900778#BK15>

²⁶ *Ministry of Correctional Services Act Regulation 778*, RSO 1990, c. M.22, ss 28.10(3)
<https://www.ontario.ca/laws/regulation/900778#BK15>

²⁷ *Ministry of Correctional Services Act Regulation 778*, RSO 1990, c. M.22, ss 28.3(1)
<https://www.ontario.ca/laws/regulation/900778#BK15>

²⁸ *Ministry of Correctional Services Act Regulation 778*, RSO 1990, c. M.22, s.28.2(1)-(2)
<https://www.ontario.ca/laws/regulation/900778#BK15>



28.4(2) of the regulations).²⁹ Additionally, programs and services may be adapted for the conditions of segregation to the least restrictive extent possible.

- In cell provisions: TV? Radio? Regular furniture? Special limitations? Canteen?
 - Under s.32(1) of the *MCSA* Regulations, disciplinary segregation because of a determination of serious misconduct may be imposed with other reprimands such as loss of access to canteen purchases to a maximum of 120 days (about 4 months), a change of program or work activity, or a change of security status.³⁰

For youth placed in secure isolation, the conditions are described in a 2016 report conducted by the Office of the Provincial Advocate for Children and Youth. This report notes that youth in secure isolation may be locked in a room or cell that may or may not include a bed and/or toilet. They may spend up to 23 hours per day locked in the cell. They may be provided little to no reading materials. They may or may not be allowed to go outside. The prisoners may only have access to a guard through a slot in the door.³¹

c. Solitary confinement for the prisoner's own protection

- Yes, see answers in b.

d. Solitary confinement pre-trial

- The legislation does not make distinctions between convicted prisoners and pre-trial prisoners. Segregation is used for prisoners on remand subject to the same provisions outlined above.

4. Restraints and chemical irritants

- The legislation does not refer to or prescribe limits to use of force against prisoners in segregation or for transfer to segregation. It may be that these are further addressed in policy.

5. Protected populations

- The *MCSA* Regulations prohibit the segregation of prisoners with the following mental health disorders:
 - i. Amnestic or cognitive disorder
 - ii. Major depressive disorder
 - iii. Neurocognitive disorder
 - iv. Bipolar I or II
 - v. Borderline personality disorder

²⁹ <https://www.ontario.ca/laws/regulation/900778#BK14>

³⁰ *Ministry of Correctional Services Act Regulation 778*, RSO 1990, c. M.22, s.32(2) & s.32(1) <https://www.ontario.ca/laws/regulation/900778#BK15>

³¹ This information was retrieved from the Office of the Provincial Advocate for Children and Youth's report: It's a matter of time: Systemic review of secure isolation in Ontario youth justice facilities.



- vi. Brief psychotic disorder
- vii. Delirium
- viii. Delusional disorder
- ix. Dementia
- x. Obsessive-compulsive disorder
- xi. PTSD
- xii. Psychotic disorder
- xiii. Schizoaffective disorder
- xiv. Schizophrenia (any)
- xv. Schizophreniform disorder
- xvi. Substance-induced psychotic disorder (except intoxication & withdrawal)³²
 - o The MSCA Regulations prohibit the ongoing segregation of prisoners who are experiencing at least 1 of:
 - i. Significant impairment in judgement, inability to make decisions, confusion, disorientation
 - ii. Significant impairment in thinking, paranoia or delusions making inmate danger to self or others.
 - iii. Significant impairment in mood = interferes with ability to interact with others, depressed mood with helplessness, hopelessness, agitation, manic mood.
 - iv. Significant impairment in behaviour & communication = interferes with ability to interact with others.
 - v. Hallucinations, delusions, severe obsession rituals = interfere with ability to interact with others.
 - vi. Suicidal ideation & high risk for attempt.
 - vii. Self injury & high risk for serious physical or mental injury.³³

Additionally, every prisoner in segregation is to be assessed by a healthcare professional at least once in every 24-hour period. If the healthcare professional finds evidence of increasing risk of adverse effects on the prisoner's physical or mental health as a result of continued segregation, the health care professional shall report this to the Superintendent and may recommend that the conditions of custody be altered to minimize adverse effects on the prisoner's health.

6. Statistical data on use of solitary confinement/segregation

- o A 2016 publication of the Ombudsman reported on the overuse of segregation in that there were more than 1600 segregation placements over the course of 5 months for just 2 of Ontario's jails.³⁴

³² *Ministry of Correctional Services Act Regulation 778*, RSO 1990, c. M.22, s.28.2(1)
<https://www.ontario.ca/laws/regulation/900778#BK15>

³³ *Ministry of Correctional Services Act Regulation 778*, RSO 1990, c. M.22, s.28.2(2)
<https://www.ontario.ca/laws/regulation/900778#BK15>

³⁴ Ombudsman Ontario. (2016). Segregation: Not an Isolated Problem.
<https://www.ombudsman.on.ca/resources/speeches-and-articles/speeches/2016/segregation-not-an-isolated-problem>



- In 2013 the government of Ontario reached a settlement with Christina Jahn, a former prisoner at the Ottawa Carleton Detention Centre. A condition of the settlement involved reviewing segregation practices and making segregation data available to the public.³⁵
- From April 1, 2020 to March 31, 2021 there were 8,219 prisoners in segregation in Ontario. 1,044 (13%) identified as female and 7,175 (87%) identified as male.³⁶
- Overall, 32% of females in provincial custody and 29% of males in provincial custody were placed in segregation on at least one occasion.³⁷ A breakdown of segregation placements by gender and correctional institution is also available in the link in the footnote.
- Of the 8,219 prisoners placed in segregation from April 1, 2020-March 31, 2021, 3,197 (39%) had an active mental health alert on their file for at least one segregation placement. This number represents 51% of women prisoners in segregation and 37% of male prisoners in segregation.³⁸
- Across correctional institutions, 4,479 prisoners placed in segregation were white, 1,089 were Black, and 1,049 were Indigenous. A full breakdown of segregation placements by ethnicity is available on the website.

7. Jurisprudence on solitary confinement

- *R v. Capay 2019 ONSC 535*.³⁹ The following information is pulled from the case documents. Adam Capay was transferred to the Thunder Bay jail in Ontario. He was held in administrative segregation alone in a cell continuously from June 4, 2012-December 6, 2016 (a period of 1,647 days). The conditions of his confinement in administrative segregation are described under segregation history and provide some insights into the conditions of the cell and common areas and the daily routine. During his first three months in segregation, he was held in almost total isolation, as correctional officers were directed not to speak to him. When Mr. Capay was allowed out of his cell to the common area he was always alone. He met with the Chaplain eight times, always in his cell or cell block. When he was placed in segregation, he had a documented history of mental illness. During his time in administrative segregation, he saw one psychiatrist on 3 occasions in the Kenora Jail. The accused was in his cell for these meetings. Cumulatively, these three meetings lasted 80 minutes. In Thunder Bay, he saw a psychiatrist on 31 occasions in the multipurpose room. Mr. Capay was handcuffed during these meetings. He had no access to Indigenous programming or services until 2016 when he was visited by a Native Inmate Liaison Officer on 13 occasions. Notably, eleven of these visits took place after the Chief Commissioner of the Human Rights Commission visited the Thunder

³⁵ <https://www.ohrc.on.ca/sites/default/files/OHRC%20v%20MCSCS%20-%20Consent%20Order%20-%20Jan%202018.pdf>

³⁶ <https://www.ontario.ca/document/2021-data-release-inmates-ontario/human-rights-based-data-collection-inmates-segregation>

³⁷ <https://www.ontario.ca/document/2021-data-release-inmates-ontario/human-rights-based-data-collection-inmates-segregation>

³⁸ <https://www.ontario.ca/document/2021-data-release-inmates-ontario/human-rights-based-data-collection-inmates-segregation>

³⁹ <https://www.canlii.org/en/on/onsc/doc/2019/2019onsc535/2019onsc535.html?resultIndex=1>



Bay jail and met with the accused. The judge ruled that the breaches of Mr. Capay's ss. 7, 9, 12, and 15 Charter Rights "have been found to be prolonged, abhorrent, egregious, and intolerable".⁴⁰

- Francis v. Ontario, 2020 ONSC 1644.⁴¹
 - This case involves prisoners who had a serious mental illness and were placed in administrative segregation and/or prisoners who were placed in administrative segregation for 15 days or more.
- Jahn v. Ministry of Community Safety and Correctional Services
 - A summary of this case can be found here: <https://www.ohrc.on.ca/en/segregation-and-mental-health-ontario%E2%80%99s-prisons-jahn-v-ministry-community-safety-and-correctional>

8. Reports on the use of solitary confinement

- Inspection / monitoring bodies /non-Governmental bodies
 - Ombudsman of Ontario. (2017). Out of Oversight, Out of Mind.⁴²
 - Ontario Human Rights Commission. No Date. Report on conditions of confinement at Toronto South Detention Centre. *Ontario Human Rights Commission*.⁴³
 - Ontario Human Rights Commission. (2017). A bold voice: Annual report 2016-2017. *Ontario Human Rights Commission*.⁴⁴ See page 28 – Ending cruel and inhumane treatment in corrections.
- Media
 - <https://www.ombudsman.on.ca/resources/news/press-releases/2018/ombudsman-welcomes-new-legislation-to-reform-correctional-services,-segregation>
 - [https://www.ombudsman.on.ca/resources/news/in-the-news/2017/ontario-prisons-use-solitary-confinement-too-often,-and-for-the-wrong-reasons-\(two\)](https://www.ombudsman.on.ca/resources/news/in-the-news/2017/ontario-prisons-use-solitary-confinement-too-often,-and-for-the-wrong-reasons-(two))
 - <https://www.cbc.ca/news/canada/thunder-bay/segregation-ontario-ohrc-1.5703807>
 - <https://www.cbc.ca/news/canada/toronto/ont-segregation-1.5971689>
 - <https://globalnews.ca/news/7296897/ontario-segregation-rules-human-rights-commission/>
 - <https://www.cbc.ca/news/canada/toronto/lawyers-legal-specialists-immigration-detainees-ontario-jails-1.3601390>

9. Relevant academic / research resources on solitary confinement

- Provincial Advocate for Children and Youth. (2015). It's a matter of time: Systemic review of secure isolation in Ontario youth justice facilities. *Provincial Advocate for Children and Youth*.⁴⁵

⁴⁰ Paragraph 515 <https://www.canlii.org/en/on/onsc/doc/2019/2019onsc535/2019onsc535.html?resultIndex=1>

⁴¹ <https://www.canlii.org/en/on/onsc/doc/2020/2020onsc1644/2020onsc1644.html?autocompleteStr=Francis%20v.%20Ontario%20&autocompletePos=1>

⁴² <https://www.ombudsman.on.ca/resources/reports-and-case-summaries/reports-on-investigations/2017/out-of-oversight,-out-of-mind>

⁴³ <https://www.ohrc.on.ca/en/report-conditions-confinement-toronto-south-detention-centre>

⁴⁴ https://www3.ohrc.on.ca/sites/default/files/A%20bold%20voice%20Annual%20report%202016-2017_accessible.pdf

⁴⁵ This resource was accessed through the university library system.



- Cleveland, J. (2015). Not so short and sweet: Immigration detention in Canada. In *Immigration Detention: The migration of a policy and its human impact*. A. Nethery and S. Silverman (Eds.). Routledge.

ABSTRACT: “This chapter deals only with non-Melanesian irregular migrants who are not in International Organization for Migration (IOM) care or registered with the United Nations High Commissioner for Refugees (UNHCR) and persons transferred to Papua New Guinea (PNG) under the 2013 Memorandum of Understanding (MoU). There are thousands of non-citizens unlawfully present in PNG. At the same time, there are other non-citizens who are subjected to administrative detention despite being lawfully present in PNG. Until 1975, PNG was an Australian colony, and since then it has been dependent on Australian aid, receiving an allocation of AUD \$577 million in the 2014-15 Australian aid budget. The 2013 MoU provides for the establishment of 'a Joint Committee with responsibility for the oversight of practical arrangements required to implement this MoU'. For practical reasons, PNG has tended not to make much use of immigration detention in dealing with irregular migrants.”

- Silverman, S. & Molnar, P. (2016). Everyday injustices: Barriers to access to justice for immigration detainees in Canada. *Refugee Survey Quarterly*, 35(1), 109-127.

ABSTRACT: “The growing Canadian immigration detention system touches upon the lives of thousands of people daily. However, despite significant legal and normative problems, the Canadian detention system seems to be escaping sustained scrutiny. To address this gap, we employ the rubric of “access to justice” to refocus on inequalities being reproduced in the legal system that impede fair, unprejudiced, and non-arbitrary treatment for minorities and vulnerable people. If law is meant to govern equally and to ensure against arbitrary deprivations of liberty, immigration detainees should not be placed outside its reaches. Yet, our examination of access to justice in the Canadian detention system demonstrates that exactly this sort of displacement is occurring. Above and beyond the basic deprivation of liberty and setback to immigrants and asylum-seekers’ interests, detention inflicts irreparable psychological, physical, and social damage. We point to issues such as deteriorating daily detention conditions, far-flung facilities locations, unfair discretionary decision-making, lack of options for women, children, and vulnerable people, the compounding reasons for indefinite detention, and inadequate legal aid and access to counsel. Canada is propagating an extremely costly and ineffective system of administrative detention that is often in contravention of national and international standards on immigration detention.”