

Structured Intervention Unit Implementation Advisory Panel

2021/22 Annual Report



Howard Sapers, Chair

Ottawa, CANADA

Submitted September 2, 2022

Table of Contents

Executive Summary.....	5
Introduction.....	19
The Structured Intervention Unit Implementation Advisory Panel.....	29
Mandate and Panel Members.....	29
Panel Governance and Operations.....	30
Collaborating Framework Between the IAP and CSC	30
Methodology.....	31
What is a Structured Intervention Unit?	35
SIU Decision-Making and the Monitoring of SIUs.....	42
Observations on the Independent External Decision-Maker Role and Functions.....	44
IEDM Training.....	46
Assignments	46
IEDM Case Reviews.....	47
IEDM Length of Stay Decisions.....	48
SIU Operational and Legal Requirements.....	54
Length of Stay in the SIU.....	58
Summary of Findings Regarding Length of Stay in the SIU	62
Time Out of the SIU Cell.....	63
Achieving the “Promised” Four Hours Out of the SIU Cell.....	63
Two Hours of Meaningful Human Contact.	70
Summary of Findings Regarding Time Out of Cell (Four Hours and 2 Hours of Meaningful Contact)	74
Promising Practice Example from Millhaven Institution	75
Special Areas of Concern	77
Mental Health	77
Indigenous Prisoners	82
Multiple Stays in the SIU.....	89
Understanding Why People Are Sent to SIUs More Than One Time.....	90
Conclusion	93
Advice to the Minister of Public Safety and Recommendations to the Commissioner of Corrections	98

Appendices	106
Appendix A – Data Tables.....	106
Appendix B – New Measurement System	122
Appendix C – CSC Operational Goals and Performance Measures.....	131
Appendix D – SIU-IAP Member Biographies.....	136
References	142

Acronyms Used

CCRA – Corrections and Conditional Release Act

CCRR – Corrections and Conditional Release Regulations

CD – Commissioner's Directive

CJS – Community and Justice Services (Loyalist College)

CPS – Canadian Penitentiary Service

CSC – Correctional Service of Canada

EIFW – Edmonton Institution for Women

IEDM – Independent External Decision-Maker

ISH – Indigenous Social History

MHCC – Mental Health Commission of Canada

MI – Millhaven Institution

MOMS – Mothers Offering Mutual Support

OMS – Offender Management System

P4W – Prison for Women

PSC – Public Safety Canada

SIU – Structured Intervention Unit

SIU IAP – Structured Intervention Unit Implementation Advisory Panel

Executive Summary

On 30 November 2019, Correctional Service Canada implemented amendments to the *Corrections and Conditional Release Act (CCRA)* that were meant to abolish what was known officially as “Administrative Segregation”, and informally as solitary confinement. The idea was to provide accommodation and a set of services for prisoners who could not be adequately housed in the general penitentiary population. There are only three legislated justifications for transferring a prisoner to one of these Structured Intervention Units: Concerns related to the safety of others, concerns about the safety of the prisoner, or concerns related to the integrity of ongoing investigations.

There were a number of key features to the legislation. First was that these special units, known as Structured Intervention Units, or SIUs, would be used infrequently, and that once a prisoner was transferred into an SIU, their stay would be as short as possible. In order to ensure short stays, programs and services would be provided that would allow the prisoner to return to the general penitentiary population quickly. Among the legislated promises to prisoners was that they would be offered an opportunity to spend at least four hours out of their cells each day, two hours of which would involve meaningful human interaction. Other important amendments enhanced the professional autonomy and independence of healthcare professionals, created patient advocates, and guaranteed reasonable access to non-essential healthcare services (in addition to access to essential care).

The legislation also required that data on the operation of the SIUs would be routinely collected, presumably to ensure that the legislative promises were fulfilled. Finally, a complex, multi-stage set of approvals was necessary to place and keep a prisoner in an SIU. One of the key components of this oversight process is that certain key decisions must be reviewed by Independent External Decision-Makers (IEDMs), a feature that was not in the original legislation as

originally tabled but was added after the House of Commons committee reviewing the legislation recommended amendments.

This report builds on this Panel's "Preliminary Observations of the Operations of Correctional Service Canada's Structured Intervention Units"¹, a document completed in October 2021 but unfortunately not released by Public Safety Canada until April 2022. The Panel's work is also informed by the experiences of the earlier panel that concluded its term in the summer of 2020 without receiving the information it requested, that was needed to fulfil its oversight mandate. This Panel's work also builds on the findings of four reports written by independent researchers and released between October 2020 and May 2021.²

It would be short-sighted to minimize the importance of SIUs in the context of Canada's overall penitentiary system. On 13 February 2022 there were "only" 165 prisoners in the SIUs out of a total population of 12,182 prisoners in CSC facilities (1.4% of the total federally incarcerated population that day). But as this Panel pointed out in its October 2021 "Preliminary Observations" document, this "count" ignores the flow of people into and out of the SIUs. In October 2021, the Panel estimated that about 8.4% of those who had been in CSC's facilities during the first 21 months of the SIU regime spent at least some time in one or more SIUs.

But this, too, ignores important concerns about the use of the SIUs. Transfers to SIUs are much more likely to occur if a prisoner is Indigenous, and placements are dramatically more likely to occur in certain regions than in others. Given that transfers to SIUs are only supposed to occur if "there is no reasonable alternative to the inmate's confinement in a structured intervention unit..."³, it is fair to conclude that this should be the least preferred solution to a problem.

¹ Available at <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/2022-siu-iap/index-en.aspx>

² <https://www.crimsl.utoronto.ca/news/reports-canada%E2%80%99s-structured-intervention-units>

³ *Corrections and Conditional Release Act (S.C. 1992, c.20)*, s.34(1)

It is well known that Indigenous people are over-represented in Canada's penitentiaries. Starting with the fact that only about 4.2% of Canadian adults are believed to be of Indigenous origin, we see, in Table A, that Indigenous people are substantially over-represented in our penitentiaries.

Table⁴ A: Indigenous people in Canada's Penitentiaries and SIUs.

	Male	Female	Total
Proportion of adult Canadian population that is Indigenous	4.2%	4.2%	4.2%
% Penitentiary population that was Indigenous on 13 February 2022⁵	31.6%	49.1%	32.4%
Percent of person-stays⁶ in SIUs through 13 February 2022 that involve Indigenous people	39.8%	75.8%	41.1%

Recent concerns have been expressed about the fact that Indigenous people – especially Indigenous women – are over-represented in Canada's penitentiaries. But the over-representation of Indigenous people in penitentiaries, generally – especially with respect to women – is dwarfed by the use of SIUs for Indigenous women.

CSC's own data show that 75.8% of the stays in SIUs by women in Canada involved Indigenous women despite constituting a mere 4.2% of the overall adult female population in Canada. The findings for Indigenous men, while not as dramatic, are similar. Compared to the overall penitentiary population in each of CSC's five regions, Indigenous people are more likely than others to end up in the SIU.

⁴ Details, and in some instances, expanded version of the tables can be found in the main text and/or the data tables associated with the main report.

⁵ This is the most recent "census" (count) information that we have from CSC.

⁶ Each stay in an SIU for each prisoner is counted as a separate "person-stay".

The Panel fully understands there will be regional and institutional differences. What concerns the Panel, however, is the lack of explanation for the extent of the variation in the use of SIUs across regions. In Table B, we have presented the unexpected significant variation in overall use of the SIUs by region.

Table B: Person Stays in SIUs by Region.

Region	Total Stays in SIUs per 1000 Prisoners in the Region
Atlantic	355.3
Quebec	475.7
Ontario	107.5
Prairie	259.1
Pacific	321.1
Canada	278.2

To say that the variation in the use of SIUs reflects “local culture” in each region is not an adequate explanation. The fact that there is huge variation in the use of SIUs suggests two things. The regions are clearly using SIUs differently, and probably for different purposes or with different thresholds for their use.

The regions also differ dramatically in terms of the number of SIU cells they have, ranging from 13.4 SIU cells per 1000 in total cell capacity in Ontario, to 36.3 SIU cells per 1000 total capacity in the Prairie region. The Panel does not fully understand CSC’s reasons for the variation in the number of SIU cells per region. Second, the variation that we see in the use of SIUs across regions provides an opportunity for CSC to learn from those regions or institutions that use SIUs most sparingly.

IEDM Oversight of the SIUs

As already noted, external oversight by IEDMs is provided for certain decisions in SIUs; one of the most important of which is the length of the prisoner’s stay in the SIU. Although the United Nations Standard Minimum Rules for the Treatment of

Prisoners (the Mandela Rules)⁷ distinguish between stays of 15 days or less, and longer stays, Canada decided the first external review of a prisoner's stay in the SIU need not be completed until the prisoner has been in the SIU for at least 90 days.

Since the SIUs opened officially on 30 November 2019, 14 different IEDMs have made "length of stay" decisions on whether it was justified to keep a prisoner in an SIU. Looking only at the decisions of "Prisoner should not remain in the SIU" vs. "Prisoner should remain in the SIU", IEDMs can be divided into two distinct groups: 9 IEDMs who never or seldom ordered the release of a prisoner, and 5 IEDMs who ordered release at least 23% of the time. As can be seen in Table C, there was huge variation across IEDMs in their decisions on whether a prisoner should be released.

⁷https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf.

The Mandela Rules deal with solitary confinement which is defined as confinement for 22 hour or more a day without meaningful human contact. Prolonged solitary confinement would involve such confinement in excess of 15 consecutive days. An SIU stay in which a prisoner receives at least two hours per day of meaningful human interaction would not, therefore, be defined by these rules as solitary confinement. Note that the Mandela Rules would appear to put the responsibility on the correctional system to ensure that at least two hours of meaningful human interaction actually occurs.

Table C: Decisions by IEDMs

	Decision by the IEDM		
IEDM types:	Prisoner should not remain in the SIU	Prisoner Should Remain in the SIU	Total (definite) Decisions
Five IEDMs most likely to remove Prisoner from SIU	55	103	158
	34.8% Range: 23% to 50%	65.2% Range: 50% to 77%	100%
Nine IEDMs most likely to order Prisoners to Remain in the SIU	19	348	367
	5.2% Range: 0% to 8%	94.8% Range: 92% to 100%	100%
Total	74	451	525
	14% Range: 0% to 50%	86% Range: 50% to 100%	100%

A related problem is that many prisoners who were ordered to be removed from the SIU were not immediately returned to general population. There may be legitimate reasons for delays in effecting Independent External Decision-Maker (IEDM) decisions to transfer prisoners out of a Structured Intervention Unit (SIU), but we found it difficult to understand why it would, in some cases, take months.

Although SIU stays are, according to the legislation, supposed to “end as soon as possible”⁸, this does not mean that they are short. More than half (56.5%) of the SIU stays exceeded 15 days.⁹ The length of stay in the SIU did vary across

⁸ *Corrections and Conditional Release Act (S.C. 1992, c.20)*, s.33.

⁹ The United Nations’ Mandela Rules state that prolonged solitary confinement (solitary confinement for more than 15 days) can “amount to torture or other cruel, inhuman, or degrading treatment or punishment.” Hence 16 days or more is a convenient way of dividing “short” from “long” stays in SIUs.

the time that we have been studying them (starting on 30 November 2019), but without any obvious pattern.

However, there were large regional differences in the length of stay in the SIU. For example, 32% of the SIU stays in Quebec were for 5 days or fewer, whereas only 10% of the SIU stays in the Prairies were for 1-5 days. About 30% of the SIU stays in Ontario lasted at least 62 days. In Quebec, however, only about 18% were 62 days or longer.

Although the IEDMs do make other (non-binding) recommendations (e.g., on whether CSC has taken all reasonable steps with respect to meaningful human contact under S. 37.83(1)), the “binding” investigations by IEDMs of “time in the SIU” (S. 37.8 of the *CCRA*) need not occur until the prisoner has been in the SIU for more than 60 days. Given that the IEDM need not report a decision until an additional 30 days has elapsed, there is, by design, the potential that Canadian prisoners will spend more than 6 times the length of time that the Mandela Rules define as prolonged solitary confinement (i.e., more than 15 days) absent an independent decision regarding their continued isolation. Our findings – and CSC documents – also note that even when ordered out of an SIU, CSC is sometimes slow to implement the decision. An independent external review of SIU placement that is not timely is largely without meaning. The legislation must be amended to correct this error.

Indigenous prisoners, who, as previously noted, were disproportionately more likely to be transferred into SIUs, were also less likely than other groups (Blacks, Whites, and other groups) to have very short stays (5 or fewer days) in the SIUs. Prisoners identified by CSC as having deteriorated mental health problems were especially likely to have very long stays in SIUs (62 days or longer).

Another key promise in the legislation is that prisoners will be offered at least four hours out of their cells, including two hours of meaningful human contact. Most

prisoners did not actually spend four hours out of their cell each day, though the likelihood of not having two hours of meaningful human contact was somewhat higher. Achieving these legislated goals was much more likely in the Prairie region than elsewhere. CSC has advised the Panel that despite daily offers of time out of cell, many prisoners refuse to avail themselves of the opportunity. When we looked in detail at prisoners who were in SIUs for 16 days or longer we found that for 1,335 of these long stay prisoners, or 64% of this group, refusals cannot explain the failure to achieve four hours out of cell. The results on achieving two hours a day of meaningful human contact were similar: Refusals do not explain all failures of prisoners to get two hours of meaningful human contact each day. We estimate that for 1,091 of the 2,071 long-stay prisoners (or 53% of these long stay SIU prisoners), refusals do not explain the failure to get the two hours of meaningful human contact promised in the legislation.

We understand that CSC has, from the early days of the SIU regime, been concerned about their ability to deliver on the legislated requirements related to time out of cell. This problem predated the presence of COVID-19 and lasted throughout the period that we studied. We did, however, find evidence that in 2021, there was significant improvement in ensuring that prisoners got out of their cells for the expected four hours.

In the last quarter of 2020, 70% of “long stay” SIU prisoners¹⁰ (those in SIUs for 16 days or more) missed getting out of their cells on most days (76-100% of their days in the SIU). This “failure rate” was comparable to what it was when the SIUs first opened in November and December 2019. However, during 2021, this failure rate dropped steadily and substantially from 70% to 34%. Nevertheless, one cannot ignore the fact that 34% of the “long stay” prisoners in CSC’s SIUs missed getting their four hours out of the cell during most of their days in the SIU.

¹⁰ We focus on “long stay” prisoners for the obvious reason that there is more concern about negative impact of isolation for those in SIUs for many days (defined here as 16 days or more) rather than few days (1-15 days).

Part of the challenge for CSC is what to do when a prisoner refuses to leave the cell. The Commissioner's Directive CD711 suggests that "all reasonable efforts" should be made to provide this time out of the cell. Said differently, it would appear to be CSC's responsibility to try to get prisoners out of their cells. Nevertheless, for reasons that are not fully understood, about 65% of "long stay" SIU prisoners refused at least twice to leave their cells and about 10% refused to leave their cells during at least half of the days they spent in the SIU. But once again, the key to understanding prisoner refusals may already be in the hands of CSC: refusals to leave the SIU cells were much more likely in some regions (e.g., the Pacific region) than in others (Prairies or Ontario). This Panel does not yet have hard data to understand this regional variation.

CSC has an obligation to record information about offers to leave the cells and refusals. Refusals by prisoners to leave the cells do not fully explain prisoners not getting the required time out cells. We found records of (literally) hundreds of "long stay" SIU prisoners where refusals to leave the cell did not explain the failure to achieve the four hours out of cell. For example, looking only at those whose stays in the SIU were at least 16 days, there were 610 prisoners who were recorded by CSC as having refused to leave their cells on 20% or fewer of their days in the SIU, but missed getting their "four hours out of cell" on at least 76% of their days in the SIU.¹¹ In addition, from our interviews and other information we have received (e.g., derived from some IEDM decisions), some of these refusals are quite understandable in that what was being offered would be less attractive to almost anyone than remaining in a cell alone.

One cannot talk about solitary confinement, segregation, or SIUs without talking about mental health. Many prisoners – 29% of men and 64% of women – who were transferred to SIUs were identified by CSC as having mental health challenges. This was especially true for those transferred to SIUs multiple times.

¹¹ See Appendix Table A8

We identified 161 prisoners who were transferred into SIUs on five separate occasions between 30 November 2019 and 13 February 2022. 53% of them were identified at the beginning of one or more of their stays as having mental health needs as compared to “only” 24% of those who had only one SIU stay during this period.

CSC’s practice often involves moving prisoners to different institutions and often different regions when they are transferred to SIUs or being transferred out of an SIU. Those with mental health needs that had been identified by CSC were especially likely to be transferred to different SIUs in the same or different regions. And, not surprisingly, when they are transferred to an SIU, they stay there longer than do those without mental health challenges. We found it difficult to reconcile this with CSC’s statement that “SIUs are about helping prisoners and providing them with the continued opportunity to engage in interventions and programs to support their safe return to a mainstream prisoner population.” Moving prisoners from institution to institution and between regions does not appear to be the most obvious way to encourage them to engage in interventions and programs.

We have noted that Indigenous prisoners are especially likely to end up in Canada’s SIUs. On one day for which we have “census” data from CSC (13 February 2022), the proportion of Indigenous prisoners in the SIUs was higher than the proportion of Indigenous prisoners in CSC facilities in every region. Given that the social isolation of anyone (even if in an SIU) almost certainly puts them at risk of developing or exacerbating existing mental health problems, it is concerning that Indigenous people transferred to Structured Intervention Units (SIUs) were especially likely to be flagged by Correctional Service of Canada (CSC) as having mental health challenges.

Given that isolation puts people at risk, it is the Panel’s hope that CSC will learn from its relative success in some institutions in keeping Indigenous people from

being isolated in their SIU cells. There was huge variation across institutions in the success of getting Indigenous prisoners with long stays in the SIUs out of their cells. Table D looks at the percentage of days that prisoners missed getting their four hours out of their cells. This table contains data only for Indigenous people with long stays in SIUs (i.e., 16 or more days) in six institutions.

Table D: For Indigenous Prisoners: Success in getting 4 hours out of cell (stays of 16 or more days in the SIU, only).

	Prisoner failed only infrequently (0-50% of the days in the SIU) to get four hours out of cell	Prisoner failed to get four hours out of cell frequently (51% or more)	Total
Saskatchewan Penitentiary	30	87	117
	(25.6%)	(74.4%)	(100%)
Edmonton Institution	15	64	79
	(19.0%)	(81.0%)	(100%)
Edmonton Institution for Women	8	11	19
	(42.1%)	(57.9%)	(100%)
Stony Mountain	193	17	210
	(91.9%)	(8.1%)	(100%)
Bowden	37	1	38
	(97.4%)	(2.6%)	(100%)
Kent	4	163	167
	(2.4%)	(97.6%)	(100%)
All other SIUs	35	271	306
	(11.4%)	(88.6%)	(100%)
Total	322	614	936
	(34.4%)	(65.6%)	(100%)

In Stony Mountain and Bowden penitentiaries, for example, only 8.1% and 2.6% of long-stay Indigenous prisoners, respectively, missed getting their four hours out of their cells during half or more of their days. The comparable figures for not getting the expected four hours out of the cell for Saskatchewan Penitentiary,

Edmonton Institution and Kent are 74.4%, 81%, and 97.6%, respectively. In other words, Indigenous prisoners with long stays in Saskatchewan Penitentiary, Edmonton Institution, or Kent almost never got out of their cells for four hours in a day. In Stony Mountain Penitentiary and Bowden, they almost always did. Such variation across institutions was not unusual.¹²

The Panel has just started to work on an issue already mentioned: the movement of prisoners around the country. Multiple stays in SIUs are common. Indeed, of the 1,920 different people who had been transferred to an SIU one or more times during the period 30 November 2019 to 13 February 2022, 46% had visited SIUs at least twice. Indeed 161 people had visited SIUs on at least five separate occasions, and as the number of stays in SIUs increased, the number of different SIUs they visited also increased, as did the number of different regions that these prisoners were taken to.

We identified 27 prisoners who had been in four different SIUs, and 43 prisoners who had been in SIUs in three or more regions in this 26.5-month period (30 November 2019 to mid-February 2022). Indeed, one prisoner had been sent to SIUs in all five of Canada's regions and another six prisoners had been in SIUs in four regions. The question that arises is what these transfers are supposed to accomplish, and why did people need to go to more than one SIU in multiple regions? Those with multiple stays in SIUs were more likely to have been identified as having mental health challenges. It's hard to imagine that transfers across institutions and regions is the best way to address those challenges.

The 1996 Arbour Commission report into CSC's response to disturbances in the Prison for Women in Kingston concluded that "(p)lacing a prisoner in segregation is the most intrusive decision the Service can make affecting a person's liberty."¹³ Social isolation is not a "normal" state for social beings. However, in the prison

¹² The pattern was relatively similar for non-Indigenous prisoners.

¹³ <https://www.publications.gc.ca/site/eng/9.831714/publication.html>

environment, it is inevitable that at certain times, prisoners must be isolated for their own safety or the safety of others.

The legal and policy framework for SIUs suggests that stays are to be rare and brief, while at the same time providing for prisoners in an SIU to receive programs and services to address their needs and risks with the goal of returning them to the mainstream population as expeditiously as possible. There is, then, a tension between addressing, in an effective manner, the needs of high-risk, vulnerable and complex prisoners, and the goal of moving prisoners quickly from the SIUs into the general population.

We are not suggesting that long stays in SIUs should be allowed or encouraged. What this conflict does suggest, however, is that the solution to destructive isolation is not guaranteed by the implementation of SIUs. This requires relying less on penitentiaries to meet complex needs, and if incarceration cannot be avoided, adopting more person-centred programs rather than the current “place based” approach (or off-loading difficult prisoners to other regions or institutions).

We conclude our first Annual Report with recommendations to the Commissioner of the Correctional Service of Canada and advice to the Minister of Public Safety. Our recommendations and advice address 14 key areas of concern regarding the operation of SIUs and the future of CSC oversight. Topics covered by the recommendations include the following:

- Alternatives to SIU Placement
- Length of SIU Stays
- Time Out of Cell
- Meaningful Human Contact
- Inter-Regional Transfer

- Health Care
- Indigenous Prisoners
- Programs/Interventions
- Independent External Decision-Makers
- Infrastructure
- Human Resources
- Staff Training
- Enhanced Accountability
- Future of the Implementation Advisory Panel

Introduction

The enactment of Bill C-83: *An Act to amend the Corrections and Conditional Release Act and another Act* in 2019 was intended to bring new and improved standards of care for Canadian prisoners. In CSC's own words, "Structured Intervention Units are part of a historic transformation of the federal correctional system that saw the abolition of administrative segregation." CSC commented further that "(a) key safeguard in place [in the SIU system] is external oversight. The importance of this cannot be overstated. Independent External Decision-Makers across the country provide oversight of a prisoner's conditions and duration of confinement in a Structured Intervention Unit. Their decisions are binding." ¹⁴

A second form of oversight, not mentioned in the legislation, was created a few months before the new legislation was proclaimed. The Minister of Public Safety established a Structured Intervention Unit Implementation Advisory Panel (SIU IAP) of eight people to provide advice to CSC and the Minister on the operation of the SIUs. For various reasons – including that CSC did not provide the SIU IAP with timely or adequate information about the actual operation of the SIUs – that Panel was not able to carry out its responsibilities. At the end of the one-year appointment of its members, the first SIU IAP submitted a report and automatically lapsed during the summer of 2020 without being able to make any assessments of how the SIUs were operating. ¹⁵

After the first SIU IAP's mandate expired, Public Safety Canada ordered that data on the operation of the SIUs be released to Dr. Anthony Doob (the Chair of the first panel). Between the end of September 2020 and May 2021, Dr. Doob

¹⁴ CSC: Structured Intervention Units March 12, 2021, p. 1

¹⁵ This report is available starting on page 40 of the following document:
https://drive.google.com/file/d/1FiN_l3hbBUU-KNIHFQ3g4auN59KyRo0n/view

and his colleagues produced four separate reports on the operation of the SIUs.¹⁶

This current report is the first Annual Report of the renewed Structured Intervention Unit Implementation Advisory Panel (SIU IAP), established by the Minister of Public Safety in the Spring of 2021. This report begins with a brief history of solitary confinement in Canada and how the Structured Intervention Units (SIUs) came to be, as well as a description of the current Panel. Following these introductory sections, the report covers several broad themes and includes advice for the Minister of Public Safety and recommendations to the Commissioner of Corrections.

Solitary Confinement in Canada and the Promise of SIUs

Solitary confinement has a long history in prisons. In early North American prisons, all prisoners were confined to solitary living and working so as to prevent “contamination” through social interaction. As prisons evolved, association became the norm and only the most incorrigible of prisoners required isolation from others. With the abolition of corporal punishment, solitary confinement emerged as “the major formal mechanism of control.”¹⁷ Over time, solitary confinement was replaced by the term¹⁸ dissociation and, with that, came more nuanced placements. Prisoners were separated from the general population for either punitive or non-punitive reasons. Punitive dissociation involved disciplinary segregation for serious or flagrant institutional offences. Non-punitive dissociation included administrative segregation for the maintenance of good order and protective custody for the purposes of prisoner safety.

¹⁶ Available at <https://www.crimsl.utoronto.ca/news/reports-canada%E2%80%99s-structured-intervention-units>

¹⁷ (Cloward, 1960, p.82: Social Control in the Prison; see Report of the Study Group on Dissociation, 1975).

¹⁸ Various terms are currently in use (e.g., “restrictive housing”, segregation, administrative confinement, extended solitary confinement).

In 1975, a Study Group was tasked by the Solicitor General of Canada (in response to a report by the Correctional Investigator) to examine concerns about the dissociation model, including a lack of adequate record-keeping by the Canadian Penitentiary Service (CPS)¹⁹, which failed to specify the reasons for and conditions of segregation (e.g., daily routine, length of stay, defined release). The Study Group identified a tendency for all dissociated prisoners to be treated the same regardless of the reason for their dissociation, and a related tendency for dissociated prisoners to be forgotten or ignored. The Study Group acknowledged variations across institutions due to age and architecture, as well as other factors that could exacerbate the impact of social isolation, including individual features (e.g., physical, intellectual, emotional) and concerns for safety, fear of illness and injury, and lack of health care and good food. The Study Group recommended that CPS demonstrate greater adherence to existing law, regulations, and policy; better training of staff dedicated to dissociated units; and more research on the effects of isolation. It also recommended the establishment of a segregation review board to oversee administrative segregation. The board was to be chaired by the warden who would be responsible for developing a plan for prisoner reintegration as soon as possible and monitoring thereafter. In 1977, a Parliamentary Sub-committee on the Penitentiary System in Canada endorsed the Study Group's recommendations but advised that the Internal Segregation Review Board model be reviewed after two years. In 1977, CPS acted upon the recommendations. In 1979, the newly renamed Correctional Service Canada (CSC) failed to conduct the internal review (Jackson, 2006).

In 1983, University of British Columbia law Professor Michael Jackson assessed the "new, reformed" process by reviewing administrative segregation cases at Kent Institution in Agassiz, BC. In his book entitled, *Prisoners of Isolation: Solitary Confinement in Canada*, Jackson criticized the lack of criteria for segregation and the absence of an independent review process. He proposed a Model Segregation Code that called for independent adjudication of cases to

¹⁹ The Canadian Penitentiary Service is the predecessor to Correctional Service Canada.

ensure protection of prisoner rights and freedoms, and clearly defined limitations on duration of stay in segregation. While condemning the process, Jackson (1983) recalled that the origins of solitary confinement “lie not in the practice of torture and the abuse of state power, but rather in a reform-spirited reaction against such practices” (p.6). In other words, “the best laid plans of mice and men” can go awry; thus, they require careful oversight and management. Neither independent adjudication of administrative segregation nor limits on confinement were incorporated into the *Corrections and Conditional Release Act (CCRA)* (1992).

Whereas disciplinary and administrative segregation often looked the same (physically), the two differed in important ways. Most importantly, because disciplinary segregation was punitive, it was highly regulated by law and policy. Section 44 of the *CCRA* dictated that a prisoner could only be placed in disciplinary segregation if sentenced by an independent chairperson following a disciplinary hearing. This required that the prisoner receive written notice of the disciplinary charge and be informed of the process by which they would be judged. By contrast, placement in administrative dissociation did not call for the same procedural protections. Moreover, while disciplinary segregation could not extend beyond 30 days (45 days if more than one offence had occurred), the duration of administrative segregation was undefined and potentially indefinite (until warrant expiry date). In practice, the regulation and scrutiny of disciplinary segregation led to an increased reliance on administrative segregation for the isolation of unmanageable prisoners²⁰. This, in turn, led to the abusive use of administrative segregation, which, 30 years later in 2007 would contribute to the death while in a segregation cell, of 19-year-old Ashley Smith. In 11.5 months of CSC custody, Smith endured almost continuous segregation, interspersed with numerous use-of-force episodes and 17 transfers involving eight different institutions.

²⁰ See Segregation in Canada and Other Western Democracies by Mark Addo, May 6, 2020; The Canadian Criminal Justice Association

What can happen to captive populations in the absence of independent adjudication and timely oversight was laid bare 13 years earlier by a series of events at the Prison for Women (P4W) in Kingston, Ontario. In her 1996 report on the PW4 incidents, Justice Louise Arbour was unequivocal in her condemnation of CSC's punitive use of administrative segregation, which she maintained was "... administrative in name only" and "a form of punishment that courts would be loathe to impose, so destructive are its consequences" (p. 141-143). Arbour was especially critical of the indefinite nature of administrative segregation and CSC's apparent unwillingness or inability to reform its practices without "judicial guidance and control" (p. 198). Justice Arbour offered the following recommendations: That administrative segregation be compliant with law and appropriately monitored (recommendation 9.a); the end of long-term confinement in administrative segregation (recommendation 9.d); segregation review after three days to a maximum of 30 days (recommendations 9.e.ii,iv); and that segregation be imposed no more than twice in a calendar year for a total of 60 days (recommendation 9.e.iii). If the maximum time was exhausted, alternatives to be considered could include institutional transfer, placement in a mental health unit or "forms of intensive supervision" (recommendation 9.e.iv), all of which were to involve interactions with the general population. If alternative options were not available or extended segregation was required, then CSC would have to apply to the court for direction (recommendation 9.e.v). Justice Arbour further recommended that if segregation was not subject to judicial supervision, then another form of independent adjudication of continued segregation over five days needed to be in place (recommendation 9.f).

In her report, Justice Arbour reminded readers of the need to measure CSC's performance against its Mission Statement and its commitment to "openness", "integrity", and "accountability" (section 2.12). Arbour asserted that these values require compliance with the law and vigilance to correct any departures from the law. Arbour advised CSC to be more responsive to external criticism and more

engaged in self-criticism, to provide fair and honest accounting of its actions and acknowledgement of error. Arbour reminded CSC that respect for prisoner rights requires integrity in managing sentences, including the careful management of segregation. Arbour (1996) concluded that conditions at P4W, including the use of administrative segregation, represented “a profound failure of the custodial mandate of the Correctional Service”.

In response to the Arbour Report, CSC established a Task Force on Administrative Segregation (1996-1997). The Task Force included both internal and external members. Initial Task Force findings confirmed Justice Arbour’s impression that “CSC has a culture that does not respect the Rule of Law” (Jackson, 2006, p. 168). The Task Force recommended that CSC pilot an “enhanced” internal model of segregation review that would include independent adjudication of segregation cases. Adopting this recommendation was seen as “a litmus test of the Service’s commitment to changing its corporate culture to one which not only professes but demonstrates its respect for the Rule of Law” (Jackson & Sloan, 1998). Concomitantly, CSC received a report from the Working Group on Human Rights (1997) that rendered the same recommendation. The combined weight of both reports failed to move then CSC Commissioner, Ole Ingstrup, who maintained CSC’s long-standing position of rejecting independent adjudication. In a letter to the Commissioner in June 1998, Michael Jackson and Todd Sloan (1998) characterized CSC’s resistance to independent adjudication as “a symbol of operational reality failing to conform to the principles of openness, integrity and accountability” (as cited in Jackson, 2006, p. 78).

Jackson’s 2006 article refers to other reviews of CSC practices. The CCRA 5-year review (2000) recommended immediate implementation of an independent decision-maker for administrative segregation. CSC’s response was to pilot an enhanced segregation review process (2001-2002) that included a segregation review board with an external member. An external evaluation of the pilot in 2003

found enhanced perceptions of fairness in the process but few actual differences in segregation review outcomes. The primary issues of concern were the rising number of voluntary cases, many of whom refused to reintegrate due to incompatibilities with other prisoners, and few viable alternatives, (e.g., intra-, or inter-regional transfers). The pilot process was soon suspended.

In 2004, the Canadian Human Rights Commission issued a report on federally sentenced women and recommended independent adjudication of administrative segregation at the five regional women's prisons. Once again, Correctional Service of Canada (CSC) declined to accept the recommendation, claiming that the existing legal framework precluded it from doing so, but offered to "enhance" existing practices. This decision was roundly denounced as being disingenuous and illustrative of CSC's commitment to maintaining status quo - retaining exclusive control of administrative segregation. CSC (2005) claimed to share "... the concern of long stays and possible overuse but situates this within operational realities which must be addressed first: outdated infrastructure, lack of alternatives, difficulties with transfers, management of long-term cases, including those who refuse to leave segregation". These "operational realities" sound remarkably similar to the findings of the 1975 Study Group on dissociation and every review since, resulting in little progress over the intervening 30 years.

In a 2015 article (Kerr 2015A), Queen's University Law Professor Lisa Kerr addressed how isolating prisoners without judicial input and for reasons unrelated to either the sentence imposed or the concerns of criminal law can profoundly intensify the severity and effects of a legal sanction of imprisonment. While acknowledging that Canadian law dictates that segregation be used as a measure of last resort, Kerr underscored the inadequacy of law in defining the terms of concrete time limits, independent review, and sufficient health protections for those subjected to isolation. In a second 2015 article, Kerr outlined the first comprehensive *Charter*-based challenge to segregation laws. This was the case of Bobby Lee Worm, an Indigenous woman who was held in solitary

confinement for four years under a segregation regimen called the “Management Protocol” that applied only to women. According to Kerr, prior to its implementation, both internal and external stakeholders had advised CSC that the “Management Protocol” was unlawful. It did not comply with either the *CCRA* standards on administrative segregation or the *Charter*. CSC ignored the advice and proceeded to hold women, predominantly racialized women, in this form of confinement for years on end. At the same time, CSC ignored continuing criticism and demands for change from both the judiciary and the Correctional Investigator. When Bobby Lee Worm filed her case in March 2011, however, CSC reacted immediately, publicly promising to revise the policy. In May 2011, less than 60 days after pleadings were filed, CSC announced that it had cancelled the Protocol and offered a settlement to Ms. Worm, thereby ending the litigation.

While the Worm case was settled, it did not address the existing legislation that continued to enable questionable correctional practices, such as the “Management Protocol” or the abusive use of segregation more generally. Kerr (2019) outlined the legal costs of harmful correctional practices and inadequacies of law regarding segregation, such as stays of proceedings in criminal cases, extended credit for time spent in pretrial custody, and a \$20 million *Charter* damages award against the federal government.²¹ In testament to the inadequacies of existing law, courts were granting *Charter*-based relief to prisoners who had been held in segregation even when the prisons and jails had operated within legislative boundaries. In 2019, courts in both British Columbia and Ontario found that administrative segregation met the definition of solitary confinement as defined by the Mandela Rules, and violated sections 7 (i.e., prolonged and indefinite segregation violated liberty rights) and 12 (i.e.,

²¹ Brazeau v. Attorney General (Canada), 2019 ONSC 1888 (CanLII), <<https://canlii.ca/t/hz9gd>>, retrieved on 2022-07-29

segregation over 15 days was cruel and unusual punishment) of the *Canadian Charter of Rights and Freedoms* (the Charter).²²

As appeals were underway, in 2019 the federal government passed Bill C-83, *An Act to amend the Corrections and Conditional Release Act and another Act*, with the specific intent of eliminating disciplinary segregation and replacing administrative segregation with structured intervention units (SIUs). With Bill C-83, the Canadian government was claiming to “transform federal corrections” by conforming to the Nelson Mandela Rules and enhancing health care for prisoners. Despite this good intent, the legislation was not without concern. For example, some features of SIUs remain poorly defined, including time limits on placement, “meaningful human contact”, standards of physical environment, degree and form of judicial oversight, and categorical restrictions for vulnerable prisoners, such as those who are mentally ill.

SIUs were established with the legislated promise that each prisoner would be offered a minimum of four hours out-of-cell time, two hours of which would include “meaningful human contact”. Moreover, prisoners transferred to SIUs were to receive interventions and programs tailored to their needs. The provision of four hours of out-of-cell time meant that SIUs would exceed the Mandela Rules, specifically Rule 44, which defines solitary confinement as “the confinement of prisoners for 22 hours or more a day without meaningful human contact”.

The legislation requires that transfers to SIUs be avoided when possible, and if transfer to an SIU is considered to be necessary, efforts are to be made to quickly return prisoners to the general population. Policy and law require CSC to explore options and alternatives as part of the process when considering transfer to an SIU. These provisions – suggesting few stays and of short duration, and a

²² *Canadian Charter of Rights and Freedoms*, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act, 1982 (UK), 1982, c 11.

guarantee of offers of time out of cell, including time involving meaningful human interaction – were the key justifications for the government's announcement that the unconstitutional use of segregation had ended.

The Structured Intervention Unit Implementation Advisory Panel

Mandate and Panel Members

In April 2021, the Hon. Bill Blair, then Canada's Minister of Public Safety, re-created an independent advisory panel to "enhance accountability and transparency in the new SIU system." (Press Release, 2021). The mandate of the renewed SIU IAP was strengthened in terms of its independence, and its relationship with CSC and Public Safety Canada (PSC). More specifically the mandate of the new IAP was "to monitor and evaluate the implementation and operation of Structured Intervention Units (SIUs), to submit a report to the Minister of Public Safety and Emergency Preparedness to advise on whether the SIU model is being implemented as required by the Act, and to provide non-binding recommendations and advice to the Commissioner of Correctional Service of Canada (CSC)." (Terms of Reference, 2021). The Terms of Reference call for the Panel to produce annual reports in both official languages and obligate PSC to publish them on its website within 15 working days after submission to the Commissioner and the Minister.

In April 2021, Howard Sapers was appointed Chair of the SIU IAP. Up to nine additional Panel members were to be appointed and would include people with diverse experience and knowledge, including direct experience of incarceration. Members were to be selected in consultation with the Panel Chair and their mandates would be for a maximum of two years. Initial Panel membership included Howard Sapers, Anthony Doob, Ed McIsaac and Farhat Rehman. A few months later, Ed Buller and Johanne Vallée were appointed, creating the quorum (six) necessary to hold a first meeting. A third round of appointments in early 2022 saw Janet Taylor, Margo Watt, and Robert Wright²³ become members of the Panel.²⁴ At the time of writing the Panel was still awaiting the promised appointment of a member with direct experience of incarceration.

²³ Due to competing priorities, Mr. Wright resigned as a Panel member on August 24, 2022.

²⁴ Panel member biographies are contained in Appendix D.

Panel Governance and Operations

The Panel is independent but is administratively supported by Public Safety Canada (PSC), specifically by the Crime Prevention Branch. A member of this Branch is responsible for the preparation of Records of Discussion of the Panel meetings, except when the Panel decides to meet in camera. Panel expense claims for travel and per diems are processed and paid by the Department in accordance with Treasury Board rules. The primary point of contact with PSC is the Assistant Deputy Minister of the Crime Prevention Branch. The Chair and other PSC staff liaise when necessary and the Deputy Minister is also available to discuss any matter related to the work of the Panel. In addition, the Terms of Reference call for the Chair and Minister of Public Safety to meet.

The Panel meets regularly and makes decisions by consensus. The Panel determines its own work plan, the topics discussed, the preferred methodology, the identification of individuals and organizations it wishes to meet, and the institutions it visits. Between July 2021 and June 2022, the Panel has convened 18 times.

Collaborating Framework Between the IAP and CSC

In October 2021, the Panel and Correctional Service of Canada (CSC) agreed to a Collaborating Framework which outlines the information to which the Panel has access, mutual expectations, and the specific timeframes within which CSC must provide the various types of data and information required by the Panel. The framework also establishes the timing and nature of the meetings to be held between CSC and the Panel.

The CSC has identified an individual responsible for coordinating the exchange of information and responses to Panel requests, which has resulted in a positive and productive relationship. Moreover, the Panel has access to the entire CSC senior management team, including the CSC Commissioner, and the Chair of the

Implementation Advisory Panel (IAP) and the Commissioner maintain frequent contact.

The Collaborating Framework has been helpful. The Panel has made several information requests and has generally received what has been asked for. With some exceptions, responses have been timely and complete. When information is not available or easily compiled, CSC has worked with the Panel to identify alternative data responsive to our needs.

Methodology

To effectively fulfill its mandate to monitor and evaluate the implementation of the SIUs, the Panel employs the following:

1. Analysis of quantitative data requested from the CSC
2. Analysis and review of reports and other documents, including Independent External Decision-Maker (IEDM) decisions
3. SIU site visits that include meetings with staff and interviews with prisoners transferred to an SIU
4. Meetings with CSC senior leaders at its national and regional headquarters
5. Meetings with various organizations and stakeholders.

At the request of the Panel, PSC has contracted with prominent criminologist, Dr. Jane Sprott, to support the Panel's work. It is important to note that the data used for the Panel's analysis come directly from CSC. Professors Doob and Sprott have secure access to the relevant departmental networks to facilitate data exchange and they are also able to directly communicate with the CSC Research Branch.

The Panel has access to information regarding the number of prisoners entering and leaving every SIU in all of CSC's five administrative regions. This data includes gender, race, general reasons for placements in the SIU and whether

the file contains an indicator that the prisoner has a documented mental health need in their medical record. The data normally include the length of the stay, the time out of cell and the time that the prisoner was engaged in what was deemed by CSC to be meaningful human interaction. A substantial amount of information about the prisoner and the stay in the SIU was provided to the panel by CSC from its administrative records. In addition, data concerning “time in the SIU” reviews by Independent External Decision-Makers were provided to the panel.

Much of the statistical information provided to the panel comes from new data collection tools implemented at the same time as the transformation from “administrative segregation” to the “structured intervention units”. CSC has informed the panel that there have been some challenges in implementing these new data collection tools. Although there is no doubt that the data are not error-free, the panel could find no evidence to suggest that the records related to stays in the SIUs were biased in any particular direction.

More recently, CSC implemented software that generates an End of Day Report which allows the Correctional Manager of each SIU to review all activities in their SIU at the end of the day and to ensure quality control. Since Spring 2022, wardens and regional management teams have had access to real-time SIU operational information.

To gather firsthand observational and interview data, it was essential to visit the SIUs and gather information through direct observation, meetings with CSC management and front-line staff, and interviews with prisoners. Panel members also have met with several stakeholders and organizations identified later in this section. The COVID-19 pandemic delayed the start of the site visits, but as soon as it was possible, the Panel commenced site visits (typically with two panel members at each visit). As of 30 June 2022, the following institutions have been visited or visits have been scheduled:

- October 2021 – Millhaven Institution (Ontario Region)

- March 2022 – Grand Valley Institution
- March 2022 – Stony Mountain Institution (Prairie Region)
- April 2022 – Edmonton Institution (Prairie Region)
- April 2022 – Edmonton Institution for Women (Prairie Region)
- April 2022 – Kent Institution (Pacific Region)
- June 2022 – Millhaven Institution; 2nd visit (Ontario Region)
- June 2022 – Special Handling Unit (Quebec Region)
- June 2022 – Regional Reception Centre (Quebec Region)
- Scheduled for August 2022 – Saskatchewan Penitentiary (Prairie Region)
- Scheduled for August 2022 – Atlantic Institution (Atlantic Region)
- Scheduled for September 2022 – Donnacona Institution (Quebec Region)
- Scheduled for October 2022 – Nova Institution for Women (Atlantic Region)
- Scheduled for Fall 2022 – Port Cartier Institution (Quebec Region)

During visits, the panel members examine the physical locations of the SIUs to assess conditions of confinement and opportunities for access to spaces dedicated to programs, meetings, and activities. They speak with staff from various occupational groups within the institutions to understand local, regional, and national issues, challenges, and best practices. Members also meet with prisoners. Prisoners are asked about the activities and opportunities offered, time spent out of cell, medical and psychological services, reasons for placement in the SIU, quality of interactions with others (staff and prisoners) in the SIU and, where relevant, about their refusals of offers to leave their cells.

When meeting with CSC SIU staff and managers, panel members discussed several aspects of SIUs, including policies, the implementation process, staffing, financial resources, performance indicators, and health services. Meetings and

briefings were also arranged with various stakeholders and organizations outlined below. The following is a partial list²⁵ of meetings held:

- October 2021 – IAP meeting and the CSC National Executive Committee
- November 2021 – meeting with some members and management of the National Health Services
- November 2021 – meeting with some members and the Mothers Offering Mutual Support (MOMS) support group
- November 2021 – meeting with some members and representatives of the SIU management team
- January 2022 – participation of a member in the MOMS Focus Group
- January 2022 – meeting with some members and SIU team representatives
- February 2022 – meeting with some members and representatives of the SIU management team
- February 2022 – meeting with some members and the Senior Deputy Commissioner’s team responsible for SIUs
- February 2022 – meeting with one member and SIU team representatives to follow up on data collection instruments.
- February 2022 – IAP meeting with two Independent External Decision-Makers
- March 2022 – IAP meeting and the Parliamentary Secretary to the Minister of Public Safety
- March 2022 – Chair meeting with Minister of Public Safety, Marco Mendicino
- May 2022 – Chair meeting with Dr. Kiera Stockdale, Canadian Psychological Association
- May 2022 – two IAP meetings (Eastern and Western regions) with Independent External Decision-Makers
- May 2022 – IAP meeting with CSC’s National Executive Committee

²⁵ The list does not include several informal phone and virtual meetings with PSC staff, CSC staff, Minister’s Office Staff, Senior IEDMs, or Office of the Correctional Investigator staff.

- May 2022 – IAP meeting with the Correctional Investigator
- May 2022 – IAP meeting with the Prisoners' Legal Services in British Columbia

What is a Structured Intervention Unit?

It is essential to remember that SIUs are the solution developed by the Government of Canada following its decision not to defend at the Supreme Court of Canada the practice of segregation. As was explained in the introduction, Canadian courts²⁶ and the Mandela Rules²⁷ have established that prisoners shall not be confined in their cells for more than 22 hours without meaningful human contact.

The relevant Mandela Rules are:

Rule 44

For the purpose of these rules, solitary confinement shall refer to the confinement of inmates for 22 hours or more a day without meaningful human contact. Prolonged solitary confinement shall refer to solitary confinement for a time period in excess of 15 consecutive days.

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 an inmate'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

²⁶ *British Columbia Civil Liberties Association v. Canada (Attorney General)*, 2019 BCCA 228; *Canadian Civil Liberties Association v. Canada (Attorney General)*, 2019 ONCA 243.4.

²⁷ United Nations, Standard Minimum Rules for the Treatment of Prisoners, UN-Doc A/Res/70/175(17 December 2015) (Mandela Rules).

...

The Mandela Rules also prohibit prolonged solitary confinement (defined in Rule 44) as follows:

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.²⁸

...

The operation of these new units must meet the legal requirements that are now included in the *Corrections and Conditional Release Act (CCRA)*. These requirements include the provision of opportunities to interact with others, whether through programs, interventions, services, or recreation. The ultimate goal is to promote the prisoner's reintegration into the institution's general population as soon as possible.²⁹ The use of SIUs is a temporary measure for prisoners whose safety is threatened, when the security of the institution is compromised due to the prisoner's behaviour, or during an investigation. In addition to its obligation to offer time outside the cell and activities, CSC must also provide physical and mental health care for the prisoners in these units.

Section 37(2) of the *CCRA* states that CSC must keep a record of the opportunities offered to each prisoner and the prisoner's responses. CSC had to review the physical layout of institutions housing SIUs in order to facilitate an environment conducive to meeting its obligations to offer these opportunities. The CSC informed the IAP that several institutions made changes to their

²⁸ https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf

²⁹ *CCRA*, Section 36(1)(b)(i)

infrastructure to include spaces dedicated to interviews, recreation, and programs, as well as common rooms, outside yards and offices for staff. Work has been completed at several institutions and other sites expect renovations to be completed in the coming months (roughly three years after the opening date of the SIUs was known).

The IAP has been told by CSC Executive Committee members that the choice of sites for establishing SIUs was determined in cooperation with regional headquarters. Notwithstanding, most sites reported they had little or no input into the decision to create SIUs at their location, the placement of the units within the institution, or the capacity of the units. There are SIUs in all of CSC's five administrative regions, in institutions for both men and women. There are SIUs at the sites listed in Table 1.

Table 1: SIU Capacity and Prisoner Counts

Region	Institution	SIU Capacity	SIU Count on 13 February 2022	Regional Prisoner Count on 13 February 2022	Rated cell capacity for region (July 2021)	SIU cells per 1000 rated capacity
Atlantic		56	20	1,027	1,819	30.8
	Atlantic	54	20			
	Nova (women)	2	0			
Quebec		107	35	2,571	3,596	29.8
	Port Cartier	19	14			
	Donnacona	48	20			
	RRC	18	1			
	SHU	18	0			
	Joliette (women)	4	0			
Ontario		53	19	3,268	3,970	13.4
	Millhaven	50	19			
	Grand Valley (women)	3	0			
Prairies		154	58	3,697	4,246	36.3
	Stony Mountain	40	33			
	Bowden	30	0			
	Saskatchewan	32	14			
	Edmonton	48	11			
	Edmonton (women)	4	0			
Pacific		52	33	1,619	2,657	19.6
	Kent	48	33			
	Fraser Valley (women)	4	0			
Total		422	165	12,182	16,288	25.9

As of May 10, 2022,³⁰ SIUs in Canada had a total cell capacity of 422. Distribution across the country is uneven, resulting in varying SIU capacity per 1000 rated capacity in the region. It is not clear how decisions were made regarding the allocation of SIU spaces in each institution or by region. The result, however, is that there is dramatic regional variation in the number of SIU cells available per 1000 “rated capacity” in the region’s penitentiaries (last column of Table 1).

In developing the SIU model, CSC developed a staffing framework to meet the legislative requirements. Each SIU has correctional officers (male institutions) or front-line workers (institutions for women) as well as correctional managers. There are also Parole Officers, Correctional Program Officers, Social Program Officers, Security Intelligence Officers, Indigenous Liaison Officers, Teachers and access to Indigenous Elders, Chaplains, and health care staff. Since SIUs house prisoners who have or could present mental health problems, CSC has told the Panel it takes steps to ensure that staff members assigned to SIUs first receive mental health training. However, due to staff turnover and other human resources pressures, CSC has also informed the panel that it has struggled to maintain this training objective.

The CSC must ensure ongoing monitoring of the physical and mental health of prisoners in an SIU. A mental health assessment must be conducted within 24 hours of their arrival in the SIU and regularly thereafter; however, the advice from the health care professional conducting these assessments is presented as a recommendation to the Institutional Head and is not binding. It is the Institutional Head who determines what actually happens:

37.3 (1) The Institutional Head shall determine, in accordance with regulations made under paragraph 96(g), whether an inmate should remain in a structured intervention unit

³⁰ CSC Structured intervention Units – Construction Project Completion – Executive Dashboard Last updated:2022-05-10, document submitted to the IAP on May 24, 2022.

- (a) as soon as practicable after a registered health care professional recommends under section 37.2, for health reasons, that the inmate not remain in the unit
- (b) within the period that begins on the day on which the determination under subsection 29.01(2) is made and that ends on the expiry of the period of 30 days that begins on the first day on which the inmate is confined in the unit

If the Institution Head does not implement the recommendation, a Health Committee chaired by the Assistant Commissioner of Health Services will review the case, and ultimately an Independent External Decision-Maker (IEDM) may receive the case to make a determination.

“As soon as practicable” is not defined and is a difficult standard in terms of accountability. Furthermore, it could be argued that the legislation itself does not intend for decisions to be made quickly since subsection (b) indicates that the Institutional Head’s decision on whether the prisoner should be in the Structured Intervention Unit (SIU) in the first place need not be made until the prisoner has been confined in the SIU for 30 days.

There are no health human resources dedicated to SIUs, but prisoners are to receive daily visits from a registered health care professional. What such a visit entails is also not clearly established in the legislation. Some details about the nature of visits are outlined in CSC’s own Mental Health Guidelines and Commissioner’s Directives, but the panel has no systematic data on actual practice.

In various meetings with CSC senior leaders and during IAP visits to the SIUs, CSC management staff indicated that they regularly face human resources challenges. While some institutions seem to be less affected than others, retention, staff turnover and the impacts of the pandemic on overtime and

absenteeism are all factors that have had consequences on the stability of the teams in place in the SIUs. At this point in our work, the IAP cannot fully assess this impact on CSC's ability to deliver expected services and meet its legal requirements.

At all institutions, staff have generally presented as being enthusiastic and committed to the SIU model, often stating that things are much better than when the former Administrative Segregation regime was in place. That said, front line staff have consistently raised concerns about delayed infrastructure improvements, limited or inappropriate physical space, failure of the data collection process, management's singular focus (at all levels) on "time out of cell" numbers at the expense of appreciating what they referred to as "the bigger picture". The Panel consistently heard from program staff that the preponderance of SIU placed prisoners who can not be out of their cell with others is making it nearly impossible to offer all prisoners reasonable options given current limitations on staffing and space. While the physical space is certainly limited, we have witnessed staff creativity at a number of sites to overcome many of these barriers. We have also heard consistently from health care staff that the current charting requirements are excessively demanding and duplicative.

CSC informed the IAP that, after 2.5 years of operation, it intends to add health care staff to institutions to better support SIU prisoners and those in the mainstream population. As the new staffing is not yet in place, the Panel is unable to assess the proposed changes. With respect to health services, CSC informed us that additional financial resources have been allocated to add nursing and psychiatry positions within institutions, but these positions are not specifically assigned to SIUs. During site visits, we found many health care staff were unaware of the planned new human resources model and had not provided input into decisions regarding the allocation of new staff either by occupational group or regarding the number of new staff required. The CSC has informed us that its goal is to improve the initial assessment of prisoners' health, but once

again, this enhancement is not targeted to SIU placed prisoners. The Panel plans to examine the issue of SIU human resources more closely over the coming year.

When preparing this report, the IAP had no data on the number of prisoners who participated in programs during their time in an SIU or on the effectiveness of the programs. The same is true for other activities offered to prisoners in an SIU. As with the issue of staffing in SIUs, this point will be examined more closely in the second year of the panel's mandate.

SIU Decision-Making and the Monitoring of SIUs

The amended *CCRA* provides for decision-making authority outside of CSC by establishing the Independent External Decision-Makers (IEDMs). Among other functions that they carry out, the IEDMs review files following certain decisions by the Commissioner.

To understand the “length of time” reviews that IEDMs carry out, it may be worthwhile to start by looking at where these reviews take place in the context of the entire process leading up to the review (starting from the original placement in the SIU).

The relevant sections of the *CCRA* are included in the following timeline. In order to understand when the reviews occur, we have listed the time starting from the initial authorization to place the prisoner in the SIU.

1. Staff member may authorize transfer to SIU [s. 29.01(1)] [Day 1]
2. Institutional Head shall determine if inmate stays (within 5 working days) [s. 29.01(2)] [Day 6-8]
3. Within two days of their placement in the SIU, written reasons are provided to the prisoner [s. 34(3)] [Day 1-3]

4. Mental health reviews take place within two days of placement and daily thereafter and a mental health assessment may be ordered. However, it is ultimately the Institutional Head's decision as to what happens to the prisoner [s. 37.2 & s. 37.3]. This process can take an additional 30 days.
5. Within 30 days of the placement in the SIU, Institutional Head determines if prisoner remains in SIU "as soon as practicable in any of the prescribed circumstances" [s. 37.3(1)].
6. 30 days after #5, the "Commissioner" decides if prisoner stays in the SIU. [37.4] [Day 61-66]]
7. 30 days after decision in #6, the IEDM shall determine if prisoner remains in SIU [s. 37.8] [Day 91-96] This is sometimes referred to as the "30-day review".

While an Institution Head may review a case for release whenever a safe alternative is identified, the legislated timeframe for the length of time reviews is cumbersome and does not guarantee timely reviews. Specifically, if the prisoner is still in the SIU 60 days after the Commissioner's previous decision (in #6) and therefore roughly at day 120 or shortly thereafter, the Commissioner makes another determination (as in #6). This then triggers another IEDM determination 30 days later [Day 150 or shortly thereafter]. This gets repeated until the prisoner is ordered released by the Commissioner or by the IEDM.

While section 37(2) of the *CCRA* authorizes health staff to recommend changes to the conditions of confinement in an SIU or even to remove a prisoner from an SIU who shows signs of deteriorating health, it bears repeating that section 37(3) is clear that any such recommendation by health staff is not binding on the Institutional Head.

Observations on the Independent External Decision-Maker Role and Functions

The original bill (C-83, 42nd Parliament, 1st session) creating the SIUs contained no external review of the operation of the SIUs. Very quickly during the review of the bill by the parliamentary committee, it became clear that some form of independent external review of certain decisions was required. Amendments creating Independent IEDMs were passed and incorporated into the final form of the legislation. The role of the IEDMs is to conduct case reviews, provide oversight related to a prisoner's conditions of confinement, and the frequency and duration of SIU placements. They are given responsibility to review certain decisions and make recommendations. They have the authority to meet and speak with the prisoners and access documents relevant to decision-making. IEDMs have legislative authority to make binding decisions for movement out of an SIU. These decisions, of course, must be implemented by CSC. As will be discussed later in this report, the implementation of these decisions is not as straightforward as one would hope.

Independent External Decision-Makers (IEDMs) are not CSC employees. They are appointed by the Minister and occupy statutory positions. Appointees must have knowledge of administrative decision-making processes, and their work and their findings are directed by sections 37.6 to 37.83 of the *CCRA*. They are appointed to serve either full-time or part-time for a renewable term of not more than five years, and they receive remuneration at rates fixed by the Treasury Board based on a minimum of 1,800 hours in any consecutive 12-month period. There are currently twelve IEDMs appointed for various terms, eleven of which are serving on a full-time basis and one part-time. Two of the twelve were appointed as senior IEDMs; one for the Western SIUs and one for the Eastern SIUs. The current terms and conditions of IEDM appointment do not provide for benefits or paid leave. IEDMs may choose to not work (or get paid) for up to four weeks during the year, but they must first ensure the workload allows for their leave. In practice, since some IEDM coverage must be available 365 days a

year, we are told some full-time IEDMs have not been able to take four weeks off since their appointment. If a full-time IEDM does not meet the 1,800 hour minimum (e.g., if they are ill), not only could they forfeit income, but there is also a risk that cases will be left unaddressed or not addressed within legislated timeframes.

The Independent External Decision-Maker (IEDM) positions were not created within a structure that includes independent support. As a result, Correctional Service of Canada (CSC) has allocated staff to provide administrative support to the IEDMs. The staff assigned to these duties are federal public servants and report to CSC. In discussions with panel members, some IEDMs have reported issues related to receiving documents in a timely manner. As mentioned, CSC provides administrative support for the IEDMs, and is responsible for the collection of documents to be shared. Currently there are six CSC positions allocated for these tasks. There is little concern about CSC employees collecting the documents requested by the IEDMs, however, there are concerns about the impact on the perception of IEDM independence due to CSC fulfilling a secretariat function and the resulting perception of a conflict of interest.

The *Corrections and Conditional Release Act (CCRA)* states:

37.7 (1) The Service shall furnish to an independent external decision-maker all information under the Service's control that is relevant to the making of a determination in respect of an inmate by the independent external decision-maker.

One clear problem is that there is no way of knowing what constitutes "all information under the Service's control that is relevant to the making of a determination...". Without access to CSC's Offender Management System (OMS), IEDMs may not be aware of the existence of information that could be relevant to their decision-making tasks. Some IEDMs have expressed concerns

that this limits their ability to be certain they have reviewed all relevant information prior to making a finding or decision.

IEDM Training

Initial IEDM training consisted of a two-week session provided by CSC and Public Safety Canada (PSC). Much of the material that the panel examined from that training session consisted of generic information about the operation of CSC. Aside from the issue of whether it is appropriate for the CSC to be developing and delivering the training for those responsible for providing oversight of its operations, members of this panel identified what it considers important elements missing from the initial training, including:

- A description of the circumstances in which an IEDM would be asked to make a decision and the expected time frame for these decisions.
- A list of the materials to be routinely provided by CSC to the IEDM for the purpose of establishing the basis of CSC's decisions.
- The basic structure and essential components of written decisions that the IEDM would be expected to make.
- Detailed information about CSC's internal processes, including decision making, information collection and recording keeping with respect to the operation of SIUs that would provide the IEDM with important and relevant information without in any way fettering their independence.³¹

Assignments

The senior IEDMs receive a list of new cases provided by CSC with limited information that essentially identifies only the prisoner and what section of the legislation the pending review will address. The senior IEDMs are responsible for assigning the cases. Interestingly, if a specific IEDM has already rendered a previous decision on a case, subsequent reviews are typically assigned to the

³¹ CSC provides this as part of the training for Parole Board members and similar material has been used to train OCI investigators. Such information would allow the IEDM to ask relevant questions and to require additional information if they thought it was necessary to make an appropriate decision.

same IEDM for further decisions (if the prisoner remains uninterrupted in the SIU). Once the prisoner transfers out of the SIU, the assignment will typically go to a new IEDM. This helps ensure that prisoners don't begin to view the IEDM as their "worker" or "advocate". In addition, involving different IEDMs contributes to the perception of independence and unbiased reviews. The Panel has been told that, occasionally, an IEDM may feel they have a conflict of interest, or they believe they have rendered an excessive number of decisions on a specific file and recuse themselves.

IEDM Case Reviews

Two of the most frequent categories of review that the IEDMs carry out include time out of cell reviews (s. s. 37.83) and length of stay reviews (s. 37.8).

The IEDM typically starts a length of stay review (s. 37.8) following the Commissioner's decision on the prisoner's placement pursuant to section 37.4, which is generally 60 days after initial placement. Typically, a decision is rendered within 90 days after the beginning of the confinement in the SIU. Under the legislation, it is possible that a prisoner could be reviewed by the IEDM, simultaneously, for different issues.

IEDMs have noted that once they render a decision calling for a prisoner to be removed from an SIU, they receive little or no feedback on how and when that decision is acted on. Concerns have been raised that no explanation is provided if the direction to remove is not followed. Although this Panel has seen a small sample of anonymized IEDM decisions and the senior IEDMs have told the Panel they are comfortable sharing decisions (once identifying information is removed), IEDM decisions have yet to be made routinely available for review. Resistance to sharing these decisions is difficult to understand given that the CCRA and its regulations provide for transparency as well as dissemination for research purposes. Specifically, s.37.77 provides that:

37.77 An independent external decision-maker may, in accordance with regulations made under paragraph 96(g.1), publish or otherwise disseminate information, other than personal information, relating to any determination made by the independent external decision-maker.

The relevant regulation states that:

23.02 For the purposes of section 37.77 of the Act, a representative sampling of information related to any determination of the independent external decision-maker may be published in print and electronically and those publications are to be made available to offenders, staff members and the public.

The Panel is aware that *CCRA* section 37.74(1) would seem to prohibit the sharing of information. However, a full reading of section (including s.37.74(2)) dispels this concern:

37.74 (1) Subject to subsection (2), an independent external decision-maker shall not disclose any information that comes to their knowledge in the course of the exercise of their powers, or the performance of their duties and functions, under this Act or any other Act of Parliament.

(2) An independent external decision-maker may disclose information referred to in subsection (1) in the exercise of their powers or the performance of their duties and functions.

IEDM Length of Stay Decisions

The Panel focused its attention on length of stay reviews. Importantly, a prisoner, during one SIU stay, can have more than one length of stay review if they are in the SIU for an extended period. The IEDM review process initiated once the prisoner has been in the SIU for 60 days, can take a further 30 days to complete despite the legislated requirement for reviews to be timely. Thirty days is twice the amount of time that a stay in “solitary confinement” may be considered

“torture or other cruel, inhuman or degrading treatment or punishment” under the Mandela Rules if the prisoner is experiencing solitary confinement conditions (Rule 43).

In 36% of the cases originally referred to the IEDM, the prisoner had already been transferred out of the SIU before a decision could be made, and in another 1.4% of the other cases, the IEDM determined that a review would be moot. When we looked at the two most obvious outcomes of the review process (i.e., remain in the SIU vs. not remain in the SIU), we found 451 of 525, or 86% of the IEDM decisions were that the prisoner should remain in the SIU.

Perhaps the most interesting finding when reviewing the decisions is the variability across individual IEDMs. Table 2 highlights this unexpected issue - the significant variability across IEDMs in the decisions that they made.

Table 2: Decisions on Release for Each of the 14 IEDMs

		IEDM Decision		Total
		Inmate should NOT remain in SIU	Inmate should remain in SIU	
IEDM Identifier	1	3	49	52
		5.8%	94.2%	100.0%
	2	0	57	57
		0.0%	100.0%	100.0%
	3	21	24	45
		46.7%	53.3%	100.0%
	4	4	62	66
		6.1%	93.9%	100.0%
	5	10	33	43
		23.3%	76.7%	100.0%
	6	9	27	36
		25.0%	75.0%	100.0%
	7	3	36	39
		7.7%	92.3%	100.0%
	8	12	16	28
		42.9%	57.1%	100.0%
	9	3	47	50
		6.0%	94.0%	100.0%
	10	2	22	24
		8.3%	91.7%	100.0%
	11	4	55	59
		6.8%	93.2%	100.0%
	12	0	6	6
		0.0%	100.0%	100.0%
	13	0	14	14
		0.0%	100.0%	100.0%
	14	3	3	6
		50.0%	50.0%	100.0%
Total		74	451	525
		14.1%	85.9%	100.0%

Table 2 shows that the Independent External Decision-Maker (IEDM) to which a case was assigned is important. Specifically, looking at those IEDMs with 40+ reviews, we see that the percentage of “removal from SIU” decisions ranges from zero to 46.7%. Said differently, if a prisoner’s case was being reviewed by IEDM #2, the expected result would be a determination that the prisoner should remain in the Structured Intervention Unit (SIU). While a number of IEDMs

recommended removal for fewer than 5% of their cases, others recommended that over a quarter of the prisoners they reviewed be released.

To find out what happens when an IEDM orders that a person be transferred out of the SIU, we looked at the subset of decisions involving person-stays in the SIUs where there was only one review.

Based on the premise of external oversight with decision making authority, it is reasonable to expect that when an IEDM has ordered CSC to transfer a prisoner out of an SIU it would happen fairly quickly. The rules for this are covered in Commissioner's Directive 711: Structured Intervention Units (CD 711)³², which states that the timing of the transfer out of the SIU depends on where the prisoner is being transferred to:

- If it is to the general population of the same institution, "the transfer will be effected immediately." (paragraph 66)
- But "Where an SIU inmate is approved for a transfer to another institution, but the inmate cannot be immediately physically transferred, they will remain in the SIU until the transfer can be effected." (paragraph 69)

This last set of provisions may explain why, sometimes, people spend a long time in the SIU after they are ordered out by the IEDM.

³² <https://www.csc-scc.gc.ca/politiques-et-lois/711-cd-en.shtml>

The time for the transfer to be effected is shown in Table 3:

Table 3: Number of Days to be Released as a Function of the Decision of the IEDM.

		Number of days in the SIU (from date file referred to IEDM to date of leaving the SIU)				
		Released within 30 days of referral to IEDM	Released 31 to 40 days after file was referred to IEDM	Released 41 to 60 day after file was referred to IEDM	Released 61+ days after file was referred to IEDM	
IEDM Decision	Prisoner to be removed from SIU	11	13	9	18	51
		21.6%	25.5%	17.6%	35.3%	100%
	Prisoner to remain in the SIU	21	35	47	10	113
		18.6%	31.0%	41.6%	8.8%	100%
	No decision necessary because already transferred out/moot	218	5	1	1	225
		96.9%	2.2%	0.4%	0.4%	100%
Total		250	53	57	29	389
		64.3%	13.6%	14.7%	7.5%	100%

Note: Person-stays with only one IEDM length of stay review. The times involved in this table relate to the time to release, starting from the date that the issue was referred to the IEDM.

The data in Tables 3 and 4 suggest that IEDM reviews may be somewhat less of a check on long stays than intended. After about 60 days, a case should be sent to an IEDM for a length of stay review. However, it appears that CSC didn't refer a significant number of prisoners for length of stay reviews even after they had been in the SIU for quite some time.

Table 4: Time in the SIU and Whether the Case was Referred to an IEDM.

Number of days in the SIU		Was the stay sent to IEDM to be reviewed for length of stay?		Total
		Not sent for review	Sent to IEDM	
	Up to 65 days	3,097	57	3,154
		98.2%	1.8%	100%
	66 to 75 days	63	94	157
		40.1%	59.9%	100%
	76 to 90 days	59	105	164
		36.0%	64.0%	100%
	91 to 120 days	66	136	202
32.7%		67.3%	100%	
121+ days	93	196	289	
	32.2%	67.8%	100%	
Total		3,378	588	3,966
		85.2%	14.8%	100%

Note: We have used 65-66 as the break point since it, in effect, gives the benefit of the doubt to CSC on the manner in which days should be counted.

We identified two potential explanations for the findings in Tables 3 and 4. First, it is possible that CSC intended to implement the IEDM's decision but was waiting for an intra- or inter-regional transfer to take place (i.e., the prisoner was going to another institution, but CSC wasn't able to arrange for the transfer very quickly). The Panel was told that the COVID-19 pandemic contributed to transfer delays. A second possibility is that the prisoner didn't want to leave the SIU, and CSC saw no reason for an IEDM review. Neither explanation satisfactorily explains the failure of CSC to refer cases for IEDM review as required by the legislation.

The Independent External Decision-Makers (IEDMs) are meant to play an important role in ensuring that prisoners in federal custody are treated fairly in accordance with the Legislation. However, it is not clear to the Panel that the IEDM review process is working as intended. Terms of appointment, gaps in training and orientation, an overly complex policy framework, limited and conflicted administrative support are among identified concerns. To add to this list, the Panel has noted a lack of consistency in the form of decisions, timeliness of reviews, wide variation across IEDMs in patterns of decisions, and legislation that allows for interpretation when precise language is called for.

SIU Operational and Legal Requirements

The Panel has noted wide variations in practice from institution to institution and across regions, as evidenced by the data on SIU operations. Some institutions demonstrating greater success in integrating offenders into general populations are using their Inmate Committees from the general population to work with prisoners in the SIU on exit plans. At other institutions, we have witnessed the involvement of outside groups in providing programming and activities. However, other institutions do not allow Inmate Committees access to the SIU and there is no evidence of involvement of outside groups. Many institutions have effectively incorporated Indigenous Elders into the daily operations of the SIU, including participation in the development of prisoner case management plans. At other institutions we have been told that Elders feel marginalized and not part of the team.

As has been pointed out earlier in this report, it is generally agreed that solitary confinement is harmful to those who experience it, especially for long periods of time. At the same time, correctional administrators argue that some form of isolation from the general penitentiary population is sometimes necessary in the case of certain prisoners. We have heard as well from both staff and prisoners that many of the more vulnerable offenders feel safer in the SIU than in general population. A number of prisoners, in addition to feeling more comfortable in the SIU environment, see the SIU as a better place to access health care, programming, and cultural services. Many prisoners have also expressed the belief that a security reclassification and/or transfer to lower security is easier from the SIU than from general population. These factors have aided in fostering a sense within the inmate population that the SIU is not a bad place to be if you want to feel safe, do quiet time, and work on your correctional plan. In addition, program staff have suggested that offenders with mental health needs are better served by remaining in the SIU than returning to the general population in terms of access to and continuity of programming and treatment.

This dilemma should be a surprise to no one. There has traditionally been a significant portion of the segregated population placed there for their own protection. With the measures taken to address the negative aspects of isolation it is then not at all surprising that prisoners seeking safety have found a home in the Structured Intervention Unit (SIU). The surprise is that Correctional Service of Canada (CSC) does not appear to date to have developed specific strategies to address this dilemma.

The fact that a certain portion of the prisoner population finds the SIU a preferable home to a general population range is faint praise for the conditions of confinement in the SIU. While a significant number of resources have been added, the majority of SIUs are located in former Administrative Segregation areas. Although fresh paint has been applied, these areas are often spartan, with cramped office and program space, poor natural lighting, limited indoor and outdoor recreation areas, and the ghosts of their recent history. The Panel has noted that a number of projects to enhance the infrastructure of these units, two and a half years in, remain in the planning stage or under construction.

When the government decided, in response to Court of Appeal judgements, to amend the *Corrections and Conditional Release Act (CCRA)* to abolish segregation and to move, at least in law if not in practice, toward becoming compliant with the Mandela Rules, it had to establish what might be considered legislative goals or requirements. There are essentially two objectives - First, the use of time locked in a cell in isolation (relative or absolute) from other people is meant to be used as a last resort. Second, even when a prisoner is experiencing isolating conditions of confinement, complete isolation is to be minimized, if not forbidden.

Canadian legislation now allows this isolating use of cell confinement in SIUs for three reasons outlined explicitly in the *CCRA*. The use of SIUs for the purposes

of punishment is not permitted in law, and prisoners are not to be transferred to an SIU for treatment purposes.

34 (1) A staff member may authorize the transfer of an inmate into a structured intervention unit under subsection 29.01(1) only if the staff member is satisfied that there is no reasonable alternative to the inmate's confinement in a structured intervention unit and the staff member believes on reasonable grounds that

- (a)** the inmate has acted, has attempted to act or intends to act in a manner that jeopardizes the safety of any person or the security of a penitentiary and allowing the inmate to be in the mainstream inmate population would jeopardize the safety of any person or the security of the penitentiary;
- (b)** allowing the inmate to be in the mainstream inmate population would jeopardize the inmate's safety; or
- (c)** allowing the inmate to be in the mainstream inmate population would interfere with an investigation that could lead to a criminal charge or a charge under subsection 41(2) of a serious disciplinary offence.

In addition to the three possible grounds for SIU placement (i.e., safety of others, prisoner's own safety, and interference with an ongoing investigation) there is another important issue to consider: the length of time that a person is in an SIU. As noted above, if CSC is contemplating putting someone in an SIU, there can be "no reasonable alternative" to the SIU, and "an inmate's confinement in a structured intervention unit is to end as soon as possible."³³ There is no ambiguity about these goals. Implicitly, the legislation incorporates the idea that time in an SIU is not in the best interest of a prisoner and is to be used as a last resort.

³³ Section 33 of the *CCRA*

Within 24 hours of the transfer of a prisoner to an SIU, the “inmate’s case” must be referred to CSC health care “for the purpose of conducting a mental health assessment of the inmate”³⁴ and the prisoner must be visited daily by a “registered health care professional”³⁵. In addition, there are repeated internal (and eventually external) reviews. In all cases, despite the legislated provision for binding independent decision making, CSC exercises ultimate authority regarding what, if any, actions are taken in response to the reviews.

Upon close examination of the review sections of the *CCRA* it becomes clear that it is only after a prisoner has been in an SIU for roughly four times the length of time that the Mandela Rules specify for ‘solitary confinement’ to be considered torture or other cruel, inhuman, or degrading treatment or punishment (i.e. 60 days), does the Commissioner³⁶ determine if the prisoner should continue in the SIU (*CCRA* 37.4). Taking these factors together, there should be relatively few people transferred to SIUs, and they should stay for as short a time as possible. Short stays, then, are preferable to long stays according to the law. What the law does not provide, however, is a hard limit to the length of a stay. But if two regions were to be compared, and one had fewer stays than the other and its stays in the SIU were also of shorter duration, it would be clear that the region with fewer and shorter SIU stays would be more compliant with the law.

The second legislative requirement is that prisoners must be provided an opportunity to spend four hours every day out of their cells, two hours of which are supposed to involve meaningful human contact. These are separate, but obviously related legislative requirements.³⁷ A problem that arises is in understanding why a person might not avail themselves of the opportunity that is offered by CSC. Knowing that they were offered “time in the yard” and that the

³⁴ *CCRA* section 37.1(2)(a)

³⁵ *CCRA* section 37.1(2)(b)

³⁶ And, although the Act may refer to the “Commissioner”, the regulations make it clear that it does not have to be the commissioner herself.

³⁷ *CCRA* s.36 and 37.

prisoner “didn’t want to spend time in the yard” is hard to interpret. In reading Independent External Decision-Maker (IEDM) reports (together with local weather records), one might infer prisoners sometimes refuse four hours in the yard in the winter because of unpleasant outdoor conditions. Similarly, it is difficult to evaluate the “two hours” of “interaction” under s. 36(1)(b) since we don’t know, in meaningful detail, what was being offered and why it might or might not have been attractive.

For the analyses that follow, we used CSC’s own data based on SIU stays from 30 November 2019 until 13 February 2022. However, for the purposes of evaluating anything related to time in the SIU, we used an earlier cut-off for the start of the SIU stay (the end of November 2021) so that we could determine whether a person stayed more than two months (by the time our data were collected by CSC in mid-February 2022).

Length of Stay in the SIU

As shown in Table 5, there are a number of SIU stays that lasted longer than the key international threshold that is often used in talking about solitary confinement – 15 days. Indeed, more than half of the stays during this period lasted 16 days or more.

Table 5: Total days in SIU.

Number of Days in the SIU:	Frequency	Percent	Cumulative Percent
1 thru 5	752	20.1	20.1
6 thru 15	874	23.4	43.5
16 thru 31	606	16.2	59.8
32 thru 61	636	17.0	76.8
62 thru 552	866	23.2	100.0
Total	3,734	100.0	

To put these numbers in context, the Panel considered data on previous length of stay in administrative segregation. The 2020 Corrections and Conditional Release Statistical Overview (CCRSO: Public Safety Canada, 2022) reports

72.2% of the placements in Administrative Segregation in 2019 (April 2019-November 2019) were for less than 30 days (based on 3216 placements). The previous CCRSO (2019) reported a comparable figure for 2018-19 (74.7% (n=5421)). Hence about 72-75% of the stays in segregation were for less than 30 days. It would appear, then, that stays commencing during the first two years of the operation of SIUs were, overall, somewhat longer than was the case under administrative segregation. Even so, across time, the length of stay for prisoners in SIUs varied without any obvious pattern (see Table 6).

Table 6: Length of Stay in the SIU as a function of the date that it started

		Total days in SIU including those still in on 13 February 2022					Total
		1 thru 5	6 thru 15	16 thru 31	32 thru 61	62 thru 552	
When the person's SIU stay started	Nov 2019 thru Dec 2019	36 12.0%	50 16.7%	44 14.7%	74 24.7%	95 31.8%	299 100.0%
	Jan 2020 thru March 2020	137 23.9%	149 26.0%	83 14.5%	84 14.6%	121 21.1%	574 100.0%
	April 2020 thru June 2020	151 29.7%	117 23.0%	87 17.1%	70 13.8%	83 16.3%	508 100.0%
	July 2020 thru Sept 2020	121 20.3%	168 28.2%	104 17.5%	94 15.8%	108 18.2%	595 100.0%
	Oct 2020 thru Dec 2020	104 21.9%	102 21.5%	71 14.9%	78 16.4%	120 25.3%	475 100.0%
	Jan 2021 thru March 2021	76 17.2%	127 28.7%	75 17.0%	59 13.3%	105 23.8%	442 100.0%
	April 2021 thru June 2021	52 17.0%	53 17.3%	48 15.7%	70 22.9%	83 27.1%	306 100.0%
	July 2021 thru Sept 2021	49 15.8%	63 20.3%	49 15.8%	69 22.3%	80 25.8%	310 100.0%
	October 2021 thru Nov 2021	26 11.6%	45 20.0%	45 20.0%	38 16.9%	71 31.6%	225 100.0%
Total		752 20.1%	874 23.4%	606 16.2%	636 17.0%	866 23.2%	3,734 100.0%

The regional differences in the way in which SIUs are used suggests that each region might be able to benefit from understanding the best practices (or more accurately, the best outcomes) that occur in other regions. This variation also complicates understanding of how the onset of the COVID-19 pandemic was responsible for prolonged SIU stays.

As shown previously in Table 1, the number of Structured Intervention Unit (SIU) cells that were created per 1000 rated capacity in the region varied considerably. We see in Table 7 below that the number of SIU stays per 1000 prisoners³⁸ in a region also varied considerably, and regions that tended to have a high rate of short stays (Atlantic and Quebec) also tended to have high rates of long stays. Ontario is notable for having low counts (and rates) of both short and long stays in SIUs.

Table 7: Rate of Short and Long Person-Stays in SIUs per 1000 Prisoners in the Region.

Region	Short Stays in SIUs (1-15 days) per 1000 prisoners in the Region	Long Stays in SIUs (16 or more days) per 1000 Prisoners in the Region	Total Stays in SIUs per 1000 Prisoners in the Region
Atlantic	134.8	220.5	355.3
Quebec	278.4	197.3	475.7
Ontario	39.8	67.7	107.5
Prairie	74.8	184.3	259.1
Pacific	144.2	176.9	321.1
Canada	121.1	157.0	278.2

But the regions varied not only in terms of their overall use of the SIUs, but also in how they used these cells. We have no obvious explanation for the variation across regions. That said, if the goal is to have relatively few stays in SIUs (long or short), it is a matter of concern that there is as much variation as there is.

As shown in Table 8, once a prisoner is transferred to an SIU, the region that they are in is a good predictor of how long they will stay in the SIU. Very short stays in the SIU (i.e., five days or fewer) are significantly more likely to occur in Quebec than in the Prairies.

³⁸ We used the average counts of prisoners for these two years because they were the latest available to us. The data in this table do not take into account inter-regional transfers.

Table 8 Length of Stay in the SIU by Region

		Total days in SIU including those still in					
		1 thru 5	6 thru 15	16 thru 31	32 thru 61	62 thru 552	
Region of SIU	Atlantic	57	108	67	80	123	435
		13.1%	24.8%	15.4%	18.4%	28.3%	100.0%
	Quebec	403	338	155	148	222	1,266
		31.8%	26.7%	12.2%	11.7%	17.5%	100.0%
	Ontario	70	77	48	81	121	397
		17.6%	19.4%	12.1%	20.4%	30.5%	100.0%
	Prairies	99	192	213	230	274	1,008
		9.8%	19.0%	21.1%	22.8%	27.2%	100.0%
	Pacific	123	159	123	97	126	628
		19.6%	25.3%	19.6%	15.4%	20.1%	100.0%
Total		752	874	606	636	866	3,734
		20.1%	23.4%	16.2%	17.0%	23.2%	100.0%

There are also some race/ethnicity differences in length of stay. Indigenous prisoners were less likely than other groups to spend five days or less in the SIU, once transferred there. However, the proportion of very long stays (62 days or more) does not seem to vary much across groups (See Appendix Table A1)

As mentioned earlier, a concern that appears to form the basis of the sections of the *CCRA* that created SIUs is that long periods of time in SIUs are assumed to be harmful to the prisoner. As can be seen in Table 9, those whose mental health deteriorated at some point during the SIU stay³⁹ are substantially more likely to stay in an SIU for an extended period. Those whose mental health did not

³⁹ This “mental health” measure is a bit difficult to interpret since the period of time during which CSC says that the prisoner’s mental health is changing is both unspecified and variable across prisoners. All we know is that CSC says that the prisoner’s mental health is deteriorating.

deteriorate during the SIU stay (i.e., whether the person has no identified mental health needs, or has identified but stable needs) are much more likely to be transferred out of the SIU within 15 days.

Table 9: Length of Stay in the SIU for Prisoners with Varied Mental Health Challenges.

		Total days in the SIU including those still in		Total
		1 thru 15 days	16 thru 552 days	
Mental Health Groups (from CSCs 9 mental health groups)	No low or some needs, not getting worse	1,433	1,681	3,114
		46.0%	54.0%	100.0%
	High needs, not getting worse	158	171	329
		48.0%	52.0%	100.0%
	Various mental health needs and getting worse	35	256	291
		12.0%	88.0%	100.0%
Total		1,626	2,108	3,734
		43.5%	56.5%	100.0%

Indigenous prisoners in SIUs (who constitute about 41% of the person stays we are examining in these analyses) are more likely than other groups to have high mental health needs or to be identified as having deteriorated mental health (See Appendix Table A2).

Summary of Findings Regarding Length of Stay in the SIU

1. Once admitted to an SIU in Canada, prisoners are more likely than not to be held in that SIU for more than 30 days. Almost a quarter of the person stays commencing between 30 November 2019 and the end of November 2021 lasted more than two months.
2. The length of stays in SIUs has varied somewhat across time, but not in an obvious pattern. Given that shorter stays in SIUs are the goal of the

- legislation, it does not appear that Canada is unambiguously moving in that direction.
3. The length of stay in SIUs in different regions varies considerably and in a manner that suggests that SIUs are being used for very different purposes in the different regions. This suggests that CSC itself, if it were concerned about equality of treatment of prisoners across regions, should investigate this issue in more detail.
 4. Those prisoners with deteriorating mental health (according to CSC's own assessments) are more likely to have longer stays in SIUs. In this context it is notable and disturbing that Indigenous people in SIUs are more likely than other groups to show deteriorating and/or high mental health needs.
 5. The *CCRA* does not provide for timely internal or external length of stay reviews.

Time Out of the SIU Cell

There is, for various obvious reasons, much more concern about long stays in SIUs than there is with short stays. Some jurisdictions have limits on the length of stays in solitary confinement or special review procedures for longer stays. Slightly more than half (56%) of the SIU stays during the period covered by our data were for 16 days or more.

In the section that follows, we will be focusing largely on those whose stays in SIUs were at least 16 days. These “long stay” SIU prisoners are more likely than the “short stay” prisoners (i.e., those with SIU stays of 15 days or less) to get their four hours out of the SIU cell and their two hours of meaningful human contact (see Appendix Tables A3 and A4).

Achieving the “Promised” Four Hours Out of the SIU Cell

Nevertheless, during the period covered by these statistical analyses (stays in SIUs beginning between November 2019 and November 2021), the majority of long stay prisoners in SIUs did not receive their “four hours” out of their SIU cells

on at least half their days. As can be seen in the Table 10, about 58% of long stay SIU prisoners didn't get their four hours during at least three quarters of their days. A more detailed breakdown can be found in Appendix Table A5.

Furthermore, and perhaps most importantly, as shown in Appendix Tables A8 and A10, for the long stay prisoners, "refusals" by prisoners do not adequately account for the fact that many prisoners do not receive the time out cell that one would expect from the legislation.

Table 10: Percent of days during which long-stay prisoners missed getting 4 hours out of their cell

	Frequency	Percent	Cumulative Percent
Missed zero days up to 50% of their days	518	25.0	25.0
Missed 51% to 75% of their days	351	16.9	42.0
Missed 76% to 100% of their days	1,202	58.0	100.0
Total	2,071	100.0	

Note: Long stay (16 days or more) prisoners only.

There were, however, huge differences across regions. The Structured Intervention Units (SIUs) in the Prairie region were measurably more successful in achieving this legislative requirement than were the other four regions (see Table 11).

Table 11: Regional differences on achieving the “4 hours out of cell” (Long stay SIU prisoners only) Note: Long stay (16+ days) SIU prisoners only

		Percent of days that 4 hours out of cell was not achieved			Total
		Missed zero days up to 50% of their days	Missed 51% to 75% of their days	Missed 76% to 100% of their days	
Region of SIU	Atlantic	33	52	179	264
		12.5%	19.7%	67.8%	100.0%
	Quebec	26	88	406	520
		5.0%	16.9%	78.1%	100.0%
	Ontario	50	71	125	246
		20.3%	28.9%	50.8%	100.0%
	Prairies	401	88	213	702
		57.1%	12.5%	30.3%	100.0%
	Pacific	8	52	279	339
		2.4%	15.3%	82.3%	100.0%
Total		518	351	1,202	2,071
		25.0%	16.9%	58.0%	100.0%

Regional and institutional differences are important in understanding what is possible in the SIUs. For example, in this case, if about 57% of those in SIUs in the Prairie region availed themselves of their four hours out of cell on most days (i.e., they missed getting them on 50% or fewer days), why is it that only about 2.4% of those in SIUs in the Pacific experienced this result?

More encouraging is the fact that during 2021, CSC got better at getting people out of their SIU cells. This can be seen in detail in Table 12 which divides success in achieving the four hours out of cell into three groupings.

Table 12: Success in achieving four hours out of cell as a function of starting date in SIU (Long stay prisoners only).

		Percent of days that 4 hours out of cell was not achieved			Total
		Missed zero days up to 50% of their days	missed 51% to 75% of their days	missed 76% to 100% of their days	
When the person's SIU stay started	Nov 2019 thru Dec 2019	33	34	146	213
		15.5%	16.0%	68.5%	100.0%
	Jan 2020 thru March 2020	64	53	162	279
		22.9%	19.0%	58.1%	100.0%
	April 2020 thru June 2020	55	24	156	235
		23.4%	10.2%	66.4%	100.0%
	July 2020 thru Sept 2020	79	42	178	299
		26.4%	14.0%	59.5%	100.0%
	Oct 2020 thru Dec 2020	26	53	184	263
		9.9%	20.2%	70.0%	100.0%
	Jan 2021 thru March 2021	57	39	139	235
		24.3%	16.6%	59.1%	100.0%
Total		518	351	1,202	2,071
		25.0%	16.9%	58.0%	100.0%

Note: Long stay (16 days or more) prisoners only.

The findings in Table 12 are certainly encouraging. 70% of those whose SIU stays began in the final quarter of 2020 missed getting the legislated expectation of four hours out of cell in at least 76% of the days they were in the SIUs. For those beginning their SIU stays in October or November 2021, this had dropped by about half to 34.2%.

“Getting better” is good, but it doesn’t mean that improvements are not still necessary. We can’t help noting that only 42.1% missed half or fewer of their promised four hours out of cell. The numbers (not percentages) perhaps make

this point clear. During this much improved period, 152 people entered SIUs and stayed there at least 16 days. 52 of them did not get out of their cells on at least three quarters of their days in the SIU. In addition, improvement was not uniform across regions. The national improvement appears to have come from relatively clear improvement in two regions – Atlantic and the Prairie regions, and less consistent or less favourable change in the others.

The *CCRA* presents the four hours requirement as a “hard floor” of what a prisoner can expect in an SIU. The language is that prisoners are to be provided “an opportunity to spend a minimum of four hours outside the inmate’s cell” (s.36(1)(a)). Similarly, paragraph 117 of Commissioner’s Directive 711: Structured Intervention Units (CD 711) indicates that “...all reasonable efforts will be made to provide inmates with as much time out of their cells beyond the minimum of four hours...”. In most cases, however, the average time the prisoner gets out of their cell does not come close to the “promised” four hours. Said differently, 5.5% of prisoners got their full four hours each day. But 69.6% got an average time out of their cells of only two hours or less (see Appendix Table A6).

CSC also has a legal requirement to record refusals from prisoners to leave their cell. Recording these refusals whenever they occur for any reason is in CSC’s best interest. It is notable that for these long stay prisoners, refusals cannot account for the failure to provide four hours out of cell. As shown in Table 13, about 70% of the “long stay” prisoners refused only once or twice, constituting less than 20% of their days in the SIU.

Table 13: Amount of refusal to leave the cell all day (Long stay prisoners only).

	Frequency	Percent	Cumulative Percent
Refused zero or one time	730	35.2	35.2
Refused at least twice, constituting up to 20% of their days	724	35.0	70.2
Refused at least twice, constituting 20.1% to 50% of their days	417	20.1	90.3
Refused at least twice, constituting 50.1% to 100% of their days	200	9.7	100.0
Total	2,071	100.0	

Note: Long stay (16 days or more) prisoners only.

Refusals on the part of prisoners to leave their cells happened in all regions and across all time periods. However, regional differences are dramatic, with refusals much more common in some regions (Pacific and Quebec) than elsewhere.

Refusals were relatively rare in the Prairie region (see Table 14).

Table 14: Regional variation in rate of refusals to leave the cell all day.

		Amount of refusal to leave the cell all day				Total
		Refused zero or one time	Refused at least twice, constituting up to 20% of their days	Refused at least twice, constituting 20.1% to 50% of their days	Refused at least twice, constituting 50.1% to 100% of their days	
Region of SIU	Atlantic	77	114	64	9	264
		29.2%	43.2%	24.2%	3.4%	100.0%
	Quebec	88	201	167	64	520
		16.9%	38.7%	32.1%	12.3%	100.0%
	Ontario	103	130	12	1	246
		41.9%	52.8%	4.9%	0.4%	100.0%
	Prairies	437	201	53	11	702
		62.3%	28.6%	7.5%	1.6%	100.0%
	Pacific	25	78	121	115	339
		7.4%	23.0%	35.7%	33.9%	100.0%
Total		730	724	417	200	2,071
		35.2%	35.0%	20.1%	9.7%	100.0%

Note: Long stay (16 days or more) prisoners only.

Consistent with the data on success in achieving four hours out of the cell, refusals appeared to be somewhat less common for long Structured Intervention Unit (SIU) stays starting in 2021 than with stays in SIUs beginning in 2019 and 2020 (Appendix Table A7).

The failure of prisoners to have four hours out of their cells cannot be adequately explained by prisoner refusals. We examined the records of the 2,071 long-stay SIU prisoners who did not get their four hours out of the cell for a high proportion (51% or more) of their days in the SIU (Appendix Table A8). A fair number did refuse to leave their cells on at least one day. However, for 1,335 of these long

stay prisoners, or 64% of this group, refusals cannot explain the failure to achieve four hours out of cell.

Two Hours of Meaningful Human Contact.

The “time out of cell” findings are mirrored, for the most part, in the data for the “two hours of meaningful human contact”. As seen in Table 15, about three quarters of long-stay prisoners missed getting two hours of meaningful human interaction quite frequently (over 21% of their days).

Table 15: Percent of days that 2 hours out of cell was not achieved.

	Frequency	Percent	Cumulative Percent
Missed zero to 20% of their days	502	24.2	24.2
Missed 21% to 75% of their days	1,035	50.0	74.2
Missed 76% to 100% of their days	534	25.8	100.0
Total	2,071	100.0	

Note: Long stay (16 days or more) prisoners only.

Table 16 demonstrates that the Prairie region was most successful, and Quebec and the Pacific regions were least successful in providing two hours of meaningful human interaction for these long-stay SIU prisoners (as was found when examining time out of cell results). The variation across regions is, once again, dramatic.

Table 16: Regional Variation in the percent of days that 2 hours of Meaningful Human Contact out of cell was not achieved.

		Percent of days that 2 hours out of cell was not achieved			Total
		Missed zero to 20% of their days	Missed 21% to 75% of their days	Missed 76% to 100% of their days	
Region of SIU	Atlantic	45	168	51	264
		17.0%	63.6%	19.3%	100.0%
	Quebec	53	273	194	520
		10.2%	52.5%	37.3%	100.0%
	Ontario	55	143	48	246
		22.4%	58.1%	19.5%	100.0%
	Prairies	329	252	121	702
		46.9%	35.9%	17.2%	100.0%
Pacific	20	199	120	339	
	5.9%	58.7%	35.4%	100.0%	
Total		502	1,035	534	2,071
		24.2%	50.0%	25.8%	100.0%

Note: Long stay (16 days or more) prisoners only.

In comparison with SIU stays from November 2019 through March 2021, for the period beginning around April 2021, CSC was more successful in providing prisoners with two hours of meaningful human contact (see Table 17). This is similar to the more inclusive measure (four hours out of cell) described earlier. CSC has suggested to the Panel that these improved numbers may be the result of better documentation, and not changes in operational practices.

The panel examined the new record keeping measures which came into effect in late 2021 and are therefore not useful for understanding the first two years of operation of the SIUs. Our conclusion is a simple one: they may well be better

than the original measures for accountability purposes within CSC. However, they do not provide a substantively different picture of the SIUs than the measures we used to examine the SIUs since they first opened. A discussion of the new measures is contained as Appendix B to this report.

Table 17: Changes over time in the percent of days that 2 hours out of cell was not achieved.

		Percent of days that 2 hours out of cell was not achieved			Total
		missed zero to 20% of their days	missed 21% to 75% of their days	missed 76% to 100% of their days	
When the prisoner's SIU stay started	Nov 2019 thru	36	128	49	213
	Dec 2019	16.9%	60.1%	23.0%	100.0%
	Jan 2020 thru	67	141	71	279
	March 2020	24.0%	50.5%	25.4%	100.0%
	April 2020 thru	53	112	70	235
	June 2020	22.6%	47.7%	29.8%	100.0%
	July 2020 thru	60	152	87	299
	Sept 2020	20.1%	50.8%	29.1%	100.0%
	Oct 2020 thru	34	150	79	263
	Dec 2020	12.9%	57.0%	30.0%	100.0%
	Jan 2021 thru	61	94	80	235
	March 2021	26.0%	40.0%	34.0%	100.0%
	April 2021 thru	68	95	37	200
	June 2021	34.0%	47.5%	18.5%	100.0%
	July 2021 thru	63	86	46	195
	Sept 2021	32.3%	44.1%	23.6%	100.0%
	October 2021 thru Nov 2021	60	77	15	152
		39.5%	50.7%	9.9%	100.0%
Total		502	1,035	534	2,071
		24.2%	50.0%	25.8%	100.0%

Note: Long stay (16 days or more) prisoners only.

Refusals to accept offers of two hours out of the cell for meaningful human contact are a concern, since there are a non-trivial number of refusals (see Appendix Table A9).

Refusals, however, do not explain all failures of prisoners to get two hours of meaningful human contact each day. We estimate (see Appendix Table A10) that for 1,091 of the 2,071 (53% of these long stay SIU prisoners), refusals do not explain the failure to get the promised two hours of meaningful human contact.

Summary of Findings Regarding Time Out of Cell (Four Hours and 2 Hours of Meaningful Contact)

The data provide us with the following set of interrelated findings:

- Correctional Service of Canada (CSC) is not particularly successful in providing all SIU prisoners with any or adequate choices for spending time out of their cells.
- There are huge regional differences in CSC's ability to deliver on this legislative requirement that should assist CSC in identifying ideas about how to implement the legislation adequately across the country.
- Prisoner refusals to leave their cells do not fully account for CSC's failures to deliver on the legislated minimum time out of cell.
- In three of the five regions, there is evidence that CSC has improved over time (or more accurately for person stays beginning in 2021) in getting prisoners out of their Structured Intervention Unit (SIU) cells.

Promising Practice Example from Millhaven Institution

During a site visit to Millhaven Institution (MI) in June 2022, Panel Members met with the Warden who was eager to discuss a new project at MI intended to enhance services to SIU-placed prisoners. The project represents a local initiative between MI and the Community and Justice Services (CJS) Program at Loyalist College. This 2-year college program is designed to contribute to safer communities by helping people at risk for or involved with the criminal justice system to gain the skills and support they need to make positive life choices. The Warden (a Loyalist College alumnus) contacted the Loyalist College CJS program coordinator to explore a role for students in designing and delivering activities for prisoners transferred to the SIU. Despite the challenges of COVID-19 and institutional scheduling, a pilot project was successfully launched. The project involved students identifying feasible “activities” (not to be confused with “programs”) that they could deliver to SIU-placed prisoners who would be able to gain micro-credentials (a certificate) for participating. The two activities delivered over the 2021/22 winter months were “Indigenous Creations/Crafts” (offered in collaboration with the institution’s Elder and Indigenous Liaison Officer) and “Job Readiness Skills” (computer-based skills, including working with Excel and Word). Three prisoners earned certificates for their participation.

Plans are in place to extend the project this Fall (2022) to include more SIU-placed prisoners and staff. Extending this initiative to the general population, as well as to other institutions is being explored. As the Warden explained, extending this project to the general population could facilitate the transition out of SIU for prisoners resistant to leave, and extending it to other institutions could ease post-transfer adjustment. This project has potential to be a win for SIU-placed prisoners; a win for institutions that struggle to provide enough activities and meaningful interactions with prisoners; a win for students who gain valuable experience; and a win for corrections generally due to the enhanced transparency provided by community members being inside prison walls. The Warden and the CJS program director are currently in discussions and sharing

resources with a university professor who coordinates a similar practicum-based program in the Atlantic Region.

Special Areas of Concern

Mental Health

The prevalence of mental health problems/disorders/illnesses/needs among correctional populations has consistently been considerably higher than found in the general non-carceral population. A CSC study by Beaudette et al. (2015) found that 73% of over 1000 newly admitted male prisoners met criteria for at least one mental disorder; over half met lifetime criteria for major mental disorder other than substance use disorders and antisocial personality disorder, such as anxiety and mood disorders (46.4%). A CSC study by Brown et al. (2018) found that 79.2% of female prisoners met criteria for current mental disorder; the rate was 95.6% among Indigenous women. The most common disorders included personality disorders (82.7%), substance use (76%), anxiety (54.2%) and mood (22.1%). Further complicating the situation are the high rates of comorbidity (co-occurring disorders), which in any population, can be 30% or higher. By comparison, about 20% of Canadians experience a mental illness in any given year; up to 50% by age 40. It is worth noting that only 6% of public health spending is devoted to mental health. It is unclear what proportion of CSC health care spending is devoted specifically to mental health, but according to a 2017 report, about 11% of CSC's total direct program spending in 2014-2015 was allocated to three areas: clinical, public, and mental health services.

Prisoners with mental health problems are disproportionately at greater risk for isolation than those without a mental illness. Research shows that in correctional environments, segregation is a common response to mental health problems manifested by aggressive, disruptive, self-injurious behaviour and cognitions (e.g., suicidal ideation). These manifestations/symptoms actually align with the primary criteria for being transferred to an SIU – risks for personally safety, risks to others, or risks to the security of the institution.

As can be seen in Table 18, CSC itself has flagged a substantial portion of people entering the SIUs as facing mental health issues. Women and Indigenous

prisoners who enter an SIU are especially likely to be identified by CSC as having a mental health challenge (see Appendix Tables A11 and A12).

As mentioned, there are three justifications for transfers to an SIU. A substantial portion of each group was flagged by CSC as having mental health needs (Appendix Table A13).

Prisoners who, during the period 30 November 2019 and 13 February 2022 had multiple stays in SIUs were substantially more likely to be identified (at the start of one or more of these stays) as having mental health needs. As shown in Table 18, 55% of those who had five or more SIU stays during this 26-month period were identified by CSC as facing mental health challenges. “Only” 24.4% of those who visited an SIU once during this period were identified as having mental health needs.

Table 18: Likelihood of an indication of a mental health need as a function of the number of transfers to an SIU (30 November 2019 to 13 February 2022).

		Was there a flag during any SIU stay indicating that the prisoner had mental health needs?		Total
		No	Yes	
Number of SIU stays	One	779	251	1,030
		75.6%	24.4%	100%
	Two	277	126	403
		68.7%	31.3%	100%
	Three	124	87	211
		58.8%	41.2%	100%
	Four	67	48	115
		58.3%	41.7%	100%
	Five or more	72	89	161
		44.7%	55.3%	100%
Total		1,319	601	1,920
		68.7%	31.3%	100%

A person whom CSC identifies as having mental health challenges who has multiple SIU stays is somewhat more likely to be transferred to a different SIUs in

different regions (37.4% vs. “only” 30.4% of those without a CSC mental health flag. See Appendix Table A14). These may be more challenging prisoners to deal with. The strategy of moving prisoners to a different SIU in a different region is reminiscent of abusive segregation practices that resulted in difficult to manage prisoners being frequently moved across the country.

It is hard to understand how the needs of people whom Correctional Service of Canada (CSC) has identified as having mental health issues are going to be addressed during multiple short Structured Intervention Unit (SIU) stays especially if, between SIU stays, they are moving across institutions and regions. This does not appear to us to be conducive to establishing positive therapeutic relationships or an effective way of providing stability in the lives of prisoners.

Prisoners with identified mental health needs were slightly (but statistically significantly) more likely to have relatively long stays in SIUs (Appendix Table A15).

CSC has provided a detailed mental health assessment index of those in SIUs to the Panel. Essentially, it divided people into low, some, and high needs groups and indicated whether their mental health challenges were stable or getting worse or better. The group of most concern, obviously, were those whose mental health status was seen, by CSC, as deteriorating. They turned out to be most likely to have long stays in SIUs. These findings are especially important as separation from others has been found to produce extremely high psychological distress, and greater levels of isolation are associated with a higher rate of suicide.

Understanding the impact of SIUs on prisoner mental health requires considerably more information than is currently available to the Panel. CSC stresses that SIU placements are a temporary measure to assist prisoners in adopting more positive behaviours, though as shown in Table 18, having mental

health challenges is associated with multiple stays in SIUs. Furthermore, those with mental health challenges and multiple stays in SIUs are more likely to be moved across two or more regions (Appendix Table A24). Depending on the circumstances, in the short-term, being isolated from the general population may help to reduce symptoms of psychological distress, enhance one's sense of safety and security, and reduce exposure to environmental and interpersonal triggers. Over a longer term, however, isolation can exacerbate existing mental health problems (e.g., low mood), contribute to new problems (e.g., social anxiety), and lead to stigmatization.

This brings into question the basis of CSC's claim that "SIUs are about helping inmates and providing them with the continued opportunity to engage in interventions and programs to support their safe return to a mainstream prisoner population"⁴⁰. At this point, the Panel does not have sufficient information to assess whether SIUs are therapeutic or counter-therapeutic for prisoners with mental health problems. For example, we lack adequate information on specified reasons for placement in SIUs; whether and how those reasons align with mental health symptoms (see reference to OCI, 2015 below); SIU prisoner specific symptom/disorder profiles; alternatives to SIUs, including intra- and inter-regional transfers and creation of subpopulations (see reference to CSC 2016 below); alternatives to SIUs outside of maximum security; impact of SIU placement on access to, and performance in, interventions and programming.

An Office of the Correctional Investigator (OCI)⁴¹ report on 10 year trends in administrative segregation released in 2015 showed that prisoners with (vs. without) the following "issues" (many, if not all, of which are mental health related) were significantly more likely to be segregated: behavioural issues (68.6% vs 44.9%); cognitive issues (68.8% vs. 45.3%); interventions issues

⁴⁰ <https://www.csc-scc.gc.ca/acts-and-regulations/005006-3000-en.shtml>

⁴¹ <https://www.oci-bec.gc.ca/cnt/rpt/oth-aut/oth-aut20150528-eng.aspx?texthighlight=segregation>

(64.9% vs. 47.5%); mental health issues (63.2% vs. 48.0%); mental ability issues (61.6% vs. 47.8%); and sexual behaviour issues (54.0% vs. 48.0%). It is noteworthy that prisoners with (vs. without) a history of segregation were significantly more likely to be assessed as being high risk (75.5% vs. 45.5%), high needs (74.4% vs. 47.5%), low motivation (27.2% vs. 11.2%), low reintegration potential (62.3% vs. 24.5%) and low accountability (30.3% vs. 17.9%). A 2016 report by CSC indicated that the number of prisoners in administrative segregation had been reduced from 474 in November 2015 to 360 in August 2016. The reduction was due largely to two strategies; specifically, inter-regional transfers and the creation of additional sub-populations of prisoners considered to be unsuitable for general population housing. Neither of these strategies is recommended for SIUs and it is important to determine how often they are being employed to manage SIU cases.

Mental health care in correctional facilities has long been hampered by understaffing and high turnover rates. According to a report by the Mental Health Commission of Canada (MHCC) (2017), vacancy rates in federal and provincial correctional institutions hovered around 8.5% and up to 30% for specific roles, like psychologists. Primary care tends to be overloaded because intermediate and specialized care are not adequately resourced. Regional Treatment Centres, which provide tertiary care, have limited capacity. Some mental health problems (substance use, adjustment problems) get attended to whereas others are under-detected (e.g., neurodevelopmental disorders like autism spectrum and attention-deficit/hyperactivity disorder (ADHD), under-treated (e.g., trauma and stress disorders); and misdiagnosed (e.g., obsessive-compulsive and related disorders). Symptom manifestations that demand more immediate attention (e.g., emotional dysregulation, oppositional, defiant, and self-injurious behaviour) may end up in SIUs. Whether SIUs are the best option for prisoners with mental health problems in the short- or long-term remains to be determined. As mentioned, with the prevalence of mental health problems exceeding 70% for both males and females, it is abundantly evident that CSC must respond to this

challenge. The manner in which SIUs are currently configured – limited space for treatment and private consultation, cell capacity that is not matched to demand, located mostly in maximum security prisons, physically aversive and austere, without dedicated healthcare staff – render them inadequate for this task.

Indigenous Prisoners

To introduce the issue of Indigenous people in SIUs, we have summarized in Table 19, some facts about the Indigenous population of Canada's penitentiaries. This table provides a picture of the dramatic over-representation of Indigenous people in Canada's penitentiaries. While Indigenous people make up about 4.2% of Canada's adult population, we see that Indigenous men and women are over-represented generally in penitentiary populations, and specifically within the SIUs. On 13 February 2022, the percentage of Indigenous prisoners in CSC facilities was 32.4% and, for the first time, Indigenous women made up almost half of the federal female prisoner population. On that same day, about 48% of the male SIU population were of Indigenous origin.

The most dramatic single figure is the fact that while Indigenous women make up about 4.2% of the population of Canada's women, 75.8% of the person-stays in SIUs experienced by women since the SIUs opened in November 2019 involve Indigenous women.

Table 19: Indigenous people in Canada's Penitentiaries and SIUs.

	Male	Female	Total
Proportion of adult Canadian population that is Indigenous	4.2%	4.2%	4.2%
Penitentiary population, 13 February 2022 – Number	11,608	574	12,182
Penitentiary population 13 February 2022 - Percent	95.3%	4.7%	100%
Indigenous in penitentiary on 13 February 2022	3,665	282	3,947
% Penitentiary population that is Indigenous on 13 February 2022	31.6%	49.1%	32.4%
SIU population that day	164	--	164
Number of Indigenous prisoners in SIUs that day	79	--	79
% of SIU population that is Indigenous that day	48.2%	--	48.2%
Person stays in SIUs through 13 February 2022 that involve Indigenous people	39.8%	75.8%	41.1%

Variation exists among CSC Regions, reflecting at least in part presumably, the non-incarcerated population in the region. Quebec recorded that 15.6% of their prisoner population was Indigenous while in the Prairie Region it was 55.7%. Close behind the Prairie Region was the Pacific Region with an Indigenous prisoner population of 39.3%.

The issue of Indigenous over-representation in federal corrections has been the focus of several task forces, inquiries, and Royal Commissions since the early 1980s, and, despite efforts by governments and interventions by the courts, the percentage of Indigenous people in federal corrections has continued to increase. Indigenous over-representation in federal corrections has been used both nationally and internationally to question Canada's commitment to human rights, and as over-representation increases, Canada's reputation in that area declines.

With respect to SIUs, in February 2022, the Prairies recorded that 67.2% of all SIU prisoners were Indigenous with the Pacific Region being a close second with 54.5%. It should be noted that in February 2022, in every region of Canada, the

proportion of Indigenous SIU-placed prisoners was higher than the proportion of Indigenous people in the general population of CSC's penitentiaries.

Table 20: Census of Penitentiaries, 13 February 2022.

Region	% Indigenous in the Region's CSC facilities, overall.	% Indigenous in the SIUs in the Region
Atlantic	20.8%	40.0%
Quebec	15.6%	26.5%
Ontario	19.5%	26.3%
Prairie	55.7%	67.2%
Pacific	39.3%	54.5%
Canada	32.4%	48.2%

The percentage of Indigenous SIU prisoners with a mental health flag is 37.6% which is a higher proportion than with any of the other three racial groupings of prisoners (white, black, and other/mixed) entering SIUs (see Appendix Table A16).

For both Indigenous and non-Indigenous prisoners, the length of stay in an Structured Intervention Unit (SIU) is considerably longer in some institutions than in others. Across Canada, slightly more than half (56.5%) of the SIU stays are "long" (16 days or more). Overall, across all institutions, Indigenous SIU prisoners are more likely to have long stays (62.0% of stays are at least 16 days long) than are non-Indigenous SIU prisoners (52.6%).

Variation is notable between both institutions and regions, as seen in Table 21. There is, for example, significant regional variation with respect to Indigenous prisoners getting time out of their cells for the required four hours a day. In Stony Mountain and Bowden, the vast majority of long-stay Indigenous prisoners seldom or never miss getting their four hours out of cell on most of their days in

the SIU. By contrast, in Saskatchewan Penitentiary, Edmonton, and Kent, as well as everywhere else, Correctional Service of Canada (CSC) is considerably less likely to be successful in accomplishing this central goal of SIUs.

Table 21: Achieving 4 hours out of cell for long stay⁴² (16+ days) Indigenous SIU prisoners only.

		Percent of days that the 4 hours out of cell was not achieved		Total
		Missed 0-50% of their days	Missed 51% to 100% of their days	
SIU Location	Saskatchewan Penitentiary	30	87	117
		25.6%	74.4%	100%
	Edmonton	15	64	79
		19.0%	81.0%	100%
	Edmonton Institution for Women	8	11	19
		42.1%	57.9%	100%
	Stony Mountain	193	17	210
		91.9%	8.1%	100%
	Bowden	37	1	38
		97.4%	2.6%	100%
	Kent	4	163	167
		2.4%	97.6%	100%
	All Other SIUs	35	271	306
		11.4%	88.6%	100%
Total		322	614	936
		34.4%	65.6%	100%

When we reviewed the equivalent data for non-Indigenous prisoners, the pattern is much the same (see Appendix Table A17).

Panel members were told by both CSC staff and prisoners that the SIUs in Bowden and Stony Mountain Penitentiaries were “special” in a good way. Table 21 suggests that the experience of prisoners with long SIU stays in Stony and

⁴² As noted elsewhere in this report, there is understandably more concern about isolation of people with long stays in SIUs than there is concerning short stays.

Bowden are in fact different from the experiences of long SIU stay prisoners elsewhere. In Stony and Bowden, they typically get out of their cells reasonably often; elsewhere they do not.

There are several reasons for an Indigenous prisoner (and other prisoners) refusing to leave their cells for the legislated four hours. During interviews, prisoners reported that sometimes they were not offered time out of the cell or that they did not avail themselves of time out of cell because of weather, the time of day, what was offered held no interest, or because they wanted a time-out away from staff and other prisoners. By law and directives, it is incumbent on CSC to provide meaningful alternatives to prisoners as a way of encouraging them to leave their cells. Failure of a person to leave the cell, then, should not be attributed solely to the prisoner.

CSC is required to transfer all prisoners out of SIUs at the earliest opportunity. However, many Indigenous prisoners interviewed to date in SIUs prefer to stay in the SIU. As one Independent External Decision-Maker (IEDM) noted, the prisoner's personal safety is understood to be a major reason for refusals to leave. Other reasons were that the prisoners may have developed a good relationship with SIU staff, they had more time out of cell, and received more attention from non-security staff than elsewhere. Prisoners also realize the pressure prison staff are under to comply with the legislation and this provides a certain amount of negotiating power because CSC wants to keep the SIU population low.

Members of rival gangs are often present in federal institutions, particularly in the Prairie and Pacific Regions. Belonging to one of the gangs, being an Associate Member or even simply associating with a gang member, can lead to inter-gang violence. For that reason, voluntary placement in an SIU is the preferred option for many gang-involved Indigenous prisoners who are incompatible with other

prisoners in the general population. Several prisoners interviewed acknowledged that they did whatever they could to be transferred to an SIU.

Once in an SIU, Indigenous prisoners may attempt to stay as long as possible for their own personal safety as well as access to programs and other activities. Prisoners frequently expressed what they felt were the only acceptable reasons for leaving a SIU. Key among those reasons were (a) to stay in the SIU until they could be cascaded from maximum to medium security, (b) to stay until their parole eligibility date, or (c) to stay until they could be transferred to an institution outside the Region where their gang involvement would either not be known or they would not face conflicts with rival gangs.

Elders are recognized as being an important and integral part of an Indigenous prisoner's healing journey and provide opportunities for ceremony, spiritual guidance, and one-on-one counselling. Although Panel members have so far only consulted with a small number of Elders, they have generally raised similar concerns. Many felt that they lacked sufficient time to do the work with prisoners and that more Elders should be hired. Currently, the contracts in place with Indigenous Elders range from one year to multi-year agreements.

Programming for Indigenous prisoners, both within the SIU and elsewhere in the institution is guaranteed by section 80 of the *CCRA* which states that "the Service shall provide programs designed particularly to address the needs of Indigenous offenders". What is implied in the legislation is that Elders' services should not be the only support for Indigenous prisoners, but part of a larger strategy to assist Indigenous prisoners as they complete their correctional plans.

Commissioner's Directive 702: Indigenous Offenders (CD 702)⁴³ specifically states that Elders shall be members of the case management team, have appropriately equipped facilities for the provision of confidential spiritual services,

⁴³ <https://www.csc-scc.gc.ca/lois-et-reglements/702-cd-eng.shtml>

and ensure that the prisoner's Indigenous Social History (ISH) report is considered in decision-making processes, including their placement in and out of the SIU. These requirements do not appear to be routinely met, with the possible exception of the SIU cultural space at Stony Mountain. The Elders we spoke to told us that they were informed about decisions made by the Warden's Board regarding placements and transfers, but they weren't specifically involved in the decision-making. They were also not involved in case management in any significant way, although they did work with prisoners on individual healing plans.

CD 702 further states that the prisoner's ISH needs to be considered in all decisions respecting an Indigenous prisoner's transfer. While some Independent External Decision-Maker (IEDM) decisions did include input from Elders' reports, in only two cases reviewed by the Panel thus far has there been evidence that ISH was included as part of the material given to IEDMs by CSC. The Panel has asked for, but not yet received, evidence of compliance with this component of CD 702.

Elders require stability in their positions if they are to accomplish any healing work that cannot realistically be achieved in a short period of time. While Elders at Stony Mountain, Edmonton Institution and Edmonton Institution for Women (EIFW) have long term contracts, and the Elder at EIFW has been on site for almost two decades, the Elder at Kent was released from his contract after one year without a replacement being hired. In both Stony Mountain and EIFW, the cultural spaces were well appointed and well used and neither Elder had any specific concerns with the SIU. On the other hand, the Elder at Edmonton and Kent had less than appropriate space for counselling and ceremony. The Elder at EIFW has no difficulties accessing women but told us that in her experience, SIU placement was usually only for a few days.

Elders have acknowledged challenges working with Indigenous prisoners transferred to SIUs, including that they have received minimal training about

CSC's SIU policies and practices. Despite the existence of a comprehensive Elder Orientation Program, Elders told the Panel their training has been on the job and often lacked detail, which has, at times resulted in conflict between their interpretation and CSC's interpretation of policies and practices. Elders told the Panel they would like to see more support coming from Regional Elders Councils and the reintroduction of a National Elder at Correctional Service of Canada (CSC) Headquarters.

Multiple Stays in the SIU

There are many ways to understand the operation of the Structured Intervention Units (SIUs). In this report, we have looked at the SIUs as distinct units within larger institutions. When Panel members spoke to prisoners who had been or were currently placed within an SIU, we clearly were hearing individual prisoners' experiences. In our statistical analyses, we mostly look at "person stays" in the SIU, where each separate transfer to an SIU was a data point that we were examining. The results of these analyses did not make a distinction between two stays by one person and a single stay by each of two people. Each stay (by the same or different people) constitutes a separate "person stay". When attempting to understand the daily operation of the SIUs, this clearly is the most appropriate way of describing what is occurring.

But many prisoners in CSC institutions – even in the short time that the SIUs have been operating – have spent time in SIUs on more than one occasion. Based on data obtained from CSC systems in early March 2022, there are 3,966 person stays in SIUs between 30 November 2019, and 13 February 2022. Some of these 3,966 stays involved prisoners who were transferred to SIUs more than once. The data show that "only" 1,920 different prisoners were transferred to an SIU. Hence some of them got two or more stays.

Looking at the number of "stays" in the SIUs each of these 1,920 prisoners got (see Appendix Table A18), the majority (1,030 or 53.6%) were placed only once.

This means that 890 people (46.4% of the 1,920 people) stayed at least twice in an SIU during this period (30 November 2019 to 13 February 2022). Multiple stays, in other words are not unusual. Indeed, there were ten prisoners who visited an SIU on ten or more separate occasions during the period November 2019 to February 2022.

When we consider the 890 people who stayed more than once in an SIU during this period and look at the number of different SIUs that they were transferred to, we find that almost a third of those (31.5%) who had two SIU stays during this period, had their second SIU visit in a different institution from the first (see Appendix Table A19). At the other extreme, there were 161 people (or 8.4% of the total population of 1,920) who, during this period, were transferred to an SIU on five or more separate occasions. Of these 161 people who had been in an SIU five or more times, 80.7% were transferred to at least two different SIUs.

The question that arises is what these transfers are supposed to accomplish. If SIU placement was an attempt to solve a problem, why did people need to go to more than one SIU (often, of course, in more than one region since only two regions – Quebec and the Prairies – have multiple SIUs for men).

Those who visit SIUs many times are very likely to be moved to different regions (Appendix Table A20). Of those who were transferred to SIUs five or more times, most (62.7%) were put in SIUs in more than one region. One of these prisoners was transferred to SIUs in all five regions.

Understanding Why People Are Sent to SIUs More Than One Time

There are only three legally permissible justifications for putting prisoners in SIUs. We looked at the number of different legal justifications that were used to justify a stay in an SIU. A little over half (54.6%) of the people who had two or more SIU stays during this period, had two or more legal justifications used to justify the stays (Appendix Table A21).

A much more concerning characteristic of the prisoners who experienced multiple stays in SIUs is the relationship between multiple SIU stays and CSC's identification of a person as having a mental health need. As we saw earlier (and is summarized in Appendix Table A22) people identified as having mental health challenges were more likely to have multiple SIU stays (58.2% vs. 40.9%). This is also evidenced by Table 18, which demonstrates that the more stays a person had in SIUs during this 26.5-month period, the more likely it was that CSC would identify them, at some point during this journey, as having mental health challenges. For people with only one stay, 24.4% had a mental health flag. For those with five or more stays, 55.3% had a mental health flag. Bluntly, having a flag on one's file noting mental health challenges appears to also be a flag suggesting that multiple placements in an SIU is likely.

Looking only at those with multiple stays, those with mental health flags are more likely to experience different SIUs and different regions compared to those without mental health flags. While 46.7% of those without mental health flags experienced two or more different SIUs, 55.7% of those with mental health flags experienced two or more different SIUs. Similarly, people with mental health flags were more likely to be transferred to SIUs in different regions (37.4%) compared to those without mental health flags (30.4%) (see Appendix Tables A23 and A24).

The use of the SIU and the movement of prisoners to different regions and different SIUs may be a useful tool in understanding CSC's approach to those facing mental health challenges. A prisoner whom CSC identifies as having mental health challenges who has multiple SIU stays is more likely to be moved to different SIUs in different regions (37.4% vs. "only" 30.4% of those without a CSC mental health flag) (see Appendix Table A24). These may be more challenging prisoners to deal with, but it is unclear how constant movement can be therapeutic or in itself constitute good correctional practice.

We are concerned that these data on the movement of prisoners who have experienced multiple stays in SIUs across institutions and regions, and especially those who face mental health challenges, may reflect a larger issue related to the way CSC addresses the very significant and complex challenges faced by some of its prisoners.

Conclusion

“Placing a prisoner in segregation is the most intrusive decision the Service can make affecting a person’s liberty” (Arbour Report, 1996) and is “a litmus test for the legitimacy of the correctional system” (Jackson & Sloan, 1998). Almost 25 years later, these statements remain true. What have we learned in the intervening years? Response to the issue of problematic prisoner segregation tends to follow a familiar pattern: Concerns emerge about prisoner segregation, either through media attention, or expressed by prisoners themselves. A mandated review of CSC practices, including an examination of CSC’s compliance with the law usually follows. Recommendations are then made and typically include the need for independent adjudication and oversight of segregation, limitations on the placement of vulnerable prisoners, greater compliance with law, better record keeping, and legal and human rights education for staff and administrators. CSC then responds to the recommendations but declines to accept recommendations for mandated placement limitations and enhanced external oversight or independent adjudication, offering instead to conduct its own review and to “enhance” practices (e.g., “enhanced” security units, “enhanced” segregation review). In the end, meaningful change is elusive, and the cycle eventually repeats. When viewed across time and considering the many reports and reviews that have been written on this issue, CSC’s resistance to external adjudication, restrictions about who could be segregated, its variable adherence to law, regulations, and policy, and reluctance to implement recommendations, is notable and worrisome.

Social isolation is not a natural state for social beings. Isolating people from their community, from “meaningful human contact”, whether inside or outside of prison, is a significant decision. It jeopardizes the individual’s legal rights (to life, liberty, and security) largely by the threat it poses to their psychological well-being. Social isolation is harmful and increases personal vulnerability. Decades of research show that social connectedness is critical for health and wellbeing, strongly related to indicators of morbidity and mortality, including mental and

physical health. Social connectedness is rewarding and stress buffering; by contrast, social isolation and ostracization are aversive. It is imperative that such isolation be carefully adjudicated and duly monitored, both legally and psychologically. We need interaction with others for reality testing, perspective taking, social skills acquisition and practice, and interpersonal functioning (all of which contribute to successful post-incarceration success).

A primary question that needs to be addressed is what does intervention mean and what results are expected from a prisoner's time in a SIU? If it is to simply give a prisoner a "time out" from the general population while other options for cell placement can be identified, then perhaps a short interval in the SIU meets that goal. On the other hand, if intervention means working with the prisoner to address the needs that precipitated SIU placement, then ongoing involvement with Elders, clinicians, program officers and other supports is required.

Managing a population defined by histories of abuse, intergenerational trauma, inadequate education, skill and learning deficits, addictions, and other mental health problems is not an easy task. Inevitably, there will be times when individuals must be isolated for their own safety or the safety of others. Isolating prisoners from the general population can be a legitimate tool in managing a potentially dangerous environment, provided it is done legally, responsibly, and with the prisoner's best interests and legal rights in mind.

There is a discord between the legislative requirements and intervention, particularly for prisoners who come into federal custody with a myriad of traumatic experiences. There is a fundamental contradiction in the legislative and policy framework that created and governs the SIUs. On the one hand, SIUs are meant to replace dangerous isolation with safe, structured interventions for the most vulnerable and/or difficult and/or complex men and women in federal custody. On the other hand, a careful reading of the legislation would suggest that transfer to an Structured Intervention Unit (SIU) is meant to be a last resort.

Furthermore, the provisions related to ending placement within an SIU as soon as possible make it very clear that stays are meant to be short. It is difficult to reconcile the extraordinary efforts undertaken and resources dedicated to operationalizing SIUs, with the goal of moving the most challenging prisoners out of them as quickly as possible. Dedicated staff to assess and address the risks and needs of the incarcerated is part of good correctional practice, but this takes time. The current focus on short stays and resulting frequent involuntary movement interferes with both continuity and sustained level of effort this good practice requires.

We are not suggesting that long stays, with or without monitoring, should be allowed or encouraged. What we are saying is that there is a clear tension between meeting the needs of high-risk, vulnerable and complex prisoners, and the operational and legislative pressure to quickly remove them from potentially safer and well resourced, intervention focused, conditions of confinement.

This tension arises from the circumstances that fueled the creation of SIUs. Bill C-83 responded to the British Columbia and Ontario court decisions that found CSC's use of segregation to be unconstitutional. The indeterminate nature of administrative segregation, the lack of truly independent oversight, the differential impact on Indigenous men and women, and those with mental health concerns, were all found to be problematic. The first goal of Bill C-83 was to address these problems. Instead of amending existing policy and operations, segregation was to be eliminated, at least in name if not in practice. What the Panel observed during site visits, and through examining Correctional Service of Canada (CSC) data, is that the same population of prisoners who were chronically placed in administrative segregation is now being serially transferred to SIUs, and once transferred, are the most likely to remain in an SIU.⁴⁴

⁴⁴ See "Characteristics of Federal Offenders in Structured Intervention Units, the Mainstream Population and Administrative Segregation" (CSC Research in Brief, July 2021). The SIU population looked more like a group of "Segregation" prisoners (described in a 2018 report) than they did the mainstream population in

During institutional visits, a frequent observation of both staff and prisoners was that SIUs have become viewed as desirable accommodation. Prisoners point out the benefits of priority access to health care, more contact with parole officers, no double bunking, and improved sense of personal safety. Staff complain these positive aspects of SIUs undermine their ability to move prisoners back to general population. This raises another fundamental question: Should SIUs be less accommodating and supportive, or should the general population accommodation and support be enhanced so that SIUs are not seen as offering preferential treatment?

CSC staff have also commented on the impact SIUs have on other areas of operation. The roll-out of SIUs placed heavy demands on CSC staff, and SIUs continue to add operational and administrative burdens throughout the organization. These reporting, staffing, monitoring, and intervention burdens have reportedly meant less attention paid to other institutional priorities and have diverted resources from other initiatives. Notwithstanding, the leadership of CSC view SIUs as essential to the transformation of the Service. This vision of transformation includes progress on addressing the problems identified by the courts.

Despite sincere and intensive effort on the part of CSC staff to make SIUs work, the Panel notes that many prisoners continue to experience long stays, multiple (sometimes almost continuous) placements, extended periods of time locked up, and without meaningful human contact. There continues to be a marked over-representation of Indigenous men and women and those with known mental health concerns locked up in the SIUs (as they formerly were in segregation). It is

2021. Given that the number of people going to SIUs is smaller than the intake to the previous Segregation units, it is likely that differences between these two groups, where they do exist, are the result of the selection of (largely) the most difficult prisoners for transfer into the SIU. The differences between the SIU population and the Segregation population were generally very small compared to the differences between the SIU population and the (current) mainstream population.

not hard to conclude that even if SIUs were perfectly operated, without significant changes in correctional policy and practices throughout, this state of affairs will persist.

Advice to the Minister of Public Safety and Recommendations to the Commissioner of Corrections

1. Alternatives to SIU Placement

- 1.1 No prisoners are to be assigned to any form of restrictive housing until all other options have been explored and their lack of suitability documented.
- 1.2 Each institution is to catalogue all forms of housing that are not used for the mainstream population, including any with restrictions on movement and association. Prior to placement in any form of restrictive housing, a formal assessment must be completed that will document why restrictions are necessary and detail a plan for removing restrictions as soon as possible. Placement in any form of restrictive housing will be approved by the Institutional Head.
- 1.3 The Office of the Correctional Investigator is to be informed of the use of all forms of modified routine/restrictive housing through quarterly reports.

2. Length of SIU Stays

- 2.1 The timeframe and process for review of the length of time a prisoner spends in an SIU must be streamlined to ensure reviews are both timely and meaningful. Pending the 5-year legislative review, interim policy and direction must be provided so that if a SIU stay beyond 15 days is confirmed, the case is automatically referred for Independent External Decision-Maker (IEDM) review and a decision issued 15 days after the referral.

3. Time out of Cell

- 3.1 The CSC Internal Audit Committee should consider an audit to determine reasons for prisoners not availing themselves of time out of cell offers and reasons why offers are not made or not properly documented.
- 3.2 To help address regional variation, Correctional Service of Canada (CSC) must immediately share proven best practices for offers and activities that result in achieving legislated time out of cell targets. Once best practices are shared, each Structured Intervention Unit (SIU) institution must prepare an action plan to implement these practices.
- 3.3 Develop and implement mechanisms, including computer-based learning options, to allow SIU prisoners access to a broad range of education and training opportunities.

4. Meaningful Human Contact

- 4.1 There is an immediate need for CSC to provide guidance to staff through a Commissioner's Directive Policy Bulletin regarding what constitutes meaningful human contact and how to best meet the obligations imposed in law and policy.
- 4.2 The Senior Deputy Commissioner is to ensure meaningful human contact activities are carefully documented and shared between SIU sites.
- 4.3 Each SIU site should convene an open house inviting community partners and service providers to explore opportunities that would improve the frequency and quality of time out of cell for meaningful human contact.

5. Inter-Regional Transfer

- 5.1 Policy must require a review at the regional level of every instance when a prisoner transferred out of an SIU is transferred into a different SIU within 5 days.
- 5.2 All inter-regional transfers from or to an SIU must be approved by the Senior Deputy Commissioner.

6. Health Care

- 6.1 In consultation with the SIU sites, policy and procedures are to be developed that will appropriately ease the health care documentation burden by reducing duplication.
- 6.2 When implementing the enhanced staffing model for SIUs, CSC should reconsider its policy on the allocation of health human resources and dedicate clinical staff to the units.
- 6.3 Information exchange between Independent External Decision-Makers (IEDMS), healthcare, and frontline program and security staff must be reviewed to identify opportunities for increased transparency and sharing.

7. Indigenous Prisoners

- 7.1 A National Elder position must be re-established, and CSC should immediately consult with the Regional Elders Councils and the National Elder to resolve long-standing concerns regarding terms and conditions of appointment and work, the contracting process, training, retention, and succession planning.
- 7.2 All Elder and Indigenous Liaison Officers positions must immediately be staffed.

- 7.3 An Indigenous Human Resources strategic plan should be developed this fiscal year with input from the National and Regional Elders and the National Aboriginal Advisory Committee.
- 7.4 Minimum expectations for on-boarding, supporting, and meaningfully involving Elders working in SIUs immediately be promulgated and a governance and accountability structure put in place to ensure compliance.
- 7.5 A formal agreement guaranteeing Elder access to prisoners, appropriate meeting, program and spiritual space, and required information sharing be developed in each CSC institution.

8. Programs/Interventions

- 8.1 Whenever possible, programs and meaningful activities are to be offered to SIU prisoners in association with others.
- 8.2 An audit of the impact of Interim Policy Bulletin 690 (CD711) on progress against the correctional plans of SIU prisoners must be conducted to determine if the direction given to clarify the management and delivery of programs, interventions, and services within a Structured Intervention Unit, and to provide flexibility when determining referrals to programs and interventions, has provided positive results.
- 8.3 A strategy to enhance involvement of community partnerships in the provision of programs, services and other supports for SIU prisoners must be developed and implemented.

9. Independent External Decision-Makers

- 9.1 To establish IEDMS as truly independent of both PS and CSC, a structure must be created to ensure Senior IEDMS have both administrative and supervisory responsibilities for IEDM operations,

reviews and decisions, and Senior IEDMs have access to and spending authority for a budget to cover expenses for travel, legal advice, research, and annual report preparation. The first step in the implementation of this recommendation must be an arms-length review of IEDM appointments, operations, organizational structure, and decision-making processes and procedures. (Advice to Minister)

- 9.2 Clear job descriptions for Independent External Decision-Makers (IEDMS), including a statement of work and required key competencies, must be developed prior to the appointment of IEDMS. IEDM compensation should clearly relate to the details in the job description and allow for vacation leave, training, and sick leave. The number of IEDMS should immediately be adjusted to meet the workload experienced during the first 2.5 years of SIU operation. (Advice to Minister)
- 9.3 In anticipation of the mandated 5-year review of Bill C-83 changes, PS should immediately consult with IEDMs and other stakeholders to assist in the drafting of amendments that will eliminate overlapping and co-occurring reviews, provide guidance about what information IEDMS must review prior to rendering a decision, clearly establish IEDM decisions as binding and IEDMS as fully independent of CSC, legislate time frames for CSC compliance, and require that written decisions follow a standard format. (Advice to Minister)
- 9.4 The Corrections and Conditional Release Act be amended to establish more timely and enforceable reviews and orders regarding length of SIU placements. (Advice to the Minister)
- 9.5 CSC must advise the decision-making IEDM of the disposition of a direction to remove a prisoner from an SIU within 5 days of receiving

the decision, including a transfer plan or an explanation of why the transfer will be delayed or not actioned.

10. Infrastructure

- 10.1 An immediate deficiencies survey of all SIU sites be conducted. Information collected through the survey should be used to develop capital plans and budget requests for the next fiscal cycle.
- 10.2 Funds be made available this fiscal year to ensure adequate common area furnishing, exercise equipment, working televisions, and amenities to support meaningful human contact are in place in each SIU.
- 10.3 A National Standard for secure interview and meeting spaces must be developed and all SIU sites must be immediately provided resources to ensure compliance.
- 10.4 An IT and digital readiness and capacity audit of all SIU sites should be completed this fiscal year and a plan developed to eliminate all identified gaps and shortcomings.

11. Human Resources

- 11.1 A strategic SIU Human Resource Plan must be developed based on diversity, equity, and inclusion targets as well as SIU operational experience that will address high turnover, absenteeism, reliance on underfilling and use of acting positions, and recruitment of targeted occupational groups.
- 11.2 Specific targets and key performance measures be developed this fiscal year to determine if the soon-to-be-implemented enhanced SIU staffing model is addressing priority needs.

12. Staff Training

- 12.1 Training focused on understanding the history of segregation in federal corrections and the reasons for the creation of SIUs be developed and delivered to all CSC staff and should be frequently updated to reflect court decisions, legislative amendments, and reviews and evaluations related to the operation of the Structured Intervention Units (SIUs).
- 12.2 All staff assigned to work within SIUs must complete annual Human Rights and anti-discrimination training.
- 12.3 Mental Health awareness and intervention initial and refresher training (including de-escalation) be required for all staff assigned to work within SIUs.

13. Enhanced Accountability

- 13.1 The next risk identification and assessment that is undertaken to determine internal audit priorities must reflect the operational challenges faced by SIUs.
- 13.2 To support accountability and transparency, Correctional Service of Canada (CSC) must prepare a consistent and meaningful set of key performance indicators for SIUs and published on a quarterly basis.
- 13.3 Ministerial monitoring and public reporting of progress against the CSC Commissioner's Mandate Letter Priorities should be in place. (Advice to the Minister)

14. Future of IAP

- 14.1 Prior to the end of the current Panel's mandate, the Minister's Office should develop a plan to transition the Panel from implementation oversight to ongoing operational oversight. This plan should address the need for dedicated administrative support available to the Chair and

Panel members, timely appointment of Panel members, spending authority for legal, research, and report preparation expenses, and, how to best integrate the Panel into the broader matrix of Public Safety oversight and assurance provision. (Advice to the Minister)

Appendices

Appendix A – Data Tables

Table A1: Time in the SIU as a Function of Race/Ethnicity

	Total days in SIU including those still in					Total
	1 thru 5	6 thru 15	16 thru 31	32 thru 61	62 thru 552	
White	318	344	196	208	315	1381
	23.0%	24.9%	14.2%	15.1%	22.8%	100.0%
Indigenous	246	336	291	306	354	1533
	16.0%	21.9%	19.0%	20.0%	23.1%	100.0%
Black	113	106	64	75	121	479
	23.6%	22.1%	13.4%	15.7%	25.3%	100.0%
Other/Combination/ Missing	75	88	55	47	76	341
	22.0%	25.8%	16.1%	13.8%	22.3%	100.0%
Total	752	874	606	636	866	3734
	20.1%	23.4%	16.2%	17.0%	23.2%	100.0%

Table A2: Mental Health Status of those Prisoners Transferred to SIUs.

		Mental Health Groups (from CSCs 9 mental health groups)			Total
		No low or some needs, not getting worse	High needs, not getting worse	Various mental health needs and getting worse	
White		1,167	113	101	1,381
		84.5%	8.2%	7.3%	100.0%
Indigenous		1,203	184	146	1,533
		78.5%	12.0%	9.5%	100.0%
Black		438	13	28	479
		91.4%	2.7%	5.8%	100.0%
Other/Combination/ Missing		306	19	16	341
		89.7%	5.6%	4.7%	100.0%
Total		3,114	329	291	3,734
		83.4%	8.8%	7.8%	100.0%

Table A3: Length of Stay in the SIU and Success at Achieving 4 hours Out of Cell

		Percent of days that 4 hours out of cell was not achieved			Total
		Missed zero days to 50% of their days	Missed 51% to 75% of their days	Missed 76% to 100% of their days	
Number of days in SIU	1 thru 15 days	294	171	1,174	1,639
		17.9%	10.4%	71.6%	100.0%
	16 thru 551 days	518	351	1,202	2,071
		25.0%	16.9%	58.0%	100.0%
Total		812	522	2,376	3,710
		21.9%	14.1%	64.0%	100.0%

Table A4: Length of Stay in the SIU and Success in Receiving 2 Hours of Meaningful Human Contact out of the Cell.

		Percent of days that 2 hours out of cell was not achieved			Total
		Missed zero to 20% of their days	Missed 21% to 75% of their days	Missed 76% to 100% of their days	
Number of days in SIU	1 thru 15 days	309	569	761	1,639
		18.9%	34.7%	46.4%	100.0%
	16 thru 551 days	502	1,035	534	2,071
		24.2%	50.0%	25.8%	100.0%
Total		811	1,604	1,295	3,710
		21.9%	43.2%	34.9%	100.0%

Table A5: Percent of days that 4 hours out of cell was not achieved (long stay only)

	Frequency	Percent	Cumulative Percent
Missed zero days (0%)/got out for 4 hrs every day in SIU	113	5.5	5.5
Missed up to 20% of their days	201	9.7	15.2
Missed 21% to 50% of their days	204	9.9	25.0
Missed 51% to 75% of their days	351	16.9	42.0
Missed 76% to 99% of their days	887	42.8	84.8
Missed 100% of their days	315	15.2	100.0
Total	2,071	100.0	

Table A6: For those who missed their full 4 hours on 1 or more days -- The average hours they got (Long Stay Prisoners Only)

Average time received:	Frequency	Percent of all long stay prisoners	Percent of those who missed getting their 4 hours on at least one day
0 thru a half hour	252	12.2	12.9
over half an hour to 1hr	304	14.7	15.5
over 1hr to 2hrs	885	42.7	45.2
over 2hrs to 3hrs	500	24.1	25.5
over 3hrs to 4hrs	17	.8	.9
Total	1,958	94.5	100.0
Out 4 hours every day	113	5.5	
Total	2,071	100.0	100%

Long stay prisoners (16 or more days) only

Table A7: Refusals to leave the SIU cell all day across time.

		Amount of refusal to leave the cell all day				Total
		Refused zero or one time	Refused at least twice, constituting up to 20% of their days	Refused at least twice, constituting 20.1% to 50% of their days	Refused at least twice, constituting 50.1% to 100% of their days	
When the person's SIU stay started	Nov 2019 thru Dec2019	65	96	41	11	213
		30.5%	45.1%	19.2%	5.2%	100.0%
	Jan 2020 thru March 2020	95	111	57	16	279
		34.1%	39.8%	20.4%	5.7%	100.0%
	April 2020 thru June 2020	80	63	60	32	235
		34.0%	26.8%	25.5%	13.6%	100.0%
	July 2020 thru Sept 2020	95	98	69	37	299
		31.8%	32.8%	23.1%	12.4%	100.0%
	Oct 2020 thru Dec 2020	72	98	59	34	263
		27.4%	37.3%	22.4%	12.9%	100.0%
	Jan 2021 thru March 2021	95	66	40	34	235
		40.4%	28.1%	17.0%	14.5%	100.0%
	April 2021 thru June 2021	83	72	33	12	200
		41.5%	36.0%	16.5%	6.0%	100.0%
	July 2021 thru Sept 2021	77	73	30	15	195
		39.5%	37.4%	15.4%	7.7%	100.0%
	October 2021 thru Nov 2021	68	47	28	9	152
		44.7%	30.9%	18.4%	5.9%	100.0%
Total		730	724	417	200	2,071
		35.2%	35.0%	20.1%	9.7%	100.0%

Table A8 : Percent of days that 4 hours out of cell was not achieved and the Amount of refusal to leave the cell all day

		Amount of refusal to leave the cell all day				Total
		Refused zero or one time	Refused at least twice, constituting up to 20% of their days	Refused at least twice, constituting 20.1% to 50% of their days	Refused at least twice, constituting 50.1% to 100% of their days	
Percent of days that 4 hours out of cell was not achieved	Missed zero days up to 50% of their days	431	83	4	0	518
		83.2%	16.0%	0.8%	0.0%	100.0%
	missed 51% to 75% of their days	152	178	18	3	351
		43.3%	50.7%	5.1%	0.9%	100.0%
	missed 76% to 100% of their days	147	463	395	197	1,202
		12.2%	38.5%	32.9%	16.4%	100.0%
Total		730	724	417	200	2,071
		35.2%	35.0%	20.1%	9.7%	100.0%

Note: Long stay (16 days or more) prisoners only.

Table A9 : Amount of refusal to leave the cell for meaningful human contact all day (Long Stay Prisoners Only)

	Frequency	Percent	Cumulative Percent
Refused zero or one time	619	29.9	29.9
Refused at least twice, constituting up to 20% of their days	746	36.0	65.9
Refused at least twice, constituting 20.1% to 50% of their days	495	23.9	89.8
Refused at least twice, constituting 50.1% to 100% of their days	211	10.2	100.0
Total	2,071	100.0	

Note: Long stay (16 days or more) prisoners only.

Table A10: Percent of days that 2 hours out of cell was not achieved and Refusal to Leave the Cell (Long Stay Prisoners Only)

		Amount of refusal to leave the cell for meaningful human contact all day				Total
		Refused zero or one time	Refused at least twice, constituting up to 20% of their days	Refused at least twice, constituting 20.1% to 50% of their days	Refused at least twice, constituting 50.1% to 100% of their days	
Percent of days that 2 hours out of cell was not achieved	missed zero to 20% of their days	401	101	0	0	502
		79.9%	20.1%	0.0%	0.0%	100.0%
	missed 21% to 75% of their days	189	572	267	7	1,035
		18.3%	55.3%	25.8%	0.7%	100.0%
	missed 76% to 100% of their days	29	73	228	204	534
		5.4%	13.7%	42.7%	38.2%	100.0%
Total		619	746	495	211	2,071
		29.9%	36.0%	23.9%	10.2%	100.0%

Note: Long stay (16 days or more) prisoners only.

Table A11: Rate at which mental health needs were identified by CSC for Men and Women transferred to an SI

		Mental Health Need Identified by CSC		Total
		No	Yes	
Sex of prisoner	Male	2,708	1,126	3,834
		70.6%	29.4%	100.0%
	Female	47	85	132
		35.6%	64.4%	100.0%
Total		2,755	1,211	3,966
		69.5%	30.5%	100.0%

Table A12: Rate at which mental health needs were identified by CSC for Indigenous and Non-Indigenous Prisoners Transferred to an SIU

		Mental Health Need Identified by CSC		Total
		No	Yes	
	Non-Indigenous	1,732	594	2,326
		74.5%	25.5%	100.0%
	Indigenous	1,023	617	1,640
		62.4%	37.6%	100.0%
Total		2,755	1,211	3,966
		69.5%	30.5%	100.0%

Table A13: Reason for Transfer to SIU and Mental Health Needs

		Mental Health Need Identified		Total
		No	Yes	
Transfer Reason	Jeopardize Safety/Security of Institution	1,564	630	2,194
		71.3%	28.7%	100.0%
	Prisoner's Own Safety	1,133	562	1,695
		66.8%	33.2%	100.0%
	Interfere with an Investigation	58	19	77
		75.3%	24.7%	100.0%
Total		2,755	1,211	3,966
		69.5%	30.5%	100.0%

Table A14 : Mental Health and Travel Across SIUs and Regions

		For those with more than one SIU stay: Location of stays			Total
		All stays in one SIU/one region	Different SIUs but all in same region	Different SIUs and different regions	
Was there a flag during any SIU stay that the person had mental health needs?	No	288	88	164	540
		53.3%	16.3%	30.4%	100.0%
	Yes	155	64	131	350
		44.3%	18.3%	37.4%	100.0%
Total		443	152	295	890
		49.8%	17.1%	33.1%	100.0%

Note: Table contains data only from those prisoners with multiple SIU stays during the study period.

Table A15: Days in the SIU as a Function of Whether the Prisoner has an Identified Mental Health Need

		Number of days in SIU		Total
		1 thru 15 days	16 thru 551 days	
Mental Health Need	No	1,187	1,408	2,595
		45.7%	54.3%	100.0%
	Yes	452	663	1,115
		40.5%	59.5%	100.0%
Total		1,639	2,071	3,710
		44.2%	55.8%	100.0%

Table A16: Identified Mental Health Need by Group

	Identified Mental Health Need		Total
	No	Yes	
White	1,032	424	1,456
	70.9%	29.1%	100.0%
Indigenous	1,023	617	1,640
	62.4%	37.6%	100.0%
Black	427	86	513
	83.2%	16.8%	100.0%
Other/Combination/ Missing	273	84	357
	76.5%	23.5%	100.0%
Total	2,755	1,211	3,966
	69.5%	30.5%	100.0%

Table A17: Percent of days 4 hours not achieved, selected SIUs, Non-Indigenous Prisoners.

	% days that 4 hours out of cell was not achieved						
SIU Location	Missed zero days (got out for 4 hrs every day in SIU)	Missed up to 20% of their days	Missed 21% to 50% of their days	Missed 51% to 75% of their days	Missed 76% to 99% of their days	Missed 100% of their days	Total
Sask. Pen	0	3	15	14	26	4	62
	0%	4.80%	24.20%	22.60%	41.90%	6.50%	100.00%
Edmonton Institution	0	1	7	11	41	18	78
	0.00%	1.30%	9.00%	14.10%	52.60%	23.10%	100.00%
Edmonton Institution for women	0	1	0	0	1	0	2
	0.00%	50.00%	0.00%	0.00%	50.00%	0.00%	100.00%
Stony Mountain	19	30	9	4	1	0	63
	30.20%	47.60%	14.30%	6.30%	1.60%	0.00%	100.00%
Bowden	13	13	7	1	0	0	34
	38.20%	38.20%	20.60%	2.90%	0.00%	0.00%	100.00%
Kent	0	0	3	30	82	56	171
	0.00%	0.00%	1.80%	17.50%	48.00%	32.70%	100.00%
Everywhere else	1	12	62	147	393	110	725
	0.10%	1.70%	8.60%	20.30%	54.20%	15.20%	100.00%
Total	33	60	103	207	544	188	1,135
	2.90%	5.30%	9.10%	18.20%	47.90%	16.60%	100.00%

Note: Non-Indigenous prisoners only

Table A18: Number of SIU stays

Number of Stays	Frequency	Percent	Cumulative Percent
1	1,030	53.6	53.6
2	403	21.0	74.6
3	211	11.0	85.6
4	115	6.0	91.6
5	70	3.6	95.3
6	35	1.8	97.1
7	20	1.0	98.1
8	12	.6	98.8
9	14	.7	99.5
10	3	.2	99.6
11	4	.2	99.8
12	1	.1	99.9
14	1	.1	99.9
15	1	.1	100.0
Total	1,920	100.0	

Table A19: For those with multiple SIU stays, the number of different SIUs that they stayed in

		Number of different SIUs person has stayed in						Total
		One	Two	Three	Four	Five	Six	
Number of SIU stays (removing those with only one stay)	2.	276	127	0	0	0	0	403
		68.5%	31.5%	0.0%	0.0%	0.0%	0.0%	100.0%
	3	102	86	23	0	0	0	211
		48.3%	40.8%	10.9%	0.0%	0.0%	0.0%	100.0%
	4	34	55	24	2	0	0	115
		29.6%	47.8%	20.9%	1.7%	0.0%	0.0%	100.0%
	5+	31	58	47	21	2	2	161
		19.3%	36.0%	29.2%	13.0%	1.2%	1.2%	100.0%
Total		443	326	94	23	2	2	890
		49.8%	36.6%	10.6%	2.6%	0.2%	0.2%	100.0%

A20: Multiple Stays in SIUs and Number of Regions

		Number of different regions person has been in for SIU stays					
		One	Two	Three	Four	Five	Total
Number of SIU stays (removing those with only one stay)	Two	335	68	0	0	0	403
		83.1%	16.9%	0.0%	0.0%	0.0%	100%
	Three	142	65	4	0	0	211
		67.3%	30.8%	1.9%	0.0%	0.0%	100%
	Four	58	49	8	0	0	115
		50.4%	42.6%	7.0%	0.0%	0.0%	100%
	Five+	60	70	24	6	1	161
		37.3%	43.5%	14.9%	3.7%	0.6%	100%
Total		595	252	36	6	1	890
		66.9%	28.3%	4.0%	0.7%	0.1%	100%

Table A21: Number of different legal justifications for transfers by number of SIU placements.

	Number of Legal Justifications			
Number of separate stays in SIUs during this period:	One	Two	Three	Total
Two	249	154	--	403
	61.8%	38.2%	--	100%
Three	88	120	3	211
	41.7%	56.9%	1.4%	100%
Four	32	79	4	115
	27.8%	68.7%	3.5%	100%
Five or more	35	112	14	161
	21.7%	69.6	8.7%	100%
Total	404	465	21	890
	45.4%	52.2%	2.4%	100%

Table A22: Mental Health and number of stays in SIUs

		Number of SIU stays		Total
		single stay	multiple stays	
Was there a flag during any SIU stay that the person had mental health needs?	No	779	540	1,319
		59.1%	40.9%	100.0%
	Yes	251	350	601
		41.8%	58.2%	100.0%
Total		1,030	890	1,920
		53.6%	46.4%	100.0%

Table A23: Mental Health and Number of Different Stays

		Number of different SIUs person has stayed in						Total
		1	2	3	4	5	6	
Was there a flag during any SIU stay that the person had mental health needs?	No	288	179	61	10	0	2	540
		53.3%	33.1%	11.3%	1.9%	0.0%	0.4%	100.0%
	Yes	155	147	33	13	2	0	350
		44.3%	42.0%	9.4%	3.7%	0.6%	0.0%	100.0%
Total		443	326	94	23	2	2	890
		49.8%	36.6%	10.6%	2.6%	0.2%	0.2%	100.0%

Table A24: Mental Health and Number of Different Regions

		Number of different regions person has been in for SIU stays					Total
		1	2	3	4	5	
Was there a flag during any SIU stay that the person had mental health needs?	No	376	136	25	3	0	540
		69.6%	25.2%	4.6%	0.6%	0.0%	100.0%
	Yes	219	116	11	3	1	350
		62.6%	33.1%	3.1%	0.9%	0.3%	100.0%
Total		595	252	36	6	1	890
		66.9%	28.3%	4.0%	0.7%	0.1%	100.0%

Appendix B – New Measurement System

In late 2021, Correctional Service of Canada (CSC) refined its approach to measuring “time out of cell” to correct deficiencies in the existing approach and to provide a more accurate account of whether people got their full four hours of time out of their SIU cell. For example, if the prisoner entered the Structured Intervention Unit (SIU) in the evening (after 6:00 pm, for example), then there would not be four hours available for that prisoner to be out of the cell that day. Under the old approach, CSC’s “day count” would count that day as a day in the SIU (even if they were released from the SIU the next day). Similarly, if the prisoner were at court or in the hospital, time out of cell or “meaningful human interaction” would not have the same meaning as they would if the person were in the SIU.

We accounted for this issue in our analyses by subtracting a day when counting “days in the SIU”. Thus, a prisoner who entered the SIU on Monday (any time) and was released from that SIU the next day counts under our system as having been in the SIU for one day (not two). These details – and the modifications of the measurement system that CSC instituted in late 2021 – may well constitute an important improvement for managers in CSC who are trying to ensure that staff do what is expected of them. For example, given that a person who enters the SIU late in the evening of a given day cannot be “outside of the cell” for four hours before 10:00 pm, it is clearly not reasonable to count this as a failure when this occurs.

There was also a more subtle shift in the way these measures of the key elements of the SIU are described. An explicit record of an “offer” for time out of cell is now made and whether the prisoner “availed” themselves of that offer. Under this scheme, if the prisoner was offered but declined the offer, then CSC, or those responsible for the local SIU, may accept little responsibility for the prisoner not getting out of the cell.

There is one additional issue that is important to consider. The effects of this “fine tuning” of the measurements are more likely to be important for assessing short stays in SIUs since what happens on one or two days (e.g., the first day) is a much higher proportion of the days for a short stay than for a long stay in the SIU.

That said, we did look at the new data. Clearly the numbers are going to be slightly different. The conclusions that one would draw from these “new” data are, however, not different from what we have concluded using the measures that allow us a longer period of time to examine. The basic findings, using the new measure, involve stays that began on 1 November 2021. Given that our data were “harvested” on 13 February 2022, this provided only 2.5 months of data to review. There were 344 person-stays that began during this period, 339 of which we could examine carefully.⁴⁵ The difficulty is that many of these people – especially those whose stays began in 2022 – were still in the SIU when the data were harvested, so we don’t know how long their actual stay was. This means we cannot compare the measures for the group of the greatest interest to us – the long stay prisoners.

⁴⁵ These other five stays had zero days available for time outside of the cell for reasons noted above and other “exemptions” from the applicability of this new measure (e.g., necessary appearances in court or during hospital stays).

Table B1 shows that, using this new measure, most people were, in fact, offered time out of cell.

Table B1: Using new measure: What percent of days did those starting their stay in an SIU after 1 November 2021 get asked about getting outside of cell?

	Frequency	Valid Percent	Cumulative Percent
Less than or equal to 50%	28	8.3	8.3
Greater than 50% thru 75%	26	7.7	15.9
Greater than 75% thru 90%	63	18.6	34.5
Greater than 90% thru 99%	105	31.0	65.5
100% of days	117	34.5	100.0
Sub-Total	339	100.0	
Missing	5		
Total	344		

Being offered time out of cell is especially likely to occur for longer stay prisoners (understanding that the difference between “long and short” stay is problematic, given that some prisoners are still in the SIU) (see Table B2).

Table B2: Total days in SIU including those still in -- using new measure of total days available -- and the percent of days those starting their stay in an SIU after 1 November 2021 got asked about getting outside of cell?

		Using new measure: What percent of days did those starting their stay in an SIU after 1 November 2021 get asked about getting outside of cell?					Total
		50% of days	50% thru 75% of days	75% thru 90% of days	90% thru 99% of days	100% of days	
Total days in SIU including those still in -- using new measure of total days available	1 thru 15	26	24	36	4	58	148
		17.6%	16.2%	24.3%	2.7%	39.2%	100.0%
	16 thru 98	2	2	27	101	59	191
		1.0%	1.0%	14.1%	52.9%	30.9%	100.0%
Total		28	26	63	105	117	339
		8.3%	7.7%	18.6%	31.0%	34.5%	100.0%

Turning to whether the prisoners availed themselves of the offer, we see, in Table B3 – consistent with findings referred to in the body of this report – that a substantial portion of prisoners did not accept the offer of time out of the cell.

Table B3: Using new measure: What percent of days did those starting their stay in an SIU after 1 November 2021 avail themselves of the offer to get out of cell?

		Frequency	Percent	Valid Percent	Cumulative Percent
	50%	245	71.2	72.3	72.3
	50% thru 75%	33	9.6	9.7	82.0
	75% thru 90%	27	7.8	8.0	90.0
	90% thru 99%	23	6.7	6.8	96.8
	100% of days	11	3.2	3.2	100.0
	Total	339	98.5	100.0	
	Missing	5	1.5		
Total		344	100.0		

The likelihood of a prisoner not availing themselves of the offer to leave the cell was especially high in short stays (see Table B4).

Table B4: Including those still in the SIU, for those with long and short stays, what percent of days did those starting their stay in an SIU after 1 November 2021 avail themselves of the offer to get out of cell?

		Using new measure: What percent of days did those starting their stay in an SIU after 1 November 2021 avail themselves of the offer to get out of cell?					Total
		50%	50% thru 75%	75% thru 90%	90% thru 99%	100% of days	
Total days in SIU including those still in -- using new measure of total days available	1 thru 15	119	15	6	1	7	148
		80.4%	10.1%	4.1%	0.7%	4.7%	100.0%
	16 thru 98	126	18	21	22	4	191
		66.0%	9.4%	11.0%	11.5%	2.1%	100.0%
Total		245	33	27	23	11	339
		72.3%	9.7%	8.0%	6.8%	3.2%	100.0%

In Table B5, we look at the likelihood that people were asked about getting out of the SIU cell. In the body of this report, we saw large regional variation. In this new, improved measure, we also see (even though sometimes the sample size is small) large regional variation. This finding serves to undercut in advance any notion that the regional variation that we see in virtually every measure we have looked at is the result of measurement errors. Here, with the new and improved measures, we continue to see large regional variation.

Table B5: Success in being asked about getting out of the cell, by region and length of SIU stay.

Total days in SIU including those still in -- using new measure of total days available			Using new measure: What percent of days did those starting their stay in an SIU after 1 November 2021 get asked about getting outside of cell?					Total	
			50%	50% thru 75%	75% thru 90%	90% thru 99%	100% of days		
1 thru 15		Atlantic	2	1	5	0	8	16	
			12.5%	6.3%	31.3%	0.0%	50.0%	100.0%	
		Quebec	14	14	13	1	12	54	
			25.9%	25.9%	24.1%	1.9%	22.2%	100.0%	
		Ontario	6	2	8	0	1	17	
			35.3%	11.8%	47.1%	0.0%	5.9%	100.0%	
		Prairies	1	5	10	2	23	41	
			2.4%	12.2%	24.4%	4.9%	56.1%	100.0%	
		Pacific	3	2	0	1	14	20	
			15.0%	10.0%	0.0%	5.0%	70.0%	100.0%	
		Total		26	24	36	4	58	148
				17.6%	16.2%	24.3%	2.7%	39.2%	100.0%
16 thru 98		Atlantic	1	0	1	7	12	21	
			4.8%	0.0%	4.8%	33.3%	57.1%	100.0%	
		Quebec	0	1	4	25	8	38	
			0.0%	2.6%	10.5%	65.8%	21.1%	100.0%	
		Ontario	1	1	13	7	1	23	
			4.3%	4.3%	56.5%	30.4%	4.3%	100.0%	
		Prairies	0	0	1	42	35	78	
			0.0%	0.0%	1.3%	53.8%	44.9%	100.0%	
		Pacific	0	0	8	20	3	31	
			0.0%	0.0%	25.8%	64.5%	9.7%	100.0%	
		Total		2	2	27	101	59	191
				1.0%	1.0%	14.1%	52.9%	30.9%	100.0%
Total		Atlantic	3	1	6	7	20	37	
			8.1%	2.7%	16.2%	18.9%	54.1%	100.0%	
		Quebec	14	15	17	26	20	92	
			15.2%	16.3%	18.5%	28.3%	21.7%	100.0%	
		Ontario	7	3	21	7	2	40	
			17.5%	7.5%	52.5%	17.5%	5.0%	100.0%	
		Prairies	1	5	11	44	58	119	
			0.8%	4.2%	9.2%	37.0%	48.7%	100.0%	
		Pacific	3	2	8	21	17	51	
			5.9%	3.9%	15.7%	41.2%	33.3%	100.0%	
		Total		28	26	63	105	117	339
				8.3%	7.7%	18.6%	31.0%	34.5%	100.0%

Again, there is the same pattern we have seen earlier in the willingness of prisoners across regions to accept the offers made.

Table B6: Likelihood of availing themselves of offers to get out of the cell by region and length of SIU stay.

Total days in SIU including those still in -- using new measure of total days available			Using new measure: What percent of days did those starting their stay in an SIU after 1 November 2021 avail themselves of the offer to get out of cell?					Total
			LE 50%	50% thru 75%	75% thru 90%	90% thru 99%	100% of days	
1 thru 15	Atlantic	Quebec	15	1	0	0	0	16
			93.8%	6.3%	0.0%	0.0%	0.0%	100.0%
		Quebec	51	3	0	0	0	54
			94.4%	5.6%	0.0%	0.0%	0.0%	100.0%
		Ontario	15	2	0	0	0	17
			88.2%	11.8%	0.0%	0.0%	0.0%	100.0%
	Prairies	Prairies	20	9	6	1	5	41
			48.8%	22.0%	14.6%	2.4%	12.2%	100.0%
16 thru 98	Pacific	Pacific	18	0	0	0	2	20
			90.0%	0.0%	0.0%	0.0%	10.0%	100.0%
		Total	119	15	6	1	7	148
			80.4%	10.1%	4.1%	0.7%	4.7%	100.0%
	Atlantic	Atlantic	18	0	3	0	0	21
			85.7%	0.0%	14.3%	0.0%	0.0%	100.0%
		Quebec	37	1	0	0	0	38
			97.4%	2.6%	0.0%	0.0%	0.0%	100.0%
		Ontario	19	3	0	1	0	23
			82.6%	13.0%	0.0%	4.3%	0.0%	100.0%
Total	Prairies	Prairies	23	12	18	21	4	78
			29.5%	15.4%	23.1%	26.9%	5.1%	100.0%
		Pacific	29	2	0	0	0	31
			93.5%	6.5%	0.0%	0.0%	0.0%	100.0%
		Total	126	18	21	22	4	191
			66.0%	9.4%	11.0%	11.5%	2.1%	100.0%
	Atlantic	Atlantic	33	1	3	0	0	37
			89.2%	2.7%	8.1%	0.0%	0.0%	100.0%
		Quebec	88	4	0	0	0	92
			95.7%	4.3%	0.0%	0.0%	0.0%	100.0%
		Ontario	34	5	0	1	0	40
			85.0%	12.5%	0.0%	2.5%	0.0%	100.0%
Total	Prairies	Prairies	43	21	24	22	9	119
			36.1%	17.6%	20.2%	18.5%	7.6%	100.0%
		Pacific	47	2	0	0	2	51
			92.2%	3.9%	0.0%	0.0%	3.9%	100.0%
		Total	245	33	27	23	11	339
			72.3%	9.7%	8.0%	6.8%	3.2%	100.0%

When we look at the number of hours, on average, that people actually get out of the cell, we see in Table B7 that most prisoners are not getting close to the required minimum of four hours.

Table B7: Average hours out of cell

	Frequency	Percent	Cumulative Percent
0 thru a half hour	56	16.3	16.3
over half an hour to 1hr	54	15.7	32.0
over 1hr to 2hrs	118	34.3	66.3
over 2hrs to 3hrs	79	23.0	89.2
over 3hrs to 3.75hrs	21	6.1	95.3
Received their full four hours	16	4.7	100.0
Total	344	100.0	

One of the primary reasons for the change from the segregation to the SIU model was to ensure that people were not isolated in their cells. In that sense, whether the reason for being isolated in one's cell is because the prisoner wasn't offered time out of the cell, or the prisoner was asked and declined is irrelevant. The responsibility of CSC is to ensure that prisoners do not suffer from the effects of prolonged isolation in their cells.

The legislation as written gives the impression that people are spending at least four hours per day out of their cells. Using these new measures, Table B8 looks at what prisoners actually experienced, broken down by how long (as of 13 February 2022) the stay in the SIU had lasted. A similar picture emerges - most prisoners are not getting what the legislation implies they should be getting. These are, of course, person stays that began on or after 1 November 2021. As shown in Table B8, about two thirds of the prisoners are getting half or less than half of what is "promised" by the legislation.

Table B8: Total days in SIU including those still in and average hours out of cell

		Average hours out of cell						Total
		0 thru a half hour	over half an hour to 1hr	over 1hr to 2hrs	over 2hrs to 3hrs	over 3hrs to 3.75hrs	Got their full four hours	
Total days in SIU including those still in -- using new measure of total days available	1 thru 15	39	25	40	26	11	7	148
		26.4%	16.9%	27.0%	17.6%	7.4%	4.7%	100.0%
	16 thru 98	17	29	78	53	10	4	191
		8.9%	15.2%	40.8%	27.7%	5.2%	2.1%	100.0%
Total		56	54	118	79	21	11	339
		16.5%	15.9%	34.8%	23.3%	6.2%	3.2%	100.0%

The new and improved measures applied to the most recent data available to us demonstrate that the SIUs continue to face challenges similar to those evident in the use of the old segregation regime.

Appendix C – CSC Operational Goals and Performance Measures

In a document dated May 2022 provided to the Panel at a meeting with CSC, CSC outlined 11 performance indicators that it had put in place for measuring performance, as part of its commitment to the Treasury Board. Our first concern with these measures results from the footnote indicating that Correctional Service of Canada (CSC) has “the objective of revising it by March 2023.” To indicate in advance that the measures will be revised 3.5 years into the Structured Intervention Unit (SIU) regime could well mean that we will not have comparable measures upon which to make judgements about the performance of the SIUs over time.

The immediate problem, however, is different. It is whether these are measures that will indicate the extent to which CSC meets the objectives of the new law which is for the SIUs to be a fair and effective replacement for segregation. In that sense, the performance measures might be seen as measuring the degree to which CSC meets the aspirations of the law and the transformation CSC has been promoting.

The CSC website⁴⁶ lists aspirations and goals for SIUs:

- a) CSC should be following the correctional plan that was set out for the prisoner.
- b) Prisoners should get targeted intervention and health services “based on their unique needs and risks.”
- c) The prisoner can interact with staff.
- d) The prisoner can get access to visitors, legal counsellors, elders, etc.
- e) Prisoners should have access to health, including mental health, services
- f) Prisoners can engage in indoor/outdoor exercise (daily)
- g) Prisoners have the opportunity to have at least 4 hours out of cell.
- h) Included in that 4 hours are two hours of meaningful human contact.

⁴⁶ See for example <https://www.csc-scc.gc.ca/acts-and-regulations/005006-3002-en.shtml>

- i) Prisoners are provided with multiple offers of time out of their cell.

In addition, of course, there are the legislative aspirations that:

- A) The SIUs should be used as little as possible.
- B) The “Four” and “Two” hour legislated opportunities for time out of cell should not relate to brief unattractive “offers” to the prisoner but should be of a quality that prisoners are successfully motivated to cease their isolation and avail themselves of the opportunities for association with others and activities. Said differently, time out of cell should not only be “offers” to the prisoner but should be of a quality that prisoners are successfully encouraged not to isolate themselves. CSC has an obligation to actively encourage prisoners to leave the cells voluntarily for meaningful human contact specifically and “time out of cell” more generally.
- C) The stay in the SIU should be as short as possible.

SIU Performance Measurement Framework

As of 30 November 2019, CSC put in place 11 performance indicators:

1. Rate of transfers to SIUs per 1000 offenders in federal custody.
2. Rate of transfers out of SIUs per 1000 offenders in federal custody
3. Median number of days spent in SIUs
4. Percentage of successful transfers out of SIUs (successful if the inmate remains in mainstream population for a period of 120 days)
5. Number of subsequent transfers to SIUs within the past 12 months
6. Percentage of days offenders housed in SIUs were offered time out of their cell
7. Percentage of days offenders in SIUs were out of their cell
8. Percentage of days with interaction time offered to offenders housed in SIUs
9. Percentage of days where interaction time was used by offenders housed in SIUs

10. Percentage of accepted offers of interventions in SIUs

11. Median number of days from decision to transfer an offender out of the SIU to the actual transfer.

Upon examination, we have serious concerns regarding these performance indicators. In particular:

- a) There is no good measure for assessing whether CSC is successful in ensuring that time in the SIU is as short as possible. Note that transfers in and out of the SIUs (performance indicators 1 and 2) don't measure that, though they do tell you something about the frequency of their use.
- b) It could be argued that performance indicator 3 reports about length of stay, however, there is no standard against which to measure CSC performance. The Mandela Rules have a standard of 15 days. We believe that this measure – the median number of days – hides considerably more than it reveals. Consider a finding from an earlier part of this report on the length of time in an SIU. It is reproduced in this table:

Table C1: Total days in SIU including those still in

	Frequency	Percent	Cumulative Percent
1 thru 5	752	20.1	20.1
6 thru 15	874	23.4	43.5
16 thru 31	606	16.2	59.8
32 thru 61	636	17.0	76.8
62 thru 552	866	23.2	100.0
Total	3734	100.0	

We grouped these data so that one can easily see the distribution of the lengths of time. If, over time, the proportion of stays of 62 days or more went up, we would know that SIU stays were getting longer. If the

proportion were to go down over time (from 23.2% to some lower proportion) we would know that there were fewer long stays.

The median of these data (when one does a frequency distribution of the ungrouped data) is 21 days. Hence CSC can legitimately and accurately say that the median length of stay in an SIU for those admitted to the SIU between November 2019 and November 2021 is 21 days. But, for example, if the 1000 prisoners with the longest SIU stays in this table were to have had stays which averaged 6 months longer than they were, the median – the score with 50% shorter stays and 50% longer stays – would still be 21 days, even though 1000 prisoners were spending 6 months longer. Similarly, if the 1000 longest stays in the next period of time did not exceed 35 days and nothing else changed, the median would still be 21 days. Simply put, this is an inadequate measure of length of stay.

- c) Performance indicator 4 may be useful but is also at least in part dependent on total use of the SIU. If, in a given region, SIU placements are very common and involve large numbers of not-very-difficult offenders, then the percent of repeat placements is likely to be low. If SIU placements are reserved for very difficult or complex prisoners, then they are likely to reappear in an SIU.
- d) We had difficulty understanding what performance indicator 5 means (i.e., how “subsequent” relates to “past”). But as with indicator 4 (discussed above), it would appear to relate at least as much to the mix of prisoners going to SIUs. Can one determine if SIUs live up to policy aspirations by counting the transfer of large numbers of “easy” prisoners?
- e) Performance indicators 6 through 9 are interesting for what they do not include. As pointed out earlier, the critical factor that separates SIU time from segregation and prolonged solitary confinement (defined as torture

under the Mandela Rules) is the amount of time that the prisoner gets out of the cell (and time involved in meaningful human contact). These indicators don't even mention the amount of time.

- f) The percent of accepted interventions is a bit meaningless unless one knows two things: (i) what interventions were offered, and (ii) what was done to make the intervention attractive (or unattractive) to the prisoner.
- g) Performance indicator 11 is quite interesting. Correctional Service of Canada (CSC) clearly is aware this is a problem as evidenced by a mid-2020 memo from a senior CSC employee indicating that there were 79 decisions to transfer the inmate out of the Structured Intervention Unit (SIU) that had not been effected.”⁴⁷

It is interesting to note that this performance measure – the time between the making of a legal decision and the implementation of that decision – was created due to the central importance of compliance with Independent External Decision-Maker (IEDM) decisions. But using the measure of “median” time might be seen as a conscious attempt to obscure this problem. In an earlier analysis (reported in the sections on IEDMs), we noted that of those who were ordered to be released by IEDMs, 35.3% had not been released within two months of the referral to the IEDM. This translates, we estimate, to mean that 35.3% of those ordered to be released from the SIU by the IEDM were still in the SIU a month after the IEDM had ordered the transfer. If the “median” were reported (estimated to be about 10-15 days after the IEDM decision), one might get the impression that the median described the data quite well. It doesn't.

⁴⁷ Source: House of Commons committee (SECU) website:
<https://www.ourcommons.ca/content/Committee/432/SECU/WebDoc/WD11469999/11469999/CorrectionalServiceCanada-2021-07-23-Part1-b.pdf>

Appendix D – SIU-IAP Member Biographies

Chairperson

Howard Sapers

Mr. Sapers, a prominent expert on effective and humane corrections management, previously served as the Correctional Investigator of Canada and an Independent Advisor to the Government of Ontario on corrections matters. He has also served as Vice-Chairperson for the Prairie Region of the Parole Board of Canada, Director of the Crime Prevention Investment Fund at the National Crime Prevention Centre, and as Executive Director of the John Howard Society of Alberta. Mr. Sapers is a past President of the Canadian Criminal Justice Association. He has served as a member of the Board of Directors of the Forum of Canadian Ombudsman and, between 2012 and 2016, was a North American Regional representative to the International Ombudsman Institute. Mr. Sapers is currently a Trustee on the Centre for Addiction and Mental Health's (CAMH) Board of Trustees. He is a Visiting Professor at the University of Ottawa's Department of Criminology, Adjunct Professor at Simon Fraser University's School of Criminology, and has been awarded an Honorary Doctor of Laws from the University of Ottawa.

Members

Ed Buller

Mr. Buller is a member of the Mistawasis First Nation in Saskatchewan. He has been the Executive Director of the National Association of Friendship Centres and the Native Canadian Centre of Toronto as well as President of Pedahbun Lodge, an Aboriginal substance abuse centre in Toronto.

While working at the federal Department of the Solicitor General, Mr. Buller was responsible for the development, implementation, and evaluation of the Aboriginal Justice Initiative's Corrections Initiative (1991-1996) and the Aboriginal Community Corrections Initiative (1996-2001), which were implemented as part

of the Federal Government's Strategy for Aboriginal Justice. Mr. Buller has also been Director of Aboriginal Policy with the Department of Public Safety. He is currently a board member of Crime Prevention Ottawa, Ontario's Quarter Century Club and is an Elder/Advisor to the Canadian Institute for Health Information as well as a resource, Elder and counsellor at the Royal Ottawa Hospital. Ed is a former member of Canadian Reference Group to the World Health Organization Commission on the Social Determinants of Health.

Anthony Doob

Dr. Doob is Professor emeritus of criminology and was a long-serving director of the Centre of Criminology at the University of Toronto. He has championed the place of empirical evidence in the development of policy for over 40 years, notably as a member of the Canadian Sentencing Commission, as a contributor to programs of the National Judicial Institute and as the founder and co-director of the University of Toronto's Criminological Highlights, a publication that provides an accessible look at recent high-quality research. Since 2009, Dr. Doob has been a fellow of the Royal Society of Canada's Academy of Social Sciences. He received the University of Toronto's Carolyn Tuohy 'Impact on Public Policy' award in 2011 and was awarded the Order of Canada in 2014 for his scholarship in the field of criminology and his role in shaping Canadian justice policy.

Ed McIsaac

Mr. McIsaac has been active in the Canadian criminal justice system for over four decades. He has worked with both government and non-government agencies to promote the recognition of offender human rights in correctional institutions. When he served as the long time Executive Director at the Office of the Correctional Investigator, he directed numerous reviews of segregation practices in federal penitentiaries across the country. He has authored scores of recommendations focused on improving Correctional Service of Canada's treatment of incarcerated individuals.

In 2009, Mr. McIsaac received the Public Service Award of Excellence recognizing an "outstanding career exemplifying the ethics, values and priorities of the Public Service of Canada." On his retirement, the Office of the Correctional Investigator established an award in his name to acknowledge annually those who "have demonstrated a lifelong commitment to improving Corrections and protecting the human rights of the incarcerated."

Mr. McIsaac has an undergraduate degree from Queen's University and a Master's degree in criminology from the University of Ottawa.

Farhat Rehman

Ms. Rehman co-founded Mothers Offering Mutual Support (M.O.M.S) in 2010, a support group for women who, like herself, have a son or a close relative in Canada's correctional systems. She has participated in advocacy efforts by speaking out publicly about her experiences as a mother of a son suffering from mental health challenges while incarcerated. Ms. Rehman represents M.O.M.S. on the Corrections Reform Coalition in Ontario, a group of over 20 agencies and groups advocating for reforms in Ontario's criminal justice system. She was the president of CCMW-Ottawa Chapter from 1995 to December 2020. The Canadian Council of Muslim Women (CCMW) focuses on women's equality, social justice, civic engagement, and gender justice for women.

Ms. Rehman has received several awards for her community work, including the Canadian Council of Women's Women Who Inspire Award in 2016, the Governor General's Meritorious Service Award in 2017, and the Ottawa Muslim Women's Organization's Community Service Award in 2019.

Janet Taylor

Mrs. Taylor began her 27-year career with CSC in 1988 prior to retiring in 2015. Over the course of this period, she held various positions which enabled her to gain a broad understanding of the organization's mandate and operations. Having a keen interest in working directly with the offender population, Mrs.

Taylor became a Parole Officer and eventually Manager of Assessment and Intervention (MAI). As the MAI, she chaired and coordinated the activities of the weekly Correctional Intervention Board and was the institutional liaison between the Parole Board of Canada and the Atlantic Institution, where she supervised the activities of the Indigenous Liaison Officer and Elder and worked closely with them and the Regional CSC Headquarters on implementing activities related to Indigenous initiatives.

Mrs. Taylor chaired the institutional Segregation Review Board and became a valuable and highly respected resource for the Wardens of Atlantic Institution on issues related to segregation and the initiatives to develop plans to reduce the segregated population. During her last few years at Atlantic Institution, she served as acting Assistant Warden of Intervention over various periods, while continuing her efforts to assist with the reduction of segregation cases.

Mrs. Taylor has a BA, majoring in Sociology with a minor in Psychology, from St. Thomas University in Fredericton, New Brunswick.

Johanne Vallée

Mrs. Vallée has a diverse background of experience, working not only in the community criminal justice sector, but also the broader public service. Over her 20-year career, she led the Association des services de réhabilitation sociale du Québec (association of rehabilitative services of Quebec). She was also Vice-President of the National Crime Prevention Council of Canada, Associate Deputy Minister of the Correctional services directorate in Quebec, Deputy Commissioner of women offenders and Deputy Commissioner for the Quebec region at Correctional Services Canada. She is currently Chair of the Joint Committee between peace officers in correctional services and the Ministry of Public Safety Quebec. She is also Vice-President of the Centre de pédiatrie sociale (Centre for social pediatrics) in Laval.

Mrs. Vallée has a sociology degree from the University of Ottawa and a Master's degree in criminology from the University of Montreal. In 2005, she received an award from the Faculty of Arts and Sciences of the University of Montreal for her career achievements. In 2012, she received the Queen Elizabeth II Diamond Jubilee Medal and in 2019, the Society of Criminology in Quebec gave her an award honouring her career achievements.

Margo C. Watt

Dr. Watt is a Full Professor of Psychology, and Coordinator of the Applied Forensic Psychology program at St. Francis Xavier University (StFX, Antigonish, NS). Dr. Watt is an Adjunct Professor at Dalhousie University (Halifax, NS), and Honorary Research Associate at the University of New Brunswick. As a registered clinical psychologist, Dr. Watt has provided professional services to the Correctional Service of Canada over the past 25 years, including forensic risk, specialized mental health, and complex case assessments.

She was the recipient of StFX's President's Research Award in 2009, Outstanding Teaching Award in 2013, and Jules Léger Research Chair (2017-2019). Her publications in Forensic Psychology include *Explorations in Forensic Psychology: Cases in Abnormal and Criminal Behaviour* (2014) and *Case Studies in Clinical Forensic Psychology* (Winter 2023).

Robert Seymour Wright

Mr. Wright is an African Nova Scotian Social Worker whose more than 30-year career has spanned the fields of education, child welfare, forensic mental health, trauma, sexual violence, and cultural competence.

A "clinician/academic/administrator," he has always integrated his work delivering direct practice clinical service to clients with teaching and supervising interns and promoting lasting systemic change through social policy advocacy. He teaches, consults, trains, speaks, and comments on a wide range of clinical, social policy and social justice issues. He has served in senior roles in child welfare

administration and as a civil servant in Nova Scotia and has been a sessional instructor on child and youth studies, education, counselling, social work, and criminology in various universities.

His extensive pro bono work gave birth to The Peoples' Counselling Clinic, a non-profit mental health clinic. He is the pioneer of Impact of Race and Culture Assessments (known as Enhanced Pre-sentence Reports in Ontario) and is leading a project to recruit and train assessors nationally.

References

Legislation

Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act, 1982 (UK), 1982, c 11.

Corrections and Conditional Release Act S.C. 1992, c.20.

Corrections and Conditional Release Regulations (SOR/92-620).

Jurisprudence

Brazeau v. Attorney General (Canada), 2019 ONSC 1888.

British Columbia Civil Liberties Association v. Canada (Attorney General), 2019 BCCA 228.

British Columbia Civil Liberties Association v. Canada (Attorney General), 2018 BCSC 62, 43 C.R. (7th) 1 (B.C. S.C.) [BCCLA, Trial Judgment].

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

Other Material

Addo, M. (2020). *Segregation in Canada and Other Western Democracies*, The Canadian Criminal Justice Association. Retrieved from <https://www.ccja-acjp.ca/pub/en/briefs-articles/segregation-in-canada-and-other-western-democracies-mark-addo/>.

Beaudette, J.N., Power, J., & Stewart, L. A. (2015). National prevalence of mental disorders among incoming federally sentenced men offenders (Research Report, R-357). Ottawa, ON: Correctional Service Canada.

Brown, G., Barker, J., McMillan, K., Norman, R., Derkzen, D., & Stewart, L. (2018). *National prevalence of mental disorders among federally sentenced women offenders: In custody sample* (R-406). Ottawa, ON: Correctional Service of Canada.

Centre for Addiction and Mental Health (2022). *Mental Illness and Addiction: Facts and Statistics*. Retrieved from <https://www.camh.ca/en/driving-change/the-crisis-is-real/mental-health-statistics>.

Canada, Commission of Inquiry Into Certain Events at the Prison for Women in Kingston (1995). Retrieved from <https://www.publications.gc.ca/site/eng/9.831714/publication.html>.

Canada, Parliament, House of Commons, Standing Committee on Public Safety and National Security, *Minutes of Proceedings and Evidence*, 43rd Parliament,

2nd Session. Document Submitted July 23 ,2021, Part 1, b. Retrieved from [https://www.ourcommons.ca/content/Committee/432/SECU/WebDoc/WD11469999/11469999/CorrectionalServiceCanada-2021-07-23-Part1-b.pdf](https://www.ourcommons.ca/content/Committee/432/SECU/WebDoc/WD1146999/11469999/CorrectionalServiceCanada-2021-07-23-Part1-b.pdf).

Canada, The Structured Intervention Unit Implementation Advisory Committee, *Preliminary Observations of the Operation of Correctional Service Canada's Structured Intervention Units* (26 October 2021). Retrieved from <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/2022-siu-iap/index-en.asp>.

Cloward, R. (1960). *Social Control in the Prison* as cited in Canada, Report on the Study Group on Dissociation (1975). Retrieved from <https://www.publicsafety.gc.ca/lbrr/archives/hv%209506%20g7%201975-eng.pdf>.

Correctional Service Canada, CD-711 Structured Intervention Units. Retrieved from <https://www.csc-scc.gc.ca/politiques-et-lois/711-cd-en.shtml>.

Correction Service Canada, CD-702 Indigenous Offenders. Retrieved from <https://www.csc-scc.gc.ca/lois-et-reglements/702-cd-eng.shtml>.

Correctional Service Canada. *Structured Intervention Units*. Retrieved from <https://www.csc-scc.gc.ca/acts-and-regulations/005006-3000-en.shtml>.

Correctional Service Canada. *Overview: Structured Intervention Units*. Retrieved from <https://www.csc-scc.gc.ca/acts-and-regulations/005006-3002-en.shtml>.

Correctional Service Canada. (2022). *Status Report on Administrative Segregation*. Retrieved from <https://www.csc-scc.gc.ca/acts-and-regulations/005006-3000-en.shtml>.

Correctional Service Canada (2022). CSC Structured intervention Units – Construction Project Completion – Executive Dashboard Last updated:2022-05-10, document submitted to the IAP on May 24, 2022.

Correctional Service Canada (2021). *Characteristics of Federal Offenders in Structured Intervention Units, the Mainstream Population and Administrative Segregation*. Research in Brief No RIB-21-13. Retrieved from <https://www.csc-scc.gc.ca/research/005008-rib-21-13-en.shtml>.

Correctional Service Canada. (2017). *Comorbid mental disorders: Prevalence and impact on institutional outcomes* (Document No. R-379) [Research brief]. <https://www.csc-scc.gc.ca/005/008/092/r-379-eng.pdf>.

Correctional Service Canada. (2016). Status Report on Administrative Segregation. Retrieved from <https://www.csc-scc.gc.ca/publications/005007-2540-eng.shtml>.

Doob, A & Sprott, J. (2020). *Understanding the Operation of Correctional Service Canada's Structured Intervention Units: Some Preliminary Findings*. Retrieved from <https://www.crimsl.utoronto.ca/news/reports-canada%E2%80%99s-structured-intervention-units>.

Haney, Craig: "The Psychological Effects of Solitary Confinement: A Systematic Critique." *Crime and Justice: A Review of Research* (Michael Tonry, Editor). Volume 47. University of Chicago Press, 2018.

Kerr, L. "The Chronic Failure to Control Prisoner Isolation in US and Canadian Law" (2015A) *Queen's Law Journal*, Vol. 40, No. 2, 483–530.

Kerr, L. "The Origins of Unlawful Prison Policies" (2015B) *Canadian Journal of Human Rights*, Vol. 4, No. 1, 91–119.

Mental Health Commission of Canada (MCCC, 2017). The Mental Health Needs of Justice-Involved Persons A Rapid Scoping Review of the Literature Office of Correctional Investigator (May 28, 2015) Administrative Segregation in Federal Corrections 10 Year Trends. Retrieved from <https://www.oci-bec.gc.ca/cnt/rpt/oth-aut/oth-aut20150528-eng.aspx?texthighlight=segregation>.

Segregation in Canada and Other Western Democracies (Mark Addo, May 6, 2020; The Canadian Criminal Justice Association).

Sprott, J., Doob, A., Iftene, A. (2021). *Do Independent External Decision Makers Ensure that "An Inmate's Confinement in a Structured Intervention Unit Is to End as Soon as Possible"?* Retrieved from <https://www.crimsl.utoronto.ca/news/reports-canada%E2%80%99s-structured-intervention-units>.

Sprott, J. & Doob, A. (2021). *Solitary Confinement, Torture, and Canada's Structured Intervention Units*. Retrieved from <https://www.crimsl.utoronto.ca/news/reports-canada%E2%80%99s-structured-intervention-units>.

Sprott, J. & Doob, A. (2020). *Is there clear evidence that the problems that have been identified with the operation of Correctional Service Canada's "Structured Intervention Units" were caused by the COVID-19 Outbreak? An examination of data from Correctional Service Canada*. Retrieved from <https://www.crimsl.utoronto.ca/news/reports-canada%E2%80%99s-structured-intervention-units>.

Stewart, M. J., & Watt, M. C. (2014). *Substance use and mental health problems among Canadian women offenders*. Canadian Psychological Association (CPA) newsletter, *Psynopsis, Special Issue: Criminal Justice and Mental Health*, 36(1), 14-16.

Summary of Evaluation of CSC's Health Care Services (2015) <https://www.csc-scc.gc.ca/publications/005007-2018-eng.shtml>.

United Nations Office on Drugs and Crime. The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). Retrieved from https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf.

Wang, J. et al. (2017). Public Expenditures for Mental Health Services in Canadian Provinces: Dépenses publiques pour les services de santé mentale dans les provinces canadiennes. *The Canadian Journal of Psychiatry*, 63, 250–256.

Webster, C. (2015). *On the Willful Induction of Mental Disorder*. See https://www.csc-scc.gc.ca/research/forum/e02*3/e023j-eng.shtml.