

# Response by the Minister of Public Safety and Emergency Preparedness

led by (Minister or Parliamentary Secretary): JOËL LIGHTBOUND, M.P.

In November 2019, the *Corrections and Conditional Release Act* (CCRA) was amended to implement a new Structured Intervention Unit (SIU) model and abolish the use of administrative disciplinary segregation in all federal correctional institutions. ~~This new model is fundamentally different~~<sup>1</sup> from the previous model and constitutes a historic transformation of the federal correctional system. SIUs are meant as a ~~temporary measures~~<sup>2</sup> and are intended to address the needs of inmates and provide them with the opportunity to engage in targeted interventions and programs to support their safe return to a mainstream inmate population as quickly as possible. ~~Although COVID-19 has created unique challenges throughout the federal correctional system, including the Government and the Correctional Service of Canada (CSC) are strongly committed to the successful implementation of this new model, both during and after the pandemic.~~

Under the law, inmates in an SIU ~~must be provided with the opportunity to spend a minimum of four hours a day outside of their cell, and two hours of meaningful human contact through~~

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<sup>1</sup> There is little indication this model is “fundamentally different” from administrative segregation. A recent report from Dr. Doob and Dr. Sprott found that 10% of prisoners qualify as being tortured by the Minister of Public Safety Bill Blair accepted this finding before the House of Commons Standing Committee on Public Safety. Former Minister of Public Safety, Ralph Goodale, conceded that the physical infrastructure of Structured Intervention Units are virtually indistinguishable from segregation. Minister Goodale maintained that the change was still substantive: “What makes segregation substantive is not the physical cell; it is the lack of human contact. It is the isolation.” Yet, 79% of inmates in an SIU did not get their full four hours out of their cell at least half the days of their stay, which is not a “substantive” change.

services,<sup>5</sup> upon request.

~~SIU model responds to obligations under Canadian law~~<sup>6</sup>. Many safeguards specified in  
a's legislation were guided by international sources, such as the ~~Mandela Rules~~<sup>7</sup>. The  
~~the requirement for enhanced health care monitoring and empowering health care~~  
~~prisoners to make recommendations on an inmate's conditions of confinement.~~<sup>8</sup> The SIU  
was purpose-built to monitor and minimize situations where inmates are spending too

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mentioned, while we do not have records of what programs had been offered to SIU prisoners or  
might have been declined, the Doob/Sprott evidence shows 79% of prisoners in an SIU did not  
all four hours out of their cell at least half the days of their stay. 56% of SIU stays fail to get 2  
hours of their cell for meaningful human contact.

at Institute in BC, a legal aid clinic was shut down by prison management. Three prisoners  
filed national-level grievances in March 2020 regarding the cancellation of the legal clinic, but  
no response to these grievances has been received. Two of the three advised that they have not even received  
confirmation of receipt of the grievance. Prisoners in the SIU regularly report that they were not told of their  
legal rights upon admission. Four days after the opening of Kent's SIU, Kent staff informed  
Prisoners Legal Service, in British Columbia, that they would no longer give prisoners messages to  
their legal representatives. Kent administration also refuse to tell legal counsel at Prisoners Legal Service  
the date and time of the SIU review hearing. At John Howard Canada, we repeatedly try to connect with  
prisoners, but remain unable to do so.

As far as prisoners in SIUs are held in solitary confinement as defined by the Mandela Rules beyond  
15 consecutive days (195 such prisoners identified by the Doob/Sprott data) or are not provided with  
timely, early independent reviews of their placements in such conditions, the Charter protections  
established in the BC and Ontario Court of Appeal decisions relating to administrative segregation are  
violated in contravention of Canadian Law.

In line with the Nelson Mandela rules, 28% of SIU stays are classified as solitary confinement and  
classified as torture. According to Rule 43 and Rule 44 of the Mandela Rules, prolonged solitary  
confinement should not be used for a period of 15 days straight or more. As mentioned in Note 2, one  
prisoner has spent 454 days straight in an SIU. Further, Mandela Rule 45(1) states that prisoners with  
physical disabilities, or conditions that would be exacerbated by solitary confinement, not be subjected  
to solitary confinement. CSC violates this rule by placing prisoners with mental health needs in solitary

respect to the Optional Protocol to the Convention against Torture, work is ongoing on this key and important treaty. Federal, provincial and territorial government officials have been actively assessing options for implementation, by studying the approaches taken in various countries that have already implemented the Optional Protocol. To date, the consideration process has involved two rounds of consultations led by Justice Canada, in 2016 and 2017, with Provincial and Territorial governments, and also within the Government of Canada. ~~While significant progress has been made,~~<sup>10</sup> there is a range of policy and implementation issues and additional consultations that remain to be undertaken in the future.

~~were 181 inmates in Structured Intervention Units (SIUs) on May 13, 2021, which represents 1.5% of federal inmates in Canada.~~<sup>11</sup>

SIUs are in place at 15 of our 43 institutions. Inmates can only be transferred to an SIU if they meet one of the three criteria in section 34 (1) of the *Corrections and Conditional Release Act*: if there are no other reasonable alternatives to placement in a SIU. SIUs are meant as a ~~temporary measure~~<sup>12</sup> to help inmates adopt more positive behaviours that keep the institutions safe and secure.

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In practice, the SIU system has admitted data integrity problems and is failing to prevent about 10% of inmates placed in them from experiencing prohibited, prolonged solitary confinement: [Feb 2021 Sprott Report](#). [The more recent Doob/Sprott/Iftene Report](#) confirms that the independent-external monitor provisions are not adequate to protect prisoners from long confinement in SIUs. What "significant progress" has been made? After nearly no political traction, the Canada OPCAT closed its doors in April 2021. Canada OPCAT noted that, after years of advocacy, no progress has been made on this now ["dormant policy file."](#) For context, [Afghanistan, South Sudan and most](#)

the transferring an inmate to a SIU, ~~every possible reasonable alternative is explored.~~<sup>14</sup>  
alternatives include, but are not limited to, a transfer to a different unit or range with the  
involvement of the Inmate Committee or the range representative, mediation or  
informal resolution, transfer to another institution or a regional treatment centre, involvement  
of individuals who have influence over the inmate, such as an Elder, Chaplain or Indigenous Liaison  
Officer.

It is important to note that support for inmates is not a “one-size fits all approach” and involves  
addressing difficult and complex situations. For example, inmates with complex health care needs  
often require interdisciplinary teams to work with them. While some cases can resolve quickly  
through informal resolution, others take time, and require ongoing care and steady work to  
ensure inmates safely ~~reintegrate within mainstream population.~~<sup>15</sup>

## Health Services

~~In 24 hours of their transfer to an SIU, an inmate is referred to Health Services for an  
assessment of their health, including mental health, which is repeated every 14 days.~~

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WITNESS BY ANOTHER NAME: Prisoners in SIUs are often there because of behaviours caused by  
mental health difficulties (i.e. symptoms of PTSD include being on-edge due to feelings that other  
prisoners or corrections officers could attack them at any moment). Many people in SIUs are those with  
pre-existing mental health difficulties, and they are more likely to end up in SIUs and spend more time  
there than if their mental needs were addressed.

WITNESS BY ANOTHER NAME: A prisoner at Kent Institution SIU who is certified under the  
*Mental Health Act* was kept in the SIU for months after being transferred from a CSC treatment centre.  
At a stakeholder meeting, the issue was raised that prisoners lack real alternatives to SIUs other than  
transfer to maximum security. Such alternatives could be transfer to a lower security level, healing lo-

should not remain in the SIU or that the inmate's conditions of confinement should be improved. If the inmate's conditions of confinement do not improve, the registered health care professional will make a recommendation in writing to the institutional head. The institutional head must make a decision as soon as practicable. If the institutional head does not implement the recommendation, the case is referred to the Health Services Review Committee, which is chaired by the Assistant Commissioner of Health Services.

## External Oversight Mechanism

Through the establishment of an external oversight mechanism, the CCRA provides a critical check and balance. ~~Although CSC maintains its own internal protocols and review processes for SIU cases, Independent External Decision Makers (IEDMs) across the country operate at arm's length from CSC to provide decision-making oversight of an inmate's conditions and duration of confinement in a SIU.~~<sup>17</sup> IEDMs monitor and review inmate cases on an ongoing basis and make recommendations and decisions to CSC.

IEDM review occurs under the following conditions:

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MENTAL ILLNESS BY ANOTHER NAME The individual mentioned in note 9 requested a psychological assessment multiple times but did not receive one. He continued to spend months in the SIU, waiting to be transferred to another region. Another prisoner at Kent Institution SIU had not seen anyone from mental health services since he arrived. He is borderline schizophrenic and had submitted a request to see a psychologist from mental health services but no one came to see him. Some prisoners also reported that when mental health care staff do their daily rounds, they are escorted by security staff, which makes it intimidating and undermines doctor-patient confidentiality.

Independent External Decision Makers Ensure that "An Inmate's Confinement in a Structured Intervention Unit Is to End as Soon as Possible"? CSC has tried to emphasize two independent oversight mechanisms (IAP and IEDM). IAP did not exist as of May 9 2021 and even when it was operational, it was deemed that it could not operate, as CSC refused to comply with information requests. IEDM decisions are made by a panel of three IEDMs, one from each province, and one from the federal government.

An inmate has been confined in an ISU for 90 consecutive days (and every subsequent days).

## Conditions of Confinement

~~An inmate has not received a minimum of four hours per day out of their cell, or at least two hours of interaction with others, for five consecutive days, or 15 cumulative days in a 30-day period.~~<sup>18</sup>

If the IEDM finds that CSC has taken all reasonable steps in the above determination in the last 10 consecutive days the inmate has not received these opportunities, the IEDM must determine whether the inmate should remain in the SIU.

## Health care

~~If the Health Committee~~<sup>19</sup> determines that an inmate's conditions of confinement in a structured intervention unit should not be altered in accordance with a recommendation of a registered health care professional, the IEDM must determine whether the inmate should remain in the unit or whether the inmate's conditions of confinement in the unit should be altered.

~~Each~~<sup>20</sup> must, in all circumstances, order that the conditions of confinement in the SIU to be altered. ~~Each~~

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days without an opportunity for meaningful human contact and without four hours outside of a cell. This is a blatant violation of the UN's *Nelson Mandela Rules* 43 and 44. It also violates section 36 1 (a) and 36 1 (b) of the *Corrections and Conditional Release Act*.

Health care professionals are to act in the best interest of the patient. The Health Committee is contracted with CSC. As per Rule 25 (2) of the Nelson Mandela Rules, health care professionals must have full clinical independence so as to ensure the well-being of the patient remains top of mind. As the example of Dr. Arley shows, health professionals on contract with CSC may face obstacles to speaking freely.

~~significant work, rendering more than 1,400 binding decisions.~~<sup>22</sup>

~~dition to the important role played by IEDMs, the Office of the Correctional Investigator  
ains broad oversight of federal corrections and is empowered by the CCRA to investigate  
erations and decisions of CSC,<sup>23</sup> including those related to SIUs. Further, several ext  
s prepared by academics have provided valuable insight into the operation of SIUs.<sup>24</sup>~~

ary

~~the implementation of the Structured Intervention Units on November 30, 2019, there  
eantly fewer inmates in SIUs than in the former model.<sup>25</sup> This shows that many effort  
made to proactively manage inmates within a mainstream population and use of SIUs  
sort. Five years ago, in March 2016 there were 454 inmates in administrative segregation  
red to 182 inmates in SIUs across the country on May 5, 2021. During 2015-16, there  
5,788 admissions to administrative segregation whereas the total number of authorizat  
nsfer to an SIU that started between April 1, 2020 and March 31, 2021 was 2,267.<sup>26</sup>~~

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identities of the IEDMs have never been disclosed. Therefore, there is no way to ascertain the  
y of this statement. [According to a recent ATIP](#), CSC does not know the identity of their IED  
puzzling as they receive and, allegedly implement, their decisions.  
incredibly concerning that the IEDMs were required to render 1,400 decisions in two years si  
re CSC's legislative compliance.

Correctional Investigator has noted "[blatant evidence of non-compliance](#)." He has provided  
mendations, which, [CSC has repeatedly rebuffed](#). Dr Zinger notes ""There's noncompliance,  
istency [in the law], and I think at one point you've got to concede defeat and bring in new  
tion that would be more helpful." He noted his office was not consulted on Bill C-83 and the  
uent scheme which is "puzzling at best."

[Doob, Spratt and Iftene have noted torture is occurring inside SIUs](#). Despite [repeated outcry](#) t  
[ed academics](#), no measures have been taken in response.

29 to address ~~some~~<sup>30</sup> of the trends and regional differences identified through our data of external academics and stakeholders. ~~With respect to data, CSC also has a dedicated team that is currently working to improve the integrity, timeliness and quality of data.~~<sup>31</sup> In addition, CSC has gathered best practices and is sharing them across the country.<sup>32</sup> This helps to target common challenges to support frontline operations. Regular meetings and town halls take place with regions to build on lessons learned and determine additional improvements needed.

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Doob & Spratt have repeatedly emphasized that 89% of SIU prisoners pursue opportunities for meaningful human contact (on 50% or more of their days in the SIU). The question remains whether the remaining 11% of individuals are concerned for their safety when offered these opportunities. Again, if stakeholder groups cannot access these individuals, we cannot make any determination on this matter. John Howard Canada has repeatedly offered to provide meaningful human contact to prisoners in the midst of the pandemic, we repeatedly offered to provide meaningful human contact by video so as to keep everyone safe. Not a single prisoner has been able to contact us. Despite this, on several occasions, CSC has publicly thanked John Howard Canada and other stakeholder groups, for their work with SIU prisoners. As noted above, **we have been unable to engage with even a single prisoner.**

What action has been taken? To stakeholders' knowledge, no action whatsoever has been taken. What are the trends? To stakeholders' knowledge, no action whatsoever has been taken. CSC refused to release data to federally-appointed experts. Minister Blair then ordered CSC to release the data. Following this, data integrity issues emerged. Based on documents provided to the Parliamentary Committee on Public Safety, CSC was aware of data integrity issues as early as January 2020. As data integrity issues persist. As a CSC presentation from November 2020, notes in bold "[an...]



~~respect to body cameras, CSC is not currently exploring their use at this time.~~<sup>34</sup>

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for signature

ber 16, 2020, at 2:07 p.m. (EDT)

for signature

5, 2021, at 2:07 p.m. (EDT)

ted to the House of Commons

l Garrison (Esquimalt—Saanich—Sooke)

2, 2021 (Petition No. 432-00953)

ment response tabled

~~3, 2021~~<sup>35</sup>

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er first meeting with Stakeholders on June 17-18, 2021, Commissioner Kelly noted that 26% of prisoners will be released on statutory release within 6 months of serving time in an SIU. To many of the Correctional Law community, the choice of the word “safe” to describe this practice is concerning. Over the past seven years, [a video recently emerged of seven CSC guards assaulting a Black prisoner with a baton](#). According to the media, [Commissioner Kelly determined no corrective action was warranted](#). Our concern is not that CSC has explored the use of body cameras. Our concern is that CSC