

SYSTEMIC INVESTIGATION UPDATE

Report on the implementation of recommendations from

ALONE:

The prolonged and repeated isolation of youth in custody




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The Ombudsperson has a broad mandate to investigate complaints involving provincial ministries; provincial boards and commissions; Crown corporations; local governments; health authorities; colleges and universities; schools and school boards; and self-regulating professions and occupations. A full list of authorities can be found in the *Ombudsperson Act*. The Office of the Ombudsperson responds to approximately 8,000 enquiries and complaints annually.

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A photograph of a forest path with a text overlay. The path is made of dirt and fallen leaves, winding through a dense forest of tall, thin trees. The ground is covered in green moss and fallen leaves. The text is white and bold, set against a dark blue background that is semi-transparent over the forest image.

Our office is located on the traditional lands of the Lək'wəŋən (Lekwungen) People and ancestors and our work extends across the homelands of the First Nations Peoples within what we now call British Columbia. We honour the many territorial keepers of the lands and waters where we work.

Content Warning

This report discusses topics related to separate confinement and use of force in youth custody that may be upsetting for some people. For those who have been involved in the criminal justice system, the content of this report may trigger memories of traumatic personal experiences or experiences of family or friends.

This report examines how separate confinement is used in youth custody and discusses recommendations to significantly reduce the separate confinement of youth and to support the trauma-informed and culturally safe care of youth in custody. However, the content may trigger unpleasant feelings or thoughts of past abuse.

If you require emotional support, you can contact:

BC Crisis Centre

Phone 1-800-784-2433 or chat online at <https://www.crisislines.bc.ca/>

Hope for Wellness Helpline

Toll-free at 1-855-242-3310 or through <https://www.hopeforwellness.ca/> for First Nations, Métis and Inuit people who require emotional support

KUU-US Crisis Line

Available 24/7, toll-free, at 1-800-588-8717 for Indigenous people in BC (for more information, go to <https://www.kuu-uscrisisline.com/>)

Métis Crisis Line

Available 24/7, toll-free, at 1-833-MétisBC (1-833-638-4722)

Acknowledgment of youth

We acknowledge the young people who are and have been in custody, especially those who have experienced and survived the harms caused by separate confinement. We have learned from their experiences and we hope that telling part of their stories in this report will help other youth avoid the psychological harms caused by separate confinement and other forms of physical and social isolation.



OMBUDSPERSON
BRITISH COLUMBIA

April 2024

The Honourable Raj Chouhan
Speaker of the Legislative Assembly
Parliament Buildings
Victoria BC V8V 1X4

Dear Mr. Speaker,

It is my honour to present the Ombudsperson's Special Report No. 56, *Systemic Investigation Update: Report on the Implementation of Recommendations from Alone: The Prolonged and Repeated Isolation of Youth in Custody*.

The report is presented pursuant to section 31(3) of the *Ombudsperson Act*.

Yours sincerely,

Jay Chalke
Ombudsperson
Province of British Columbia

FROM THE OMBUDSPERSON

Almost three years ago, I released a report with troubling findings about how separate confinement was being used in youth custody centres in BC.

Our 2021 report, *Alone: The Prolonged and Repeated Isolation of Youth in Custody*, examined each instance of separate confinement in youth custody over a three year period from 2017-2019, the longest of which were for 31, 41 and 47 consecutive days. One youth was separately confined for 78 days over an 81 day period. Our 2021 report highlighted concerns such as:

- prolonged isolation was most commonly used in responding to suicidal or self-injuring youth
- prolonged isolation periods were experienced almost exclusively by Indigenous and racialized girls
- separately confined youth had limited and inconsistent access to educational, mental health and cultural supports
- in several cases youth were subject to repeated use of force and forcible removal of clothing

By their nature, custody centres are closed environments where little is known publicly about their operations. Youth in custody who are further isolated through separate confinement are placed very far out of the sight of justice. Protecting the rights of these youths is challenging but extraordinarily important.



Today, some youth in BC continue to be separately confined for prolonged periods of time, and Indigenous youth continue to be disproportionately exposed to the risk of psychological harm caused by this ongoing practice.

Our 2021 report contained 26 recommendations made to the Ministry of Children and Family Development. The ministry was clear in its commitment; the then-minister stated “...I and MCFD are in agreement with the spirit and intent of the report’s findings, that we will endeavour to implement every recommendation in your report and, if there are any that we cannot implement through the means you have described, we will achieve the goal and intent of that recommendation.” The minister’s response then detailed specific commitments including timing for implementation.

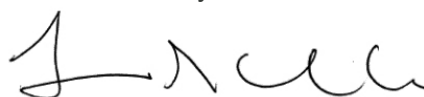
The main difference between the ministry's commitments and our recommendations involved the speed of implementation. The ministry gave itself longer to implement, which, in my view, represented a failure to recognize the urgency of the matters at hand. However, as this report reveals, the ministry has failed to meet even those extended timelines it allowed for itself.

Unfortunately, many of those recommendations remain unaddressed and, in some respects, the ministry has moved backwards from the position it adopted after the 2021 report. It has become less open to sharing information that would improve oversight of separate confinement. This can be seen in its lack of progress on key recommendations about conducting external inspections and an independent review of the use of force, sharing information about the use of separate confinement with the Public Guardian and Trustee and Representative for Children and Youth, and publishing meaningful data about its use of separate confinement. And, most concerning, I am disappointed by the ministry's lack of progress towards law and policy reform that will protect the vulnerable youth in its care.

I am deeply concerned that nearly three years later, the ministry has not made this work a priority and continues to subject youth – especially Indigenous youth – to the risk of serious harm from separate confinement.

I am calling on the ministry to account for its delay in meaningfully implementing the recommendations. I am also calling on the ministry to do better. Although there are fewer youth in custody now than in 2021, this should make system transformation easier, not harder. For these youth, the potential for harm is so significant that change cannot wait any longer.

Yours sincerely,



Jay Chalke
Ombudsperson
Province of British Columbia

INTRODUCTION

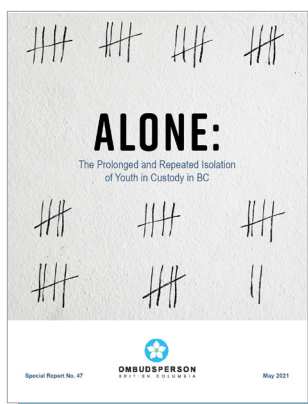
One of the ways in which the Office of the Ombudsperson can effect change in the fair administration of government programs is by making recommendations. Our recommendations result from investigative findings of unfairness. In other words, when our investigation highlights a problem in fair administration, our recommendations aim to fix that problem. Our recommendations may involve individual remedies or systemic change, and often contain timelines by which we expect an authority to have made the change.

Once a report is released publicly, we begin monitoring the implementation of the recommendations by the authority. We collect information from the authority about the steps they have taken to implement

the recommendations. We expect the authority to provide us with specific, relevant and verifiable information about its implementation steps – a general commitment to act is not sufficient. We then assess this information to determine whether, in our view, the recommendation is fully implemented. While some recommendations may be implemented quickly, others may be implemented over time. As part of this monitoring commitment, we issue periodic updates on specific reports and their recommendations. In this monitoring report, we identify the stage of implementation for each recommendation as fully implemented, partially implemented, implementation ongoing, and no progress.

ALONE REPORT AND RECOMMENDATIONS

The practice of isolating young people in custody – known in BC as “separate confinement” – is authorized by the provincial *Youth Justice Act* and *Youth Custody Regulation*. The practice carries significant risk of psychological harm to the youth who are subject to it.¹



We released *Alone: The Prolonged and Repeated Isolation of Youth in Custody* in June 2021.² The report was the product of a comprehensive investigation into the use of separate confinement at the

two youth custody centres in BC, located in Burnaby and Prince George. What we found in our investigation was troubling. While the number of instances of separate

confinement had declined overall from 2017 to 2019, the average duration of separate confinement increased three-fold at Burnaby Youth Custody Services Centre. When we took a closer look at who was separately confined, we found that Indigenous youth were separately confined more frequently and for longer than other youth. We found that prolonged periods of separate confinement – those over 72 hours – were most often used to respond to youth who were self-injuring or suicidal. These prolonged periods of separate confinement in response to self-injury were experienced almost exclusively by female youth and mostly by Indigenous and racialized female youth.

We found that the conditions in which youth were separately confined were unsafe and dehumanizing. Separate confinement was often accompanied by the repeated use of force, including forced clothing removal.

¹ The central harmful feature of isolation in custody is that it “reduces meaningful social contact to a level that many will experience as insufficient to sustain health and well-being.” UN General Assembly, *Interim Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, UN General Assembly Official Records, 63rd Session, UN Doc A/63/175 [2008] <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N08/440/75/PDF/N0844075.pdf?OpenElement>, cited in *British Columbia Civil Liberties Association v. Canada (Attorney General)*, 2019 BCCA 228, para. 73. Statement adopted by a working group of 24 international experts at the International Psychological Trauma Symposium, Istanbul.) This social isolation is known to cause significant, sometimes irreversible, psychological harms, which can include “such clinically significant symptoms as hypertension, uncontrollable anger, hallucinations, emotional breakdowns, chronic depression, and suicidal thoughts and behavior.” (Craig Haney, “Mental Health Issues in Long-Term Solitary and ‘Supermax’ Confinement,” *Crime and Delinquency* 49, no. 1 [January 2003]: 131, www.gwern.net/docs/psychology/2003-haney.pdf. The UN Special Rapporteur on Torture lists the effects of solitary confinement as including anxiety, depression, anger, cognitive disturbances, perceptual distortions, paranoia and psychosis, and self-injury. (UN General Assembly, *Interim Report of the Special Rapporteur of the Human Rights Council*, 66th Session, 26–27).

² Our original report *Alone: The Prolonged and Repeated Isolation of Youth in Custody*, is available on our website, at https://bcombudsperson.ca/investigative_report/alone-the-prolonged-and-repeated-isolation-of-youth-in-custody/.

These measures diminished the youth's sense of autonomy and privacy, and it is very likely that they retraumatized youth who had significant, known, histories of trauma. Youth had limited and inconsistent access to mental health support, schooling and other programs. Youth did not have effective access to cultural or spiritual supports. Not surprisingly, youth struggled in this environment, and their isolation contributed to a deterioration of their mental health over time.

The decisions by ministry staff to separately confine these youth – and the ways in which they were treated during their isolation – reflected a profound gap between the ministry's policy commitment to trauma-informed practices and the lived reality of youth in custody. Moreover, the review and approval processes set out in the governing regulation did not limit the prolonged and repeated isolation of these youth. We found that there was insufficient oversight of youth custody to safeguard against the risk of serious harm to youth.

Our 2021 report made 26 recommendations to the Ministry of Children and Family Development, focusing on four key areas:

- **Reducing inequities and disparate outcomes for Indigenous youth** - We recommended that the ministry ensure that Indigenous youth in custody are not disproportionately harmed by the use of separate confinement, that their social histories are taken into account by custody staff in making decisions, and that culturally safe supports are provided.
- **Improving mental health care and trauma informed practice** - We recommended that the ministry establish meaningful alternatives to isolation to respond to youth in crisis and with complex mental health needs.

The ministry accepted all of the recommendations in our report, and we have been monitoring the ministry's implementation since 2021. When it accepted the recommendations, the ministry indicated it preferred implementation timelines that were considerably longer rather than the more urgent call to action embodied in our recommendations. Throughout this report, we have included the implementation timelines we originally established in our recommendations, as well as the much longer timelines proposed by the ministry. We note, however, that in many cases the ministry has failed to meet even those longer timelines for implementation.

Based on our assessment of the ministry's actions to date, we are concerned that the ministry has not made this work a priority and continues to subject youth, and especially Indigenous youth, to risk of serious harm.

As this report highlights, there is significant work ahead to ensure that the systemic issues we identified in our report are fully addressed.

THE CURRENT CONTEXT OF YOUTH CUSTODY IN BRITISH COLUMBIA

United Nations Declaration on the Rights of Indigenous People and the *Declaration Act*

The assessment provided in this monitoring report occurs within the context of the ministry's efforts to transform child and family services and systems in accordance with the government's broader commitment to reconciliation through the *Declaration on the Rights of Indigenous Peoples Act (Declaration Act)*.³ In her letter of commitment to the First Nations Leadership Council dated August 31, 2021, the minister at the time, the Honourable Mitzi Dean, wrote "The key goal of this transformation is to eliminate all forms of colonialism, discrimination, and denial of the right of Indigenous people from child and family service laws and policies in British Columbia and to support First Nations to resume jurisdiction over children and families."⁴ The minister indicated that the ministry's priority was to align its governing legislation with the United Nations Declaration on the Rights of Indigenous People as required under section 3 of the *Declaration Act*, through a modernization of statutes, beginning with the *Child, Family and Community Service Act*.

The ministry told us that as part of this broader transformation it intends to co-develop a new Youth Justice Service Framework⁵ and that it has been "meeting with key Indigenous leadership on an approach to the broader engagement" it is planning for the new service framework. The ministry first indicated a target date of December 2023 for the completion of its new framework, and has since extended this date to September 2024.

In response to many of our recommendations, the ministry has explained that in accordance with the *Declaration Act* it is committed to working directly with First Nations, Métis and Inuit people in the co-development of legislation, policy and programming. It has told us that its first step in implementing many of our recommendations is to engage with Indigenous rights and title holders, the BC First Nations Justice Council and Métis Nation BC to discuss the recommendations made in *Alone* and incorporate their feedback into its new youth justice service framework. The ministry provided a proposed meeting schedule for those discussions but has not provided us with

³ *Declaration on the Rights of Indigenous Peoples Act*, S.B.C. 2019, c. 44, <https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/19044>.

⁴ Ministry of Children and Family Development (MCFD), "Letter of Commitment to First Nations Leadership Council," August 31, 2021, https://www2.gov.bc.ca/assets/gov/family-and-social-supports/children-teens-with-support-needs/letter_minister_dean_mcfd.pdf.

⁵ MCFD, "Youth Justice Service Framework," <https://www2.gov.bc.ca/gov/content/family-social-supports/data-monitoring-quality-assurance/reporting-monitoring/mcfd-transformation/youth-justice-service-framework>.

further details confirming whether relevant recommendations made in *Alone* were discussed. We are concerned that despite its stated commitments, the ministry has not meaningfully consulted or substantively engaged with BC First Nations Justice Council, Métis Nation BC, or individual First Nations on the implementation of specific recommendations made in *Alone* that concern the well-being of Indigenous youth in custody.

We are encouraged by the ministry's commitment to consult with Indigenous leadership and communities to determine the best way forward. This is critically important. However, we remain concerned that the ministry has failed to act with the urgency required to safeguard against serious harms, which are experienced disproportionately by Indigenous youth. We note that when *Alone* was released, the First Nations Leadership Council highlighted the need for urgency in the ministry's response:

We demand immediate and concrete actions and accountability, and that the recommendations outlined in this report be given the urgent attention and commitment they warrant. We are concerned by specific responses by the Ministry of Children and Family Development to several of the recommendations in the report that indicated delayed implementation due

to a need to engage with Indigenous peoples and governments. We reject the insinuation that legal safeguards to protect the rights of our children will be delayed by the Minister upholding her legal requirements under the *Declaration Act* and demand immediate engagement and consultation with First Nations leaders and the BC First Nations Justice Council to address these concerns.⁶

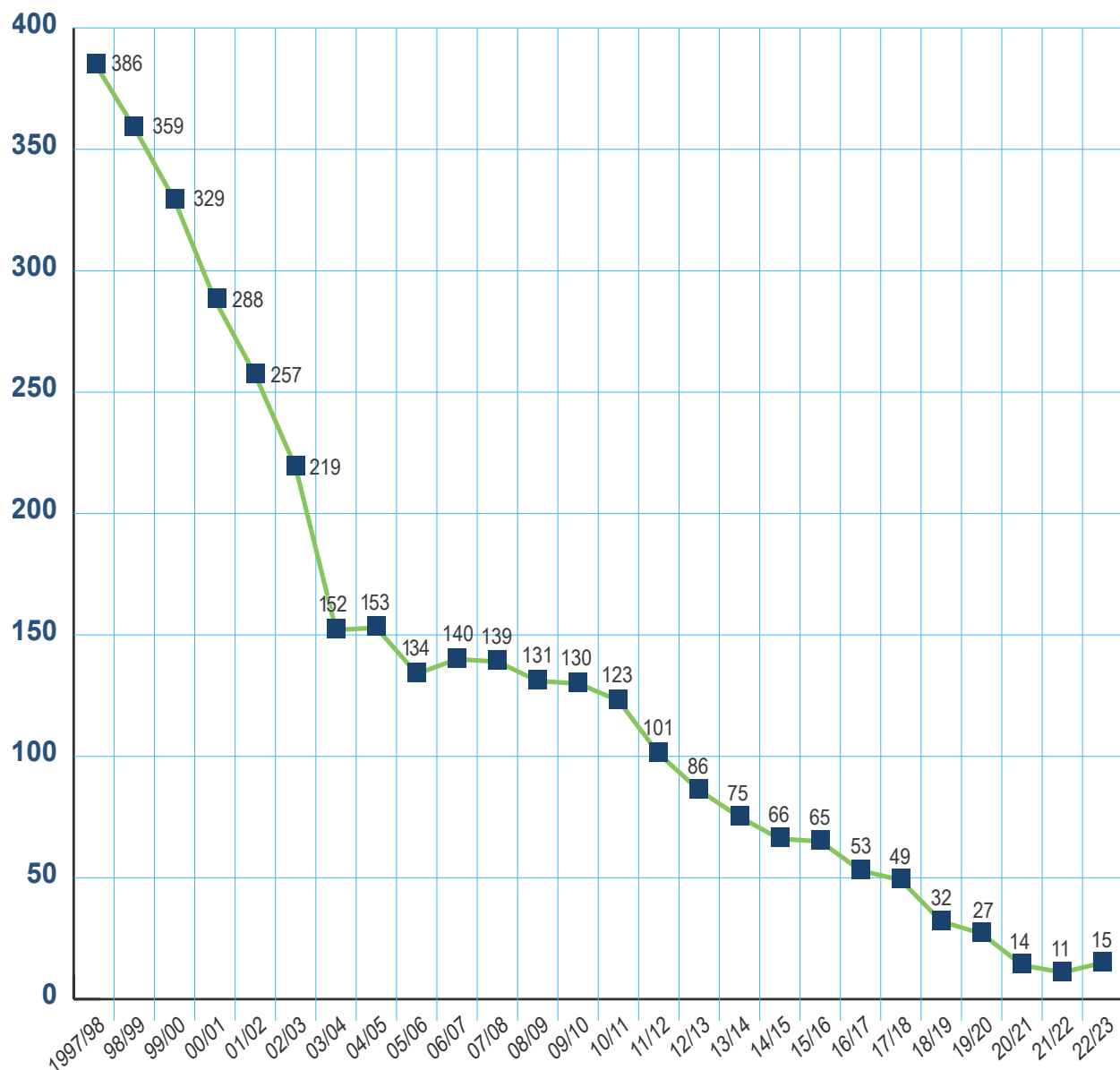
Alongside the First Nations Leadership Council, we reject the ministry's suggestion that taking action to protect Indigenous youth from further harm in custody by implementing our recommendations can be delayed by the minister upholding her legal requirements under the *Declaration Act*.

⁶ First Nations Leadership Council, "FNLC Sickened by Findings in Ombudsperson's Report '*Alone: The Prolonged and Repeated Isolation of Youth in Custody*,'" news release, June 16, 2021, <https://www.bcafn.ca/news/fnlc-sickened-findings-ombudspersons-report-alone-prolonged-and-repeated-isolation-youth>.

Declining number of youth in custody

The number of youth who are detained in custody in BC has declined over the past decade.⁷ Figure 1 shows the average daily number of youth in custody in BC since 1997/98.

Figure 1: Average daily number of youth in custody, BC, 1997/98–2022/23



⁷ Representative for Children and Youth, *Missed Opportunities: A review of the use of youth justice resources*, 2024, 10 <https://rcybc.ca/reports-and-publications/missed-opportunities/>. This decline is consistent with a national decline in the number of youth in custody. The national youth incarceration rate in 2017/18 decreased by 12 percent from the previous year and 29 percent from 2013/14 (Jamil Malakieh, *Adult and Youth Correctional Statistics in Canada, 2017/2018*, Statistics Canada, Canadian Centre for Justice Statistics, May 9, 2019, 6, <https://www150.statcan.gc.ca/n1/en/pub/85-002-x/2019001/article/00010-eng.pdf?st=UI3FwMKW>).

Closure of Prince George Youth Custody Services Centre

On November 16, 2023 the ministry announced that it would close Prince George Youth Custody Services Centre (PGYCS) by March 2024 and that by this time all youth in custody would be housed at Burnaby Youth Custody Services Centre, approximately 775 kilometres south of Prince George.⁸ The ministry explained that the decision to close PGYCS would save approximately \$5 million per year in operating costs for a centre that has been operating below 30 percent capacity.

Youth from the north of the province will be most impacted by the closure of PGYCS. We are concerned that moving youth so far away from their families and communities will further isolate these youth from the opportunity to access culturally appropriate supports and services while in custody. As we noted in *Alone*, the provision of culturally relevant and safe services is important in supporting Indigenous youths' well-being as well as their right to be connected with their community and culture. In this way, providing culturally safe services is consistent with the ministry's commitment to reduce the use of separate confinement and to improve outcomes for Indigenous children and youth. We are concerned that moving youth 775 kilometres south to Burnaby will limit their opportunity to connect in a meaningful and sustained way with their families, communities and cultural supports.

⁸ "Youth Custody Centre in Prince George, BC, Closing Due to Lack of Use," *CBC News*, November 16, 2023, <https://www.cbc.ca/news/canada/british-columbia/prince-george-custody-centre-closure-1.7030301>; "Prince George Youth Custody Centre Set to Close," *Prince George Citizen*, November 16, 2023, <https://www.princegeorgecitizen.com/local-news/prince-george-youth-custody-centre-set-to-close-7841552>.

CHANGES IN THE USE OF SEPARATE CONFINEMENT SINCE 2021

The harmful effects of separate confinement are significant and well understood.⁹ This makes it essential for us, in monitoring the ministry's implementation of our recommendations, to understand how often the ministry continues to use separate confinement and who is primarily affected by its use.

The following sections are based on information that we received from the ministry after our 2021 report was released.

How often and for how long are youth being separately confined?

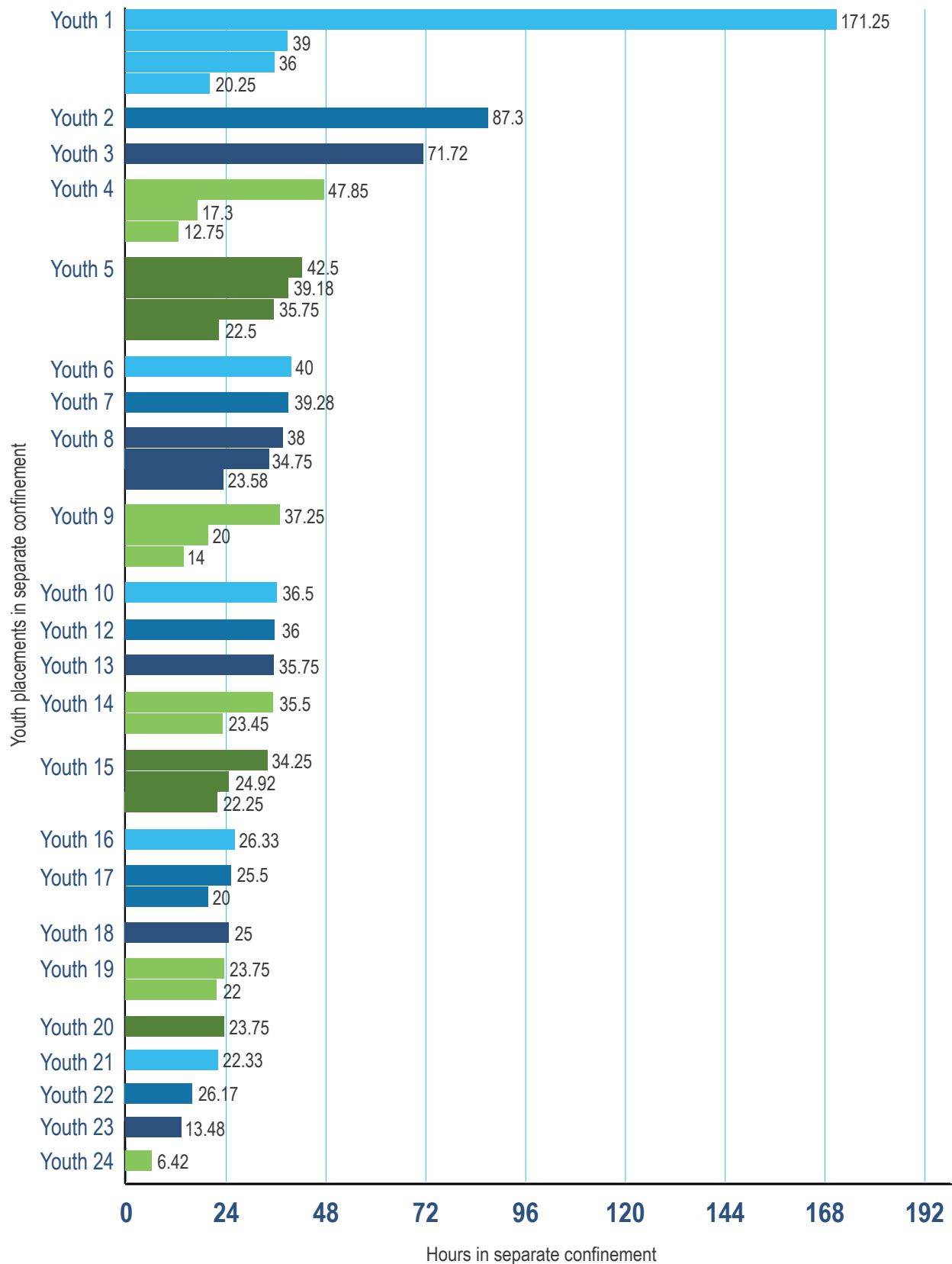
The ministry has provided our office with limited information about the use of separate confinement for the 16-month period following the release of *Alone*, from September 1, 2021 to December 31, 2022. However, the information we received indicates that the use of separate

confinement has declined since our initial investigation into the use of separate confinement from 2017 to 2019.

From September to December 2021, the ministry reported 41 instances of separate confinement experienced by 24 individual youth. At least 9 individual youth were separately confined multiple times, but the information provided by the ministry did not show how close or far apart these placements were in relation to each other. The average length of each placement was 34 hours. Three placements were for at least 72 hours (3.6 days), including a placement for 87 hours and another for 171 hours (7 days). One youth experienced 266.5 hours (11 days) of separate confinement over four separate placements (see Figure 2).

⁹ See UN General Assembly, *Interim Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (2008); Craig Haney, "Mental Health Issues in Long-Term Solitary and 'Supermax' Confinement"; Diane Kelsall, "Cruel and Unusual Punishment: Solitary Confinement in Canadian Prisons," *Canadian Medical Association Journal* 186, no. 18 (2014): 1345. See also *British Columbia Civil Liberties Association v. Canada*, 2018 BCSC 62, para. 250 (this finding was not challenged on appeal: *British Columbia Civil Liberties Association v. Canada (Attorney General)*, 2019 BCCA 228, para. 90); Royal College of Paediatrics and Child Health, Royal College of Psychiatrists, and British Medical Association, *Joint Position Statement on Solitary Confinement of Children and Young People*, 2018, www.rcpch.ac.uk/sites/default/files/2018-04/solitary_confinement_position_statement.pdf; College of Family Physicians of Canada, *Position Statement on Solitary Confinement*, August 7, 2016, https://portal.cfpc.ca/resourcesdocs/uploadedFiles/Directories/Committees_List/Solitary%20Confinement_EN_Prison%20Health.pdf; American Academy of Child and Adolescent Psychiatry, "Solitary Confinement of Juvenile Offenders," policy statement, April 2012, https://www.aacap.org/aacap/policy_statements/2012/solitary_confinement_of_juvenile_offenders.aspx.

Figure 2: Authorized separate confinements by youth and number of hours, September 1–December 31, 2021

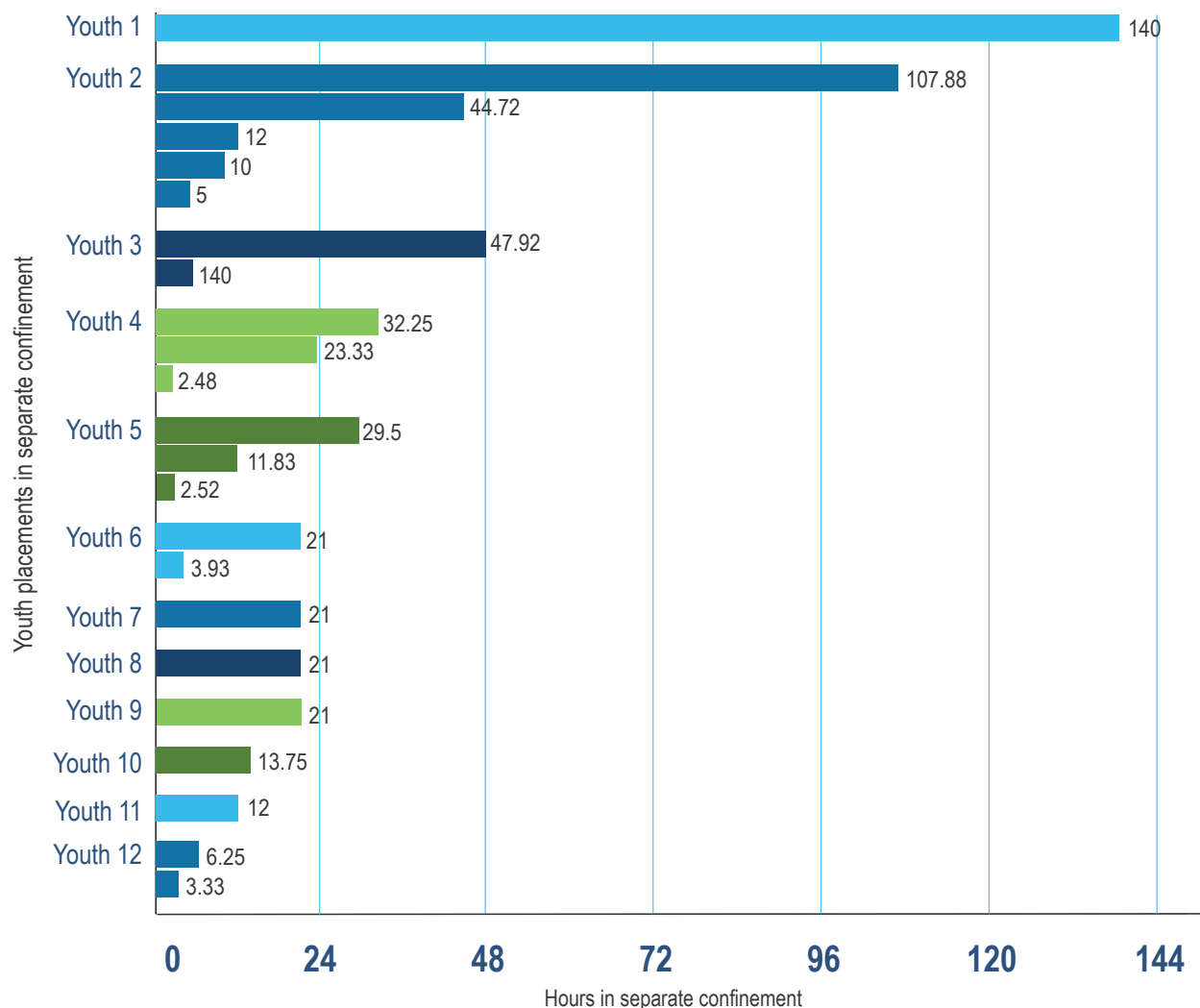


The ministry told us that 93 percent of these instances of separate confinement were in accordance with its interim COVID-19 admissions policy. The policy provided that on admission, all asymptomatic youth be housed separately in an “assessment unit” until the earlier of receiving a negative COVID-19 test, being medically cleared by public health or a medical doctor, or completing a 10-day isolation period. The policy provided further for symptomatic youth or youth who had tested positive for

COVID-19. Specifically, the policy provided that the youth would be separately confined in a single room in the medical observation unit until the morning of the 11th day after onset of symptoms or a positive test.¹⁰

From January 1, 2022, to December 31, 2022, the ministry reported 23 instances of separate confinement experienced by 12 individual youth. At least 6 individual youth were separately confined multiple times, but the information provided by the ministry

Figure 3: Youth placement in separate confinement by hours and frequency per youth, January 1–December 31, 2022



¹⁰ MCFD, *Manual of Operations – Youth Custody Programs* (Youth Custody Operations Manual), December 2020, G.9.07–9.08.

does not show how close or far apart these separate confinements were in relation to each other. Only 8 of these instances were related to the ministry's COVID-19 admission policy. The average length of these separate confinements was 26 hours, with several instances of separate confinement extending beyond this time, including instances that lasted for 44, 47, 107 and 140 hours. One youth experienced 179.6 hours (7.5 days) of separate confinement over 5 separate instances (see Figure 3).

The information provided by the ministry suggests that in 2022, the ministry used separate confinement less frequently and for shorter periods of time than had previously been the case. This is encouraging. However, it also shows that the ministry continues to separately confine some youth for prolonged periods of time. While these prolonged periods are shorter than those we observed during our initial investigation, it is concerning that youth continued to be exposed to prolonged periods of isolation following the release of *Alone*. The research is clear that the risk of psychological harm from separate confinement increases over time and that young people are particularly vulnerable to the risk of long-term psychiatric and developmental harm caused by prolonged isolation. Moreover, the harms of separate confinement are caused by the nature and extent of the isolation. These harms can be felt regardless of the intention of the decision maker, the reason for the isolation or the operational challenges at hand.

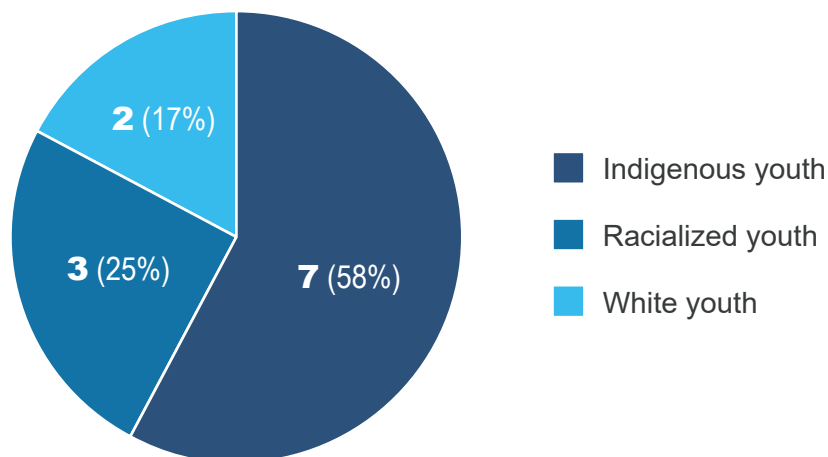
The continued use of prolonged periods of isolation highlights the need for legal protections against this practice.

Which youth are being separately confined?

It is also important to understand how different groups of youth are exposed to the risk of harm caused by separate confinement. The ministry provided some disaggregated demographic data on the gender and racial identities of youth separately confined over the 16-month period between September 1, 2021, and December 31, 2022. While limited, this data shows that Indigenous youth continue to be separately confined more than other youth. For example, between January 1, 2022, and December 31, 2022, the ministry's records show that 12 individual youth were separately confined 23 times. As shown in Figure 4, of the 12 individual youth, 7 (58 percent) identified as Indigenous, 3 (25 percent) identified as racialized and 2 (17 percent) identified as white. Of these youth, 7 (58 percent) were in the care of the ministry.

The ministry's data did not allow us to determine how frequently or how long Indigenous youth were separately confined compared with other youth.

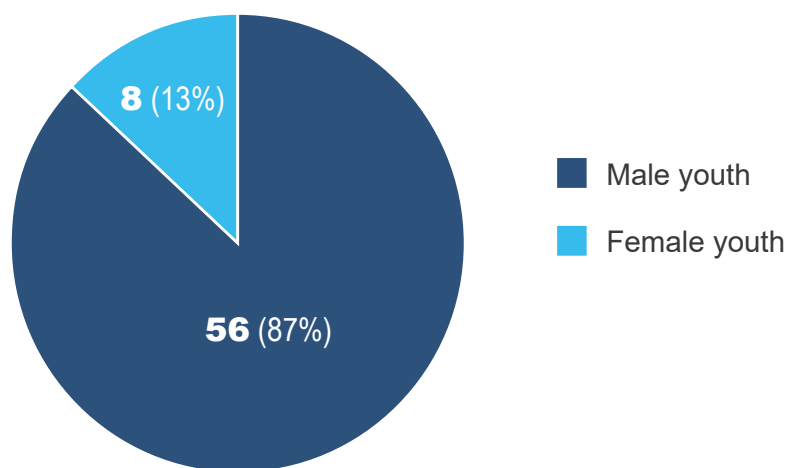
Figure 4: Number and rate of youth placed in separate confinement by racial category, January 1–December 31, 2022



The ministry’s data also showed that between September 1, 2021, and December 31, 2022, male youth were separately confined most frequently. As shown in Figure 5, over this period male youth were separately confined 56 different times. This represents 87 percent of all instances of separate confinement. Female youth continue to be separately confined less

frequently but we were unable to determine the length of time that female youth spent in separate confinement. The ministry’s demographic data did not include diverse gender identity but categorized youth exclusively by biological sex. As a result, we were unable to determine whether gender-diverse youth were separately confined.

Figure 5: Number and proportion of placements in separate confinement by gender, September 1, 2021–December 31, 2022



The records from the ministry do not provide any information about the ages of youth, and as a result we were unable to determine if any youth under the age of 16 were separately confined. Similarly, the ministry's records do not identify whether youth with mental health needs were separately confined. Finally, the records provided by the ministry do not provide any information about the youth who were separately confined for longer than 22 hours. In the absence of this information, and because we have not seen evidence that the ministry has taken steps to limit prolonged separate confinement in the circumstances we described in *Alone*, we remain concerned that Indigenous and racialized female and gender-diverse youth may continue to be disproportionately exposed to the risk of harm caused by prolonged isolation.

Conclusion

The ministry's records provide a limited amount of information about the use of separate confinement and as a result we were unable to fully assess how separate confinement is being used and how youth are experiencing these periods of isolation. However, the ministry's records indicate that there has been a decline in the use of separate confinement since the release of *Alone* – the records show that separate confinement is being used less frequently and for shorter periods of time. This is good.

At the same time, these records show that the ministry continues to separately confine some youth for prolonged periods of time and that Indigenous youth continue to be disproportionately exposed to the risk of psychological harm caused by separate confinement. This is very troubling, especially as the ministry has failed to make meaningful progress on many of our recommendations to safeguard against the most serious harms caused by separate confinement.

ANALYSIS OF THE MINISTRY'S IMPLEMENTATION WORK

Alone was released almost three years ago, and the ministry has yet to implement the majority of our recommendations, although some work has been done. In

this section we identify where progress in implementation has been made, as well as identifying recommendations where substantial work remains to be done.

Limiting the use of separate confinement and ending prolonged isolation

RECOMMENDATION		Assessment
R4	Law reform to limit length and frequency of separate confinement	No Progress
R8	Law reform to prohibit separate confinement of especially vulnerable youth	No Progress
R9	Policy framework to assess and identify especially vulnerable youth	No Progress
R18	Law reform to ensure oversight of isolation for operational reasons	No Progress
R19	Policy changes to support female youth, and especially Indigenous female youth, isolated for operational reasons	Ongoing
R20	Policy changes to ensure court is informed of isolation for operational decisions	Partially implemented

Limiting prolonged periods of separate confinement

In our investigation we found that section 15.1 of the *Youth Custody Regulation* is unjust because it does not establish

a specific time limit on the duration of separate confinement and as a result, youth have been separately confined for prolonged periods.¹¹

¹¹ In accordance with the *Youth Custody Regulation*, the length of a separate confinement period is determined by the continued existence of the grounds set out in section 15.1 of the regulation and the absence of a reasonable alternative to separate confinement, as determined by either the custody centre director or the provincial director. There is nothing in the *Youth Custody Regulation* that requires the confinement to end after a specified period. Nor is there is there a cap on the number of consecutive hours or days a youth can spend in separate confinement. While the regulation places some limits on the decision maker's exercise of discretion in placing or maintaining a youth in separate confinement, it does not safeguard against prolonged use of

Without a legal framework that imposes specific, mandatory time limits on the use of separate confinement, youth will continue to be isolated, sometimes for very long periods of time. As we have just described, this practice continued after the publication of *Alone*.

For this reason, we recommended that by April 1, 2022, the *Youth Custody Regulation* be amended to limit the amount of time that a youth can be separately confined to no more than 22 consecutive hours. We recommended that the regulation also be amended to ensure that youth are not repeatedly separately confined by establishing a clear limit on the frequency with which separate confinement can be used in relation to any one youth (**Recommendation 4**).

The ministry told us that it planned to consult with Indigenous communities, Indigenous governing bodies and other partners about these regulatory changes and incorporate their feedback into its new service framework by December 2023; it then changed this date to September 2024. The ministry has not confirmed whether these consultations have occurred or how it intends to move this critical piece of law reform forward. We consider the ministry's intentions to be insufficient and conclude that no progress has been made on Recommendation 4.

The ministry also told us that it had amended the youth custody policy on September 1, 2021, to limit separate confinement to a maximum of 22 hours. At

the same time, the ministry indicated that it is unwilling to consider limiting the maximum number of times a youth can be separately confined within a specified time frame. The amended youth custody policy reads:

... unless the director determines it would endanger the youth or other persons . . . during the first 24 hours of confinement and during each 24-hour period, thereafter, [youth will] be allowed at minimum a two-hour period outside a separate confinement room.¹²

This policy does not safeguard against prolonged periods of separate confinement. Rather, it is focused on providing youth with two hours outside the separate confinement unit within a 24-hour period. This policy effectively allows youth to be separately confined for an indefinite number of 22-hour periods, one after the other. As discussed above (see Figure 2 and Figure 3), the ministry's records show that in the past two years some youth have been separately confined multiple times and for prolonged periods of time. Without a legal framework that imposes specific, mandatory time limits on the use of separate confinement, we remain concerned that youth will continue to be isolated, sometimes for lengthy periods.

Moreover, we note that two hours out of the separate confinement unit described in the policy is a minimum standard that does not expressly require opportunities for meaningful human contact. The Mandela Rules define solitary confinement as “the confinement of prisoners for 22 hours or

.....
separate confinement and the consequent psychological harm. Rather, the regulation allows for prolonged periods of separate confinement to occur. For example, as we found in our investigation, the person in charge can conscientiously apply the limits set out in section 15.1 in exercising their discretion and still conclude that the earliest appropriate time to release a youth from separate confinement is only after days or weeks have passed, or until they are released into the community.

¹² Youth Custody Operations Manual, D.7.12.

more a day without meaningful human contact.”¹³ The ministry’s policy does nothing more than restate this definition. By contrast, we note that the federal *Corrections and Conditional Release Act* requires federally sentenced adult prisoners in structured intervention units to be offered a minimum of four hours out of their cells every day, two hours of which are supposed to involve meaningful human contact.¹⁴ In short, the ministry’s policy amendment does not meet the minimum standards legislated in Canada for federally sentenced adults in custody. This is especially concerning because youth are more vulnerable to the harms caused by isolation in custody. We consider the ministry’s policy amendment to be insufficient to protect youth from the harms of separate confinement in custody and are concerned that the ministry’s approach is fundamentally inconsistent with its stated commitments to trauma-informed practice and the federal *Youth Criminal Justice Act* requirements that the ministry provide a safe, fair and humane custodial environment.¹⁵

Prohibiting separate confinement for especially vulnerable youth

Establishing a legally binding and non-discretionary time limit on the use of separate confinement is a key step toward reducing or eliminating the use of separate confinement of youth who are especially vulnerable to its harms.

We recommended that the minister amend the *Youth Custody Regulation* to prohibit the separate confinement of youth who are especially vulnerable to its harms, including those under 16 years of age and those with complex mental health needs (**Recommendation 8**). To support the practical implementation of this recommendation, we recommended that the ministry develop and implement a policy framework to assess and identify youth who should not be separately confined because they are especially vulnerable to the harms of separate confinement (**Recommendation 9**).

The ministry told us that it planned to consult with Indigenous communities, Indigenous governing bodies and other

¹³ The United Nations Standard Minimum Rules for the Treatment of Prisoners (known as the “Mandela Rules”) speak directly to the standards of care expected in custodial settings. As the Ontario Court of Appeal stated, the Mandela Rules reflect an “international consensus” on appropriate correctional practices. The BC Court of Appeal affirmed that the Mandela Rules inform constitutional interpretation and, in particular, our understanding of the principles of fundamental justice. As such, the Mandela Rules are directly relevant in assessing legislation authorizing segregation and separate confinement. See *Canadian Civil Liberties Association v. Canada (Attorney General)*, 2019 ONCA 243, para. 28; UN Office on Drugs and Crime, *Standard Minimum Rules for the Treatment of Prisoners*, Rule 44.

¹⁴ In June 2019, the federal government passed Bill C-83: *An Act to amend the Corrections and Conditional Release Act and another Act* with the primary intention of eliminating the use of administrative and disciplinary segregation in federal prisons and replacing the practice with structured intervention units. The SIU model is intended to separate unsafe inmates while ensuring they receive appropriate mental health services, increased time outside of their units, and meaningful human contact (*Corrections and Conditional Release Act*, S.C. 1992, c. 20, s. 34(1)).

¹⁵ *Youth Criminal Justice Act*, S.C. 2002, c. 1, s. 83(1)(a). This provision of the *Youth Criminal Justice Act* acknowledges that a “safe, fair and humane” custody system contributes to the protection of society.

partners about these regulatory changes and incorporate their feedback into its new service framework by December 2023; it then changed this date to September 2024. The ministry has not confirmed whether these consultations have occurred or how it intends to move these regulatory amendments forward. We consider the ministry's intentions to be insufficient and conclude that no progress has been made on Recommendation 8.

With respect to Recommendation 9, the ministry told us that it had amended the youth custody policy on September 1, 2021, to include the following direction:

Youth Custody Services recognizes that separate confinement can have negative impacts on youth. All youth admitted to custody in BC are considered to be vulnerable. Extensive consultation and authorization with a director must occur prior to the use of separate confinement. Consultation and authorization shall be documented on CORNET by a director and include: Consideration of all other options—separate confinement is only to be used as a last resort; Consideration of the youth's age, self-identified gender, social history, cultural background, mental health, history of trauma, and may include consultation with elders and/or pastor(s); Potential short- and long-term implications of separately confining the youth; Consultation with [Youth Forensic Psychiatric Services].

We are concerned that this policy direction is so broad and general that it will not allow staff to meaningfully identify the specific vulnerabilities faced by youth under the age of 16 and youth with complex mental health needs in relation to the use of separate confinement. For example, the policy statement that “all youth admitted

to custody in BC are considered to be vulnerable” – while true – does not account for the specific risks of isolating youth who are self-injuring or suicidal or who are under the age of 16. Moreover, the policy language that describes separate confinement as a last resort effectively mirrors the language set out in section 15.1 of the *Youth Custody Regulation* which, as discussed above, currently permits any youth, including youth under 16 and youth with complex mental health needs, to be isolated for prolonged periods of time. Finally, the ministry has provided no evidence to demonstrate that this policy has had the effect of prohibiting or even limiting the separate confinement of youth under 16 years or youth with complex mental health needs.

Taking all this together, we find that the ministry's efforts insufficiently protect youth under the age of 16 and youth with complex mental health needs from the harms caused by separate confinement in custody. We encourage the ministry to establish focused policy direction and, more importantly, to urgently seek to establish legal protections to safeguard vulnerable youth from the harms of separate confinement.

Youth “temporarily housed alone”

In our investigation we found that some youth were being isolated for operational reasons, which the ministry explained was in accordance with its “temporarily housed alone” policy. This policy states that a youth may be housed by themselves in “exceptional circumstances,” where they are the only youth, or the only youth of the same gender, in a custody centre.

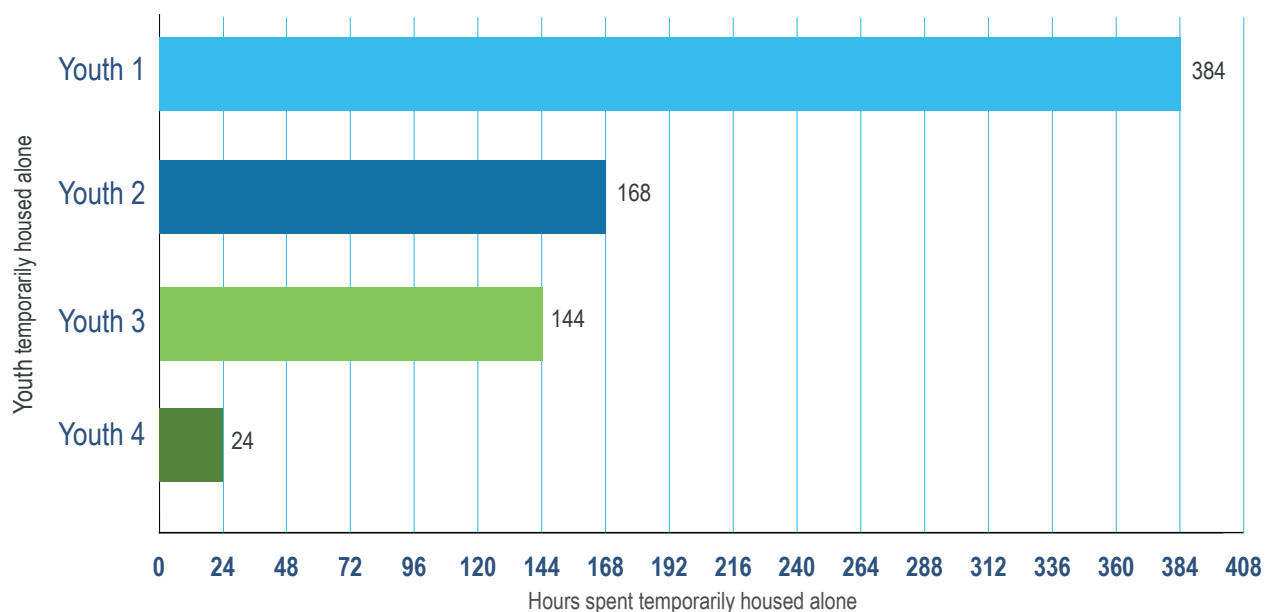
The ministry confirmed that youth continue to be housed alone under this policy and that it continues to report differently on these youth. It told us that it did not include

information about youth temporarily housed alone in its separate confinement report, described above. The ministry told us that in the four-month period between September 1, and December 31, 2021, there were four instances in which youth were temporarily housed alone. These periods of isolation lasted for 384 hours (16 days), 168 hours (7 days), 144 hours (6 days) and 24 hours (1 day). The ministry made further reference to two youth being housed alone between January and March 2022 but has not provided more recent data.

In *Alone*, we found that the “temporarily housed alone” policy permits the separate confinement of youth for a reason that is not set out in the *Youth Custody Regulation* and without the authorization and documentation

required for every instance of separate confinement. While we recognize that this policy was developed to operationally manage situations in which there are small numbers of youth, or no other youth, in a facility we found that its application results in individual youth being confined separately from other youth in the centre. This isolation from other youth is the very essence of separate confinement as defined in the *Youth Custody Regulation*.¹⁶ The regulation sets out the circumstances in which separate confinement is authorized. The regulation does not include a general power to separately confine youth for operational reasons outside of the grounds set out in section 15.1, nor does it permit the separate confinement of a youth by means of a policy.

Figure 6: Hours spent by youth temporarily housed alone, September 1–December 31, 2021



¹⁶ *Youth Custody Regulation*, BC Reg. 137/2005, s. 15.1.

We recommended that the ministry amend the *Youth Custody Regulation* to ensure that any “housed alone” placements occur with the same limits and oversight that would exist in the case of any other separate confinement decision (**Recommendation 18**).

In response to the regulatory changes recommended in Recommendation 18, the ministry told us that it planned to consult with Indigenous communities, Indigenous governing bodies and other partners about these regulatory changes and incorporate their feedback into its new service framework by December 2023; it then changed this date to September 2024. The ministry has not confirmed whether these consultations have occurred or how it intends to move these regulatory amendments forward. We consider the ministry’s intentions to be insufficient and conclude that no progress has been made on Recommendation 18.

At the same time, we note that the ministry’s “temporarily housed alone” policy continues to expressly exempt staff from complying with the “separate confinement paperwork.”¹⁷ Instead, the policy continues to require the custody centre director to confirm the decision to house a youth alone to ensure that the decision and reasons are documented in the ministry’s case management system (CORNET). An internal quality control review conducted by the ministry in March 2022 suggests that documentation of these decisions in CORNET is inconsistent – in some cases the documentation was completed and in other cases there was little to no documentation. As a result, we remain concerned that youth are being separately confined under the “temporarily housed alone” policy without the authorization and

documentation required under the *Youth Custody Regulation* and the ministry’s own policy. The absence of clearly documented records makes it difficult to determine how long youth have been housed alone and whether they were able to access school, programs, health care or cultural support. We remain concerned in the absence of consistent record keeping and reporting that youth continue to be confined under conditions that will exacerbate psychological harm.

Alternatives to isolation

In our investigation we found that the practice of housing youth alone disproportionately affects female youth because of the low numbers of female youth in custody. We recommended that the ministry take steps to mitigate their isolation through policy changes that would ensure alternatives to isolation for female youth and provide meaningful opportunities for Indigenous female youth to connect with specially trained Elders for ongoing cultural support (**Recommendation 19**).

The ministry told us that in response to Recommendation 19 it had issued a new directive to staff in May 2022 to consider reintegration leave when all “in-custody” options have been considered or exhausted for a youth who is housed alone. A reintegration leave is an authorized time-limited release of a youth into the community while serving the custodial portion of a sentence, subject to conditions that are monitored and legally enforceable.¹⁸ The purpose of the reintegration leave program is to provide youth with the opportunity to engage with community resources and participate in constructive activities in the community. We are encouraged by the

¹⁷ Youth Custody Operations Manual, D. 5.04.

¹⁸ *Youth Criminal Justice Act*, S.C. 2002, c. 1, s. 91; *Youth Justice Act*, S.B.C. 2003, c. 85, s. 23.

ministry's policy directive supporting a consideration of reintegration leave for youth who are being isolated in custody for operational reasons. The ministry has not confirmed whether it has authorized reintegration leave for any youth since the directive was issued.

The ministry also told us that it had amended its policy on September 1, 2021, to strengthen social interactions and promote meaningful contact for youth temporarily housed alone. The policy directs staff to ensure that youth who are temporarily housed alone have meaningful human contact with staff, Elders, pastoral/religious supports, counsellors, legal guardians and other supportive adults. The policy also directs that youth be provided, where possible, with safe and appropriate contact with other youth who may or may not be of the same self-identified gender as the youth.

The ministry points to an internal quality control review conducted in March 2022 that observed two youth who were temporarily housed alone. The reviewers concluded that "there was evidence of significant effort on the part of staff and contractors to engage and connect with youth when the youth was separately confined and or temporarily housed alone." The reviewers also concluded that one youth who was temporarily housed alone spent time participating in daily programming with other youth, but observed that for the second youth there was little difference between being separately confined and temporarily housed alone. The reviewer wrote that this youth was kept separate and apart from their peers in the separate confinement unit with no evidence of peer interaction. The reviewers concluded that it was unclear "what the difference in this situation was between separate confinement and being temporarily housed alone."

We are encouraged to hear that one youth was provided with the opportunity to participate in daily programming with their peers, but we are concerned about these opportunities not being provided to another youth housed alone under the same policy. This suggests that some youth continue to experience a very isolating environment with little to no social interaction. We consider the ministry's progress on this element of Recommendation 19 to be ongoing, and we expect the ministry to take additional steps to ensure full and meaningful implementation of its policy.

Cultural support for Indigenous youth housed alone

In response to our recommendation to provide cultural connection and support to Indigenous female youth who are housed alone, the ministry told us that its work in this area is complete. The ministry told us that "connection to Indigenous supports, including Elders, has been incorporated throughout policy and is part of long-term engagement discussions with Indigenous partners." The ministry did not provide any details or examples of its policy work or its engagement. Nor did the ministry provide any evidence to show that Indigenous female youth have been connected with Elders while they were separately confined or living alone in custody. As a result, we are not satisfied that the ministry has established a more robust program of cultural support, including access to specially trained Elders for Indigenous youth who are separately confined or housed alone. We are further concerned that the ministry's decision to close PGYCS will further limit the ability of youth to connect with Elders from their home community. We conclude that no progress has been made on this element of Recommendation 19.

Communicating with the court about isolation in custody

We also recommended that the ministry take steps to ensure that the court is informed when detained youth are housed alone for operational reasons. To support this communication with the court, we recommended that the ministry revise its policy manual for community probation officers to require them to report to the court in relevant pre-trial and pre-sentencing proceedings when youth are likely to be housed alone in custody for operational reasons (**Recommendation 20**).

In response to Recommendation 20, the ministry told us that it had revised the youth custody policy to acknowledge the potential for negative psychological and emotional

impact on youth when they are separate and apart from other youth in the custody centre. It also advised that it had issued a practice directive on October 1, 2021, to all youth probation officers, directing them to notify the court when youth are living alone or there is the potential likelihood that youth remanded or sentenced to custody may be housed alone for operational reasons. The ministry also advised that it intended to call the chief judge of the provincial court to discuss the operational realities in custody and the fact that youth may be living alone as a result of declining admissions. The ministry has not confirmed whether this call has occurred. We consider Recommendation 20 partially implemented.

Implementing independent oversight and inspections

RECOMMENDATION		Assessment
R5	Developing a process to collect and report disaggregated demographic data on use of separate confinement	Ongoing
R21	Independent body to review separate confinement decisions	No Progress
R22	With consent of youth, notifying parent or guardian of separate confinement of youth	Partially implemented
R23	Reporting to Representative for Children and Youth on each instance of use of separate confinement	No Progress
R24	Providing Public Guardian and Trustee (PGT) with information on separate confinement of youth for which PGT is property guardian	No Progress
R25	Reporting to PGT on each instance of use of separate confinement where PGT is property guardian	No Progress
R26	Implementing an independent inspections process that is consistent with the Mandela Rules	Partially implemented

Many of the recommendations in *Alone* were directed at strengthening oversight of and accountability for the ministry's use of separate confinement in youth custody. When they are separately confined, youth in custody are placed "very far out of the sight of justice." Protecting their rights in such circumstances is challenging but also extraordinarily important.¹⁹ Responsive and fair oversight mechanisms are critical to ensuring that if youth are separately confined, the confinement is "safe, fair and humane"²⁰ and used as minimally as possible.

Our investigation found that the existing internal and external oversight processes are not sufficient to protect against the inappropriate or prolonged use of separate confinement. Our recommendations were aimed at improving the review and oversight of individual separate confinement decisions, as well as ensuring systemic review of separate confinement decisions.

Data collection and reporting

Effective oversight of separate confinement in BC's youth custody centres depends on transparent record-keeping and decision making. Meaningful data collection can and should inform oversight of separate confinement. We recommended that by July 1, 2021, the ministry develop a process

for collecting and reporting disaggregated demographic data on the use of separate confinement (**Recommendation 5**).

The objective of our recommendation was to improve transparency and counter the closed nature of youth custody. Greater transparency about separate confinement may reduce the known risks associated with its use.

As BC's Human Rights Commissioner has affirmed, data can lead to positive change by making systemic inequalities in our society visible.²¹ Moreover, the commissioner has specifically called on BC to begin collecting disaggregated demographic data on the use of segregation and separate confinement.²² We echoed that call in our recommendation to the ministry, and it is our expectation that the ministry will apply the principles outlined by the Human Rights Commissioner in implementing this recommendation. Since our report was released, the *Anti-Racism Data Act* has come into force. The Act empowers public bodies to collect personal information to identify and eliminate systemic racism and advance racial equity, and sets out a process through which public bodies can appropriately collect such information, including mechanisms for Indigenous data governance.²³

¹⁹ "The Istanbul Statement on the Use and Effects of Solitary Confinement," December 9, 2007, https://studiesonsolitary.files.wordpress.com/2016/10/istanbul_expert_statement_on_sc.pdf. Statement adopted by a working group of 24 international experts at the International Psychological Trauma Symposium, Istanbul.

²⁰ *Youth Criminal Justice Act*, S.C. 2003, s. 83(1).

²¹ BC Human Rights Commissioner, *Disaggregated Demographic Data Collection*, 8, https://bchumanrights.ca/wp-content/uploads/BCOHRC_Sept2020_Disaggregated-Data-Report_FINAL.pdf.

²² BC Human Rights Commissioner, *Disaggregated Demographic Data Collection*, 83.

²³ *Anti-Racism Data Act*, S.B.C. 2022, c. 18.

The ministry committed to implementing this recommendation by June 30, 2022. It has explained that it will use its existing internal data collection process to collect information about separate confinement, and has published selected data on separate confinement on the British Columbia Data Catalogue.²⁴ However, our review of the datasets published on the Data Catalogue identified inconsistent information. For example, despite representing the same date range, the total instances of separate confinement are different in each data set. A dataset that *excludes* separate confinement for medical reasons lists more total instances of separate confinement than the data-set that *includes* instances of separate confinement for medical reasons. The data published in the Data Catalogue also appears inconsistent with the records that the ministry provided to our office as part of this monitoring process. These inconsistencies raise concerns for our office that the information provided by the ministry is inaccurate and is not a reliable account of how separate confinement is being used in youth custody.

Our review also identified key information that was absent from the Data Catalogue. For example, the ministry has published data from Prince George Youth Custody Services Centre for 2022/23, but has not published data for Burnaby Youth Custody Services Centre in the same year.

The disaggregated data published by the ministry in the Data Catalogue includes reasons for separate confinement, duration of separate confinement, and some demographic information, such as the youth's race and gender identity. The ministry has acknowledged that "the terminology used in this dataset is

outdated" and stated, "we are working with our partners to update our data collection system to be more inclusive of gender identification and to align ethnicity definitions with our cultural values." The ministry has not provided us with a timeline or any further details about that work.

In addition, the ministry's data is published without sufficient context to understand how separate confinement is being used in custody. This approach undermines the purpose of making this data public in the first place, which is to increase transparency and support the identification of broader trends in the use of separate confinement in custody. While publishing datasets to the Data Catalogue is a good step, much more work is needed to implement our recommendation. We expect that further work by the ministry will align with the principles set out in the *Anti-Racism Data Act* and data standards issued by the province. We conclude the implementation of Recommendation 5 is ongoing.

Independent review of individual separate confinement decisions

In our investigation we found that the existing process for reviewing separate confinement decisions was not sufficient to safeguard against the overuse or inappropriate use of separate confinement.

We found that the process for authorizing and reauthorizing individual separate confinement decisions was not procedurally fair because the provincial director is not sufficiently independent, reviews their own decisions and rarely hears from youth before making decisions. We recommended that by April 1, 2022, the ministry amend the *Youth Custody Regulation* to establish

²⁴ Province of British Columbia, *Data Catalogue*, <https://catalogue.data.gov.bc.ca/>.

an independent review body for all separate confinement decisions (Recommendation 21). This body should:

- be independent from the ministry
- receive notification of every separate confinement decision
- review compliance with laws, policies and procedures governing the use of separate confinement and, in doing so, have the power to order youth released from separate confinement – to ensure that no youth is separately confined for longer than 22 hours and that no youth is separately confined more than the maximum number of times in a specified period

The ministry told us that it intends to consult with Indigenous governing bodies, Indigenous communities, and existing oversight bodies on implementation of this recommendation and incorporate their feedback into its service framework by December 2023; it then changed this date to September 2024. The ministry also told us that implementing this recommendation has “resource implications that require government direction.” It did not elaborate further on the resource implications it has identified, nor did it confirm whether these consultations have occurred or how it intends to move these regulatory amendments forward. We conclude that no progress has been made on Recommendation 21.

Notification of parent or guardian

We recommended that the ministry establish, by July 1, 2021, a policy to immediately notify a parent or guardian of a youth’s placement in separate confinement, and if the youth is in care under the *Child, Family, and Community Service Act*,

immediately notify their social worker of a placement. We recommended that the policy include a requirement to seek the consent of youth before providing that notification (**Recommendation 22**). We made this recommendation because it is important that separate confinement decisions are communicated, at the time they are made, to someone outside the custody centre who may be in a position to support or advocate for the youth in separate confinement. The ministry agreed to implement this recommendation by September 1, 2021.

On September 1, 2021, the ministry amended the youth custody policy to state that “in all instances of separate confinement, the youth’s legal guardian must be notified as soon as practicable.”²⁵ The ministry told us that most of these notifications have been given over the telephone and documented in the ministry’s case management system (CORNET). The ministry provided no further details, and as a result it is unclear how many times this notification has actually been provided. Similarly, it is unclear how much time passed between when youth were separately confined and when their legal guardians were notified.

We also note that the policy does not include a requirement to seek the consent of youth before providing this notification. We have also heard concerns that asking youth to provide their consent in the moment or immediately after being separately confined may be a barrier to notifying their legal guardians and we encourage the ministry to mitigate this barrier in its policy and practice by, for example seeking prior consent. In summary, we encourage the ministry to further amend its policy to provide for staff to seek and document the youth’s consent

²⁵ Youth Custody Operations Manual, D. 7.15.

and, if consent is given, provide immediate notification or, at the very least, notification within a specified time frame. In the meantime, we assess this recommendation as partially implemented.

Oversight by the Representative for Children and Youth

We recommended that the ministry work with the Representative for Children and Youth (RCY) to develop a policy and process for reporting to the RCY about each instance of the use of separate confinement in youth custody by July 1, 2021 (**Recommendation 23**). We made this recommendation in recognition of the RCY's statutory mandate to review critical injuries of children and youth receiving youth justice services. Because separate confinement carries such a high risk of significant psychological harm, we determined it was critical for the RCY to receive a report on each use of separate confinement in youth custody so that it can assess whether it has an investigative role.

The ministry initially indicated that it accepted the recommendation and would implement it by June 30, 2022. The ministry has since modified its position, writing that under the *Youth Criminal Justice Act*, it can only disclose information about a youth in custody to the RCY upon request from the RCY. However, without a report or a contact from a youth, the RCY may not know when a youth is separately confined. The ministry said it would voluntarily report a case of separate confinement if ministry staff determine that the confinement has resulted in critical injury; however, unless the ministry defines every instance of separate confinement as a critical incident, which it has not done, this practice is likely

to result in reports being sent to the RCY on only some, rather than all, separate confinements.

We are disappointed that the ministry has taken this position in respect of the provision of records to the RCY. In our view, there are options available under the existing legal framework that allow the ministry to report each instance of separate confinement to the RCY, including an order by the Lieutenant Governor in Council that provides for this disclosure of records.²⁶ This in turn will support the transparency and accountability of youth custody services provided by the ministry. We are disappointed that the ministry has not taken steps to ensure that the RCY is provided with records necessary to carry out its role. As a result, we conclude that no progress has been made on Recommendation 23.

Oversight by the Public Guardian and Trustee

We recommended that by July 1, 2021, the ministry provide the Public Guardian and Trustee (PGT) with information about the separate confinement for longer than 22 hours, since 2017, of any youth for whom the PGT is still property guardian, for the purpose of allowing the PGT to assess whether any of these youth have a legal claim in relation to their separate confinement (**Recommendation 24**).

In addition, we recommended that the ministry, by July 1, 2021, and in consultation with the PGT, develop a policy and process for reporting to the PGT about each instance of the use of separate confinement in youth custody where the PGT is property guardian of that youth (**Recommendation 25**).

²⁶*Youth Criminal Justice Act*, S.C. 2002, c. 1, s.119(1)(r).

We made these recommendations because our investigation raised concerns that there were some youth in the continuing care of the ministry may have suffered critical injuries or harm during periods of separate confinement while in youth custody and their individual cases should be retrospectively reviewed by the PGT to determine whether any of these youth had a legal claim.

Moreover, the ongoing risk of harm posed by separate confinement warrants a report being provided to the PGT each time a youth for whom the PGT is property guardian is separately confined while in custody.

The ministry initially indicated that it accepted these recommendations and would implement them by June 30, 2022. However, the ministry has since modified its position, writing that Recommendations 24 and 25 cannot be implemented because under the *Youth Criminal Justice Act*, information can only be disclosed to the PGT upon request.

We are concerned that the ministry will not provide the PGT with this information unless PGT staff expressly request it, and that the ministry has not sought other means to ensure that it can provide this information to the PGT. Instead, analogous to the practice followed with respect to the RCY, the ministry will provide a report where its staff determine that the separate confinement has resulted in critical injury. Because of the way in which the ministry defines critical injuries, this is not the same as providing the PGT with a report each time a youth is separately confined. As with the RCY, the PGT is not in a position to proactively know when a youth for which it is property guardian has been separately confined.

We are concerned about the ministry's position on this recommendation because separate confinement itself carries such a high risk of significant psychological harm to youth in custody. The ministry's position minimizes these psychological harms. We continue to believe that it is important for the PGT to independently assess whether it has a role in cases where its property guardian clients have been separately confined. As a result, we are disappointed that the ministry has taken this position in respect of the provision of records to the PGT. In our view, there are options available under the existing legal framework that allow the ministry to report each instance of separate confinement to the PGT, including an order by the Lieutenant Governor in Council that provides for this disclosure of records.²⁷ This in turn will support the transparency and accountability of youth custody services provided by the ministry. We are disappointed that the ministry has not taken steps to ensure that the PGT is provided with records necessary to carry out its role. As a result, we conclude that no progress has been made on Recommendations 24 and 25.

Inspections

The ministry is required, under the *Youth Justice Act*, to conduct periodic inspections of youth custody centres. In our investigation we found that the ministry had not complied with this legal obligation. This is concerning, because regular, independent inspections are one way of ensuring that custody centres are run in a way that protects the rights, health and safety of youth in custody. As a result, we recommended that by October 1, 2021, the ministry develop and implement an inspection process that

²⁷ *Youth Criminal Justice Act*, S.C. 2002, c. 1, s.119(1)(r).

expressly incorporates the standards set out in Rules 83-85 of the Mandela Rules **(Recommendation 26)**.²⁸

Our recommendation referenced the Mandela Rules because they are an internationally accepted minimum standard for the conduct of inspections. Consistent with those rules, we recommended that the ministry’s inspection process:

- include a process for conducting regular internal inspections of each youth custody centre
- establish a team of independent inspectors that includes experts in youth development and trauma-informed practice to conduct regular inspections of each youth custody centre
- ensure that inspections focus primarily on legislative compliance and matters related to the health, safety and human rights of youth in custody, including separate confinement and the use of force
- include a mechanism for reporting, in writing, on the outcome of inspections and for following up on the implementation of any resulting recommendations

The ministry agreed to implement this recommendation and provided us with a copy of the inspection process framework it developed in response to the recommendation.

The framework divides the inspection process into three components: quality assurance, quality control and systemic

quality improvement. The first component, Quality assurance involves centre-based procedure and policy reviews conducted “bi-monthly” under the direction of the custody centre director.²⁹ Quality control is described as operating on a “bi-annual” cycle and is undertaken by what the ministry calls an “independent quality control team” selected by the director of Youth Justice Program Support.³⁰

The ministry provided us with the first quality control report completed by Youth Justice Program Support staff in March 2022. The inspection was initiated by the director of Youth Justice Program Support and included two staff from the Youth Justice Program Support branch. The review looked at the use of separate confinement and youth temporarily housed alone. To conduct their review, staff reviewed the relevant legislation, policy and custody records and consulted directly with youth custody staff as well as youth in custody. The reviewers described their observations and conclusions in a written report, identifying several areas where they believed that practice required significant improvement. The report made several recommendations aimed at continual improvement. We are pleased to see the ministry engage in this internal quality control process, and find that the written report contributes to greater transparency of conditions in youth custody.

The final component of the ministry’s inspection process, systemic quality improvement, is described by the ministry as intended to “support a process for

²⁸ UN Office on Drugs and Crime, *Standard Minimum Rules for the Treatment of Prisoners*, Rules 83-85, https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf.

²⁹ The ministry describes these reviews as occurring bi-monthly. It is unclear whether they are planned to occur twice monthly or every two months.

³⁰ The ministry describes these reviews as occurring bi-annually. It is unclear whether they are planned to occur twice yearly or every two years.

systemic quality improvement using independent, external inspections.” We are pleased to see the ministry’s reference to independent, external inspections but note that the framework does little to describe how it intends to carry out independent, external inspections. Rather, the framework simply lists multiple public bodies, including our office, the Representative for Children and Youth, the courts, the Human Rights Tribunal, the Canadian Red Cross, and WorkSafe BC, among others.

The framework states that these public bodies ensure that the ministry remains accountable - suggesting that the ministry is relying on the existence of these public bodies to satisfy its responsibility to conduct independent and external inspections. We are disappointed to see that ministry has made no meaningful progress on this critically important element of oversight. We conclude that the ministry’s implementation of Recommendation 26 is ongoing.

Reducing inequities and disparate outcomes for Indigenous youth

RECOMMENDATION		Assessment
R6	Law reform to require consideration of social history of Indigenous youth for all decisions made about them while in custody	No Progress
R7	Policy framework developed in consultation with BC First Nations Justice Council to support implementation of R6	No Progress

In its 1999 *Gladue* decision, the Supreme Court of Canada recognized that fair treatment for Indigenous people by the criminal justice system requires recognizing their distinct social history and culture. Currently, however, there is no requirement in the *Youth Custody Regulation* for custody staff to consider the social history of Indigenous youth and the systemic disadvantages that they face when staff are making decisions about youths’ care in custody, including decisions to place or maintain them in separate confinement. The *Youth Criminal Justice Act* requires that measures taken against young persons should “respond to the needs of aboriginal young persons,”³¹ but this statement of principle is not reflected in the provincial legislation, nor has it been operationalized

in relation to decisions about whether to separately confine youth. We saw this legislative gap as contributing to the overrepresentation of Indigenous youth who were separately confined in custody.

In our investigation we found that Indigenous youth were separately confined more frequently and experienced more hours of separate confinement than non-Indigenous youth. Prolonged periods of separate confinement in response to self-injury were experienced disproportionately by female, Indigenous and racialized youth. These youth were separately confined more often and for significantly longer periods than any other youth in custody.

³¹ *Youth Criminal Justice Act*, S.C. 2002, c. 1, s. 3(1)(c)(iv).

As a result, we recommended that by April 1, 2022, the minister introduce legislation to amend the *Youth Justice Act* to require consideration of the social history of Indigenous youth in all decisions made about them while in custody (**Recommendation 6**). To support this legislative change we recommended that the ministry work with the BC First Nations Justice Council to, by July 1, 2022, develop a policy framework to support ministry staff in considering the social history of Indigenous youth in custody in all decision making (**Recommendation 7**).

The application of a *Gladue* analysis to decisions made about Indigenous youth in custody is an attempt to recognize – as the Supreme Court has acknowledged – that the justice system as currently constituted does not respond to “the needs, experiences and perspectives”³² of Indigenous people or communities and that alternative approaches must be taken. The importance of integrating the *Gladue*

principles into the youth justice system was articulated in the BC First Nations Justice Council’s annual justice forum report, *What We Heard*: “Rightsholders expressed a need to fully implement *Gladue* principles in the youth justice system and the important role *Gladue* Reports play in connecting Indigenous youth with their communities and cultures.”³³

The factors outlined in *Gladue* are the bare minimum that custody centre staff should understand and consider when making decisions about Indigenous youth in custody. Consideration of social history and systemic racism should also inform the development of an alternative model of care for Indigenous youth in custody.

The ministry has told us that it intends to consult with the BC First Nations Justice Council on this recommendation but has not confirmed progress on this work. We conclude that no progress has been made on Recommendations 6 and 7.

Improving mental health care and trauma-informed practice

RECOMMENDATION		Assessment
R1	Law reform to ensure that communication with youth in custody is not mediated by physical barriers	Ongoing
R12	Complete an independent review of the Independent Observation Unit and implement resulting recommendations	Fully implemented
USE OF FORCE		
R2	Conduct an independent review of use of force in youth custody	Ongoing

³² *R. v. Gladue*, [1999] 1 SCR 688, para. 73.

³³ BC First Nations Justice Council, “BC First Nations Annual Justice Forum Report: What We Heard,” March 6–8 2023, 13, https://bcfnjc.com/wp-content/uploads/2023/10/BCFNJC_BCFNAJF-Report-WWH_2023_WEB.pdf.

R3	Provide our office with a copy of use of force review, with a plan for implementing its recommendations	Ongoing
ALTERNATIVES TO SEPARATE CONFINEMENT		
R10	Develop and implement culturally safe, trauma-informed supportive alternatives to separate confinement for youth	No Progress
R11	Complete an independent review of the changes made in response to Recommendation 10	No Progress
R13	Designate a secure psychiatric facility that is equipped to provide trauma-informed, culturally safe treatment to youth with complex mental health needs	No Progress
R14	Law reform to require youth with complex mental health needs be transferred to a designated youth psychiatric facility	No Progress
R15	Develop a policy to ensure that youth with complex mental health needs are identified on admission	No Progress
ALTERNATIVES TO CONFINEMENT FOR SUSPECTED CONTRABAND		
R16	Establish a policy regarding the operation of the body scanner at Burnaby Youth Custody Services Centre	Fully implemented
R17	Provide our office with a report assessing whether the body scanner has reduced the use of separate confinement for suspected contraband	Fully implemented

In our investigation we found that separate confinement is used to manage and respond to symptoms of mental illness, such as self-injury and suicidal behaviour. At the same time, separate confinement is known to exacerbate mental illness. As described earlier, we recommended prohibiting in law the practice of separately confining youth with complex mental health needs.

We also recommended that the ministry develop and implement a trauma-informed, culturally safe way of responding to youth

with complex mental health needs – including self-injuring and suicidal youth – without separately confining them. Ultimately, it is the strengthening of trauma-informed practice, the implementation of culturally safe services, and better access to appropriate mental health treatment that will, in our view, give real meaning to the *Youth Criminal Justice Act* requirement that youth custody be “safe, fair and humane.”³⁴

³⁴ *Youth Criminal Justice Act*, S.C. 2002, c. 1, s. 83(1)(a). This provision of the *Youth Criminal Justice*

Conditions of separate confinement

Communication through the door slot

In our investigation we found that youth in separate confinement had been required to communicate with mental health practitioners and others through the slot in the door of their separate confinement room. We found that this made it more challenging or impossible for youth to access essential mental health care and meaningful human contact.

We recommended that the minister amend the *Youth Custody Regulation* to require staff, including practitioners, to make all reasonable efforts to ensure that communication is not mediated by physical barriers. We recommended that those regulatory amendments be made by April 1, 2022 (**Recommendation 1**).

In response, the ministry told us that it planned to consult with Indigenous communities, Indigenous governing bodies and other partners about these regulatory changes and incorporate their feedback into its new service framework by December 2023; it then changed this date to September 2024. The ministry has not confirmed whether these consultations have occurred or how it intends to move these amendments forward.

The ministry also told us that it had amended the youth custody policy in September 2021 to limit the use of the door slot. The amended policy reads as follows:

Communication with youth should be conducted free from barriers. Staff, including mental health practitioners, shall make all reasonable efforts to ensure

that communication with youth in custody is not mediated by physical barriers (including a door slot) unless doing so would put the staff or youth in imminent physical danger.³⁵

We are encouraged to see policy amendments intended to reduce the use of physical barriers and support trauma-informed practice. However, the ministry has not provided any evidence about whether this policy has been effective in reducing the use of the door slot or other physical barriers to communication.

More importantly, the ministry has provided no clear timeline for when the regulation will be amended.

As further work is required to fully implement Recommendation 1, we conclude that it is ongoing.

Independent Observation Unit

Our investigation found that most of the youth who were separately confined at Burnaby Youth Custody Services Centre were housed in a unit designated for separate confinement, commonly referred to as the Independent Observation Unit (IOU). In our investigation we found deficiencies in the structural design, construction, and durability of this unit: we found that the separate confinement space had various safety hazards, was vulnerable to damage by youth and could become a source of material used by youth to self-injure. The unit contributed to the risk of injury and harm youth experienced while separately confined.

.....
Act acknowledges that a “safe, fair and humane” custody system contributes to the protection of society.

³⁵ Youth Custody Operations Manual, D. 7.12.

As a result, we recommended that the ministry undertake an independent review of the IOU, applying trauma-informed principles to recommend physical changes that would ensure a trauma-informed and physically and culturally safe space (**Recommendation 12**).

The ministry told us that it conducted a review of the IOU in March 2022; that the unit was decommissioned as of December 1, 2022, and is no longer used to house youth. The ministry has not provided any information about where separately confined youth are being housed since the IOU was decommissioned.

We appreciate that decommissioning the IOU addresses the specific safety concerns described in *Alone* and to this extent we conclude that Recommendation 12 has been fully implemented. However, the ministry has not confirmed where youth are currently being housed while separately confined nor has the ministry described measures taken to ensure that the living units are safe.

Use of force

In our investigation we found that some youth were repeatedly subjected to physical force by custody staff immediately before and during separate confinement.

In particular, we found that ministry staff used force repeatedly in response to the self-injuring and suicidal behaviour of some youth. The repeated use of force in these circumstances diminished the youths' sense of autonomy and privacy. It is likely that the use of force had a retraumatizing effect on youth who had a significant and known history of trauma. For these reasons, we found that the use of force in relation to the separate confinement of these youth – even

though permitted by the *Youth Custody Regulation* and ministry policy – was oppressive.

We recommended that by October 1, 2021, the ministry conduct an independent review of the use of force against youth in custody (**Recommendation 2**). We recommended that the review include the collection of data about which youth are subject to use of force interventions, and the extent to which the use of force is connected to the use of separate confinement. We recommended that the review make recommendations for reducing the use of force in custody including the forcible removal of clothing, and for developing alternate models of non-violent de-escalation based in trauma-informed practice and cultural safety. We further recommended that the ministry provide us with a copy of the review report within one month of its completion, along with a plan for implementing its recommendations (**Recommendation 3**).

In partial response to Recommendation 2, the minister issued a directive to youth custody staff in May 2021 stating, “use of force shall no longer be used to remove the clothing of youth, unless for immediate medical life saving measures.” The directive was put into practice on September 1, 2021. The ministry has since provided data confirming that, based on its records, staff did not forcibly remove the clothing of any youth in custody between May 17, 2021, and May 22, 2022. This is encouraging, and we look forward to receiving more recent data on the use of force.

In February 2024, the ministry provided us with a report on a review of use of force conducted by its Youth Justice Program Support Branch. The review examined the use of force over a nine-month period between September 2021 and June 2022.

During this time 36 use of force incidents occurred. The review found that all of the youth involved in those incidents had a mental health diagnosis, that 50 percent of the involved youth were Indigenous and that two individual youth were involved in 64 percent of all use of force incidents examined.

As a result of its review, the ministry identified several areas of concern. The reviewers noted that many of the incidents occurred in places in the custody centre where there are no surveillance cameras or where the cameras were not functioning. In the absence of video evidence, the only record of the incident is written documentation by custody staff involved. However, the review found multiple instances where the use of force was not reported, and other instances where the use of force was not authorized or approved. The review further found that most use of force incidents were not documented in a timely way; the review found that it took an average of 32 days to complete the required documentation. This is far longer than what is expected in the ministry's own policy. The review further found that many of the records were incomplete and contained errors. Finally, the review identified that on several occasions, staff that were directly involved in the application of force reviewed and or approved their own actions. This practice is concerning as it creates a conflict of interest and undermines the foundations of procedural fairness.

We are pleased to see that the ministry conducted an internal review of the use of force; the written report contributes to greater transparency of the use of force in youth custody. We are also pleased to see that the ministry developed an action plan to address the concerns the report identified.

However, we remain concerned that the use of force review lacked sufficient independence because it was conducted by ministry staff. The ministry maintains that the Youth Justice Program Support branch is independent because it has no operational authority over the use of force in youth custody. However, the Youth Justice Program Support branch reports to the provincial director of youth justice, who is responsible for youth custody operations. As part of their responsibility for youth custody, the provincial director of youth justice is responsible for approving all the techniques and devices of force used by custody staff.³⁶ In addition, the provincial director is responsible for receiving notification of all incidents involving use of force³⁷ including immediate notification of incidents involving forcible removal of clothing,³⁸ and notification when the protective shield is used.³⁹ Given the role of the provincial director, we are unable to conclude that a review conducted by their staff is sufficiently independent.

Our concerns about the independence of the review are heightened by the myriad of findings in the report that evidence a closed and insular system that hides the experiences of youth from view. For example, the absence of video evidence

³⁶ Youth Custody Operations Manual, E.3.08.

³⁷ Youth Custody Operations Manual, E.3.13.

³⁸ Youth Custody Operations Manual, D.9.08.

³⁹ Youth Custody Operations Manual, F.7.06.

and poorly documented records makes it difficult if not impossible to assess whether use of force was justified and determine whether force was applied appropriately.

As such, we conclude that the ministry has made insufficient progress on implementing either of Recommendations 2 or 3 and that its work is ongoing. We continue to recommend that the ministry engage an expert independent of the ministry to conduct a meaningful review of its use of force on youth in custody.

Alternatives to separate confinement

To eliminate its reliance on separate confinement as a behavioural management tool, the ministry must take meaningful steps to better integrate trauma-informed practices into the youth custody system. In *Alone*, we made recommendations aimed at supporting the ministry in responding to youth with complex health needs without separately confining them.

We recommended that the ministry develop and implement culturally safe, trauma-informed supportive alternatives to separate confinement for youth (**Recommendation 10**).

In its initial response to this recommendation, the ministry told us that it intended to “develop and implement culturally safe, trauma informed supportive alternatives to separate confinement.” The ministry has pointed to three actions as evidence of as implementing this recommendation.

First, the ministry points to the behaviour support model it adopted in 2018, called the Trauma Informed Behaviour Support

Model (TIBS), described by the ministry as “a strategic and actionable approach” to help youth develop cognitive and behavioural awareness; motivate positive, safe, pro-social behaviours; and facilitate youth-centred practice. The ministry writes that the use of TIBS has reduced the use of separate confinement and use of force. We appreciate the benefits of this model but note that it was in place during our investigation and, as such, we conclude that it did little to provide alternatives for youth who experienced prolonged and repeated periods of separate confinement. We do not consider the use of TIBS as providing sufficiently safe and supportive alternatives to separate confinement.

Second, the ministry told us that it had amended its policy manual to encourage the use of alternatives to separate confinement.⁴⁰ The amended policy states that separate confinement is to be used as a last resort and that staff must consider all other options. We appreciate the general intention of these policy amendments but note that they simply mirror the requirements of the *Youth Custody Regulation* and do not set out practical alternatives to separate confinement.⁴¹

Third, the ministry told us that it planned for youth custody leadership to receive trauma informed training starting in June 2022. The ministry has not confirmed whether this training took place. We note the absence of any commitment by the ministry for staff to undergo cultural safety training.

⁴⁰ Youth Custody Operations Manual, D. 7.03.

⁴¹ Section 15.1(1)(a) of the *Youth Custody Regulation* states, “The person in charge of a youth custody centre may . . . confine a youth separately from other youths in the youth custody centre if . . . all other means of dealing with the youth have been exhausted or are not reasonable in the circumstances.”

Taking these three points together, we conclude that no meaningful progress has been made on Recommendation 10, and we encourage the ministry to take a more proactive approach to developing safe and supportive alternatives to separate confinement.

To support the ministry in developing effective alternatives to separate confinement, we recommended that it engage an expert in trauma-informed practices to provide an independent review of any alternatives developed in response to our recommendation, and implement any resulting recommendations by July 1, 2024 (**Recommendation 11**). The ministry told us that it has not initiated this process yet. As a result, we conclude that no progress has been made on Recommendation 11.

Secure care for youth with complex mental health needs

It became clear in our investigation that Burnaby Youth Custody Services Centre was not equipped to respond to youth's complex mental health needs without separately confining them. We recommended that the ministry build on the model offered by other existing resources, such as the Maples Adolescent Treatment Centre,⁴² to create a secure and therapeutic facility with appropriately trained staff who can provide trauma-informed behavioural

interventions, counselling, psychological assessment, Indigenous-specific care and recreational activity that incorporates frequent, sustained opportunities for meaningful social contact.

We recommended that youth with complex mental health needs be transferred to a secure facility that can respond to their needs appropriately – whether the Maples or elsewhere – and that this must be mandated in the *Youth Justice Act* (**Recommendations 13 and 14**).⁴³

The ministry told us that it intended to consult with Indigenous governing bodies, Indigenous communities and existing oversight bodies on implementation of this recommendation and incorporate their feedback into its service framework by December 2023; it then changed this date to September 2024. The ministry has not confirmed whether these consultations have occurred or how it intends to move this critical piece of law reform forward. We consider the ministry's intentions to be insufficient and conclude that no progress has been made on Recommendations 13 and 14.

To support these legislative changes, we recommended that the ministry develop a policy to ensure that youth with complex mental health needs are identified on

⁴² The Maples Adolescent Treatment Centre provides specialized assessment and treatment programs for youth aged 12–18 who are living with significant mental health, emotional or behavioural challenges that impact many aspects of their lives. The Maples is designated under the *Mental Health Act* as a provincial tertiary mental health facility. It also acts as the provincial forensic hospital treatment facility for youth found not fit to stand trial or not criminally responsible by reason of a mental disorder. (*Mental Health Act*, R.S.B.C. 1996, c. 288, s. 3(1); Ministerial Order M076/2019 amending Ministerial Order M393/2016.; Ministerial Order M213/2003; *Youth Criminal Justice Act*, S.C. 2002, c. 1, s. 141(11); *Criminal Code*, R.S.C. 1985, c. C-46, s. 672.1).

⁴³ Similarly, the need for a mechanism to transfer self-injuring adult prisoners to appropriate psychiatric facilities was discussed in, *Damage/Control: Use of Force and the Cycle of Violence and Trauma in BC's Federal and Provincial Prisons*, Prisoners' Legal Services, June 2019, 51, <https://prisonjustice.org/wp-content/uploads/2019/06/use-of-force-report-online-1.pdf>.

admission (**Recommendation 15**). In response to this recommendation, the ministry told us that it had updated its Memorandum of Understanding between Youth Custody Services and Youth Forensic Psychiatric Services. The ministry described the updated MOU as “adding opportunities to bridge services,” but based on our review of the MOU it is unclear what, if any, additional services are provided for the MOU. Moreover, we note that the MOU does not contemplate a process for supporting the transfer of youth with complex health needs to the Maples. As a result, we conclude that the ministry has made no progress on Recommendation 15.

Separate confinement of youth suspected of concealing contraband

During our investigation we reviewed cases where ministry staff separately confined youth who were suspected of concealing contraband and youth who were believed to be intoxicated. Under the *Youth Custody Regulation*, a youth can be separately confined if they are reasonably believed to have taken an intoxicant, have contraband hidden on or in their body, or must be separately confined for a medical reason.⁴⁴ In many of the cases we reviewed, staff separately confined youth because they suspected that the youth was concealing drugs inside their body but they were unable to conclusively determine this because of limits on searching. Separate confinement was used to enable staff to closely monitor the youth’s well-being and prevent the possible distribution of drugs within the centre if the youth was in fact concealing contraband. We found that some youth were separately confined for prolonged periods as a result.

During our investigation we learned that the ministry planned to install a full body ION scanner, which, the ministry told us, would allow staff to detect contraband without the need for prolonged separate confinement. We recommended that the ministry establish a policy for using the body scanner, including standardized documentation, and to ensure appropriate training of staff (**Recommendation 16**). We also recommended that the ministry report to us on whether the body scanner reduced the use of separate confinement for suspected contraband at Burnaby Youth Custody Services Centre (**Recommendation 17**).

The ministry told us that it installed a full body ION scanner in September 2021 and developed policy to guide its use. The policy, approved on September 1, 2021, outlines conditions and legal authority for the body scanner’s use, including youths’ right to refuse to submit to a body scan, restrictions on scans, pathways to interpret and action results, and data retention. The ministry’s policy suggests that the body scanner is utilized to screen all youth at Burnaby Youth Custody Services Centre in the following circumstances: new admissions, transfers from another custody centre, court returns, returns from offsite appointments - and when there are reasonable grounds to believe that a youth has contraband hidden in their body. The ministry told us that it administered 677 scans between September 1, 2021, and February 28, 2023, and had zero positive results – in other words, the scanner did not detect any contraband and as a result no youth were placed in separate confinement because of suspected contraband. We consider Recommendations 16 and 17 fully implemented.

⁴⁴ *Youth Custody Regulation*, BC Reg. 137/2005, s.15.1(1)(b)(iv).

CONCLUSION

This monitoring report is being released almost three years after our original report, *Alone: The Prolonged and Repeated Isolation of Youth in Custody*, was published. While the Ministry of Children and Family Development's records indicate that the use of separate confinement has declined significantly, we are concerned that the ministry continues to separately confine some youth for prolonged periods of time and that Indigenous youth continue to be disproportionately exposed to the risk of psychological harm caused by separate confinement. This is very troubling, especially as the ministry has failed to make meaningful progress on 15 of the 26 recommendations made to safeguard against the most serious harms caused by separate confinement.

Based on our assessment of the ministry's actions to date, we are concerned that the ministry has not made this work a priority and continues to subject youth, and especially Indigenous youth, to risk of serious harm.

We look forward to seeing the ongoing work of the ministry and others who have taken on the issues highlighted in this report and who will continue to push for a more fair system. We will continue to monitor and report publicly on the implementation of the remaining recommendations from *Alone*.

APPENDIX: RESPONSE FROM MINISTRY FOR CHILDREN AND FAMILY DEVELOPMENT



VIA E-MAIL

April 3, 2024

Jay Chalke
Ombudsperson
E-mail: [REDACTED]

Re: *Alone: The Prolonged and Repeated Isolation of Youth in Custody* Progress Update

Dear Jay Chalke:

Thank you for sharing a draft copy of the “Systemic Investigation Update: Report on the Implementation of Recommendations from *Alone: The Prolonged and Repeated Isolation of Youth in Custody*” on February 1, 2024. The ministry appreciates the opportunity to review your assessment of the progress made towards implementing the twenty-six recommendations from the *Alone* report.

When the draft copy of the report was shared, your office requested that the ministry provide another update on our progress implementing the recommendations by March 31, 2024, that may potentially inform the draft report. In consideration of pending legal action related to the topic of the *Alone* report, the ministry is currently unable to provide a further update on the progress of the implementation of the recommendations.

If you have any questions, please contact [REDACTED]

Sincerely,

A handwritten signature in black ink, appearing to read "David Galbraith".

David Galbraith
Deputy Minister for Children and Family Development

pc: James Wale

Ministry of
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STATUS OF RECOMMENDATION ASSESSMENTS

RECOMMENDATION	MCFD's 2021 commitment	Assessment
<p>R1</p> <p>By April 1, 2022, the Minister of Children and Family Development propose to the Lieutenant Governor in Council that the <i>Youth Custody Regulation</i> be amended to require that staff, including mental health practitioners, make all reasonable efforts to ensure that communication with youth in custody is not mediated by physical barriers, including a door slot.</p>	<p>Regulation consultation to be completed and incorporated into service framework by December 2023 (later extended to September 2024).</p> <p>Policy to be amended and implemented by September 2021.</p>	<p>Ongoing</p>
<p>R2</p> <p>By October 1, 2021, the Ministry of Children and Family Development conduct an independent review of the use of force in youth custody that includes:</p> <ul style="list-style-type: none"> a. The collection and analysis of data to understand which youth are most affected by the use of force and the circumstances in which force is used, and b. Recommendations to reduce the use of force including the forcible removal of clothing, including the development of alternate models of non-violent de-escalation based in trauma-informed practice and cultural safety. 	<p>Review to be completed by June 30, 2022.</p>	<p>Ongoing</p>
<p>R3</p> <p>Within one month of the completion of the use of force review, the ministry provide a copy of the completed review report to our office with a plan for implementing its recommendations.</p>	<p>Report to be provided by September 30, 2022.</p>	<p>Ongoing</p>
<p>R4</p> <p>By April 1, 2022, the Minister of Children and Family Development propose to the Lieutenant Governor in Council that the <i>Youth Custody Regulation</i> be reconsidered by amending the regulation to:</p> <ul style="list-style-type: none"> a. Prohibit the separate confinement of youth in custody for more than 22 consecutive hours, with no exceptions, and b. Establish a maximum number of times that a youth can be separately confined within a specified time frame, with no exceptions. 	<p>Regulation consultation to be completed and incorporated into service framework by December 2023 (later extended to September 2024).</p> <p>Policy to be amended and implemented by September 1, 2021</p>	<p>No Progress</p>

RECOMMENDATION	MCFD's 2021 commitment	Assessment
<p>R5 By July 1, 2021, the Ministry of Children and Family Development</p> <p>a. Implement a process for collecting and publicly reporting on an annual basis data on the use of separate confinement in youth custody, including the frequency and duration of instances of separate confinement.</p> <p>b. Develop a framework for public reporting that includes the collection, use and disclosure of disaggregated demographic data in relation to separate confinement and ensures that appropriate processes of Indigenous data governance are followed throughout required data acquisition, access, analysis and reporting.</p>	Data collection framework to be developed and implemented by June 20, 2022.	Ongoing
<p>R6 By April 1, 2022, the Minister of Children and Family Development reconsider the <i>Youth Justice Act</i> by introducing legislation to amend the Act to require consideration of the social history of Indigenous youth for all decisions made about them while in custody.</p>	Legislative consultation to be completed and incorporated into service framework by December 2023 (later extended to September 2024).	No Progress
<p>R7 By July 1, 2022, the Ministry of Children and Family Development develop a policy framework in consultation with the BC First Nations Justice Council to support implementation of the legislative changes described in Recommendation 6 above.</p>	Policy consultation to be completed and incorporated into service framework by December 2023 (later extended to September 2024).	No Progress
<p>R8 By April 1, 2022, the Minister of Children and Family Development propose to the Lieutenant Governor in Council that the <i>Youth Custody Regulation</i> be amended to prohibit the use of separate confinement of youth who are especially vulnerable to the harms of separate confinement, including those under the age of 16 years and those with complex mental health needs.</p>	<p>Regulation consultation to be completed and incorporated into service framework by December 2023 (later extended to September 2024).</p> <p>Policy to be amended and implemented by June 2023.</p>	No Progress

R9	By April 1, 2022, the ministry develop and implement a policy framework to assess and identify youth who should not be separately confined because they are especially vulnerable to the harms of separate confinement.	Policy to be developed and implemented by June 2023.	No Progress
R10	By July 1, 2022, Youth Justice Services develop and implement culturally safe, trauma-informed supportive alternatives to separate confinement for youth that includes <ul style="list-style-type: none"> a. Staff with training and expertise in mental health, trauma informed practices, and youth development b. Structured activities and access to programming, school and skills training c. Meaningful social contact d. Access to counselling and behaviour therapy and other mental health services e. Cultural, religious and spiritual support 	Culturally safe, trauma-informed supportive alternatives to be developed and implemented by June 30, 2022.	No Progress
R11	By July 1, 2024, the Ministry of Children and Family Development complete an independent review by an expert in trauma-informed practices of the changes made in response to recommendation 10, above, and implement any resulting recommendations by September 1, 2024.	Review to be completed and resulting recommendations implemented by July 1, 2024.	No Progress
R12	By October 1, 2021, the Ministry of Children and Family Development complete an independent review of the IOU that applies trauma-informed principles to recommend physical changes to the unit to ensure it is safe and allows it to support delivery of the trauma-informed and culturally safe services. The ministry implements the resulting recommendations by March 31, 2022.	Review to be completed and resulting recommendations implemented by June 30, 2022.	Fully Implemented
R13	By July 1, 2021, the Minister of Children and Family Development propose to the Lieutenant Governor in Council to designate as a place of secure custody for the purpose of the <i>Youth Criminal Justice Act</i> and the <i>Young Offenders Act</i> one or more secure youth psychiatric facilities that are equipped to provide trauma informed, culturally safe treatment to youth with complex mental health needs.	Regulation consultation to be completed and incorporated into service framework by December 2023 (later extended to September 2024).	No Progress

RECOMMENDATION	MCFD's 2021 commitment	Assessment	
R14	By April 1, 2022, the Minister of Children and Family Development reconsider the <i>Youth Justice Act</i> by introducing amendments to the Act to require that youth in custody with complex mental health needs to be transferred to a designated youth psychiatric facility.	Legislative consultation to be completed and incorporated into service framework by December 2023 (later extended to September 2024).	No Progress
R15	At the same time as the amendments in Recommendation 14 come into force, the Ministry of Children and Family Development implement a policy and procedures for ensuring that youth with complex mental health needs are identified on admission and transferred into a designated facility.	Policy consultation to be completed and incorporated into service framework by December 2023 (later extended to September 2024).	No Progress
R16	By the date on which the body scanner is operational, the Ministry of Children and Family Development a. Establish a policy on when and how to use the body scanner, including a requirement for staff to document each use of the body scanner to detect suspected contraband, and develop and implement a standard form for this purpose, and b. Ensure that staff are appropriately trained in the use of the body scanner and interpretation of results.	Policy to be completed, implemented and staff trained by October 31, 2021.	Fully Implemented
R17	One year after the body scanner begins operating, the Ministry of Children and Family Development provide our office with a report that assesses whether the body scanner has reduced the use of separate confinement for suspected contraband at BYCS and if not, what additional steps will be implemented to reduce the use of separate confinement due to suspected contraband.	Report to be provided one year after body scanner becomes operational.	Fully Implemented

R18	<p>By April 1, 2022, the Ministry of Children and Family Development propose to the Lieutenant Governor in Council that the <i>Youth Custody Regulation</i> be amended to establish a legal framework that applies to youth who are housed alone for operational reasons that, at a minimum:</p> <ol style="list-style-type: none"> Requires staff to ensure that these youth have meaningful human contact Requires staff to immediately implement alternatives to isolation Requires staff to document cases where youth are housed alone for operational reasons Establishes a process for authorizing and reviewing such placements that is equivalent to the review process for youth who are separately confined in other circumstances. 	<p>Regulation consultation to be completed and incorporated into service framework by December 2023 (later extended to September 2024).</p> <p>Policy to be amended and implemented by September 1, 2021.</p>	No Progress
R19	<p>By October 1, 2021 Youth Justice Services develop and implement a policy identifying and requiring the use of</p> <ol style="list-style-type: none"> alternatives to isolation for female youth who are separately confined solely because they are the only female youth in custody at that time, and cultural supports, including the development of a program to connect Indigenous female youth with specially trained Indigenous Elders to provide ongoing support, encouragement, and care during separate confinement. 	<p>Policy to be amended and implemented by June 30, 2022.</p>	Ongoing
R20	<p>By October 1, 2021, Youth Justice Services revise existing policy to acknowledge the significant risk of psychological harm caused by being housed alone in custody and require Community Probation Officers to:</p> <ol style="list-style-type: none"> Identify when specific youth are living alone or are likely to be housed alone for operational reasons; and Communicate this to the court in relevant pre-trial proceedings, including bail hearings, reviews of detention orders, consideration of Indigenous social history (Gladue reports and reviews) and pre-sentence proceedings. 	<p>Policy to be amended and implemented by October 1, 2021.</p>	Partially Implemented

RECOMMENDATION	MCFD's 2021 commitment	Assessment
<p>R21 By April 1, 2022 the Minister of Children and Family Development recommend to the Lieutenant Governor in Council that the <i>Youth Custody Regulation</i> be amended to establish an independent review body for all separate confinement decisions that:</p> <ul style="list-style-type: none"> a. Is separate from the Ministry of Children and Family Development b. Receives notification of every decision to separately confine a youth c. Reviews compliance with the laws, policies and procedures that govern the use of separate confinement and specifically. <ul style="list-style-type: none"> i. Has the power to order that a youth be released from separate confinement ii. Ensures that no youth is separately confined for longer than 22 consecutive hours iii. Ensures that no youth is separately confined for more than the maximum number of times in a specified time period. 	Regulation consultation to be completed and incorporated into service framework by December 2023 (later extended to September 2024).	No Progress
<p>R22 By July 1, 2021, the Ministry of Children and Family Development develop a policy to:</p> <ul style="list-style-type: none"> a. Seek the prior consent of youth in custody to immediately notify a parent or guardian of their placement in separate confinement, and b. If the youth is in case under the Child, Family and Community Service Act, immediately notify their social worker of the placement. 	Policy to be amended and implemented by September 1, 2021.	Partially Implemented
<p>R23 By July 1, 2021, the Ministry of Children and Family Development in consultation with the Representative for Children and Youth, develop a policy and process for reporting to the Representative about each instance of the use of separate confinement in youth custody.</p>	Consultation with RCY and reporting framework to be completed and implemented by June 30, 2022.	No Progress
<p>R24 By July 1, 2021, the Ministry of Children and Family Development provide the Public Guardian and Trustee with information about the separate confinement for longer than 22 hours, since 2017, of any youth for whom the PGT is still property guardian for the purpose of allowing the PGT to assess whether any of these youth have a legal claim in relation to their separate confinement.</p>	Consultation with PGT and reporting framework to be completed and implemented by June 30, 2022.	No Progress

R25	By July 1, 2021, the Ministry of Children and Family Development, in consultation with the Public Guardian and Trustee, develop a policy and process for reporting to the PGT about each instance of the use of separate confinement in youth custody where the PGT is property guardian of that youth.	Consultation with PGT and reporting framework to be completed and implemented by June 30, 2022.	No Progress
R26	<p>By October 1, 2021, and in accordance with section 37(1) of the Youth Justice Act, the ministry develop and implement a process for inspections of youth custody centres that expressly incorporates the standards set out in Rules 83-85 of the Mandela Rules:</p> <ul style="list-style-type: none"> • Establishes a process for conducting regular internal inspections of each youth custody centre • Establishes a process for a team of independent inspectors that includes experts in youth development and trauma-informed practice to conduct regular inspections of each youth custody centre • Focuses primarily on legislative compliance and matters related to the health, safety and human rights of youth in custody, including separate confinement and the use of force • Includes a mechanism for reporting in writing on the outcome of inspections and for following up on the implementation of any resulting recommendations. 	Inspection framework to be developed and implemented by June 30, 2022.	Partially Implemented



OMBUDSPERSON

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