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## Structured Intervention Units and Mental Health in Canadian Federal Prisons: A Policy Assessment of Bill C-83

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### A Federal Health Reform Analysis

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## Abstract

On 21 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 Canadian federal prisons and replacing the practice with structured intervention units. This new correctional model would serve as a way to separate unsafe inmates while ensuring they receive appropriate mental health services, increased time outside of their units, and meaningful human contact. The conception of Bill C-83 was largely a result of a history of widespread criticisms that administrative segregation infringed on human rights, posed significant mental health concerns, and violated the Canadian Charter of Rights and Freedoms. While the reform mitigated immediate pressure on the federal government to act, several advocacy groups, legal experts, politicians, and other stakeholders voiced negative opinions and indicated the shortcomings of the new units and the impact they will have on the health of prisoners. Bill C-83 has the potential to prompt significant change in the context of prison health reform, but this will be dependent on the federal government's coordination with Correctional Services Canada.

*Le gouvernement fédéral a fait adopter le 21 juin 2019 le projet de loi C-83 : transformer le système correctionnel afin de mettre l'accent sur la réinsertion sociale et les soins de santé mentale, dont l'intention première était de supprimer le recours à l'isolement administratif disciplinaire dans les prisons fédérales canadiennes et de le remplacer par des unités d'intervention structurées. Ce nouveau modèle correctionnel vise à séparer les prisonniers dangereux tout en garantissant qu'ils reçoivent les soins de santé mentale nécessaires, qu'ils aient du temps hors de leurs unités et des contacts humains significatifs. Le projet de loi C-83 a été conçu largement en réponse à une série de critiques tenant que l'isolement administratif bafouait des droits élémentaires, présentait des risques importants pour la santé mentale et violait la Charte canadienne des droits et libertés. Parce que la réforme atténuait le besoin d'action immédiate de la part du gouvernement fédéral, plusieurs groupes de défense, des experts juridiques, des politiques et autres acteurs ont exprimé leur opposition et souligné les défauts des nouvelles unités ainsi que l'impact qu'elles auront sur la santé des prisonniers. Le projet de loi C-83 peut apporter un changement significatif dans le contexte de la réforme de la santé en prison, mais ceci dépendra du degré de coordination entre le gouvernement fédéral et Service correctionnel Canada.*

### Key Messages

- Administrative and disciplinary segregation in Canadian federal prisons sparked a series of debates about the human rights and mental health of inmates.
- Bill C-83 was passed in 2019 to address concerns by introducing a replacement for segregation called structured intervention units in federal prisons across Canada operated under Correctional Services Canada.
- Since its introduction, Bill C-83 has received support as it presents an opportunity to abolish the practice of administrative segregation as well as criticism from various stakeholders that structured intervention units function similarly to administrative segregation.

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### Messages-clés

- *L'isolement administratif et disciplinaire dans les prisons fédérales canadiennes a suscité une série de débats sur les droits de l'homme et la santé mentale des prisonniers.*
- *Le projet de loi C-83 a été adopté en 2019 pour répondre à ces préoccupations en introduisant une alternative à l'isolement appelée unités d'intervention structurées dans les prisons fédérales dans tout le pays, gérées par Service correctionnel Canada.*
- *Depuis son introduction, le projet de loi C-83 a été bien accueilli car il représente une occasion d'en finir avec la pratique de l'isolement administratif, mais il a aussi été critiqué par de nombreux acteurs car les unités d'intervention structurées fonctionnent de manière très proche de l'isolement administratif.*

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## 1 BRIEF DESCRIPTION OF THE POLICY REFORM

On 16 October 2018, the former Minister of Public Safety and Emergency Preparedness and member of the Liberal party, Ralph Goodale, introduced Bill C-83: *An Act to amend the Corrections and Conditional Release Act and another Act* in the House of Commons. After several committee reviews and debates, the bill received Royal Assent on 21 June 2019. Bill C-83 eliminated the use of administrative and disciplinary segregation (“solitary confinement”) and introduced a replacement, structured intervention units (SIUs). SIUs are alternative institutional living environments where individual inmates are placed for a period of time. In practice, SIUs are intended to provide a designated space for inmates who the institution are unable to manage safely and cannot be maintained in the general inmate population while ensuring they are provided with necessary resources for reintegration (Casavant and Charron-Tousignant 2018). Empirical evidence has consistently shown that inmates placed in long-term confinement experience short- and long-term cognitive symptoms including insomnia, hallucinations, suicidal thoughts, isolation panic, and clinical depression (*CBC News* 2014; *CBC Radio* 2019; Luigi et al. 2020; Sapers 2015; Shalev 2008). Although the extent to which SIUs will mitigate the mental health effects associated with confinement remains unclear, Bill C-83 could provide a platform for future prison health reform. Clauses 3, 7, 8 and 10 of the bill are the focus of this health reform analysis.

## 2 HISTORY AND CONTEXT

Prior to Bill C-83, two forms of solitary confinement were established in Canadian prisons, disciplinary and administrative segregation. Disciplinary segregation is applied when an inmate has committed a serious offense such as assaulting another inmate or stealing (Government of Canada 1992). Alternatively, administrative segregation is intended to “maintain the security of the penitentiary or the safety of any person by not allowing an inmate to associate with other inmates” (Casavant and Charron-Tousignant 2018, p. 3). Both forms of segregation deprive inmates from human contact, time outdoors, and recreational activities, all of which are available to inmates from the general inmate population (Casavant and Charron-Tousignant 2018).

Correctional Services Canada (CSC) is responsible for managing convicted criminal offenders with a sentence of 24 months or more in Canada (Correctional Services Canada 2019a). CSC is a federal agency within the Government of Canada’s Public Safety portfolio that is governed by the *Corrections and Conditional Release Act* (CCRA) and Corrections and Conditional Release Regulations (Correctional Services Canada 2019b). The head of the CSC is the Correctional Service Commissioner who reports to the Minister of Public Safety Canada (Correctional Services Canada 2019b). CSC primarily receives funding from the federal government and manages 43 institutions across Canada (Correctional Services Canada 2019a; John Howard Society 2018).

**1996:** *The Arbour Report* is published in response to an incident at the Prison for Women in Kingston, Ontario where a group of six female inmates protesting a rise in suicides in the facility were strip searched by an all-male emergency response team and placed in prolonged isolation (7-9 months). The report describes the problematic conditions in which the women were placed (empty cells with restraints and paper gowns), condemns the use of segregation, and prompted the building of regional facilities for women (Arbour 1996; Jackson 2015).

**1997-2000:** A CSC task force on administrative segregation struck by the Commissioner of Corrections and a House of Commons Standing Committee on Justice and Human Rights and Subcommittee on CCRA provide recommendations to evaluate and find alternatives to segregation in all federal penitentiaries across Canada (Jackson 2015; Public Safety Canada 1997).

**2007-2016:** Five high-profile incidents involving administrative segregation are reported in the media. A pivotal case that garnered government engagement was the death of 19-year-old Ashley Smith, who committed suicide after spending a total of 1,047 days in disciplinary segregation at the Grand Valley Institution for Women in Ontario. Notably, prime minister Stephen Harper publicly criticized Corrections Canada's handling of the case but indicated that he would not intervene. (*CBC News* 2014; Parkes 2017; *National Post* 2012; *The Globe and Mail* 2017).

**2013:** *Coroner's Inquest Touching the Death of Ashley Smith* is published by the Coroner for Ontario in response to the death of Ashley Smith. The inquest recommended the termination of indefinite solitary confinement and alternatives for inmates with mental illness (Carlisle 2013).

**June 2017:** Bill C-56: *An Act to amend the Corrections and Conditional Release Act and the Abolition of Early Parole Act* is tabled by the Liberal party in the House of Commons to put a 21-day limit on administrative segregation in federal institutions. It fails at the first reading (McDonald 2018).

**2017-2018:** Two provincial lawsuits specific to the constitutionality of administrative segregation in federal prisons are brought to the Ontario Superior Court and B.C. Supreme Court deeming it unconstitutional. Both cases directly condemned CSC's practice of administrative segregation and placed pressure on the federal government to respond (Grace 2019; Kapralos 2017; Parkes 2017).

**July 2021:** The Minister of Public Safety and Emergency Preparedness, Bill Blair, appoints Howard Sapers as the Chair for a renewed Structured Intervention Unit Implementation Advisory Panel (SIU IAP) for two years. The Panel will appoint a wide

range of individuals with different perspectives related to the federal corrections system. The goal of the Panel will be to monitor, assess, and report on issues related to the ongoing implementation of SIUs (Public Safety and Emergency Preparedness Canada 2021).

### **3 GOALS OF THE REFORM**

#### **3.1 Stated**

1. Eliminate administrative and disciplinary segregation in Canadian federal prisons (Casavant and Charron-Tousignant 2018).
2. Implement SIUs as a replacement with the following protocols:
  - (a) Provide opportunities for inmates to spend at least four hours a day outside of their cells, two of which include meaningful human contact<sup>1</sup>.
  - (b) Require a registered health professional visit the inmate once a day and inmates receive mental health assessment by a licensed professional within 24 hours of placement (Casavant and Charron-Tousignant 2018).
  - (c) Establish procedures for reviewing the decision to place an inmate in a SIU every 30 days (Casavant and Charron-Tousignant 2018).

#### **3.2 Implicit**

1. Continue to separate inmates that pose security and safety threats that the institution is unable to manage without the label of administrative segregation (Kulik 2019; Pate 2019).
2. Respond to the concerns around administrative segregation raised by various advocacy groups and academics (McKay-Panos 2020).
3. Increase mental health care for inmates placed in SIUs (Desmarais 2018).

### **4 FACTORS THAT INFLUENCED THE HOW AND WHY**

#### **4.1 How administrative segregation came onto the government's agenda: problems, policies, and politics**

The adverse mental health outcomes and human rights violations associated with administrative segregation in Canadian prisons has widely been condemned by advocacy groups, researchers, international organizations, provincial courts, and the Correctional Investigator

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<sup>1</sup>Meaningful human contact is defined as contact that is not mediated or interposed by physical barriers such as bars, security glass, door hatches or screens (Casavant and Charron-Tousignant 2018).

of Canada for decades (McKay-Panos 2020). In his 2015 annual report, the Correctional Investigator of Canada cited a WHO report indicating that solitary confinement has negative impacts on the health and well-being of inmates especially for inmates with pre-existing mental health conditions (Sapers 2015; World Health Organization 2014). Additionally, evidence has shown that administrative segregation disproportionately impacts specific inmate populations, including individuals with mental health issues and Indigenous people (Desmarais 2018). Between 2011 and 2013 almost half of suicides in federal prisons occurred in segregation cells, most of which were among inmates with known mental illnesses (Kelsall 2014; Sapers 2015). The statistical evidence of the harmful effects associated with administrative segregation was manifest in several high-profile cases of suicide and neglect among inmates who were placed in segregation for prolonged periods of time (*CBC News* 2014; *The Globe and Mail* 2017). Each of these cases received a large amount of press that garnered the public’s attention and helped to highlight the scope of the problem in Canadian federal prisons, which in turn influenced how the issue was positioned on the federal government’s agenda.

Several political factors have been central to bringing the topic of administrative segregation onto the federal government’s agenda. Bill C-83 was introduced in 2018, when the Liberal party held a majority, offering a political climate conducive to push forward a bill largely supported by Liberal party members. From 2017 to 2018, two provincial litigations, *Corporation of the Canadian Civil Liberties Association v. Her Majesty the Queen* and *British Columbia Civil Liberties Association v. Canada (Attorney General)* deemed administrative segregation in federal prisons unconstitutional as it violates sections 7 (life, liberty, and security of the person) and 15 (equality rights) of the Canadian Charter of Rights and Freedoms. As a result, the B.C. Supreme Court gave the federal government one year to take action (Wells 2020). This generated pressure on the government to take action in the form of legislation (Grace 2019). On an international level, the United Nations’ call to end solitary confinement lasting 15 days or more suggested Canada had both a domestic and an international moral obligation to reform administrative segregation (Sapers 2015). Amidst international initiatives, in the last decade, ten states in the United States have reexamined their use of solitary confinement in state prisons by introducing limits to or prohibitions on its use (Hager and Rich 2014). Together, these factors served as key catalysts in bringing the topic of administrative segregation on to the federal government’s agenda and ultimately leading to the introduction of Bill C-83.

## **4.2 The final decision was made: interests, ideas, and institutions**

The bill’s primary assertion to eliminate the use of segregation in Canadian federal prisons aligned with the ongoing efforts to abolish the practice by many prisoners’ rights advocacy groups including the John Howard Society, Elizabeth Fry Society, Canadian Criminal Justice Association, and the Canadian Civil Liberties Association (Bronskill 2020; McKay-Panos 2020). From a health care standpoint, the Canadian Medical Association voiced

their concerns about the mental health effects associated with segregation, and committed to working with CSC to dismantle segregation (Kelsall 2014). However, when Bill C-83 was introduced, it raised apprehensions among legal experts and advocacy groups around the lack of comprehensiveness of the legislation, resulting in over 40 amendments that were later accepted in the bill's final form (Casavant and Charron-Tousignant 2018). Examples of amendments integrated into the final bill include requiring a mental health assessment of all inmates within 30 days of admission into custody and within 24 hours of being moved to an SIU, as well as in certain circumstances, ensuring independent external decision-makers review the number of hours inmates spend outside their unit and determine if an inmate should remain in an SIU (Desmarais 2018; Wright 2019).

One of the most dominant voices throughout the development of Bill C-83 was that of Senator and former executive director of the Canadian Association of Elizabeth Fry Societies, Kim Pate. Senator Pate claimed that SIUs did not address the root problem of prolonged isolation and, costing an estimated \$58M annually to operate, were more expensive than other alternatives to administrative segregation. Examples of alternatives that address more systemic issues include admitting inmates into a psychiatric hospital (\$900 a day per inmate) and a national anti-gang program costing about \$200,000 annually (Wright 2019). Beyond the financial resources required to implement and maintain SIUs, additional staffing resources to ensure that a registered health professional visits an inmate once a day and that a coordinated independent review of inmates placed in a SIU are required to meet the guidelines of the bill.

Furthermore, although CSC was determined to be the institution responsible for implementing and operationalizing SIUs, correctional officers and wardens employed within CSC were largely left out of the deliberations on Bill-C83, allegedly due to privacy clauses that prevent correctional officers from contributing to the legislative reforms. The absence of frontline perspectives in prison reform legislation has been a common criticism for years (Powers 2016). Upon the introduction of Bill C-83, the Union of Canadian Correctional Officers (UCCO) published a public statement highlighting their concerns with the bill, arguing that the elimination of administrative segregation would constrain the ability of officers to respond to particularly violent inmates posing safety threats to staff and other inmates (UCCO 2018). UCCO emphasized that the current capacity of staff and funding at the federal facilities were not equipped to adopt SIUs and meet the standards outlined by the bill (UCCO 2018). The points made by the UCCO were conveyed during debates in the House as the Conservative party strongly opposed the approval of Bill C-83 on the grounds that it compromised the security of staff members and other inmates and was an attempt from the Liberals to be "soft on crime," ultimately demonstrating the parties' ideological differences about prison health reform (Doherty 2019). The lack of representation from CSC when drafting the bill along with contrasting ideologies between the Conservative and Liberal parties may have shaped the progression of Bill C-83.



## 5 IMPLEMENTATION

As of 30 November 2019, Bill C-83 applies to 15 federal prisons operated by CSC (Casavant and Charron-Tousignant 2018; Correctional Service Canada 2021). An SIU Implementation Advisory Panel was commissioned by the federal government to monitor and evaluate the implementation of SIUs for one year (Bronskill 2020; Public Safety 2019). Furthermore, a team of independent decision-makers with expertise in human rights, criminal law and Indigenous issues were appointed to review and represent cases of inmates placed in SIUs (Bronskill 2020). The federal government allocated a total of \$448M to the establishment of SIUs and it is estimated that implementation and oversight of the new system will cost \$60M-\$70M annually (Office of the Parliamentary Budget Officer 2019; Wright 2019). Beyond the establishment of an advisory board, it is unclear how the federal government plans to oversee the implementation of SIUs.

## 6 EVALUATION

According to the federal government, Bill C-83 will be reviewed every five years. The evaluation conducted by the first SIU IAP was released on 16 October 2020. In an interview with CBC, then head of the panel, Anthony Doob, described being unable to properly evaluate the program, claiming CSC rebuffed attempts by the panel to obtain data on the operation of SIUs (Harris 2020). Based on the data they were able to access, the panel reported that only 21% of inmates spent four hours outside of their cells, 16% of inmate stays in SIUs were for two months or longer, a significant proportion of inmates reported mental health concerns, and inmates in SIUs were disproportionately young, Indigenous, and male (*The Canadian Press* 2020; Wells 2020). CSC defended itself against the allegations made in the report, citing the negative impact the COVID-19 pandemic has had on the ability to obtain data along with a brief acknowledgement that the data reliability concerns would be taken into account (CSC 2020). More recently, the SIU IAP led by Howard Sapers found that as of August 2021, 48% of inmates placed in SIUs were Indigenous and about 55% of inmates spent more than 15 days in the units (*The Globe and Mail* 2022).

## 7 STRENGTHS, WEAKNESSES, OPPORTUNITIES AND THREATS

Table 1 summarizes the strengths, weaknesses, opportunities, and threats (SWOT) of replacing administrative segregation with SIUs as per Bill C-83 from the perspectives of the stakeholders concerned. These perspectives are indicated in parentheses.

Table 1: SWOT Analysis

STRENGTHS	WEAKNESSES
<ul style="list-style-type: none"> <li>● Formally eliminates administrative and disciplinary segregation (<i>inmates, advocacy groups, researchers, public</i>).</li> <li>● A registered health professional visits an inmate daily (<i>inmates, advocacy groups, researchers, health professionals</i>).</li> <li>● Maintains safety and security by providing a way for dangerous inmates to be separated from the mainstream inmate population (<i>correctional officers, inmates, CSC</i>).</li> <li>● Introduces regular independent reviews for each inmate in a unit (<i>inmates, advocacy groups</i>).</li> </ul>	<ul style="list-style-type: none"> <li>● Places the responsibility for implementation and operations of SIUs and additional health services mandated by the bill on the CSC (<i>correctional officers, CSC, wardens</i>).</li> <li>● Fails to provide a day limit for time spent in a unit (<i>inmates, CSC, correctional officers, advocacy groups</i>).</li> <li>● Costly compared to other alternatives to segregation such as placement in psychiatric hospitals or national anti-gang programming in prisons (Wright 2019) (<i>government, CSC</i>).</li> <li>● Has no clear mechanism to limit the use of segregation for marginalized groups who have historically been most vulnerable to mistreatment in correctional facilities despite this being one of the goals of SIUs outlined in the bill (<i>Indigenous inmates</i>).</li> <li>● It is unclear who is holding CSC accountable for shortfalls of implementing SIUs (<i>government</i>).</li> </ul>
OPPORTUNITIES	THREATS
<ul style="list-style-type: none"> <li>● Could provide a successful intervention model that increases mental health care for the most vulnerable in Canadian correctional institutions (<i>advocacy groups, inmates</i>).</li> <li>● Could provide a platform for future prison health reform (<i>provincial/territorial governments, advocacy groups, legal experts</i>).</li> </ul>	<ul style="list-style-type: none"> <li>● Due to the politicized nature of the implementation of SIUs, a future government ideologically opposed to prison reform and SIUs may eliminate them and revert to administrative segregation (<i>government, advocacy groups</i>).</li> <li>● Lack of resources and health professionals to implement units effectively (<i>CSC</i>).</li> </ul>

## 8 CONCLUSION

The changes to federal prisons brought forward by Bill C-83 address solitary confinement, one of the most criticized practices in Canadian penitentiaries. While novel SIUs present an alternative to administrative segregation and potentially increased mental health services, the federal government pushed the bill forward, without providing adequate funding to support the implementation of SIUs. This may lead to challenges related to the sustainability of the units and their lasting impact on the mental health of inmates.

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