BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION

Recommendations for Northwest Territories Bill 45: *Corrections Act*

July 4th, 2019

Introduction to the BCCLA

The BCCLA's mandate is to preserve, defend, maintain and extend civil liberties and human rights in Canada. As Canada's oldest active civil liberties association, the BCCLA has a long history of work in prisoners' rights and relationships with Indigenous peoples and communities.

The BCCLA has significant expertise in the law and policy governing correctional facilities in Canada. The work that the BCCLA has done regarding prisoners' rights and corrections services, through litigation and with oversight agencies, include the following:

- We have led the constitutional challenge to the practice of solitary confinement in prisons across Canada, which the BC Court of Appeal has held to be an unconstitutional practice in its current form.
- We have authored a report opposing mandatory minimum sentencing, as they are ineffective, costly, and unjust.

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- We have intervened with the Union of BC Indian Chiefs at the Supreme Court of Canada in the *Ewert v. Canada* case, which challenges the use of prisoner risk assessment tests that can be culturally biased against Indigenous prisoners.

- We have called for transparency and accountability in a number of prison deaths, including the case of Soleiman Faqiri's in an Ontario correctional facility; and the case of Christopher Robert Roy, who committed suicide in his prison cell after spending two months in solitary confinement.

- We are an original member of The Coalition on Murdered and Missing Indigenous Women and Girls which came together in response to the Missing Women Commission of Inquiry in British Columbia overseen by Commissioner Wally Oppal.

- We have made submissions and commented on Bill C-83, which amends the federal *Corrections and Community Reintegration Act*'s provisions on solitary confinement.

- We have spoken publicly in favour of improved health services and human rights in prisons.

- We participated in a report on arbitrary imprisonment and cruel treatment of migrants with mental health issues in Canada.

In modernizing correctional law, the Northwest Territories ("NWT") has the opportunity to become a leader in the human rights of prisoners by placing limits on the use of solitary and restrictive confinement. Your jurisdiction can also provide exemplary living conditions and oversight mechanisms in order to create a correctional system that best provides safety for inmates and corrections officers, while also best preparing inmates for re-integration.

All of the recommendations included in this submission are collated in Appendix A. All of the resources that we refer to are included in Appendix B.

Part 1: Separate Confinement

1) Impacts of Solitary Confinement and how they relate to Separate Confinement

The *United Nations Standard Minimum Rules for the Treatment of Prisoners* ("Mandela Rules") defines solitary confinement as "22 hours or more a day without meaningful human contact," and prolonged confinement as solitary confinement for a time period of over 15 consecutive days. This type of treatment is considered torture under international law.[1]

Over the years, a lot of evidence has accumulated on the many negative effects of solitary confinement. Health effects of solitary confinement include weight loss, weakness, and loss of vocal power. Inmates may also suffer from hallucinations and illusions in numerous senses, becoming intensely paranoid, confused, and fearful. Health effects also include boredom, loneliness, and a range of long-term, non-psychotic psychiatric conditions. The most common conditions are: depression, anxiety, insomnia, learning disabilities, attention deficit hyperactivity disorder, and posttraumatic stress disorder. Symptoms of confinement can also include antisocial and borderline personality disorders, manifestations of interpersonal and behavioural problems, and major psychotic mental illnesses, which can leave prisoners severely incapacitated on their exit from prison and/or solitary confinement. Solitary confinement thus decreases the chances that prisoners will be able to effectively transition back into society. The

[1] Office of the Correctional Investigator (May 2019). Strategic Planning Exercise: Legislative Framework Consistent with Evidence-Based Policy and Best Practices: CCRA 2.0 [CCRA 2.0].

mental effects of prolonged or solitary confinement are extremely detrimental to inmates and society alike.

Bill 45 contemplates separate confinement, which is defined as "holding an inmate apart from other inmates." It is unclear whether inmates would still have access to meaningful human interaction during that period of confinement, albeit not with other inmates. In addition, the legislation places a limit on separate confinement, establishing that inmates may not be held in separate confinement for more than 20 hours in a 24-hour period. It is unclear, however, what setting or activities inmates would have access to outside of the 20 hours of separate confinement. We recommend that this time period be mandated to include meaningful human interaction, without which the effects of separate confinement on prisoners would not differ significantly from solitary confinement under the Mandela Rules. This topic is explored in greater detail later in our submission. In addition, separate confinement may still have the negative effects of solitary confinement if it is prolonged, with poor attention to living conditions or prisoners' health. Thus, we have several recommendations for a more comprehensive regime regarding section 32 on separate confinement in Bill 45.

2) Purpose, Use, and Duration of Separate Confinement

Bill 45 should clarify that separate confinement should only be used as a last resort.

It should be clear in the Bill that separate confinement should only be used when absolutely necessary. This principle should also be included in Bill 45, both as a general principle and in the provisions on separate confinement.

Bill C-83, which amends the federal *Corrections and Conditional Releases Act ("CCRA")*, the recently passed Ontario *Correctional Services Transformation Act ("CSTA")*, and the Legislative Framework Consistent with Evidence-Based Policy and Best

Practices: CCRA 2.0 ("CCRA 2.0") law drafted by the Office of the Correctional Investigator, all include a provision which states that separate confinement should be administered for as short a period as possible. One example of a general clause is the recently enacted Bill C-83 include "(d) that the Service use the least restrictive measures consistent with the protection of the public, staff members and offenders." The *CSTA* also limits non-disciplinary segregation to "exceptional cases and as a last resort if all other options to manage the inmate without segregation have been exhausted."

We suggest that the NWT Legislature include such language in Bill 45. This will help minimize the number of inmates negatively affected by separate confinement and ensure that less damaging alternatives are considered.

Bill 45 should clarify that solitary confinement, as defined by the UN Mandela Rules, is prohibited.

We encourage the Legislature of the NWT to add a prohibition on the use of solitary and prolonged confinement in the Bill. More specifically, the legislation should prohibit any type of confinement for 22 hours or more in a day without meaningful human contact. Sample language for this can be found in section 70(1) of the model CCRA 2.0 law, and the Mandela Rules 43 and 44.[2]

Remove section 32(2) (c) from Bill 45, which allows separate confinement when an inmate has concealed contraband.

Inmates should not be held in separate confinement on the grounds that the Person in Charge has reasonable grounds to believe that the inmate has contraband concealed on their person. Bill 45 defines contraband very broadly, and includes alcohol or any drug,

[2] *United Nations Standard Minimum Rules for the Treatment of Prisoners* (the Mandela Rules), Resolution Adopted by the General Assembly on 17 December 2015. 8 January 2016. *General Assembly Seventieth Session,* A/RES/70/175.

cannabis, tobacco, anything else 'prescribed to be contraband' and anything threatening the management or security of the correctional center. Separate confinement is a disproportionate punishment for concealing contraband, especially since much of this contraband would be legal outside of the penitentiary. The other criteria included for separate confinement (i.e. harm to others or harm to the inmate themselves) are sufficient to address the harms that contraband may cause. Separate confinement remains similar to solitary confinement, an internationally condemned condition of imprisonment, and so should not be the punishment of choice for concealing, possessing or potentially trafficking, contraband in the penitentiary. Other punishments are more appropriate to disincentives the concealment and traffic of contraband in the penitentiary. Thus, s. 32(2) (c) should be removed from the legislation altogether.

Include provisions stating that inmates with serious mental health conditions should not be placed in separate confinement.

- *Remove section 32(2) (c) from Bill 45.*
- *Individuals with untreated mental health conditions should be sent to specialized health facilities to obtain adequate treatment.*

Inmates should not be placed in separate confinement when a Person in Charge has "requested an examination of the mental condition of the inmate under the *Mental Health Act*." Evidence shows that individuals with mental health problems are likely to suffer greater negative impacts from solitary confinement than those without a mental health conditions. In addition, they are discriminated against with respect to separate confinement and are more likely to be placed in higher levels of security, supervision, and control. Solitary confinement does not respond to the particular needs of individuals

with mental health conditions, and may only worsen their situation.[3] Mandela Rules recommend that such individuals be placed in specialized facilities with the supervision of qualified health-care professionals.[4] Separate confinement, especially if it were to be prolonged, would likely have a negative impact on individuals with mental health, and would not be an appropriate way to treat their condition.

The model CCRA 2.0 law recommends that inmates that are chronically self-harming, suicidal, or need medical observation should not be held in conditions like separate confinement. The *CSTA* also includes prohibitions on solitary confinement for a person who is "self-harming or suicidal; has a mental disorder, or an intellectual disability, that meets the prescribed conditions; [and] needs medical observation." In addition, inmates with a mental disorder, intellectual disability or emotional disability should not be kept in these conditions if a health care professional believes separate confinement would exacerbate their conditions. We endorse these recommendations, and suggest that similar provisions be implemented in Bill 45 for separate confinement. At the very least, corrections officers must ensure that those with mental health conditions have regular access to adequate healthcare and counselling.

3) Meaningful Human Contact

Bill 45 should include a requirement that the hours outside of separate confinement are marked by meaningful human interaction.

We welcome the efforts to limit separate confinement of inmates to no more than 20 hours in a 24-hour period. This is an important step towards protecting the well-being of prisoners, and helping to prepare them for life outside of the penitentiary. However,

[3] *BCCLA v Canada (AG)* 2019 BCCA 228, at 134.
[4] *Treatment of Prisoners*, *supra*.

those four hours must be marked by 'meaningful human interaction' as per the Mandela Rules.

Meaningful human interaction has been defined in a variety of contexts. Bill C-83 requires "an opportunity for meaningful human contact and an opportunity to participate in programs and to have services that respond to the inmate's specific needs" and establishes a few additional requirements of meaningful interactions, including that:

1) reasonable efforts shall be made to ensure that the opportunity to interact through human contact is not mediated or interposed by physical barriers such as bars, security glass, door hatches or screens;

2) an inmate's transfer or shower time does not count as meaningful interaction; and

3) an opportunity to interact, for a minimum of two hours with activities that include but are not limited to programs, interventions, and services that encourage the inmate to make progress towards the objectives of their correctional plan or that support the inmate's reintegration into the mainstream inmate population, and leisure time.

The BCCLA recommends that Bill 45 mandate an opportunity for meaningful human interaction for the hours outside of separate confinement, and to use a definition that mirrors the above. Without meaningful human interaction, separate confinement does not differ significantly from solitary confinement.

4) Additional Limits to Separate Confinement

Bill 45 should state that an inmate should not be kept in separate confinement for longer than 15 days, and for no more than a total of 60 calendar days over a 365 day period, until and unless an independent and impartial oversight body approves it.

We recommend that there be a cap on the number of days prisoners are kept in separate confinement. Inmates should not be placed in separate confinement for indefinite periods, and there should be a limit to how many days they are kept in separate confinement. Mandela Rules limit prolonged confinement of prisoners to 15 days. Since 15 days in separate confinement is similar to prolonged confinement, this should be the default maximum detention period for an inmate. This limit developed because evidence shows segregation for any longer can have irreversible psychological effects, interpreting the evidence generously.[5] Negative health effects nevertheless occur after just a few days in segregation.

Bill 45 should prohibit the separate confinement of vulnerable populations.

In addition, separate confinement for vulnerable populations such as for minors should be abolished altogether, as recommended by organizations such as the Canadian Bar Association. The model CCRA 2.0 law and the *CSTA*, also recommend excluding certain groups from restrictive confinement.[6] These groups include individuals with mobility challenges and pregnant individuals.

[5] Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, at 9.
[6] CCRA 2.0, supra note 1, at article 70 (6) on Restrictive Confinement: Prohibitions.

5) Independent Oversight of Decisions Regarding Separate Confinement

Separate confinement decisions must be appealed or justified to an independent and impartial oversight body

Even with the rules we recommend regarding separate confinement in place, proper oversight is needed to ensure they are properly implemented. There must be impartial and independent oversight over decisions to place or maintain an inmate in separate confinement. Inmates must have the right to appeal a decision to be put in separate confinement, or to continue their separate confinement without their express approval. However, an appeal procedure to the Director of Corrections is not sufficiently independent from the inmate to be an adequate or independent review body.

Adequate review bodies could include: 1) the Investigation and Standards Office mentioned in sections 12 to 14 of Bill 45; or 2) the NWT Courts. Several organizations have suggested that a superior court judge is best positioned for this role.[7]

Include a provision that inmates have the right to an impartial oral hearing, the right to counsel, disclosure of relevant documents, and the ability to present or cross-examine witnesses.

The burden of proof must be on the corrections officers to show that they did not breach an inmate's rights and to justify the use or extension of separate confinement.

Corrections officers should be required to provide reasons and rationales for any decision to place an inmate in separate confinement. In addition, the onus should be on corrections officers to justify any stay in separate confinement that is longer than 15 days to an

[7] David Asper Centre for Constitutional Rights, (18 November 2018). Submissions to the Standing Committee on Public Safety and National Security. Online at: https://www.ourcommons.ca/Content/Committee/421/SECU/Brief/BR10205343/br-external/DavidAsperCentreForConstitutionalRights-e.pdf

independent and impartial oversight body. Such justification should require evidence that separate confinement is being used as a last resort, and that all other options have been considered to protect other inmates, staff members, or the inmate themselves.

Part 2: Reintegration & Correctional Programs

1) Structure & Purpose

Include a provision about the establishment and operation of correctional programs

The BCCLA suggests that there be a provision that outlines the purpose, scope, and relevance of correctional programs. We recommend a provision that parallels the elements described in Section 33 of the *Nunavut Corrections Act*. In particular, we suggest considering where correctional programming can be operated (i.e. at the correctional center, in a community, or on the land). As with s. 33(3) of the *Nunavut Correctional Act*, we also suggest that the Bill 45 provision consider the cultural and possible linguistic relevance of its programming.

Any provisions related to correctional plans and reintegration plans should come under one heading.

The BCCLA suggests that the legislative provisions be presented in order of the correctional experience. To do this, we suggest that any provisions related to correctional plans and reintegration plans come under one heading.

As an example, the draft CCRA 2.0 presents all provisions relating to reintegration and correctional planning under one group of sections entitled "Correctional and Reintegration Plans."

2) Inmate Involvement in Correctional and Reintegration Plans

Include provisions that offenders must be involved in making their own correctional and reintegration plan.

One vital element of a reintegration process is the involvement of the offender in making their own plan. We suggest that the language in the Act specifically mention the involvement of offenders in their correctional and reintegration planning. Section 23 of the model CCRA 2.0 law provides sample language on objectives for offenders' behavior in reintegration.

3) Indigenous Inmates

Systemic and Individual Circumstances

Include a provision that considers an Indigenous offender's personal and systemic history in considering options for reintegration. Gladue factors must be considered during the development of reintegration and correctional plans.

To ensure cultural relevance and appropriate healing plans, the BCCLA suggests that Gladue factors be considered during the development of reintegration and correctional plans. This would require the correctional staff member and the inmate to work together to create a plan that will work for that inmate given their unique history and social reality.

The BCCLA further suggests that, where possible, an Indigenous offender be given the option to do in-community programming or, alternatively, programming on the land. To do this, it would be appropriate, where possible, to have an Elder from that individual's community and/or culture involved in the planning process for that individual's reintegration plan. Sample language is available in section 23 of the model

CCRA 2.0 law, which also considers social factors for Indigenous offenders in developing their reintegration plan.

Elders and Spiritual Leaders

Bill 45 should include provisions that traditional Indigenous knowledge and cultures should be made accessible to Indigenous offenders throughout their involvement in the system.

In the spirit of reconciliation and considering the overrepresentation of Indigenous peoples in the criminal justice system throughout Canada, we believe that the incorporation of traditional Indigenous knowledge and cultures should be accessible to Indigenous offenders throughout their involvement in the system. For this reason, we suggest that Bill 45 include a special provision similar to s. 83 of the federal *CCRA* that recognizes the vital role of Elders and Spiritual Leaders for the purpose of cultural preservation and healing for Indigenous offenders.

First Nations, Métis and Inuit Healing

Bill 45 should recognize and prioritize access to culturally appropriate healing traditions for Indigenous inmates.

Keeping in line with the recommendation for Elders and Spiritual Leaders, we recommend that Bill 45 recognize and prioritize the accessibility to culturally appropriate healing traditions for Indigenous inmates. Section 31 of Bill 6, the Ontario *CSTA,* has similar provisions.

Release to Indigenous Community

Include protocols for Indigenous inmates who wish to be released into an Indigenous community.

Similarly to s. 84 of the *CCRA*, we believe that Bill 45 should have procedures in place for Indigenous inmates who wish to be released into an Indigenous community. Taking into consideration the importance of community and cultural connection, efforts should be made for such arrangements.

4) Women Inmates

Health

Include provisions that are specific to health concerns of women inmates as they can differ from male inmates. These provisions should consider things such as menstrual products, pregnancy care, childcare, etc.

Reintegration

Include specific protocols for women's re-integration into the community.

Bill 45 should include procedures to address the reintegration challenges that are uniquely faced by women inmates. The John Howard Society of Ontario has identified that women have a more difficult time with reintegrating into the community than men do, specifically when it comes to finding adequate housing.[8] The Office of the Auditor General of Canada also identified the issue of reintegration for women offenders in a 2003 report. The Correctional Services Canada "Reintegration of Women Offenders" report identifies the specific needs of women at all stages of the reintegration process;

[8] John Howard Society, p. 11

assessment, programs, community reintegration, as well as the specific needs of Indigenous women offenders.

Indigenous Women

Bill 45 should require penitentiaries to provide intensive and comprehensive mental health, addictions, and trauma services for incarcerated Indigenous women and girls, and give special consideration to the reintegration and rehabilitation of Indigenous women inmates.

The BCCLA recognizes that Indigenous women are a vulnerable group within Canadian society and are overrepresented within correctional systems. For these reasons, special consideration should be made to the reintegration and rehabilitation of Indigenous women inmates.

Recommendation 14.6 of the recently published Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls calls on Correctional Services Canada and provincial and territorial services "to provide intensive and comprehensive mental health, addictions, and trauma services for incarcerated Indigenous women, girls, and 2SLGBTGGIA people, ensuring that the terms of care are needs-based and not tied to the duration of incarceration."[9]

5) Assessment for discharge and discharge plan

Set out specific provisions to address discharge and discharge plans.

In their report on community reintegration, the John Howard Society of Ontario stresses the importance of discharge planning, especially for "specific populations such as those

[9] Reclaiming Power and Place, p. 27

dealing with mental illness, addictions, substance abuse issues, co-occurring disorders, and HIV/AIDS."[10] We endorse these recommendations by the John Howard Society.

Part 3: Gladue Principles, Risk Assessment & Planning

The BCCLA recognizes that Indigenous offenders "tend to score significantly higher than non-Indigenous offenders on most risk factors."[11] Public Safety Canada also reports that Indigenous offenders are disadvantaged at virtually every stage of decision-making in the justice system—including security placements and parole grant rates.[12] Their report suggests that one of the best ways to protect Indigenous offenders against bias in these processes "is to rely on objective, structured, and empirically defensible methods."[13]

It is our recommendation that the NWT Correctional Facilities develop a risk assessment tool that considers the unique realities for Indigenous offenders.

Until then, we recommend that Bill 45 use the language of "objective, structured, and empirically defensible" as a commitment to unbiased risk assessments.

Security Classification

To ensure that the risk assessment process as it relates to security classification is fair to Indigenous inmates, the BCCLA suggests that a separate Indigenous-specific assessment be established and used. This would ensure that Gladue principles would be integrated into the assessment in a way that would act as mitigating factors for inmate assessment as opposed to aggravating factors. As stated in the previous section, the risk assessment tool was not created for Indigenous inmates and considering Gladue factors in the current

[10] *Ibid*.
[11] Public Safety Canada, at p. 5
[12] *Ibid*, at p. 10
[13] *Ibid*.

assessment may be aggravating for Indigenous inmates. For example, Indigenous inmates tend to have a longer criminal record than non-Indigenous inmates and this would be seen as a higher risk factor in the current assessment. Instead, as mentioned in the previous section, a risk assessment method that is created with Indigenous inmates in mind should be developed.

Assessments—General

Include provisions on risk assessments, such as: when they will be conducted, when they will be updated who will conduct them, and what method will be used.

Parole

Bill 45 should ensure that indigenous inmates should have the right to involve Elders in their parole hearings.

Similarly to security classifications, there is the danger that parole evaluations are inherently biased against Indigenous inmates. We recommend establishing a risk assessment method for parole consideration, as well, that is made with Indigenous offenders and their unique social and historical realities in mind. Additionally, the parole process would benefit from the involvement of an Elder in cases involving Indigenous inmates. Information and examples of this practice can be found in the Parole Board of Canada's website, where they conduct and share examples of Elder-Assisted Hearings.

Part 4: Living Conditions

Include provisions requiring penitentiaries to provide adequate living conditions.

Subsections 26(c) and (d) of Bill 45 contain some reference to living conditions, but requirements on living conditions are not explicit. It is useful to expressly outline the entitlements of inmates in the statute, and to ensure these are adequate to Canadian

human rights standards. We therefore suggest adding provisions which guarantee adequate housing, access to natural light and fresh air, adequate bedding, cleanliness and repair of the facilities, nutritious food and water on a daily basis which complies with spiritual, religious and dietary needs, clothes that fits and is suitable to their personal dignity, access to a toilet, necessary toiletries and feminine hygiene products, access to a shower and sufficient equipment for bathing. Sample provisions can be found in the model CCRA 2.0 law, and in the Mandela Rules.

Include provisions requiring penitentiaries to provide inmates with access to adequate means of communications.

Inmates should have the right under the legislation to have reasonable contact with people outside the penitentiary, subject to security concerns. This should include being permitted to send and receive letters, access to a telephone, and visits from family and friends in person. Sample language can be found in the model CCRA 2.0 law.[14]

Include provisions requiring penitentiaries to provide inmates with access to adequate services and activities.

Section 50(1) of Bill 45 includes discretionary language about the provision of services and activities. However, we submit that language used should be mandatory (i.e. use "shall" instead of "may") as the items listed are fundamental services for prisoners. Corrections services should also be required to maintain libraries with a sufficient number of books and computers.

[14] *CCRA* sections to 45

Include provisions requiring penitentiaries to provide inmates with adequate healthcare.

Bill C-45 should be more explicit about inmates' rights to healthcare. We suggest including provisions outlining minimum healthcare standards. For example, the corrections service must provide inmates with essential health care, annual check-ups upon request, and reasonable access to non-essential health care. This must include mental health and physical health treatments. There should also be an area of the penitentiary that is designated to be the healthcare unit. In addition, treatment should be clinically sound and in conformity with accepted ethical standards, and must not be given to an inmate unless they have consented to it. The corrections services must also ensure a process whereby an inmate, including inmates giving birth, can be conveyed to a nearby hospital if the need arises. The model CCRA 2.0 law provides more detailed sample provisions that should be included in a Corrections Act, including the meaning of 'informed consent'.

Healthcare means therapeutic medical, dental and mental health care provided by registered healthcare professionals. It should include, but not be limited to, prevention of disease or injury, medication, addictions and substance abuse care, Indigenous medicine, and mental health care. None of these should be withheld as punishment, or while in separate confinement.

Include provisions requiring penitentiaries to provide inmates in separate confinement with access to and visits from healthcare professionals.

Members of a healthcare team should have access to visit, or be visited by, inmates in separate confinement on a daily basis. Inmates in separate confinement should be afforded proper healthcare, and should have regular healthcare check-ins to ensure their health is not worsening in separate confinement.

Include provisions requiring penitentiaries to provide equal services to inmates with disabilities.

All individuals with physical or mental disabilities must be provided with adequate treatment and reasonable accommodation in order to have equitable and full access to prison life, as mandated by the Mandela Rules. Services should include accessible mobility options, mobility service devices, hearing services and visual aids.

Appendix A: List of Recommendations

Part 1: Separate Confinement

Use and Purpose

- *Bill 45 should clarify that separate confinement should only be used as a last resort.*
- *Bill 45 should clarify that solitary confinement, as defined by the UN Mandela Rules, is prohibited.*
- *Remove section 32(2) (c) from Bill 45, which allows separate confinement when an inmate has concealed contraband.*
- *Include provisions stating that inmates with serious mental health conditions should not be placed in separate confinement.*
- *Remove section 32(2) (c) from Bill 45.*
- *Individuals with untreated mental health conditions should be sent to specialized health facilities to obtain adequate treatment.*

Meaningful Human Contact

- *Bill 45 should include a requirement that the hours outside of separate confinement are marked by meaningful human interaction.*

Additional Limits to Separate Confinement

- *Bill 45 should state that an inmate should not be kept in separate confinement for longer than 15 days, and for no more than a total of 60 calendar days over a 365 day period, until and unless an independent and impartial oversight body approves it.*

- *Bill 45 Should Prohibit the Separate Confinement of Vulnerable Populations.*

Independent Oversight of Decisions Regarding Separate Confinement

- *Separate confinement decisions must be appealed or justified to an independent and impartial oversight body*
- *Include a provision that inmates have the right to an impartial oral hearing, the right to counsel, disclosure of relevant documents and the ability to present or cross-examine witnesses.*
- *The burden of proof must be on the corrections officers to show that they did not breach an inmate's rights and to justify the use or extension of separate confinement.*

Part 2: Reintegration & Correctional Programs

- *Include a provision about the establishment and operation of correctional programs.*
- *Any provisions related to correctional plans and reintegration plans should come under one heading.*
- *Include provisions that offenders must be involved in making their own correctional and reintegration plan.*
- *Set out specific provisions to address discharge and discharge plans.*

Indigenous Inmates

- *Include a provision that considers an Indigenous offender's personal and systemic history in considering options for reintegration. Gladue factors must be considered during the development of reintegration and correctional plans.*

- *Bill 45 should include provisions that traditional Indigenous knowledge and cultures should be made accessible to Indigenous offenders throughout their involvement in the system.*

- *Bill 45 should recognize and prioritize access to culturally appropriate healing traditions for Indigenous inmates.*

- *Include protocols for Indigenous inmates who wish to be released into an Indigenous community.*

Women Inmates

- *Include provisions that are specific to health concerns of women inmates as they can differ from male inmates. These provisions should consider things such as menstrual products, pregnancy care, childcare, etc.*

- *Include specific protocols for women's re-integration into the community.*

- *Bill 45 should require penitentiaries to provide intensive and comprehensive mental health, addictions, and trauma services for incarcerated Indigenous women and girls, and give special consideration to the reintegration and rehabilitation of Indigenous women inmates.*

Part 3: Gladue Principles, Risk Assessment & Planning

- *It is our recommendation that the NWT Correctional Facilities develop a risk assessment tool that considers the unique realities for Indigenous offenders.*

- *Include provisions on risk assessments, such as: when they will be conducted, when they will be updated who will conduct them, and what method will be used.*

- *Bill 45 should ensure that indigenous inmates should have the right to involve Elders in their parole hearings.*

Part 4: Living Conditions

- *Include provisions requiring penitentiaries to provide adequate living conditions.*
- *Include provisions requiring penitentiaries to provide inmates with access to adequate means of communications.*
- *Include provisions requiring penitentiaries to provide inmates with access to adequate services and activities.*
- *Include provisions requiring penitentiaries to provide inmates with adequate healthcare.*
- *Include provisions requiring penitentiaries to provide inmates in separate confinement with access to and visits from healthcare professionals.*
- *Include provisions requiring penitentiaries to provide equal services to inmates with disabilities.*

Appendix B: Resources

Legislation

Bill 1, *Corrections Act*, 2nd Sess, 5th Leg, Nunavut, 2019 (Assented to June 6, 2019).

Bill 6, *Correctional Services Transformation Act*, Ontario, 2018 (Assented to May 7, 2018).

Bill C-83, *An Act to amend the Corrections and Conditional Release Act and another Act*, 1st Sess, 42nd Parl, Canada, (Passed by House of Commons March 18, 2019)

United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), Resolution Adopted by the General Assembly on 17 December 2015. *General Assembly Seventieth Session,* A/RES/70/175 (8 January 2016).

Reports

"Chapter 4: Correctional Services Canada—Reintegration of Women Offenders." *Report of the Auditor General of Canada to the House of Commons* (2003).

Gutierrez, Letica, L. Maiike Helmus, and R. Karl Hanson. "What We Know and Don't Know About Risk Assessment with Offenders of Indigenous Heritage." *Public Safety Canada* (2017).

Parole Board of Canada. *Elder-Assisted Hearings and Community-Assisted Hearings.* Last updated June 28, 2018. https://www.canada.ca/en/parole-board/corporate/publications-and-forms/elder-assisted-and-community-assisted-hearings.html.

"Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls." *National Inquiry into Missing and Murdered Indigenous Women and Girls* (2019).

"Reintegration in Ontario: Practices, Priorities, and Effective Models" *John Howard Society of Ontario* (2016).

Office of the Correctional Investigator. Strategic Planning Exercise: Legislative Framework Consistent with Evidence-Based Policy and Best Practices: CCRA 2.0 (May 2019).