

# Model Segregation Code\*

\*This code does not deal with protective-custody segregation or with punitive segregation imposed as a sanction after conviction of a disciplinary offence.

1. The warden, or in his absence, the officer in charge of the institution, may segregate a prisoner
  - (a) Pending the investigation of allegations which, on reasonable and probable grounds, implicate the prisoner in
    - (i) Attempted escape;
    - (ii) Possession of dangerous contraband\*\*;
    - (iii) Actual or threatened violence to another person or incitement to violence of other prisoners;
    - (iv) Willful destruction of property where there is a substantial likelihood that the destruction will be continued;
    - (v) Refusal to obey the lawful order of an institutional officer where there is a substantial likelihood that the refusal will be repeated and will lead to widespread disobedience by other prisoners; or
  - (b) Pending the investigation of an alleged disciplinary or criminal offence where there is a substantial likelihood that the prisoner will intimidate potential witnesses to the offence.

\*\* Dangerous contraband is contraband which, by its nature, is likely to endanger life or cause serious bodily harm.

2. Where disciplinary or criminal charges have been laid against a prisoner, the warden may segregate that prisoner where
  - (a) The offence if proved will lead to an increased security rating of the prisoner, requiring his transfer to another institution or part of that institution; or
  - (b) The offence involves actual or threatened violence to another person or incitement to violence of other prisoners and there is a substantial likelihood that:
    - (i) the offence will be continued or repeated; or
    - (ii) There will be violent reprisals by other prisoners; or
  - (c) The offence involves willful destruction of property and there is a substantial likelihood that the destruction will be continued; or
  - (d) The offence involves the refusal to obey the lawful order of an institutional officer and there is a substantial likelihood that the refusal will be continued and will lead to widespread disobedience by other prisoners; or
  - (e) The prisoner, at the time of being charged with an offence, reacts in a violent or uncontrolled manner.

A prisoner detained under subsection (e) shall be released from segregation as soon as he has ceased to act violently and has regained control.

3. The warden may segregate a prisoner, notwithstanding that disciplinary or criminal charges have not been laid, where there are grounds to believe beyond a reasonable doubt that the prisoner has committed, attempted to commit, or plans to commit acts which represent a serious and immediate threat to the physical security of the institution or the personal safety of staff or prisoners.

4. Segregation shall in all cases be authorized by written order signed by the warden or officer in charge.

5. Within twenty-four hours of a segregation order the prisoner shall be given a copy of such order, which shall set forth
  - (a) The relevant subsection{s} of sections 1 to 3 under which segregation has been ordered; and
  - (b) A summary of the facts upon which the segregation order has been made,

**6.** Where the order is made by the officer in charge, the warden, upon his return to the institution, shall review the order and either affirms the order in writing or issue a further order directing that the prisoner be released from segregation. A copy of any such order shall be given to the prisoner forthwith.

**7.** Where the warden deems it necessary to continue segregation beyond seventy-two hours, he shall refer the case to an independent hearing officer for a hearing. The reference shall include

- (a) Particulars of the circumstances of the case which are relied upon to justify continued segregation;
- (b) A statement of whether an application will be made for the presentation of confidential evidence in the absence of the prisoner.

**8.** A copy of the reference shall be given to the prisoner at least 24 hours prior to the hearing.

**9.** Where a reference has been made pursuant to section 7, the hearing officer shall convene a hearing not later than seventy-two hours from the time of first segregation to determine whether such segregation shall be continued. The hearing shall be carried out in the following manner:

- (a) Where an application is made by the warden to present confidential evidence, the hearing officer shall determine this issue in the absence of the prisoner. In making this determination there shall be a presumption in favor of disclosure, which may be rebutted by substantial evidence that disclosure will endanger another person or the physical security of the institution.
- (b) Where the hearing officer determines that all or part of the confidential evidence may be presented in the absence of the prisoner he shall summarize the evidence for the prisoner.
- (c) Subject to subsections (b) and (c), all evidence shall be given in the presence of the prisoner.
- (d) The prisoner may testify on his own behalf, cross-examine witnesses, introduce relevant documents, and call witnesses who can give relevant evidence on his behalf.
- (e) Every prisoner who testifies at a hearing shall be advised of his rights pursuant to section 5 of the Canada Evidence Act and section 13 of the Charter of Rights and Freedoms.
- (f) A prisoner may have the assistance of a representative of his own choosing at the hearing. The representative may be a lawyer, a law student, member of the staff, or fellow prisoner whom the prisoner selects and who agrees to represent the prisoner at the hearing. The hearing officer may appoint a representative to act on behalf of the prisoner where he deems it appropriate and where the prisoner consents.
- (g) The warden of the institution may appoint a representative to present the institution's case for segregation.
- (h) The hearing officer shall consider any evidence presented on the issue of prejudice to the prisoner caused by being segregated in relation to the preparation and presentation of his defense of outstanding charges.

**10.** The hearing officer shall determine whether there are grounds for continued segregation in light of the criteria and standard of proof set out in sections 1-3 and shall order either that segregation be continued or that the prisoner be returned to the population. The order shall contain

- (a) A summary of the evidence; and
- (b) Reasons for the decision.

A copy of the order shall be given to the prisoner forthwith.

**11.** Where, under section 10, an order is made that a prisoner be continued in segregation, a review of that decision shall be carried out every seven days before the hearing officer. The review hearing shall be carried out in accordance with the provisions of section 10 and with the following provisions:

- (a) The warden shall present evidence of the plan, if any, which has been proposed for the reintegration of the prisoner into the population.
- (b) The prisoner may make representations as to the proposed plan and any alternative plan for such reintegration.

(c) Where the Inmate Committee has given written notification to the hearing officer, a representative of the committee may make representations on the proposed plan(s) or on any alternative plan(s).

**12.** After each review the hearing officer shall determine whether there is grounds for continued segregation and shall order either that segregation be continued or that the prisoner be released into the population. The order shall contain

- (a) A summary of the evidence presented at the review including the plan for reintegration and the steps which have been taken to implement the plan(s); and
- (b) Reasons for the decision.

**13.**

(a) Where segregation has been ordered under section 1, the hearing officer shall order the prisoner released into the population after fourteen days unless evidence is presented demonstrating that

- (i) The investigating authorities have exercised all due diligence in pursuing their investigations; and,
- (ii) Further time is necessary to complete these investigations.

(b) Where the necessary evidence set forth in subsection (a)(i) and (ii) has been provided and subject to subsections (c) and (d) the hearing officer shall order the prisoner released into the population after thirty days.

(c) Where the investigation arises from an incident involving a large number of prisoners, segregation beyond thirty days may be authorized upon the presentation of evidence demonstrating that owing to the nature and extent of the investigations further time is necessary to complete those investigations.

(d) In any application for segregation pending investigation of charges beyond fourteen days under subsection (a) or beyond thirty days under subsection (c), the hearing officer shall not authorize further segregation unless the allegations under investigation implicate the prisoner in an offence within subsections 2(a)-(d) of this code.

**14.** Segregated prisoners shall be afforded the same rights and privileges as general population prisoners in respect to

- (a) Visiting and correspondence with and telephone calls to persons or agencies outside of the institution;
- (b) Personal effects;
- (c) clothing, bedding, and linen and exchange thereof;
- (d) Personal hygiene, including opportunities to shave and shower; e canteen;
- (f) Borrowing from the institutional library and receiving reading material from outside the institution;
- (g) Access to legal materials and legal services.

**15.**

(a) Segregated prisoners shall be afforded access to programs and services that include but are not limited to education, work, counselling, social services, religious services, hobbies, and recreation.

(b) The programs and services referred to in subsection (a) may be provided on a group or individual basis consistent with the physical security of the institution and the safety of prisoners and staff.

**16.** Segregated prisoners shall be permitted out of their cells to participate in the programs, services, and activities referred to in subsections 14 and 15 for no less than six hours per day, which shall include not less than one hour of outside exercise.

**17.**

(a) A prisoner in segregation may be deprived of any usually authorized item or usually authorized activity where there is imminent danger that the prisoner will destroy that item or induce self-injury or injury to another person. In such cases, every effort should be made to supply a substitute for the item or to permit the prisoner to use the item under the supervision of a staff member. No item or activity should be withheld longer than is necessary to ensure the prisoner's safety or the safety of the staff and other prisoners.

(b) Where the preventive action authorized in subsection (a) has been taken, a report of the action shall be made to the warden forthwith.

(c) No such preventive action shall be continued for more than seventy-two hours without the written order of an independent hearing officer who shall satisfy himself that further deprivation is necessary, having regard to subsection (a). Before making such an order the hearing officer shall convene a hearing and receive representations from both the prisoner and the institution as to the necessity for the continued deprivation. Where the hearing officer determines that such deprivation shall continue, he may order the provision of a substitute item or give directions for the use of the item under supervision. Any such order shall remain in force for not more than seventy-two hours. Subject to compliance with the hearing provisions

Of this subsection, further orders limited in duration to seventy-two hours may be made.

**18.**

(a) Subject to subsection (c), where application is made to continue segregation beyond thirty days the hearing officer shall hear the evidence of two experts, who shall be psychiatrists or psychologists, on the effects of such continued segregation on the prisoner.

(b) One of the experts shall be nominated by the warden and the other by the prisoner.

(c) In any case in which the warden and the prisoner nominate the same expert, the hearing officer need not consider the evidence of a second expert.

(d) Where, based upon the expert evidence or upon other evidence, the hearing officer determines that continued segregation will cause the prisoner substantial psychological or physical harm, he shall order the prisoner released into the general population.

**19.**

(a) Where, at a hearing carried out pursuant to the provisions of sections 9 or 11, evidence is presented that there has been a violation of the provisions of sections 14, 15, or 16, the hearing officer, after giving the warden an opportunity to present evidence on the matter, shall make a written determination on whether there has been any violation, and if so its nature and extent.

(b) Where the hearing officer determines that there has been a violation, he may issue written directions to the warden to remedy the violation.

(c) Where, at a further hearing carried out under section 11 there is evidence that the directions issued pursuant to subsection (b) have not been complied with, the hearing officer

(i) Shall prepare a report detailing the nature and extent of the violation, the directions issued, and the circumstances of non-compliance, a copy of which shall be provided to both the warden and the prisoner and transmitted to the solicitor-general; and

(ii) May order the prisoner released from segregation.

**20.** No segregation shall be continued for more than ninety days unless during this period the prisoner commits further acts which under sections 1-3 justify further segregation. Any further period of segregation shall also be subject to a ninety day limitation.