

## Class-action trial in Manitoba to challenge province's use of segregation jail cells on children

Manitoba's practice of putting incarcerated children in segregation jail cells - including some who are as young as 12 and 13 years old - will be challenged this fall when a landmark class-action lawsuit goes to trial.

The case, which has been about seven years in the making, will be the first major piece of litigation dealing with youth inmate segregation to go to trial in Canada. It follows several recent lawsuits against governments in the country that have successfully challenged aspects of how solitary confinement is used in adult prisons.

But despite these cases - and multiple public watchdog reports within Manitoba that have raised concerns about the use of youth segregation in the province - the province has persisted with the practice, the lawsuit alleges.

In Manitoba, the segregation of children in youth detention centres is permitted in certain circumstances, but it is to be used as a last resort and not as a punishment.

However, the class action alleges that the provincial government is not following its own policies and that youth are being regularly sent to what it describes as "solitary confinement" for weeks and even months at a time - which the lawsuit argues is a violation of their Charter rights.

The statement of claim, which has not been tested in court, describes Manitoba's segregation cells for children as small rooms - sometimes tinier than a parking space - that regularly lack windows.

"Inmates often sleep on mats on the floor. The cells are often covered in filth, blood, and excrement," the claim alleges, calling the practice of segregation rooms "a dungeon inside a prison" that "imposes conditions of torture" on inmates.

A spokesperson for the province declined to comment as the matter is before the courts. But in Manitoba's statement of defence, the government has argued that its practices around segregation do not "amount to Solitary Confinement." (Solitary confinement is generally defined as segregation in a room or area without meaningful human contact in which the duration lasts at least 22 hours a day.)

In the government's statement of defence, it noted that youth who are placed in segregation cells are under observation. This observation by a supervisor provides the youth inmate with "daily meaningful contact," the defence reads.

The lawsuit alleges that this is not sufficient.

Lawyer James Sayce, the class action's lead counsel, said that the impact of such confinement on an adult's health has been well documented.

"Those impacts are amplified for children," said Mr. Sayce, a partner with Koskie Minsky LLP.

In 2019, the Manitoba Ombudsman released a report on the practice of youth segregation. It noted that Canada is a signatory to numerous international agreements that prohibit the use of segregation for youth, including the Mandela Rules and the United Nations Convention on the Rights of the Child.

That same year, the Manitoba Advocate for Children and Youth released its own [report](#) concluding that "solitary confinement, for longer than 24 hours per day, must be prohibited for youth in Manitoba custody facilities."

But provincial data produced through the class action, which were obtained by The Globe and Mail, show that even after these reports, the use of segregation cells with children has continued.

The dataset, which spans from 2006 to 2022, documents more than 34,000 incidents. The identities of the inmates are not included in the data, but each inmate is given a unique offender number, which has been partly redacted. An analysis of those numbers, birthdays, gender and Indigenous status suggests that these incidents appear to involve around 6,000 different youth between the ages of 12 and 17.

The duration of each incident ranges from about one minute to 307 consecutive days, and the average stay in segregation was about 13 days. But in reality, these figures could be even higher.

The data suggest that some continuous placements were recorded over multiple entries, meaning the consecutive stays are likely longer. This could significantly affect the averages.

The data also suggest that after the Ombudsman's warning, more than 600 children were sent to segregation units in Manitoba - about 50 of whom were 12 or 13 years old at the time.

The Globe shared its findings with the Manitoba government, but the province declined to comment.

Devon Daniels was 14 years old the first time he was put in a segregation cell. In one incident, he remembers spending more than two weeks in a room that was essentially a small, white, windowless box with a concrete bed. There were obvious signs of mould on the walls, he said, and it was apparent that staff had been trying to paint over it. The room smelled of decay and urine, the now 27-year-old said.

"The boredom eats at you. You just sit there. You have to try to figure out how to escape somewhere in your mind, or your present just eats you up," he said.

Mr. Daniels, who is a class member in the Manitoba litigation, says that by his count, he was put in segregation cells about 15 times as a youth.

The experience was deeply traumatizing, he said, and left him contemplating suicide.

One of his earliest memories as a child was being locked in a basement, he said. Mr. Daniels grew up in Winnipeg. He is mixed race - Black and Indigenous - and was raised by his grandmother, who was a residential-schools survivor. There was trauma, abuse and poverty in his childhood, he said.

One of the first times he was arrested was for stealing a chocolate bar. Mr. Daniels - who left prison in 2020 and says he has since turned his life around - says the memories of being in segregation still haunt him.

"A piece of me is still in that place," he said.

Craig Haney, a psychology professor with the University of California, Santa Cruz, is among three academics to provide expert reports as part of the lawsuit. Prof. Haney - who was one of the principal researchers in the famous Stanford Prison Experiment, in which regular students were assigned a role of either a prisoner or a guard in a simulated jail environment - toured some of the segregation sites in Manitoba.

"In terms of harshness and the risk of harm to which they subjected prisoners, they rivalled anything I have observed in some of the worst solitary confinement units in the United States," he wrote.

"The conditions of confinement I encountered were stark and depriving - ranging from very bad to outright egregious - and the segregation practices the prisoners described being exposed to were truly severe and isolating," he said.

"I know of no legitimate penological purpose that can possibly justify their continued use in their present form."

The trial is scheduled for Nov. 17 in Winnipeg.

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