

Summary of Proposed Regulatory Amendments to Strengthen Ontario's Corrections System

The Ministry of the Solicitor General is seeking feedback on a proposal for amendments to Regulation 778 under the *Ministry of Correctional Services Act, 1990*, related to:

1. Segregation;
2. Discipline and misconduct of persons in custody; and
3. Mandatory training.

BACKGROUND

The Ministry of the Solicitor General is continuing its work towards a safe, accountable and efficient corrections system. The ministry is seeking feedback on proposed amendments to R.R.O. 1990, Regulation 778 under the *Ministry of Correctional Services Act* that are intended to reduce the use of segregation and mitigate harm for individuals in conditions of segregation, while ensuring the safety and security of institutions. The ministry is also considering changes to allow for a more progressive discipline and misconduct model and require training on human rights and systemic racism as well as de-escalation and use of force.

OVERVIEW OF R.R.O 1990, REGULATION 778

The current regulation can be read in full at: [R.R.O 1990, Regulation 778](#). This regulation outlines authorities and requirements for the operation of adult correctional institutions and parole processes in the province.

1. SEGREGATION

Context

The ministry continues to make progress on its goal to only place individuals in segregation conditions as a last resort and under the least restrictive conditions available. In November 2019, the ministry introduced in regulation a 15-day limit on consecutive days in disciplinary segregation as well as prompt and independent reviews of administrative segregation placements.

The ministry is considering amending Regulation 778 to include a 15-day limit (currently in place through policy) on consecutive days in administrative segregation in regulation and to introduce independent reviews of disciplinary segregation. Additional provisions aim to formalize in regulation current operational practices and introduce new requirements to further reduce the use of segregation and reduce harm from placement in segregation conditions.

Proposed Changes to Regulation 778

Current Related Provisions in Regulation 778	Summary of the Proposed Regulatory Amendment
Reasons the Superintendent may hold an inmate in segregation condition are provided in s. 34. (1)	Include the 15-day limit on consecutive days in administrative segregation.
34.0.1 (2) The Minister shall (a) review the circumstances of each inmate held in segregation conditions under subsection 34 (1) no later than, (i) the fifth consecutive day the inmate is held in such conditions, and (ii) each fifth consecutive day the inmate is held in such conditions following the day on which a review is held under this section.	Expand current provision for the ministry to provide prompt and independent reviews (conducted by ministry staff outside the institution) to include disciplinary segregation placements. Reviews for those in disciplinary segregation will be focused on harm reduction and monitoring for deterioration.

Additional Proposed Provisions in Regulation 778

To reduce the use of segregation:

- Require institutions to have specialized care placements that reflect the needs of their populations.
- Require institutions to have medical isolation placements for individuals that are directed by and under the oversight and management of healthcare practitioners.
- Require that segregation be used as a last resort measure with consideration of the safety and well-being of the individual and other people in the institution.
- Prohibit the use of segregation for those with a serious mental illness (see definition on page 4).
- Require a five-day break from placement in segregation conditions if the 15-day limit has been reached, with an exception if other options are exhausted and the Superintendent has reasonable grounds to believe placement in segregation conditions is needed to address immediate safety or security concerns. Require grounds for placement to be documented and placements may only continue for as long as the grounds for placement continue.

To reduce harm from placement in segregation conditions:

- Define segregation as conditions where a person is highly restricted in movement for 22 hours or more in a day or does not receive a daily minimum of two hours of meaningful social interaction.
- Define meaningful social interaction as an experience that involves opportunities for social interaction and activities that could be reasonably considered meaningful to the individual and promote mental and/or physical stimulation to mitigate isolation and potential harm caused by segregation conditions.
- Receive daily healthcare assessments. The clinical staff will communicate deterioration in an individual's mental or physical health, as it relates to their placement in segregation conditions, to the Superintendent or designate.
- Set a 60-day limit on number of aggregate (total) days in segregation conditions in the most recent 365-day period for administrative and disciplinary segregation, with an exception if other options are exhausted and the Superintendent has reasonable grounds to believe placement in segregation conditions is needed to address immediate safety or security concerns. Require grounds for placement to be documented and placements may only continue for as long as the grounds for placement continue.
- Require the ministry to provide independent reviews at:
 - 15 aggregate (total) days in the most recent 3-month period
 - 30 aggregate (total) days in the most recent 6-month period
 - 45 aggregate (total) days in the most recent 365-day period

Proposed Definition of Serious Mental Illness

The ministry is proposing to include a definition in regulation for the purpose of prohibiting those with a serious mental illness from being in conditions of segregation:

- People who were diagnosed by a Regulated Health Professional before or during their incarceration or supervision order with at least one of a list of Diagnostic and Statistical Manual for Mental Disorders-defined disorders.
 - For example: schizophrenia, substance-induced psychotic disorder, major depressive disorders, neurocognitive disorders and/or delirium.
- In addition to a diagnosis, a person with a serious mental illness must also present at least one of the following symptoms as a result of the disorder:
 - Significant impairment in judgment;
 - Significant impairment in thinking;
 - Significant impairment in mood;
 - Significant impairment in behaviour and communications that interferes with their ability to effectively interact with other people, including staff;
 - Hallucinations; delusions; or, severe obsessional rituals that interfere with their ability to effectively interact with other people, including staff;
 - Chronic and/or severe suicidal ideation resulting in increased risk for suicide attempts; or
 - Chronic and/or severe self-injury.

2. DISCIPLINE AND MISCONDUCT

Context

The ministry is considering amending Regulation 778 to:

- Improve how it addresses violations of institutional rules by those in custody (misconduct) and determines disciplinary measures (sanctions);
- Reduce the use of segregation as a disciplinary measure; and
- Improve safety and security of institutions.

Currently, Regulation 778 provides one process through which all misconducts are handled. The regulation allows the superintendent or designate to adjudicate all misconducts in an institution and apply any sanction. The Minister must approve decisions to remove earned remission over 15 days, or eligibility to earn remission. The proposed changes seek to establish an alternative resolution process and a formal adjudication process with oversight.

Proposed Provisions in Regulation 778 for Inmate Misconduct

- Require the rules to be provided in writing, and to individuals in custody as soon as practicable on admission and be accessible following admission.
- Require key factors to be considered when determining what disciplinary process to follow, whether to impose disciplinary measures, and what disciplinary measure to apply:
 - Degree of awareness that a rule has been breached
 - Degree of intentionality/ premeditation
 - Circumstances around the rule violation
 - Amount and potential of harm/damage
 - Previous conduct/repetition of misconduct
 - Human Rights Code-related factors
 - Other factors defined in operational policy

Proposed Changes to Regulation 778

Current Related Provisions in Regulation 778	Summary of the Proposed Regulatory Amendment
<p>Process for determining whether misconduct was committed and any disciplinary measures is provided in s. 31</p>	<p>Prior to considering disciplinary measures, consideration must be given to alternatives (e.g., apology, journaling, access to programs, counseling, restorative measures).</p> <p>Establish an Alternative Resolution Process</p> <ul style="list-style-type: none"> • Allow disciplinary measures, not specified as serious disciplinary measures, to be agreed to through alternative resolution. <ul style="list-style-type: none"> ○ Agreement should be between a staff member and the person alleged to have committed the misconduct. • Require staff to record and notify operational managers of misconducts and alternative resolutions, the rationale for decisions (including consideration of factors) and measure taken. • Serious disciplinary measures can not be applied through alternative resolution, and the outcome shall not impact the individual’s security classification. • Require quarterly statistical reporting to the Assistant Deputy Minister on use of alternative resolution and measures applied.

Current Related Provisions in Regulation 778	Summary of the Proposed Regulatory Amendment
<p>Process for determining whether misconduct was committed and any disciplinary measures is provided in s. 31</p>	<p>Formal Adjudication of Misconducts</p> <ul style="list-style-type: none"> • In addition to the requirements in current regulation, require: <ul style="list-style-type: none"> ○ That the person in custody be provided a record of the adjudication outcome. ○ Adjudication to be done by an individual, at the operational manager level or above, who was not directly involved with the alleged misconduct. <p>Quarterly statistical reporting to the Assistant Deputy Minister on outcomes of formal adjudication process and disciplinary measures applied.</p>
<p>List of misconducts is provided in s. 29 (1).</p>	<p>Remove “refuse to pay a fee or charge” as a misconduct</p>
<p>List of disciplinary measures and disciplinary measures for serious misconducts are provided in s. 32.</p>	<ul style="list-style-type: none"> • Add “additional work or duty” as an available disciplinary measure • Remove reference to “misconduct of a serious nature.” All disciplinary measures are to be applied based on consideration of factors <p>Serious Disciplinary Measures</p> <ul style="list-style-type: none"> • Define serious disciplinary measures as: <ul style="list-style-type: none"> ○ Disciplinary segregation ○ Loss of earned remission ○ Eligibility to earn remission ○ Revocation of Temporary Absence Permit ○ Change of security status ○ Loss of privilege (including canteen) for over 7 days • Use of serious disciplinary measures require approval of the superintendent, with delegation limited to the acting head of the institution. • Retain requirement for Minister (or designate) approval for loss of earned remission over 15 days or suspension of ability to earn remission.

Current Related Provisions in Regulation 778	Summary of the Proposed Regulatory Amendment
Review of decisions provided for in s. 33	Require that the Minister (or designate) <u>shall</u> review a decision of the Superintendent where, <ul style="list-style-type: none"> (a) the inmate alleges that the Superintendent did not make the decision in accordance with the procedures set out in this Regulation; or (b) the inmate has been disciplined by having a portion or the whole of his or her remission forfeited or by receiving a suspension from eligibility to earn remission.

3. MANDATORY TRAINING

Context

The ministry is considering amending Regulation 778 to require mandatory training on human rights and systemic racism, as well as de-escalation and the use of force. Training will ensure staff are equipped with the necessary tools and strategies to effectively carry out their duties and respond to the needs of diverse populations of the corrections system.

Proposed New Provisions in Regulation 778

- Establish mandatory human rights and systemic racism training to equip all correctional staff to effectively respond to the needs of diverse populations within its system.
 - Require that individuals will complete human rights and systemic racism training every five years.
- Establish mandatory de-escalation and use of force training to equip frontline staff to address conflicts and reduce the use of force/escalated incidents:
 - Establish mandatory de-escalation training for probation and parole officers.
 - Establish mandatory use of force and de-escalation training for correctional officers.
 - Require that individuals will complete de-escalation and use of force training (as relevant to their roles) every two years.