Comparative Table and Comments on Bill C-83

Legend: yellow highlights indicate differences between the current version of the Corrections and Conditional Release Act and the amendments proposed by Bill C-83

CCRA	CCRA + C-83	Comments
		Missing from Bill C-83: the principle of "least restrictive measures" The government's previous proposed legislation regarding segregation, Bill C-56 (cl. 1, 2, 8), would have reinstated within the CCRA the guiding principle that "least restrictive measures" be used. Prior to 2012 (S.C. 2012, c. 1, ss. 54, 58: https://laws-lois.justice.gc.ca/eng/AnnualStatutes/2012_1/), the CCRA provided as a guiding principle "that the Service use the least restrictive measures consistent with the protection of the public, staff members and offenders [sic]" (s. 4(d)) and required that "Where a person is, or is to be, confined in a penitentiary, the Service shall take all reasonable steps to ensure that the penitentiary in which the person is confined is one that provides the least restrictive environment for that person, taking into account … [enumerated factors]" (s. 28). With Bill C-83, the principle of "least restrictive measures" included in Bill C-56 has been abandoned again. It must be reinstated in the CCRA, as a fundamental part of upholding the human rights of those who are incarcerated.
Definitions **2(1)** … [New definition]	**cl. 1** ***Indigenous*, in respect of a person, includes a First Nation person, an Inuit or a Métis person; (*autochtone*)**	**Definition** Updates this term, but not the outdated and offensive "offender"; according to the input of those impacted, the term "prisoner" should be used instead

Principles that guide Service **4** The principles that guide the Service in achieving the purpose referred to in section 3 are as follows: … (g) correctional policies, programs and practices respect gender, ethnic, cultural and linguistic differences and are responsive to the special needs of women, aboriginal peoples, persons requiring mental health care and other groups;	**cl. 2** **Principles that guide Service** **4** The principles that guide the Service in achieving the purpose referred to in section 3 are as follows: … (g) correctional policies, programs and practices respect gender, ethnic, cultural and linguistic differences and are responsive to the special needs of women, ~~**aboriginal peoples**~~ **Indigenous persons**, persons requiring mental health care and other groups;	**<u>Principles that guide service</u>** NB: Effect on rights as peoples of going from "aboriginal peoples" to "Indigenous persons"?
Objectives for offender's behaviour **15.1** (1) The institutional head shall cause a correctional plan to be developed in consultation with the offender as soon as practicable after their reception in a penitentiary. The plan is to contain, among others, the following: (a) the level of intervention in respect of the offender's needs; and (b) objectives for (i) the offender's behaviour, including (A) to conduct themselves in a manner that demonstrates respect for other persons and property, (B) to obey penitentiary rules and respect the conditions governing their conditional release, if any, (ii) their participation in programs, and	**cl. 3** **Objectives for offender's behaviour** **15.1** (1) The institutional head shall cause a correctional plan to be developed in consultation with the offender as soon as practicable after their reception in a penitentiary. The plan is to contain, among others, the following: (a) the level of intervention in respect of the offender's needs; and (b) objectives for (i) the offender's behaviour, including (A) to conduct themselves in a manner that demonstrates respect for other persons and property, (B) to obey penitentiary rules and respect the conditions governing their conditional release, if any, (ii) their participation in programs, and	**<u>Correctional plan</u>** Update of correctional plan following move to + determination that should stay in "structured intervention unit"

(iii) the meeting of their court-ordered obligations, including restitution to victims or child support. **Maintenance of plan** (2) The plan is to be maintained in consultation with the offender in order to ensure that they receive the most effective programs at the appropriate time in their sentence to rehabilitate them and prepare them for reintegration into the community, on release, as a law-abiding citizen.	(iii) the meeting of their court-ordered obligations, including restitution to victims or child support. **Maintenance of plan** (2) The plan is to be maintained in consultation with the offender in order to ensure that they receive the most effective programs at the appropriate time in their sentence to rehabilitate them and prepare them for reintegration into the community, on release, as a law-abiding citizen. **Update of plan — structured intervention unit** **(2.1) If an offender is in a structured intervention unit and a determination is made under paragraph 37.3(1)(a) or (c) or section 37.4 that the offender should remain in the unit, the institutional head shall, as soon as practicable after the determination, cause the offender's correctional plan to be updated, in consultation with the offender, in order to ensure that they receive the most effective programs at the appropriate time during their confinement in the unit and to prepare them for reintegration into the mainstream inmate population.**	In consultation with the "offender"[sic] makes this sound as though the prisoner actually has some involvement. Other than being asked to sign that they have received the resulting CSC documentation, there is no meaningful involvement of individuals in the development of their correctional plans, much less the updates. "mainstream" seems to be the new term for general – as opposed to segregated – population
Investigations **19 (1)** Where an inmate dies or suffers serious bodily injury, the Service shall, whether or not there is an investigation under section 20, forthwith investigate the matter and report thereon to the Commissioner or to a person designated by the Commissioner. **Medical assistance in dying** (1.1) Subsection (1) does not apply to a death that results from an inmate receiving medical assistance in dying, as	**cl. 4, 5** **Investigation** **19 (1)** Where an inmate dies or suffers serious bodily injury, the Service shall, whether or not there is an investigation under section 20, forthwith investigate the matter and report thereon to the Commissioner or to a person designated by the Commissioner. **Medical assistance in dying** (1.1) Subsection (1) does not apply to	**<u>Review where death by natural causes</u>** For death by natural causes, instead of investigation under s. 19, review by CSC health care professional into quality of care provided at prison, with copy of report to OCI. OCI in its: • 2007 ***Deaths in Custody Study and*** 2010 ***Final Assessment of the CSC's Response to Deaths in Custody,*** concluded some of the deaths could have been prevented; and, "so-called ""natural" cause deaths" –

defined in section 241.1 of the Criminal Code, in accordance with section 241.2 of that Act.	(**a)** a death that results from an inmate receiving medical assistance in dying, as defined in section 241.1 of the Criminal Code, in accordance with section 241.2 of that Act; **or** **(b) if a registered health care professional advises the Service in writing that the registered health care professional has reasonable grounds to believe that an inmate's death is from a natural cause.** **Quality of care review** **19.1 (1) If a registered health care professional advises the Service in writing that the registered health care professional has reasonable grounds to believe that the death of an inmate is from a natural cause, the Service shall, whether or not there is an investigation under section 20, without delay, cause a review to be conducted by a registered health care professional employed or engaged by the Service for the purpose of determining the quality of care provided to the inmate in the penitentiary. The registered health care professional shall report on the review to the Commissioner or to a person designated by the Commissioner.** **Copy to Correctional Investigator** **(2) The Service shall give the Correctional Investigator, as defined in Part III, a copy of its report referred to in subsection (1).**	deaths not deemed to be suicides, homicides or accidents – were in fact preventable; • 2013 report, ***An Investigation of the Correctional Service of Canada's Mortality Review Process***, concluded CSC's mortality review process did not then meet the requirements of S. 19 of the *CCRA;* • 2016 report, ***In the Dark: An Investigation of Death in Custody Information Sharing and Disclosure Practices in Federal Corrections***, recommended improvements to investigating deaths, most of which CSC has not incorporated; • ***2017-2018 Annual Report,*** raised significant concerns about the adequacy and appropriateness of the Correctional Service investigating itself, and how it accounts for and reports on serious incidents and deaths in federal penitentiaries; for example, the OCI concluded that CSC's investigation of the 'riot' at Saskatchewan Penitentiary was "superficial and "self-serving" What about deaths that are labelled as from natural causes, but originate with medical conditions such as diabetes, heart conditions and some pulmonary conditions that are treatable with diet, exercise and related lifestyle changes that are made less/not possible as a result of the conditions of confinement, particularly in segregated and limited movement units? There needs to be more analysis and contextualizing of such deaths, not merely an acceptance of the 'natural cause' label by a nurse. Given that, in the past, reports of the Office of the Correctional Investigator helped spur the government to strike the Arbour Commission and the alternative perspective at the inquest into Ashley Smith's death, will the OCI be provided with additional resources to review all of these

		reports and conduct requisite analysis? How many of their related past recommendation have been accepted and implemented by CSC?
Transfers **29** The Commissioner may authorize the transfer of a person who is sentenced, transferred or committed to a penitentiary to (a) another penitentiary in accordance with the regulations made under paragraph 96(d), subject to section 28; or (b) a provincial correctional facility or hospital in accordance with an agreement entered into under paragraph 16(1)(a) and any applicable regulations.	**cl. 7, 8** **Transfers** **29** The Commissioner may authorize the transfer of a person who is sentenced, transferred or committed to a penitentiary **(a) within a penitentiary, from an area that has been assigned a security classification under section 29.1 to another area that has been assigned a security classification under that section, in accordance with the regulations made under paragraph 96(d), subject to section 28;** **(b) into a structured intervention unit in the penitentiary or in another penitentiary, in accordance with the regulations made under paragraph 96(d), subject to section 28;** **(c) to** another penitentiary in accordance with the regulations made under paragraph 96(d), subject to section 28; or **(d) to** a provincial correctional facility or hospital in accordance with an agreement entered into under paragraph 16(1)(a) and any applicable regulations. **29.1 The Commissioner may assign the security classification of "minimum security", "medium security", "maximum security" or "multi-level security", or any other prescribed security classification, to each penitentiary or to any area in a penitentiary.**	**Restructuring of s. 29** Giving Commissioner power to assign security classifications to prisons, areas within prisons; lumping together transfers between areas/prisons given security classifications and transfers to "structured intervention" units under s. 29. This effectively frustrates the legislative intent of s. 29 to allow prisoners to be transferred to appropriate health and mental health facilities, by allowing s. 29 transfers to include movements into the segregated units within prisons that will now be labelled as 'structured intervention units'. The OCI has routinely found that s. 29 transfers to the provincial health care system must be used more; rather than responding to this concern, Bill C-83 will have the effect of further restricting these types of transfer - **OCI Annual Report 2017-2018, recommendation 21:** "I once again recommend that the Service use section 29 provisions of the Corrections and Conditional Release Act to transfer patients who present with serious mental health needs, suicidal or chronic self-injurious behaviours and cannot be safely managed in a penitentiary setting to the care of external psychiatric facilities." Power is granted to authorize regulations regarding details of transfers –leaving the details for the regulations and therefore not open to legislative scrutiny during the consideration of C-83.

		Section 29.1 appears to open the door to new security classifications/regimes all in accordance with unwritten regulations that have not been provided. CSC security classification systems were designed for male, non-Indigenous prisoners and routinely result in discriminatory over-classification of women, particularly Indigenous women and those with disabling mental health issues, as well as racialized men - **Fall 2017 Report 5 of the Auditor General (preparing women for release from prison)** found that the current classification system results in women being needlessly placed in higher security, unnecessarily causing them to be segregated in higher security settings, delaying access to programs and services, and consequently prejudicing their chances of release and therefore their likelihood of success in the community. The report revealed that CSC has further exacerbated the results of this security screening for 37% of women, placing twice as many women in higher security than was even recommended by the already discriminatory tool. - **The Supreme Court's decision in *Ewert* (2018 SCC 30)** held, regarding and Indigenous man's challenge to the classification system, that Correctional Service Canada (CSC), by disregarding the possibility that its risk assessment tools are systematically disadvantaging Indigenous prisoners, is failing to abide by its statutory duty to use accurate information and to account for systemic discrimination - **OCI Annual Report 2017-2018, Recommendation 19:** "I recommend repealing of two related

		measures that exist outside the law: the two-year "rule" and the discriminatory movement levels system for women classified as maximum security." Why not follow Dr. Moira Law's recommendation, made as a result of research she did at the request of CSC, and label all in the prisons for women as minimum, thereby providing means for women to access community-based mental health, therapeutic and other post trauma supports and services?
Administrative Segregation **Purpose** **31** (1) The purpose of administrative segregation is to maintain the security of the penitentiary or the safety of any person by not allowing an inmate to associate with other inmates. **Duration**	**cl. 10** **Structured Intervention Units** **Designation** **31 The Commissioner may designate a penitentiary or any area in a penitentiary to be a structured intervention unit.** **Purpose** **32** The purpose of ~~**administrative segregation**~~ **a structured intervention unit** is to ~~**maintain the security of the penitentiary or the safety of any person by not allowing an inmate to associate with other inmates.**~~ **(a) provide an appropriate living environment for an inmate who cannot be maintained in the mainstream inmate population for security or other reasons; and** **(b) provide the inmate with an opportunity for meaningful human contact and an opportunity to participate in programs and to have access to services that respond to the inmate's specific needs and the risks posed by the inmate.** **Duration**	**<u>Designation of "structured intervention unit"</u>** This allows the Commissioner to rename any unit or penitentiary as a "structured intervention unit" (SIU); it does not impose restrictions on the nature or number of cells, units or other spaces that may be designated as SIUs and thus creates the potential for extending and even normalizing segregation conditions and potentially creating entire prisons/penitentiaries of SIUs Overall, these measures fly in the face of the recommendations of the Ashley Smith inquiry, which were based on the principles that prisoners should not be separated and that those with mental health issues should be in mental health facilities, not in prisons. For instance, refer to the following key recommendations: 28. That there should be an absolute prohibition on the practice of placing female inmates in conditions of long- term segregation, clinical seclusion, isolation, or observation. Long-term should be defined as any period in excess of 15 days.

(2) The inmate is to be released from administrative segregation at the earliest appropriate time. **Grounds for confining inmate in administrative segregation** (3) The institutional head may order that an inmate be confined in administrative segregation if the institutional head is satisfied that there is no reasonable alternative to administrative segregation and he or she believes on reasonable grounds that (a) the inmate has acted, has attempted to act or intends to act in a manner that jeopardizes the security of the penitentiary or the safety of any person and allowing the inmate to associate with other inmates would jeopardize the security of the penitentiary or the safety of any person; (b) allowing the inmate to associate with other inmates would interfere with an investigation that could lead to a criminal charge or a charge under subsection 41(2) of a serious disciplinary offence; or (c) allowing the inmate to associate with other inmates would jeopardize the inmate's safety.	**33 ~~The inmate is to be released from administrative segregation at the earliest appropriate time.~~An inmate's confinement in a structured intervention unit is to end as soon as possible.** **Transfer to unit** **34** The **~~institutional head~~ Commissioner** may **~~order that an inmate be confined in administrative segregation~~ authorize the transfer of an inmate into a structured intervention unit under section 29 only** if the **~~institutional head~~Commissioner** is satisfied that there is no reasonable alternative to **~~administrative segregation~~ the inmate's confinement in a structured intervention unit** and **~~he or she~~ the Commissioner** believes on reasonable grounds that (a) the inmate has acted, has attempted to act or intends to act in a manner that jeopardizes **~~the security of the penitentiary or~~** the safety of any person **or the security of a penitentiary** and allowing the inmate to **~~associate with other inmates~~ be in the mainstream inmate population** would jeopardize the **~~security of the penitentiary or~~** safety of any person **or the security of the penitentiary**; **~~(b) allowing the inmate to associate with other inmates would interfere with an investigation that could lead to a criminal charge or a charge under subsection 41(2) of a serious disciplinary offence; or~~** **(b)** allowing the inmate **~~to associate with other inmates~~ to be in the mainstream inmate population** would jeopardize the inmate's safety; or (c) allowing the inmate **~~to associate with other inmates~~ to be in the mainstream inmate population** would interfere with	29. That until segregation and seclusion is abolished in all CSC-operated penitentiaries and treatment facilities: a. CSC restricts the use of segregation and seclusion to fifteen (15) consecutive days, that is, no more than 360 hours, in an uninterrupted period; b. That a mandatory period outside of segregation or seclusion of five (5) consecutive days, that is, no less than 120 consecutive hours, be in effect after any period of segregation or seclusion; c. That an inmate may not be placed into segregation or seclusion for more than 60 days in a calendar year; and d. That in the event an inmate is transferred to an alternative institution or treatment facility, the calculation of consecutive days continues and does not constitute a "break" from segregation or seclusion. The purpose of separating and segregating prisoners is now characterized as required because of the individual prisoner, NOT, the security of the penitentiary or safety of others. This change implicitly holds the individual prisoner responsible for his or her placement and situates responsibility for continued isolation with the individual prisoner, thereby apparently absolving the prison/CSC of responsibility. The reference in s. 32(a) to "security or other reasons" is broad and vague and creates the potential for abuse in decisions to place individuals in segregation/SIU; reference to "appropriate" creates an extremely vague standard; this approach to drafting does not provide any protections to individuals and will essentially leave it to courts to set the

	an investigation that could lead to a criminal charge or a charge under subsection 41(2) of a serious disciplinary offence.	standards (which requires individuals, usually marginalized individuals, with already remote opportunities to access counsel, advocates, not to mention courts, to mount legal challenges) Subsection 32(b) refers to segregation/SIU as providing "an opportunity for meaningful human contact", when it actually constitutes more restrictive conditions of confinement than the general population No elucidation as to what constitutes meaningful human contact and no indication that it is anything more than minimal, likely the ongoing requirement of rounds and counts by correctional officers. In addition to removal of minimal procedural safeguards such as an individual's ability to make representations (ss. 34, 35), there are no time limits on the length of time prisoners can be segregated in these newly named intervention units. There are no requirements, for example, that the Commissioner state what other measures were considered and the reasons why they were not considered reasonable, that could help ensure that segregation/SIU are actually considered only as a last resort. Rather than ending segregation, this measure creates the potential to allow this type of confinement for periods beyond the even the minimal protection of a 15-day cap and other types of safeguards that courts have previously required. According to the recent *BC CLA* case that confirmed that segregation is solitary confinement: "The 15-day maximum prescribed by the Mandela Rules is a generous standard given the overwhelming evidence that even within that space of time an individual can suffer severe

		psychological harm." (https://bccla.org/wp-content/uploads/2018/01/Judge-Leask-re-British-Columbia-Civil-Liberties-Association-v.-Canada-Attorney-General-01-17.pdf). This 15-day limit reflects international human rights standards: - Mandela Rule 43(1): "In no circumstances may restrictions or disciplinary sanctions amount to torture or other cruel, inhuman or degrading treatment or punishment. ... The following practices, in particular, shall be prohibited: (a) Indefinite solitary confinement; (b) Prolonged solitary confinement. ..."; Mandela Rule 44: " ... Prolonged solitary confinement shall refer to solitary confinement for a time period in excess of 15 consecutive days." Utilizing s. 29 to segregate/isolate prisoners, vs transferring them into appropriate mental health facilities, underscores the fundamental manner in which this bill is essentially gutting the human rights and decarceral objectives and legislative intent of the CCRA. Same rationale previously used to allow segregation will now permit "transfer" in to segregated units pursuant to s. 29
Inmate rights **37** An inmate in administrative segregation has the same rights and conditions of confinement as other inmates, except for those that (a) can only be enjoyed in association with other inmates; or (b) cannot be enjoyed due to	**Cl 10** **Inmate rights** **35** An inmate in ~~**administrative segregation**~~**a structured intervention unit** has the same rights ~~**and conditions of confinement**~~ as other inmates, except for those that ~~**(a) can only be enjoyed in association with other inmates; or**~~ cannot be ~~**enjoyed**~~ **exercised** due to limitations specific to the ~~**administrative segregation area**~~ **structured intervention unit** or security requirements.	**<u>Rights while in SIU</u>** In addition to removing review requirements and related procedural safeguards, this amendment removes prior reference to those in segregation (now called SIU) having rights to the same conditions of confinement as those in general population.

(i) limitations specific to the administrative segregation area, or (ii) security requirements.		
[New provision]	**Cl 10** **Obligations of Service** **36 (1) The Service shall provide an inmate in a structured intervention unit** **(a) an opportunity to spend a minimum of four hours a day outside the inmate's cell; and** **(b) an opportunity to interact, for a minimum of two hours a day, with others, through activities including, but not limited to,** **(i) 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** **(ii) leisure time.** **Time included** **(2) Time spent interacting under paragraph (1)(b) outside an inmate's cell counts as time spent outside the inmate's cell under paragraph (1)(a).** **Time not included** **(3) If an inmate takes a shower outside their cell, the time spent doing so does not count as time spent outside the inmate's cell under paragraph (1)(a).** **Exceptions**	**SIU: Time outside cell** Minimum of 4 hours outside cell per day, of which only 2 have to involve interaction with others through programs or leisure time; showers do not count toward the 4 hours, but no indication as to how visits and telephone calls will be treated. This is essentially the current situation in the segregated maximum security units. In the penitentiaries for women, this can involve contact with 0-4 women, depending upon whether all or some are permitted to exit their cells together. Currently, being placed in a maximum-security unit severely limits access to programs and services and the proposed amendments essentially replicate and extend the current system rather than making changes that would increase and ensure such access.

	37 (1) Paragraph 36(1)(a) or (b), as the case may be, does not apply **(a) if the inmate refuses to avail themselves of the opportunity referred to in that paragraph;** **(b) if the inmate, at the time the opportunity referred to in that paragraph is provided to them, does not comply with reasonable instructions to ensure their safety or that of any other person or the security of the penitentiary; or** **(c) in the prescribed circumstances, and those circumstances must be limited to what is reasonably required for security purposes.** **Record** **(2) The Service shall maintain a record of every instance that an inmate has refused to avail themselves of any opportunity referred to in paragraph 36(1)(a) or (b) or has not been given such an opportunity by reason of paragraph (1)(b) or (c).**	The minimum time out does not have to be granted if the prison administration decides that a prisoner refuses (even if reasons for refusing are due to illness, other commitments or other 'reasonable' explanations (eg. Many prisoners are currently deemed to refuse when they are offered very early morning time slots or times that conflict with telephone calls or visits) or doesn't follow "reasonable instructions" or for security reasons. Despite the increasing number of lockdowns in prisons throughout Canada, the provisions are silent on the impact of staff-initiated limits on time out of and into segregated units/SIU. There is no indication if hours will be offered at reasonable times of the day or of any remedies if time out of the cell is missed due to lockdowns, staff availability or lack thereof, etc. The reference to "prescribed circumstances" will allow for other reasons to deny time out of a cell to be established and changed by regulation, without the public scrutiny associated with passing a bill; there is no indication that draft regulations have been made available Although CSC is expected to record any time missed out of cells, it is not clear that staff/institution-initiated reasons, such as lockdowns or staff shortages, will be recorded; if a prisoner refuses, there should be an obligation on CSC to document precise reasons why, to inform a requisite review process per s. 37.3(1)(d). Together with the provisions on daily "monitoring" (cl. 10, s. 37.1) and reviews by the institutional head or commissioner (cl. 10, s. 37.3), these recording requirements fail to provide external, non-CSC oversight of segregated living conditions.
Visits to inmate	**Cl 10**	

36 (1) An inmate in administrative segregation shall be visited at least once every day by a registered health care professional. **Idem** (2) The institutional head shall visit the administrative segregation area at least once every day and meet with individual inmates on request.	**Ongoing monitoring** **37.1 (1) The Service shall ensure that measures are taken to provide for the ongoing monitoring of the health of inmates in a structured intervention unit.** **Daily visit** (2) ~~**An inmate in administrative segregation shall be visited**~~ **The Service shall ensure that the measures include a visit to the inmate** at least once every day by a registered health care professional **employed or engaged by the Service.** ~~**(2) The institutional head shall visit the administrative segregation area at least once every day and meet with individual inmates on request**~~.	**<u>SIU: Monitoring of Health</u>** Amending requirement on CSC to have health care professionals and wardens or warden's designate visit each segregated prisoner AND monitor health. Seems to open the door for electronic monitoring for all but one visit of a health care professional per day. Nothing precludes this being the nurse distributing medication. Mandela rules require not just daily visits but also ability of prisoner or staff to request immediate attention: *46(1) Health-care personnel shall not have any role in the imposition of disciplinary sanctions or other restrictive measures. They shall, however, pay particular attention to the health of prisoners held under any form of involuntary separation, including by visiting such prisoners on a daily basis and providing prompt medical assistance and treatment at the request of such prisoners or prison staff.* Removes obligation that institutional head – or a designate -- visit every day (s. 37.6 below requires visit only during transfer process?) Also, many prisoners are not advised when the visit occurs and often are unaware that they have the right to request a meeting.
Case to be reviewed	**Cl. 10** **Recommendations to institutional head** **37.2 A registered health care professional employed or engaged by the Service may, for health reasons, recommend to the institutional head that the conditions of confinement of the inmate in a structured intervention unit be altered or that the inmate not remain in the unit.** **Decision — institutional head** **37.3** (1) ~~Where an inmate is involuntarily confined in administrative segregation, a person or persons designated~~	**<u>Review of transfer to SIU</u>** CSC health care professional can "recommend" that prisoner be removed from SIU, which is supposed to trigger a review by the warden/institutional head or his/her designate (Cl. 10, s. 37.3(b)); does not appear to be any recourse if review does not occur, decision made to keep in segregation, other than to make another "recommendation"; no obligation that institutional head provide written reasons, which could promote accountability <u>Institutional head</u>

33 (1) Where an inmate is involuntarily confined in administrative segregation, a person or persons designated by the institutional head shall (a) conduct, at the prescribed time and in the prescribed manner, a hearing to review the inmate's case; (b) conduct, at prescribed times and in the prescribed manner, further regular hearings to review the inmate's case; and (c) recommend to the institutional head, after the hearing mentioned in paragraph (a) and after each hearing mentioned in paragraph (b), whether or not the inmate should be released from administrative segregation. **Presence of inmate** (2) A hearing mentioned in paragraph (1)(a) shall be conducted with the inmate present unless (a) the inmate is voluntarily absent; (b) the person or persons conducting the hearing believe on reasonable grounds that the inmate's presence would jeopardize the safety of any person present at the hearing; or (c) the inmate seriously disrupts the hearing.	~~by the institutional head shall~~ **The institutional head shall determine, in the prescribed manner, whether an inmate should remain in a structured intervention unit** **(a) within the period of five working days that begins on the first working day on which the inmate is confined in the unit;** **(b) as soon as practicable after a registered health care professional recommends under section 37.2, for health reasons, that the inmate not remain in the unit;** **(c) within the period that begins on the day on which the determination under paragraph (a) is made and that ends on the expiry of the period of 30 days that begins on the first day on which the inmate is confined in the unit;** **(d) as soon as practicable, if the inmate has refused to avail themselves of the opportunity referred to in paragraph 36(1)(a) or (b), or the inmate has not been given such an opportunity by reason of paragraph 37(1)(b), for** **(i) five consecutive days, or** **(ii) a total of 15 days during any 30-day period; and** **(e) as soon as practicable in any of the prescribed circumstances.** (~~**a) conduct, at the prescribed time and in the prescribed manner, a hearing to review the inmate's case;**~~ ~~**(b) conduct, at prescribed times and in the prescribed manner, further regular hearings to review the inmate's case; and**~~	Decision about remaining in SIU made by institutional head in accordance with regulations Removal of the requirement that prisoner be present Review after 5 working days, 30 days; requirement for "as soon as practicable" vs. immediately, in certain urgent cases such as where "recommended" by CSC health care providers for health reasons is too vague to ensure individuals will receive the attention they require in critical situations. Grounds for keeping in SIU remain the same as previously existed for segregation: security of person, prison, interference with investigation that could lead to charge

Considerations governing release **32** All recommendations to the institutional head referred to in paragraph 33(1)(c) and all decisions by the institutional head to release or not to release an inmate from administrative segregation shall be based on the considerations set out in section 31.	~~**(c) recommend to the institutional head, after the hearing mentioned in paragraph (a) and after each hearing mentioned in paragraph (b), whether or not the inmate should be released from administrative segregation.**~~ ~~**(2) A hearing mentioned in paragraph (1)(a) shall be conducted with the inmate present unless**~~ ~~**(a) the inmate is voluntarily absent;**~~ ~~**(b) the person or persons conducting the hearing believe on reasonable grounds that the inmate's presence would jeopardize the safety of any person present at the hearing; or**~~ ~~**(c) the inmate seriously disrupts the hearing.**~~ **Grounds for decision** ~~**32 All recommendations to the institutional head referred to in paragraph 33(1)(c) and all decisions by the institutional head to release or not to release an inmate from administrative segregation shall be based on the considerations set out in section 31.**~~ **(2) The institutional head may determine that the inmate should remain in the unit only if the institutional head believes on reasonable grounds that allowing the inmate's reintegration into the mainstream inmate population** **(a) would jeopardize the safety of the inmate or any other person or the security of the penitentiary; or**	Addition of factors for institutional head to consider in decision; reference to "appropriateness" in factors creates an extremely vague standard; this approach to drafting does not provide any protections to individual prisoners and may impede access to justice; if prisoners get to the courts to mount legal challenges, this will essentially leave it to courts to set the standards

	(b) would interfere with an investigation that could lead to a criminal charge or a charge under subsection 41(2) of a serious disciplinary offence. **Factors** **(3) In making the determination, the institutional head shall take into account** **(a) the inmate's correctional plan;** **(b) the appropriateness of the inmate's confinement in the penitentiary;** **(c) the appropriateness of the inmate's security classification; and** **(d) any other consideration that he or she considers relevant.** **Conditions of confinement** **(4) As soon as practicable after the registered health care professional referred to in section 37.2 has recommended, for health reasons, that the conditions of confinement be altered, the institutional head shall determine whether the inmate's conditions of confinement in the structured intervention unit should be altered.** **Decision — Commissioner** **37.4 Thirty days after the institutional head's determination under paragraph 37.3(1)(c) in respect of the inmate, the Commissioner shall determine, in the prescribed manner, whether the inmate should remain in a structured intervention unit. The Commissioner shall also make such a determination in the prescribed circumstances and every 30**	<u>Commissioner</u> Review after 60 days (30 days following institutional head's final decision) and every 30 days thereafter CSC could set, by regulation, more situations in which CSC will review decisions, but the lack of any draft regulations does not inspire confidence in this possibility.

	days after the Commissioner's last determination under this section in respect of the inmate. **Review of inmate's case** **37.5 If an inmate has been authorized to be transferred to a structured intervention unit the prescribed number of times or in the prescribed circumstances, the Service shall review the inmate's case in the prescribed manner and within the prescribed period.**	This is another case where key details regarding procedure for review by institutional head and commissioner, and their implications for the human rights of those who are incarcerated, are not yet known; there is no indication that draft regulations have been made available The result of these provisions is that 5 day, 30 day, 60 day + reviews will be made by CSC officials, contrary to the external oversight of segregation that has been recommended for over two decades. As stated in the Arbour Report (1996), "If illegalities, gross mismanagement or unfairness in the administration of a sentence renders the sentence harsher than that imposed by the court, a reduction of the period of imprisonment [should] ... be granted, such as to reflect the fact that the punishment administered was more punitive than the one intended. … I see no alternative to the current overuse of prolonged segregation but to recommend that it be placed under the control and supervision of the courts. (pp 101, 105)."
[No equivalent]	**Cl 10** **Restriction of movement and application of provisions before transfer** **37.6 (1) The transfer of an inmate to a structured intervention unit must be completed not later than five working days after the day on which the authorization for the transfer is given. Until the transfer is completed, the Service may impose restrictions on the inmate's movement and sections 33 and 35 to 37.4 apply with any necessary modifications in respect of the inmate as though the inmate were in a structured intervention unit. However, the opportunity referred to in paragraph 36(1)(b) is to be provided only if the circumstances permit.** **Obligation of the institutional head**	**<u>Transfer to SIU</u>** CSC authorized to impose segregation/SIU-like restrictions in place for prisoners in any area of a prison, not merely SIU

	(2) The institutional head shall, at least once every day, meet with the inmate. **Exception** **(3) Subsection (1) does not apply if the transfer is to a structured intervention unit in the penitentiary where the inmate is confined at the time the authorization is given.**	Institutional head obliged to visit at least once a day. How will each meeting be documented? No prisoner sign-off; this is another instance where the bill creates the potential for CSC decision-making that places individuals in segregated conditions, with no external oversight
Where institutional head must meet with inmate **34** Where the institutional head does not intend to accept a recommendation made under section 33 to release an inmate from administrative segregation, the institutional head shall, as soon as is practicable, meet with the inmate (a) to explain the reasons for not intending to accept the recommendation; and (b) to give the inmate an opportunity to make oral or written representations**.** **Idem** **35** Where an inmate requests to be placed in, or continue in, administrative segregation and the institutional head does not intend to grant the request, the institutional head shall, as soon as is practicable, meet with the inmate (a) to explain the reasons for not intending to grant the request; and (b) to give the inmate an opportunity to make oral or written representations.	~~**Where institutional head must meet with inmate**~~ ~~**34 Where the institutional head does not intend to accept a recommendation made under section 33 to release an inmate from administrative segregation, the institutional head shall, as soon as is practicable, meet with the inmate**~~ ~~**(a) to explain the reasons for not intending to accept the recommendation; and**~~ ~~**(b) to give the inmate an opportunity to make oral or written representations.**~~ ~~**Idem**~~ ~~**35 Where an inmate requests to be placed in, or continue in, administrative segregation and the institutional head does not intend to grant the request, the institutional head shall, as soon as is practicable, meet with the inmate**~~ ~~**(a) to explain the reasons for not intending to grant the request; and**~~ ~~**(b) to give the inmate an opportunity to make oral or written representations.**~~	**No obligation on the part of the warden/institutional head to meet with impacted prisoner(s) where not heeding request to release from segregation/SIU**

Disciplinary sanctions **44** (1) An inmate who is found guilty of a disciplinary offence is liable, in accordance with the regulations made under paragraphs 96(i) and (j), to one or more of the following: (a) a warning or reprimand; (b) a loss of privileges; (c) an order to make restitution, including in respect of any property that is damaged or destroyed as a result of the offence; (d) a fine; (e) performance of extra duties; and (f) in the case of a serious disciplinary offence, segregation from other inmates — with or without restrictions on visits with family, friends and other persons from outside the penitentiary — for a maximum of 30 days.	**cl. 11** **Disciplinary sanctions** **44** (1) An inmate who is found guilty of a disciplinary offence is liable, in accordance with the regulations made under paragraphs 96(i) and (j), to one or more of the following: (a) a warning or reprimand; (b) a loss of privileges; (c) an order to make restitution, including in respect of any property that is damaged or destroyed as a result of the offence; (d) a fine; **and** (e) performance of extra duties. ~~**(f) in the case of a serious disciplinary offence, segregation from other inmates — with or without restrictions on visits with family, friends and other persons from outside the penitentiary — for a maximum of 30 days.**~~	**Disciplinary sanctions** Repeal of disciplinary segregation, along with all procedural safeguards. Result is administrative process of SIU may be utilized.
Search and Seizure **Definitions** **46** [New definition]	**Cl 12** **body scan search** means a search of a body by means of a prescribed body scanner that is conducted in the prescribed manner. (fouille par balayage corporel)	
Routine strip search of inmates **48** A staff member of the same sex as the inmate may conduct a routine strip search of an inmate, without individualized suspicion,	**Cl 14, 15** **Routine strip search of inmates**	**Strip search of prisoners** Power to strip search relating to segregation/SIU remains; effect is that prisoners in SIU may be strip-searched at least

(a) in the prescribed circumstances, which circumstances must be limited to situations in which the inmate has been in a place where there was a likelihood of access to contraband that is capable of being hidden on or in the body; or (b) when the inmate is entering or leaving a segregation area.	**48** A staff member of the same sex as the inmate may conduct a routine strip search of an inmate, without individualized suspicion, (a) in the prescribed circumstances, which circumstances must be limited to situations in which the inmate has been in a place where there was a likelihood of access to contraband that is capable of being hidden on or in the body; or (b) when the inmate is entering or leaving **~~a segregation area~~structured intervention unit**. **Search by body scan** **48.1 A staff member may, in the prescribed circumstances, conduct a body scan search of an inmate, and those circumstances must be limited to what is reasonably required for security purposes**.	twice a day, as they enter and leave the unit, a process that may cause prisoners to choose not to participate in activities (including family visits); unclear why so many searches are needed, when individuals are already isolated from other prisoners and supervised throughout the time they would be out of the SIU No discussion of the particularly negative impact of strip searches on women , most of whom have a history of sexual abuse **Body scan of prisoners** Ability to use body scanner on prisoners; rules on when and how are unclear and will be set by regulation; another area where key details regarding rights of those who are incarcerated are not yet known; there is no indication that draft regulations have been made available Currently, body scanners can only be used with prisoners' consent; these could be offered as an alternative to strip searching 'for cause'. N.B. - In 2005, all of the deputy wardens responsible for security in the regional prisons for women recommended the elimination of routine strip searches as they rarely yielded contraband but resulted in significant trauma for federally sentenced women, most of who have experienced sexual assault. N.B. – In provincial jurisdictions, such as ON, this has added to, rather than replace, invasive strip and body cavity searches.
Use of X-ray, "dry cell"	**Cl 16** **Detention in dry cell**	**X-ray, dry cell**

51 Where the institutional head is satisfied that there are reasonable grounds to believe that an inmate has ingested contraband or is carrying contraband in a body cavity, the institutional head may authorize in writing one or both of the following: (a) the use of an X-ray machine by a qualified X-ray technician to find the contraband, if the consent of the inmate and of a qualified medical practitioner is obtained; and (b) the detention of the inmate in a cell without plumbing fixtures, with notice to the penitentiary's medical staff, on the expectation that the contraband will be expelled.	**51** (1) ~~**Where If**~~ the institutional head is satisfied that there are reasonable grounds to believe that an inmate has ingested contraband or is carrying contraband in a body cavity, the institutional head may authorize in writing ~~**one or both of the following: (a) the use of an X-ray machine by a qualified X-ray technician to find the contraband, if the consent of the inmate and of a qualified medical practitioner is obtained; and (b)**~~the detention of the inmate in a cell without plumbing fixtures, ~~**with notice to the penitentiary's medical staff,**~~ on the expectation that the contraband will be expelled. **Visits by registered health care professional** **(2) The inmate must be visited at least once every day by a registered health care professional.**	Removal of ability of institutional head to authorize X ray (presumably, body scanner will now be used instead) Removal of requirement for notice to prison's medical staff prior to placing person in dry cell In accordance with segregation rules, requirement that prisoner be visited daily by health care professional
Frisk search **60** (1) A staff member may conduct a frisk search of a visitor where the staff member suspects on reasonable grounds that the visitor is carrying contraband or carrying other evidence relating to an offence under section 45. **Strip search** **(**2) Where a staff member (a) suspects on reasonable grounds that a visitor is carrying contraband or carrying other evidence relating to an offence under section 45 and believes that a strip search is necessary to find the contraband or evidence, and (b) satisfies the institutional head that there are reasonable grounds	**Cl 18** **Frisk search** **60** (1) A staff member may conduct a frisk search of a visitor where the staff member suspects on reasonable grounds that the visitor is carrying contraband or carrying other evidence relating to an offence under section 45. **Strip search** **(**2) Where a staff member (a) suspects on reasonable grounds that a visitor is carrying contraband or carrying other evidence relating to an offence under section 45 and believes that a strip search is necessary to find the contraband or evidence, and (b) satisfies the institutional head that there are reasonable grounds	**Body scan of visitors** New ability to also use the body scanner to search visitors in circumstances to be set by regulation

(i) to suspect that the visitor is carrying contraband or carrying other evidence relating to an offence under section 45, and (ii) to believe that a strip search is necessary to find the contraband or evidence, a staff member of the same sex as the visitor may, after giving the visitor the option of voluntarily leaving the penitentiary forthwith, conduct a strip search of the visitor. **Idem** (3) Where a staff member believes on reasonable grounds that a visitor is carrying contraband or carrying other evidence relating to an offence under section 45 and that a strip search is necessary to find the contraband or evidence, (a) the staff member may detain the visitor in order to (i) obtain the authorization of the institutional head to conduct a strip search, or (ii) obtain the services of the police; and (b) where the staff member satisfies the institutional head that there are reasonable grounds to believe (i) that the visitor is carrying contraband or carrying other evidence relating to an offence under section 45, and (ii) that a strip search is necessary to find the contraband or evidence,	(i) to suspect that the visitor is carrying contraband or carrying other evidence relating to an offence under section 45, and (ii) to believe that a strip search is necessary to find the contraband or evidence, a staff member of the same sex as the visitor may, after giving the visitor the option of voluntarily leaving the penitentiary forthwith, conduct a strip search of the visitor. **Idem** (3) Where a staff member believes on reasonable grounds that a visitor is carrying contraband or carrying other evidence relating to an offence under section 45 and that a strip search is necessary to find the contraband or evidence, (a) the staff member may detain the visitor in order to (i) obtain the authorization of the institutional head to conduct a strip search, or (ii) obtain the services of the police; and (b) where the staff member satisfies the institutional head that there are reasonable grounds to believe (i) that the visitor is carrying contraband or carrying other evidence relating to an offence under section 45, and (ii) that a strip search is necessary to find the contraband or evidence,	

the institutional head may authorize a staff member of the same sex as the visitor to conduct a strip search of the visitor. **Rights of detained visitor** (4) A visitor who is detained pursuant to subsection (3) shall (a) be informed promptly of the reasons for the detention; and (b) before being searched, be given a reasonable opportunity to retain and instruct counsel without delay and be informed of that right.	the institutional head may authorize a staff member of the same sex as the visitor to conduct a strip search of the visitor. **Rights of detained visitor** (4) A visitor who is detained pursuant to subsection (3) shall (a) be informed promptly of the reasons for the detention; and (b) before being searched, be given a reasonable opportunity to retain and instruct counsel without delay and be informed of that right. **Search by body scan** **60.1 A staff member may, in the prescribed circumstances, conduct a body scan search of a visitor, and those circumstances must be limited to what is reasonably required for security purposes.**	
Frisk search or strip search **64** (1) Where a staff member believes on reasonable grounds that another staff member is carrying contraband or carrying evidence relating to a criminal offence and that a frisk search or strip search is necessary to find the contraband or evidence, (a) the staff member may detain the other staff member in order to (i) obtain the authorization of the institutional head to conduct a frisk search or strip search, or (ii) obtain the services of the police; and	**Cl 21** **Frisk search or strip search** **64** (1) Where a staff member believes on reasonable grounds that another staff member is carrying contraband or carrying evidence relating to a criminal offence and that a frisk search or strip search is necessary to find the contraband or evidence, (a) the staff member may detain the other staff member in order to (i) obtain the authorization of the institutional head to conduct a frisk search or strip search, or (ii) obtain the services of the police; and	**Body scan of staff** New ability to use body scanner on staff under circumstances set by regulation. Currently, in theory, staff are supposed to be screened upon entry to penitentiaries but in practice are not. How will this be implemented any differently? No evidence of oversight of new invasive security interventions being introduced, especially for visitors.

(b) where the staff member satisfies the institutional head that there are reasonable grounds to believe that the other staff member is carrying contraband or carrying evidence relating to a criminal offence and that a frisk search or strip search is necessary to find the contraband or evidence, the institutional head may (i) authorize a staff member to conduct a frisk search of the other staff member, or (ii) authorize a staff member of the same sex as the other staff member to conduct a strip search of that other staff member. **Rights of detained staff member** (2) A staff member who is detained pursuant to subsection (1) shall (a) be informed promptly of the reasons for the detention; and (b) before being searched, be given a reasonable opportunity to retain and instruct counsel without delay and be informed of that right.	(b) where the staff member satisfies the institutional head that there are reasonable grounds to believe that the other staff member is carrying contraband or carrying evidence relating to a criminal offence and that a frisk search or strip search is necessary to find the contraband or evidence, the institutional head may (i) authorize a staff member to conduct a frisk search of the other staff member, or (ii) authorize a staff member of the same sex as the other staff member to conduct a strip search of that other staff member. **Rights of detained staff member** (2) A staff member who is detained pursuant to subsection (1) shall (a) be informed promptly of the reasons for the detention; and (b) before being searched, be given a reasonable opportunity to retain and instruct counsel without delay and be informed of that right. **Search by body scan** **64.1 A staff member may, in the prescribed circumstances, conduct a body scan search of another staff member, and those circumstances must be limited to what is reasonably required for security purposes.**	
Power to Seize	**Cl 22** **Power to Seize**	**Seizure of contraband**

65 (1) Subject to section 50, a staff member may seize contraband, or evidence relating to a disciplinary or criminal offence, found in the course of a search conducted pursuant to sections 47 to 64, except a body cavity search or a search described in paragraph 51(a).	**65** (1) ~~**Subject to section 50,**~~ a staff member may seize contraband, or evidence relating to a disciplinary or criminal offence, found in the course of a search conducted ~~**pursuant to**~~**under** sections 47 to 64, except a body cavity search or a ~~**search described in paragraph 51(a)**~~**body scan search.**	Removes restriction on staff seizing contraband/evidence found as a result of X-ray but not evidence obtained as a result of a search using a body scanner
Aboriginal Offenders **Definitions** **79** In sections 80 to 84, aboriginal means Indian, Inuit or Métis; (autochtone) aboriginal community means a first nation, tribal council, band, community, organization or other group with a predominantly aboriginal leadership; (collectivité autochtone) correctional services means services or programs for offenders, including their care and custody. (services correctionnels)	**Cl 23** ~~**Aboriginal**~~ **Indigenous Offenders** **Definitions** **79** In sections 79.1 to 84.1, correctional services means services or programs for offenders, including their care, custody **and supervision**. (services correctionnels) ~~**aboriginal community means a first nation, tribal council, band, community, organization or other group with a predominantly aboriginal leadership**~~ **Indigenous governing body means a council, government or other entity that is authorized to act on behalf of an Indigenous group, community or people that holds rights recognized and affirmed by section 35 of the Constitution Act, 1982. (corps dirigeant autochtone)** ~~**aboriginal means Indian, Inuit or Métis; (autochtone)**~~ **Indigenous peoples of Canada has the meaning assigned by the definition aboriginal peoples of Canada in subsection 35(2) of the Constitution Act, 1982. (peuples autochtones du Canada)** **Factors to be considered** **79.1 In making decisions under this Act affecting an Indigenous offender, the Service shall take the following into consideration:**	**Indigenous prisoners** Adding factors to be considered in decisions about Indigenous prisoners Removing the concept of "aboriginal community" from the Act and replacing it with "Indigenous governing body" (requirement for authorization to act on behalf of group, affirmed by s. 35); this change could have significant effects on ss. 81 and 84, below. It will do nothing to address chronic underuse of these provisions and will instead further restrict their use by limiting them to "Indigenous governing bodies". This ignores the recommendations of the Office of the Correctional Investigator in annual reports and its *Spirit Matters* report on Indigenous prisoners, which have identified chronic failures to make full use of s. 81 transfers and s. 84 releases to Indigenous communities, including failures to provide information to and consult with Indigenous communities: - **OCI, Annual Report 2017-2018, Recommendation 13 and 14:** noting that 28% of those in federal prisons, and 40% of women in federal prisons, are Indigeneous, "I recommend that CSC re-allocate very significant resources to negotiate new funding arrangements and agreements with appropriate partners and service providers to transfer care, custody and supervision of Indigenous people from prison to the community. This would include creation of **new**

	(a) systemic and background factors affecting Indigenous peoples of Canada; **(b) systemic and background factors that have contributed to the overrepresentation of Indigenous persons in the criminal justice system and that may have contributed to the offender's involvement in the criminal justice system; and** **(c) the Indigenous culture and identity of the offender.**	**section 81 capacity in urban areas and section 84 placements in private residences**. These new arrangements should **return to the original vision of the Healing Lodges** and include consultation with Elders. ... To honour the Truth and Reconciliation Commission's 'calls to action,' I recommend that CSC spending, budget and resource allocation should better reflect the proportion of Indigenous people serving a federal sentence. Over the next decade, re-allocation of resources and delegation of control to Indigenous communities should be the stated goals of CSC's contribution to reaching the TRC's 'calls to action.'" - **OCI, *Spirit Matters* (2012) at paras 71, 100, Recommendations 2, 5**: "[**O]ver the years a series of barriers have been created in CSC's implementation of Sections 81 and 84** provisions of the CCRA. In failing to make Section 81 and 84 arrangements more readily accessible to more Aboriginal offenders [sic], CSC bears some responsibility for widening performance discrepancies and disproportionate representation between Aboriginal and non-Aboriginal offenders [sic]. ... Sections 81 and 84 capture the promise to redefine the relationship between Aboriginal people and the federal government. Control over more aspects of release planning for Aboriginal offenders [sic] and greater access to more culturally-appropriate services and programming were original hopes when the CCRA was proclaimed in November 1992. **Twenty years later, it is time that federal corrections more closely aligned its policies, resources and actions with Parliament's original intent**"; "**The perception**

		that Section 84 releases should focus on First Nation communities is not in accord with the reality that the majority of Aboriginal offenders [sic] will be released to urban centres. More attention needs to be paid to developing relationships with urban Aboriginal organizations."; **"2. CSC should develop a long-term strategy for additional Section 81 agreements …"; "5. CSC should re-examine the use of non-facility based Section 81 agreements as an alternative to Healing Lodge …"** - **OCI, *Annual Report* (2017) at 50-51, Recommendation 12:** "**Two provisions in particular, both of which were intended to be used as alternative release options for Indigenous offenders [sic], are chronically under-funded and under-utilized in federal corrections**. Section 81 allows for Indigenous communities to oversee the care and custody of Indigenous offenders [sic] who would otherwise be in a federal prison. Section 84 allows for an Aboriginal community to propose a plan for an interested and consenting Aboriginal inmate's release and reintegration into that community."; "12. I recommend that CSC review its community release strategy for Indigenous offenders [sic] with a view to: i. **increase the number of Section 81 agreements to include community accommodation options** for the care and custody of medium security inmates; ii. address discrepancies in funding arrangements between CSC and Aboriginal-managed Healing Lodge facilities, and; iii. **maximize community interest and engagement in release planning** for Indigenous offenders [sic] at the earliest opportunity."

Agreements **81** (1) The Minister, or a person authorized by the Minister, may enter into an agreement with an aboriginal community for the provision of correctional services to aboriginal offenders and for payment by the Minister, or by a person authorized by the Minister, in respect of the provision of those services. **Scope of agreement** (2) Notwithstanding subsection (1), an agreement entered into under that subsection may provide for the provision of correctional services to a non-aboriginal offender. **Placement of offender** (3) In accordance with any agreement entered into under subsection (1), the Commissioner may transfer an offender to the care and custody of an aboriginal community, with the consent of the offender and of the aboriginal community.	**Cl 24** **81** (1) The Minister, or a person authorized by the Minister, may enter into an agreement with an **Indigenous governing body or any Indigenous organization** ~~**aboriginal community**~~ for the provision of correctional services to **Indigenous** offenders and for payment by the Minister, or by a person authorized by the Minister, in respect of the provision of those services. **Scope of agreement** (2) Notwithstanding subsection (1), an agreement entered into under that subsection may provide for the provision of correctional services to a non-**Indigenous** offender. **Placement of offender** (3) In accordance with any agreement entered into under subsection (1), the Commissioner may transfer an offender to the care and custody of an ~~**aboriginal community**~~**appropriate Indigenous authority**, with the consent of the offender and of the ~~**aboriginal community**~~**appropriate Indigenous authority**.	**Section 81 transfer** Restriction of ability to enter agreements with Minister to Indigenous governing bodies (defined above), instead of Indigenous communities
Advisory committees **82** (1) The Service shall establish a National Aboriginal Advisory Committee, and may establish regional and local aboriginal advisory committees, which shall provide advice to the Service on the provision of correctional services to aboriginal offenders. **Committees to consult** (2) For the purpose of carrying out their function under subsection (1), all committees shall consult regularly with	**Cl 25** **Advisory committees** **82** (1) The Service shall establish a national **Indigenous** advisory committee, and may establish regional and local **Indigenous** advisory committees, which shall provide advice to the Service on the provision of correctional services to **Indigenous** offenders. **Committees to consult** (2) For the purpose of carrying out their function under subsection (1), all committees shall consult regularly with	**Change of terminology from "aboriginal" to "Indigenous",** but no further attempts to address over-representation of Indigenous Peoples in prisons, per mandate letters - Minister of Justice mandate letter: "You should conduct a review of the changes in our criminal justice system and sentencing reforms over the past decade. … Outcomes of this process should include increased use of restorative justice processes and other initiatives to reduce the rate of incarceration amongst Indigenous Canadians, and implementation of recommendations from the inquest into the death

aboriginal communities and other appropriate persons with knowledge of aboriginal matters. **Spiritual leaders and elders** **83** (1) For greater certainty, aboriginal spirituality and aboriginal spiritual leaders and elders have the same status as other religions and other religious leaders. **Idem** (2) The Service shall take all reasonable steps to make available to aboriginal inmates the services of an aboriginal spiritual leader or elder after consultation with (a) the National Aboriginal Advisory Committee mentioned in section 82; and (b) the appropriate regional and local aboriginal advisory committees, if such committees have been established pursuant to that section.	~~**aboriginal communities**~~ **Indigenous communities, Indigenous governing bodies, Indigenous organizations and other appropriate persons with knowledge of Indigenous matters.** **Spiritual leaders and elders** **83** (1) For greater certainty, **Indigenous** spirituality and **Indigenous** spiritual leaders and elders have the same status as other religions and other religious leaders. **Obligation** (2) The Service shall take all reasonable steps to make available to **Indigenous** inmates the services of an **Indigenous** spiritual leader or elder after consultation with (a) the national **Indigenous** advisory committee established under section 82; (b) the appropriate regional and local **Indigenous** advisory committees.	of Ashley Smith regarding the restriction of the use of solitary confinement and the treatment of those with mental illness."; "Work with the Minister of Public Safety and Emergency Preparedness and the Minister of Indigenous and Northern Affairs to address gaps in services to Indigenous Peoples and those with mental illness throughout the criminal justice system." (https://pm.gc.ca/eng/minister-justice-and-attorney-general-canada-mandate-letter) - Minister of Public Safety mandate letter: "Work with the Minister of Justice and the Minister of Indigenous and Northern Affairs to address gaps in services to Indigenous Peoples and those with mental illness throughout the criminal justice system." (https://pm.gc.ca/eng/minister-public-safety-and-emergency-preparedness-mandate-letter) Meetings of this advisory committee are generally organized by CSC (the Commissioner's office in the past) and does not meet frequently. The amendments proposed here will not change this practice. In addition, the Vision Circle for the Okimaw Ohci Healing Lodge and other similar Indigenous guiding bodies and national visiting Elder initiatives for prisons for Indigenous prisoners have long since been disbanded or not resourced to meet for more than a decade. Process for identifying Elders recognized in communities vs. hired by CSC not addressed. What about access to their own Elders?
Release to aboriginal community	**Cl 25** **84** If an inmate expresses an interest in being released into an **Indigenous** community, the Service shall, with	**<u>Section 84 transfer</u>** Restriction of ability of communities to enter into agreements with Minister to Indigenous governing bodies (defined

84 If an inmate expresses an interest in being released into an aboriginal community, the Service shall, with the inmate's consent, give the aboriginal community (a) adequate notice of the inmate's parole review or their statutory release date, as the case may be; and (b) an opportunity to propose a plan for the inmate's release and integration into that community. **Plans with respect to long-term supervision** **84.1** Where an offender who is required to be supervised by a long-term supervision order has expressed an interest in being supervised in an aboriginal community, the Service shall, if the offender consents, give the aboriginal community (a) adequate notice of the order; and (b) an opportunity to propose a plan for the offender's release on supervision, and integration, into the aboriginal community.	the inmate's consent, give the **~~aboriginal community~~ community's Indigenous governing body** (a) adequate notice of the inmate's parole review or their statutory release date, as the case may be; and (b) an opportunity to propose a plan for the inmate's release and integration into that community. **Plans – long-term supervision** **84.1 If** an offender who is required to be supervised by a long-term supervision order has expressed an interest in being supervised in an **Indigenous** community, the Service shall**~~, if the offender consents~~ with the offender's consent,** give the **~~aboriginal community~~ community's Indigenous governing body** (a) adequate notice of the order; and (b) an opportunity to propose a plan for the offender's release on supervision, and integration, into **~~the aboriginal~~ that** community.	above), instead of Indigenous communities (per legislative intent of individualized and systemic response of over-incarceration of Indigenous Peoples).
Health Care **Definitions** **85** In sections 86 and 87, health care means medical care, dental care and mental health care, provided by registered health care professionals	**Cl 26** **Health Care** **Definitions** **85** In sections 86 and 87, health care means medical care, dental care and mental health care, provided by registered health care professionals **or by persons acting under the supervision of registered health care professionals**	**<u>Health Care</u>** Can now be provided by persons acting "under the supervision" of a health care professional; not just health care professionals. This could include a correctional officer and there is no requirement that the "supervising" health care professional be on site. This contradicts many reports of the OCI, CHRC and the jury recommendations from the inquest into the death of Ashley Smith. - OCI *2017 Annual Report*, at 9 http://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20162017-eng.pdf: "In carrying out their duties, the Mandela

		Rules instruct that correctional health care workers must be provided full clinical and professional independence. **Clinical decisions may only be taken by health care professionals;** the prison administration must not influence, interfere with or go against the decisions of the health care team. **Health care staff must never be involved in assessing fitness for, approving or inflicting disciplinary punishments**" - CHRC, *Protecting Their Rights* (2003) at 40 https://www.chrc-ccdp.gc.ca/eng/content/protecting-their-rights-systemic-review-human-rights-correctional-services-federally : "Psychological counselling is one way of addressing mental health issues. ... But effective **counselling requires a relationship of trust and a guarantee of confidentiality, features often absent in the prison setting, where many federally sentenced women fear that whatever they say may end up recorded in their file**" - Ashley Smith Verdict Recommendations 8 and 10 http://www.csc-scc.gc.ca/publications/005007-9009-eng.shtml: "That there be adequate staffing of qualified, mental health care providers with expertise and experience in treating a population with mental health issues, self-injurious behaviours, suicidality, and trauma, at every women's institution to provide services and supports to female inmates. … **That all staff providing mental health care will report to, and be accountable to, health care, not security, and that the therapeutic relationship should not be compromised by the assignment of security-focused assessments**."

Obligations of Service **86** (1) The Service shall provide every inmate with (a) essential health care; and (b) reasonable access to non-essential mental health care that will contribute to the inmate's rehabilitation and successful reintegration into the community.	**Cl 27, 28** **Obligations of Service** **86** (1) The Service shall provide every inmate with (a) essential health care; and (b) reasonable access to non-essential mental health care ~~**that will contribute to the inmate's rehabilitation and successful reintegration into the community**~~**.** **Health care obligations** **86.1 When health care is provided to inmates, the Service Shall** **(a) support the professional autonomy and the clinical independence of registered health care professionals and their freedom to exercise, without undue influence, their professional judgment in the care and treatment of inmates;** **(b) support those registered health care professionals in their promotion, in accordance with their respective professional code of ethics, of patient-centred care and patient advocacy; and** **(c) promote decision-making that is based on the appropriate medical care, dental care and mental health care criteria.** **Designation of health care unit** **86.2 The Commissioner may designate a penitentiary or any area in a penitentiary to be a health care unit.**	**<u>Access to mental health care</u>** Obligation to provide access to mental health care broadened, but not required to relate to rehabilitation and reintegration Obligation on CSC to "support professional autonomy" of health care professionals, without a requisite requirement regarding prisoner rehabilitation or community integration; requirement to "support" is vague and does not establish an enforceable standard Magic Wand approach grants authority to CSC to designate any area of prison as a "health care unit", with admission/discharge to be determined by regulation; this could include an SIU being deemed a "health care unit"

	Purpose **86.3 The purpose of a health care unit is to provide an appropriate living environment to facilitate an inmate's access to health care.** **Admission and discharge** **86.4 The admission of inmates to and the discharge of inmates from health care units must be in accordance with regulations made under paragraph 96(g.1).**	
Force-feeding **89** The Service shall not direct the force-feeding, by any method, of an inmate who had the capacity to understand the consequences of fasting at the time the inmate made the decision to fast.	**Cl 30** **Force-feeding** **89** The Service shall not direct the force-feeding, by any method, of an inmate who had the capacity to understand the consequences of fasting at the time the inmate made the decision to fast. **Patient advocacy services** **89.1 The Service shall provide, in respect of inmates in penitentiaries designated by the Commissioner, access to patient advocacy services** **(a) to support inmates in relation to their health care matters; and** **(b) to enable inmates and their families to understand the rights and responsibilities of inmates related to health care.**	**Patient Advocacy Services** CSC required to provide access to "patient advocacy services" (term not defined in legislation). No links to provincial or territorial mental health requirements (most of which are not adhered to in any event (ie. RPC Prairies practice of commencing mental health committals, but abandoning them before requirement for additional psychiatric opinions/decisions or mental health advocates, but after prisoners have been forcibly treated – usually by injection)) This is contrary to the recommendations of the Ashley Smith Inquest, which recommended (1) permanent peer support programs; (2) independent patient advocacy systems operating in the context of treatment facilities that would serve as alternatives to prisons for women with mental health issues (Recommendations 15, 22, 73-75), and: 5. That Correctional Service of Canada (CSC) create a permanent peer support program, with highly trained and qualified peer support workers in each of the women's penitentiaries that: a. is available to all women, including segregated women and regardless of security status, upon their request, 24 hours a day;

		b. provides training and on-going support for the peers by women-centred psychologists and social workers; c. ensures confidentiality between the female inmate and the peer to the greatest extent possible; d. can be utilized during an incident of self-injurious behaviour, if requested; and e. is offered to women actively engaged in self-injurious behaviour or at risk of engaging in self-injurious behaviour as a therapeutic intervention. 15. That female inmates with serious mental health issues, and/or self-injurious behaviours serve their federal terms of imprisonment in a federally-operated treatment facility, not a security-focused, prison-like environment. 22. That inmates in such facilities must have access to an independent patient advocate system, equivalent to the advocacy system to be provided to inmates in penitentiaries, pursuant to these recommendations, including the newly adopted [Prisoners working as internal members of Canadian Association of Elizabeth Fry Societies' (CAEFS) Regional Advocacy teams] RA-IA (see Recommendations #73-75). 73. That CSC implement an independent RA-IA for all inmates, regardless of security classification, status, or placement. The institution will be responsible for advising all inmates of the existence of; and their right to contact, the RA-IA. 74. That the RA-IA will be responsible for providing advice, advocacy and support to the inmate with respect to various institutional issues, including: a. Transition into institutions;

		b. Transfers; c. Security classification, status, or placement; d. Parole and release eligibility, including escorted and unescorted absences; e. Temporary absences; f. Use of restraints - physical and chemical; g. Seclusion and segregation; h. Complaints and grievances; i. Consent to treatment and capacity to consent; j. Consent to medication, including available alternatives; k. Consent to disclosure of information; and l. Institutional and criminal charges. 75. That inmates are protected from reprisals related to contacting the RA-IA and exercising their rights. Not only would this patient advocacy system be operating in a prison, rather than a treatment facility as specified in the Ashley Smith recommendations, no provisions have been made regarding requirements for independence and the other details for patient advocacy and peer supports set out in the recommendations. Additionally, in the dually designated penitentiary and psychiatric hospital, the Regional Psychiatric Centre in Saskatoon, Mental Health advocates are rarely notified as CSC has a history of commencing committal proceedings under provincial mental health legislation in order to forcibly 'treat' (usually by sedative or anti-psychotic injection or both) prisoners and then abandons the process before the procedural safeguards are required to be adhered to. Also, while prisoners and staff are very supportive of initiatives like the peer support program (POPS) in Stony Mountain penitentiary, and although prisoners

		are available 24/7 and are doing work that has been identified as comparable to that of paid professionals, they do so for the prisoner work remuneration alone and without any possibility of using this experience to assist them in finding related work or even access to post-secondary training to assist with community integration.
Regulations **96** The Governor in Council may make regulations ... (g) respecting the administrative segregation of inmates;	**Cl 31** **Regulations** **96** The Governor in Council may make regulations ... (g) respecting the ~~**administrative segregation of inmates**~~ **confinement of inmates in a structured intervention unit;** **(g.1) respecting the admission of inmates to and the discharge of inmates from health care units;**	**Regulations** Power granted to authorize regulations regarding details of SIU, health care units – yet again leaving the details for the regulations and therefore not open to legislative scrutiny during the consideration of C-83
Mandatory hearings **Audio recording** **140** (13) Subject to any conditions specified by the Board, a victim, or a person referred to in subsection 142(3), who does not attend a hearing in respect of a review referred to in paragraph (1)(a) or (b) as an observer is entitled, after the hearing, on request, to listen to an audio recording of the hearing, other than portions of the hearing that the Board considers could reasonably be expected to jeopardize the safety of any person or to reveal a source of information obtained in confidence.	**Cl 34** **Mandatory hearings** **Audio recording** **140** (13) Subject to any conditions specified by the Board, a victim, or a person referred to in subsection 142(3), ~~**who does not attend a hearing in respect of a review referred to in paragraph (1)(a) or (b) as an observer**~~ is entitled, after the hearing, on request, to listen to an audio recording of the hearing, other than portions of the hearing that the Board considers **(a)** could reasonably be expected to jeopardize the safety of any person or reveal a source of information obtained in confidence; or	**Audio recordings of hearings** Previously, audio recordings were available to victims who they did not attend a hearing. New grounds for refusing access to recordings of hearings to victims due to privacy interests.

	(b) should not be heard by the victim or a person referred to in subsection 142(3) because the privacy interests of any person clearly outweighs the interest of the victim or person referred to in that subsection	
		Mechanism for Judicial Oversight and Accountability A critical oversight in Bill C-83 is the lack of independent, judicial oversight of decision-making regarding segregation/SIUs that has been recommended for over two decades. Bill C-83, cl. 10, ss. 37.2-37.5 leaves this decision in the hands of the institutional head and the commissioner, with no mechanism for external oversight, a situation that has been found, going back at least to the Arbour Commission's report of 1996, to prolong and increase the use of segregation. **Arbour Commission (1996):** "If illegalities, gross mismanagement or unfairness in the administration of a sentence renders the sentence harsher than that imposed by the court, a reduction of the period of imprisonment [should] ... be granted, such as to reflect the fact that the punishment administered was more punitive than the one intended. … I see no alternative to the current overuse of prolonged segregation but to recommend that it be placed under the control and supervision of the courts. (pp 101, 105)."

NB – media reports indicate UCCO opposition to plans to reduce or eliminate segregation, but support for body scanners and management protocol conditions for federally sentenced women

- https://ucco-sacc-csn.ca/2018/10/16/bill-c-83-the-union-of-canadian-correctional-officers-is-cautiously-acknowledging-the-new-bill-c-83-on-administrative-segregation/#articles