

Regulatory Impact Statement: Improving the management of prisoners subject to health-related segregation and at-risk regimes

Coversheet

Purpose of Document	
Decision sought:	<i>Cabinet agreement to policy decisions about the statutory reviews of health-related segregation and at-risk regimes in the Corrections Act 2004.</i>
Advising agencies:	<i>Department of Corrections</i>
Proposing Ministers:	<i>Minister of Corrections</i>
Date finalised:	<i>22 February 2023</i>
Problem Definition	
<p>Prisoners can experience significant psychological and physiological impacts if separated from the mainstream population for long periods. Because of the significance of the harm that can result, and the potential impact on an individual’s human rights, clear and formal safeguards should apply to ensure that prisoners are not subject to these regimes for longer than necessary.</p> <p>While operationally prisoners are typically visited by staff each day, the current process for considering the status of the segregated prisoner is informal, lacks transparency and clarity around Corrections’ requirements to ensure that prisoners are not removed from the mainstream prison population for longer than necessary. The status quo lacks clarity for staff and prisoners as to what prisoners’ rights are to have their management status reviewed over time, which creates issues around accountability for situations where reviews are not completed. Under the status quo, if a prisoner is segregated and kept apart from the mainstream prison population for longer than is deemed necessary, there is a risk that Corrections could be subject to litigation challenging the length of time someone is placed on segregation or the at-risk regime.</p> <p>In addition, prisoners separated from the mainstream population for other reasons have statutory review periods to protect their rights and wellbeing. Currently this means there is a legislative discrepancy that means that without clear safeguards in place, there is a risk that prisoners may find it difficult to understand their rights when being managed on these directions and regimes (although we were unable to consult with prisoners to understand the extent of this risk).</p> <p>New Zealand is also not currently aligned with comparable international jurisdictions, who have more formal statutory processes in place for reviewing whether placement on these regimes is still necessary, and for escalating decision making where prisoners are on these regimes for substantial periods of time. The approaches of other jurisdictions, and comments from their courts, support the importance of clear formal safeguards where prisoners’ human rights are being impacted.</p>	

We want to give stronger assurance to prisoners, their family and friends, and oversight entities, that we are taking as many steps as we can to ensure that prisoners are not segregated from the mainstream prison population for longer than necessary. There is an opportunity to formalise review processes for prisoners subject to segregation for the purpose of medical oversight, or at-risk regimes, to give this assurance.

Executive Summary

Segregation of prisoners from the mainstream population is a key correctional management tool. Segregation and at-risk regimes for managing prisoners can be used for various purposes. These include:

1. for the purpose of security, good order, or safety (s58)
2. protective custody (s59(1)(a) for voluntary, s59(1)(b) for directed)
3. medical oversight (s60)
4. for prisoners at-risk of self-harm (s1B-H)

Prisoners can *voluntarily* ask for segregation, or it can be *directed* by the prison manager.

While directed segregation and the at-risk regime are important tools, careful consideration needs to be given to their use as prolonged periods of being removed from the mainstream prison population can be detrimental to prisoners' wellbeing and increase their risk of self-harm. This level of impact can increase with the extent of the separation a prisoner experiences. Specifically, if a management regime amounts to solitary confinement, which is defined under the Mandela Rules as confinement of 22 or more hours per day without meaningful human contact, risks can include significant negative psychological and physiological impacts, including depression, hallucinations, paranoia, psychosis, insomnia, and fatigue.

We have identified an opportunity to formalise review processes for prisoners subject to segregation for the purpose of medical oversight, or at-risk regimes, to give assurance that prisoners are not removed from the mainstream prison population for longer than necessary.

The safeguards that do exist are for health professionals to visit these prisoners one or two times per day, for the purpose of checking the prisoner's health and wellbeing, and during which consideration may be given as to whether it is best for the prisoner to stay on segregation or an at-risk regime. However, there are currently no clear requirements for regular reviews of the decision to continue to manage prisoners on either of these restrictive regimes. Instead, prisoners remain on segregation or the at-risk regime until such time as it is revoked by the prison manager, or in the case of medical oversight the Chief Executive. On average, this is for 7-8 days, with a median length of 3 days. There is insufficient data to understand if this length of stay is longer than necessary in some cases, because of the current lack of reviews.

This approach is inconsistent with other forms of segregation within the Corrections Act, which have requirements for reviews at set intervals, seclusion under the Mental Health (Compulsory Assessment and Treatment) Act 1992, and comparable jurisdictions' procedures for similar regimes.

Legislative change to require daily reviews of the decision to continue to segregate a prisoner for their health or to manage them as at-risk is the best option to meet the objective of implementing clear and sufficient safeguards to ensure these prisoners are not removed from the mainstream population for longer than necessary. While staff typically visit prisoners daily based on operational practice and may informally review the

segregation status, we seek to ensure transparency for prisoners, staff, and oversight entities because separation from the mainstream is a significant experience for prisoners.

Other options considered were to require reviews every three days or at longer intervals, through either operational guidance or legislative change, or to have a legislative expiration date. These options are not recommended as they do not contribute to safety or support the wellbeing of prisoners as well as the recommended option, or do not provide the same level of accountability.

9(2)(f)(iv)

we recommend that a phased approach is taken by making this change now, as there is a legislative vehicle to make this legislative change, and we consider it necessary given that the change will support human rights of prisoners, and transparency of decision making while longer term change that will take up to five or ten years continues.

Limitations and Constraints on Analysis

There has not been any public or agency consultation on the proposals contained within this regulatory impact statement, and this has created limitations on the analysis. This is because the analysis has been drafted on a shortened timeframe to enable a response to the Inspectorate's recommendations to be considered while there is an opportunity to make any necessary legislative change through the Corrections Amendment Bill that is currently before Select Committee.

We consider the risks of limited consultation are relatively low as this is a technical issue that will formalise and build on existing policies, and some external stakeholder views on segregation and the at-risk regime have been obtained, where possible, through means other than consultation. For example, in the Inspectorate's 'Separation and Isolation' report, which was informed by visits to all 18 prisons and interviews with prisoners and staff, recommended as an 'area for consideration' that Corrections consider whether there should be statutory review periods after a set period of time for medical oversight segregation and at-risk prisoners. The report did not include a proposal for how frequent these review periods should be. The report also made other recommendations and provided areas for consideration relating to segregation, which are being progressed operationally through a long-term strategic work programme. 9(2)(f)(iv)

Some feedback was also sought internally from Health Centre Managers in some prisons. Two submissions to select committee on the Corrections Amendment Bill also commented on this issue. The submission from Auckland District Lawyer's Society stated that "an end date or a date of review is required" for at-risk prisoners to ensure they are not isolated without oversight. The Ombudsman's submission also noted that new s61CA in the Bill could be "bolstered by some explicit limitations on the extent or scope of the restriction or denial" of association.

Responsible Manager(s) (completed by relevant manager)



Dr Marian Horan

Manager Legislative Policy

Department of Corrections

12 March 2023

Quality Assurance (completed by QA panel)

Reviewing Agency:	Department of Corrections and New Zealand Police
Panel Assessment & Comment:	The panel has assessed the RIA as partially meeting the quality assurance criteria. The panel noted there has been no consultation on the proposals and options, and the limited data on the scale of the issue, which creates limitations on the analysis. The panel were of the view that the analysis could have been strengthened by considering a wider series of options to address the problem and support the stated objective of ensuring prisoners aren't segregated or on 'at-risk' for longer than necessary.

Part One: Improving the management of prisoners subject to health-related segregation and at-risk regimes

Terminology used in this section

At-risk cell: A cell where an at-risk prisoner is placed with additional safety precautions to ensure their safety.

At-risk prisoner: A prisoner who has received an at-risk assessment indicating that the prisoner is at risk of self-harm and the at-risk assessment has not been reversed or revoked.

At-risk regime: Sections 61A-61H of the Corrections Act 2004 make up the at-risk regime. These sections set out processes to be followed for a prisoner who is at-risk of self-harm.

Intervention and Support Unit (ISU): A unit that accommodates individuals at immediate risk of self-harm or suicidal behaviour, or those with acute mental health needs. Prisoners who are awaiting transfer to hospital or forensic in-patient mental health care are also placed in the ISU.

Mandela Rules: The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules) are based on an obligation to treat all prisoners with respect for their inherent dignity and value as human beings, and to prohibit torture and other forms of ill-treatment. They offer guidance on a wide variety of issues, ranging from disciplinary measures to medical services.

Meaningful human contact: While this phrase is not defined in New Zealand, it is used overseas to mean the amount and quality of social interaction and psychological stimulation which human beings require for their mental health and wellbeing.

Seclusion: A type of restraint where a person is placed alone in a room or area, at any time and for any duration, from which they cannot freely exit.

Segregation: Management tools in a prison where a prisoner has their ability to associate with other prisoners denied or restricted. A prisoner can be segregated for a number of reasons, such as for the purpose of security, good order or safety, or for medical oversight, which may be in relation to the prisoner's physical or mental health.

Solitary confinement: The confinement of prisoners for 22 hours or more a day without meaningful human contact.¹

Prolonged solitary confinement: Solitary confinement for a period in excess of 15 consecutive days. Prolonged solitary confinement is prohibited by the Mandela Rules.

Context

What is the context behind the policy problem and how is the status quo expected to develop?

Corrections can manage prisoners on restrictive regimes when appropriate, including through segregation for health oversight and the at-risk regime

1. Segregation of prisoners from the mainstream population is a management tool that is used to ensure safety within the prison environment. Prisoners can *voluntarily* ask for segregation, or it can be *directed* by the prison manager.²

1 Rule 44 of the Mandela Rules.

2 Voluntary segregation is done with the consent of the prisoner for their own safety. Directed segregation is directed by the prison manager one of the reasons in the Act, such as for the security, good order, or safety of the prison.

2. Segregation and at-risk regimes for managing prisoners can be used for various purposes, such as:

Section of Corrections Act 2004	Reason for segregation/separation
Section 58	The security, good order of the prison, or safety of another prisoner or person.
Section 59	Protective custody. This can be at the request of a prisoner, or directed by the prison manager if satisfied that the safety of the prisoner is at risk and there is no other reasonable way to ensure their safety.
Section 60	Medical oversight to assess or ensure the prisoner's physical or mental health.
Section 61B-H	Managing prisoners who are at risk of self-harm or suicide (the at-risk regime).

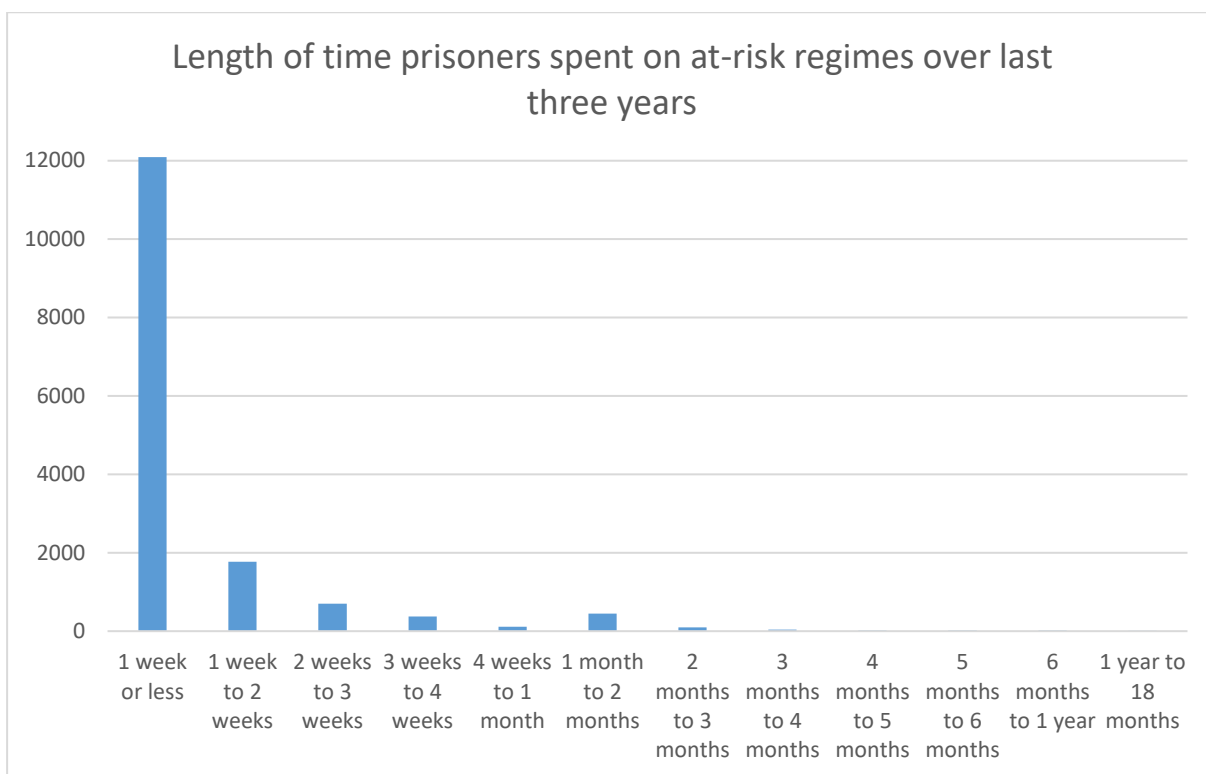
The at-risk regime was introduced by the Corrections Amendment Act 2019 to better enable staff to respond promptly to prisoners at-risk of self-harm

3. As part of the at-risk regime, a prisoner can have the opportunity to associate with others restricted or denied; however, this must be included in their at-risk management plan. The prison manager is responsible for ensuring an at-risk management plan is created in consultation with the health centre manager, and that it also includes the steps to be taken to address the prisoner's risk of self-harm and the situations in which the prisoner must be strip searched.
4. Legislation requires that an at-risk prisoner must be observed by a corrections officer at specified intervals and the health centre manager must ensure a registered health professional visits the prisoner at least twice per day.³ These observations are required to manage the safety of the prisoner, and operationally staff can decide to include consideration of whether there is still a justification for them remaining on the at-risk regime, although there is a lack of clarity and consistency about whether this ongoing justification is considered by staff at every review across the prison network.
5. Whilst subject to the at-risk regime, prisoners can remain in the ISU and are unable to associate with others for extended periods of time, if their management plan specifies restrictions on their opportunity to associate with other prisoners.
6. On average, approximately 5,206 people are managed under an at-risk regime per year.⁴ While the average length of stay for prisoners on an at-risk regime is 7-8 days, the median length of stay is 3 days.⁵ While shown in the table below that prisoners predominantly spent less than one week on at-risk regimes, over the last three years there have been 3,584 prisoners who have been subject to an at-risk regime for more than one week. Additionally, 739 prisoners have been on segregation for medical oversight for over 4 weeks.

³ Section 61B(c) of the Corrections Act 2004.

⁴ This average is from 1 July 2020 to 30 June 2023. It is noted that this average could include the same person visiting multiple times.

⁵ This average is from 1 July 2022 to 30 June 2023. It is noted that this average could include the same person visiting multiple times.



7. More information on vulnerable prisoners who are subject to these plans is included in the table below.⁶

	Percentage under 25	Percentage that are women	Percentage that are Māori	Percentage that are Pasifika	Percentage that are transgender
At risk management plans	17%	10%	51%	10%	1%
Percentage of the total prison population	9.6%	6.3%	52%	11.9%	0.46%

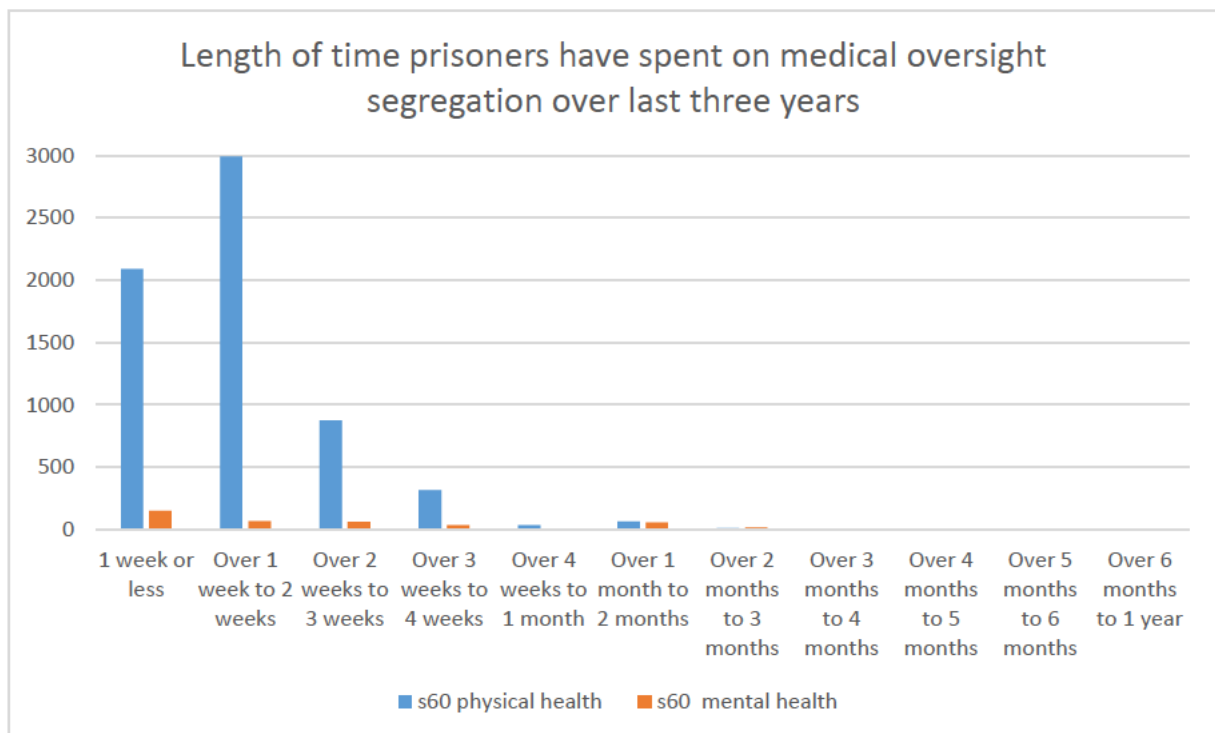
Segregation for the purpose of medical oversight can be used to assess a prisoner's physical and/or mental health

- Under s60 of the Corrections Act, a prisoner's opportunity to associate with other prisoners may be restricted or denied in order to assess or ensure the prisoner's physical and/or mental health needs are met (this excludes whether they are at risk of self-harm, which is dealt with under the at-risk framework).
- Section 60 segregation can be used, for example, when a prisoner has a physical health condition that requires close monitoring. This could include significant wounds, suspected internal concealment of an unauthorised item that could cause serious injuries, or they have an infectious disease that staff want to prevent from spreading. A prisoner could also be segregated if their mental health is such that they need to be

⁶ The categories shown in this table have been chosen because they are groups of prisoners who are either particularly vulnerable to the impacts of separation (young people and transgender) or because they are overrepresented in the prison population (Māori and Pasifika).

segregated to keep themselves safe but they do not meet the threshold to be managed as at-risk.

10. Whilst subject to a health-related segregation direction, s60(5) states that prisoners must be visited by a registered health professional at least once per day, unless the health centre manager deems this unnecessary. As for at-risk prisoners, these visits are about determining what is best for the prisoner, and operationally staff can consider whether there is still a justification for them remaining on the order, although there is a lack of clarity and consistency about whether this ongoing justification is considered by staff at every review.
11. On average, approximately 1,887 people per year are segregated for medical oversight for physical health reasons, and 113 people per year in relation to mental health.⁷ The average length of stay for prisoners segregated for medical oversight is 11.5 days for physical health purposes, and 23.6 days for mental health.⁸ The below table shows the spread of the length of stays in segregation that prisoners have experienced over the last three years. While the average is below 30 days, there are still prisoners who are experiencing segregation for up to one year. For example, in the last three years 214 prisoners have been on segregation for medical oversight for over 4 weeks.



12. We note that the average length of time for segregation for physical health purposes will have been skewed by the impact of COVID-19, which resulted in many prisoners being segregated for their physical health to prevent the spread of COVID-19 within prisons.

⁷ Average number from 1 July 2020 to 30 June 2023. It is noted that for physical health this number is higher than previous years, likely due to isolation as a result of COVID-19.

⁸ This average is from 1 July 2020 to 30 June 2023.

13. More information on vulnerable prisoners who are segregated is included in the table below.⁹

Reason for segregation	Percentage under 25	Percentage that are women	Percentage that are Māori	Percentage that are Pasifika	Percentage that are transgender
Segregated for physical health	12%	9%	55%	12%	0.30%
Segregated for mental health	18%	39%	51%	12%	1.26%
Percentage of the total prison population	9.6%	6.3%	52%	11.9%	0.46%

Segregation directions and the at-risk regime are important tools, but their impacts must be managed carefully

14. While the at-risk regimes and segregation for health oversight are different regimes that are used for different purposes, they are both important tools that are used to manage the safety and wellbeing of prisoners by restricting or denying the association these prisoners can have with other prisoners.
15. Careful consideration therefore needs to be given to the use of either regime, including how long these regimes are used for to avoid prisoners experiencing conditions that could be likened to solitary confinement.
16. In 2020, a United Nations human rights expert expressed their concern as to the negative effects on those subject to solitary confinement. They considered that the “severe and often irreparable psychological and physical consequences of solitary confinement and social exclusion...can range from progressively severe forms of anxiety, stress, and depression to cognitive impairment and suicidal tendencies”.¹⁰
17. Section 60 segregation directions should only be used when no other option is available to assess or ensure the prisoner’s physical or mental health, for example when they cannot be safely managed in the mainstream prison population.
18. Similarly, the at-risk regime is an important tool for managing a prisoner who is at risk of self-harm. However, restricting or denying association with other prisoners through the at-risk management plan should only be done where necessary and for the shortest amount of time possible. Issues can arise when an at-risk prisoner has been unable to associate with others for an extended period, especially considering the restrictive environment of ISUs.¹¹

⁹ The categories shown in this table have been chosen because they are groups of prisoners who are either particularly vulnerable to the impacts of separation (young people and transgender) or because they are overrepresented in the prison population (Māori and Pasifika).

¹⁰ The statement has been endorsed by the United Nations. <https://www.ohchr.org/en/press-releases/2020/02/united-states-prolonged-solitary-confinement-amounts-psychological-torture>


¹¹ If a regime were to constitute prolonged solitary confinement, which is solitary confinement for more than 15 days, this can cause significant negative psychological and physiological impacts, including depression, hallucinations, paranoia, psychosis, insomnia, and fatigue.

19. For both the at-risk regime and s60 segregation directions, if a prisoner spends a prolonged period with restricted or denied association with others, this could be detrimental to their wellbeing, although impacts would differ on a case-by-case basis.

Statutory review requirements are in place for some segregation directions, but not all restrictive regimes





20. As shown in the table below, ss 58 and 59 segregation directions are subject to statutory review mechanisms and the segregation direction will expire unless extended by the relevant decision maker.
21. By comparison, s60 segregation directions and at-risk regimes continue in force until they are actively revoked, without any requirements for regular reviews of whether they are still justified.
22. However, there are legislative requirements for health professionals to visit prisoners on s60 segregation directions or at-risk regimes once or twice per day. Though legislation does not prescribe the purpose of these visits, operationally they are used to manage the prisoner’s health and safety. Operationally, decisions are made about when to revoke these management directions based on ongoing conversations between health and custodial staff about the prisoner’s management.
23. Institutional knowledge and documentation can’t explain what the policy rationale was for introducing daily visits instead of time-bound reviews of s60 segregation directions or at-risk regimes. As such, we cannot provide context to why currently some segregation directions have statutory reviews and others do not.

Summary of different expiration and review requirements for segregation and at-risk regimes within the Corrections Act

Section of the Act	Statutory expiration and review
<p>Section 58: segregation for security, good order, or safety</p>	<p style="text-align: center;"></p> <p>The direction expires after 14 days unless the Chief Executive or delegate directs it to continue.¹²</p> <p>Where a direction continues for 14 days or more, it must be reviewed by the Chief Executive at least monthly and expires after three months unless a Visiting Justice directs it to continue.¹³</p> <p>Where extended by a Visiting Justice, it then must be reviewed by a Visiting Justice at least every three months.</p> <p>Section 58(4)(a) also notes that it must be revoked by the prison manager if there ceases to be any justification for continuing.</p>

12 Section 58(3)(c) of the Corrections Act 2004.

13 Sections 58(3)(d)-(e) of the Corrections Act 2004.

<p>Section 59: segregation for protective custody</p>	<p style="text-align: center;"></p> <p>Section 59(1)(a) voluntary segregation</p> <p>The direction ceases if the prisoner withdraws his or her consent to the giving of the direction.</p> <p>There is no statutory requirement for a review of the segregation.</p>
	<p style="text-align: center;"></p> <p>Section 59(1)(b) directed segregation (by prison manager)</p> <p>The direction expires after 14 days unless the Chief Executive directs it to continue.¹⁴</p> <p>Where a direction continues for 14 days or more, it must be reviewed every three months by the Chief Executive.¹⁵</p> <p>If at any point there ceases to be justification for the segregation direction continuing, it must be revoked by the prison manager.¹⁶</p>
<p>Section 60: segregation for medical oversight</p>	<p style="text-align: center;"></p> <p>The direction remains in place until the prison manager or Chief Executive revokes it. The prison manager can only revoke the direction if a health centre manager advises that there has ceased to be any justification for it continuing.</p> <p>There is no statutory requirement for a review of the segregation.</p> <p>Legislation instead requires that a health professional visit prisoners on mental health segregation at least once a day, unless they are satisfied that it is not necessary in the circumstances. Operationally, these daily checks manage the safety of the prisoner. While they can include consideration of whether there is still a justification for them remaining on the regime, there is no requirement that this occurs. Operational documents for these daily checks provide expected minimum requirements of the check. For example, these consider things such as any changes in the prisoners condition/response to treatment, and links back to the reason of medical oversight and the findings of the initial assessment to determine what needs to be considered.</p>
<p>Section 61B-H: prisoners at risk of self-harm</p>	<p style="text-align: center;"></p> <p>The direction remains in place until the prison manager revokes the at-risk assessment, under advice from the health centre manager.</p> <p>There is no statutory requirement for a review of the segregation.</p> <p>Legislation requires that a health professional visits an at-risk prisoner at least twice per day, unless they are satisfied that it is not necessary in the</p>

14 Section 59(b) of the Corrections Act 2004.

15 Section 59(4)(d) of the Corrections Act 2004.

16 Section 59(4)(a) of the Corrections Act 2004.

	<p>circumstances. Operationally, these daily checks manage the safety of the prisoner. While they can include consideration of whether there is still a justification for them remaining on the regime, there is no requirement that this occurs. Operational documents for these daily checks provide expected minimum requirements of the check. For example, these consider things such as any changes in the prisoner’s condition/response to treatment, and prompts the staff member to ask questions about the prisoner’s mental wellbeing since the last check.</p>
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Operational guidance requires notifications to be made where prisoners are managed as at-risk for over 30 days

- 24. It is operational policy for prison sites to escalate the management of at-risk prisoners who have been in an ISU for 30, and again at 60 days, to the Regional Commissioner.¹⁷ There is no similar escalation process for prisoners segregated under s60.
- 25. The Prison Operations Manual specifies that an at-risk management plan, or a segregation direction for medical oversight, ends when the prison manager revokes the at-risk status after consulting with and obtaining advice from the health centre manager.
- 26. While in practice, health professionals and custodial staff discuss the prisoner’s management regularly, there are no clear requirements to do so or to record why decisions have been made to continue to manage prisoners on these restrictive regimes.

Oversight bodies have critiqued Corrections’ use of segregation and at-risk regimes

- 27. Our external oversight bodies have a history of reporting on, and recommending changes to, Corrections’ use of segregation and at-risk regimes within prisons. Some recent examples include:
 - the Ombudsman’s December 2020 report following an inspection of Auckland women’s prison. This report commented on how the length of stays of some prisoners on segregation was inappropriate and that there was a lack of planning as to “pathways to prisoner progression out of the unit”.
 - the Ombudsman’s March 2023 report: *Kia Whitake | Making a Difference: Investigation into Ara Poutama Aotearoa | Department of Corrections*¹⁸. This report states concerns as to “monitoring and review measures in place to ensure good practice and sound decision making” in relation to segregation of prisoners.

17 Where this is escalated to the Regional Commissioner in the instance of less than 60 days in an ISU, the Commissioner refers the prisoner to the Regional High Risk Panel who determine what, if any, action or further support is required. Once the Panel advise the prison manager of the outcome, the Chief Inspector must also be informed. In the case of over 60 days, the same process occurs as for 30 days, but the matter can also be escalated to the National High Complex Needs panel notified.

18 *Kia Whitake | Making a Difference: Investigation into Ara Poutama Aotearoa | Department of Corrections*, the Office of the Ombudsman, paragraph 35.

- the Inspectorates June 2023 thematic ‘Separation and Isolation’ report This was the most recent report to recommend improvements to the segregation process.
28. The Inspectorate’s recommendations from the ‘Separation and Isolation’ report were largely operational and Corrections’ responses to the recommendations are being implemented through an ongoing, long-term programme of work across the department. The report concludes that the current use of segregation in prisons can cause significant harm to prisoners through a range of psychological and physical impacts.
29. The report includes seven overarching recommendations and a further 59 areas for consideration. Two areas for consideration that are related specifically to health-related segregation and at-risk regimes are summarised below:
- *Corrections should consider whether a statutory mechanism is needed that would trigger a review of the management of an at-risk prisoner, and provide regional and national oversight for prisoners who have been in an at-risk cell for an extended period; and*
 - *Corrections should consider whether s60 segregation directions should include a statutory mechanism to trigger a review after a set period.*
30. The Inspectorate identified that the lack of a statutory mechanism to trigger a review of the management of at-risk prisoners and prisoners segregated for health oversight may be too informal, which is inappropriate for a regime where prisoners may be unable to associate for extended periods.
31. Additionally, a 2017 report titled ‘*First, Do No Harm, Segregation, restraint, and pepper spray use in women’s prisons in New Zealand*’, commissioned by the Human Rights Commission and funded by the United Nations recommended that:¹⁹
- Stays in segregated housing should be significantly shorter, and must not exceed 15 days, as prescribed in the Mandela Rules, and
 - If, in absolutely exceptional circumstances, segregations have to last longer than 15 days, reasons for the segregation should be clearly stated and documented, and substantially reviewed by a body external to the prison.

Other legislation, such as the Mental Health Act, requires comprehensive reviews as to a continued justification when an individual is unable to associate with others

32. The Mental Health Act requires that the maximum period individuals can be placed in seclusion, without a review, is two hours.²⁰ For seclusion to be extended beyond two hours, the responsible clinician must assess the individual’s wellbeing and provide a reason for the continued use of seclusion. If seclusion is still needed after the initial two hours, staff may extend the seclusion period for an additional eight hours. Throughout this period, staff must continue to assess whether seclusion is still needed every two hours.²¹

19 Dr Sharon Shalev, *First, Do No Harm, Segregation, restraint, and pepper spray use in women’s prisons in New Zealand* https://www.solitaryconfinement.org/_files/ugd/First_do_no_harm_FINAL.pdf

20 The Mental Health Act uses the term ‘seclusion’ instead of ‘segregation’.

21 Ministry of Health. (2023). *Guidelines for Reducing and Eliminating Seclusion and Restraint Under the Mental Health (Compulsory Assessment and Treatment) Act 1992*. Wellington: Ministry of Health. Retrieved

Internationally, prisons have expiration and review periods in place to try to manage the length of time that prisoners are subject to a segregation direction

33. Australia, Canada and France have statutory requirements for the length of time that prisoners can be subject to segregation (or solitary confinement), and when reviews of this decision must occur. This is contained in the Prison Rules within the United Kingdom.
34. A more detailed summary of the procedures comparable jurisdictions have in place to monitor and review segregation directions are contained in **Appendix One**.

France has prescriptive legislation in the Code of Criminal Procedures outlining processes around segregation

35. The head of the prison can place a prisoner on segregation for a maximum period of three months and renew this once.²² Further extensions can occur, but the decision must be made by the regional director of prison services. Where segregation is in place for one year, any decision to extend is made by the Minister of Justice.

Canada's robust review provisions for segregated prisoners are contained in the Corrections and Conditional Release Act

36. Prisoners must receive a mental health assessment within 24 hours of their placement in a Structured Intervention Unit (SIU).²³ The Commissioner reviews this decision 60 days after initial placement in the SIU to determine whether the prisoner should remain in the SIU, and every 60 days thereafter.
37. Prisoners in the SIU are also required to be visited by a registered health care professional at least once per day.²⁴

In Australia, states have strict time limitations and review processes in place for segregation directions, and these directions must be in force for no longer than necessary

38. In some Australian states, such as South Australia and Western Australia, a segregation direction must not exceed 30 days.
39. In New South Wales, the initial period that a prisoner can be segregated for is 14 days.²⁵ Where segregation continues beyond 14 days, regular reviews must be undertaken by the General Manager of Statewide Operations. Additionally, after 14 days on segregation the prisoner has the right to have the Serious Offenders Review Council review the decision to place the prisoner on segregation.

Alternatively, in England and Wales, provisions for segregation are contained in the Prison Rules

from <https://www.health.govt.nz/publication/guidelines-reducing-and-eliminating-seclusion-and-restraint-under-mental-health-compulsory>.

22 The code of criminal procedure (third part: Decrees) and relating to the isolation of prisoners.. Retrieved from <https://legislationline.org/taxonomy/term/18027>

24 The Statutes of Canada 2019, at chapter 27. Retrieved from <https://www.parl.ca/DocumentViewer/en/42-1/bill/C-83/royal-assent>

25 Corrective Services NSW. (Last updated 6 September 2023). *Custodial Operations Policy and Procedures: 3.4 Segregation*. Retrieved from <https://correctiveservices.dcj.nsw.gov.au/documents/copp/03.04-segregation-redacted.pdf>

40. While directions expire after 72 hours, they can be authorised to be extended. There is no limit on how long a prisoner can be segregated, provided that the segregation direction is properly authorised.²⁶

What scope will options be considered within?

41. The direct scope of this analysis includes considering the different review mechanisms that apply to s60 segregation directions and the at-risk regime to ensure that prisoners are not removed from the prison population for longer than necessary. While longer review periods (three, seven or fourteen days) were considered, these options were not tailored to the specific health needs of prisoners, and risked some prisoners being removed from the mainstream prison population for longer than necessary.

42. The scope does not include a full review of the use of segregation and at-risk regimes in prisons. **9(2)(f)(iv)**

43. Operational guidance or legislative change to include an expiration date was considered but not recommended as they do not contribute to safety or support the wellbeing of prisoners as well as review processes. This option contained a risk that prisoners could be released from segregation too late, or too early, if using expiration date as this option lacked the ability to treat prisoners on a case-by-case basis.

44. **9(2)(f)(iv)**

45. An option including a requirement for daily reviews in Regulations was not considered because this would not align with the legislative design of the rest of the segregation framework, which is to include key requirements in the Act with additional guidance in operational policies.

Diagnosing the policy problem

What is the overall policy problem or opportunity?

Problem: There is an opportunity to formalise review processes for prisoners subject to segregation for the purpose of medical oversight, or at-risk regimes, to give assurance that prisoners are not removed from the mainstream prison population for longer than necessary

Corrections currently lacks formal and time-bound review mechanisms to ensure prisoners are not removed from the mainstream prison population for longer than necessary

46. The informal processes for s60 segregation and the at-risk framework leaves Corrections vulnerable to critique and legal risk without the ability to effectively reassure prisoners and oversight entities that we are not managing people more restrictively than necessary.

47. The Corrections Act currently requires that where prisoners are segregated for medical oversight or on an at-risk regime, visits by a registered health professional are to occur

26 Prison Reform Trust. (Last Updated June 2022). Segregation. Retrieved from <https://prisonreformtrust.org.uk/wp-content/uploads/2019/01/24-Segregation.pdf>; Prisoners’ Advice Service. (2021). Prisoners Advice Service – Information Sheet: Segregation. Retrieved from <https://www.prisonersadvice.org.uk/wp-content/uploads/2021/05/SEGREGATION-1.pdf>.

once, or twice, daily. However, the Act and operational policy do not provide a rationale for the reasons of this visit, or requirements about what needs to be considered by the health professional at, or following, this visit. The rationale for the absence of formal reviews, when other segregation regimes have them, is not clear from departmental documentation and is not clear to operational staff either.

48. This means that the status quo is a relatively informal process that lacks transparency for staff and prisoners as to what prisoner's rights are to have their management status reviewed over time, and lacks accountability for situations where reviews are not completed in accordance with set timeframes.
49. Operationally, health staff discuss with custodial staff when they consider that at-risk management or segregation for medical oversight is no longer necessary. Nothing requires them to do this on any particular timeframe and practice varies between prisons. From available data and examination of staff processes, it is not sufficiently clear to staff that they should be regularly reviewing whether the justification still exists for that prisoner being segregated.
50. This creates the risk that the legislative requirement for s60 segregation orders and an at-risk status to be revoked as soon as there is no continued justification for it, will not always be met. As noted by the Inspectorate in its report into *Separation and Isolation in prison*, the informality of the status quo is not appropriate for a regime where prisoners may be unable to associate for extended periods of time and where clear safeguards are needed.
51. However, there is a lack of data on the size of the risk that exists from the lack of clear safeguards. This is because no data is collected on how soon a segregation direction or at-risk status could have been revoked compared to when it was revoked.
52. Litigation was one of the factors that resulted in Canada's 2019 amendments to legislate for specific review periods, as well as other aspects of the segregation regime. A 2017 court case determined that the provisions relating to segregation were inconsistent with the principles of fundamental justice as they did not provide for meaningful independent review within five working days of the decision to place an inmate in administrative segregation.²⁷ The need for a five working day review was reiterated in 2019.²⁸
53. There is a risk that without clear formal safeguards in place to hold us to account, Corrections could be subject to litigation challenging the length of time someone is placed on segregation or the at-risk regime.

There is an opportunity for New Zealand to better align with comparable international jurisdictions in relation to review processes for these regimes

54. Currently, New Zealand differs with comparable jurisdictions as reviews of the decision to remain on medical segregation and at-risk regimes are informal and not enshrined in our legislation. While the timing of reviews differs, comparable overseas jurisdictions, such as Australia, Canada and France, have statutory requirements for the period for reviews of the decision to segregate prisoners.

27 Canadian Civil Liberties Association v. Canada, 2019 ONCA 243, <https://ccla.org/wp-content/uploads/2021/06/2019-04-26-ONCA-decision-on-2nd-extension-of-ONSC-decision.pdf>

28 Canadian Civil Liberties Association v. Canada, 2019 ONCA 243, <https://ccla.org/wp-content/uploads/2021/06/2019-04-26-ONCA-decision-on-2nd-extension-of-ONSC-decision.pdf>

55. These jurisdictions have further legislated for an escalation process so that where segregation occurs for a certain amount of time, an independent decision maker separated from the day-to-day management of segregated prisoners must review the decision, such as a Commissioner, the General Manager of Statewide Operations, or the Minister of Justice.
56. New Zealand's status quo contains a requirement for escalation at an operational level for at-risk regimes, but the same does not apply for s60 segregation. While at-risk regimes have escalation policies, these are not entrenched in legislation. This creates the risk that there may not always be oversight from someone with a degree of independence from the day-to-day management of segregated prisoners. This is of particular concern given the risks to mental and physical health discussed above. Given that over the last three years 214 prisoners have been on medical oversight segregation for over four weeks, and 739 prisoners on at-risk for over 4 weeks, this is a substantial amount of people who could have had their mental and physical health impacted by these restrictive regimes.

Formalising review processes would respond to oversight bodies concerns about our current processes in regard to segregation

57. Given the risks to prisoners mental and physical health while removed from the mainstream population, processes around segregation and at-risk regimes are an area where Corrections faces a lot of scrutiny from over-sight bodies.
58. As discussed above, oversight bodies such as the Inspectorate and Ombudsman have a history of reporting on, and recommending changes to, Corrections' use of segregation and at-risk regimes. These recommendations include considering a statutory review mechanism and having an escalation process for longer periods of segregation.

International human rights standards contain provisions that relate to reviews of segregation decisions

59. The Mandela Rules provides that solitary confinement shall be used only in exceptional cases as a last resort for as short a time as possible and subject to independent review.²⁹
60. While our existing legislation mirrors the idea of prisoners not remaining on these regimes longer than necessary, this principle is not supported by formal provisions that ensure this principle is complied with.

What objectives are sought in relation to the policy problem?

61. There is an opportunity to give stronger assurance to prisoners, their family and friends, and oversight entities, that we are taking as many steps as we can to ensure that prisoners are not segregated from the mainstream prison population for longer than necessary. This is important as long periods on these restrictive regimes can increase risks of significant impacts on prisoners' health and wellbeing, and can be contrary to the prisoners' human rights if their management amounts to solitary confinement.

29 Rule 45, United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules) regarding solitary confinement and instruments of restraint

62. While each of these segregation purposes – section 60 medical oversight and at-risk – are for prisoners segregated for very different reasons, both instances require the prisoner to be separated from the mainstream population and should be addressed.
63. We also aim to ensure that prisoners clearly understand their rights when being managed on these regimes and that staff have a clear understanding of how frequently these management types must be reviewed.
64. The criteria used to analyse the options supports our understanding of the objective in the following ways:

Criterion	Objective/consideration
Complies with human rights obligations	Consistency/alignment with the New Zealand Bill of Rights Act (specifically s 9) and New Zealand’s international human rights obligations and standards, such as the Mandela Rules (in particular, Rules 43-45). NZBORA is the domestic articulation of our international obligations and while the Mandela Rules are non-binding, they are referenced in the Corrections Act.
Transparency and accountability	Provides transparency and accountability to staff, prisoners, public and others including oversight bodies regarding review processes that should be in place for at-risk and s60 segregation regimes.
Practical to implement and responsive	The option is practical to implement operationally, and will be responsive to any future changes in best practice regarding the use of at-risk and s60 segregation regimes within prison environments.
Contributes to better outcomes for Māori	Contributes to improved outcomes for Māori subject to at-risk and s60 segregation regimes within the custodial environment. Understands and mitigates potential negative impacts on Māori and considers Te Tiriti principles such as active protection.
Supports oranga/wellbeing of the people we manage	Supports the oranga/wellbeing of prisoners subject to at-risk and s60 segregation regimes and ensures this is at the forefront of all decision-making processes.

Deciding upon an option to address the policy problem

What options are being considered?

Problem: There is an opportunity to formalise review processes for prisoners subject to segregation for the purpose of medical oversight, or at-risk regimes, to give assurance that prisoners are not removed from the mainstream prison population for longer than necessary

Option One – status quo

65. No changes will be made to medical oversight segregation and at-risk regimes. These will continue to be implemented in accordance with existing requirements in the Act, which includes daily or twice daily checks of the prisoner by a health professional and for a prison manager to revoke the direction when there ceases to be a justification for it.
66. There will continue to be no requirement for reviews to occur while these management regimes are in place. Instead, it will be at the discretion of the prison manager (or chief executive in relation to medical oversight) to determine when the segregation direction or at-risk regime ceases.³⁰

Option 2 – amend the Act to require daily reviews of the continued need for segregation of prisoners subject to health-related segregation and at-risk regimes, and for the Chief Executive to conduct monthly reviews

67. Under this option, the Act would be amended to introduce new statutory mechanisms to require:
 - the health centre manager to undertake daily reviews of whether a direction for medical oversight or an at-risk regime is still justified for a prisoner, and to advise the prison manager as soon as they think it is no longer justifiable. The decision about whether to revoke or continue the direction would sit with the prison manager or Chief Executive, as it does for the status quo, and
 - for the Chief Executive to review a direction for medical oversight or an at-risk regime where a direction or regime is in place for 14 days or more, and every month thereafter, taking into account the advice of the health centre manager.
68. These daily reviews will be used to ensure these prisoners are being managed safely to support their health and wellbeing, and will include any steps that could be taken to support the prisoner to reintegrate back into the mainstream prison population.
69. The daily health centre manager reviews would continue in addition to the ongoing monthly reviews by the Chief Executive, to ensure regular assessments continue to be made about whether these regimes continue to be justified.
70. The daily checks that are currently required under the legislation would also continue. In practice this would mean that the health centre manager would be conducting daily reviews, with clear requirements to check the prisoner's health and wellbeing and to conduct a review of the decision to continue to manage the prisoner on a restrictive regime.
71. The rationale for daily reviews is that people on medical-oversight segregation (particularly for mental health), and those on at-risk regimes are particularly vulnerable. The potential negative implications associated with extended periods of restrictions can be particularly harmful to this group of people, and as such daily reviews would best support the objective of ensuring prisoners are not separated for longer than necessary.

³⁰ Note that the decision to revoke the segregation/regime must be made in consultation with the health centre manager (s61F and 60(4)).

Option 3 – amend operational guidance to require daily reviews of the need for continued segregation of prisoners subject to health-related segregation and at-risk regimes, and for the Chief Executive to conduct monthly reviews

72. Under this option, the same framework of daily reviews by the health centre manager and monthly reviews by the Chief Executive as option 2 would be implemented. However, this change would be made through updates to operational guidance rather than changes to legislation.
73. The existing requirements in legislation for health professionals to conduct daily checks of prisoners would continue, along with the existing power for prison managers or the Chief Executive to revoke these directions on advice from the health centre manager.
74. Clearer operational guidance about timeframes for these reviews would support these existing legislative safeguards.

How do the options compare to the status quo/counterfactual?

Problem: There is an opportunity to formalise review processes for prisoners subject to segregation for the purpose of medical oversight, or at-risk regimes, to give assurance that prisoners are not removed from the mainstream prison population for longer than necessary

	Option One – status quo	Option 2 – amend the Act to require daily reviews of the need for continued segregation of prisoners subject to health-related segregation and at-risk regimes, and for the Chief Executive to conduct monthly reviews	Option 3 - amend operational guidance to require daily reviews of the need for continued segregation of prisoners subject to health-related segregation and at-risk regimes, and for the Chief Executive to conduct monthly reviews
Complies with human rights obligations	0	<p>++</p> <p>Creates clearer safeguards that Corrections is not managing prisoners on s60 segregation directions or the at-risk regime for longer than is necessary. This supports prisoners' rights not to be subjected to torture or to cruel, degrading, or disproportionately severe treatment or punishment.</p> <p>This option does this by requiring daily reviews of whether the directions or regime is still justified, to ensure it is not used when there is no longer a justification.</p>	<p>+</p> <p>Similar to option 2. However, given that the use of restrictive regimes impacts on prisoner's human rights, this option provides lower safeguards compared to including them in legislation under option 2. The Legislation Design and Advisory Committee guidelines state that "some matters, such as those that affect fundamental human rights in a significant way, are clearly appropriate only for an Act."</p>
Transparency and accountability	0	<p>++</p> <p>Ensures there is greater clarity and transparency in the Act surrounding review processes for prisoners subject to medical oversight directions and at-risk regimes. Provides greater accountability on Corrections to ensure regular reviews of at-risk and segregated prisoners are being conducted to ensure they are still justified. Provides greater accountability as prisoners will be able to seek judicial review if they feel these review requirements have not been complied with.</p>	<p>+</p> <p>Similar to option 2, but slightly less transparency due to requirements for reviews being contained in operational guidance. A lower degree of accountability as these reviews are not required by legislation. This could be somewhat mitigated by publishing operational guidance and recording the decision-making process so that decisions can be reviewed and scrutinised, particularly where prisoners lay complaints about the decision to restrict or deny their association.</p> <p>§(2)(g)(i)</p>
Practical to implement and responsive	0	<p>+</p> <p>Practical to implement as staff can incorporate daily reviews of management regimes alongside daily welfare checks. Less responsive to any future changes to best practice review processes as the requirements are embedded in legislation.</p>	<p>++</p> <p>Similar to option 2 but more responsive as operational guidance can be more easily updated in future if needed, for example if best practice changes for managing prisoners on these regimes.</p>
Contributes to better outcomes for Māori	0	<p>+</p> <p>As Māori make up more than half of those on medical oversight segregation, and at-risk regimes, this option will contribute to better outcomes for Māori as it supports active protection of all prisoners by ensuring daily reviews of whether the order or regime is necessary. This will support the mitigation of potentially negative implications of extended periods of restrictions on Māori, which can limit important whakawhanaungataunga connections with whānau and other supports such as rongoā Māori practitioners.</p>	<p>+</p> <p>Same as for option 2.</p>
Supports oranga/wellbeing of the people we manage	0	<p>+</p> <p>Ensures staff and health professionals are able to make judgements about prisoners' individualised needs and enables case-by-case practice. Assists Corrections to avoid prisoners having restricted or denied association for longer than necessary, and the risk of the psychological and physiological impacts associated with long term use of these directions/regimes.</p>	<p>+</p> <p>Same as for option 2.</p>
Overall assessment	0	<p>+</p> <p>(Recommended option)</p> <p>Overall, this option will provide clearer safeguards that the human rights of prisoners will be upheld as they will not be subject to indefinite restrictions for longer than is necessary, as their management will be reviewed daily.</p> <p>This option will also provide greater clarity and transparency as requirements will be included in legislation. It is practical to implement and will also ensure the wellbeing and health of prisoners subject to restrictive regimes is increased.</p> <p>Although this option is less responsive to change over time than option 3, we have placed less weight on that criteria compared to the need for accountability, transparency and protection of human rights. For this reason this is our preferred option.</p>	<p>+</p> <p>Similar to option 2. Slightly less transparent and accountable due to requirements being contained in operational policy rather than legislation. Slightly more responsive because this means requirements can be more easily updated in future. §(2)(g)(i)</p>

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

Problem: There is an opportunity to formalise review processes for prisoners subject to segregation for the purpose of medical oversight, or at-risk regimes, to give assurance that prisoners are not removed from the mainstream prison population for longer than necessary

75. Corrections' preferred approach to address the problem is option 2: amend the Act to require daily reviews of prisoners subject to health-related segregation and at-risk regimes, and for the Chief Executive to conduct monthly reviews.
76. Option 2 is preferred over option 3 because including requirements for daily reviews in legislation provides greater transparency and accountability for prisoners about their rights and for staff about their obligations. Given segregation and at-risk regimes' potential impact on the human rights of prisoners, and the risk of the psychological and physiological harm, having review provisions contained in legislation creates greater accountability on the part of Corrections than operational solutions that Corrections will ensure these daily reviews occur. A legislative solution will create more consistent practice across the prison network and given the prescriptive nature of Corrections operating environment staff will have clearer rules to follow. Because of the significant infringements on people's rights that Corrections oversees in prison, having robust rules in place that are supported by legislation gives the best assurance to prisoners of their rights, and to staff about their obligations.
77. This change complies with our international human rights obligations and upholds the human rights of prisoners subject to health-related segregation and at-risk regimes. It also better aligns with comparable jurisdictions that have predominantly included robust provisions for reviewing segregation decisions in their respective legislation.
78. While option 2 is less responsive than 3 in terms of operational policy being easier and more efficient to update in the future if needed, we do not consider that a need for flexibility outweighs other criteria, for example greater transparency and accountability.
79. Both options would better support the oranga/wellbeing of prisoners subject to the above regimes and prioritises the safety of prisoners, as there would be regular reviews and oversight to support restrictions being removed when they are no longer necessary.

This option means we would be better aligned with comparable international jurisdictions

80. Comparable overseas jurisdictions have statutory requirements for the period for reviews of the decision to segregate prisoners. While the occurrence of the reviews differs, they are all embedded within legislation. These jurisdictions have further legislated for an escalation process so that where segregation occurs for a certain amount of time, a decision maker separated from the day-to-day management of segregated prisoners must review the decision, such as a Commissioner, the General Manager of Statewide Operations, or the Minister of Justice.
81. Currently, New Zealand is not aligned with comparable jurisdictions in this regard as reviews of the decision to remain on medical segregation and at-risk regimes, and an escalation process for the same, are informal and not enshrined in our legislation. Option 2 will better align New Zealand with these jurisdictions by legislating for review periods and an escalation process.

What are the marginal costs and benefits of the option?

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Prisoners	Unlikely to have a material impact on prisoners.	Low	Low
Department of Corrections, including staff	<p>There will be minimal costs associated with updating operational guidance/requirements including paperwork or online systems for recording the outcome of the daily reviews, as well as providing staff with information. Additionally, there may be minimal costs associated with updated training regarding the changes, as the daily reviews of the decision about whether the regime is still justified will be streamlined with the daily checks that are currently carried out to assess the prisoner's health and wellbeing.</p> <p>An existing legislative vehicle exists to be able to make the necessary changes to the Act, so there will be minimal additional costs associated with making this change.</p> <p>There will be some costs for staff spending time carrying out and recording the outcome of the additional reviews, although this will be minimal as health staff already do daily welfare checks.</p>	Low	Medium. There is existing guidance for staff regarding health-related segregation and at-risk processes, however this would need to be updated.
Whānau of prisoners	No cost.	Low	Low. Whānau have not been involved in this policy process.
Wider public	No cost.	N/A	N/A
Total monetised costs		N/A	N/A
Non-monetised costs		Low	Low
Additional benefits of the preferred option compared to taking no action			
Prisoners	This option will provide prisoners subject to health-related segregation and at-risk regimes with greater assurance that their management is being regularly reviewed to ensure their best interests are taken into consideration.	Medium	Medium (based on this option strengthening existing processes).
Department of Corrections, including staff	This option provides more clarity about review requirements for staff and will closely align us with our international obligations. Additionally, this option enables us to better support the wellbeing/safety of prisoners.	Medium	Medium (as above).

Whānau of prisoners	As above, this option will provide whānau with greater assurance that we are prioritising the wellbeing/safety of at-risk and segregated prisoners.	Low-medium	Low (as above). We note that no public consultation has occurred.
Wider public	This option will provide the wider public with greater assurance/confidence that we are prioritising the safety of both prisoners and the wider public. Additionally, assurance will be provided to the public that the best interests of prisoners are considered when making decisions regarding health-related segregation and at-risk processes.	Low	Low (as above). No public consultation has been undertaken regarding segregation processes.
Total monetised benefits		N/A	N/A
Non-monetised benefits		Low-medium	Low-medium

Delivering the option

How will the new arrangements be implemented?

82. The proposed legislative amendments are planned to be progressed through a Corrections Amendment Bill, with changes coming into effect mid-2024. Operational change to implement option 2 will involve updating guidance and training for health staff who will be required to conduct the daily reviews. The updated guidance and training will ensure custodial staff are aware of the formal review processes and requirements in place regarding the above regimes.
83. As discussed throughout, these staff already conduct daily checks for the health and wellbeing of the prisoner. The impact of implementation on staff will therefore be minimal as they will be able to use the same visit to the prisoner to complete both the wellbeing check and the new requirement to review the decision to continue to manage the prisoner on a restrictive regime. This will, however, likely require additional paperwork or updates to online systems to give assurance that the daily check of the status of the prisoner has occurred and provide a data source for any prisoner who wishes to challenge the decision to segregate or ongoing segregation status. Criteria for staff to assess the prisoner by will be developed and it will be in line with the legislation as it stands now. Work is underway for a new mental health manual that can support this work.
84. New processes will also be required across the network to support the Chief Executive check for prisoners who are on segregation for more than a month.
85. Data on these processes can be made available regularly for our oversight entities so they can have better assurance that we are meeting our legislative obligations not to keep prisoners segregated for longer than necessary.

This is part of a longer-term, phased approach to providing more consistent practice across the network and assurance to oversight entities

86. It is noted that significant and long-term operational change is currently underway to respond to all of the recommendations made by the Inspectorate in its *Separation and Isolation* report. As these operational changes are progressed over a five to 10 year

period, 9(2)(f)(iv)

87. We consider it necessary to make the change in option 2 now, as this is a tangible change that will ensure impacted prisoners' human rights are more clearly safeguarded, and there is transparent decision-making about how long prisoners are subject to restrictive regimes. There is also a legislative vehicle available now to make this change.
88. Making this change now therefore allows us to support the long-term phased approach to improving Corrections' use of restrictive regimes. We are ensuring in the shorter term that there are clear and appropriate safeguards for the use of these two segregation regimes to benefit prisoners, and in the longer term reviewing the overall settings of all regimes and if they are working as intended.

How will the new arrangements be monitored, evaluated, and reviewed?

89. The proposed amendments should strengthen existing processes that are already in place. We will also conduct a review of the policy changes to assess how the new policies are working operationally 9(2)(f)(iv) in 2025/26.

Appendix One: The procedures in place to monitor and review segregation directions across comparable jurisdictions

	England and Wales	Canada	Australia	France
Reason for segregation	<p>Segregation directions are often imposed as an administrative measure to manage prisoners identified as dangerous or disruptive, or as a protective or preventive measure to protect vulnerable prisoners from future harm or risk to themselves or others.³¹</p> <p>There must be reasonable grounds for believing that a prisoner's behaviour is likely to be so disruptive, or cause disruption, to the extent that keeping them with the mainstream prison population is unsafe.³²</p> <p>There must also be sufficient reasons for believing that the prisoner is at risk of assault and that their safety cannot reasonably be assured by any other means. It is noted that a prisoner can also self-request segregation for this purpose.</p>	<p>Segregation in Canada previously existed in the form of administrative and disciplinary segregation.³³</p> <p>However, in 2019, administrative segregation and disciplinary segregation were legislatively abolished. Instead, a structured intervention unit ("SIUs") is used for the confinement of prisoners who cannot be maintained in the mainstream prison population for:</p> <ul style="list-style-type: none"> • the security (of themselves or others), or • risk of interference with an investigation that could lead to a criminal charge or serious disciplinary offence.³⁴ 	<p>In some Australian states, such as New South Wales (NSW), Victoria, and Western Australia, a prisoner can be placed on a segregation direction if this is necessary to secure the good order and discipline of a prison, the personal safety of any other person, and the security of a prison.³⁵</p> <p>In Queensland, prisoners can be placed in solitary confinement for:³⁶</p> <ul style="list-style-type: none"> • administrative reasons, such as where the prisoner is 'at risk' of harming either themselves or others, or of disturbing the 'security' or 'good order' of the prison. This also includes prisoners who are placed on a maximum security order (MSO), or • punitive reasons, such as where the prisoner has been charged with an offence or a breach of discipline within the prison. <p>Meanwhile, reasons for segregation in Victoria are defined as "the management, good order or security of the prison".³⁷</p>	<p>A prisoner may be placed in solitary confinement as a measure of protection or security, either at his request or automatically.³⁸</p>
Segregation direction expirations	<p>Segregation directions expire after 72 hours, however a Segregation Review Board (SRB) may authorise a further period of segregation for up to 14 days.³⁹</p>	<p>A prisoner's confinement in a SIU is to end as soon as possible.⁴¹</p>	<p>In some states, such as South Australia and Western Australia, a segregation direction must not exceed 30 days.⁴²</p>	<p>The isolation measure may be ended at any time by the authority which took the measure or which extended it, automatically or at the request of the detainee.</p>

³¹ Prison Reform Trust. (2016, February 29). *Deep Custody: segregation units and close supervision centres in England and Wales*. Retrieved from <https://prisonreformtrust.org.uk/publication/deep-custody-segregation-units-and-close-supervision-centres-in-england-and-wales/>; Walsh, T., Blaber, H., Smith, C., Cornwell, L., & Blake, K. (2020). *Legal perspectives on solitary confinement in Queensland*. Queensland: University of Queensland.

³² Prisoners' Advice Service. (2021). *Prisoners Advice Service – Information Sheet: Segregation*. Retrieved from <https://www.prisonersadvice.org.uk/wp-content/uploads/2021/05/SEGREGATION-1.pdf>.

³³ Addo, Mark, *Segregation in Canada and Other Western Democracies*, Segregation-Mark-Addo.pdf (ccja-acjp.ca)

³⁴ *Bill C-83, An Act to amend the Corrections and Conditional Release Act and another Act*, 1st Sess, 42nd Parl, 2019, (Assented to 21 June 2019), SC 2019, c 27, Government Bill (House of Commons) C-83 (42-1) - Royal Assent - An Act to amend the Corrections and Conditional Release Act and another Act - Parliament of Canada

³⁵ Office of the Inspector of Custodial Services. (2022). *The use of confinement and management regimes*. Retrieved from https://www.oics.wa.gov.au/wp-content/uploads/2022/11/2022_10_03-FINAL-Use-of-Confinement-and-Management-Regimes-v2.pdf.

³⁶ Walsh, T., Blaber, H., Smith, C., Cornwell, L., & Blake, K. (2020). *Legal perspectives on solitary confinement in Queensland*. Queensland: University of Queensland.

³⁷ OPCAT in Victoria: A thematic investigation of practices related to solitary confinement of children and young people', Victorian Ombudsman (2019) 100.

³⁸ The code of criminal procedure (third part: Decrees) and relating to the isolation of prisoners, Article D.283-1. Retrieved from <https://legislationline.org/taxonomy/term/18027>

³⁹ Prisoners' Advice Service. (2021). *Prisoners Advice Service – Information Sheet: Segregation*. Retrieved from <https://www.prisonersadvice.org.uk/wp-content/uploads/2021/05/SEGREGATION-1.pdf>.

⁴¹ The Corrections and Conditional Release Act Corrections and Conditional Release Act (justice.gc.ca)

⁴² Justice Action. (2020, December 8). *Solitary Confinement – A Breach of Human Rights*. Justice Action. Retrieved from <https://justiceaction.org.au/wp-content/uploads/2020/12/Solitary-Confinement-Draft-8-Dec-2020-1-1.pdf>.

	England and Wales	Canada	Australia	France
	There is no limit on how long a prisoner can be segregated, as long as the segregation direction is properly authorised. ⁴⁰		In Queensland, a prisoner can be subject to a breach of discipline segregation direction for a maximum of seven days, a safety order for a maximum of one month, and a MSO for a maximum of six months. However, consecutive safety orders and MSOs can be implemented, which means prisoners can be subject to a segregation direction for prolonged periods of time. ⁴³	Specific expiration dates apply for different circumstances. For example, in the event of an emergency an inmate may be placed in temporary solitary confinement. At the end of a period of five days, if no decision to place in solitary confinement has been made, the isolation expires.
Segregation direction review periods	<p>Where the SRB has authorised a further period of segregation, subsequent SRBs are held at least every 14 days.⁴⁴</p> <p>The SRB must obtain consent from the relevant Secretary of State to authorise a prisoner remaining on a segregation direction for longer than 42 days, and must re-approve this at least every 42 days.⁴⁵</p> <p>If a prisoner is subject to a segregation direction for six months or longer, this must be reviewed by the Prison Group Director.</p>	<p>An independent decision-maker, appointed by the Minister, must review decisions to place a prisoner in the SIU within five working days, and has the power to direct removal of a prisoner from the SIU.⁴⁶</p> <p>The institutional head must determine whether a prisoner should remain in a SIU as soon as practical after a registered health care professional recommends that an inmate not remain in the unit, in addition to 30 days after the prisoner is initially placed in the ISU.⁴⁷ Before making any such determination, the institutional head must visit the prisoner.</p> <p>The Commissioner reviews this decision 60 days after initial placement in the ISU to determine whether the prisoner should remain in the SUI, and every 60 days thereafter. Additionally, thirty days after each of the Commissioner's determinations, an independent external decision-maker must determine whether the inmate should remain in the unit.</p>	<p>In NSW, a segregation direction must be reviewed by the Commissioner, who will make a direction to revoke, confirm, or amend the terms of the segregation direction. If a segregation direction exceeds 14 days, the prisoner may apply to the Review Council for a review. Further reviews are required every three months, until the prisoner returns to the mainstream prison population. If a segregation direction exceeds six months, the Commissioner must provide written notice to the Minister.⁴⁸</p> <p>In Queensland, orders that segregate/isolate prisoners, have timeframes for reviews. For example, a safety order must be reviewed either as soon as practicable, or at the intervals recommended by a doctor or psychologist.⁴⁹</p>	<p>The head of the establishment can make the initial decision to place a prisoner on solitary confinement for a maximum of three months, and renew this one.</p> <p>However, for solitary confinement to be extended past this point, this decision must be made by the regional director of prison services. The regional director makes this decision based on a report from the head of the establishment. The regional director can renew this decision once.</p> <p>If the inmate has been in solitary confinement for one year from the initial decision, the Minister of Justice may decide to extend the solitary confinement for a period of four months renewable. The Minister makes this decision based on a report from the regional director, which contains the opinion of the sentence enforcement judge for convicted prisoners, and magistrate for a remand prisoner.</p> <p>Isolation cannot be extended beyond two years except, exceptionally, if placement in solitary confinement constitutes the only means of ensuring the safety of individuals or the establishment.</p>

40 Prison Reform Trust. (Last Updated June 2022). Segregation. Retrieved from <https://prisonreformtrust.org.uk/wp-content/uploads/2019/01/24-Segregation.pdf>; Prisoners' Advice Service. (2021). Prisoners Advice Service – Information Sheet: Segregation. Retrieved from <https://www.prisonersadvice.org.uk/wp-content/uploads/2021/05/SEGREGATION-1.pdf>.

43 Walsh, T., Blaber, H., Smith, C., Cornwell, L., & Blake, K. (2020). *Legal perspectives on solitary confinement in Queensland*. Queensland: University of Queensland.

44 HM Prison and Probation Service. (Last updated April 2022). Reviewing and Authorising Continuing Segregation & Temporary Confinement in Special Accommodation. Retrieved from <https://assets.publishing.service.gov.uk/media/627b8f84e90e0712da92521c/pso1700-policy-update-april-2022.pdf>.

45 Prison Rule 45(2), The Prison Rules 1999.

46 Walsh, T., Blaber, H., Smith, C., Cornwell, L., & Blake, K. (2020). *Legal perspectives on solitary confinement in Queensland*. Queensland: University of Queensland.

47 The Statutes of Canada 2019, at chapter 27. Retrieved from <https://www.parl.ca/DocumentViewer/en/42-1/bill/C-83/royal-assent>

48 Corrective Services NSW. (Last updated 6 September 2023). Custodial Operations Policy and Procedures: 3.4 Segregation. Retrieved from <https://correctiveservices.dcj.nsw.gov.au/documents/copp/03.04-segregation-redacted.pdf>.

49 Section 55 of the Corrective Services Act 2006

	England and Wales	Canada	Australia	France
				Any decision to place, or extend, solitary confinement must be communicated to the sentence enforcement judge for a convicted prisoner.
Contained in operational policy or legislation	The Prison Rules authorise prisoners to be segregated. ⁵⁰	The Corrections and Conditional Release Act contains provisions relating to segregation. In 2019, the Statutes of Canada 2019, at chapter 27, added additional provisions.	In New South Wales, provisions as to segregation are contained in the Crimes (Administration of Sentences) Act 1999. This Act provides for the reasons for segregation, what segregation means, reviews of the decision for the prisoner to be segregated, and further provisions. In Western Australia, the expiration date of an order being 30 days is contained in the Prisons Act 1981. This Act also contains the reasons for an order, who makes them, and requirements around what confinement means. ⁵¹ In Queensland, the Corrective Services Act 2006 contains timeframes for when orders that segregate prisoners expire. For example, the timeframes discussed above for safety orders and MSOs are contained in the Act. In Queensland, while some elements of segregation are contained in the Corrective Services Regulation 2017, this does not include an expiration date or review periods.	The Code of Criminal Procedures authorises prisoners to be segregated.

⁵⁰ Segregation: PSO 1700. Retrieved from [Segregation: PSO 1700 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/policies/segregation-in-prisons)

⁵¹ Section 43 of the Prisons Act 1981.