



PRISONERS' LEGAL RIGHTS

in British Columbia provincial prisons

**This booklet explains what rights you have
as a provincial prisoner in British Columbia,
and how to exercise your rights.**

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Basic rights

All prisoners have the right to:

- regular meals;
- daily exercise for at least one hour, outside if possible;
- clothing, a mattress and bedding;
- reading materials;
- reasonable access to mail and the telephone;
- postage for all privileged communication (letters to lawyers, the warden and most government officials);
- postage for up to 7 other letters per week;
- personal visits;
- health care;
- wash or shower at least once per day; and
- toiletry items needed for health and cleanliness.

The *Correction Act Regulation* (CAR) calls these rights “Inmate privileges” – but they are rights. The warden of the prison **must** ensure that you are given all of these rights.

The only time you do not have these rights is if the warden has a good reason to believe that the right cannot be given because it may endanger you or another person.

If you are in segregation, you have all of these rights unless it is unreasonable to give them because of the limitations of the segregation area, or for the safe and effective operation of the area.

You also have the right to the following information:

- the *Correction Act*;
- the *Correction Act Regulation*;
- the daily routine of the prison;
- the rules prisoners must follow;
- how to file a complaint;
- how to appeal a disciplinary hearing decision; and
- how to apply for temporary absence or parole.

If you can't understand this information, staff must try to help you understand it. You can also call Prisoners' Legal Services for information about your rights. There is information about how to contact Prisoners' Legal Services at page 31 of this booklet.

Security classification

Prisoners sentenced to 30 days or more are classified to secure, medium or open custody. A person's classification is decided based on considerations including:

- protecting society;
- assigning prisoners to the lowest level of security possible; and
- giving access to health care, education, work activities, social programs and recreational programs to meet case management goals.

Prisoners are classified to **secure custody** based on their danger to the community, their escape risk, behaviour and other factors.

Prisoners will be considered a danger to the community if they have a pattern of violent offences, if police information links them directly to violent or destructive behaviour, if there are professional opinions that they are likely to assault, or if they behave violently or aggressively in a way that makes them a risk to other prisoners or to staff.

Escape risk is based on a prisoner's history of escape or escape attempts, and on whether their attitude and behaviour have improved since the last incident.

Behaviour is considered a problem if a prisoner intimidates other prisoners, often violates rules and does not respond well to discipline.

Sentenced prisoners may be classified to **medium custody** if they do not meet the criteria to be classified to secure custody or open custody.

Prisoners who are on **remand** or being held in **immigration detention** may be classified to **medium custody** if they do not need secure custody, they do not meet the criteria to be classified to open custody and have:

- shown a positive change from a previously established pattern of violence;
- no history of escape in the past 3 years;
- no violent offences while on community supervision before being in custody on current offences;
- successful placement at open or medium facilities during a previous period of custody;
- shown an interest or actively participated in case planning; or
- the potential to interact well with others, both individually and in groups, under regular supervision.

Prisoners may be classified to **open custody** if they have:

- no pattern of violence;
- no history of escape in the past 5 years and are considered unlikely to escape; and
- no ongoing immigration issues.

Prisoners who are classified as open custody may be considered for work in the community.

Prisoners may be classified to **protective custody** only when there is clear evidence that protective custody is needed.

A classification officer will interview you before preparing a report on your classification. This officer is required by policy to discuss with you the information that is considered in deciding your classification, unless it would prejudice its use, would be harmful to law enforcement or could reasonably be expected to threaten someone's safety.

You have the right to request copies of the information used about you in your classification and a copy of the classification report. Some information may be withheld under privacy law.

You also have the right to the reasons for your classification in writing.

You have the right to appeal classification and placement decisions to the warden. If you are not happy with the warden's decision on your appeal, you can make a complaint to the Investigation and Standards Office. There is information about how to make a complaint at page 29 of this booklet.

You can also ask to be reclassified. You must make your request in writing and give reasons why things have changed since you were first classified. A classification

officer will review your request and your file, and will tell you his or her decision.

You can appeal this decision to the warden and make a complaint to the Investigation and Standards Office if you are not happy with the warden's decision.

Identification of staff

You have the right to know the names of staff working in the prison. Staff must wear name tags.

Physical restraint devices

Physical restraints can be used on you only if they are needed to:

- prevent injury or death;
- prevent property damage;
- prevent escape; or
- maintain your custody and control.

Restraints cannot be used for more than 4 hours unless they are allowed by the warden or you are on an escorted absence from the prison. The warden can allow restraints to be used for up to 16 hours if he or she has a good reason to believe they are needed for safety and other ways of controlling you haven't worked or are not reasonable.

The provincial director must approve the use of restraints for longer than 16 hours.

Searches

Staff may search prisoners' cells, personal possessions and clothing for the purpose of finding contraband without suspicion that the person has any contraband.

Staff may also search prisoners' cells, personal possessions and clothing if they have a good reason to believe that the person has contraband.

Searches also include a search of a person.

All prisoners are searched when they enter prison.

Strip searches must be done by a staff member of the same sex as the prisoner unless it would cause a delay that would result in danger to human life or safety.

You may be strip searched only if:

- you are entering the prison;
- you are entering or returning from segregation;
- you are returning from a visit, work or a program in the prison, and you could have accessed and hidden contraband; or
- staff have a good reason to believe you may have contraband or have evidence that you were involved

in giving or taking contraband from someone else. In this case, the staff must also reasonably believe that a strip search is necessary and get authorization from the warden (unless this would cause a delay that would put someone in danger or evidence would be lost).

Strip searches must be observed by another staff person and done quickly, in as private an area as possible. You should be told the reason for the strip search and how it will be done. Strip searches are limited to “visual inspections”. You should be given clothes or covering after the search.

Communication

Staff may intercept or record prisoner communication without suspicion that the person is involved in any illegal activity.

Staff may restrict, intercept or monitor prisoner communication if they have a good reason to believe that the person is involved in illegal activity, harassing or causing harm to others or participating in an activity that may jeopardize the safety, security or operation of the prison.

Communication can also be restricted if a court order restricts contact between the prisoner and the other person, or if the other person has asked that the prisoner not contact them.

You must be given written notice and the reasons for any restriction of your right to communicate, without delay.

Communication with your legal advocate or lawyer is privileged and confidential. The BC Corrections Branch is not allowed to monitor privileged communication. But staff might open privileged mail to check it for contraband.

Urinalysis testing

Corrections Branch staff may demand that you submit to urinalysis **only** if:

- they have reason to believe that you have taken an intoxicant into your body; or
- being drug or alcohol free is a condition of a temporary absence, work program, voluntary treatment program or conditional release. In this case, urinalysis may be done regularly or randomly.

Staff must give you the reason for the demand and tell you what can happen to you if you refuse to give the sample.

They must give you up to 2 hours to give the sample. The staff person taking your sample must be the same gender as you. They must follow the process set out in the *Correction Act Regulation*.

Right to vote

Remanded prisoners and prisoners serving sentences of less than 2 years can vote in provincial and federal elections. Remanded prisoners and prisoners serving sentences for non-indictable offences have the right to vote in municipal elections. Voting can be done by proxy votes, mobile polls or polls at the prison. You will not be released from prison to vote.

Administrative segregation

Sections 17 and 18 of the *Correction Act Regulation* deal with administrative segregation, or “separate confinement”. Different rules apply to administrative segregation than to disciplinary segregation, which is discussed later in this booklet.

To make an order to segregate you for administrative reasons, the warden must have a good reason to believe that you:

- are endangering yourself (or you are likely to);
- are endangering another person (or you are likely to);
- are jeopardizing the management, operation or security of the prison (or you are likely to);
- would be at risk of serious harm (or are likely to be) if you were not segregated;

-
- must be segregated for a medical reason; or
 - have contraband hidden in your body.

The warden must give you the reasons for your segregation, in writing, within 24 hours.

You must be released from segregation within 72 hours unless the warden decides to extend the order placing you in segregation under section 18 of the *Correction Act Regulation*.

The warden can decide to extend your segregation order under section 18 of the *Correction Act Regulation* for one or more periods of not longer than 15 days each.

To extend your segregation order, the warden must review the circumstances, believe that the circumstances still exist and decide that the segregation should continue.

The warden **must** give you, **in writing**:

- the reason for the segregation;
- the period of time you will be in segregation; and
- the reason for the length of time of segregation.

The warden must give you a “reasonable opportunity” to make submissions about why you should not be in segregation or why your segregation should be for less time (CAR subsection 18(3)(b)).

The Corrections Branch does not interpret this legal duty as requiring a meeting with the prisoner before a final decision is made to continue the segregation order. So, if you want to have your side heard, you must put your submissions in writing to the warden. You can call Prisoners' Legal Services for help.

After you have made your submissions, the warden must give you written reasons for continuing or changing your segregation order.

If you are worried that you are at risk of serious harm, you can ask for an agreement with the warden that you be segregated voluntarily. You can ask that the agreement be reviewed at any time.

“Enhanced Supervision Classification”

Provincial prisons may set up units called “Enhanced Supervision Classification”. These units are similar to segregation units because prisoners are often locked in their cells for long periods of time. Because they are not called “segregation” or “separate confinement”, the Corrections Branch takes the position that the laws for keeping people in segregation, set out in the *Correction Act Regulation*, do not apply.

You still have rights in Enhanced Supervision units under the *Charter of Rights and Freedoms*. The *Charter* requires that you be treated fairly when your liberty rights are at issue.

You have all of the legal rights of other prisoners while you are in Enhanced Supervision.

The Corrections Branch has also set out policy that should be followed if you are put in Enhanced Supervision.

Corrections Branch policy says that prisoners can be put in Enhanced Supervision if they are considered high risk because of factors including:

- mental or physical disorders;
- patterns of predatory or assaultive behaviour;
- patterns of non-compliance; or
- patterns of property damaging behaviour.

If you are put in Enhanced Supervision, a case manager should make a case plan for you within 4 days. The case plan includes:

- the reasons you are put in Enhanced Supervision;
- the programs the case manager recommends and what you have completed; and
- how you are expected to behave.

If you want a copy of your case plan, you must request it. The prison should give you your case plan if you ask for it.

Your progress and status in Enhanced Supervision is reviewed every week. You can make a complaint to the warden if you are in Enhanced Supervision and you think your rights are being violated.

If you are not satisfied with the warden's response to your complaint, you can make a complaint to the Investigation and Standards Office. Call Prisoners' Legal Services if you would like legal advice or help in making your complaint.

Disciplinary offences

The *Correction Act Regulation* sets out a number of disciplinary offences that prisoners can be charged with. Offences include things like disobeying a direction of a staff member or the warden, and assaulting or threatening another person.

If you are charged with a disciplinary offence, call Prisoners' Legal Services right away for help. If you are called to a hearing before you have been able to speak with a legal advocate, ask for an adjournment to get legal advice before your hearing starts. Prisoners' Legal Services can give you advice on how to represent yourself at your hearing, and in some cases may appoint a lawyer to represent you at your hearing.

You have the right not to say anything about the event that led to your charge. Talk to a legal advocate before you say anything to anyone about your charge.

You may be able to resolve an issue informally before you are charged. Staff must try to stop you from breaking a rule and give you a chance to stop the offence before they have you charged, if possible (CAR, section 22). Also, staff must try to address your concerns if the circumstances allow (CAR, section 4).

If you are charged with an offence, the warden must give you written notice, without delay. The notice must include:

- the rule they say you broke;
- a description of what happened;
- notice of the evidence they may use against you at your hearing;
- the date and time set for the hearing; and
- if you are put in segregation until your hearing, the reason why you are in segregation.

To put you in segregation until your hearing, the warden must have a good reason to believe that:

- you are likely to endanger yourself or another person if you are not put in segregation;
- you are likely to jeopardize the management, operation or security of the prison if you are not put in segregation; or
- you must be in segregation so that evidence will not be lost.

The warden must review your segregation status every 24 hours until your hearing. If he or she decides that the reasons for your segregation no longer exist, you must be released from segregation.

Disciplinary hearings

Disciplinary hearings are usually decided by a staff member at the prison. If this hearing officer was involved in the events that led to your charge, or they know about these events because they saw what happened or someone told them what happened outside of the hearing, you should ask for a different person to hear your charge.

You can also ask for a different person to hear your charge if you think that the hearing officer might be biased against you for any other reason.

Your hearing must start within 72 hours of when the charge was approved. If you went to your hearing within 72 hours and it was adjourned, your hearing has started within 72 hours.

You have the right to be present at your hearing. Your hearing must be adjourned if you are not there unless you refuse or choose not to attend, or if your presence would put someone's safety at risk at the hearing or you are causing serious disruption to the hearing.

Hearings must be recorded. The hearing officer must give you written reasons for the decision and the penalty imposed.

You have the right to know, and review, the evidence against you before the hearing starts.

At your hearing, you have the right to ask questions of the witnesses who are giving evidence against you. You also have the right to tell your side of what happened, to call witnesses for your side and to make arguments about why you should be found not guilty.

The decision maker will weigh the evidence against you when he or she decides whether you are guilty or not guilty. The evidence used to find you guilty must be relevant, trustworthy and credible.

If the decision maker decides, based on the evidence presented at your hearing, that it is more likely that you are guilty than not, you will be found guilty. This “standard of proof” is called a “balance of probabilities”. It is a lower standard of proof than in criminal court. In criminal court, the judge or jury can find you guilty only if there is proof “beyond a reasonable doubt”.

The Corrections Branch usually applies the lower standard of “balance of probabilities”. But the Courts have not decided if this is the correct standard of proof, or if the standard should be “beyond a reasonable doubt”.

Penalties for breaking a rule

If you are found guilty of an offence, or pleaded guilty to an offence, you can be given a penalty. Penalties are set out in section 27 of the *Correction Act Regulation*. They include a warning, restrictions on activities, extra duties, cell lock up, loss of earned remission and segregation.

Depending on the offence, you can face up to 15 days or 30 days in segregation. If you have more than one charge, the total time you spend in segregation in a row must not be more than 45 days.

If you were put in segregation when you were charged until your hearing date, that time must be subtracted from your penalty (unless you were in administrative segregation).

You have the right to say why you should be given a lighter penalty before the hearing officer decides your penalty (and after they have found you guilty or you pleaded guilty).

You can also ask that one penalty be given instead of another. For example, if you are close to your release date and you do not want to lose earned remission, you can ask for time in segregation instead of loss of earned remission. Think about what would be fair and suggest that to the hearing officer.

You can also ask that your penalty be “suspended” for up to 90 days. For example, you could ask that your penalty be suspended on the condition that you do not receive any other charges for that period of time. If you meet the conditions of your suspension, you do not have to serve the penalty.

You can also apply for a reduction in your penalty. The hearing officer or the warden must make a decision within 14 days of your application for a reduction in your penalty and give you the reasons for his or her decision in writing.

Appeals

If you are found guilty of an offence or if you feel that the penalty was too harsh, you can appeal the decision to the Investigation and Standards Office. Call Prisoners' Legal Services right away if you would like help with your appeal.

You must appeal within 7 days of the decision. Your appeal should be made in writing.

Ask staff to fax your letter to the Investigation and Standards Office.

The Investigation and Standards Office will listen to the recording of your hearing and consider your written submissions about why your hearing was unfair or why the decision was wrong.

The Investigation and Standards Office can confirm the decision or "rescind" the decision. If the decision is rescinded, your record will be changed to show that you were not found guilty of the offence, or a new hearing will take place with a different decision maker.

The Investigation and Standards Office can also change the penalty imposed.

Programs

The Correction Act Regulation requires the warden of each prison to establish programs for prisoners. Programs should be designed to improve the education or training of prisoners and reduce the risk of prisoners to the community.

You are required to participate in programs when you are told to, unless:

- you are excused in writing by health care;
- the program is religious and you choose not to participate in it;
- the program is on a religious day of the faith that you follow; or
- you have not been sentenced yet or you are in prison under the Immigration Act or the Immigration and Refugee Protection Act, the program is a work program, and you have not consented to participate in it.

Health care

Provincial prisoners are entitled to health care services provided by qualified personnel.

The Corrections Branch will provide dental care if there is:

- evidence of serious disease or injury that is curable or can be substantially alleviated; or
- a serious chance of harm if your treatment is delayed or denied.

Prosthetic devices (such as hearing aids or knee braces) will be provided if a qualified specialist believes it is necessary for a prisoner, who faces a long term of imprisonment, to function normally or participate in a program.

If you lose your glasses or a prosthetic device through no fault of your own, the Corrections Branch will replace them. The Corrections Branch will not pay for routine eye exams.

Health care information is confidential unless its release is necessary for the safe management of the prisoner and security of staff.

If you have a problem accessing health care, you can make a complaint to the Investigation and Standards Office. Complaints about health care professionals are reviewed by a doctor.

Transfers

There are few procedural rights for BC provincial prisoners who are transferred from one prison to another. Under the Correction Act, prisoners can be transferred without being given the right to make submissions, to have submissions considered or to receive the reasons for the decision.

But you do have the legal right to have your concerns addressed, if possible (CAR section 4).

It is Corrections Branch policy to transfer prisoners to allow for contact with families, and to access programs, resources, legal services and police. Transfers may also be made for medical treatment or assessments. Usually the Corrections Branch will transfer prisoners because of bed space issues.

If you are told that you are being transferred and you refuse, you may be charged with a disciplinary offence. If you have a good reason not to be transferred, such as family contact, you can say that you want to have your concerns addressed under section 4 of the *Correction Act Regulation*, and explain your reason for not wanting to be transferred.

The *Canadian Charter of Rights and Freedoms* gives you a right to procedural fairness in your transfer if you are moving from a medium security prison to a maximum security prison. But there are only three medium security prisons in BC (Alouette Correctional Centre for Women, Ford Mountain Correctional Centre and the Nanaimo Correctional Centre).

Remission awards

Provincial prisoners can earn remission awards for good behaviour. Remission awards are calculated at the end of the month. When you are released, remission will be calculated for the days left in your sentence.

How much remission you will be awarded depends on how well you have obeyed the rules and how much you have participated in programs. Programs do not include religious programs.

Remission is credited on the basis of 1 day's earned remission credit for each full 2 days that are served.

If the staff person decides your performance was “good” or “average” for a certain month, you will be credited with 15 days earned remission for that month.

If the staff person decides your performance was “fair”, you will get 8 - 14 days of earned remission for that month.

If the staff person decides your performance was “poor” or “unsatisfactory”, you will get 0 - 7 days of earned remission for that month.

If you do not get the full 15 days of earned remission in a month, the staff person who decided not to give you the earned remission must give you the reason for the decision in writing.

If you disagree with the decision, you can apply to the warden or district director for a review of the decision. You must apply **in writing** within **7 days** of getting the decision.

The warden must complete his or her review within 7 days. The district director must complete his or her review within 2 weeks. The warden or district director can confirm the amount of earned remission, increase the number of days credited or reduce the number of days credited. The warden must give you his or her reasons in writing without too much delay.

If you are not satisfied with the warden's decision, you can make a complaint to the Investigation and Standards Office who can recommend that the decision be reconsidered.

Parole applications

On April 1, 2007, the National Parole Board became responsible for provincial parole applications. Before that, the BC Parole Board was responsible for provincial parole.

Prisoners are eligible for day parole when they have served one-sixth of their sentences. Prisoners are eligible for full parole when they have served one-third of their sentences.

The National Parole Board does not have to review parole applications of prisoners with sentences of less than 6 months. It is not required to review parole applications within the 2 months before the end of your sentence. The National Parole Board can take up to 6 months from when parole applications were received to review them.

Because of these time frames, and because provincial prisoners can earn 15 days of remission each month, it is often of no benefit to provincial prisoners to apply for parole unless they are serving a sentence of more than one year. But the National Parole Board may hear your application before the time limits required by law.

If you are granted day parole, and you are not suspended, you are free on your earned remission date. (You continue to earn remission while on day parole.)

If you are granted full parole, you will serve your full sentence in the community, under conditions. If the National Parole Board decides that you have broken a condition of your parole, it can return you to prison and take away your previously earned remission.

You can call Prisoners' Legal Services for advice if you are suspended from parole.

There is no longer parole for prisoners convicted of provincial offences. But these prisoners can apply for temporary absences.

Complaints

It is best to try to resolve problems at the lowest level possible. If you have a problem, staff must try to deal with your concerns (CAR section 4).

If you feel that your rights have been violated by staff or you have been treated unfairly, you can make a complaint to the warden. You can submit your complaint to any staff person who must give it to the warden without undue delay (CAR section 37).

Make sure you get a carbon copy of your complaint form that shows you gave it to a staff person on the date you handed it in. If the staff person does not give you a carbon copy, copy the complaint out onto another form and ask the staff person to sign and date your copy of the form.

Keep the extra copy of your complaint so you can prove you handed it in on that date.

The warden has 7 days to investigate your complaint. He or she must tell you, in writing, of his or her decision, without undue delay.

If you are not happy with the warden's decision about your complaint, or if you have not received a response to your complaint in a reasonable amount of time, you can make another complaint to the Investigation and

Standards Office. Staff must forward your complaints to the Investigation and Standards Office without delay.

The Investigation and Standards Office must investigate the written complaints of prisoners. The results of the investigation must be reported to the Minister. But the Investigation and Standards Office may refuse to investigate a complaint that is frivolous, vexatious, trivial or not made in good faith.

The Investigation and Standards Office can make a recommendation to the warden about your complaint. There is no legal requirement that the warden follow the recommendation.

If you are not happy with the recommendation of the Investigation and Standards Office, or if the warden does not follow the recommendation, you can call Prisoners' Legal Services for legal advice.

If your complaint is serious and it has not been resolved fairly, you might have other legal options to pursue your complaint.

Getting legal help

You can contact Prisoners' Legal Services for advice or assistance with issues that affect your liberty (such as segregation, disciplinary charges or parole) or about health care or human rights issues.

For assistance from Prisoners' Legal Services, you must have a referral from the Legal Services Society. Contact their call centre at 604-681-9736. Once you have a referral, you can call Prisoners' Legal Services directly at 604-636-0464.

Prisoners' Legal Services phones are open Monday to Friday from 9:00 a.m. to 11:00 a.m. and from 1:00 p.m. to 3:00 p.m.

**This publication contains general information only.
Each situation is unique. Law and policy can also
change. If you have a legal problem, contact
Prisoners' Legal Services or a lawyer.**



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