



Prisoners' Legal Services

A Project of the West Coast Prison Justice Society

August 30, 2017

VIA EMAIL

Honourable John Horgan
Honourable David Eby
Honourable Mike Farnworth
PO Box 9041 Stn Prov Govt
Victoria, BC
V8W 9E1

Dear Mr. Horgan, Mr. Eby and Mr. Farnworth:

RE: Provincial reforms to prison law

Prisoners' Legal Services congratulates Premier Horgan and his team on their election win. We look forward to working with the Minister of Public Safety and Solicitor General, Mr. Farnworth, and the Minister of Attorney General, Mr. Eby, to enhance the BC correctional system so that it respects the human rights and dignity of prisoners, who represent some of the most vulnerable members of our society.

Prisoners' Legal Services is the only full legal aid clinic for prisoners in Canada. We provide legal services to federal and provincial prisoners on issues that affect their liberty rights under s. 7 of the *Charter*, and on issues related to health care and human rights. We have been working for the rights of prisoners for 37 years, since 1980. In the past year alone we have assisted BC provincial prisoners with over 950 legal issues.

Prisoners' Legal Services calls on the BC government to:

- Prohibit the use of solitary confinement by statute. Solitary confinement is defined by the United Nations' *Mandela Rules* as any form of isolation for 22-24 hours per day without meaningful human contact, which is considered to be torture or cruel treatment if it extends beyond 15 days or is used on prisoners with mental disabilities.

In BC, solitary confinement may take the form of separate confinement, segregation, Enhanced Supervision Program, dry cells or medical observation cells. Legislation should require that when it is necessary to separate a prisoner from the population, it should be for as short a period of time as necessary within one day, and no prisoner should ever be denied sufficient meaningful human contact each day. British Columbia should never engage in the torture or cruel treatment of its prisoners.

- Prohibit the use of segregation or separate confinement on prisoners with mental disabilities and youth under the age of 21.
- Repeal s. 24 of the *Conditional Act Regulation*, which allows prisoners to be held in segregation pending a disciplinary hearing.
- If separate confinement and other forms of isolation are to continue, provide a statutory right to procedural fairness, including the right to an oral hearing of the evidence, legal representation of the prisoner's choice, and independent adjudication of such placements with the authority to remove a prisoner from the placement. There should be legislative limits of 15 days continuous placement in separate confinement, segregation or Enhanced Supervision Program with an annual limit of 30 days.
- Prohibit the double bunking of prisoners in separate confinement against their wishes.
- Prohibit housing prisoners on suicide or self-harm observation in segregation units, and require adequate mental health resources to be provided to these prisoners.
- Increase the level of independence and the powers of the Investigation and Standards Office to include independent oversight of separate confinement placements and independent adjudication of disciplinary hearings, to be determined on the "beyond a reasonable doubt" standard of proof. The Investigation and Standards Office should be required to report publicly on BC Corrections' use of solitary confinement and other conditions of confinement, similar to the role of the federal Correctional Investigator. It should have the legislative duty to provide external oversight of separate confinement placements to ensure that prisoners are not isolated, and are provided opportunities to keep their minds occupied with adequate levels of meaningful human contact each day.
- Require BC Corrections to document and report publicly on an annual basis information about its use of segregation, separate confinement, Enhanced Supervision Program and observation placements, including the number of prisoners held under any of these regimes, the number of continuous days held in each of these regimes for a prisoner in the year, whether prisoners have mental health needs, and data about gender, race,

Indigenous status, and instances of self-harm and deaths in these regimes, as well as the number of hours prisoners receive out of their cell and engaging in therapeutic services each week while held in these regimes.

- Fund BC Corrections sufficiently to provide at least half of the beds in each correctional centre as therapeutic living units, on an ongoing basis. Legislation should specify that the number of therapeutic beds available must be sufficient to meet the mental health needs of the number of prisoners who are identified as having mental health needs. The definition of mental health needs should be broad. Mental health units should be staffed with mental health professionals, including nurses, social workers, counsellors, psychologists and psychiatrists as appropriate. Legislation should specify that prisoners with mental health needs should be provided at least 10 hours of out-of-cell therapeutic time per week, including opportunities for individual counselling.
- Fund BC Corrections to modify correctional centres to allow for smaller units that would allow prisoners to be housed in the population when there are contact concerns.
- Fund the Forensic Psychiatric Hospital at levels that will ensure that prisoners with high mental health needs can be transferred there for long and short-term treatment based on clinical need. Prisoners who are certified under the *Mental Health Act* should never be held in solitary confinement in correctional centres.
- Introduce legislation aimed at reducing the over-representation of Indigenous prisoners in BC correctional centres and requiring that *Gladue* factors be considered in decisions concerning incarceration.
- Introduce regulations that require mediation to be used as a first resort to address aggressive behaviour, whenever possible.
- Amend laws and policies to require medical professionals who work in corrections to be in compliance with the *Mandela Rules*.
- Implement laws that would require broader access to harm reduction in prisons.
- Amend s. 4(1) of the *BC Freedom of Information and Protection of Privacy Regulation* to include lawyers acting on behalf of clients in the list of “representatives” who may access private information on behalf of an individual, to allow lawyers acting on behalf of prisoners to represent them effectively and in a timely way without requiring a consent for the release of information form to be signed.

- Include mental health experts and key stakeholders, including Prisoners' Legal Services, to be involved in the transformation of correctional law and policy, and be open and transparent during this process.

We encourage you to review [Solitary: A case for abolition](#), produced by the West Coast Prison Justice Society and Prisoners' Legal Services, when implementing correctional reforms. The report provides a number of recommendations on how to reduce the use of segregation, largely by enhancing mental health resources to prisoners, supported by amendments to legislation.

We look forward to consulting with you along with other stakeholders on how best to address these issues in the future.

Yours truly,

PRISONERS' LEGAL SERVICES

A handwritten signature in black ink, appearing to read 'Jennifer Metcalfe', with a long horizontal flourish extending to the right.

Jennifer Metcalfe
Executive Director
Barrister and Solicitor