



# Indigenous Prisoners' Legal Rights

**This booklet explains your rights, and the options available to you, as an Indigenous prisoner in federal custody.**

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# Contents

Introduction .....	5
CSC has a duty to consider your Aboriginal Social History .....	6
CSC has a duty to give you culturally appropriate options .....	8
Liberty issues .....	9
Security classification and pen placement .....	10
Involuntary transfer .....	12
Disciplinary sanctions .....	14
Administrative segregation .....	15
Rights in segregation .....	18
New segregation rules from January to June 2019 .....	19
Indigenous programming .....	20
Your correctional plan .....	20
Role of Elders .....	21
Role of Aboriginal Liaison Officers .....	22
Role of Aboriginal Community Development Officers .....	22
Role of Aboriginal Community Liaison Officers .....	22
Indigenous programs .....	23
Aboriginal Pathways .....	23
Joining Pathways .....	24
Temporary absences .....	26
Transfer to an Indigenous community or Healing Lodge .....	26

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Indigenous communities .....	27
Transfer to a Healing Lodge .....	29
Healing Lodge temporary absence requests .....	30
Healing Lodge locations .....	31
Transfer to a Health Facility .....	32
Access to your Family .....	32
Parole .....	33
Recommendations to the Parole Board .....	33
Parole Board Decisions .....	34
Elder-assisted hearings .....	34
Release to an Indigenous community for parole .....	35
Section 84 process .....	36
Your release .....	41
Indigenous halfway houses and programs .....	41
Getting legal help .....	42

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## Introduction

Indigenous people are over-represented in Canadian prisons. They make up less than 5% of the population in Canada, but 27% of the population in federal prisons. 38% of women in federal prisons are Indigenous.<sup>1</sup> The proportion of federal prisoners that are Indigenous continues to increase.

The reasons Indigenous people are imprisoned at higher rates than other people in Canada may include:

- systemic discrimination and prejudices about First Nations;
- poverty;
- substance abuse; and
- family problems over generations caused by residential schools and the large number of children taken from their families and communities and put into foster care.<sup>2</sup>

Indigenous prisoners tend to be classified at higher security levels than other prisoners and are segregated more often than other prisoners.<sup>3</sup> Indigenous prisoners are less likely to be granted

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1 Annual Report of the Office of the Correctional Investigator (2016-2017) (“OCI Annual Report”); Public Safety Canada, “2017 Annual Report: Corrections and Conditional Release Statistical Overview” (2018) at 53 (“Public Safety 2017 Statistics”).

2 Office of the Correctional Investigator, “Backgrounder: Aboriginal Inmates”. Online: <http://www.oci-bec.gc.ca/cnt/rpt/annrpt/annrpt20052006info-eng.aspx> (“OCI Backgrounder: Aboriginal Inmates”).

3 Office of the Correctional Investigator, “Spirit Matters: Aboriginal People and the Corrections and Conditional Release Act”

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parole and are more likely to be suspended and detained past their statutory release date.<sup>4</sup> This means that Indigenous prisoners spend more time in prison, and less time on conditional release in the community.<sup>5</sup>

**45% of Indigenous prisoners report being the victim of physical abuse.**

**28% of Indigenous prisoners were raised in foster care.**

**15% of Indigenous prisoners went to residential schools.<sup>6</sup>**

## **CSC has a duty to consider your Aboriginal Social History**

The law recognizes First Nations' history of colonization, including dislocation, residential schools, forced adoption (the "sixties scoop"), and loss of cultural and spiritual identity.<sup>7</sup> The Correctional Service of Canada (CSC) has a duty to consider how you are affected because of this history when it makes decisions about you during your sentence.<sup>8</sup>

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(2012) at para xiii ("Spirit Matters"); Public Safety 2017 Statistics at 55.

4 Public Safety 2017 Statistics at 79-81, 85-86, 103.

5 OCI Annual Report; Public Safety 2017 Statistics at 91-92.

6 OCI Backgrounder: Aboriginal Inmates.

7 *R v Gladue*, [1999] 1 SCR 688 at paras 67-68 ("*Gladue*").

8 *Corrections and Conditional Release Act*, SC 1992, c 20, s 4(g) ("*CCRA*"); *Twins v Canada (Attorney General)*, 2016 FC 537 at para 64 ("*Twins*"); CSC, Commissioner's Directive: Correctional Planning and Criminal Profile (2018-01-15), Definitions: Domain analysis ("*CD 705-6*").

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When CSC makes a decision about you, it must consider any of these factors that apply to you:

- effects of the residential school system;
- the “sixties scoop” of Indigenous children into the adoption system;
- low income or experience with poverty;
- unemployment;
- lack of opportunities and options;
- lack of formal education;
- family or community history of substance abuse;
- Fetal Alcohol Spectrum Disorder (FASD);
- early death of family or friends because of substance abuse, violence, or suicide;
- sexual, physical, emotional, verbal or spiritual abuse against you or in your community;
- loneliness;
- poor relationships with family or community;
- mental and physical health issues;
- breaking apart of family or community;
- experience in the child welfare system (foster care or adoption) by you, your family or community;
- struggles with cultural or spiritual identity and connection;

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- poor social and economic conditions; and
  - discrimination and racism in the community and in prison.<sup>9</sup>

These might be referred to as the “*Gladue*” factors or your **Aboriginal Social History**.

You do not need to prove a link between your Aboriginal Social History and your problems in the criminal justice system.<sup>10</sup>

### **CSC has a duty to give you culturally appropriate options**

CSC has a duty to have policies, programs and practices that are appropriate for you as an Indigenous person.<sup>11</sup> It must carry out your sentence and assist you in rehabilitating and re-entering the community in a way that responds to you as an Indigenous person.<sup>12</sup>

Here are a few examples of what this means:

- When assessing you or making decisions about you, CSC should use assessment tools that are free of cultural bias. This means that they must not use tools that were designed for non-Indigenous people and were not tested for accuracy

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9 *R v Gladue*, [1999] 1 SCR 688 at paras 67-68; CSC, Commissioner’s Directive 702: Aboriginal Offenders at Definitions: Aboriginal social history (“CD 702”); Legal Services Society, “Gladue Submission Guide” (2017) at 6-7.

10 *R v Ipeelee*, 2012 SCC 13 at para 83 (“Ipeelee”).

11 CCRA, s 4(g).

12 CCRA, ss 3, 4(g); *Ewert* at paras 53-61; *Canadian Human Rights Act*, RSC 1985, c H-6, ss 2, 3.



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on Indigenous people.<sup>13</sup> Contact PLS if you see in your papers that CSC has relied on the SIR-R1, SORAG, PCL-R, VRAG, Static-99 or VRS-SO in assessing you.

- When making decisions about you, CSC must consider options and make decisions that are appropriate for your Indigenous culture and background. They must consider options that are designed to help you (“restorative” options). There are examples of this in this booklet;<sup>14</sup> and
- CSC must provide Indigenous programs.<sup>15</sup>

If there is a decision, policy, or practice that applies to everyone but affects you differently because you are Indigenous, you might be experiencing discrimination. You can phone Prisoners’ Legal Services if you would like to discuss your case. You can also find out about how to make a human rights complaint in Prisoners’ Legal Services’ booklet: “Human Rights for Federal Prisoners”.

## Liberty issues

CSC has a duty to consider how your Aboriginal Social History has impacted you and to consider options that are culturally appropriate for you whenever it makes a decision that affects your freedom, including:

- security classification and pen placement;
- transfer decisions;

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13 *Ewert* at paras 62, 80, 90; CCRA, s 24(1); CD 705-6, para 10.

14 *Twins* at para 64; CD 702 at para 6(e) & Definitions: Aboriginal social history.

15 CCRA, s 80.

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- disciplinary sanctions; and
  - administrative segregation.<sup>16</sup>

## **Security classification and pen placement**

When you arrive at prison, you will go through the “intake assessment process”. Your security classification, pen placement and correctional plan are decided from this process.

CSC must try to place you in an institution that restricts your freedom as little as possible, considering public safety and prison security.<sup>17</sup>

The Parole Officer will assess what they think your security classification and prison placement should be and will write their recommendations to the Warden in a document called an Assessment for Decision.<sup>18</sup>

They must consider your Aboriginal Social History, and how your family’s or community’s history has impacted you (See the list

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16 CCRA, s 4(g); *Ewert v Canada*, 2018 SCC 30 at paras 57-59 (“*Ewert*”); *Twins* at paras 57, 64; *Ipeelee* at para 69; CSC, “Commissioner’s Directive 705-6: Correctional Planning and Criminal Profile” (2018-01-15) (“CD 705-6”); CSC, “Commissioner’s Directive 705-7: Security Classification and Penitentiary Placement” (2018-01-15), Annex E; CSC, “Commissioner’s Directive 580: Discipline of Inmates” (2015-10-26), Annex C; *Frontenac Ventures Corporation v Ardoch Algonquin First Nation*, 2008 ONCA 534 at paras 56-57, leave to appeal refused [2008] SCCA No 357; *R v Sim*, 2005 CanLII 37586 (ONCA) at para 16; *Re Alexis*, [2003] BCRBD No 1 at para 80.

17 CCRA, s 28 (“CCRA”).

18 CCRA, s 30; CCRR, ss 17-18; CD 705-7.

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near the beginning of this booklet). These factors should be used to better understand you and to find more appropriate options for you. They should **not** be used as reasons to give you a higher security level, more time in prison, or other restrictions.<sup>19</sup>

The Parole Officer must then consider whether there are any culturally appropriate options or restorative options (like mediation or a behavioural contract) that can be used to keep you in a lower security prison.<sup>20</sup>

If you express an interest in following traditional healing practices, you will get an opportunity to meet with an Elder for an Elder Review. You can make this request during intake or anytime later on. The Elder's Recommendations will be incorporated into your Correctional Plan and any future updates.<sup>21</sup> If you show during your sentence that you are committed to working with an Elder and following traditional healing practices, you may be able to enter a Pathways unit.<sup>22</sup> There is more information about the Pathways program later in this booklet.

CSC must try to place you in an institution that lets you access Indigenous cultural programs, your home community and your family.<sup>23</sup>

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19 CD 705-7, Annex A.

20 CD 705-7, Annex E.

21 CSC, Commissioner's Directive 705-5: Supplementary Assessments (2017-01-23), paras 17-19 ("CD 705-5"); CD 702, para 14 & Definitions: Healing component, Healing path/journey.

22 CSC, GL 702-1: Establishment and Operation of Pathways Initiatives (2013-11-12) ("GL 702-1").

23 CCRA, s 28.

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When the warden gets the Parole Officer's recommendation and makes a decision on your security classification and pen placement, CSC must give you written reasons and a chance to respond to the decision before you are moved to the institution.<sup>24</sup>

CSC must also consider your Aboriginal Social History when making your Correctional Plan.<sup>25</sup>

You can call Prisoners' Legal Services for advice or help in responding to your security classification and pen placement recommendation.

### **Involuntary transfer**

CSC staff might recommend that the warden raise your security classification level and transfer you to a higher security institution.

CSC must not classify you at a higher level of security than is necessary.<sup>26</sup> The warden should consider the alternatives to transferring you to higher security, such as:

- resolving the problem at your institution; or
- transferring you to an institution of the same security level.

CSC must consider your Indigenous background before it decides to increase your security classification or transfer you to higher security.<sup>27</sup>

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24 CCRA, s 30 and *Corrections and Conditional Release Regulations*, SOR/92-620, s 11, ("CCRR").

25 CD 705-6.

26 CCRA, s 4(c).

27 Commissioner's Directive 710-2, "Transfer of Offenders", 2013-04-30, ("CD 710-2"), Annex C - Assessment for Decision for Transfers -

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CSC should also consider your access to Indigenous cultural programs, your home community and your family when making a transfer decision.<sup>28</sup>

You must be given written reasons for a recommendation to increase your security classification and to involuntarily transfer you to another institution.<sup>29</sup>

You have the right to respond to these recommendations before any decision is made (this is called your rebuttal). You will have 2 working days to submit your rebuttal, but you can ask the warden for an extension of 10 working days if you need it.<sup>30</sup> If you want to ask for an extension, you should do that as soon as possible after you receive the Assessment for Decision (the recommendation to transfer you).

You can call Prisoners' Legal Services for advice or help in writing your rebuttal.

After you submit your rebuttal, CSC must give you a final decision and reasons for the decision.<sup>31</sup>

If CSC decides to transfer you involuntarily, it must give you the decision and reasons and then wait at least 2 days before moving you to the new institution.<sup>32</sup>

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Report Outline.

28 CCRA, s 28.

29 CCRA, s 30(2); CCRR, s 11.

30 CCRR, ss 11-12; GL 710-2-3, paras 27-28 ("GL 710-2-3").

31 GL 710-2-3, para 30.

32 CCRR, s 12

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If CSC decides that they need to move you right away for safety or security reasons, you might be moved first and then get the chance to rebut the transfer after you have already been moved.<sup>33</sup> This should only be done in emergencies. If this happens to you, you can call Prisoners' Legal Services for help.

## **Disciplinary sanctions**

You can call Prisoners' Legal Services for advice or assistance if you are charged with a disciplinary offence. You can also ask for a copy of our booklet "The Prison Disciplinary Process", for more information.

You can ask CSC staff to "informally resolve" a problem instead of charging you with an offence. You can ask that an Elder or Aboriginal Liaison Officer be involved in informal resolution.<sup>34</sup>

If you are found guilty of an offence after a hearing, or if you plead guilty to an offence, the chairperson should consider your Indigenous background before deciding on the penalty or sanction for the offence.<sup>35</sup> This means that they should consider how your Aboriginal Social History has affected you and should look for culturally appropriate or restorative (intended to heal rather than punish) options before giving you a penalty.

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33 CCRR, s 13.

34 CSC, Commissioner's Directive 580: Discipline of Inmates (2015-10-26), para 5 ("CD 580").

35 CCRA, s 4(g); CCRR, s 34; *Ewert v Canada*, 2018 SCC 30 at paras 57-59 ("*Ewert*"); *Twins* at paras 57, 64; CD 580, Annex A: Definitions – Aboriginal social history, Annex C – Duties of the Serious Disciplinary Hearing Advisor.

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Penalties can include one or more of the following:

- A warning or reprimand.
- A loss of privileges – But the chairperson is not allowed to take away your visits unless you are segregated. The chairperson is not allowed to take away your spiritual activities unless they are recreational.
- An order to make restitution – This means to pay for any damage you caused.
- A fine.
- Extra duties.
- Segregation for up to 30 days – Segregation can only be given as a sanction for a serious offence. If you have 2 or more offences, you cannot be given more than 45 days in segregation in total. You can be denied visits while in segregation. For your rights in segregation, see the end of the next section.<sup>36</sup>

### **Administrative segregation**

If you are reading this booklet after June 17, 2019, contact Prisoners' Legal Services for an update on the law and your rights.

You can be placed in administrative segregation if the warden has a good reason to believe that:

- your presence in the regular prison population would threaten the security of the institution or the safety of any person, including yourself; or

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36 CCRA, s 44(1); CCRR, s 40(2).

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- your presence in the regular prison population would interfere with an investigation of a prison or criminal offence.<sup>37</sup>

The person making the decision must consider your Aboriginal Social History before deciding to place you in segregation (see list of factors near the beginning of this booklet). As part of this, they must consider a possible link between what happened and your Aboriginal Social History. In deciding what to do, they must consider culturally appropriate or restorative options that could be used rather than segregation. They must also consider your access to Elder support, Indigenous programs and traditional healing practices.<sup>38</sup>

You can be placed in administrative segregation **only if there are no reasonable alternatives** to segregating you.<sup>39</sup>

Alternatives might include:

- culturally appropriate or restorative options like informal resolution or a healing circle with an Elder;
- mediation;
- moving you to another cell, range or unit;
- placing you in a treatment centre or other place where you can get mental health care;
- transferring you to another institution; or

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37 CCRA, s 31(3).

38 CSC, GL 709-1: Administrative Segregation Guidelines (2017-08-01), Annex B (“GL 709-1”).

39 CCRA, s 31(3).



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- allowing you to stay locked up in your cell if you agree.<sup>40</sup>

**If you have a serious mental illness with significant impairment, are self-harming, or you are imminently suicidal, CSC is not allowed to put you in segregation.**<sup>41</sup>

Normally, the decision whether to place you in administrative segregation is made by the warden. If the decision is made by somebody else, the warden must review it within 1 working day.<sup>42</sup>

You have a right to call a lawyer, in private, as soon as you arrive in segregation.<sup>43</sup> You can call Prisoners' Legal Services at 1-866-577-5245.

Once you are admitted to administrative segregation, CSC must give you reasons in writing within **1 working day**. The reasons must tell you what alternatives were considered before you were put in segregation, and must say why these alternatives could not be used in your case.<sup>44</sup>

The Segregation Review Board must review your case within **5 working days**.<sup>45</sup> If they decide to keep you in segregation after that review, CSC must create a clear plan for how to get you out of segregation.<sup>46</sup>

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40 GL 709-1, Annex A.

41 CD 709, para 19.

42 CCRA, s 31(3); CCRR, ss 6(c), 20

43 CD 709, para 33.

44 CCRR, s 19.

45 CCRR, s 21; CD 709, paras 41-62.

46 CD 709, para 42 & Annex F – Reintegration Action Plan.

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If you are kept in segregation after the 5 days review, you will receive a review at least every **30 days** by the Institutional, Regional, and National segregation review boards.<sup>47</sup> **CSC must consider your Indigenous ancestry when deciding whether to continue your segregation.** They must also consider your gender, mental health needs and treatment options, and physical health needs.<sup>48</sup>

You can call Prisoners' Legal Services for advice or assistance with your segregation reviews.

### **Rights in segregation**

While you are in administrative segregation, you must be given the same rights, privileges and conditions as other prisoners unless they cannot be given because they can only be done in a group or because of security concerns or limitations of the segregation area.<sup>49</sup>

In disciplinary or administrative segregation, you must be allowed to contact a lawyer and to access spiritual support, including Elders. You must also be allowed to access your personal cell effects. You should have access to items for hygiene and spirituality immediately, and other items within 24 hours. A health care professional must visit you each day. You can submit a complaint or grievance about being put in administrative segregation or about the conditions of treatment inside.<sup>50</sup>

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47 CCRR, ss 21-22; CD 709, paras 41-69.

48 CD 709, para 64.

49 CCRA, s 37.

50 CCRA, ss 37, 90; CCRR, ss 40(3), 98(2), 74-82; CD 709, paras 30, 39, 70; CD 259, para 7(c)(i); Note CD 580 paras 58-59 does not comply with CCRR, s 40(3).

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**Administrative segregation new rules  
from January to June 2019:**

**You must receive 2 hours and 30 minutes out of your cell every day**, including weekends and holidays. Of that, you must be allowed to exercise outdoors for 1 and a half hours. If the weather is too bad to go outside, you must be allowed to exercise indoors for that time instead.

When the **health care professional** visits you each day, they **must see you**. If they think you should be removed from segregation or that something needs to be done for you, they must write to the warden about it within 24 hours. The warden must do what the health care professional recommends. If not, the warden must give you their reasons for not following the recommendation. **If you ask them to send a copy to your lawyer or to Prisoners' Legal Services**, they must do so.

**You are allowed to have a lawyer at your segregation reviews.** Staff must let the lawyer attend and make submissions for you.

If you are not given these rights, you can phone PLS at 1-866-577-5245.

By June 17, 2019, the law about administrative segregation will change.<sup>51</sup> If you are reading this booklet after June 17, 2019, contact Prisoners' Legal Services for an update on the law and your rights.

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51 *BCCivil Liberties Association v Canada (Attorney General)*, 2018 BCSC 62; *BCCLA v Canada*, 2019 BCCA 5.

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## Indigenous programming

CSC has a duty to provide programs that are designed specifically to address your needs as an Indigenous person.<sup>52</sup> The programs include information that is relevant to Indigenous culture such as traditional teachings and ceremonies, and cultural activities. Elders should be involved in delivering these programs.<sup>53</sup>

CSC recognizes that when Indigenous prisoners join in spiritual and cultural activities and programs, and have family and community support, they are more successful when they return to the community.<sup>54</sup>

### Your correctional plan

If you are interested in taking part in Indigenous programs, you should tell your Institutional Parole Officer (IPO) during intake. You can work with your IPO to make sure Indigenous programs are part of your Correctional Plan.<sup>55</sup>

During intake, your IPO should explain the role of Elders, Aboriginal Liaison Officers, Aboriginal Community Liaison Officers and Aboriginal Community Development Officers, who can be a part of your Case Management Team. They can help you include Indigenous traditions in your Correctional Plan.

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52 CCRA, ss 4(g), 80; CSC, Commissioner's Directive 705: Intake Assessment Process and Correctional Plan Framework (2014-03-24), para 4(d); CSC, CD 726: Correctional Programs (2018-02-05), para 6(c) ("CD 726").

53 CD 726, para 16 & DEFINITION: Aboriginal correctional programs.

54 CD 702, Annex B – Aboriginal Corrections Continuum of Care.

55 CD 705-6, para 26.

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You can talk to your IPO about how to apply to serve part of your sentence in an Indigenous community or Healing Lodge, or to be released into an Indigenous community on parole. There is more information later in this booklet.

### **Role of Elders**

Elders or Spiritual Advisors can give you individual counseling, teachings and ceremonial services.<sup>56</sup>

If you want to take part in traditional healing with an Elder, your Correctional Plan should include an **Elder Review** report.<sup>57</sup> Your Elder Review is the Elder's perspective of you, based on traditional knowledge and teachings, and is used to measure your progress.<sup>58</sup>

Your Elder Review will be part of your Correctional Plan and all key case management documents to guide CSC staff in supporting you during your sentence and after release.<sup>59</sup>

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56 CD 702, para 8.

57 CD 705-5, paras 17-19.

58 CD 702, Annex C.

59 CD 705-5, para 19; CD 710-1; CSC, CD 715-2: Post-Release Decision Process.

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## **Role of Aboriginal Liaison Officers**

Aboriginal Liaison Officers provide leadership, cultural awareness, counseling and general services.

The Aboriginal Liaison Officer is a link between you and your Case Management Team, and should help communicate your cultural and spiritual needs with case management and correctional program staff. The Aboriginal Liaison Officer is also a link between you, your community and Aboriginal Community Development Officers.<sup>60</sup>

## **Role of Aboriginal Community Development Officers**

The Aboriginal Community Development Officer can help you find support in an Indigenous community for your release. The Aboriginal Community Development Officer can also help an Indigenous community make a release plan for you.<sup>61</sup>

## **Role of Aboriginal Community Liaison Officers**

Aboriginal Community Liaison Officers can give you support in the community and help you connect with Indigenous community resources, ceremonies and events.<sup>62</sup>

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60 CD 702, para 9; CSC, Guidelines 712-1-1: CCRA Sections 84 and 84.1 Release Planning Process (2018-08-07), Annex A – Definitions; CSC, Job profile – Aboriginal liaison officer. Online: <http://www.csc-scc.gc.ca/careers/003001-1201-eng.shtml>.

61 CD 702, para 12; GL 712-1-1, Annex A - Definitions.

62 CD 702, para 13; GL 712-1-1, Annex A - Definitions.

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## Indigenous programs

We do not have a current list of Indigenous programs but we hope to update this soon. You can ask your IPO or an Elder or Aboriginal Liaison Officer for more information on the Indigenous programs available at your institution or in the community.

## Aboriginal Pathways

Aboriginal Pathways are units or programs in the institution that are meant to provide a healing and traditional environment for prisoners who are dedicated to following an Indigenous healing path.<sup>63</sup>

Pathways is aimed at providing cultural and spiritual services to help you address your risk factors so that you can move to a minimum security institution, a healing lodge, or to the community on a work release, temporary absence, day parole or full parole.<sup>64</sup>

**Maximum security institutions** should allow indoor space for daily Indigenous ceremonies and activities to help prepare you for transfer to a medium security Pathways unit.<sup>65</sup> This is called **Pre-Pathways** and is a day program. It is not a separate living unit. If you apply to take part in Pre-Pathways, you will likely only be chosen if you have been participating in ceremonies with Elders regularly. In the Pacific Region, Kent Institution and Fraser Valley Institution for Women (FVI) have Pre-Pathways.

Some **medium security institutions** have **Pathways units**. These are living units. In the Pacific Region, Pathways units are offered at Mission Institution, Mountain Institution, and FVI.<sup>66</sup>

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63 GL 702-1, para 1.

64 GL 702-1, para 15(o).

65 GL 702-1, paras 12(f), 15(c), Annex A.

66 CSC, The Strategic Plan for Aboriginal Connections (2013).

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**Minimum security institutions** can provide **Pathways transition units**. If you are in a medium security Pathways unit, you may be able to transfer into the minimum security Pathways transition unit as a next step. To be approved, you will need to show your commitment to traditional healing, values and beliefs, and show that you can take responsibility for your own healing. In the Pacific Region, a Pathways transition unit is offered at William Head Institution and FVI. Kwikwèxwelhp Healing Village is a minimum security facility in British Columbia where male prisoners may be able to transition from a medium security Pathways unit.

### **Joining Pathways**

You can apply to join Pathways through your Case Management Team, the Elder or the Aboriginal Liaison Officer.

To be eligible for the Pre-Pathways day program, you should have participated in ceremonies with Elders regularly and have shown that you can work with others in a positive, non-confrontational manner.<sup>67</sup>

If you apply to live on a Pathways unit, staff will look for whether you:

- have worked significantly with Elders for approximately 3 to 6 months to address areas of healing;
- have shown that you are committed to working with Elders using traditional healing interventions;

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Online: <http://www.csc-scc.gc.ca/publications/005007-2002-eng.shtml>

67 GL 702-1, Annex A



- 
- have shown that you are committed to following a traditional Indigenous way of life and are ready for a more intensive healing environment 24 hours a day;
  - have made a serious commitment to pursue your healing journey;
  - are committed to your Correctional Plan;
  - have the ability to transfer to lower security or to seek a conditional release within 6-12 months of placement on the healing unit; and
  - have the agreement of the Elder.<sup>68</sup>

If you are on a Pathways unit, you might be allowed to transfer to a Pathways transition unit if can be transferred to minimum security, you have continually shown your commitment to traditional healing, values and beliefs, and you are able to take responsibility for your own healing in preparing for release.<sup>69</sup>

If there is not enough space in Pathways, your name will be added to a wait list.<sup>70</sup>

If you are admitted to Pathways, you must agree to work with the Elders and staff to follow a healing path. You will also be required to follow the rules of the Pathways program, like not using drugs or alcohol.<sup>71</sup>

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68 GL 702-1, paras 1, 12(g), Annex A.

69 GL 702-1, Annex A.

70 GL 702-1, para 15(g).

71 GL 702-1, para 15(h).

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## Temporary absences

The warden can authorize temporary absences to allow you to participate in cultural and spiritual ceremonies and other rehabilitative activities.<sup>72</sup>

## Transfer to an Indigenous community or Healing Lodge

You might be able to serve part of your sentence in an Indigenous community or Healing Lodge. This is called a **section 81 agreement**.<sup>73</sup>

If you are interested in transferring to an Indigenous community or Healing Lodge, you should tell your IPO during intake so that this goal will be part of your Correctional Plan. You can also talk to your IPO about this later on.

To be eligible for a transfer to an Indigenous Community or Healing Lodge, you must:

- be able to be classified as minimum security (or in rare cases, medium security);
- be committed to the Healing Lodge's philosophy and your Healing Plan;
- be willing to continue with your healing journey;
- be willing to follow the rules of the Healing Lodge; and

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72 CCRR, ss 9(f), 155(f).

73 CCRA, s 81.

- 
- have the agreement of a Healing Lodge that is able to provide for your programming and reintegration needs.<sup>74</sup>

When you make a request to be transferred, CSC must give you a response in 60 days.<sup>75</sup> If you are refused a transfer to an Indigenous community or healing lodge, you might be able to challenge it in court or through a human rights complaint.<sup>76</sup> See PLS' booklets "Writing an Effective Grievance" and "Human Rights for Federal Prisoners".

### **Indigenous communities**

Transfers to Indigenous communities are very rare.

You can be transferred to an Indigenous community or halfway house only if:

- there is an agreement between CSC and the community or halfway house;
- you agree to the transfer and the rules of the community or halfway house; and

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74 CSC, GL 710-2-1: CCRA Section 81: Transfers (2017-05-15), para 8 ("GL 710-2-1").

75 CCRR, s 114.

76 *Ewert* at para 61; *Spirit Matters* at paras xii, xiv, 76-78; Standing Committee on the Status of Women, "A Call to Action: Reconciliation with Indigenous Women in the Federal Justice and Correctional Systems" (2018) at 115-117 ("2018 Report of the Standing Committee on the Status of Women").

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- the community or halfway house can meet your programming needs and keep the public, you and any victims safe.<sup>77</sup>

The community does **not** need to have a formal healing lodge.

In the Pacific Region, the following Indigenous communities and halfway houses might consider taking part in section 81 custody agreements:

- **Indigenous communities**

Cowichan Tribe Community, Duncan, BC

Nak'azdli First Nation, Fort St. James, BC

Prince George Urban Aboriginal Justice Society, Prince George, BC

Sto-lo Nation, Chilliwack, BC

Secwepemc Community, Kamloops, BC

Sliammon First Nation, Powell River, BC

Tsleil-Waututh Nation, North Vancouver, BC

Wet'suwet'en Nation, Smithers, BC

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77 Correctional Service of Canada, Aboriginal community development in corrections (last modified 2015-03-05) (Archived). Online: <http://www.csc-scc.gc.ca/aboriginal/11-eng.shtml>

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- **Indigenous halfway houses**

Circle of Eagles Lodge Society, Vancouver, BC

Circle of Eagles Society – Anderson Lodge (for women),  
Vancouver, BC

Cwenengitel Aboriginal Society, Surrey, BC

Tsow Tun Le Lum Society, Nanaimo, BC

Linkage House, Kamloops, BC

Kenneth Creek Camp, Prince George, BC

### **Transfer to a Healing Lodge**

Healing Lodges are minimum security or both minimum and medium security facilities that focus on traditional Indigenous teachings. Some are run by CSC and others are run by Indigenous communities.<sup>78</sup> There are still very few healing lodges, only some of which are operated by Indigenous communities.

**CSC must consider a Healing Lodge as your first option for placement if you are classified as minimum security at intake.<sup>79</sup>**

Transfer to a Healing Lodge or a minimum security prison should be your next step if you have successfully participated in a medium security Pathways unit.<sup>80</sup>

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78 CD 702, Annex A.

79 CCRA, ss 4(c), 28, 81.

80 GL 702-1, para 15(o).

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Tell your IPO if you are interested in transferring to a Healing Lodge. The first step is to request an interview with Healing Lodge staff. You can submit this request at any time to your IPO, Primary Worker, or a Healing Lodge staff member.<sup>81</sup> It is up to the Healing Lodge director whether or not to accept you.<sup>82</sup>

You will also need to submit a voluntary transfer request.<sup>83</sup> CSC has 60 days from when you submit your transfer request to make a decision.<sup>84</sup>

You can be involuntarily transferred out of a Healing Lodge back to the prison if you are considered a risk to staff and public safety and no longer manageable at the Healing Lodge.<sup>85</sup>

### **Healing Lodge temporary absence requests**

You can also ask to go on a temporary absence to a Healing Lodge to participate in treatment programs or cultural and spiritual ceremonies.<sup>86</sup> If you are interested, give your request to your IPO. Your IPO will submit your request to the Healing Lodge director.

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81 GL 710-2-1, paras 13, 15.

82 GL 710-2-1, para 8(e).

83 GL 710-2-1, para 10.

84 CCRR, s 114; GL 710-2-3: Inmate Transfer Processes (2018-01-15), paras 22, 40-41, Annex B: Delegation of Authority, Timeframes for Decision and Timeframes for Inmates' Notification.

85 GL 710-2-1, para 30.

86 CSC, CD 710-3: Temporary Absences (2016-06-01), paras 6(f), 37.

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## Healing Lodge locations

There are no Healing Lodges in the Pacific Region.

Kwikwèxwelhp Healing Village is a CSC-run minimum security institution in Harrison Mills, BC, and acceptance there is based on similar rules.

- **CSC-run Healing Lodges in other parts of Canada**

Pê Sâkâstêw Centre (Minimum) in Hobbema, Alberta

Okimaw Ohci Healing Lodge (Medium/Minimum) for women in Maple Creek, Saskatchewan (children can also stay)

Willow Cree Healing Lodge (Minimum) in Duck Lake, Saskatchewan

- **Indigenous community-run Healing Lodges**

Stan Daniels Healing Centre (Minimum) in Edmonton, Alberta

Prince Albert Grand Council Spiritual Healing Lodge (Minimum) on the Wahpeton First Nation near Prince Albert, Saskatchewan

O-chi-chak-ko-sipi Healing Lodge (Minimum) in Crane River, Manitoba

Waseskun Healing Centre (Minimum) in Saint-Alphonse-Rodriguez, Quebec

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Buffalo Sage Wellness House for Women (Minimum/  
Medium) in Edmonton, Alberta (children can also stay)<sup>87</sup>

## **Transfer to a Health Facility**

If you are experiencing a serious illness or mental health problem, you can request to be transferred to a health facility.<sup>88</sup> This might be a good idea if you are being kept in maximum security because of “behaviour problems” caused by a mental disability. You can request a move to a health care environment, where you could get help for things like trauma, addiction, FASD or other mental health issues.

## **Access to your Family**

You should be able to access your children and other family members through phone calls or visits. See PLS’ booklet: “Visits: Your Legal Rights”.

If you are in a women’s prison and have a child under 19 years old, you might be able to apply to have your child come and stay with you for periods of time. See PLS’ booklet: “Mother-Child Program in Federal Prisons”.

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87 CSC, Correctional Service Canada Healing Lodges, Online: <http://www.csc-scc.gc.ca/aboriginal/002003-2000-eng.shtml> (Last updated 2018-09-28).

88 CCRA, s 29.



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If you are being refused access to your family, you might be able to challenge this in court or through a human rights complaint.<sup>89</sup> See PLS' booklets: "Writing an Effective Grievance" and "Human Rights for Federal Prisoners".

## Parole

This section is limited to your rights in the parole process as an Indigenous person. For complete information about the parole process, suspension, statutory release, long term supervision orders, the dangerous offender designation, temporary absences and Parole Board appeals, see the Prisoners' Legal Services booklet: "Conditional Release".

### Recommendations to the Parole Board

Your Parole Officer makes recommendations to the Parole Board whenever the Parole Board is going to make a decision about you. These recommendations must consider your Aboriginal Social History (see the factors near the beginning of this booklet). They must also explain how your Aboriginal Social History has impacted your criminal history and your behaviour in prison and the community.<sup>90</sup>

Your Parole Officer must explain how their recommendations meet your needs given your cultural and spiritual background and the disadvantage you have faced as an Indigenous person.<sup>91</sup>

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89 *Ewert* at para 61; 2018 Report of the Standing Committee on the Status of Women at 142-146.

90 CSC, CD 712-1: Pre-Release Decision-Making (2018-01-15), Annex E ("CD 712-1").

91 CCRA, s 4(g); CD 712-1, Annex E; *Ewert* at paras 53-61; *Canadian Human Rights Act*, RSC 1985, c H-6, ss 2, 3.

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For more information on parole or statutory release, see PLS' booklet: "Conditional Release". Also see the sections below.

## **Parole Board Decisions**

When the Parole Board is making a decision about whether to release you or what conditions to put on you, they must consider your Aboriginal Social History and consider the disadvantage and discrimination that you have faced as an Indigenous person.<sup>92</sup>

The Parole Board should consider the alternatives to keeping you in prison, such as halfway houses or community-based programs which could help you rehabilitate and reintegrate into the community.<sup>93</sup>

## **Elder-assisted hearings**

If you would like an Elder or Cultural Advisor to assist at your Parole Board hearing, you can make a written request through your IPO.<sup>94</sup> You can also ask to have an Elder you know from the community attend your hearing.

At an Elder-assisted hearing, the Parole Board Elder or CSC Elder will attend and give the Parole Board information about Indigenous culture, experiences and traditions. The Elder might ask you questions about your traditions and spirituality, your progress

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92 *Ewert; Twins* at paras 58, 66-67.

93 *Twins* at para 57; *Gladue; R v Ipeelee*, 2012 SCC 13 at para 69; *Ewert* at paras 57-59; *Frontenac Ventures Corporation v Ardoch Algonquin First Nation*, 2008 ONCA 534 at para 56; *R v Sim*, 2005 CanLII 37586 (ONCA) at para 16; *Re Alexis*, [2003] BCRBD No 1 at para 80.

94 CD 712-3, para 8.

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toward healing and your community support. The Elder might offer you guidance, and can advise the Parole Board about cultural and spiritual factors. The Elder does not take part in the Board's decision.<sup>95</sup>

Elder-assisted hearings take place in person. They are usually held in a circle. You can request that the Elder say a prayer and provide a ceremony such as a smudge for the people at the hearing.<sup>96</sup>

### **Release to an Indigenous community for parole**

If you would like to be released on parole to an Indigenous community, talk to your IPO. CSC must give the community notice of your parole application and a chance to make a plan for your release and integration into the community.<sup>97</sup> This is called a **section 84 agreement**.

An Indigenous community is defined as:

- a First Nation;
- a Tribal Council or Band; or
- a community organization or other group with mainly Indigenous leadership (such as an Indigenous halfway house, treatment centre or Friendship Centre).<sup>98</sup>

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95 Parole Board Manual, c 11.1.1.

96 Parole Board Manual, c 11.1.1, para 9.

97 CCRA, s. 84.

98 CCRA, s. 79.

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You can apply to be released to an Indigenous community on any kind of conditional release, including:

- temporary absences (escorted or unescorted);
- work release;
- day parole;
- full parole;
- statutory release; or
- long-term supervision.<sup>99</sup>

It is a good idea to ask to go on temporary absences or work releases to an Indigenous community before parole to help develop your release plan.<sup>100</sup>

If you are applying for day parole, you might be able to arrange residency within an Indigenous community without going through the section 84 agreement process.<sup>101</sup> You can talk about this option with your IPO.

### **Section 84 process**

It is best to start working with your IPO on a release plan to an Indigenous community as soon as you can. If you start early, you might be able to have this goal reflected in your Correctional Plan.

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99 CSC, “Path Home: Release Planning Kit – Section 84 of the Corrections and Conditional Release Act” (2014-03-31); CCRA, ss 84, 84.1.

100 See CCRR, s. 155(f).

101 CCRA, s. 99(1) (Note: definition of “day parole” includes “or other location”).

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## **Step 1: Talk to your IPO**

Tell your IPO as early as possible that you want to be released to an Indigenous community.<sup>102</sup>

## **Step 2: Choose an Indigenous community**

Find an Indigenous community that you would like to be released to. You might want to be released to your own reserve, to a halfway house, or to a Friendship Centre in the town or city where you have family and support. If you do not already have contacts in an Indigenous community where you want to live, you can ask your IPO, Aboriginal Liaison Officer, the Regional Elder or the Aboriginal Community Development Officer.

## **Step 3: Meet with the Aboriginal Community Development Officer**

Meet with the Aboriginal Community Development Officer. This person helps you with your application. If there is no Aboriginal Community Development Officer assigned to your community, you can work with your IPO to apply.

## **Step 4: Write a letter to the Indigenous community**

Write a letter to the Indigenous community where you want to live. There is a sample letter in Commissioner's Directive 712-1 "Pre-Release Decision Making", Annex C.

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<sup>102</sup> You can initiate the process or change your mind about pursuing a s. 84 release at any time during your sentence: (CSC, Guideline 712-1-1: CCRA Sections 84 and 84.1 Release Planning Process (2018-08-07), Annex E: para 3(e) ("GL 712-1-1").

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Ask your IPO or the Aboriginal Community Development Officer for the name of the contact person for the community where you want to live. If there is no contact person, you can address your letter to the Chief and Council of the First Nation or to the director of the organization.

In your letter, introduce yourself. Say where you want to live and ask for help with your release plan.

You will be asked to sign a “Consent for Disclosure of Personal Information” form so that CSC can give the community information about you.

Give the letter and consent form to the Aboriginal Liaison Officer. They will forward it to your IPO.

Your Case Management Team will review your letter and form and it will be sent to the Indigenous community.

To continue, the Indigenous community must agree to take part in your release plan. If the community does not agree, you can apply to another community or apply again after you have made more progress in your correctional plan.

### **Step 5: Write a follow-up letter**

If the Indigenous community responds positively to your letter, you might want to write a follow-up letter to begin to make a release plan with them. Or, if you already know who the contact person in the community is, you could send your personal contact details to them and begin to communicate directly.

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In your follow-up with the Indigenous community, you might want to include details like:

- which prison you are in and where it is
- the nature of your criminal history
- activities you took part in in prison
- activities you took part in before prison
- any support you have in the community
- reasons you want to go to the Indigenous community.<sup>103</sup>

Let your IPO or the Aboriginal Liaison Officer know when you have followed up with the community. Your IPO might need to review the follow-up letter and send it for you.

### **Step 6: In person meetings**

You might want to ask for a temporary absence to the Indigenous community to meet with the community contact person and to work on your release plan with the community.<sup>104</sup>

Otherwise, you could ask a representative from the Indigenous community to visit you in prison or to communicate with you by phone.

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103 GL 712-1-1, para 7.

104 See GL 712-1-1, Annex E: Step 5.

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## **Step 7: Prepare a release plan**

Your release plan should include:

- community programs and services available to help you with your needs (such as AA meetings or counselling services);
- work or social assistance;
- a place to live;
- community support people;
- any need for health care or mental health services;
- ways to deal with any concerns of any victims in the community;
- how the community will be involved in monitoring your release plan and your behaviour; and
- any safety issues for you or your victim(s).<sup>105</sup>

## **Step 8: Parole Board hearing**

The last step is presenting your release plan to the Parole Board at your hearing. You might want to have someone from the Indigenous community at the hearing to support you as your assistant or as an observer.

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105 GL 712-1-1, Annex E: para 12(g).



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Sometimes the Parole Board will have your hearing in the Indigenous community. This is called a “Community-assisted hearing”. Talk to your IPO if this interests you.<sup>106</sup>

### **Your release**

If the Board grants your release to an Indigenous community, both CSC and your community are responsible for your supervision in the community. You will still need to report to a community parole officer (CPO).

You must follow your release conditions to avoid being suspended and returned to prison. Ask your CPO if you are unsure about your release conditions.

### **Indigenous halfway houses and programs**

- **Indigenous halfway houses**

Circle of Eagles Lodge Society, Vancouver

Circle of Eagles Society – Anderson Lodge (for women),  
Vancouver

Cwenengitel Aboriginal Society, Surrey

Kenneth Creek Camp, Prince George

Linkage House, Kamloops

Tsow-Tun Le Lum Aboriginal Society, Nanaimo

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106 Parole Board Manual, c 11.1.1.

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- **Community-based Indigenous programs**

British Columbia Society for Male Survivors of Sexual Abuse, Vancouver (childhood trauma)

Hey-Wey-Noqu Healing Circle, Vancouver (addictions and co-dependency)

Vancouver Aboriginal Friendship Centre (social, employment and housing services)

United Native Nations Ventures Program, North Vancouver (peer mentoring, employment counseling and career planning)

Kla-how-eya Aboriginal Centre, Surrey (social and employment services)

## **Getting legal help**

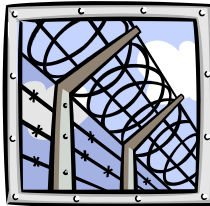
You can contact Prisoners' Legal Services for advice or assistance with issues that affect your liberty (such as segregation, disciplinary charges or parole) or about health care or human rights issues.

For assistance from Prisoners' Legal Services, you must have a referral from the Legal Services Society. Contact their call centre at 1-888-839-8889. Once you have a referral, you can call Prisoners' Legal Services directly at 1-866-577-5245.

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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