



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.

Contents

Basic rights for all prisoners	4
Indigenous rights	7
Trans rights	9
Security classification	12
Placement and requests to transfer	16
Appeals	18
Identification of staff	20
Physical restraint devices	20
Searches	21
Phone and mail	23
Urinalysis testing	25
Right to vote	26
Separate confinement	26
Voluntary separate confinement	31
“Enhanced Supervision Placement”	32
Disciplinary offences	35
Segregation pending disciplinary hearing	37
Disciplinary hearings	38
Penalties for breaking a rule	41
Applying for a reduction of your penalty	43

Appeal of disciplinary decision or penalty	43
Programs	44
Access to Indigenous Spirituality	46
Health care	50
Transfers	51
Remission awards	53
Parole applications	55
Complaints	59
Getting legal help	61

Basic rights for all prisoners

All prisoners have the right to:

- regular meals;
- daily exercise for at least one hour, outside if possible;
- clothing, a mattress and bedding;
- reading materials¹;
- 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.²

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

1 You are allowed to receive books or periodicals sent directly from a recognized retailer (for books, the retailer is Chapters) but there is a restriction on certain topics (Adult Custody Policy, cc 10.1.1-4).

2 *Correction Act Regulation*, BC Reg 58/2005, s 2(1) [CAR].

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 could endanger you or another person.³

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.⁴

You have the right to have your concerns addressed. If you bring a concern to a staff member, they are required to try to address your concern if possible.⁵

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 with the warden;
- how to file a complaint with the Investigation and Standards Office;
- how to appeal a disciplinary hearing decision; and
- how to apply for temporary absence or parole.⁶

3 CAR, s 2(2).

4 CAR, s 2(2).

5 CAR, s 4.

6 CAR, s 5(1).

If you can't understand this information, staff must try to help you understand it.⁷ You can also call Prisoners' Legal Services for information about your rights. There is information about how to contact Prisoners' Legal Services on the last page of this booklet.

7 *CAR*, s 5(2).



Indigenous rights

Indigenous people are over-represented in British Columbia prisons.⁸ Some of the reasons for this may include:

- Colonialism that causes family problems over generations from residential schools and the large number of children taken from their families and communities and put into foster care;⁹
- Systemic discrimination and prejudices against Indigenous people; and
- Poverty.

Indigenous background factors

When it makes decisions about you, BC Corrections must consider how you might be affected by the following factors because of your Indigenous background:

- low income;
- unemployment;
- lack of opportunities and options;

8 British Columbia, *Corrections & Aboriginal Justice* (accessed: 2018-11-21), online: <<https://www2.gov.bc.ca/gov/content/justice/criminal-justice/corrections/reducing-reoffending/aboriginal-justice>>.

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

- lack of formal education;
- substance abuse;
- loneliness;
- community fragmentation; and
- poor social and economic conditions.¹⁰

In this booklet, these are called the “**Indigenous background factors**”.

BC Corrections **must consider options that are culturally appropriate for you and make decisions that respond to your unique circumstances** as an Indigenous person.¹¹

The general information in this booklet applies to everybody. In addition to the general information in each section, look for this symbol throughout this booklet for extra information specific to your rights as an Indigenous person.

10 *R v Gladue*, [1999] 1 SCR 688 at paras 67-69 (“*Gladue*”); *Ewert v Canada*, 2018 SCC 30 at paras 57-58 (“*Ewert*”); *Twins v Canada (Attorney General)*, 2016 FC 537 at para 64 (“*Twins*”); *R v Ipeelee*, 2012 SCC 13 at paras 69, 83 (“*Ipeelee*”); *Frontenac Ventures Corporation v Ardoch Algonquin First Nation*, 2008 ONCA 534 at paras 56-57, leave to appeal refused [2008] SCCA No 357 (“*Frontenac*”); *R v Sim*, 2005 CanLII 37586 (ONCA) at para 16 (“*Sim*”); *Re Alexis*, [2003] BCRBD No 1 at para 80 (“*Re Alexis*”).

11 *Gladue* at paras 67-69; *Ewert* at paras 57-58; *Twins* at para 64; *Ipeelee* at paras 69, 83; *Frontenac* at paras 56-57; *Sim* at para 16; *Re Alexis* at para 80.



Trans rights

“Trans” includes many different identities and expressions. If your gender identity or expression is different from your sex at birth, or you consider yourself to be neither male nor female, both male and female, or two-spirited, the information included with this symbol might be useful for you.

You have a right to live as other prisoners do and to have your needs met without being discriminated against because of your gender identity or expression.¹²

You can choose to self-identify or not to self-identify as trans.¹³

If you identify as transgender during the classification process, prison staff are required to ask you for your chosen name and your preferred gender pronoun, and include this information in CORNET and in your file.¹⁴ They must refer to you in person and in all written documents by your preferred first name and gender pronoun, except in rare cases where your legal name is required for identification purposes.¹⁵

12 *Human Rights Code*, RSBC 1996, c 210, s 8 [BC Human Rights Code].

13 Ministry of Public Safety and Solicitor General, *Adult Custody Policy* (2018-06-01), c 4.10.1 [Adult Custody Policy].

14 *Adult Custody Policy*, c 4.10.2.

15 *Adult Custody Policy*, c 4.10.10.

For help with a legal name change or gender marker change, you can contact the *Gender Self Determination Project*, run by the PACE Society, at 604-828-4915. They can help with changes on all government documents except for passports. If you cannot get hold of them, you can call Prisoners' Legal Services.

Prison staff are supposed to keep information about your gender identity or expression private and confidential, except where staff need to have this information.¹⁶

If you identify as trans, much of the general information in this booklet applies to you. In addition to the general information, look for this symbol for extra information specific to your rights as a trans person.

Personal effects for trans prisoners

You are allowed to order canteen items that support your gender identity unless there are overriding safety or security concerns about the items.

You can request personal items to express your gender, including underwear consistent with your gender identity. These items should be provided and you should be allowed to keep them unless there are overriding safety or security concerns. If you request an item for health reasons, prison staff are required to consult with the director of mental health services and/or Correctional Health Services.¹⁷

16 Adult Custody Policy, c 4.10.5.

17 Adult Custody Policy, c 4.10.6.

Cell sharing for trans prisoners

If you are housed according to your birth sex or if you have had gender confirming surgery, you are allowed to have your own cell.¹⁸

You are not allowed to share a cell with a female prisoner if your sex at birth was male.¹⁹

You are not allowed to share a cell with a male prisoner if your sex at birth was female and you have not had gender confirming surgery.²⁰

Toilet and shower access for trans prisoners

All transgender prisoners must be offered individual and private access to the shower and toilet.²¹

18 Adult Custody Policy, c 4.10.8.

19 Adult Custody Policy, c 4.10.8.

20 Adult Custody Policy, c 4.10.8.

21 Adult Custody Policy, c 4.10.9.

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, and staff and inmates in the prison;
- assigning prisoners to the lowest level of security possible;
- giving access to health care, education, work activities, social programs and recreational programs to meet case management goals;
- giving opportunities for self-improvement for prisoners who meet the criteria for special programs; and
- satisfying the intent of the sentence.²²

Prisoners are classified to **secure custody** (the most restrictive setting) based on their danger to the community or prison, their escape risk, behaviour and other factors.²³

- Prisoners will be considered a danger to the community or prison 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 unpredictable and likely to assault, or if they behave violently or aggressively in a way that makes them a risk to other prisoners or to staff.

22 Adult Custody Policy, c 4.2.8.

23 Adult Custody Policy, c 4.5.3.

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- 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, continually violates rules and does not respond well to discipline.
 - There are a number of other factors. See section 4.5.3 of the *Adult Custody Policy: Criteria for Classifying an Inmate to Secure Custody*.

Prisoners can be classified to **open custody** (the least restrictive setting) if they:

- have no pattern of violence;
- have no history of escape in the past 5 years and are considered unlikely to escape;
- have no ongoing immigration issues;
- are cleared medically; and
- are able to interact well with others with minimal supervision.²⁴

Prisoners who are classified as open custody can be considered for work in the community.²⁵

24 Adult Custody Policy, c 4.5.5.

25 Adult Custody Policy, c 5.2.7.

Sentenced prisoners might be classified to **medium custody** if they do not need secure custody and do not meet the criteria for open custody. The other criteria are that they 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.²⁶

If you are on **remand** or being held in **immigration detention**, you will normally be housed in secure custody, but you can make a request for medium security. The warden might approve a move to medium security if, for example, you will be on remand for a long time and want to access programs.²⁷ If you have not been sentenced, you must be housed separately from convicted prisoners where possible and must not be assigned to work programs unless you consent.²⁸

26 Adult Custody Policy, c 4.5.4.

27 Adult Custody Policy, c 4.5.4.

28 CAR, s 3; For more information on immigration detainees, see the document: BC Corrections, *Immigration Detainees: Guidelines for Correctional Staff*.

Within the prison, you can be classified to **protective custody** when there is clear evidence that protective custody is needed for prisoner safety.²⁹

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.³⁰

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 can be withheld under privacy law.³¹

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



Security classification for indigenous prisoners

When BC Corrections decides on your security classification, they must consider how you might be affected by the **Indigenous background factors** listed at the beginning of this booklet.³²

29 See details at Adult Custody Policy, cc 4.3.9, 4.5.10.

30 Adult Custody Policy, c 4.4.2.

31 *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c 165, s 4.

32 *Gladue* at paras 67-69.

Placement and requests to transfer

You should be placed in a prison as close to your home as possible, based on your security level, bed space, and any special programs you are part of.³³



When you get to prison, you can ask to go to a prison that fits with your gender identity. If you are already in a prison that does not fit with your gender identity, you can ask for a transfer.

Corrections staff are required to do an individual assessment to determine where to place you.³⁴

The deputy warden at your current prison should meet with you. At this meeting, you can provide information that you want them to consider in the decision. You should talk about why the transfer is important to you, such as how it will make you feel safer or how it will let you access programs and services appropriate for your gender. If there are other issues you are facing because of your gender, you could also talk about how a transfer to a men's or women's prison would help to resolve these issues.

33 Adult Custody Policy, c 4.5.2.

34 Adult Custody Policy, c 4.10.4.

The decision is based on factors such as:

- your preference;
- your gender expression;
- your behavior in and out of custody;
- information about you during past stays in custody;
- the impact your transfer would have on the prisoner population and staff;
- safety and security; and
- case management information such as your security classification, risks, needs, and programs.

The deputy warden is required to provide you with their decision and reasons in writing within 30 days of your request to transfer. If the decision will take longer than this, they must give you reasons for the delay and make the decision within 60 business days.

If your transfer is approved, you should be transferred as soon as operationally possible.

Prisons in BC are designed for either men or women. If you do not identify as either a man or woman (gender non-binary), and do not feel like you could live with dignity in either a men's or women's prison, you can call Prisoners' Legal Services for help.

Appeals

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. The Investigation and Standards Office can only make a recommendation about your classification or placement. See the "Complaints" section later in 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. You might also want to explain how the reclassification would meet the intent of your original sentence management plan. A classifications officer will review your request and your file, and interview you if necessary. They will tell you their decision. You can ask them questions about their decision.³⁵

You can also 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.³⁶

35 Adult Custody Policy, c 4.5.7.

36 Adult Custody Policy, c 4.5.11.



If you make a request to transfer and your request is denied, you can submit a complaint to the warden. The deputy warden should give you a chance to respond to concerns used to deny your requested placement, and might request a meeting with you to discuss your complaint.³⁷

If you are not satisfied with the warden's response to your complaint, you have 7 days to make a complaint to the Investigation and Standards Office. The Investigation and Standards Office can only make a recommendation. You could also file a human rights complaint. See other steps that you can take in the "Complaints" section at the end of this booklet.



You can also ask to be reclassified if your Indigenous heritage was not considered when you were first classified. If you are not reclassified to a lower security level, you can appeal this decision to the warden and then make a complaint to the Investigation and Standards Office if your Indigenous heritage is still not properly considered.

37 Adult Custody Policy, c 4.10.4.

Identification of staff

You have the right to know the names of staff working in the prison. Staff must wear name tags.³⁸

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.³⁹

Restraints cannot be used for more than 4 hours unless they are allowed by the warden, or if you are on an escorted absence from the prison. The warden can allow restraints to be used for up to 16 hours if they have a good reason to believe they are needed for safety, and other ways of controlling you haven't worked or are not reasonable.⁴⁰

Restraints cannot be used for longer than 16 hours unless approved by the provincial director of BC Corrections. If this happens, the warden must review your condition every 12 hours.⁴¹

38 CAR, s 6.

39 *Correction Act*, SBC 2004, c 46, s 12 [*Correction Act*]; CAR, s 9;
For more details see Adult Custody Policy, c 1.3, 1.7.

40 CAR, s 9(2), (3).

41 CAR, ss 9(4)-(6).

Call Prisoners' Legal Services if you have been restrained unreasonably.

Searches

All prisoners are searched when they enter prison.⁴²

Staff are allowed to search prisoners and their cells, personal possessions and clothing to find contraband, even if they do not have an individualized suspicion.⁴³

But Corrections Branch policy says that staff are only allowed to search a prisoner's cell or property if allowed by the warden (for example, before a new person moves into the cell) or if they have a good reason to believe that the person has contraband.⁴⁴

Staff are only allowed to strip search you 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 might have contraband or they 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

42 *Corrections Act*, s 13(1); Adult Custody Policy, c 1.15.4.

43 *Corrections Act*, s 13(2)-(3).

44 Adult Custody Policy, c 1.1.5.

search is necessary and get authorization from the warden. They can only conduct a strip search without waiting for approval from the warden if they have good reason to believe that waiting would put someone in danger or cause evidence to be lost.⁴⁵

Strip searches must be done by a staff member of the same sex as you unless the warden determines that it would cause a delay that would result in danger to human life or safety. 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 immediately after the search. Strip searches must not be done on camera.⁴⁶



Frisk and strip searches for trans prisoners

You can tell staff the gender of the staff member you would prefer to frisk search or strip search you. You can also ask to be searched by both a male and a female officer, and say who you would prefer to search which body parts (this is called a “split search”). Prison staff will record your preferences in CORNET, but you can change your preferences at any time. If staff are going to do a strip search, they must confirm your gender preference with you first.

45 CAR, s 12.

46 CAR, s 11; Adult Custody Policy, cc 1.15.6-9.

Phone and mail

BC Corrections records all your telephone calls and can intercept your mail at any time.⁴⁷ They are not allowed to record calls with your lawyer or read mail to or from your lawyer.

Usually, BC Corrections is not allowed to listen to the recordings of your calls and can only keep them for 30 days. But they can keep them for longer if they have a good reason to believe that you are involved in illegal activity, harassing or causing harm to others or participating in an activity that could jeopardize the management, operation or security of the prison. They are not allowed to release or disclose the recording unless they have lawful authority.⁴⁸

BC Corrections can only restrict your communications, listen to your telephone calls or recordings, or read your mail if:

- They have a good reason to believe you are involved in illegal activity, harassing or causing harm to others or participating in an activity that could jeopardize the management, security or operation of the prison.
- A court order restricts contact between you and another person. Or,
- Another person has asked that you not contact them.⁴⁹

47 *Correction Act*, s 19(2); Adult Custody Policy, c 7.8.11.

48 *CAR*, s 15.

49 *Correction Act*, s 19(3); Adult Custody Policy, cd 7.4.7(3)-(5), 7.8.19.

Only a manager or correctional supervisor authorized by the warden is allowed to listen to your phone calls or recordings of them.

You must be given written notice and the reasons for any restriction of your right to communicate, without delay.⁵⁰

BC Corrections can also monitor your telephone communications for a short a time as necessary in order to maintain and repair the recording system.⁵¹

BC Corrections is not allowed to monitor (read or listen to) privileged communication. This includes communications with your legal advocate, lawyer, the Investigation and Standards Office, the Ombudsperson, and members of Parliament or the Legislative Assembly. But staff might open privileged mail to check it for contraband.⁵² If staff search privileged documents, they should allow you to be present during the search. If you cannot be present, they should video record the search for you to watch later. They should also document what they did to try have you present at the search.⁵³

When you send mail or make a call, staff can attach the name and address of the prison to your mail and play a message at the beginning of your call saying that the call is coming from a correctional centre.⁵⁴

50 *Correction Act*, s 19(4).

51 *Correction Act Regulation*, s 14(3)(b).

52 *CAR*, ss 13, 14(4).

53 BC Ombudsperson, *Inmates rights respected* (case summary) (2013), online: <<https://www.bcombudsperson.ca/documents/inmates-rights-respected>>.

54 *Correctional Act*, s 19.1; *CAR*, s 14.1.

Urinalysis testing

Corrections Branch staff can 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 can be done regularly or if the staff member has good reason to believe that you have breached the condition.⁵⁵

The staff member must have the permission of the warden before making the demand.⁵⁶

Staff must give you the reason for the demand and tell you what can happen if you refuse to give the sample. Refusing to provide a urine sample on demand will result in a disciplinary charge. Also, if you are required to provide a urine sample as a condition of a temporary absence or parole, refusing to provide the sample could result in your temporary absence or parole being revoked.⁵⁷

The staff member 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* and Adult Custody Policy.⁵⁸

55 *Correction Act*, s 20(1); Adult Custody Policy, c 1.17.8.

56 *CAR*, s 16(2).

57 *Corrections Act*, s 20(1)-(2); *CAR*, ss 16(3), 21(n); Adult Custody Policy, c 1.19.7.

58 *Correction Act*, s 20(2); *CAR*, s 16; Adult Custody Policy, c 1.19.

Right to vote

Both remanded and sentenced prisoners have the right to vote in provincial and federal elections.⁵⁹ Remanded prisoners, people in the community on probation or parole, and prisoners serving sentences for non-indictable offences have the right to vote in municipal elections as long as they can meet the residency requirement.⁶⁰ Voting can be done by proxy votes, mobile polls or polls at the prison. You will not be released from prison to vote.⁶¹

Separate confinement

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

To make an order to separately confine 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);

59 *Sauve v Canada (Chief Electoral Officer)*, 2002 SCC 68; *Elections Act*, RSBC 1996, c 106, ss 29-30, Part 12; *Adult Custody Policy*, c 10.5.1(1).

60 *Local Government Act*, RSBC 2015, c 1, ss 64(2)(a), 67.

61 *Canada Elections Act*, SC 2000, c 9, ss 244-262; *Adult Custody Policy*, c 10.5.

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- would be at risk of serious harm (or are likely to be) if you are not separately confined;
 - need to be separately confined for a medical reason⁶²; or
 - have contraband hidden in your body.⁶³

The warden must give you the reasons for your separate confinement, in writing, within 24 hours.⁶⁴

You must be released from separate confinement within 72 hours unless the warden decides to extend the order under section 18 of the *Correction Act Regulation*.⁶⁵

The warden can decide to extend your separate confinement order under section 18 of the *Correction Act Regulation* for 15 days at a time.⁶⁶

To extend the order for another 15 days, the warden must review the circumstances for your separate confinement and believe that the reasons still exist and that the separate confinement should continue.⁶⁷

62 For more details on segregation for medical observation, see Adult Custody Policy, c 1.21.4

63 CAR, s 17(1); Adult Custody Policy, c 1.22.

64 CAR, s 17(4); Adult Custody Policy, c 1.22.7.

65 CAR, ss 17(2), 18(1); Adult Custody Policy, c 1.22.5.

66 CAR, s 18(1); Adult Custody Policy, c 1.22.8.

67 CAR, s 18(1).

Within 24 hours of deciding to extend your separate confinement, the warden must give you, in writing:

- the reason for the separate confinement;
- the period of time you will be in separate confinement; and
- the reason for the length of time of your separate confinement.⁶⁸

The warden must give you enough information about the reasons you are there to allow you to respond.⁶⁹

After deciding to extend your separate confinement, the warden must give you a “reasonable opportunity” to make submissions about why you should not be in separate confinement or why it should be for less time.⁷⁰

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 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 consider them within a reasonable period of time and give you written reasons for continuing or changing your order.⁷¹

68 CAR, s 18(3)(a); Adult Custody Policy, c 1.22.8.

69 Adult Custody Policy, s 1.22.9(6).

70 CAR, s 18(3)(b); Adult Custody Policy, c 1.22.9.

71 CAR, s 18(4)-(5).

You have a right to make submissions about your separate confinement at least once every 15 days.⁷²

Every 30 days, a mental health professional reviews the impact that separate confinement is having on you, and the deputy warden reviews the results of the mental health review and the decision to keep you in separate confinement. Staff must notify the warden in writing of your overall status at least once every 60 days. The warden can end your separate confinement at any time.⁷³

If the mental health professional says you are okay to stay in separate confinement, call Prisoners' Legal Services for help.

While you are in separate confinement, staff cannot withhold your basic rights (listed in the Basic Rights section earlier in this booklet), unless providing you with these rights would affect the overall operation of the separate confinement unit or pose a safety risk. Staff are not allowed to withdraw your rights, privileges, and access to things as punishment.⁷⁴

International law prohibits the use of solitary confinement for more than 15 days or for any amount of time for prisoners with mental disabilities. Call Prisoners' Legal Services if you have been in separate confinement for more than 15 days or if you are in separate confinement and suffer from a mental disability.

72 Adult Custody Policy, s 1.22.9(4).

73 CAR, s 20; Adult Custody Policy, cc 1.22.9(8-11), 1.22.11.

74 CAR, s 2(2); Adult Custody Policy, c 1.22.6.



BC Corrections has a duty to address the over-representation of Indigenous people in prison by restricting your liberty as little as possible.

Before they decide to place you in separate confinement, prison staff must consider how you might be affected by the Indigenous background factors listed at the beginning of this booklet.⁷⁵ They must also consider culturally appropriate or restorative options that could be used instead of separate confinement.

If your Indigenous background was not considered in the decision to put you in separate confinement, you can write a complaint to the warden. You can also make a written submission to the warden if you get a notice under section 18 of the *Correction Act Regulation* to keep you in longer term separate confinement. Include any of the Indigenous background factors that affect you.

While you are in separate confinement, you have the right to access an Elder or Aboriginal Liaison and to take part in spiritual activities with them or on your own. You also have a right to access your spiritual items and to access Indigenous programs. Any limits on these rights must be reasonable and based on valid safety concerns. For more information, see the section on “*Access to Indigenous Spirituality*” later in this booklet.

75 *Gladue* at paras 67-69; *Ewert* at paras 57-58; *Twins* at para 64; *Ipeelee* at paras 69, 83; *Frontenac* at paras 56-57; *Sim* at para 16; *Re Alexis* at para 80.

Voluntary separate confinement

If you are worried that you are at risk of serious harm, you can ask for an agreement with the warden that you voluntarily be confined separately. You can ask that the agreement be reviewed at any time. The warden (or their designate) is supposed to meet with you at least once every 30 days to determine if your voluntary separate confinement status will continue.⁷⁶



BC Corrections is required to integrate trans prisoners with the prisoner population. But where there are health or safety concerns that cannot be resolved and there is not another placement that is appropriate, BC Corrections policy allows them to house you in separate confinement.

BC Corrections must make another arrangement for you to get you out of separate confinement as quickly as possible. While you are there, they must give you as many social and programming opportunities as possible.⁷⁷

76 CAR, s 19; Adult Custody policy, cc 1.22.4, 1.22.10.

77 Adult Custody Policy, c 4.10.7.

“Enhanced Supervision Placement”

“Enhanced Supervision Placement” is similar to segregation because prisoners are often locked in their cells for long periods of time.

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 aggressive, challenging, or abusive behaviour;
- court-ordered no-contacts when no other placement is reasonable or effective;
- significant peer issues;
- patterns of non-compliance; or
- patterns of property damaging behaviour.⁷⁸

78 Adult Custody Policy, c 4.8.3.

Staff must give you written reasons for your placement in Enhanced Supervision as soon as possible. Generalized information is not enough. Corrections must give you the particulars of time, place, people involved, and the alleged misbehavior that led to the decision to place you in Enhanced Supervision.⁷⁹

You have the right to challenge the decision to place you in Enhanced Supervision by writing to the warden.

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 is requiring you to complete; and
- how you are expected to behave.⁸⁰

The case manager should give you a copy of the case plan and an opportunity to make submissions about it. If they don't, you can request a copy of your case plan. The prison should give you your case plan if you ask for it. Your case plan can change.⁸¹

While you are in Enhanced Supervision, BC Corrections only gives you access to programs that are included in your case plan.⁸²

79 *Charlie v BC (Attorney General)*, 2016 BCSC 2292 at paras 29, 34.

80 Adult Custody Policy, c 4.8.4.

81 Adult Custody Policy, c 4.8.4.

82 Adult Custody Policy, c 4.8.7.

Your progress on the case plan and your placement in Enhanced Supervision is reviewed every week by the warden or their designate. You can ask the warden to review your placement in Enhanced Supervision at each review.⁸³

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.



Staff must consider how you might be affected by the **Indigenous background factors** listed at the beginning of this booklet before they decide to place you on Enhanced Supervision and when making your case plan.⁸⁴

If your background as an Indigenous person was not considered when you were placed on Enhanced Supervision or when your case plan was developed, or if you think your placement was not fair, you can make a complaint to the warden. If you are not happy with the warden's response, you can make a complaint to the Investigation and Standards Office.

83 Adult Custody Policy, c 4.8.6.

84 *Gladue* at paras 67-69; *Ewert* at paras 57-58; *Twins* at para 64; *Ipeelee* at paras 69, 83; *Frontenac* at paras 56-57; *Sim* at para 16; *Re Alexis* at para 80.

Disciplinary offences

You can be charged if you are accused of breaking a rule in section 21 of the *Correction Act Regulation*, such as by disobeying a direction of a staff member or the warden, or assaulting or threatening another person.⁸⁵

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.⁸⁶ Prisoners' Legal Services can give you advice on how to represent yourself at your hearing, and in some cases might 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. If the incident could lead to criminal charges, talk to a criminal lawyer before the disciplinary hearing.⁸⁷ If you are called to the hearing, ask for an adjournment to get legal advice.

You might be able to resolve an issue informally before you are charged. If staff believe you are breaking a rule, they must try to stop you from breaking the rule and give you a chance to stop. If you are accused of breaking a rule, staff must give you a chance to correct it if possible.

85 *Correction Act Regulation*, ss 21(1), 22.

86 See Adult Custody Policy, c 1.20.8(7); c 1.20.9(6).

87 Adult Custody Policy, cc 1.20.7, 1.17.10.

Staff must inform you of the rule that you broke and what you did to break that rule.⁸⁸

If the staff member believes that your breach of the rule cannot be resolved informally, they will write a report to the warden about what happened and you might be charged with a disciplinary offence.⁸⁹

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 all evidence related to the incident;
- 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.⁹⁰



Indigenous prisoners can ask that an Elder or Aboriginal Liaison be involved to help you resolve the issue informally before you are charged.⁹¹

88 CAR, s 22(1); Adult Custody Policy, c 1.20.2.

89 CAR, s 22(2)-(3).

90 CAR, s 23; Adult Custody Policy, cc 1.20.1(2) [right to procedural fairness], 1.20.2.

91 CAR, s 22.

Segregation pending disciplinary hearing

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 for your disciplinary hearing will not be lost.⁹²

The warden must review your segregation status every 24 hours until your hearing. If they decide that the reasons for your segregation no longer exist, you must be released from segregation.⁹³

If you are held in segregation pending your disciplinary hearing, you have all of your basic rights outlined in the Basic Rights section at the beginning of this booklet unless the warden decides that certain rights cannot be given in segregation. The warden must give you this decision in writing.⁹⁴

92 *CAR*, s 24(1).

93 *CAR*, s 24(2)-(3); Adult Custody Policy, c 1.21.3.

94 Adult Custody Policy, c 1.21.3.



The warden must consider your **Indigenous background** factors before deciding to place you in segregation pending your disciplinary hearing. If you are in segregation pending your hearing, you must be allowed access to spiritual activities and spiritual items unless there are valid safety reasons to deny them.

Disciplinary hearings

Disciplinary hearings are usually decided by a BC Corrections staff member who doesn't work at your prison. They are called the disciplinary chairperson.⁹⁵

The disciplinary chairperson should not be involved in your case before your hearing. They should not know about the events that led to the charge before hearing your case. You can also ask for a different person to hear your charge if you think that the chairperson might be biased against you for any other reason.⁹⁶

Your hearing must start within 72 hours of when the charge was approved. If you do not have a first appearance within 72 hours, BC Corrections cannot proceed with the charge. If you went to your hearing within 72 hours and it was adjourned, your hearing has started within 72 hours.⁹⁷

95 Awaiting update to Adult Custody Policy, c 1.20. Also see CAR, s 25; Adult Custody Policy, c 1.20.

96 CAR, s 25(2); Adult Custody Policy, c 1.20.6.

97 CAR, s 26.

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;
- your presence would put someone's safety at risk at the hearing; or
- you are seriously disrupting the hearing.⁹⁸

Hearings are usually done by video conference. They must be recorded.⁹⁹

Hearings must be fair. You have the right to know and see the evidence for and against you before the hearing starts.¹⁰⁰

Sometimes the warden appoints an investigating officer to investigate what happened and give evidence at your hearing. If an investigating officer is not appointed, the officer who charged you will give evidence at your hearing.¹⁰¹

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 say why you should be found not guilty.¹⁰²

98 CAR, s 26(3).

99 CAR, s 26(4); Recording is retained as per Adult Custody Policy, c 1.20.8, para 8.

100 Adult Custody Policy, c 1.20.1(2).

101 Adult Custody Policy, cc 1.20.3-4, 1.20.9(12).

102 Adult Custody Policy, c 1.20.1(2-4); Procedure in Adult Custody Policy, c 1.20.9.

You can ask for an adjournment if you need one to properly present your case. For example, you might ask for an adjournment if a witness you want to call is not there, or to talk to a lawyer.¹⁰³

The disciplinary chairperson will weigh all of the evidence when they decide whether you are guilty or not guilty. The evidence used to find you guilty must be relevant, trustworthy and credible.¹⁰⁴

If the disciplinary chairperson 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. BC Corrections applies this “standard of proof” which is called a “balance of probabilities”.¹⁰⁵ 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”.)

103 Adult Custody Policy, c 1.20.10.

104 Adult Custody Policy, c 1.20.10(3).

105 Adult Custody Policy, c 1.20.11(1). The Corrections Branch applies the lower “balance of probabilities” standard as a matter of policy. The courts have not confirmed that this is acceptable so perhaps the more rigorous “beyond a reasonable doubt” standard will be applied in the future.

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. The possible penalties are set out in section 27 of the *Correction Act Regulation*. They include:

- A warning.
- Restriction on activities or programs. (Note that visits can only be restricted if your offence was directly related to a visit.)
- Extra duties (up to 12 hours).
- Cell lock up (up to 192 hours).
- Loss of earned remission (up to 60 days).
- Segregation. (Depending on the offence, you can face up to 15 days or 30 days in segregation. If you have more than one charge, you cannot be given more than 45 days in a row. If you were put in segregation under section 24 (segregation pending your disciplinary hearing) when you were charged, that time must be subtracted from your penalty.)¹⁰⁶

If you plead guilty or are found guilty, you have the right to say why you should be given a lighter penalty before the chairperson decides your penalty. 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

106 CAR, s 27(1)-(3); Adult Custody Policy, c 1.20.12.

a penalty that is not loss of earned remission. Think about what would be fair and suggest that to the disciplinary chairperson.¹⁰⁷

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.¹⁰⁸

The disciplinary chairperson must give you written reasons for the decision and the penalty imposed.¹⁰⁹



The disciplinary chairperson must consider how you might be affected by your Indigenous background before deciding on a penalty for your offence, especially one that restricts your liberty (segregation or loss of earned remission).¹¹⁰ Refer to the list of Indigenous background factors at the beginning of this booklet. They must look for culturally appropriate options that will help you heal.

If you are in segregation, you must be allowed access to spiritual activities and spiritual items unless there are valid safety reasons to deny them.

107 Adult Custody Policy, c 1.20.12(1).

108 CAR, s 27(4)-(6); Adult Custody Policy, cc 1.20.12-14.

109 CAR, s 28.

110 *Gladue* at paras 67-69; *Ewert* at paras 57-58; *Twins* at para 64; *Ipeelee* at paras 69, 83; *Frontenac* at paras 56-57; *Sim* at para 16; *Re Alexis* at para 80.

Applying for a reduction of your penalty

You can apply for a reduction in your penalty or a suspension of your penalty after the hearing. Do this by writing a letter to the disciplinary chairperson who heard your case. Explain your reasons for a reduced or suspended penalty, such as good behaviour since the hearing or other new information.

The disciplinary chairperson will make the decision, or if they are not available, the warden will make the decision. They must make a decision within 14 days of your application and give you the reasons for their decision in writing.¹¹¹

Appeal of disciplinary decision or penalty

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.¹¹²

Write a letter to the Investigation and Standards Office (ISO) and explain why your hearing was unfair or why the decision or penalty was wrong. **You can also ask that they suspend your penalty until the appeal is complete.**¹¹³

111 CAR, s 27(5); Adult Custody Policy, c 1.20.13.

112 CAR, s 29(1).

113 CAR, s 29(3).

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.

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.¹¹⁴

The Investigation and Standards Office can also change the penalty imposed.¹¹⁵

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 their risk to the community.¹¹⁶

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

- you are excused in writing by health care;

114 CAR, s 29(4).

115 CAR, s 29(4).

116 CAR, s 38; Adult Custody Policy c 10 covers a number of topics, including reading and viewing material, work programs, recreation, religious programs and practices, marriage, and temporary absences for forest firefighting.

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- 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 and Refugee Protection Act*, and the program is a work program that you have not consented to participate in.¹¹⁷



BC Corrections has a duty to provide programs that can help Indigenous prisoners be successful when returning to the community.

117 CAR, s 38(3).



Access to Indigenous Spirituality

BC Corrections must provide religious programs for prisoners.¹¹⁸ The *BC Human Rights Code* prohibits discrimination on the basis of religion.

¹¹⁹ This means that BC Corrections cannot give you fewer rights to Indigenous spirituality than other prisoners have to their religions.

In keeping with human rights law, Indigenous spirituality and its followers must be given the same respect as other faiths and their followers. Access to Indigenous spirituality is a right, not a privilege.

You have the right to practice your Indigenous spirituality in prison. You also have the right to regular counselling with an Aboriginal Liaison or Elder in prison.

Aboriginal Liaisons and Elders

The Aboriginal Liaison or Elder can:

- give you spiritual counselling;
- make programs for Indigenous prisoners; and
- teach you about your Indigenous heritage, including traditional ceremonies, and arts and crafts.

118 *CAR*, s 38; Adult Custody Policy, c 10.6.

119 *BC Human Rights Code*, s 8.

If you would like to meet with an Aboriginal Liaison or Elder, submit a written request to the Aboriginal Liaison or Chaplain.

Aboriginal Liaison or Elder counselling usually takes place during the regular working day or during spiritual gatherings. You can submit a request to see an Aboriginal Liaison or Elder at anytime.

If you do not get an answer to your request or your request is denied, you can make a complaint to the warden.¹²⁰ See the section on complaints at the end of this booklet.

Spiritual items

You should be allowed to use spiritual items (such as a medicine bundle) in your cell, in separate confinement or segregation and during ceremonies, unless the item could be harmful.¹²¹

Spiritual items that are allowed include:

- sweetgrass;
- sage;
- ceremonial pipes (only used by recognized pipe carriers);
- ceremonial blankets;
- eagle feathers;

120 *CAR*, s 37.

121 Adult Custody Policy, c 10.6.5.

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- seashells; and
 - medicine bags that hold herbs (they must stay sealed).¹²²

Your medicine bundle can be searched, but correctional officers should not handle your medicine bundle. You or an Elder might be asked to open your bundle during a search, or at some institutions a mechanical scan will be used. Staff must always treat your medicine bundle with respect.

If BC Corrections finds contraband in your medicine bundle, they can take it away from you.¹²³

You can request access to other spiritual items for ceremonial purposes or for your own use. The warden will consult with the Aboriginal Liaison, so it might be helpful to talk to them about your request first.¹²⁴

If you are refused access to spiritual objects, to the Elder or Aboriginal Liaison, or to something else that you request to practice your spirituality, you might be facing discrimination on the basis of your religion. You can make a complaint to the BC Human Rights Tribunal. See PLS' booklet: *Human Rights in British Columbia Provincial Prisons*. Call Prisoners' Legal Services if you would like advice or help with a human rights complaint.

122 Adult Custody Policy, c 10.6.6.

123 Adult Custody Policy, c 1.16.4.

124 Adult Custody Policy, c 10.6.6.

Access to Indigenous spirituality in segregation

Prisoners in segregation have the same rights to spirituality as other prisoners, unless there are valid safety reasons that you cannot take part in an activity.¹²⁵ This is the case whether you are in administrative segregation or disciplinary segregation.

You have the right to take part in spiritual activities in segregation that you can do on your own or with an Elder or Aboriginal Liaison. This includes things like smudging or counselling with the Elder or Aboriginal Liaison. Any limits on these kinds of activities must be reasonable and based on valid safety concerns.

You might not be able to take part in group activities like sweat lodge ceremonies, healing circles or drum ceremonies in segregation if there are safety concerns.

125 *CAR*, s 2(2); Adult Custody Policy, cc 1.21.3, 1.21.5.

Health care

The Provincial Health Services Authority (PSHA) provides medical and mental health services in provincial prisons.¹²⁶ You should have equal access to the same quality of services that are available in the community.¹²⁷

The services provided by PSHA include the following:

- Assessment and screening for physical and mental health needs.
- Primary medical and nursing care.
- Mental health services.
- Substance use services.
- Selected public health services.
- Urgent dental care, including care necessary to relieve pain or infection and to support your ability to chew food.
- Medication services.
- Lab and x-ray imaging services.
- Urgent care and basic emergency response while waiting for emergency responders.

126 Provincial Health Services Authority, Correctional Health Services: Clinical Services Plan (Version 1.0) (26 Feb 2018) [PHSA Clinical Services Plan 2018].

127 PSHA Clinical Services Plan 2018 at 5.

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- Planning for release and transition to health care in the community.¹²⁸

Your consent is needed for treatment. You can refuse at any time.¹²⁹ 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 call Prisoners' Legal Services for help. Once you have tried to resolve the problem directly with the health care provider in the prison, you have several options:

- You can complain to the Patient Care Quality Office (PCQO) of the PHSA.
- You can complain to the BC Ombudsperson.
- If you have a problem with a specific doctor or other medical professional, you can make a complaint to their medical college. For more information, see PLS' booklet: *Complaints to Medical Colleges*.

Transfers

There are few procedural rights for BC provincial prisoners who are transferred from one prison to another with the same security level. 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.

128 PHSA Clinical Services Plan 2018 at 14.

129 PHSA Clinical Services Plan 2018 at 14.

But you do have the legal right to have your concerns addressed, if possible.¹³⁰

It is Corrections Branch policy to transfer prisoners to allow for contact with families, and to access programs, resources, legal services and police. Transfers can also be made for medical treatment or assessments, for behavioural management, to move a prisoner to a different level of security, or due to bed space issues.¹³¹

If you are told that you are being transferred and you refuse, you might 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 secure 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).

You can only be transferred if a health care professional tells the warden that you are medically fit for a transfer.¹³²

If you are being transferred to higher security or you feel the reason for a transfer is not fair, you can call PLS for help.

130 CAR, s 4.

131 Adult Custody Policy, cc 4.9.4-5.

132 CAR, s 39(2); Adult Custody Policy, c 4.9.14.

Remission awards

Provincial prisoners can earn remission awards for good behaviour.¹³³ Remission awards are calculated at the end of each month. When you are released, remission will be calculated for the days left in your sentence.¹³⁴

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

How much remission you will be awarded depends on how well you have obeyed the rules and how much you have participated in work, training, school and program activities.¹³⁵ Programs do not include religious programs. Remission awards also depend on how well you co-operate with others in these activities.

- 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.¹³⁶

133 *Correction Act*, s 26; *CAR*, s 33.

134 *CAR*, s 34(1).

135 *Prison and Reformatories Act*, RSC 1985, P-20, s 6.

136 *CAR*, ss 32, 34(2); *Adult Custody Policy*, cc 3.9.

If you have been charged with a disciplinary offence but the disciplinary chairperson has not made a decision yet, the charge cannot be considered in deciding your remission award.¹³⁷

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 their decision in writing.¹³⁸

If you disagree with the decision, you can apply to the warden for a review of the decision. You must apply in writing within 7 days of getting the decision. The warden must complete their review within 7 days. The warden 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 their reasons in writing as soon as they can.¹³⁹

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.¹⁴⁰

137 *CAR*, s 34(3); Adult Custody Policy, c 3.9.9.

138 *CAR*, s 35(1).

139 *CAR*, s 35(2)-(4); Adult Custody Policy, c 3.9.10.

140 *Correction Act*, s 28(2)(d).

Parole applications

The Parole Board of Canada is responsible for provincial parole applications.¹⁴¹

Prisoners can be released on day parole when they have served one-sixth of their sentence. You can apply before this. If you are released on day parole, you are required to return to a correctional centre or community based residential facility each night.¹⁴²

Prisoners can be released on full parole when they have served one-third of their sentence.¹⁴³

The Parole Board of Canada 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 a person's sentence. The Parole Board of Canada can take up to 6 months from when parole applications are 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 Parole Board of Canada can hear your application before the time limits required by law.

141 *Correction Act*, s 31.1; *Corrections and Conditional Release Act*, SC 1992, c 20, ss 107-108; *Adult Custody Policy*, c 6.

142 *Adult Custody Policy*, c 3.7.2.

143 *Adult Custody Policy*, c 3.7.2.

Parole can be granted at any time to a prisoner who:

- is terminally ill;
- is likely to suffer serious damage to their physical or mental health if they are not released;
- would face hardship that was not foreseeable when they were sentenced if they are not released; or
- is subject to an order to be extradited to another country.¹⁴⁴

You should receive a copy of all the information that the Parole Board of Canada will consider at least 15 days before your parole hearing.¹⁴⁵

You continue to earn remission while on day parole.¹⁴⁶ If you are granted day parole, and you are not suspended, you are free on your earned remission date.¹⁴⁷

If you are granted full parole, you do not continue to earn remission.¹⁴⁸ You will serve your full sentence in the community, under conditions.

If your parole is suspended, you can continue to earn remission for the time you spend in prison while you are waiting for your Parole Board hearing.¹⁴⁹

144 CCRA, s 121(1); Adult Custody Policy, c 6.4.3. Note the exceptions in CCRA s 121(2).

145 Adult Custody Policy, c 6.6.8.

146 *Prisons and Reformatories Act*, R.S. 1985, c P-20, s 6(1).

147 Adult Custody Policy, c 3.9.9, para 5; c 6.6.6.

148 *Prisons and Reformatories Act*, R.S. 1985, c P-20, s 6(1).

149 *Prisons and Reformatories Act*, R.S. 1985, c P-20, s 6(10).

If the Parole Board of Canada decides that you have broken a condition of your parole, it can revoke your parole and return you to prison. If your day parole is revoked, you lose the remission you earned while in prison and in the community¹⁵⁰, but the Parole Board can re-credit it to you.¹⁵¹ If your full parole is revoked, you lose the remission you earned while you were in prison, but the Parole Board can re-credit it to you.¹⁵²

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 (offences created by provincial statutes). But these prisoners can apply for temporary absences.¹⁵³

150 *Prisons and Reformatories Act*, R.S. 1985, c P-20, s 6(4,1).

151 *Prisons and Reformatories Act*, R.S. 1985, c P-20, s 6(9).

152 *Prisons and Reformatories Act*, R.S. 1985, c P-20, s 6(9).

153 Information on Temporary Absences can be found in *Correction Act*, ss 21-25; Adult Custody Policy, c 5.



When the Parole Board is making a decision about whether to release you or what conditions to put on you, they must consider the disadvantages and discrimination that you have faced as an Indigenous person.¹⁵⁴

Specifically, they must consider the Indigenous background factors that are listed at the beginning of this booklet.

The Parole Board should consider other alternatives to keeping you in prison, such as halfway houses or community-based programs that could serve to protect the public and help you rehabilitate and reintegrate into the community.¹⁵⁵

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

155 *Twins* at para 57; *Gladue; Ipeelee* at para 69; *Ewert* at paras 57-59; *Frontenac* at para 56; *Sim* at para 16; *Re Alexis* at para 80.

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.¹⁵⁶

Keep detailed notes of what happened, the time and date of events, the names of people involved and the names of any witnesses. Keep a record of all documents related to your complaint.

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.¹⁵⁷

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. They must tell you, in writing, of their decision, without undue delay.¹⁵⁸

156 CAR, s 4.

157 CAR, s 37(1).

158 CAR, s 37(2).

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 a complaint to the Investigation and Standards Office. Staff must forward your complaint 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 can refuse to investigate a complaint that is frivolous, vexatious, trivial or not made in good faith.¹⁵⁹

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 by the Investigation and Standards Office, you might have other legal options to pursue your complaint.

You can make a complaint to the BC Ombudsperson if you think you are being or have been treated unfairly by the prison staff or the Investigation and Standards Office.¹⁶⁰ Your communications

159 *Correction Act*, s 28-28.2.

160 For an example, see: BC Ombudsperson, *Witnesses denied* (2017), online: <<https://www.bcombudsperson.ca/documents/witnesses-denied>>.

with the BC Ombudsperson is privileged, which means that prison staff are not allowed to monitor it.¹⁶¹

If your complaint is about discrimination and it is not resolved through BC Corrections, you can make a complaint to the BC Human Rights Tribunal. See PLS' booklet: *Human Rights in British Columbia Provincial Prisons*. Call Prisoners' Legal Services if you would like advice or help with a human rights complaint.

Getting legal help

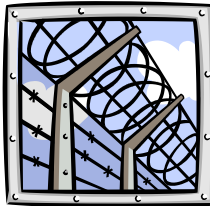
You can contact Prisoners' Legal Services for advice or assistance with issues that affect your liberty (such as segregation, disciplinary charges or parole) or about health care or human rights issues.

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.

161 CAR, ss 13(f).

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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