

## Prisons and HIV/AIDS

<ul style="list-style-type: none"> <li>1. Introduction ..... 2</li> <li>2. Definitions ..... 2</li> <li>3. Jurisdiction, and “The First Things You Need to Figure Out” ..... 4 <ul style="list-style-type: none"> <li>3.1 Jurisdiction ..... 4 <ul style="list-style-type: none"> <li>3.1.1 “The First Things to Figure Out” ..... 5</li> </ul> </li> <li>3.2 The Corrections and Conditional Release Act ..... 7</li> <li>3.3 Federal Penitentiaries In Ontario, with Addresses and Contact Numbers..... 7</li> <li>3.4 The regulations under the Ministry of Correctional Services Act ..... 8</li> <li>3.5 Provincial Detention Centres and Jails in Ontario, with Addresses and Contact Numbers ..... 9</li> </ul> </li> <li>4. Entering Institutions ..... 11 <ul style="list-style-type: none"> <li>4.1 The Problems at Local Detention Centres on Admission and Possible Solutions ..... 11 <ul style="list-style-type: none"> <li>4.1.1 Classification and Institutional Placement..... 13</li> </ul> </li> <li>4.2 Transgendered/Transsexual Prisoners..... 14</li> <li>4.3 Initial Placements in Federal Institutions .... 14</li> </ul> </li> <li>5. Involuntary Transfers and Segregation..... 16 <ul style="list-style-type: none"> <li>5.1 Involuntary Transfer – Federal Prisons ..... 16</li> <li>5.2 Segregation – Federal Prisons..... 17 <ul style="list-style-type: none"> <li>5.2.1 Administrative Segregation ..... 18</li> <li>5.2.2 Disciplinary Segregation ..... 19</li> <li>5.2.3 HIV Status ..... 19</li> </ul> </li> <li>5.3 Involuntary Transfer – Provincial Prisons .. 19</li> <li>5.4 Segregation – Provincial Prisons ..... 19 <ul style="list-style-type: none"> <li>5.4.1 HIV Status ..... 20</li> </ul> </li> </ul> </li> <li>6. Prisoners’ Rights..... 20 <ul style="list-style-type: none"> <li>6.1 Access to Treatment and the Quality of Care..... 20 <ul style="list-style-type: none"> <li>6.1.1 Federal ..... 20 <ul style="list-style-type: none"> <li>6.1.1.1 Consent ..... 21</li> <li>6.1.1.2 HIV Testing ..... 21</li> <li>6.1.1.3 Confidentiality and Disclosure..... 21</li> <li>6.1.1.4 Methadone..... 22</li> <li>6.1.1.5 Condoms and Bleach..... 23</li> </ul> </li> <li>6.1.2 Provincial..... 23 <ul style="list-style-type: none"> <li>6.1.2.1 HIV Testing ..... 24</li> <li>6.1.2.2 Confidentiality and Disclosure..... 24</li> <li>6.1.2.3 Methadone..... 24</li> <li>6.1.2.4 Condoms..... 25</li> </ul> </li> </ul> </li> <li>6.2 Access to “Amenities” like shoes, and No, You don’t have the right to smoke ..... 25 <ul style="list-style-type: none"> <li>6.2.1 Federal ..... 25 <ul style="list-style-type: none"> <li>6.2.1.1 Money..... 25</li> <li>6.2.1.2 Property..... 26</li> </ul> </li> <li>6.2.2 Provincial..... 26 <ul style="list-style-type: none"> <li>6.2.2.1 Money..... 26</li> <li>6.2.2.2 Purchases ..... 27</li> <li>6.2.2.3 Smoking ..... 27</li> </ul> </li> </ul> </li> <li>6.3 Access to Lawyers..... 27 <ul style="list-style-type: none"> <li>6.3.1 Federal ..... 27</li> <li>6.3.2 Provincial..... 28</li> </ul> </li> </ul> </li> <li>7. Privacy Matters ..... 29 <ul style="list-style-type: none"> <li>7.1 Mail..... 29 <ul style="list-style-type: none"> <li>7.1.1 Federal..... 29</li> </ul> </li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>7.1.2 Provincial..... 29</li> <li>7.2 Visitors ..... 30 <ul style="list-style-type: none"> <li>7.2.1 Federal ..... 30 <ul style="list-style-type: none"> <li>7.2.1.1 General Visits ..... 30</li> <li>7.2.1.2 Private Family Visits..... 31</li> <li>7.2.1.3 Professional Visits ..... 31</li> </ul> </li> <li>7.2.2 Provincial..... 32 <ul style="list-style-type: none"> <li>7.2.2.1 Professional Visits ..... 33</li> </ul> </li> </ul> </li> <li>7.3 Searches..... 33 <ul style="list-style-type: none"> <li>7.3.1 Federal ..... 33 <ul style="list-style-type: none"> <li>7.3.1.1 Personal Searches ..... 33</li> <li>7.3.1.2 Urinalysis..... 34</li> <li>7.3.1.3 Cell Searches..... 34</li> </ul> </li> <li>7.3.2 Provincial..... 35 <ul style="list-style-type: none"> <li>7.3.2.1 Personal and Cell Searches ..... 35</li> <li>7.3.2.2 Urinalysis..... 35</li> </ul> </li> </ul> </li> <li>7.4 Information Access..... 36 <ul style="list-style-type: none"> <li>7.4.1 Federal ..... 36</li> <li>7.4.2 Provincial..... 36</li> </ul> </li> <li>8. Institutional Charges ..... 37 <ul style="list-style-type: none"> <li>8.1 Federal..... 37 <ul style="list-style-type: none"> <li>8.1.1 Hearings..... 37</li> <li>8.1.2 Penalties..... 38</li> <li>8.1.3 Criminal Offences..... 39</li> </ul> </li> <li>8.2 Provincial..... 39 <ul style="list-style-type: none"> <li>8.2.1 Interview Process..... 39</li> <li>8.2.2 Penalties..... 39</li> <li>8.2.3 Appeals ..... 40</li> <li>8.2.4 Criminal Offences..... 40</li> </ul> </li> </ul> </li> <li>9. Resolving Problems..... 40 <ul style="list-style-type: none"> <li>9.1 Federal..... 40 <ul style="list-style-type: none"> <li>9.1.1 Office of the Correctional Investigator .... 40</li> </ul> </li> <li>9.2 Provincial..... 40 <ul style="list-style-type: none"> <li>9.2.1 Ombudsman Ontario..... 40</li> </ul> </li> <li>9.3 Pros &amp; Cons ..... 41</li> </ul> </li> <li>10. Release ..... 41 <ul style="list-style-type: none"> <li>10.1 Federal..... 41 <ul style="list-style-type: none"> <li>10.1.1 Unescorted Temporary Absence (UTA) .. 41</li> <li>10.1.2 Full Parole ..... 42</li> <li>10.1.3 Day Parole..... 43</li> <li>10.1.4 Statutory Release ..... 43</li> <li>10.1.5 Detention Review Hearings ..... 43</li> <li>10.1.6 Compassionate Release ..... 44</li> <li>10.1.7 End of Sentence..... 44</li> <li>10.1.8 Being Released..... 45</li> <li>10.1.9 Release Allowance..... 45</li> </ul> </li> <li>10.2 Provincial ..... 45 <ul style="list-style-type: none"> <li>10.2.1 Bail..... 45</li> <li>10.2.2 Parole ..... 46</li> <li>10.2.3 Parole Revocation..... 46</li> <li>10.2.4 Pre-release ..... 47</li> </ul> </li> <li>10.3 Access to Social Assistance ..... 47</li> </ul> </li> <li>11. Resources ..... 47</li> <li>Endnotes ..... 48</li> </ul>
---	---

## 1. Introduction

So your telephone rings. You answer. You hear a computerized voice. “This is Bell Canada. You have a collect call from...” The person on the other end of the phone is calling you from prison, and is a person living with HIV/AIDS. They are calling you for your help.

Perhaps they are having trouble accessing health services. Perhaps they have been cut off their medications. Perhaps they have been thrown in “the hole”, or been transferred to another prison against their wishes. Perhaps they have had their confidentiality breached by a member of staff. While each of these situations is common, they represent only a handful of the problems encountered by people in prison. Some problems are unique to people living with HIV/AIDS (PHAs), while others affect everyone “inside”.

Although the problems may vary, one thing remains constant – your commitment to ensure that people’s rights are observed, and that any problems are resolved as quickly as possible. To do this effectively, you require knowledge. You need to know how the prison system works, who makes the decisions, and what rights are guaranteed to people who are incarcerated. This guide will help you begin to answer these questions. It will help you become familiar with the prison system in Ontario, and the legislation governing it. It will provide an overview of some common issues and questions that you will confront as a prisoner advocate, and will help you make sense of the relevant federal and provincial policy and legislation.

It will present you a key to unlock the mysteries of the prison bureaucracy, and enable you to engage in effective advocacy to safeguard the rights of prisoners living with HIV/AIDS.

According to the *Corrections and Conditional Release Act (CCRA)* – the legislation governing federal corrections – people in

prison “retain the rights and privileges of all members of society, except those rights and privileges that are necessarily removed or restricted as a consequence of the sentence.” The *CCRA* also states that all correctional policies, programs, and practices must “be responsive to...the needs of...offenders with special requirements.” While these are worthy principles, the reality as experienced by many prisoners in Ontario – particularly those living with HIV/AIDS – is that our correctional system falls short of these goals. This is unacceptable, and must be consistently challenged.

As prisoners’ rights advocates, as HIV/AIDS advocates, we have a responsibility to ensure that these principles exist in fact, not only on paper. We hope this guide will be an important tool to help you meet that challenge. There are also a number of other resources listed at the end of this chapter which may be very useful to front-line workers as they engage with clients who are incarcerated.

## 2. Definitions

To help you get started, here are a few common terms, expressions, and acronyms used in this chapter, or that you might find useful is working with prisoners.

**ASO:** AIDS Service Organization

**Bucket:** Slang term for local jail

**Case Management Officer (CMO):** Staff responsible for overseeing, and reporting on, a prisoner’s progress while serving a sentence

**Commissioner’s Directives (CDs):** Commissioner’s Directives, policies of federal correctional services. All CDs are available [online](#).

**Correctional Officer (CO):** a prison guard.

**Classification:** The process through which a prisoner's security rating and program needs are assessed

**Community Residential Facility (CRF):** Federal half-way house

**Contraband:** Unauthorized property in the possession of a prisoner

**Corrections and Conditional Release Act (CCRA):** Legislation governing federal correctional services

**Canadian Police Information Centre (CPIC):** Canadian Police Information Centre criminal records check. This check is done on all professionals visiting prisoners in the provincial and federal systems, and on all visitors in federal institutions.

**Correctional Service of Canada (CSC):** Correctional Service of Canada. CSC is the government department responsible for running the federal correctional system. CSC is accountable to the Solicitor General of Canada. CSC National Headquarters is in Ottawa, while the Regional Headquarters overseeing Ontario institutions is in Kingston.

**Dead Time:** Slang term for time served on remand, while awaiting trial

**A deuce less:** Slang term for a sentence of two years less a day, the maximum sentence in the provincial system

**Escorted Temporary Absence (ETA):** a form of parole which permits a prisoner to leave the correctional facility with an escort.

**Federal Institution:** Commonly known as penitentiary. Federal prisons house people sentenced to two years or more. The federal correctional system is under the jurisdiction of the Solicitor General of Canada, and is administered by the Correctional Service of Canada (CSC).

**The hole:** Slang term for segregation

**(To) Gate:** A term for the process initiated by federal corrections to prevent an eligible prisoner from receiving statutory release (see below). In some cases, an eligible individual may be "gated" – that is, have his or her statutory release revoked prior to being released. Individuals who are gated must serve their entire sentence in the penitentiary. Prisoners are usually gated when they are considered to be at high risk of re-offending, and/or have convictions for violent crimes.

**Ministry of Correctional Services Act (MCSA):** – Legislation governing provincial correctional services in Ontario

**National Parole Board (NPB):** an independent administrative tribunal that has exclusive authority under the *Corrections and Conditional Release Act* to grant, deny, cancel, terminate or revoke day parole and full parole. The NPB may also order certain offenders to be held in prison until the end of their sentence. In addition, the Board makes conditional release decisions for offenders in provinces and territories that do not have their own parole boards. Only the provinces of British Columbia, Ontario and Quebec have their own parole boards that have authority to grant releases to offenders serving less than two years in prison. The Board also makes decisions to grant, deny and revoke pardons under the *Criminal Records Act* and the *Criminal Code of Canada*. A pardon is a formal attempt to remove the stigma of a criminal record for people who, having been convicted of an offence, have satisfied the sentence and remained crime free. The Board also makes recommendations for the exercise of clemency through the Royal Prerogative of Mercy.

**Parole by Exception:** The provision in the *CCRA* allowing a terminally ill prisoner to apply for early parole. Sometimes referred to erroneously as "compassionate release".

**Private Family Visit:** an opportunity to use a private facility to spend up to seventy-two hours with their families and/or partners. PFVs take place in a special visiting facility within the prison grounds

**Person living with HIV/AIDS (PHA):** A person who is HIV positive or living with AIDS.

**Placement Institution:** The prison where an individual is sent to serve his or her sentence; determined as a result of the classification process

**Parole Officer (PO):** An individual responsible for monitoring and reporting on a prisoner's actions following release from an institution while on parole. Also involved prior to release in assisting prisoners prepare for release and parole.

**Provincial Institution:** There are two types of institutions under provincial jurisdiction, a) Correctional Centres, which house people serving sentences of less than two years, and b) Detention Centres/Jails, which house people awaiting trial. The provincial prison system is administered by the Ontario Ministry of Correctional Services, and is accountable to the Minister.

**Range:** Living unit in a prison. Commonly comprised of 20—40 individual cells, and a shared living area

**(On) Remand:** Incarcerated while awaiting trial

**Standard Operating Practices (SOPs):** Operational memoranda of the federal correctional services which provide guidance for how certain processes should be carried out. SOPs are available [online](#).

**Statutory Release:** Under the terms of the CCR4, federal prisoners are released from custody after serving two-thirds of their sentence. This is known as statutory release. The final one-third of their sentence is usually served under supervision in the

community. The exception occurs is someone is “[gated](#)”

**Temporary Absence Pass (TAP) – Federal:** A pass approved by the Warden or Superintendent allowing a prisoner to leave the institution for a set period of time (this might be a few hours, or several weeks depending upon the circumstances). Temporary Absences can either be Escorted (ETA) by a staff member or Unescorted (UTA).

**Temporary Absence Pass (TAP) – Provincial:** if a prisoner is sentenced to less than 90 days, can apply for TAP if he or she is working or going to school and your sentence is being served on weekends or evenings.

**Trailer/Trailer Visit:** Slang term for a Private Family Visit

**Unescorted Temporary Absence (UTA):** where a prisoner is permitted to leave a correctional facility without being accompanied by a corrections official.

**Visits and Correspondence (V&C):** the designated visiting section in a federal prison.

### 3. Jurisdiction, and “The First Things You Need to Figure Out”

#### 3.1 Jurisdiction

Simply knowing a person is in prison is not enough information to engage in advocacy on their behalf. Before you can begin to assess the situation and consider advocacy options, there are a number of key pieces of information you need to gather.

The first is to find out which prison system they are in.

The prison system in Ontario is divided into two different bureaucracies, one governed by the federal government (“the federal

system”) and one governed by the provincial government (“the provincial system”).

The federal system is accountable to the Solicitor General of Canada, and is administered by the *Correctional Service of Canada* (CSC). CSC has its National Headquarters in Ottawa, where the Commissioner and other senior officials are based. The Commissioner sets policy for federal corrections on a national basis.

CSC is divided into five administrative regions, which have responsibility for implementing these policies on a regional basis. Ontario Regional Headquarters is located in Kingston, and is headed by a Regional Director. In Ontario, there are twelve federal institutions of various security levels – maximum, medium, and minimum.

The provincial system is accountable to the Minister of Community Safety and Correctional Services, which is a cabinet position in the provincial government. The system is administered by the Ontario *Ministry of Community Safety and Correctional Services*. The Ministry has jurisdiction over both adults and young offenders over the age of sixteen. This chapter does not address young offender legislation.

The Ontario government exercises jurisdiction over thirty-three institutions. Included in this number are two “superjails” with 1,184 beds each. One of these superjails, located in Penetanguishine is privately-run under a pilot program set up by the Ministry. This privately run jail is operated under contract to the provincial government by Management & Training Corporation Canada. MTCC has a contract to run the CNCC for five years. The Ministry has the option to extend the contract for one additional year and it may be renewed for up to five years on negotiated terms. The other superjail, located in Lindsay, is being operated by the provincial government.

Provincial correctional institutions fall into two separate categories – detention centres and correctional centres. Detention centres (or local jails) house people who are awaiting trial. This is known as being on *remand*. They can also house people who have been recently convicted and are awaiting transfer to another institution. Correctional centres house people who have been convicted, and are serving sentences.

Whether a person is confined in the federal or the provincial system is determined by the length of their sentence. People sentenced to less than two years are sent to a provincial *correctional centre*. Those sentenced to two years or more are sent to a federal *penitentiary*. *Detention centres/jails*, which house people awaiting trial, also fall under provincial jurisdiction. Some individuals with short sentences will serve their entire sentence within a detention centre.

Because the federal and provincial correctional systems are governed by separate legislation and policy, the type of institution in which the person is incarcerated will have a significant impact on their living conditions, and the options available to you as an advocate. While there are certainly commonalities between the two systems, they are far from uniform. Many simple day-to-day events – from seeing visitors, to making telephone calls, to eating meals, to accessing medical care – happen differently in one system than in the other. As we will also see, the federal legislation is much more comprehensive than its provincial counterpart, and explicitly guarantees federal prisoners certain rights and entitlements not set out in Ontario law.

### 3.1.1 “The First Things to Figure Out”

When a prisoner contacts you with a problem, there are a number of things you need to figure out.

- a) *You need to know where they're incarcerated.*

You need to find out which institution they are in, and whether it is a provincial or federal prison. If they are in provincial custody, you need to know whether they are serving a sentence (and therefore in a correctional centre) or on remand (and in a detention centre or jail). If you are unfamiliar with the names and jurisdictions of the various prisons in Ontario, simply ask the prisoner himself or herself for this information.

- b) *You need to know whether they're HIV positive.*

Now if you work for an AIDS service organization (ASO), you might assume that the person calling you is obviously a PHA. This is a mistake. Prisoners in need of advocacy will often call various agencies looking for help. It is not unusual for HIV negative prisoners to call your ASO simply because they know that their buddy in the next cell got help from you in the past. They may have no idea that your mandate is HIV/AIDS.

- c) *You need to know whether the institution is aware of the prisoner's HIV status.*

Does the institution know the person is HIV positive? Who in the institution knows? Is this knowledge limited only to health care? Does all the staff know? Does no one know?

This is a critical question, because if you contact the prison to advocate on an HIV-related issue, you will necessarily disclose the prisoner's HIV status. If you are an AIDS service organization contacting the prison to advocate on any issue

(HIV-related or not) you will disclose their HIV status. You need to talk explicitly with the prisoner about this risk, as it may influence their decision about your intervention.

- d) *You need to determine the specific nature and source of the problem.*

Depending upon the issue at hand, and the ability of the individual to articulate his or her needs, this can be a simple or a complex task. While some problems are instantly apparent, others may take a bit of active listening and careful questioning to properly identify.

- e) *You need to find out whether the prisoner wants you to advocate on his or her behalf, and how.*

The person may be calling you simply to vent their frustrations, or they may want you to initiate some form of advocacy on their behalf. This must be clarified. As an advocate, you may have several options available to you in trying to resolve the issue, some more confrontational than others. It is important to talk your course of action through with the prisoner. Never forget that he or she is a vulnerable position, and may face some sort of fall-out or pressure as a result of your intervention. For this reason, it's essential to get their OK on your advocacy plan.

- f) *If advocacy is required, you need to determine where to target it.*

The correctional system is a large and bureaucratic organization. Within this bureaucracy, different staff members have the ability to make different decisions. For example, decisions on health issues are typically made by health care

staff. Decisions on security issues are typically made by security staff and/or prison wardens. Therefore, it's important that your advocacy effort be addressed to the staff member(s) with the ability to make the decision necessary to resolve the problem.

Now that you've determined this basic information, you need to know what advocacy options are available to you. What are my client's rights and entitlements? What is the legislation or prison policy on this particular issue?

If the person is in federal custody, this information can be found in the *Corrections and Conditional Release Act (CCRA)*.

### **3.2 The *Corrections and Conditional Release Act***

The *Corrections and Conditional Release Act (CCRA)* and the accompanying *CCRA Regulations* are the legislation governing federal correctional services. This legislation covers all people in federal custody – both prisoners (that is, people physically incarcerated in a federal penitentiary) and those living in the community under some form of supervision (i.e., work release, half-way house, statutory release, parole).

In addition to the *CCRA*, there are various *Commissioner's Directives (CDs)* and *Standard Operating Practices (SOPs)* that outline policy and practice within the federal correctional system. It's useful to familiarize yourself with the CDs and SOPs as they can provide opportunities to advocate on behalf of prisoners. In some cases, these policies will be addressed in this chapter. However, always keep in mind that the CDs and SOPs are administrative policies, not laws, and are therefore subject to the terms of the *CCRA*.

The *Corrections and Conditional Release Act*, *Commissioner's Directives*, and *Standard Operating Practices* can all be found on the

website of the Correctional Service of Canada at [www.csc-scc.gc.ca](http://www.csc-scc.gc.ca).

### **3.3 List of Federal Penitentiaries In Ontario, with Addresses and Contact Numbers**

#### **CSC National Headquarters**

Sir Wilfrid Laurier Building  
340 Laurier Avenue West  
Ottawa, ON K1A 0P9  
Phone: (613) 992-5891  
Fax: (613) 943-1630  
*CONTACTS: Commissioner, or  
Corporate Director, Health Services, or  
National AIDS Coordinator*

#### **CSC Ontario Regional Headquarters**

440 King Street West  
P.O. Box 1174  
Kingston, ON K7L 4Y8  
Phone: (613) 545-8211  
Fax: (613) 545-8684  
*CONTACTS: Regional Director, or  
Regional Health Care Coordinator*

#### **Office of the Correctional Investigator**

P. O. Box 3421, Station "D"  
Ottawa, ON K1P 6L4  
Phone: (613) 990-2695  
Fax: (613) 990-9091  
Toll-free: 1-877-885-8848  
E-mail: [org@oci-bec.gc.ca](mailto:org@oci-bec.gc.ca)

#### **Bath Institution (Med.)**

P.O. Box 1500  
5775 Bath Road  
Bath, ON K0H 1G0  
Phone: (613) 351-8346  
Fax: (613) 351-8039

#### **Beaver Creek Institution (Min.)**

P.O. Box 1240  
Gravenhurst, ON P1P 1W9  
Phone: (705) 687-6641  
Fax: (705) 687-5010

#### **Collins Bay Institution (Med.)**

1455 Bath Road  
P.O. Box 190

Kingston, ON K7L 4V9  
Phone: (613) 545-8598  
Fax: (613) 536-4648

**Fenbrook Institution** (*Med.*)  
P.O. Box 5000  
Gravenhurst, ON P1P 1Y2  
Phone: (705) 687-6641  
Fax: (705) 687-1896

**Frontenac Institution** (*Min.*)  
1455 Bath Road  
P.O. Box 7500  
Kingston, ON K7L 5E6  
Phone: (613) 536-6000  
Fax: (613) 545-8823

**Grand Valley Institution for Women**  
(*Multi.*)  
1575 Homer Watson Blvd.  
Kitchener, ON N2P 2C5  
Phone: (519) 894-2011  
Fax: (519) 894-5434

**Isabel McNeil House** (*Min - Women's  
halfway house*)  
525 King Street West  
Kingston, ON K7L 2X9  
Phone: (613) 545-8845  
Fax: (613) 547-7724

**Joyceville Institution** (*Med.*)  
Highway 15  
P.O. Box 880  
Kingston, ON K7L 4X9  
Phone: (613) 536-6400  
Fax: (613) 536-6434

**Kingston Penitentiary** (*Max.*)  
555 King Street West  
P.O. Box 22  
Kingston, ON K7L 4V7  
Phone: (613) 545-8460  
Fax: (613) 545-8826

**Millhaven Institution** (*Max.*)  
Highway 33  
P.O. Box 280  
Bath, ON K0H 1G0  
Phone: (613) 351-8000  
Fax: (613) 351-8136

**Pittsburgh Institution** (*Min.*)  
Highway 15  
P.O. Box 4510  
Kingston, ON K7L 5E5  
Phone: (613) 536-6400  
Fax: (613) 536-6389

**Regional Treatment Centre** (*Max.*)  
555 King Street West  
P.O. Box 22  
Kingston, ON K7L 4V7  
Phone: (613) 545-8460  
Fax: (613) 545-8826

**Warkworth Institution** (*Med.*)  
County Road #29  
P.O. Box 760  
Campbellford, ON K0L 1L0  
Phone: (705) 924-2210  
Fax: (705) 924-3351

### 3.4 The regulations under the *Ministry of Correctional Services Act*

The *Ministry of Correctional Services Act* and its *Regulations* are the legislation governing provincial correctional services in Ontario, and cover all people in its custody. The *Act* covers both adults who are incarcerated and young offenders between 16 and 18 years of age.

Unfortunately for prisoners and their advocates, the Ontario legislation is not nearly as comprehensive as its federal counterpart. Of particular concern for prisoners living with HIV/AIDS is that neither the *Act* nor the *Regulations* specifically guarantee rights to health care, as does the *CCRA*. Given this lax regulatory environment, the role or advocacy in ensuring that prisoners living with HIV/AIDS have access to basic levels of care and support is perhaps even more significant than in the federal system.

Information on the Ontario correctional system may be found on the Ministry's website at [www.corrections.mcs.gov.on.ca](http://www.corrections.mcs.gov.on.ca).

### **3.5 List of Provincial Detention Centres and Jails in Ontario, with Addresses and Contact Numbers**

#### **Assistant Deputy Minister Correctional Services**

25 Grosvenor Street, 16<sup>th</sup> Floor  
Toronto, ON M7A 1Y6  
Phone: (416) 327-9911  
Fax: (416) 327-3849

#### **Senior Medical Officer Ministry of Correctional Services**

Senior Medical Consultant  
25 Grosvenor Street, 16<sup>th</sup> Floor  
Toronto, ON M7A 1Y6  
Phone: (416) 327-2389  
Fax: (705) 494-3364

#### **Algoma Treatment Centre (formerly Northern Treatment Centre)**

800 Great Northern Road  
Sault Ste. Marie, ON P6A 5K7  
Phone: (705) 946-0995  
Fax: (705) 946-2925

#### **Brantford Jail**

105 Market Street  
Brantford, ON N3T 6A9  
Phone: (519) 752-6578  
Fax: (519) 752-7461

#### **Brockville Jail**

10 Wall Street  
Brockville, ON K6V 4R9  
Phone: (613) 342-1456  
Fax: (613) 342-0962

#### **Central North Correctional Centre**

1501 Fuller Avenue  
Penetanguishene, ON L9M 2G2  
Phone: (705) 549-9470  
Fax: (705) 549-0634

#### **Chatham Jail**

17 Seventh Street  
Chatham, ON N7M 4J9  
Phone: (519) 352-0150  
Fax: (519) 351-3578

#### **Elgin-Middlesex Detention Centre**

711 Exeter Road  
London, ON N6E 1L3  
Phone: (519) 686-1922  
Fax: (519) 686-0352

#### **Fort Frances Jail**

310 Nelson Street  
Fort Frances, ON P9A 1B1  
Phone: (807) 274-7708  
Fax: (807) 274-3304

#### **Hamilton-Wentworth Detention Centre**

165 Barton Street East  
Hamilton, ON L8L 2W6  
Phone: (905) 523-8800  
Fax: (905) 529-0977

#### **Kenora Jail**

1430 River Street  
Kenora, ON P9N 1K5  
Phone: (807) 468-2871  
Fax: (807) 468-2876

#### **Central East Correctional Centre**

541 Hwy 36  
Box 4500  
Lindsay, ON K9V 6H2  
Phone: (705) 328-6000  
Fax: (705) 328-6011

#### **Maplehurst Correctional Complex**

661 Martin Street  
P.O. Box 10  
Milton, ON L9T 2Y3  
Phone: (905) 878-8141  
Fax: (905) 876-7300

#### **Mimico Correctional Centre**

130 Horner Avenue  
Toronto, ON M8Z 4X8  
Phone: (416) 314-9600  
Fax: (416) 314-9606

#### **Monteith Correctional Centre**

Junction Hwy 11 & 577, Box 90  
Monteith, ON P0K 1P0  
Phone: (705) 232-4092  
Fax: (705) 232-4530

**Niagara Detention Centre**

Highway 58, P.O. Box 1050  
1355 Uppers Lane  
Thorold, ON L2V 4A6  
Phone: (905) 227-6312  
Fax: (905) 227-0032

**North Bay Jail**

2550 Trout Lake Road  
North Bay, ON P1B 7S7  
Phone: (705) 472-8115  
Fax: (705) 472-3803

**Ontario Correctional Institute**

109 McLaughlin Road South  
Brampton, ON L6Y 2C8  
Phone: (905) 457-7050  
Fax: (905) 452-8606

**Ottawa-Carleton Detention Centre**

2244 Innes Road  
Ottawa, ON K1B 4C4  
Phone: (613) 824-6080  
Fax: (613) 824-1297

**Owen Sound Jail**

1237 Third Avenue East  
Box 517  
Owen Sound, ON N4K 5R1  
Phone: (519) 376-0435  
Fax: (519) 376-7927

**Pembroke Jail**

297 Pembroke Street East  
Pembroke, ON K8A 3K2  
Phone: (613) 735-0647  
Fax: (613) 735-2741

**Quinte Detention Centre**

89 Richmond Boulevard  
Napanee, ON K7R 3S1  
Phone: (613) 354-9701  
Fax: (613) 354-9114

**Rideau Correctional and Treatment Centre**

4707 County Road 2  
RR 3  
Merrickville, ON K0G 1N0  
Phone: (613) 269-4771  
Fax: (613) 269-3583

**Sarnia Jail**

700 Christina Street North  
Sarnia, ON N7V 3C2  
Phone: (519) 337-3261  
Fax: (519) 336-6505

**St. Lawrence Valley Correctional & Treatment Centre**

1804 Hwy 2 East  
Brockville, ON K6V 5T1  
Phone: (613) 345-1461  
Fax: (613) 345-3844

**Stratford Jail**

730 St. Andrew Street  
Stratford, ON N5A 1A3  
Phone: (519) 271-2180  
Fax: (519) 273-1938

**Sudbury Jail**

181 Elm Street West  
Sudbury, ON P3C 1T8  
Phone: (705) 564-4150  
Fax: (705) 564-4157

**Thunder Bay Correctional Centre**

Hwy 61 South, Box 1900  
Thunder Bay, ON P7C 4Y4  
Phone: (807) 475-8401  
Fax: (807) 475-9240

**Thunder Bay Jail**

285 MacDougall Street  
Thunder Bay, ON P7A 2K6  
Phone: (807) 345-7364  
Fax: (807) 345-0390

**Toronto East Detention Centre**

55 Civic Road  
Scarborough, ON M1L 2K9  
Phone: (416) 750-3513  
Fax: (416) 750-3345

**Toronto (Don) Jail**

550 Gerrard Street East  
Toronto, ON M4M 1X6  
Phone: (416) 325-8600  
Fax: (416) 325-8616

### **Toronto West Detention Centre**

111 Disco Road  
P.O. Box 4950  
Rexdale, ON M9W 5L6  
Phone: (416) 675-1806  
Fax: (416) 674-7515

### **Vanier Centre for Women**

655 Martin Street  
Box 1040  
Milton, ON L9T 5E6  
Phone: (905) 876-8300  
Fax: (905) 876-7334

### **Walkerton Jail**

209 Caley Street  
Box 429  
Walkerton, ON N0G 2V0  
Phone: (519) 881-3442  
Fax: (519) 881-2182

### **Windsor Jail**

378 Brock Street  
Box 7038  
Windsor, ON N9C 3Y6  
Phone: (519) 973-1324  
Fax: (519) 973-1376

## **4. Entering Institutions**

### **4.1 The Problems at Local Detention Centres on Admission and Possible Solutions**

The detention centre (jail, remand centre, “bucket”) is the initial institution in which a person is placed following their arrest. As such, detention centres serve as “intake” institutions for the entire Canadian correctional system.

People are housed in detention centres while they await bail, await trial, while their trial is ongoing, or immediately following their conviction while they are awaiting transfer to another prison. Depending upon an individual’s case, the time spent in a detention centre may vary from a single day to several years.

Because they house individuals charged with all manner of offences – from traffic violations to homicide – detention centres are run in the manner of maximum security institutions, meaning there is little freedom of movement or association. Prisoners are largely held on their *ranges* (living units) and are not allowed outside of them without security escort. They eat their meals on the range, make telephone calls on the range, and get their medications on the range.

Because people are taken into detention centres right off the street, there are a number of common problems affecting prisoners living with HIV/AIDS at this stage. The most common of these relates to medications.

If a person is arrested and brought to the local detention centre, they will almost always experience a disruption in any medications they might be taking. This is because standard correctional practice is to withhold any medications until the prescriptions can be confirmed with the individual’s outside physician. Even if the person is carrying their meds on them at the time of their arrest, they will still not be allowed to access them until the prescription is confirmed.

In theory, these precautions are perhaps sensible. In practice however, they regularly result in people being cut-off all medications – sometimes for several days – while the prison health unit goes through this confirmation process. For PHAs on anti-retroviral combination therapy, for those on pain management medications, and for those on methadone maintenance, this apparently sensible process creates serious barriers to optimal health service.

Short of a policy or legislative change at the provincial level, there’s little you as an individual advocate can do to alleviate this issue. It is a systemic problem that demands a systemic solution.

That said there are things you can do to help minimize disruptions in treatment for individual PHAs.

As was mentioned earlier, the *Ministry of Correctional Services Act* does not guarantee health care rights to prisoners in any specific or comprehensive manner.<sup>1</sup> While Ministry policy exists on various health issues, it does not provide the same sort of advocacy lever as does having rights enshrined in law (as is the case in the federal system). However, this lack of legislation does not mean that you cannot be an effective advocate. It simply means that you need to take a different approach than you might if you had specific legislation to back you up.

If a prisoner calls you with a health care problem, your first step should always be to call (or better yet fax) the health care unit of the institution explaining the problem, the potential ramifications of the delay, and proposing a proper solution. If you can, cite any relevant correctional policy or legislation that supports your position (see [Section 6.1 Access to Treatment and Quality of Care](#), below). No one from the health care staff is likely to release any information to you without a written consent from the prisoner. To deal with this hurdle you may want to send a consent form in the mail to the client with a self-addressed stamped envelope to return it to you. You can then provide that document to the prison health care staff. A faster option may be to have the prisoner sign the consent form and give it to health care to put on his or her file. A third option would be to have the client explicitly instruct health care staff that they are permitted to speak with you. This option is the least favourable however, and a written consent form is always better.

It is important to understand that health care problems in prisons are rarely malicious in origin. A great many of them result from a lack of effective communication mechanisms within the institution, and a significant under-staffing of prison health care units. In many cases a simple

communication from you highlighting the existence of the problem can ensure that it is quickly addressed.

For example, prisoners in detention centres are regularly taken back and forth to court as their cases move through the judicial system. There is no medical staff in the holding cells in the courthouses, so prisoners routinely miss their medications on these days. However, prison health units are not alerted by security staff when a prisoner is taken to court, and therefore the nurses will often not know that a prisoner has missed his or her medications. A simple communication from an outside advocate to notify the health care unit of this fact will often ensure that the person's meds are brought to them on their return from court. Other simple matters such as changes of clothing or bedding can also be achieved in this manner.

There are other times however when the prison health care staff will be unresponsive to your initial communication. It is at this point that a broader advocacy strategy comes into play.

As stated above, the lack of clear legislation in the provincial system means that advocates rarely have a basis in law to compel an institutional response. Therefore, success is often achieved by causing as much commotion as possible with the prison – basically creating a situation where it is easier for them to resolve the complaint than to deal with the hassle, embarrassment, or scrutiny that comes as a result of not addressing it.

The key element in creating this commotion is to involve other people in the process – both internal and external to the prison system. In this regard, never underestimate the power of the CC.

Copying your advocacy correspondence to other individuals or agencies immediately makes the issue bigger, as it expands awareness of it. Within the system, it is

useful to always CC your letter to the staff-member immediately senior to the one to whom the letter is addressed. If you are writing to an individual nurse, be sure to copy the letter to the head of health care. If you are writing to the head of health care, be sure to CC it to the Superintendent (who has ultimate responsibility for institutional health care under the *Act*).

This is a very simple, yet very effective strategy. Letting the staff member in question know that their boss or supervisor has been notified of the problem will often mean that he or she will be more motivated to address it. This is particularly true when copying a letter to the Ministry level, as this takes it outside of the institution. For health care matters, you also have the option to copy advocacy letters to the Senior Medical Officer at the Ministry (who is the “boss” for all the health units). In particularly serious matters, such as denial of anti-retrovirals or methadone<sup>2</sup>, you would be wise to always involve the Senior Medical Officer.

In addition to internal communication within the system, it can be very useful to copy letters to outside community partners such as physicians, lawyers, AIDS service organizations, and/or the Ombudsman’s office. The Ombudsman’s Office is the office charged with investigating problems arising in provincial government departments. They do a significant amount of prison advocacy. For more information about the role of the provincial Ombudsman’s office, please see [Section 9.2.1](#).

In cases of problems with medications, notifying the outside physician can be vitally important. Because doctors often carry an influence with medical professionals not enjoyed by other advocates, the client’s outside doctor can be a significant ally in negotiating with the prison health unit or prison doctor. This is particularly true of thorny issues such as pain management medications, which many institutions are

reluctant to provide because they are narcotics. If you can get the client’s outside physician to write a letter to the institution him or herself in support of your client’s needs, you as an advocate are in a much stronger position. In these cases, you can contact the prison and advocate the principle that the prisoner’s physician of choice should be respected, as that doctor is most familiar with the client’s medical history and plan of care.

Copying the letter to the prisoner’s lawyer can also be useful, for two reasons. On the one hand, involving the person’s lawyer can suggest the possibility of legal action, which may make the prison more eager to resolve the problem quickly. On the other hand, the lawyer may be able to use the issue of inadequate health care to ask a judge to release the prisoner bail, or to reduce their sentence should they be convicted.

If you are successful in having the problem resolved, it is important to write a thank you letter to the staff member in question, and to CC it to all the people to whom you copied the original letter of complaint. There are several reasons for this. First, it is a simple matter of professional courtesy to recognize the assistance you receive, even if that assistance was not easily obtained. Second, it reflects well on your own manner and follow-through. Third, it lays the foundation for a continued relationship with that staff member. Remember, this incident will probably not be the last time you will need his or her help with a matter. Therefore, you do not want to burn your bridges, nor develop a reputation as nothing but a “complainer”.

#### **4.1.1 Classification and Institutional Placement**

Outside advocates can also play a particularly effective role when it comes to deciding *classification* and intuitional placement.

If a person is convicted, they undergo a classification process to determine in which institution is most appropriate for them to serve their sentence. For people who receive a provincial sentence, classification is done by the *classification officer* at the detention centre.

Under the Ministry's policy on communicable diseases, a prisoner's health requirements may be taken into consideration in deciding which institution to place them in, or in what part of the institution. As an outside advocate, you may make a written submission to the classification officer, making a case as to why one institution is more or less appropriate than another. Issues such as proximity to family and other supports, AIDS service organizations, and or primary care physicians are useful elements to emphasize when intervening in this process.

#### **4.2 Transgendered/Transsexual Prisoners**

Under the current provincial and federal correctional systems, prisoners are classified and placed institutions based on their sex organs. This means that TS/TG prisoners who have not yet, or who have chosen not to undergo sex reassignment surgery (often referred to as "pre-operative") will be housed in institutions which correspond to their sex organs. Therefore pre-operative male-to-female prisoners will be housed in male institutions.

Clearly, this policy for placement will create significant difficulties on a number of levels of TS/TG prisoners. At the federal level, the Correctional Service of Canada has actually addressed the issue of transgendered prisoners in Commissioner's Directive 800. The official policy states that prisoners who have a diagnosis of "gender identity disorder" should in fact have access to hormone therapy while incarcerated. The policy states that hormone therapy may be continued in these circumstances, as well as

initiated for a prisoner who receives his or her diagnosis after incarceration. In addition, if they have completed a full year of the "real life test" of living as sex they intend to be reassigned to prior to incarceration and have a gender identify specialist recommend surgery during incarceration, the costs of surgery will be covered by CSC. Though it is clear that provincial institutions place prisoners according to the sex organs, it is not known whether a specific policy exists regarding TS/TG prisoners.

The reality of life behind bars for TS/TG prisoners, however, it usually significantly more difficult than for the rest of the population and there are significantly increased risks and vulnerabilities for these clients. In some cases there may also be human rights violations. To date, however, and until a systemic change happens at the provincial and federal levels of corrections, there is nothing that can be done to overturn decisions to place TS/TG prisoners in all male or all female prisons. A more thorough discussion of issues relating to TS/TG prisoners and advocacy can be found in Chapter 2 of PASAN's guide to providing services to prisoners, Pros & Cons. See Section 9.3.

#### **4.3 Initial Placements in Federal Institutions**

If a person is convicted of an offence and sentenced to a term of two years or more, they will be sent to a federal penitentiary. If they were being held in a detention centre during trial, transfer to a federal institution will not occur for at least fifteen days after sentencing, in order to allow time for the person to file an appeal. An individual prisoner may waive this fifteen-day period, should he or she so desire, in order to expedite their transfer.

As in the provincial system, all federal prisoners must undergo a *classification* process before being sent to the *placement*

*institution* in which they will serve their time. The classification process is done to assess the person's security rating and program requirements, and thereby determine the most appropriate institution in which to incarcerate them for the longer term.

In the Ontario region, classification of male federal prisoners takes place at Millhaven Institution, a maximum-security prison in Kingston.<sup>3</sup> This means that all male prisoners in Ontario who have been convicted and have been given a sentence of two years or more will be transferred initially to Millhaven. For federally sentenced women prisoners, this process takes place at Grand Valley Institution in Kitchener.

Prisoners sent to Millhaven for classification can expect to be housed there for several weeks. The placement institution to which an individual is classified is based on consideration of a number of factors, including the nature of the conviction, the individual's criminal record, their programming requirements, and the individual's previous institutional record (previous security classification, behaviour, case management reports, assessment of escape risk, etc.).

Once a federal prisoner has been classified, they must be given written notice of the penitentiary to which they've been assigned, along with the reasons for the decision. The prisoner must then be given an opportunity to make a response to the decision, should they wish to contest it. A prisoner may appeal their placement through the institutional grievance process.

Following the classification process, the individual prisoner will be transferred to their placement institution. Upon arrival they will go through a standard institutional orientation program.

For women, this process is the same, but proceeds in a slightly different manner. There is only one federal prison for women

in Ontario, Grand Valley Institution (GVI) in Kitchener. As a result, GVI houses women of all security ratings (except maximum). While the women undergo the same classification process as do the men, this will rarely result in their being transferred to another institution. The majority will remain at GVI. Currently, women who are classified as maximum security will be housed at the Saskatchewan Penitentiary in the west, Sainte-Anne-des-Plaines in the Quebec/central region or Springhill Institution in the Atlantic region. CSC is currently in the process of building maximum security units within each women's prison.

The *CCRA* mandates that a prisoner's health and health care needs be taken into consideration when making decisions about placement [Section 29]. This is a particularly important advocacy tool when working for prisoners living with HIV/AIDS, as environmental issues, stress levels, overcrowding, access to medical services, and proximity to outside support networks and family are all factors that can have a positive or negative effect on their health.

The *CCRA* also specifies that CSC has an obligation to house prisoners in "the least restrictive environment for that person" that meets acceptable security and safety considerations. In making this assessment, factors such as proximity the prisoner's home community and family and the need for a compatible cultural/linguistic environment must be considered, as well as the availability of appropriate programs and services. In the case of women prisoners, CSC has a much more limited ability to accommodate these considerations because of the limited number of women's prisons in Canada.

As an outside advocate, you may make a written submission to CSC during the classification phase if you believe that your client's needs would be best met by incarceration in a particular institution. The *CCRA* provisions above offer excellent

rationales for advocacy in support of the particular needs of imprisoned PHAs.

## **5. Involuntary Transfers and Segregation**

### **5.1 Involuntary Transfer – Federal Prisons**

CSC has the authority to involuntarily transfer a prisoner from one institution to another. Transfers can occur between institutions within Ontario region, from an institution in Ontario to one in another part of the country, from a federal prison to a provincial correctional centre, or from the prison to a hospital.

When seeking an involuntary transfer order, the institution must comply with a specific notification and review process.

Under the *CCRA*, the institution must provide a prisoner with written notification of his or her proposed involuntary transfer, including the reasons for the transfer and the proposed destination institution. Having served this written notice, the institution is obliged to allow the prisoner time to prepare a response (this time is defined within Commissioner's Directive 540 as forty-eight hours). The prisoner is then entitled to an opportunity to present their response either orally or in writing.<sup>4</sup> The institution must hear the prisoner's submission, and forward it to the CSC Commissioner, or a staff member designated for this purpose by the CSC Commissioner.<sup>5</sup>

When the final decision is made on the transfer application, the institution must provide the prisoner with written notice of the decision, including the reasons for it. If a decision is made to involuntarily transfer the prisoner, the institution must provide him or her with a written decision at least two days before the transfer is to take place. If it is decided not to transfer the person,

this written notification must be provided within five days after the decision is made.

*All prisoners are entitled to consult legal counsel when facing an involuntary transfer.* The institution must inform the prisoner of this right to counsel, and allow him or her a reasonable opportunity to contact a lawyer. CD084 states that the prisoner must be allowed to telephone a lawyer within twenty-four hours of receiving notice of the proposed transfer.

If it is believed that the prisoner's presence in the institution poses an urgent security or safety risk, the *CCRA* allows for *emergency involuntary transfers* without prior notification, effectively bypassing the process detailed above. Such a decision can be made by the Commissioner, or a designated staff member.

In the case of an immediate transfer, the Warden or designated staff person at the receiving institution must meet with the prisoner within two working days after the transfer has taken place. They must explain the reasons for the transfer, and provide the prisoner an opportunity to make an oral or written response (specified as a period of forty-eight hours under CD540). This response must be forwarded to the Commissioner, or a designated staff member. CSC must provide the prisoner written notice of the final decision within five working days after the decision is made.

Prisoners are also entitled to consult legal counsel following an emergency involuntary transfer. The institution must inform the prisoner of this right to counsel, and allow them a reasonable opportunity to contact a lawyer. CD084 states that the prisoner must be allowed to telephone a lawyer within twenty-four hours after the completion of the emergency transfer.

The *CCRA* mandates that CSC must take a person's health and health care needs into consideration when making decisions about transfers [Section 29]. This is an important

advocacy tool for prisoners living with HIV/AIDS. Transfers can often result in increased stress for the individual as well as a disruption in medical services, each of which can have negative health consequences. A move to another institution may also mean isolation from friends and family and a loss of access to local AIDS service organizations or other community supports.

The *CCRA* also specifies CSC has an obligation to house that person in “the least restrictive environment for that person” meeting the acceptable security and safety considerations. In making this assessment, factors such as proximity the prisoner’s home community and family and the need for a compatible cultural/linguistic environment must be considered, as well as the availability of appropriate programs and services. This again provides opportunities to advocate in support of the particular needs of PHAs.

If a prisoner is transferred to a new institution, the Commissioner’s Directives state that their personal property shall be shipped to them as soon as possible, and no longer than two weeks after the transfer. If a prisoner is transferred between regions, CSC has the discretion to limit the amount of property they will ship to them.

Prisoners who are involuntarily transferred have the right to seek redress using the institutional grievance procedure.

## 5.2 Segregation – Federal Prisons

CSC has the authority to involuntarily segregate any prisoner in order to keep that individual “from associating with the general inmate population.” The *CCRA* has provisions for two types of involuntary segregation, *administrative segregation* and *disciplinary segregation*. In practice, segregated prisoners are usually housed in the same unit, and under the same conditions,

whether they are segregated for administrative or disciplinary reasons.

Under Section 37 the *CCRA*, all prisoners held in segregation are entitled to “the same rights, privileges, and conditions of confinement as the general population,” except where those are necessarily limited by virtue of being segregated (i.e. lack of association with other prisoners, limitations based upon security considerations, etc.). This is a key right that ensures that several others are extended to segregated prisoners.

For example, the legislation requires that that CSC take all reasonable steps to ensure that all prisoners are given the opportunity to exercise, outdoors if weather permits. On the basis of Section 37, this must also include prisoners held in segregation. The *CCRA* also requires that CSC “take all reasonable steps” to ensure that prisoners are adequately clothed and fed, receive adequate bedding, and are provided toiletries and other personal hygiene items. Section 37 again extends this right to people held in segregation. All of these issues are particularly important issues for prisoners living with HIV/AIDS, as each is an essential element of health promotion.

Section 29 of the legislation also mandates that CSC must take a prisoner’s health and health care needs into consideration when making decisions about administrative segregation and disciplinary matters. This is another useful advocacy tool, as being placed in segregation can not only be highly stressful, but can also create barriers to accessing some medical and social supports, and sometimes increase the likelihood that person’s HIV status will become known to other staff and prisoners.

By law, all prisoners in segregation must be visited at least once a day by a member of the health care staff. The Warden (or designate) must also visit the segregation area daily, and meet with individual prisoners on request.

Prisoners in segregation have the right to access legal counsel.

### 5.2.1 Administrative Segregation

The purpose of administrative segregation is to keep an individual prisoner from associating with the general prison population. According to the *CCRA*, administrative segregation is only to be used if the Warden “is satisfied that there is no reasonable alternative.” It also states that CSC must return the individual to the general population “at the earliest appropriate time”, whether that be in their current penitentiary or another one.

There are various “reasonable grounds” upon which an individual can be placed in administrative segregation, almost all of which are security-based. A person can be segregated if he or she has attempted to harm another person or jeopardize the security of the institution, or are suspected to be about to do so. They can be segregated if their presence in the general population is deemed a risk to institutional security, the security of another person, or a risk to the safety of the prisoner him or herself. A person can also be involuntarily segregated if it is believed that their presence in general population would interfere with an institutional or criminal investigation.

If a person is involuntarily segregated, the institution must provide the prisoner with written reasons for the decision within one working day after their confinement. The institution is obliged to provide some substantiation of their allegations. The federal court has found that institutions must abide by the “fairness principle” in making decisions regarding involuntary segregation.<sup>6</sup> That is, the institution must provide sufficient information about the reasons for the segregation to allow the prisoner to mount an effective rebuttal of the allegations.

All persons involuntarily placed in administrative segregation are entitled to a hearing before the Segregation Review Board. The purpose of the Segregation Review Board hearing is to recommend whether the individual should be released back into general population. This decision is based on an assessment of the “reasonable grounds” outlined above.

A hearing must be held within five working days after the prisoner’s confinement in administrative segregation. The prisoner must be given written notice of the hearing at least three working days prior to the hearing, as well as copies of the information that the Board will be considering. The prisoner has the right to attend the hearing in person, if they so choose, and make representations. The prisoner can be barred from the hearing if they are disruptive, or if their presence is deemed a risk to another person at the hearing.

Following the hearing, the Board’s recommendation is sent to the Warden for approval, and the prisoner is entitled to receive a copy.

Should the hearing recommend that a prisoner be released from segregation back into the general population, the Warden has the authority to accept or reject it. The *CCRA* states that if the Warden rejects the Board’s recommendation, he or she must meet with the individual prisoner and explain the reasons, and allow the prisoner an opportunity to make an oral or written representation. The Warden is not compelled to provide his or her reasons in writing.

If the prisoner is not released from segregation (either by recommendation of the Board or decision of the Warden) another hearing must be held within thirty days, and at least once every thirty days thereafter that the person remains segregated. The CSC Regional Director, or designate, must also review the individual’s case at least once every sixty days.

An individual prisoner may also request to be voluntarily segregated, or request to voluntarily remain in segregation. This request is made to the Warden, who again has the authority to accept or reject it. If Warden denies the request, he or she must meet with the individual prisoner, explain the reasons for the decision, and allow the prisoner an opportunity to make an oral or written representation. The Warden is not compelled to provide his or her reasons in writing.

### 5.2.2 Disciplinary Segregation

A prisoner may only be placed in disciplinary segregation following a conviction for a serious disciplinary offence. The legislation stipulates that prisoners held in segregation for disciplinary reasons “shall be accorded the same conditions of confinement” as are people in administrative segregation.

The maximum period of segregation for a serious disciplinary offence is thirty days. If two or more offences are served consecutively, the total period of segregation cannot exceed forty-five days in a row.

For more information on disciplinary segregation, see *Institutional Charges*, below.

### 5.2.3 HIV Status

According to Commissioner’s Directive 821, “Management of Inmates with Human Immunodeficiency Virus (HIV) Infections”, CSC policy is to house PHAs in the general prison population. Under this directive, people should not be segregated based solely upon their HIV status.

That said, the policy allows that if placement in the general population is “not feasible”, then the institution may place the person in protective custody, administrative segregation, or in the health care unit.

The Directive also gives the Warden the authority to segregate a PHA who “fails to cooperate and continues to engage in activities that place others at risk for infection with HIV.”

### 5.3 Involuntary Transfer – Provincial Prisons

The *Act* authorizes the Minister to designate one or more Ministry personnel to oversee admissions to all provincial correctional institutions. This designated staff member has the authority to transfer prisoners from one provincial institution to another within Ontario.

As is the case with health care, the *Act* does not lay out specific legislative rights regarding transfers. However, the Ministry’s policy on communicable diseases does provide some options for advocacy on behalf of PHAs facing transfers. Under that policy, a prisoner’s health requirements may be taken into consideration in deciding which institution to place them in, or in what part of the institution. This opens an avenue for advocacy if you believe the new institution is less supportive of the prisoner’s health care needs than was the previous one. Issues such as proximity to family and other supports, AIDS service organizations, and the quality of health care services at a particular institution may form part of your intervention.

### 5.4 Segregation – Provincial Prisons

The Superintendent has the authority to involuntarily segregate a prisoner. A prisoner can be involuntarily segregated if the Superintendent believes he or she is in need of protection from other prisoners, or that he or she presents a danger to other prisoners or institutional security. A prisoner may also be involuntarily segregated if they are alleged to have committed a serious institutional offence.

The Superintendent may also agree to voluntarily segregate a prisoner based upon his or her own request.

Under the *Act*, segregated prisoners are entitled to the same benefits and privileges as all other prisoners, “as far as is practicable.” As an advocate, this is a useful point to note as people held in segregation often experience difficulty accessing adequate bedding, changes of clothing, the telephone, etc.

When a prisoner is involuntarily segregated, the Superintendent is required to follow a process to regularly review the need to keep the individual isolated.

When a prisoner is segregated because of an alleged institutional offence, the Superintendent must conduct a review of the case within twenty-four hours of the person’s segregation, and release the prisoner back into general population if the segregation is deemed unwarranted.

For all prisoners placed in segregation, the Superintendent is required to review each case “at least once in every five-day period” to assess whether continued segregation is appropriate. If a prisoner is held in segregation for thirty days consecutively, the Superintendent is required to file a report to the Minister explaining the reasons for the decision.

If a prisoner is segregated as a punishment for a misconduct, they may not be confined for more than thirty (on regular diet) or more than ten days (on a reduced diet). See *Institutional Charges*, below.

#### **5.4.1 HIV Status**

The Communicable Diseases Policy states that prisoners living with HIV/AIDS shall be housed in the general prison population. Therefore, no provincial prisoner should be segregated based upon HIV status alone.

However, the policy does outline exceptions to this general rule.

If the individual’s state of health requires special arrangements, the institution may choose not to house them in the general population. Also, if it is believed that the person’s presence in general population would be a threat to his or her own safety, of the safety of others, the institution may decide to take them out of general population. The policy also allows the Superintendent to place a PHA in segregation for “behavioural or non-medical reasons”, in which case the review process described above would apply.

Health care staff – in consultation with the Senior Medical Officer and Superintendent – may also decide to assign an individual prisoner to a “special needs unit”. Under the terms of the policy, this decision may be for medical need, or because the person “cannot be placed in a regular living unit for other reasons.”

If a prisoner’s health is such that they need ongoing support and monitoring, the prison physician may decide to place them within the prison hospital unit. If the prisoner’s needs are acute, a decision may be taken to move them to a hospital in the community. In this case, the prisoner would be granted a medical TAP (Temporary Absence Pass), authorized to the appropriate care setting.

## **6. Prisoners’ Rights**

### **6.1 Access to Treatment and the Quality of Care**

#### **6.1.1 Federal**

Under Sections 85—88 of the *CCRA*, CSC is mandated to provide every prisoner with essential health care, and reasonable access to non-essential mental health care that will contribute to his or her rehabilitation and reintegration into the community. The *CCRA* states that this medical care “shall

conform to professionally accepted standards” and must be provided by registered health care professionals.

This is a crucial tool in engaging in advocacy on behalf of federal prisoners. Of particular importance is the requirement that health care meet professionally accepted standards.

Best practice in HIV/AIDS care – as with many specialized areas of medicine – changes constantly based upon research and advances in medical technology. Very often, correctional service’s health care lags behind best practice, and as a result many imprisoned PHAs suffer a reduction in the quality of the care they were receiving in the community, or endure a standard of care less than equal to that available on the other side of the walls.

CSC is obligated to consider an individual’s health and health care needs in “all decisions” affecting that person. These include decisions relating to transfers, use of segregation, classification, disciplinary measures, and pre-release planning. This is another useful tool in advocating on a variety of issues affecting imprisoned PHAs.

#### **6.1.1.1 Consent**

The issue of consent is addressed in the *CCRA*. Prisoners have the right to voluntary informed consent in regards to health care treatment, as well as the right to refuse or withdraw from treatment at any time. The *CCRA* outlines criteria that must be met before the threshold of informed consent is achieved. These are that the prisoner has been advised of, and has the capacity to understand, the likelihood of effectiveness of the treatment; the risks associated with the treatment; any reasonable alternatives to the treatment; the likely effects of refusing treatment; and their right to refuse or withdraw from treatment.

If it is determined that the individual does not have the capacity to understand all these

issues, the decision whether to give treatment to the individual is governed by the applicable provincial law.

The *CCRA* does not consider consent to be involuntary if the treatment is required as a pre-requisite for temporary absence, work release, or parole.

Commissioner’s Directive 803 states that in addition to medical treatment, consent must be obtained for all psychiatric and psychological assessments and treatment, any participation in research, and for the sharing of medical information (except where legislation allows for information sharing without consent, see below).

#### **6.1.1.2 HIV Testing**

Commissioner’s Directive 821 specifically states that the same threshold of voluntary informed consent established in the *CCRA* must be met in regards to HIV testing. No prisoner may be tested for HIV involuntarily, or without his or her knowledge and prior consent.

CD821 establishes that prisoners may make a request for HIV testing to the institutional physician, and that the testing shall be done at the doctor’s discretion. In practice, federal prisoners are provided with HIV testing on request in Ontario region.

While CD821 indicates that all prisoners taking an HIV test shall receive pre- and post- test counselling, in practice this counselling is provided inconsistently.

#### **6.1.1.3 Confidentiality and Disclosure**

In regards to the security of medical information, CSC policy and practice are outlined in the Commissioner’s Directives.

CD835 states clearly “Inmates have the same rights to confidentiality of information obtained by a health professional as exist in

the general community.” It further stipulates that practices for managing health care records “shall conform wherever practical” to the standards of health care professionals in the community. The CD also clearly states that a prisoner’s health care records shall not be included in his or her institutional file.

In terms of HIV infection, CD821 specifies that all persons testing positive for HIV shall have their status recorded in their medical file. Furthermore, the Directive states that “The HIV status of an inmate is medical confidential. This information shall not be released to supervisory/agency staff without the inmate’s consent.”

That said, the Commissioner’s Directives do lay out exceptions to this policy.

If it is believed that the prisoner’s actions may constitute a danger to themselves or others, health care staff is authorized to disclose medical information without consent.

CD803 allows for the release of medical information to a prisoner’s case management officer if it is believed the information is relevant to making decisions about the individual’s release, supervision, or surveillance in the institution or the community. Furthermore, CD803 allows for the release of medical information when the information is “relevant to risk assessment or case management issues.” Unfortunately, it is not unknown for case management officers and parole officers to consider a person’s HIV positive status as a factor when assessing potential “risk” to the community.

Finally, the policy in CD821 outlines that if a prisoner is “suspected or confirmed” to be HIV positive, the head of health care must notify the Warden and the CSC Regional Manager of Health Services, who must in turn notify the CSC National Manager of Health Services, who must in turn notify the Executive Secretariat. This is in addition to

the standard public health reporting laws in Ontario, which must also be followed for people testing HIV positive in prison.

#### **6.1.1.4 Methadone**

In 1998, CSC implemented Phase I of its National Methadone Maintenance Treatment Program. This policy change enabled prisoners to access methadone maintenance therapy (MMT) in certain circumstances.

Under the terms of Phase I, people who are already on MMT in the community are eligible to continue to access the therapy while in prison. In order to be eligible under Phase I, the individual must be a current opioid user on a community methadone programme a) with a history of chronic dependence, b) who is living with HIV/AIDS or hepatitis B or C, or c) who is pregnant.

In 1999, this policy was amended to enable injection drug users to initiate MMT “on an exceptional basis” while in prison. The criteria for considering a person for “exceptional” access includes an assessment that all other treatment programs have failed, that the prisoner’s health is seriously compromised by his or her drug use, and that “there is a dire need for immediate intervention.” In practice in Ontario region, a person’s HIV positive status has also been considered an “exceptional” circumstance for initiating methadone.

The decision to allow a prisoner to initiate MMT is made by the CSC Regional Deputy Commissioner, and is based upon the recommendation of a case conference of health, parole, and program staff.

CSC Ontario Regional Headquarters has issued its own guidelines for assessing applications on an “exceptional basis”. Under these guidelines, a case conference must be called to consider the application. The applicant’s parole officer is responsible

for convening the conference, and for collecting all information relevant to the application.

If the case conference finds that the application meets the criteria, and that methadone is the most appropriate treatment option, the recommendation for approval is sent to the Warden, who has the option of supporting or rejecting it. The Warden must report his or her decision to the prisoner.

If the Warden supports the recommendation of the case conference, the application is forwarded to the Deputy Commissioner.

In Ontario, it has generally been difficult for prisoners to gain approval to initiate MMT while incarcerated. Therefore, outside advocacy has a key role to play in helping to build a case for acceptance based on the criteria above.

MMT may be terminated if a prisoner is found to be selling or giving away his or her dosage, or for repeated urine tests that show other drug use. The policy states that termination should only occur after other attempts to address the problem have failed.

If a prisoner is on MMT, this may be taken into account when assessing “risk” in regards to escorted and unescorted temporary absences, and work release. If a prisoner is approved for one of these forms of release, the institution must make arrangements for him or her to obtain their dose from a clinic or pharmacy in the community.

In 2003, Phase II of the MMT program was implemented. Under the provisions of Phase II prisoners may be eligible to initiate MMT inside the institution without having to establish that they meet the “exceptional circumstances” criteria. The new rules say that any inmate can access the MMT program in prison if they meet three basic criteria: that they have an opiate addiction

or a history of addiction and a high risk of relapse; and there be a small likelihood of benefit from non-methadone treatment as evidenced by a past history of treatment failures; and agreement to terms and conditions of the Methadone Maintenance Treatment Program as evidenced by acceptance and willingness to sign the Methadone Treatment Agreement.

#### **6.1.1.5 Condoms and Bleach**

CSC policy entitles federal prisoners to access condoms, dental dams, and water-based lubricant. This is outlined under CD821. The policy obliges each institution to make these HIV prevention measures “discreetly available” in not less than three places in the prison, including all family visiting units used for Private Family Visits. The Directive specifies that no prisoner should have to make a request to staff in order to access safer sex measures.

CSC policy also mandates all federal prisons to make bleach available to prisoners as a harm reduction measure. However, it should be noted that the reality of access to bleach and condoms may be quite different from one institution to another. There have been reports that bleach is watered down, condom machines are broken and some facilities require that bleach and condoms be specifically requested, or distribution points are in full view of institutional staff.

#### **6.1.2 Provincial**

As mentioned earlier, Ontario correctional legislation lacks the type of specific health guarantees found in its federal counterpart. As a result, medical standards and rights to care are not enshrined in law, and medical practice is outlined only in correctional policy.

However, this lack of legislation does not mean that advocates cannot fight for the healthcare rights of PHAs in prison. To the

contrary, the lack of legislation in this area means that outside monitoring of healthcare is even more vital. The fact that advocates have little hard legislation to use as a back up means we have to be more creative in our approaches. Some of these proven advocacy strategies are outlined in *The Problems Encountered at Local Detention Centres on Admission and Possible Solutions*, above.

Under the *Act*, ultimate responsibility for the health of prisoners in any institution rests with the Superintendent.

When a prisoner requires medical treatment that cannot be provided by the institution, the Superintendent of the prison must arrange for the person to be treated in a public hospital. This also applies to prisoners requiring hospitalisation for mental health issues. In these cases, the prison will provide the individual with a *temporary absence pass* (TAP) allowing them to leave the institution. If the Superintendent cannot make the arrangements to have the individual hospitalized, this responsibility falls to the Ministry.

HIV/AIDS policy and practice of provincial institutions is outlined in the “Communicable Diseases Policy” of the Ministry of Correctional Services.

The stated “goal” of the Ministry policy is to house prisoners living with HIV/AIDS within the general population of the prison wherever possible. Under the policy, PHAs may not be “unreasonably denied access to institutional programs.” Access to programs may only be limited to the extent necessary to facilitate medical treatment, or to minimize risk to the individual PHA or others. In cases where the institution decides that an individual PHA may not participate in a program, the policy obliges the Superintendent to make “every effort” to provide a comparable alternative program.

### **6.1.2.1 HIV Testing**

The policy provides for access for HIV testing on request. Testing shall only occur with the prisoner’s informed consent (although the criteria for what constitutes “informed” is not defined). The policy states that “adequate” pre- and post- test counselling shall be part of HIV testing (again the threshold for “adequate” is not defined).

The policy specifically states that mandatory HIV testing shall not be performed.

### **6.1.2.2 Confidentiality and Disclosure**

All correctional health care workers are obliged under Ministry policy to maintain confidentiality of prisoners’ medical records. Confidentiality standards must be in accordance with those outlined by the *Regulated Health Professions Act*, the *Freedom of Information and Privacy Act*, and the Ministry policy on confidentiality. As is the case in the community, a prisoner must sign a consent form before corrections may disclose any medical information to a third party.

The policy allows for HIV positive prisoners, or others necessitating “special consideration”, to be identified to the Superintendent.

As with all Ontario health workers, prison health units are obligated under Ministry policy and provincial law to report all identified cases of HIV to the local medical officer of health.

### **6.1.2.3 Methadone**

Ministry policy is that people on Methadone Maintenance Therapy (MMT) at the time of their admission are eligible to continue the therapy during their incarceration. Approval for MMT may be given following an

assessment by the prison physician, and confirmation of the prescription.

To quote from the policy, “Ideally, there should be no disruption in the [methadone] program.” For advocacy purposes, this may therefore be considered to be the policy objective. The policy directs that a nurse will verify the prescription with the outside physician and pharmacy “at the earliest opportunity”.

If the institutional physician is authorized to prescribe methadone, he or she shall prescribe the therapy directly. If not, the institutional doctor must contact the community physician and have him or her continue to prescribe for the person while they are incarcerated. In this case, the community physician is allowed to arrange appointments with the patient while they are in prison.

If the prison physician disagrees with the community physician’s recommendation to continue MMT, the matter is referred to the Senior Medical Officer of the Ministry for resolution.

If the prisoner on MMT is pregnant at the time of her admission, the policy prohibits the institution from discontinuing the therapy. Under the policy, pregnant prisoners who are opiate dependent are the only people eligible for initiating MMT while inside.

While this may all sound fine, in practice people on methadone commonly experience disruptions in their treatment when they are arrested and brought to a detention centre (particularly in rural areas that may be quite unfamiliar with MMT). Some institutions refuse to provide methadone under any circumstances. This is therefore an issue where outside advocacy can play a critical role in ensuring proper access to treatment. Given the immediate withdrawal symptoms experienced by people who have their MMT disrupted, it is also a matter that requires urgent resolution.

In addressing methadone issues, direct your advocacy to the Senior Medical Officer of the Ministry of Corrections, as it is his responsibility to ensure that the policy, and indeed proper medical standards, are upheld in Ontario prisons.

#### **6.1.2.4 Condoms**

Ministry policy allows for the distribution of condoms to prisoners. In practice, this occurs unevenly – and with greater or lesser degrees of confidentiality – from one institution to another. That said, no one should be denied access to condoms if requested from health care staff.

### **6.2 Access to “Amenities” like shoes, and No, You don’t have the right to smoke**

#### **6.2.1 Federal**

##### **6.2.1.1 Money**

Prisoners are not allowed to hold money on their persons. Instead, each individual prisoner is given an Inmate Trust Fund, which consists of a savings account and a current account. Income may be obtained through a variety of sources including wages for prison work, a business operated by the prisoner, the sale of arts and crafts, private/public pensions, or financial support donated by outside family and friends. Ten percent of a prisoner’s income is automatically deposited into his or her savings account. The rest goes into the current account.

Prisoners may use their money in various ways. These include buying things from the canteen, purchasing items of personal property from outside businesses with the approval of the institution, savings, family support, and making charitable donations.

There are certain payments that may be withdrawn from the prisoner's account without his or her authorization. These include payment of fines or restitution, and payment for room and board at the prison.

### **6.2.1.2 Property**

Federal prisoners are entitled to possess various types of personal property while incarcerated. The policy in this regard is outlined under CD090.

Standard authorized items include clothing and footwear; sports clothing, footwear, and equipment; personal grooming items; notebooks and other writing materials; photos, pictures, and posters; finished arts and crafts; musical instruments; calculators, typewriters, and batteries; radios and televisions; CDs and CD players; records and record players; cassette tapes and players; video games; approved books and magazines. Cross-gender clothing for transsexual and transgendered prisoners may also be authorized on a case-by-case basis. The total combined value of these items may not exceed \$1500.

In addition to the above, prisoners may possess jewellery, not in excess of \$300 in value; and personal computers (but not internet access), not in excess of \$2500 in value.

Prisoners are also entitled to purchase canteen items such as food, cigarettes and stamps. The total allowable amount a person may possess at any one time is \$90 total, which includes a limit of three cartons of cigarettes or two cans of tobacco.

There are three ways that federal prisoners can acquire items of personal property. The first is if it is already in their possession when they arrive at the institution (that is, it is already part of their approved property from a previous prison). The second is if the item is sent to them within the first thirty days of their admission to their

placement institution (that is, the original institution to which they are classified at the beginning of their sentence). The third is if it is received after the initial thirty day window, and approved by the Warden (or delegate). These may include items donated by family or friends, or items purchased directly from outside distributors.

All of a prisoner's personal possessions are listed on a personal property record, copies of which are held by the institution and the prisoner. Prison staff use this list when conducting cell searches to certify that all items in the cell are authorized and registered to the individual prisoner. Any items found that are not on the list may be seized, and may result in disciplinary charges.

Items of personal property not possessed in the prisoner's cell may be placed in storage at the institution. These items are also recorded.

Under CD234, a prisoner is entitled to submit a compensation claim to the institution for any personal property damaged or lost during a cell search. All claims must be investigated, and written report provided to the complainant. If the prisoner is unhappy with the finding, he or she is free to appeal the decision through the institutional grievance process.

## **6.2.2 Provincial**

### **6.2.2.1 Money**

Prisoners are not allowed to hold money on their persons. All money acquired is held in trust by the Superintendent. Prisoners may then place requests to spend this money as desired, on canteen items, approved outside purchases, or family support payments.

There are two instances in which the Superintendent may deduct money from an individual's account without their approval. One is to pay any fines that might be owed

by the prisoner, and the second to pay a fee set by the Minister to subsidize the cost of the prisoner's food, lodging, and clothing.

If a prisoner's account is greater than \$100 throughout a financial quarter, the prisoner is entitled to earn simple interest on the amount.

If a person is released, paroled, or transferred to a half-way house, the Superintendent must pay them the balance of the money in their account.

### 6.2.2.2 Purchases

Prisoners are entitled to purchase items from the institutional canteen, using funds from their trust accounts. They may also make approved purchases from outside sources if authorized by the Superintendent.

Medical necessity, or comfort based on a medical need, are grounds under which the Superintendent will often authorize outside purchases. For people living with HIV/AIDS, this can provide an opportunity to obtain items such as special shoes or runners (for people with trouble walking or neuropathy in their legs), articles of warm clothing, eyeglasses, and vitamins.

If outside family members, friends, or AIDS service organizations wish to assist in purchasing special items for PHAs, the usual method is to deposit the funds into the individual's trust account at the prison. The prisoner him or herself may then order the item(s) through the standard institutional process.

### 6.2.2.3 Smoking

In recent years, the Ministry of Corrections has moved to eliminate smoking in provincial institutions. This is part of a trend that has been followed in several provincial jurisdictions.

There have been several court cases testing the constitutionality of these "No Smoking" policies on various grounds, including that of cruel and unusual punishment. The courts have consistently found that eliminating smoking in prisons is not a violation of *Charter* rights, and that people in prison do not have the right to smoke.

## 6.3 Access to Lawyers

The *Charter of Rights and Freedoms* guarantees rights to legal counsel in the event of coming into conflict with the law. Included among these are "the right on arrest or detention...to retain and instruct counsel without delay and to be informed of that right." This right is not extinguished by virtue of incarceration. However, the prison environment – and various pieces of correctional legislation – can affect the manner in which prisoners may access lawyers.

### 6.3.1 Federal

In general terms, the *CCRA* states that all prisoners must have "reasonable access" to legal counsel and legal reading materials. In addition to this general overarching principle, there are specific circumstances in which the right of a prisoner to consult legal counsel are enshrined in legislation.

The first is if a prisoner is charged with a criminal offence while in custody. In this event, the prisoner has a right to contact legal counsel "without delay". CD084 defines "without delay" as being within twenty-four hours arrest. CSC must ensure that the prisoner is advised of their right to counsel.

A prisoner also has the right to contact a lawyer if they are placed in administrative segregation, are facing a proposed involuntary transfer, or have been subjected to an emergency transfer. In each of these

cases, the institution is obliged to inform the prisoner “without delay” of their right to counsel, as well as to allow him or her an opportunity to contact a lawyer. CD084 again defines “without delay” as being within twenty-four hours.

Prisoners charged with serious disciplinary offences have the right to retain counsel, and have legal representation at subsequent disciplinary hearings. The lawyer has the right to question witnesses, introduce evidence, and call witnesses of their own. They are also entitled to make submissions at all phases of the hearing.

Prisoners also have the right to legal representation at hearings of the National Parole Board.

Outside of the circumstances set out in the legislation, policies regarding a prisoner’s interactions with his or her lawyer are set out in CD084. The policy objective of the CD084 is “To ensure respect for the rights of inmates by providing them with reasonable access to legal counsel and advice.” The institution must ensure that all prisoners are allowed telephone and written communications with their lawyers, and have access to private legal visits. Unless the communication is as a result of one of the situations covered in the legislation, the institution may require a prisoner to provide “reasonable notice” of at least twenty-four hours notice before contacting their lawyer (although the Warden has the discretion to waive this period).

All telephone communications between prisoners and the outside are subject to monitoring. That said, CD085 stipulates that telephone calls between a prisoner and his or her lawyer are “normally confidential”. However, the Warden retains the authority under the *CCRA* to eavesdrop on lawyer/client communications if there are reasonable grounds to suspect that the call will jeopardize institutional security, or is part of a criminal act. If the call is monitored, the institution is obliged to

notify the prisoner in writing of the reasons for the eavesdropping, and provide him or her with an opportunity to respond. Similar restrictions affect the confidentiality of legal correspondence. See *Privacy Matters – Mail*, below, for details.

Every institution is required by law to allow prisoners to meet confidentially with legal counsel in a private room.

### 6.3.2 Provincial

For accused persons held in provincial detention centres while awaiting trial, ongoing communication with legal representation is standard. Communication with lawyers in order to prepare a defence for trial is a guaranteed *Charter* right, and is facilitated by detention centres.

That said, as almost everyone in a detention centre is dealing with some ongoing criminal charge, the volume of legal communication to and from the institutions can present logistical problems for attorneys and clients. Detention centres provide only a small number of private meeting rooms where defendants can meet with their legal counsel, and there is often overwhelming demand for access to these spaces. Telephone use may also be logistically difficult given the large number of prisoners needing to share the few available phones.

Provincial institutions do not place restrictions on external telephone calls. Therefore, prisoners in correctional centres and detention centres are able to call their lawyers whenever they have normal phone access.

Correspondence to and from a prisoner’s lawyer is subject to some degree of confidentiality, although not absolute privilege. See *Privacy Matters – Mail*, below, for details.

## 7. Privacy Matters

### 7.1 Mail

All people in federal or provincial custody are entitled to send and receive mail.

The most important thing to understand about prisoners' mail – whether it is coming in or going out of the institution – is that the prison has authority to open it and often read it. This presents obvious concerns about confidentiality for both the sender and the recipient of the correspondence.

#### 7.1.1 Federal

Under the *CCRA Regulations*, all mail entering or leaving federal prisons is inspected “to the extent necessary” to determine whether it contains contraband. In the case of incoming mail, the envelope is opened and the contents inspected by a staff member designated by the Warden. For outgoing mail, letters must be submitted unsealed to staff, who check the contents.

Staff is not generally allowed to read the contents of letters or packages. However, the *CCRA* does empower the Warden to authorize the reading of an individual's correspondence if there are reasonable grounds to suspect the contents may jeopardize personal safety or institutional security. After reading the correspondence, the institution may choose to refuse to deliver the letter based upon the contents. If such a decision is made, the original letter is to be returned to sender. When mail is scrutinized in this fashion, the prisoner must be notified in writing and given an opportunity to respond. If the scrutiny comes as part of an ongoing investigation, notification can be delayed until after the investigation is concluded.

Legal correspondence – both to and from a lawyer – is generally considered privileged and forwarded unopened. For this reason,

legal correspondence should be clearly marked as such, and should be sent on the official stationery of the practice. That said, the Warden may authorize the opening and reading of legal correspondence if he or she has reasonable grounds to suspect that the contents is not privileged, or that it poses a security risk of the types outlined above. In this event, the staff reviewing the correspondence is required to keep the contents confidential.

CD085 lists the individuals and organization whom CSC considers “privileged correspondents”, and whose mail is entitled to some form of confidentiality. AIDS service organizations do not meet the definition of privileged correspondent within the Directive, and therefore mail to and from them is not entitled to any special confidentiality. The same is true for medical correspondence to and from a prisoner.

The federal court has found that an individual's right to counsel under the *Charter of Rights and Freedoms* is not incompatible with the right of prison authorities to maintain institutional security.<sup>7</sup> That said, the court has upheld the principle that institutions must forward privileged correspondence directly to the prisoner unless the staff could demonstrate reasonable and probable grounds that the mail should be opened.<sup>8</sup>

Correspondence to and from the Correctional Investigator may not be opened by the prison for any reason.

#### 7.1.2 Provincial

Under the *Act*, the institution has authority to open it and read all mail. Depending upon what the correspondence contains, the prison has the further authority to delete sections of letters, or refuse to forward them at all. The grounds for such action is discretionary, based upon an opinion as to whether “the contents are prejudicial to the best interests of the recipient or are

prejudicial to the public safety and security of the institution.”

There are limitations on this authority where legal correspondence is concerned. Mail between a prisoner and his or her solicitor is entitled to certain degree of protection from arbitrary interference. Subsection 17.2 specifically exempts correspondence between solicitor and client from being opened and read by prison staff *without the prisoner being present* (more on this later).

For lawyers, this means that all mail should be clearly marked as legal correspondence, and should sent on official stationary. Prisoners sending mail out to their lawyers should clearly mark the envelope “legal correspondence”.

However, do not assume that legal mail is immune from institutional scrutiny. The prison retains the authority to open and inspect legal mail, provided that the prisoner and another staff witness are present. The prison also retains the authority to read the correspondence if there are “reasonable and probable grounds to believe that it contains material that is not privileged as solicitor-client communication.” While this regulation leaves the prison significant room for discretionary decision-making, it does mean that legal correspondence should never be opened without the prisoner’s presence. If it is, the lawyer and/or the client may consider lodging a formal complaint with both the institution and the Ministry.

Correspondence between a prisoner and the Ombudsman or Correctional Investigator of Canada is the only mail that is completely privileged under the *Regulations*. Mail to and from these officials is not to be opened, read, or inspected by the prison under any circumstances.

Correspondence from AIDS service organizations or medical professionals is not protected under the *Regulations*, and will be treated as any other piece of mail.

## 7.2 Visitors

### 7.2.1 Federal

#### 7.2.1.1 General Visits

The *CCRA* entitles federal prisoners to “reasonable contact, including visits and correspondence, with family, friends, and other persons from outside the penitentiary.” These entitlements are “subject to reasonable limits” based upon safety and security considerations. General policies and procedures for visits are outlined in CD770.

Under CD770, the Warden must ensure that general visiting privileges are available to all prisoners. While each institution has the authority to set its own visiting policies, visiting procedures are relatively consistent across Ontario region. All individuals wishing to visit a federal prisoner must complete a written application form, and submit to a CPIC criminal records check, before being approved. Some institutions will not approve an individual visitor to visit more than one prisoner in the same institution.

Once approved, they may visit the prisoner during established visiting hours, in the designated *Visits and Correspondence* (V&C) area of the prison. Visits in federal prisons are usually “open”, meaning that there is no physical barrier between the visitor and the prisoner. The Warden has the authority under the *Regulations* to require a physical barrier (usually a screen or glass partition) if he or she has reasonable safety or security concerns. New prisoners who have not yet been classified are restricted to non-contact visits until such time as their security level has been assessed.

If the Warden has reasonable grounds to suspect that a visit may jeopardize safety or security, or be used for criminal purposes, he or she has the authority to refuse an individual visit, or suspend the visiting

privileges of the visitor in question. The Warden may maintain this suspension for as long as he or she believes the risk to be continuing.

If the Warden refuses or suspends visiting privileges in this manner, he or she must inform both the visitor and the prisoner in writing, and include the reasons for the decision. Both the visitor and the prisoner are entitled to an opportunity to respond to the allegations.

If visits with a particular individual are suspended, a re-assessment of the suspension must be conducted at least once every six months, and a written decision forwarded to the prisoner within fourteen days.

#### **7.2.1.2 Private Family Visits**

In addition to general visiting, federal prisoners are also entitled to apply for *private family visits* (PFVs). PFVs (sometimes called “trailer visits”) provide prisoners an opportunity to use a private facility to spend up to seventy-two hours with their families and/or partners. PFVs take place in a special visiting facility within the prison grounds.

All prisoners are eligible for private family visiting, with the exception of those with a history of family violence or who are incarcerated in a super-maximum security Special Handling Unit (SHU). Those who are receiving unescorted temporary absence passes for family visiting purposes are also ineligible for PFVs.

People who are eligible to participate in private family visits include a prisoner’s spouse, common-law partner<sup>9</sup>, children, parents, foster parents, siblings, and grandparents. The federal court has found that same-sex partners are entitled to the same access to private family visits as are opposite-sex common-law couples.<sup>10</sup>

Individuals who do not fall into one of the above categories, but “with whom the prisoner has a close familial bond” are also eligible to access PFVs. The minimum qualification is that they have had a relationship with regular contact visits for at least one year during the course of the person’s incarceration. In these cases, the approval of the individual in question is at the discretion of the Warden, and is based in part on the recommendation of the case management officer.

Prisoners are not eligible to participate in private family visits with other prisoners.

A prisoner is entitled to one PFV every two months, for a duration of up to seventy-two hours. Final approval for PFV requests rests with the Warden. If a request is denied, the Warden must provide written reasons to both the prisoner and the visitor, and allow them an opportunity to respond.

PFV privileges may be suspended if it is found that the visit has been used to bring contraband or weapons into the institution, or if the prisoner is found guilty of committing an offence during the visit. PFV privileges may be suspended for as long as the Warden deems a risk to exist. A re-assessment of the suspension must be conducted at least once every six months, and a written decision forwarded to the prisoner within fourteen days.

#### **7.2.1.3 Professional Visits, or How To Get In**

Prisoners are also allowed to access “professional” visits from clergy, counsellors, parole/probation officers, solicitors, AIDS workers, etc. Professional visitors (other than lawyers) must submit a formal application to the institution to access this privilege, and undergo a criminal records check (CPIC). If approved, professional visitors may be required to make prior arrangements with the institution before meeting with prisoners.

Access to federal institutions can be complicated, particularly if you or your agency are seen as “troublemakers” as a result of advocating for your clients.

The forms required for clearance for professional visits require you to provide information about who you are, including your address and contact information and consent for them to undertake the CPIC check. These forms are then reviewed by relevant staff persons at the institution. Assuming there are no problems, you will be advised that your security is clear. If your request for access is denied, it is important to request written reasons for the refusal. This can help you to appeal to the institution.

It is important to note, however, that even this clearance does not guarantee that you’ll be permitted to enter the institution to visit with your client.

When you arrive at an institution, you will have to go through security at the front gate. This process involves verification of your picture identification. It is common practice that your ID, or other of your belongings will be subject to an ion scan. A guard will pass a small cloth over your personal items or ID and place the sample in a scanning machine. You may have a positive test result even if you are not a drug user – ion scans can present positive results if you have been in contact with another person who uses drugs, including contact with that person’s belongings. You will be asked to lock up your belongings in a locker, including cell phones and other electronic equipment, unless special arrangements have been made ahead of time. Be sure to bring a quarter with you when you visit for this purpose. It is wise to bring as little with you as possible.

## 7.2.2 Provincial

Under the *Regulations*, people in provincial custody are entitled to receive personal visitors under conditions defined by the institution. The *Regulations* specify that no visitor is allowed on the premises without the approval of the Superintendent, and the Superintendent has the discretionary authority to impose any conditions or restrictions on that person “necessary to ensure the safety of employees and inmates and the security of the institution.”

The meaning of this varies in practice. The Superintendent does not personally vet every visitor coming into an institution. This is a responsibility delegated to security staff. In the case of personal visitors (family and friends of the prisoner), visiting is a common and standardized process, rarely requiring formal security clearance. Typically, any person 16 years of age or older can show up at an institution during regular visiting hours, request to visit a specific prisoner, and be granted a visit following the presentation of satisfactory photo identification. Visitors under age 16 are allowed with adult accompaniment, or unaccompanied with special permission of the Superintendent. Restrictions imposed upon visitors usually translate into security features in visiting rooms, such as the presence of glass partitions and use of telephone handsets to carry on conversations.

Under the *Act*, prisoners serving a sentence are permitted a minimum of one visit per week, while those on remand are permitted a minimum of two visits per week. However, the total number of visits allowed will often vary from institution to institution. Depending upon institutional culture and practice, some may allow more visits than the prescribed minimum (this is of course discretionary, and open to change at any time). Others may adhere strictly to the *Regulations* and refuse all visits over the weekly allowance.

Despite these entitlements, the Superintendent retains the authority to suspend all visiting if, in his or her opinion, a “state of emergency exists at the institution”. This is a power usually exercised following disturbances, violent incidents, or institutional searches. In these situations, the institution goes into “lockdown”, during which time prisoners are confined to their cells and all visits and programs are cancelled. Lockdowns can last a few hours, or many days, depending upon the nature of the “emergency”.

Unless prior permission is obtained from the Superintendent, visitors are prohibited from taking photographs or sketching prisoners or the institutional environment, and are not allowed to “receive, give, trade, or sell any article to or from an inmate.”

#### **7.2.2.1 Professional Visits**

In addition to personal visits, prisoners are also allowed what are called “professional” visits from clergy, counsellors, parole/probation officers, solicitors, AIDS workers, etc. Professional visits are not counted as are personal visits, and are therefore not limited in the same manner. Professional visitors must typically submit to a formal security clearance from the institution (CPIC), and may be required to make prior arrangements with the institution before meeting with prisoners.

For more detailed information of processes you may be subject to when entering institutions, please see [Section 7.2.1.3](#), above.

### **7.3 Searches**

#### **7.3.1 Federal**

##### **7.3.1.1 Personal Searches**

The *CCRA* outlines several types of personal searches to which prisoners may be

subjected. These vary greatly, from non-intrusive (asking someone to empty their pockets) to very intrusive (including strip searches, body cavity searches, and urinalysis). Some types of searches require written authorization from the Warden. Others do not.

On the lower end of the intrusiveness scale, any staff member is empowered to conduct individual frisk searches or searches of a prisoner’s clothing at any time, based upon a “reasonable grounds” or suspicion. In some circumstances, this authority is also extended to contract workers. In many instances, these types of searches happen as part of the institutional routine, particularly when people are moving between parts of the prison, or going to and from visits.

The more intrusive types of searches generally – but not always – require some sort of due process. For strip searches, a staff member of the same sex as the prisoner may conduct a strip search if they have reasonable grounds to suspect that the individual is concealing contraband, and has then obtained authorization from the Warden. As always, there are exceptions to this rule. In the case of an “Emergency Search” – where the staff has reason to believe that a delay will create a security risk, or a risk of the contraband being destroyed – the staff (of either gender) may conduct a strip search without the Warden’s authorization.

Prisoners can also be subjected to what are called “routine” strip searches, without any suspicion of wrongdoing. These typically occur when the prisoner is returning from an environment in which they may have had access to contraband, such as when entering or leaving segregation, entering a new institution, returning from a temporary absence, etc. These routine strip searches can only be done by staff of the same sex as the prisoner.

Body cavity searches also require a form of due process. When a staff member has

reasonable grounds to suspect that a prisoner has contraband hidden in a body cavity, they must report their suspicions to the Warden. The Warden then has three options available, each of which must be authorized in writing. They can have the prisoner X-rayed, if they have the consent of the prisoner and that of a qualified X-ray technician; they can place the prisoner in a “dry cell” without plumbing facilities, with the expectation that the contraband will eventually be expelled by the body; or they can authorize a body cavity search, which can only be conducted by a qualified medical practitioner, and with the prisoner’s consent.

Under the *CCRA*, the Warden also has what is called the “Exceptional Power of Search”, which means under certain conditions, he or she can authorize in writing the frisk search or strip search of the entire prison population. In such an event, staff of the same sex as the prisoners must conduct strip searches.

Any item(s) seized during a search must be submitted to the Warden, or designated staff member, and a receipt provided to the prisoner from whom the item(s) was taken.

### 7.3.1.2 Urinalysis

The last form of intrusive search to which federal prisoners may be subjected is urinalysis. Urinalysis (“piss test”) is used to detect whether or not the prisoner has used drugs in recent days (which includes alcohol within the prison context).

The requirement for a prisoner to provide a urine sample can come as part of a specific investigation, as a surprise spot-check, or as part of an ongoing routine of random urinalysis. A staff member with reasonable suspicion – and with the OK of the Warden – can demand a urine sample from an individual prisoner at any time. Prisoners can also be subjected to ongoing random urine tests, which are not associated with

specific suspicion, but are used as a behavioural monitoring device. Others must agree to regular urinalysis as part of their participation in prison programs, particularly drug treatment programs.

If a prisoner is asked to provide a urine sample, they are allowed the opportunity to make a representation before the Warden before providing the sample. If a person is subjected to regular urine screening, they are allowed the opportunity to make regular representations to the Warden.

Failure or refusal to “provide a urine sample when demanded” is a disciplinary offence under the *CCRA*. The federal courts have consistently found against prisoners who have refused to provide urine samples, or who have challenged their constitutional validity.

Failing to cooperate with the requirement for urinalysis can have significant consequences for prisoners. Potential outcomes of failing to comply include longer sentences (having to serve a greater proportion of your sentence before being granted parole), and a suspension of privileges including visits.

### 7.3.1.3 Cell Searches

Staff members have the authority to conduct searches of cells and their contents. Such searches can happen at any time, without “individualized suspicion”, in accordance with the established security plan of the institution.

A staff member may conduct a cell search if he or she has reasonable grounds to suspect the presence of contraband, and has received authorization from a supervisor. In these cases, the search must be done in the presence of another staff member.

A staff member may conduct a cell search without prior authorization, and without the presence of a second staff, if he or she has

reasonable grounds to believe that delaying the search would result in a danger to the life or safety of any person, or cause the contraband to be destroyed.

In the event of an institutional emergency, the Warden can authorize the search of any group of cells and their contents, or all cells in the institution.

Any item(s) seized during the search must be submitted to the Warden, or designated staff member, and a receipt provided to the prisoner from whom the item(s) was taken. The staff member conducting the search must submit a written report. This report must be made available on request to the person whose cell was searched.

See also *Amenities – Property*, above.

## **7.3.2 Provincial**

### **7.3.2.1 Personal and Cell Searches**

The Superintendent has broad powers to authorize searches of the prison and the prisoners at any time. This includes the power to search a prisoner's person (including strip searches and body cavity searches), their cell and personal property, and any vehicle located on institutional grounds. Written records must be made of every search. These records must indicate the prisoner's name, the reason(s) for the search, and a description of all the items seized or damaged.

Individual guards have the discretionary power to conduct what are called "immediate searches" (without the Superintendent's authorization) in cases where they have probable cause, and fear that delaying the search would result in the suspected contraband being destroyed or hidden.

Personal searches of prisoners by staff members of the opposite sex are discouraged, but allowed in cases where the

staff member is a health care worker, or where it is a guard who has probable cause to believe an "immediate search" is necessary. Strip searches are allowed, but must be conducted in a place and manner to minimize the embarrassment and humiliation caused. Body cavity searches are also allowed, but can only be conducted by a health care professional.

The institution has the authority to confiscate any contraband item(s) found during a search. Depending on the nature of the item in question, it will either be forfeited to the Crown (where it may be sold, given away, or destroyed), or placed in the prisoner's property and held in trust until their release.

Prisoners do not have the right to refuse a search. If a prisoner refuses or resists a search, he or she can be put in segregation until they either submit to the search, or until the institution deems that the search is no longer necessary.

### **7.3.2.2 Urinalysis**

People in provincial custody are also subject to urinalysis. While the Ministry of Corrections does not at this point employ widespread random urinalysis as does CSC, the *Act* allows for the use of urine testing as an investigative tool, on a random basis without individualized suspicion, and as part of participation in a drug treatment program. Any urine testing done as part of an investigation must be authorized by the Superintendent, and be based on reasonable grounds that the prisoner has used drugs or alcohol.

The *Act* also allows for testing of people on parole, probation, conditional sentence, and temporary absence if abstaining from alcohol and drug use is part of the conditions of their release. In these instances, urinalysis may be ordered on as an investigative spot check, if there is suspicion

of drug or alcohol use, or at regular intervals as part of an ongoing monitoring process.

## 7.4 Information Access

### 7.4.1 Federal

There are various instances in which a prisoner's personal information may be released to a third party without his or her consent.

The *CCRA* provides victims of crimes the right to access various pieces of personal information about the person convicted of the offence. These are listed in Section 142, and include the individual's name; the offence for which he or she was convicted; the length of the sentence and the date it began; and the eligibility and review dates for parole and temporary absences.

The *CCRA* also gives the Chair of the National Parole Board the discretion to release other pieces of information to a victim on request. These include the prisoner's age; whether or not the person is in custody; the institution in which he or she is housed; dates of eligibility for passes and parole and, if granted, the conditions attached to them; and the destination of the prisoner if released on passes or parole.

The Commissioner's Directives also outline CSC policy and practice in regards to information sharing.

CD782 authorizes CSC to release to the National Parole Board all information necessary for them to fulfil their decision-making function.

If a prisoner is being released on an unescorted temporary absence, on parole, or statutory release, CSC is authorized to notify all police departments with jurisdiction in the destination location. If the individual has a history of violence, sexual assault, major drug trafficking, or organized crime, CSC is further allowed to release to the

police "all information relevant to the supervision or surveillance of that offender."

When a person is released on parole or statutory release, CSC is entitled to share the person's information with the area parole office, as well as any other governmental or non-governmental agencies involved in his or her supervision.

The Directive also allows CSC to share information on a person's criminal history, parole plan, and "present areas of critical concern" with any person(s) in the community "who will play a significant role in offering support to the offender upon his or her release." This information is to be shared on a "need-to-know basis".

For details on the confidentiality of medical information, see *Confidentiality and Disclosure in PRISONERS' RIGHTS: Access to Treatment and the Quality of Care*, above.

### 7.4.2 Provincial

Disclosure of a prisoner's personal information is addressed in both the *Act* and the *Regulations*.

Under the *Act*, all employees of the Ministry of Corrections are mandated to "preserve secrecy in respect of all matters that come into his or her knowledge in the course of his or her duties." There are general institutional exceptions to this, such as the communication of personal information being allowed to bodies such as the Parole Board or the Ombudsman's Office.

Apart for these institutional exceptions, there are many other exceptions laid out within the *Act* under which personal information may be disclosed by corrections and parole personnel. There are also a variety of reasons under which disclosure is acceptable. These include protection of the public, protection of victims of crime, and keeping victims informed on the judicial and

correctional processes relevant to the crime that affected them. Other reasons that personal information may be disclosed under the *Act* are for law enforcement, correctional, or administration of justice purposes.

Part V of the *Regulations* provides for many circumstances in which a prisoner's personal information may be disclosed. The authority to disclose such information rests with specifically identified staff<sup>11</sup> whose decisions must be based upon consideration of various criteria, including "what is reasonable in the circumstances of the case, [and] what is consistent with the law and the public interest."

The *Regulations* allow for personal information about an individual to be disclosed to a chief of police (or designate) if the person disclosing the information "reasonably believes that the individual poses a significant risk of harm to other persons or property" and that he or she "reasonably believes that the disclosure will reduce that risk." If this threshold is met, the *Regulations* allow the designated personnel to release any personal information they believe will reduce the risk.

These designated personnel are also authorized under the *Regulations* to share certain specified pieces of a prisoner's personal information with "any person". This information includes name, birth date, and address; the offence(s) with which they have been charged or convicted, and the sentence(s) imposed; the outcome of significant judicial proceedings relevant to their offence(s); the stage of the criminal justice process to which the prosecution has progressed; whether the individual is in custody, or under what terms he or she was released; the date of the prisoner's release, including release on parole and temporary absence. If the individual seeking the information is the victim of the offence, the *Regulations* allow all this information and more to be disclosed.

Information may also be disclosed to any Canadian police force, correctional or parole authority, or agency engaged in public protection or the administration of justice.

For details on the confidentiality of medical information, see *Confidentiality and Disclosure* in *PRISONERS' RIGHTS: Access to Treatment and the Quality of Care*, above.

## 8. Institutional Charges

### 8.1 Federal

#### 8.1.1 Hearings

The *CCRA* outlines numerous institutional disciplinary offences for which a prisoner may be charged. The legislation encourages that informal resolutions to disciplinary offences be sought wherever possible. However, where informal resolution fails, the Warden has the authority to issue a disciplinary charge. Depending upon the severity and the circumstances of the infraction, the Warden may choose to lay a charge of *minor disciplinary offence* or *serious disciplinary offence*.

Under the legislation, the prisoner must be notified of all charges in writing. This notice must indicate the details of the charge, whether the charge is minor or serious, and the date and time of the hearing. Written notice of the charge must be delivered to the prisoners "as soon as practicable." CD580 sets this timeframe as being within two days of the charge being laid.

Once the written notice is given to the prisoner, a formal hearing must be held within three working days. Hearings on minor disciplinary offences are conducted by the Warden, or a designated staff member. Hearings on serious disciplinary offences must be conducted by an independent chairperson who cannot be a member of staff. In extraordinary cases where an independent chair is not available,

the Warden is empowered to adjudicate the hearing.

If the prisoner is facing a number of different disciplinary charges based upon a single incident, all the charges must be heard together. If the series of charges includes both minor and serious offences, they shall be heard together by the independent chair.

The prisoner has a right to be present at his or her hearing. However, the prisoner may be excluded if he or she is seriously disruptive, or if it there is reasonable grounds to determine that his or her presence would constitute a threat to the safety of someone in the hearing. The prisoner may also choose not to attend.

At the hearing, the prisoner has the right to question witnesses, introduce evidence, call witnesses, and examine evidence and documents relating to the charge. He or she also has the right to make submissions at all stages of the hearing. Prisoners charged with serious offences have a right to legal counsel. The legislation states that prisoners shall be given a "reasonable opportunity" to retain and instruct a lawyer before the hearing, and that the lawyer has the right to participate in the hearing to the same extent granted to the prisoner.

The adjudicator of the hearing must render a decision "as soon as practicable" after the hearing has concluded. In order to pronounce a guilty verdict, he or she must be satisfied beyond a reasonable doubt that the individual in question committed the offence. The Warden must ensure that the prison receives a written copy of the decision as soon as possible. CSC is obliged to maintain records of all hearings, and to retain them on file for at least two years. Prisoners have a right to "reasonable access" to the records of their own hearings.

## 8.1.2 Penalties

If a prisoner is found guilty of an offence, the adjudicator determines the appropriate sanction, based upon a series of factors detailed in the legislation.

The types and severity of possible sanctions vary. They may include a warning or reprimand; loss of privileges (up to seven days for a minor offence, up to thirty days for a serious offence); an order to pay financial restitution (\$50 maximum for minor offences, \$500 maximum for serious offences); a fine (\$25 maximum for minor offences, \$50 maximum for serious offences); the imposition of unpaid extra duties (ten hours maximum for minor offences, thirty hours maximum for serious offences); or segregation (up to a maximum period of thirty days).

All financial penalties must be based upon the prisoner's ability to pay, and may be paid in instalments over time.

If the prisoner receives a disciplinary segregation sanction, but is already serving a term in segregation for a previous disciplinary offence, the sanction must state whether the terms are to run concurrently or consecutively. If they are to be served consecutively, the prisoner by law must not be segregated for a period greater than forty-five days in a row.

The Warden has the discretion to set aside the sanctions from a minor disciplinary offence, on the condition that the prisoner is not found guilty of another offence for a set period of time (up to a maximum of twenty-one days). In the same manner, the independent chair has the authority to set aside the sanctions of a serious disciplinary offence on the condition that the prisoner is not found guilty of another offence within a certain time frame (up to a maximum of ninety days).

The Warden has the authority to suspend any sanctions on humanitarian or rehabilitative grounds at any time.

### **8.1.3 Criminal Offences**

If a prisoner is alleged of committing a disciplinary offence that is also a criminal offence, he or she may be arrested within the institution and charged by the police. This is known as being “street-charged”. In this event, the prisoner has a right to contact legal counsel “without delay”. CD084 defines “without delay” as being within twenty-four hours the arrest. CSC must ensure that the prisoner is advised of their right to counsel.

## **8.2 Provincial**

### **8.2.1 Interview Process**

There are numerous misconducts under the *Act* for which a prisoner may receive an institutional charge. These are detailed in Section 29. A list of these rules is included in the handbook provided to prisoners, and must also be posted in a “conspicuous place” in the institution.

If an individual is alleged to have committed a misconduct, his or her case is decided by the Superintendent.

The prisoner must be notified of the allegation, and is then entitled to an interview with the Superintendent to respond to the charge. If the prisoner wishes to avail of an interview, he or she must notify the Superintendent within one day of receiving the notice. If the prisoner does not request an interview, the Superintendent may decide the case and impose penalty without meeting with the accused.

If an interview is requested, it must be held within ten days of the date the alleged misconduct was reported to the

Superintendent. At the interview, the prisoner is entitled to present arguments, question the person(s) making the allegation, and call other witnesses. The Superintendent may allow other people to attend the interview at his or her own discretion. The Superintendent may adjourn the interview after it has begun, but must reconvene it within three days, unless the prisoner in question consents to a longer period.

When the interview is completed, the Superintendent must inform the prisoner of the decision within two days, and provide the reasons for the decision. They must also inform the prisoner of any penalties to be imposed.

Whatever the decision, the Superintendent is obliged to make a written record of the case. This record must detail the nature of the allegation, the arguments and explanations of the prisoner accused, the reasons for the decision, and any penalties imposed.

### **8.2.2 Penalties**

If a prisoner is found guilty of a misconduct, the Superintendent has a range of penalties that he or she may impose. These include a reprimand; a loss of privileges (to a maximum of 120 days); a change of program or work activity; a change in security status; or a revocation of a temporary absence permit.

If the misconduct is of a serious nature, the Superintendent may also impose harsher penalties such as definite or indefinite segregation to a maximum of thirty days on a regular diet; segregation to a maximum of ten days on a minimal diet; forfeiture of remission; suspension of eligibility to earn remission; or payment of financial restitution (up to a maximum of \$100).

### 8.2.3 Appeals

A prisoner has the right to appeal his or her conviction to the Minister. An appeal may be made either because the prisoner does not believe the Superintendent's decision was made in accordance with the *Regulations*, or if the individual has been disciplined by the forfeiture of remission or suspension of their ability to earn remission.

In the event of an appeal, the Superintendent must immediately provide the Minister with a copy of the written record of the case. Based upon a review, the Minister may either uphold the Superintendent's original decision or direct him or her to reconsider the case. The Minister must notify both the prisoner and the Superintendent of his or her decision, and the reasons for it.

In cases of appeal, the Minister's decision is final.

### 8.2.4 Criminal Offences

If a prisoner is alleged to have committed a misconduct that is also a criminal offence, the Superintendent will consult with the Crown Attorney to determine whether the case should be dealt with as a criminal matter or as an institutional disciplinary matter. If a decision is taken to pursue the matter criminally, all internal disciplinary actions must be dropped.

## 9. Resolving Problems

A number of the sections above include some suggestions for ways in which to help advocate for PHA prisoners. The following section will identify some of the particular resources available to advocates.

## 9.1 Federal

### 9.1.1 The Correctional Investigator Canada

The Office of the Correctional Investigator Canada is mandated by Part III of the *Corrections and Conditional Release Act* as an Ombudsman for prisoners in federal institutions. The role of the Office is to respond to, investigate and resolve complaints from individual prisoners. The Office also has a role in reviewing and making recommendations to the Correction Service of Canada's policy and procedure branches on issues which are identified through the complaints received from prisoners. The Office then has a role in addressing systemic issues at a policy level.

## 9.2 Provincial

### 9.2.1 Ombudsman Ontario

The Office of the Ombudsman is at arm's-length from government and is responsible for ensuring that the government of Ontario is carrying out its duties and responsibilities properly. The Ombudsman's office is also mandated to accept complaints for individuals who feel that they have been wrongly treated by the government of Ontario.

In Ontario, the office of the Ombudsman has a specific mandate and responsibility to respond to the concerns of prisoners of provincial institutions. It is important to note, however, that by policy, the Ombudsman will not accept a complaint from a front line worker on behalf of your client. The client will have to contact the Ombudsman directly. The Ombudsman maintains two telephone lines which are specifically set up to assist prisoners in provincial institutions (jails, detention centres and provincial correctional centres). Prisoners may call collect at 416-586-3468, or toll-free at 1-888-725-8882.

The Ombudsman Ontario main office can be reached by telephone at 1-800-263-1830. The Ombudsman's website ([www.ombudsman.on.ca](http://www.ombudsman.on.ca)) also contains detailed information about their activities, contact information and office locations.

### 9.3 PASAN and Pros & Cons

The Prisoners with HIV/AIDS Support Action Network (PASAN) is a Toronto, Ontario based AIDS Service Organization which provides support to prisoners and ex-prisoners with HIV and Hepatitis C. In 2003, PASAN published *Pros & Cons: A Guide to Creating Successful Community-Based HIV/AIDS Programs for Prisoners*. This comprehensive guide provides a detailed overview of many of the intricacies of working with prisoners, and the institutions in which they reside in order to best support your PHA prisoner clients in prisons.

Pros & Cons is available online at PASAN's website ([www.pasan.org/publications.htm](http://www.pasan.org/publications.htm)) or you can order a copy by calling 416-920-9567.

## 10. Release

### 10.1 Federal

There are various types of release in the federal system that prisoners are eligible to access at different points in their sentence. In most all of these, an opportunity exists for advocates to intervene in support of PHAs.

At any point where a designated authority is rendering a decision – whether that be an individual Warden, the CSC Commissioner, or the National Parole Board (NPB) – outside advocates may make written submissions in support of their client(s) needs. Letters may emphasize the negative effects of incarceration upon people living with HIV/AIDS, and the benefits of the client's accessing community supports. It is

also important to highlight any structures or supports (i.e. housing, counselling, medical care, etc.) that have been put in place in the community to assist the prisoner's reintegration, and help minimize their risk of re-offending.

Before a prisoner is granted any form of release, CSC must be satisfied that an appropriate release plan is in place. A release plan must always include an appropriate place to live, and may contain additional programs and supports. The release plan is normally developed by the prisoner's case management officer and/or parole officer. However, outside advocates and community-based HIV/AIDS workers can be proactive in contributing to a client's release plan.

A community assessment must be done to approve the person's proposed living arrangements upon release. The assessment is done by the local parole office, and seeks to ensure that the individual will be living in a stable environment, and will not be living with other ex-prisoners or drug users. If the community assessment is negative, the prisoner will not be released until other suitable housing is obtained.

All forms of release are accompanied by conditions, apart from a person being released at the end of their sentence. These conditions are monitored by local parole officers. If a person on release has violated, or is suspected of having violated, the terms of that release they may be reincarcerated pending a review of their case.

#### 10.1.1 Unescorted Temporary Absence (UTA)

A prisoner granted an Unescorted Temporary Absence (UTA) is permitted to leave the institution without supervision for a specific period of time. UTAs may be granted for various reasons, including family and parental visitation, community service, personal development or rehabilitation

programs, medical appointments, or family emergencies (i.e. funerals). UTAs may be granted if the purpose of the absence is approved as credible, if there is a structured plan for the prisoner during the absence, and if prisoner is assessed to present a low risk of re-offending while in the community.

Most prisoners are eligible to apply for UTAs when they have served half the period necessary to reach their full parole. People with short sentences (i.e. two to three years) must serve at least six months before being eligible. People with life sentences must generally serve a length of time equivalent to the period necessary to reach full parole, less three years, before being eligible for UTAs.

Qualifying medium security prisoners are eligible to access forty-eight hours of UTAs per month. Qualifying minimum security prisoners are eligible to access up to seventy-two hours per month. Exceptions to these limits are UTAs for community service or personal development, which can be up to fifteen days in length, and for “specific personal development programs”, which may be authorized for as long as sixty days. UTAs may also be granted for medical reasons such as hospitalization. In these cases, the absence may be authorized for an unlimited period of time.

UTA applications can usually be approved by the CSC Commissioner or the Warden. The only exceptions to this are for prisoners serving life without parole, or indeterminate sentences, who must be considered by the National Parole Board.

In order to apply for a UTA, a prisoner must be eligible on the proposed date of the absence, and submit a written application to the appropriate authority. The designated authority is obliged under the *Regulations* to review the application within six months of receipt, unless the decision is postponed with the consent of the applicant. If the reviewer(s) feels the application is incomplete, they may adjourn the review for

not more than two months while they seek the necessary information.

The designated authority is not required to review more than one application every six months per eligible prisoner, unless the UTA is for medical reasons.

The designated authority may cancel a UTA at any time, if it is considered necessary to prevent a breach of the release conditions, a risk to public safety, or if the original circumstance for which the absence was approved has changed.

### **10.1.2 Full Parole**

In matters of parole, the National Parole Board has “exclusive jurisdiction and absolute discretion” to grant, deny, revoke, or cancel a person’s parole. The primary mandate of the Board is the protection of society. Therefore, in order to approve a person for some form of parole, the Board must be satisfied that he or she does not pose any undue risk to society. Furthermore, the NPB must be of the opinion that releasing the prisoner will add to the protection of society by assisting with the person’s successful re-integration.

Under the *CCRA*, the National Parole Board must review the case of every prisoner who reaches their full parole eligibility date. This review must take place within the six months preceding the individual’s eligibility date. Prisoners have the right to legal representation at hearings of the National Parole Board.

The Board may decide to grant full parole, day parole, or may adjourn the hearing for no more than two months if they require further information. Any parole granted will always have specific conditions attached that the individual must observe while in on release.

If the NPB denies the application for full parole, the individual is not eligible to apply again for six months.

If a prisoner is released on parole, they must obey the conditions set out by the NPB. If the local parole office believes the individual has violated the terms of the parole, they may order that he or she be reincarcerated. If this occurs, the person will be returned to prison pending an NPB hearing to review their parole status. Based upon that hearing, the Board may decide to reinstate or revoke the parole.

### 10.1.3 Day Parole

In general, prisoners are eligible for day parole six months before their full parole eligibility date.

The purpose of day parole is to provide the individual with a structured plan to prepare them for full parole or statutory release. If a prisoner is granted day parole, they may be transferred to a Community Residential Facility (half-way house).

Whether housed in a CRF or a penitentiary, day parole allows the individual to go into the community during the day to access employment, educational, or other programs. They must then return to the institution in the evenings.

To apply for day parole, a prisoner must submit an application to the National Parole Board no later than six months prior to serving two-thirds of their sentence (their statutory release date). The Board must review the case within six months of receiving the application, and no later than two months before the prisoner's day parole eligibility date.

The review may be postponed with the consent of the applicant, and may be adjourned if more information is needed. An adjournment may be no longer than two months in length.

Day parole may be granted for no longer than six months at a time. If day parole is to be extended beyond six months, another review hearing must be held.

If an application for day parole is denied, the prisoner may not make another application for another six months.

As with full parole, an individual may have his or her day parole suspended or revoked if they are suspected to be violating the terms of the release.

### 10.1.4 Statutory Release

Under the terms of the *CCRA*, prisoners sentenced after November 1, 1992 are entitled to *statutory release* on the day they have completed two-thirds of their sentence. The individual then serves the final third of their sentence in the community, under supervision and on a set of conditions. This is intended to assist the individual with a structured reintegration into the community.

Prisoners sentenced before that date have their statutory release date calculated using a formula that includes various earned and legislated remission.

Under most circumstances, a prisoner who reaches their statutory release date will be released.

An individual may have their statutory release revoked if they are suspected of violating the conditions of the release.

### 10.1.5 Detention Review Hearings

If a prisoner has been convicted of a major violent or sexual crime, child sexual abuse, or a serious drug offence, the CSC Commissioner may request that a *detention review hearing* be held before they are granted statutory release.

If the Commissioner is of the opinion that the prisoner's release would pose an undue risk to public safety, he or she may recommend that the National Parole Board consider whether the individual should be denied statutory release, and serve their entire sentence in the penitentiary. A detention application must be referred to the Chair of the NPB at least six months prior to the prisoner's statutory release date. The prisoner in question must be informed in writing if his or her case has been referred for review.

The NPB Chair must review the information provided on the case, and recommend whether a full hearing is warranted. If the Chair calls a detention review hearing, this decision must be made within four weeks of the receipt of the application, and the prisoner must be informed in writing of the hearing and the hearing date.

If the hearing concludes that the person's release presents an undue risk to public safety, the prisoner may be detained in the penitentiary during their statutory release period. In prison slang, this is known as being "gated". If the Board is not convinced that the prisoner should be denied statutory release, but agrees that the individual was convicted of an offence warranting closer scrutiny, they may order that if the prisoner violates their statutory release, he or she will be made to serve out their entire sentence in custody.

If a prisoner is "gated", the decision must be reviewed every year.

The only exception in the *CCRA* that allows for a "gated" prisoner to be released is on health grounds. In such a case, a prisoner may be granted an escorted temporary absence for medical purposes.

### 10.1.6 Compassionate Release

There is no provision for "compassionate release" within the *CCRA*. What is often called "compassionate release" is actually a process called "parole by exception". Under the terms of Section 121, "parole may be granted at any time to an offender (a) who is terminally ill; (b) whose physical or mental health is likely to suffer serious damage if the offender continues to be held in confinement; (c) for whom continued confinement would constitute an excessive hardship that was not reasonable foreseeable at the time the offender was sentenced." It is under this section that people living with HIV/AIDS who are suffering serious health decline may apply for early parole.

Applications for parole by exception are heard by the National Parole Board, whose primary guiding principle in making decisions is "the protection of society". There is no medical representation included in the decision-making process, nor does the *CCRA* compel the Board to weigh medical expertise highly in their deliberations. As a result, prisoners with serious illnesses are often refused early parole based strictly upon security grounds. Those that are granted parole by exception are often so ill that they merely move from one institution (the prison) to another (the hospital), and die shortly thereafter.

Because there is very little compassion inherent to this process, the role of outside advocacy is critical. In many cases, it is only through the intervention and persistence of outside HIV/AIDS workers that parole by exception cases are initiated. Talk to the health unit, or the individual's case management officer, in order to start the process.

### 10.1.7 End of Sentence

The final way a prisoner may be released is to have served the entirety of his or her

sentence. In this case, the individual is released without conditions, and without having to report to a parole officer in the community.

### **10.1.8 Being Released**

A person can be released directly from any penitentiary, or from any other place designated by the Commissioner.

When a prisoner reaches their statutory release date or the expiration of their sentence, they are released on the last working day before that day. This means that if the release date falls on a weekend, for example, the person will be released on the Friday before. If the individual is released on parole, they are released either on the day specified by the Parole Board. If that day is not a normal working day, they are released on the following working day.

The Warden has the authority to release a prisoner up to five days before their statutory release date or expiration of sentence. This is a discretionary authority that they can use if they believe that an earlier release will facilitate the individual's re-entry into the community. Obtaining a "pre-release" of this type is done by applying directly to the Warden. For PHAs, this can be a useful mechanism to enable people to attend doctor's appointments, or other essential appointments on the day they are released.

On the other side of this coin, a person who has been released on statutory release or parole may request to remain temporarily in the institution. This is again at the discretion of the Warden. This is an option that might be used if, for example, a person knows that they have accommodations coming available a few days after their release date, but have no where to live in the meantime.

### **10.1.9 Release Allowance**

The *Regulations* oblige CSC to provide various allowances to people being released from a federal institution. These include clothing suitable for the season, and money to cover travelling and living expenses to either the destination agreed in the prisoner's release plan or to the place in Canada where he or she was convicted. It is possible to arrange for allowance to travel to another destination in Canada, so long as it is no further than the place he or she was originally convicted. In exceptional circumstances, allowances for travel to another separate destination may be arranged with the approval of the Commissioner.

## **10.2 Provincial**

As in the federal system, the provincial release process offers various opportunities for you to play a constructive role in supporting their imprisoned clients. As an outside advocate or community-based HIV/AIDS worker, you may make written interventions at any point where a decision regarding release is being taken.

Letters may emphasize the negative effects of incarceration upon people living with HIV/AIDS, and the benefits of the client's accessing community supports. It is also important to highlight any structures or supports (i.e. housing, counselling, medical care, etc.) that have been put in place in the community to assist the prisoner's reintegration, and help minimize their risk of re-offending.

### **10.2.1 Bail**

When a person is arrested and held in a detention centre/jail, they are entitled to a bail hearing. This bail hearing will decide whether the person may be released pending their trial, or whether they must remain in custody.

Bail hearings provide an important opportunity to intervene in support of PHAs, either by making written submissions or by testifying in person. Remember to focus your advocacy around the main point listed above, as these will be the major areas that the judge will consider in rendering his or her decision.

### 10.2.2 Parole

Provincial prisoners are eligible for parole after serving one-third of their sentence.

All prisoners serving sentences greater than six months are automatically entitled to a parole hearing. Those serving sentences less than six months are not entitled to a hearing, but may apply in writing for parole consideration. A prisoner is free to waive his or her right to a hearing. Such a waiver must be made in writing.

In Ontario, parole decisions are made by the *Ontario Parole and Early Release Board*. The Board has the power to release an individual from custody, on terms of parole, if they believe this to be in the best interests of the individual and the community.

In considering individual applications, the Board accepts written submissions (both positive and negative) from people and organizations in the community. In practice, however, parole decisions are made primarily on the past criminal record of the person in question. If the prisoner has violated a parole in the past, or has failed to show up for court dates, it is doubtful that they will be granted a parole. For this reason, some prisoners will choose to waive their right to a parole hearing if they believe their past records make a positive decision unlikely.

If granted parole, the individual will be assigned a parole officer in their community. They must report to the parole officer on a regular basis for supervision until their sentence is completed. The frequency of

reporting is determined by the parole officer, and may vary from once or twice a month, to several times a week, depending upon the parole officer's discretion.

A prisoner may apply for early parole consideration where compelling or exceptional circumstances exist. These may include medical concerns.

Parole hearings provide another opportunity to make interventions on behalf of prisoners. Outside advocates may make written submissions to the Board in support of an individual's parole application. In these letters, it is useful to emphasize the negative health effects of incarceration on people living with HIV/AIDS, including any specific barriers to health services the he or she may have experienced while inside. It is also useful to explain any supports established in the community for the individual if released. At the discretion of the Board, an outside advocate may also be allowed attend parole hearings in person.

### 10.2.3 Parole Revocation

If the parole officer believes that the individual is not meeting the terms of their release, or that they have violated their parole, they can recommend that the parole be revoked. If this occurs, a warrant will be issued for the person's arrest and they will be re-incarcerated. The Parole Board must then hold a hearing "as soon as possible thereafter" to hear the case, and decide whether to revoke parole or to re-release the person back into the community.

If the Board decides to revoke parole, the person will be sent back to a correctional centre to serve the remainder of their sentence. They will not be offered another parole opportunity during the course of their sentence.

#### **10.2.4 Pre-release**

If a prisoner's release date falls on the weekend or a public holiday, the Superintendent has the authority to release the person early on the day preceding the weekend or holiday.

Under the Ministry's "Communicable Diseases Policy", "Provision for continuity of care shall be included in pre-release planning for [HIV] infected inmates." However, despite policy to this effect, proactive planning by the institution is unusual. That said, as an outside advocate or community-based HIV/AIDS worker, this policy may be used to get your foot in the door, and encourage the institution to support your own initiatives to put supports in place before your client's release.

The policy also directs that "where appropriate" prisoners with communicable diseases, including but not limited to HIV, shall be provided with contact information for resources and support groups in their local community. It also states that arrangements for health care and other supports shall be made "as appropriate". Again, despite these policy statements, such concrete supports upon release are not the norm.

#### **10.3 Access to Social Assistance**

HIV-positive prisoners, in particular may have need for income support following their release from prison. Knowing what income supports are available and how to access them can make a significant difference in the ability to get established in the community.

Prisoners who were in receipt of Family Benefits Allowance (FBA) or Ontario Disability Support Program (ODSP) benefits immediately prior to incarceration may be eligible for a fast track process to get back on benefits. If you are working with clients who are about to be released, it is

helpful to find out whether and when they were last in receipt of benefits and what kind of benefits they are.

Any client in financial need can apply to Ontario Works for immediate financial assistance upon release, as well as starting the application process for ODSP benefits. OW applications are initiated by a telephone call to the Intake Screening Unit. Call 1-888-789-4199 for the ISU near you. Clients should also ask about their eligibility for the Community Start Up Benefit (CSUB) which provides up to \$799 in a 12 month period to people who are establishing a residence. Individuals being release from institutions, including prisons, are eligible for the benefit, provided they have not received it within the last year. In some exceptional cases, individuals may be eligible to receive CSUB benefits even if they have received the benefit once already in the last 12 months.

HIV-positive clients who were found medically eligible for ODSP, and were not assigned a medical review date before incarceration may be eligible for a rapid reinstatement. If this is the case, the client should be sure to inform the OW or ODSP office of their medical eligibility and should be able to be reinstated onto ODSP relatively quickly.

If you are assisting clients who are being released from prison and have questions or concerns about whether and how they can apply for social assistance, contact HALCO or your local legal clinic for advice or assistance.

Clients who are housed in half-way houses where their meals and room are provided are not eligible for social assistance.

### **11. Resources**

There are a number of extremely useful and practical resources to help front-line workers as they work with clients in prison.

The listing below provides information about the resources and where they can be found. Almost all of these resources are available online.

- Pros & Cons: A guide to creating successful community-based HIV/AIDS programs for prisoners is a comprehensive guide to the prison system and the issues facing PHA prisoners. The guide, produced by the Prisoners with HIV/AIDS Support Action Network (PASAN) includes a wealth of practical information about how to navigate the system as an advocate and as a deliverer of programs for PHA prisoners. The guide is available online, as well as through PASAN, at 416-920-9567.
- PASAN itself has a wide range of publications dealing with a number of issues facing PHA prisoners, in addition to the Pros & Cons manual. PASAN is a community-based network of prisoners, ex-prisoners, organizations, activists and individuals working together to provide advocacy, education, and support to prisoners on HIV/AIDS, HCV and related issues. All of PASAN's publications can be found online at [www.pasan.org/Publications.htm](http://www.pasan.org/Publications.htm). Their publications include:
  - Driving the Point Home: A Strategy for Safer Tattooing in Canadian Prisons (2003)
  - Unlocking Our Futures: A National Study on Women, Prisons, HIV and Hepatitis C (2002)
  - HIV/AIDS in the Male-to-Female Transsexual and Transgendered Prison Population: A Comprehensive Strategy (1999)
  - Other Articles and Pamphlets include:
    - 6 Steps to Successful Advocacy for Prisoners Living with HIV/AIDS
    - HIV/AIDS and Prisoners: The Case Against Segregation
    - "Like a Dog in a Back Kennel": Death Exposes Treatment of Prisoners Living with HIV/AIDS
    - The Politics of Drug Use & Marginalization: Implications for Service Providers
    - Be Kind to Your Veins
    - Keeping FIT: A Prisoner's Guide to Syringe Care
    - Tattooing & You: The Safe-Guards Within Prison
    - Safe Tattooing
- PASAN itself has a wide range of publications dealing with a number of issues facing PHA prisoners, in addition to the Pros & Cons manual. PASAN is a community-based network of prisoners, ex-prisoners, organizations, activists and individuals working together to provide advocacy, education, and support to prisoners on HIV/AIDS, HCV and related issues. All of PASAN's publications can be found online at [www.pasan.org/Publications.htm](http://www.pasan.org/Publications.htm). Their publications include:
  - Driving the Point Home: A Strategy for Safer Tattooing in Canadian Prisons (2003)
  - Unlocking Our Futures: A National Study on Women, Prisons, HIV and Hepatitis C (2002)
  - HIV/AIDS in the Male-to-Female Transsexual and Transgendered Prison Population: A Comprehensive Strategy (1999)
  - Other Articles and Pamphlets include:
    - Prison Programming Basics
- The Canadian HIV/AIDS Legal Network (CHALN) also maintains an extensive collection of materials addressing prisoners with HIV/AIDS. You can find the complete collection available online at [www.aidslaw.ca](http://www.aidslaw.ca). Their website also contains a specific section on HIV & Prisons, which includes a series of easy-to-read fact sheets, as well as more comprehensive policy and research publications. CHALN can also be reached by telephone at 514-397-6828.
- Finally, as mentioned in other sections in this chapter, the Correctional Service of Canada itself has a great deal of useful information on its own website at [www.csc-scc.gc.ca](http://www.csc-scc.gc.ca), including the complete list of policy documents called Commissioner's Directives and Standard Operating Practices

---

<sup>1</sup> See Section *PRISONERS RIGHTS: Access to Treatment and Quality of Care* for more details on the *Act* and on provincial correctional health care policy.

---

<sup>2</sup> For more information on methadone, see *PRISONERS RIGHTS: Access to Treatment and Quality of Care*.

<sup>3</sup> In addition to classification, there are two other reasons why a male prisoner may wind up at Millhaven. If a federally sentenced male prisoner on parole or statutory release has their release rescinded for any reason, they may be taken to Millhaven while their case is being assessed (see Section 9, *Release*). Millhaven also has *ranges* where prisoners are housed to serve their sentences. These are maximum-security prisoners, many of whom have been sent to Millhaven as a result of institutional charges or other disciplinary infractions at other prisons. Therefore, if a prisoner in Millhaven contacts you, be sure to determine for what reason he is there.

<sup>4</sup> The federal court has found that there is an onus on the institution to provide sufficient information to the prisoner to allow them to effectively defend him or herself.

<sup>5</sup> Identified in CD540 as the Regional Deputy Commissioner, Assistant Deputy Commissioner, or the Regional Administrator Community and Institutional Operations.

<sup>6</sup> *Blass v. Canada (Attorney General)*, [2001] C.C.S. No. 5382, [2000] F.C.J. No. 1978, Docket No. T-151-00, November 30, 2000.

<sup>7</sup> *R. v. Solosky*, [1980] 1 S.C.R. 821, 50 C.C.C. (2d) 495, 16 C.R. (3d) 294

<sup>8</sup> *Schemmann v. Canada (Correctional Service)*, [1997] F.C.J. No. 135, DRS 97-12286, Court File No. T-1444-96, February 4, 1997.

<sup>9</sup> CD770 defines “common-law partner” as “a person who, at the time of the inmate's conviction, lived with the inmate for at least six (6) months, was considered as the inmate's partner in the community in which they lived, and who manifested an intention of continuing to live with the inmate permanently even though they were not married.”

<sup>10</sup> *Veysey v. Canada (Commissioner of Correctional Service)*, [1990] 1 F.C. 321, 39 Admin. L.R. 161, 29 F.T.R. 74 (T.D.)

<sup>11</sup> These are listed as a chair of a Board of Parole, Superintendent of an institution, an area manager of a probation and parole office, a member of the Correctional Services Division operations directorate, or a Correctional Services Division communications manager.