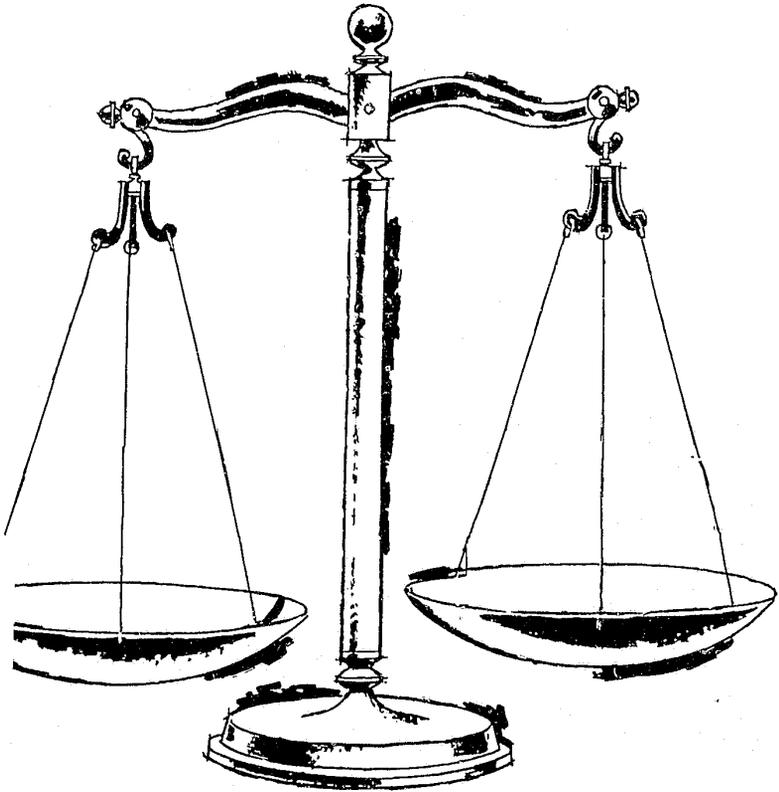


# YOUR RIGHTS AS A CONNECTICUT PRISONER

Robert Brill  
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CONNECTICUT  
CIVIL LIBERTIES UNION FOUNDATION

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## PREFACE

This handbook sets forth the legal rights of prisoners in Connecticut and it offers suggestions on how those rights can be protected. No previous booklet has done just that. It can never replace advice from a lawyer. However, we hope it will help you identify those rights when you do need a lawyer, and those situations which you can handle yourself.

The laws may change and, in some of the subjects covered in these pages, they change quite rapidly. It's not always possible to accurately predict when such changes will take place. Department of Corrections regulations and directives may also change. Of course, even if laws and regulations remain the same, interpretations of them by the courts and administrative officials often vary.

In preparing this handbook we have limited the case law cited to those cases decided by Connecticut courts, the U.S. Supreme Court and by state and federal courts which are contained within the Second Circuit Court of Appeals (Connecticut, New York and Vermont) since these decisions are the ones which most clearly govern the determination of your rights. Cases in other parts of the country can also be used when challenging Correctional Department practices and procedures in court, but they are not binding on judges here and will sometimes be disregarded.

If you encounter what you consider to be a specific abuse of your rights you should seek legal assistance. There are a number of agencies that may help you, among them the Connecticut Civil Liberties Union Foundation, but bear in mind that it is a limited purpose organization. In general, the rights that the CCLU Foundation defends are freedom of inquiry and expression; due process of law; equal protection of the laws; and privacy.

This booklet is one of a series of publications issued by the Connecticut Civil Liberties Union Foundation. Others have involved the rights of women in Connecticut and the rights of young persons in Connecticut. Brochures describing your rights when arrested and information about the Connecticut Freedom of Information Act have also been published. In addition, reports on the parole system, ability grouping, teaching the Bill of Rights in the public schools, and affirmative action in institutions of higher learning have been issued. A booklet on your right to privacy in Connecticut and a summary of the decisions and advisory opinions of the Freedom of Information Commission is currently being prepared. An update of Women and the Law will be published in the near future.

William Olds  
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## INTRODUCTION

It's very important for you to understand your rights. If you know your rights, and you know what's *supposed* to be happening, then you may be in a stronger position to control the situation. You'll be able to *use* your rights. You'll be able to work with your lawyer in preparing your case and know the kinds of facts which are important to point out. You'll even be able to do some of your own legal work if you want to. There's much legal work you can be performing while you're in prison. There's much about the law you can be learning.

There is one important source of due process rights which will not be discussed in this booklet — the procedural rights provided by the Connecticut Uniform Administrative Procedures Act. (Conn. Gen. Stats. 4-166 — 4-189). This statute requires that before any state agency (which includes the Department of Correction) takes any action which affects your rights, it must follow the procedures set forth in the statute. The Corrections Department was granted an exemption by the General Assembly from the requirements of the statute in cases involving disciplinary action, classifications and out-of-state transfers. (Conn. Gen. Stats. 18-78a). The APA does apply, however, to other procedures where your rights are involved.

The legal system has already had a major effect on your life. The more you know about how the law is supposed to function, and the more you know about what you can do when they don't work for you — the more you can be in control of your own life and future.

## DUE PROCESS

The concept of Due Process of Law means essentially that you may not be deprived of "life, liberty or property" by the state or federal government without being granted some type of hearing at some appropriate time and place after some advance notice of what the issues are. It is a flexible and general idea, and the variety of cases in which courts have decided what constitutes protected liberty or property and what type of hearing is appropriate is immense. In this chapter, we focus on the most important meanings for you as a prisoner.

The guarantee of due process comes from the 14th Amendment to the United States Constitution and Article First, Sections 8 and 10 of the Connecticut Constitution.

The "Life, Liberty and Property" protected by these provisions include your state and federal constitutional rights (see the other chapters of this book for a discussion of each of them), as well as rights created by statute (good time, parole release consideration) or regulations of the Correction Department.

A number of procedures have been developed to ensure that your rights are not arbitrarily taken away. (Notice of the charges or action to be taken, the opportunity to be heard, the opportunity to present witnesses, the right to cross-examine the witnesses testifying against you, the right to representation by counsel and the right to a fair hearing examiner or judge.) Though these procedures are all considered part of due process, the courts often state that due process is a flexible principle, and what procedures must be provided in a particular situation will depend on what procedures the court feels are adequate to protect you without being too complicated or burdensome on the state. For example, the courts have not applied all of the above guarantees to correctional hearings.

This chapter will explain to you which of these procedures should be followed by prison officials in a number of different situations.

### Disciplinary Hearings

You should be given a copy of the institutional rules governing your behavior when you first enter prison.<sup>1</sup>

Whenever you have been accused of violating institutional rules and may lose good time or be sent to segregation, the officer who has submitted the charges must promptly deliver a legible copy of the disciplinary report to you and make sure you understand the charges. If you can't read, the officer should read the charge to you, and if you can't read English, he should have the charge translated for you. He/She should give you a copy of the Code of Penal Discipline<sup>2</sup> and you should be allowed to choose an advocate, if you want one<sup>3</sup>. The advocate you choose should be promptly told of his/her selection by you in order to allow him/her to conduct a thorough pre-hearing investigation.

You have the following rights at the disciplinary hearing:<sup>4</sup>

1. The right to appear personally before the disciplinary committee and to have the charges read to you;

2. The presence and assistance of an advocate, — not necessarily a lawyer — if you want one;
3. The opportunity to plead guilty or not guilty to the charge;
4. The right, either personally or through your advocate, to examine, prior to the hearing, all of the evidence which will be before the committee;
5. The right to testify in your own behalf;
6. The opportunity to present a reasonable number of defense witnesses who have knowledge of the alleged event. You should be able to also present written statements from inmate or staff witnesses not present in the institution and you should be able to obtain a continuance of the hearing to a later date in order to receive such statements,
7. The right to cross-examine, either personally or through your advocate, witnesses who testify against you.

The committee is required to decide your case based on the evidence before it at the hearing. Once a decision is made, you will be orally informed of it and, if guilty, the punishment recommended.<sup>5</sup>

The Warden and the Commissioner or his Deputy will review and approve, modify or return, with comment for reconsideration or disapproval, the Disciplinary Committee's recommendation.<sup>6</sup> They can't however, increase the penalties imposed by the committee or find you guilty when the Committee has found you not guilty.<sup>7</sup>

If the Committee recommends the loss of good time, the Commissioner or Deputy Commissioner must give you and/or your advocate an opportunity to explain in writing, within ten days of notice from the Commissioner or Deputy Commissioner of the proposed loss, why the good time shouldn't be taken away or why less than the recommended amount should be taken away.<sup>8</sup>

You do not have a right to an attorney at disciplinary hearings, even if you are also charged with a crime arising from the same incident.<sup>9</sup> You do have the right to remain silent in the hearing unless the state grants you immunity from criminal prosecution. A refusal to testify cannot be conclusive evidence of guilt.<sup>10</sup>

If disciplinary action is deferred because of court prosecution, but a transfer is sought, you are entitled to a transfer hearing. At the hearing you should be granted immunity from the use of statements or evidence you offer in any subsequent criminal proceeding. But under Connecticut procedure, the statement or evidence can be used to impeach the credibility of your testimony in a later trial.<sup>11</sup>

## Transfer

### 1. *Within Connecticut*

The term "transfer" includes not only being sent to another prison but any change in your security classification which adversely affects your status.<sup>12</sup>

Before you can be "transferred" you are entitled to a hearing. The only exceptions to the right to a hearing are when the transfer results from disciplinary board action,<sup>13</sup> when the transfer is at your own request,<sup>14</sup> or in the case of "emergency transfers."<sup>15</sup>

You must be given written notification of the proposed transfer and transfer hearing at least 48 hours in advance.<sup>16</sup> The notice should inform you of the date of the hearing, your destination, and reasons for the intended transfer.<sup>17</sup> You can then choose an advocate to assist you at the hearing.<sup>18</sup>

You have the right to appear with your advocate at the hearing and have the notice of transfer read to you. You should be given the opportunity to present evidence by calling a reasonable number of consenting staff or inmate witnesses,<sup>19</sup> and should be given an opportunity to cross-examine witnesses who testify against you.<sup>20</sup> The committee can only decide your case on the basis of the evidence it heard at the hearing and should orally inform you of its decision. It must also prepare a brief written summary of its decision and make this available to you and the office of the commissioner, which must give final approval for the transfer.<sup>21</sup>

After being transferred you must be given a hearing before the Classification Committee in the new institution within two weeks after admission.<sup>22</sup> You should be present at the hearing and must be given an opportunity to request a given classification status and assignment.<sup>23</sup> You should then be informed of the committee's decision. The committee can, with the written approval of the warden and office of commissioner, assign you to other than general population status.<sup>24</sup>

## 2. Out of State

The Commissioner of Corrections has the authority to transfer you to an institution in a cooperating state or to a Federal facility whenever he decides that the transfer "is necessary or desirable in order to provide adequate quarters and care or an appropriate program of rehabilitation or treatment."<sup>25</sup>

The transfer can only be to a "Party State" and there are only a few states that have entered into this agreement with Connecticut. Even if the Commissioner authorizes the transfer, it will not take effect unless the receiving state is willing to accept you.

The Classification Committee will make the critical decision concerning an out-of-state transfer. You have a right to a hearing and you should be given notice of the hearing at least 48 hours in advance. The notice should indicate the day and time of the hearing and the institution and state to which the transfer is proposed.<sup>27</sup>

You have a right to be present at the hearing, have the assistance of an advocate if you want one, and have the opportunity to offer reasons which contradict the need for a transfer.<sup>28</sup> The warden reviews the decision of the Classification Committee, either approves or denies it, and sends the recommendation to the office of the Commissioner, which makes the final decision.<sup>29</sup>

### 3. To a Mental Hospital

Before you can be civilly committed to a mental hospital for an indefinite time, you are entitled to the same procedures as a non-inmate.<sup>30</sup> These procedures include the following: 1) a trial-type hearing; b) representation by counsel (retained or appointed); c) access to all records to be used in the hearing; d) opportunity to present oral testimony; e) the right not to be committed unless the court receives the sworn certificates of two physicians, one of whom must be a psychiatrist, appointed to the courts; f) their certification must indicate that they have examined you within 10 days of the hearing, and they find you are mentally ill and a fit subject for confinement, which means that you are dangerous to yourself or other persons as a consequence of your mental illness; g) the right to cross-examine such doctors by notifying the court of your intent to do so not less than 3 days before the hearing; and h) a free transcript of the proceedings (if you can't afford one) in case of an appeal.<sup>31</sup>

There is also a statute which<sup>32</sup> allows the Commissioner of Corrections to transfer you to the Whiting Forensic Institute (Security Treatment Center), providing he gets the consent of the Commissioner of Mental Health and the certification by a licensed physician that you are mentally ill.<sup>33</sup> You cannot be kept at Whiting beyond the end of your sentence<sup>34</sup> and you must be re-examined at least once a year to determine if you still should be kept there.<sup>35</sup> But, within two months prior to the end of your maximum sentence, the Director of the Institute can begin civil commitment proceedings against you.<sup>36</sup>

If you are sent to Whiting for "custody, care and treatment," you must be treated or you can't be kept there.<sup>37</sup>

### Community Release Programs

The Commissioner has the authority to grant you the opportunity to participate in work release or education release.<sup>38</sup>

If you wish to be considered for either one of these programs you must apply through your institutional counselor. The application will then be screened by the Classification Committee and, if denied, it will be returned to you.<sup>39</sup>

### Furlough Programs

Connecticut Statutes also give the Commissioner the authority to grant you furloughs outside the institution.<sup>40</sup>

Applications for a furlough whether in conjunction with work release, education release, or for other reasons will be reviewed by the warden who will either approve or deny them. If he denies your application, the warden should give you the reason for disapproval in writing on the application form and then have it returned to you.<sup>41</sup>

You can apply for a furlough, by submitting a form to your counselor, who will forward it to the furlough committee, for any one of the following reasons:

- (1) Family emergency (critical illness, death or funeral)
- (2) To secure post-release employment or residence
- (3) Home visit
- (4) Work or education release
- (5) Hospitalization

In order to be eligible for a furlough you must have served  $\frac{1}{2}$  of your minimum sentence (less good time), if the sentence is a year or less; at least  $\frac{1}{4}$  of your minimum sentence if it is longer than a year or at least 4 years if you are a lifer. People sentenced for an aggressive sexual crime<sup>42</sup> and people with a recent disciplinary board conviction will not receive furloughs.<sup>43</sup>

If your application is denied by the furlough committee the application form with the reason for denial written on it should be returned to you, *but only if you request it*. The furlough committee should also tell you orally why they rejected your application.

The only appeal you have is to the Warden. You must request that the Warden of your institution personally review the denial within 5 days of the date you receive notice of the denial. The Warden is supposed to give you a decision within 30 days of your request.

#### Mail and Periodicals

The due process procedures involving mail and periodicals are discussed in the Chapter on Free Communication.

#### Footnotes

1. *Rhem v. McGrath* 326 F. Supp. 681 (S.D.N.Y. 1972). According to Administrative Directives, Department of Corrections chapter 27, section 2 Directives these rules, called "Correctional Code of Penal Discipline," are made available to inmates. To fulfill due process standards you should be given a copy, so that you know ahead of time what offenses you can be charged with, before you get a report — after the fact would be of little value.
2. *Directives*, chapter 2.7, section 38. As was discussed in footnote 1 telling you that you broke a rule after you broke it has little value. Telling you afterwards would also defeat the stated purposes of the "Correction Code": "To control inmate behavior in an impartial and consistent manner . . . to insure that disciplinary action is not capricious or retaliatory . . . to give fair warning to the inmate of what is prohibited and the consequences of violations."  
*Directives*, chapter 2.7, section 1.
3. *Directives*, chapter 2.7, section 39.
4. *Directives*, chapter 2.7, section 42.
5. *Directives*, chapter 2.7, section 43. The U.S. Supreme Court, though, requires that you be given a written statement of the decision including the evidence relied on and the reasons for any disciplinary action. *Wolff v. McDonnell*, 418 U.S. 539.
6. *Directives*, chapter 2.7, section 45.
7. *Directives*, chapter 2.7, section 45.

8. *Directives*, chapter 2.7, section 9.
9. *Wolff v. McDonnell* 418 U.S. 539 (1974), *Baxter v. Palmigraino* \_\_\_U.S. \_\_\_ 47 LED 2d 810 (1976). *Baxter v. Palmigraino* \_\_\_U.S. \_\_\_ 47 LED 2d 810 (1976).
10. *Directives*, chapter 4.14, section 7. But see *Meachum v. Fano*, U.S. 44 LW 5053 (U.S. Supreme Court, June 25, 1976).
11. *Directives*, chapter 4.14, section 7 (the use of the testimony or evidence for impeachment purposes seems to violate the immunity exception to a person's 5th amendment right against self-incrimination. For the immunity to be proper under the Constitution, it must "prohibit the prosecutorial authorities from using the compelled testimony in any respect." *Kastigar v. U.S.* 406 U.S. 441, 453).
12. *Directives*, chapter 4.14. See also *Connecticut General Statutes* 18-86.
13. *Directives*, chapter 4.14, section 2. Hearing procedures in disciplinary actions are discussed above.
14. *Directives*, chapter 4.14, section 1.
15. *Directives*, chapter 4.14, section 4. An emergency transfer occurs "when the security, order, or personal safety of inmates or staff requires that an inmate be removed from a facility or placed in a higher security status without delay." When this action is taken, you should be told the reason for the transfer before it happens, you should be given a hearing notice within 5 working days (Monday through Friday) of admission in the new facility, and you should have a hearing within 3 working days after you get the notice — Section 6.
16. *Directives*, chapter 4.14, section 5. Where the hearing involves a reclassification and would cause you to suffer denial of access to prison programs, social furloughs, possibility of early parole or would result in transfer to other institutions, written notice should be given to you at least 10 days before the hearing. *Catalano v. U.S.* 383 f. Supp. 346 (D. Conn. 1974); *Cardaropoli v. Norton* 523 F2d 990 (2d Cir. 1975).
17. *Directives*, chapter 4.14, section 5. If the hearing involves reclassification as described in Footnote 16, then the notice must contain specific allegations supporting classification and a brief description of the underlying evidence. *Catalano v. U.S.*, *Supra*, *Cardaropoli v. Norton*, *Supra*.
18. *Directives*, chapter 4.14, section 5. There are supposed to be at least three institutional advocates in each institution. If you want the assistance of an advocate, you should tell the officer who gives you the hearing notice which advocate you want. The advocate you choose should be notified as soon as possible to allow sufficient time for pre-hearing investigation — Chapter 2.7, section 39.
19. *Directives*, chapter 4.14, section 5. You can present written statements from inmate or staff witnesses not present at the institution, and you may elect to continue the hearing to the next hearing date in order to have time to obtain these statements.
20. *Directives*, chapter 4.14.
21. *Directives*, chapter 4.14, section 5. The "brief written summary" may be adequate in terms of the type of statements required in some very similar situations. The U.S. Supreme Court in *Morrissey v. Brewer* 408 U.S. 411 (revocation of parole), and *Wolff v. McDonnell* 418 U.S. 539 (prison disciplinary hearings) required a written statement by the fact finders as to evidence relied on and the reasons for the action taken. But in *Meachum v. Fano* (supra n.10 and *Montanye v. Haymes* -U.S.- 44 LW 5051 (U.S. Supreme Court, June 25, 1976) the Supreme Court held prisoners not entitled to due process protections unless the "liberty" interest protected was created by statute, regulation or constitutional law. The court did not decide what process was due where, as in Connecticut, administrative directives create such a liberty interest.
23. *Directives*, chapter 4.13.
24. *Directives*, chapter 4.13.

24. *Directives*, chapter 4.13. Any classification which would assign you to other than general population status would certainly involve denial of at least some privileges and/or institutional programs and would thereby cause you to "suffer a grievous loss." In such situation the requirements of *Cardaropoli v. Norton* supra apply. You would be entitled to: 1) written notice, at least ten days before the hearing, containing specific allegations supporting the classification and a brief description of the underlying evidence; 2) a personal appearance before decision makers who don't have personal knowledge of the information upon which the proposed classification is based; 3) the opportunity to call witnesses and present documentary evidence; 4) retained counsel or counsel substitute if the issues are complex or you are unable to collect evidence; 5) written findings within a reasonable time in support of an opinion that the classification should be made.
25. *Connecticut General Statutes*, sections 18-106, 18-107.
26. *Directives*, chapter 4-12.
27. *Directives*, chapter 4.12.
28. *Directives*, chapter 4.12.
29. *Directives*, chapter 4.12.
30. *Chesny v. Adams* 377 F. Supp 887 (D. Conn. 1974) Aff'd 508 F 2D 836 (2d Cir. 1975); *U.S. ex rel Schuster v. Herold* 410 F 2d 1071 (2d Cir. 1969); *Baxstrom v. Herold* 383 U.S. 107.
31. *Connecticut General Statutes*, 17-178. This statute was recently amended by P.A. 76-227 which goes into effect on March 1, 1977. The amendment gives you far greater protection against being wrongfully committed.
32. *Connecticut General Statutes*, 17-246.
33. *Connecticut General Statutes*, 17-246. The procedure described by the statute is probably invalid as a denial of due process and equal protection. See cases cited at footnote 30. The procedures outlined above for civil commitment should also be followed before you can be sent to Whiting.
34. Since very few inmates serve the maximum sentence given them by the court — most are granted parole — the practice of keeping inmates in Whiting beyond their minimum sentence, without at least deciding at that point whether the inmate is eligible for release and thereafter consideration for parole, may possibly violate the equal protection clause of the 14th amendment.
35. *Connecticut General Statutes*, 17-250.
36. *Connecticut General Statutes*, 17-254. See also C.G.S. 17-177 through 187. And see C.G.S. 17-197. These statutes set out the procedures in civil commitment of "mentally ill" persons.
37. *N.Y. State Ass'n for Retard. Ch. Inc. v. Carey* 393 F. Supp. 715 (E.D. NY, 1975) held that inmates of a state facility had a constitutional right to protection from harm and to minimum quality of care or treatment; *Jackson v. Indiana*, Supra, stated that outside of danger to yourself or others, individuals are committed for care, treatment or training. Due process requires that the nature and duration of the commitment relate to these purposes (care, treatment or training). *U.S. v. Pardue* 354 F. Supp. 1377 (D. Conn. 1973) held that the continued detention of an accused person as mentally deficient, without adequate treatment, denied due process and constituted cruel and unusual punishment.
38. *Connecticut General Statutes*, 18-100.
39. *Directives*, chapter 8.1, section 4. Due process would seem to require that you have an opportunity to be heard and present evidence to the Classification Committee when your application is being considered. Written reasons for denial of access to these programs should also be required.
40. *Connecticut General Statutes*, 18-101a.
41. *Directives*, chapter 8.3, part 11(a) as received by *Perry et al v. Manson et al* No. 475-205 (U.S.D. Conn. 6-28-76).
42. Exceptions to this rule are when you have had a prior conviction for an aggressive sexual crime and have spent 3 years in the community with no new conviction for such a crime, or if the previous conviction was at least 5 years ago and you can demonstrate special circumstances which lessen the seriousness of your behavior in committing the crime.
43. If your conviction by the disciplinary board was for a class A "Infraction" you must wait 6 months from the date of conviction; if it was for a class B "Infraction", 120 days; and if it was for a class C "Infraction", 90 days.

## PRE-TRIAL CONFINEMENT

Pre-trial detainees are considered by the courts to have a greater range of rights and freedom from unnecessary restrictions than do convicted persons. The due process and equal protection clauses of the 14th Amendment prohibit depriving detainees of the rights of other citizens to a greater extent than necessary to assure their appearance at trial and the security of the jail.<sup>1</sup>

In several recent decisions courts have recognized that detainees have a number of rights concerning the conditions of their confinement. The most important of these are the right to the least restrictive confinement necessary to assure appearance at trial and the right not to be confined under worse conditions than convicted prisoners.<sup>2</sup>

Thus, all detainees cannot be kept in segregation, but must be classified to determine which ones require such custody — and only they may be segregated.<sup>3</sup> The following have been declared cruel and unusual punishment: a) to deny detainees contact visits; b) to deny them exercise for long periods of time — detainees have a fundamental right to physical exercise; c) to confine them in intolerable living environment conditions, such as extreme noise, excessive or inadequate heat, inadequate ventilation, inability to see the sun, sky, or outside world, or the presence of any condition which presents a grave and immediate threat to health or physical well-being;<sup>4</sup> d) to place detainees in overcrowded pre-trial facilities, e.g., double celling in single-occupancy cells.<sup>5</sup>

### Bail

If you are confined due to these reasons and have not made bail, you must be presented to the court within 45 days in order for the court to consider reduction, modification, or discharge of such bail.<sup>7</sup> If you are held because you cannot make bail you are also entitled to make a motion for presentment to the court every 45 days thereafter.<sup>8</sup>

### Psychiatric Examination and Treatment

If it appears to the court that you cannot understand the proceedings against you, in order to assist your attorney in your defense, the court can either (1) appoint one or more psychiatrists to examine you and make a report to the court concerning your mental state,<sup>9</sup> or (2) order the commissioner of mental health to have you examined by a psychiatrist who must report to the court on your competency within 15 days. The report will be evidence in a competency hearing. During this 15 day period you are entitled to be released on bond.

If the report indicates that you are able to understand the proceedings against you and in order to assist in your own defense, a copy will be sent to the state's attorney or prosecutor and your attorney. The court will then hold a prompt hearing on the matter and determine whether you are competent to stand trial.<sup>10</sup>

If the court determines, after examination and a court hearing, that you don't possess the ability to understand the proceedings against you and to assist you in your own defense, the court will commit you to a state institution until you are able to understand the proceedings against you and to assist in your own defense, or for a period not to exceed 18 months.<sup>11</sup>

Every six months during this type of confinement you should be examined by the Commissioner of Mental Health to determine if you are competent at that time to stand trial or, if not, whether you may become so during the period of confinement.<sup>12</sup> After each examination the court will hold a hearing to determine whether you are competent to stand trial. If not, you will be reconfined under the original commitment.

After the maximum period of commitment has expired, the Commissioner of Mental Health can make application to a court for a formal commitment.<sup>13</sup>

### Accelerated Rehabilitation

If you are accused of a crime that is not very serious, the judge believes you won't commit another crime, and you have no previous criminal record, you will be eligible to apply for the pre-trial accelerated rehabilitation program.<sup>14</sup> You must agree to follow the conditions set by the court. A notice of the application and an opportunity to be heard will also be given to the victim or victims of the alleged crime. This statute doesn't apply, unless good cause is shown the court, if you have been accused of a Class A, Class B or Class C felony. If you enter this program, you must appear in court, and you will be placed under the supervision of the Commission on Adult Probation for a period of up to two years. Once you have successfully completed your period of probation, you can apply for dismissal of the charges against you. When the court finds that you have satisfactorily completed your probation, the court will dismiss the charges.<sup>15</sup>

### Behavior Report

The Department of Correction will notify the court of instances where an unsentenced inmate's behavior is either exceptionally good or he/she is involved in serious misconduct.<sup>16</sup>

## Footnotes

- 1 *Rhem v. Malcolm* 507 F 2nd 333 (2nd Cir. 1974) affirming 371 F. Supp. 594 (SD NY, 1974); *Seale v. Manson*, 326 F. Supp. 1375 (D. Conn. 1971).
- 2 *Rhem v. Malcolm*, supra.
- 3 It has also been held that a detainee in administrative segregation must be allowed to participate in group religious services — he/she cannot be required to pray alone in his/her cell, he/she is entitled to consult with jailhouse lawyers “when such assistance is required,” and he/she is further entitled to the same opportunity to participate in educational and arts and crafts programs as are available to other inmates. *Wilson v. Beame* 380 F. Supp. 1232 (E.D. NY, 1974).
- 4 *Rhem v. Malcolm*, supra.
- 5 *Detainees of Brooklyn House of Detention For Men v. Malcolm* 520 F 2nd 392 (2nd Cir. 1975).
- 6 *Connecticut General Statutes*, 54-53.
- 7 *Connecticut General Statutes*, 54-53a.
- 8 *Connecticut General Statutes*, 54-53a.
- 9 PA 75-476 Section 1(b); *Conn. Gen. Stats.* 54-40.
- 10 PA 75-476 Section 1(b); *Conn. Gen. Stats.* 54-40.
- 11 PA 75-476 Section 3(d). An individual cannot be kept in a hospital for the criminally insane because he/she is unable to stand trial where it is evident that his/her condition won't permit him/her to stand trial within a reasonable period of time. *Jackson v. Indiana* 406 US 715; *U.S. ex rel Wolfersdorf v. Johnston* 317 F. Supp. 66 (SD NY, 1970). Nor can an individual be confined in a mental institution unless he/she receives adequate psychiatric treatment. *U.S. v. Pardue* 354 F. Supp. 1377 (D. Conn. 1973).
- 12 PA 75-476 Section 3(d). The statute uses the word “hearing” to describe the proceeding which must take place before you can be committed, although it doesn't explain what the “hearing” procedure must be. Any procedure which doesn't follow the commitment procedure set out in *Conn. Gen. Stats.* Section 17-178 (discussed in due process chapter) would probably violate the 14th Amendment's equal protection clause, *Baxstrom v. Herold*, 333 U.S. 107; *Chesney v. Adams*, 508 F.2nd 836 (2nd Cir. 1975) and its due process clause. *Jackson v. Indiana*, supra.
- 13 PA 75-476, Section 3(d); *Conn. Gen. Stats.*, Section 17-198.
- 14 *Connecticut General Statutes*, Section 54-76p.
- 15 *Connecticut General Statutes*, Section 54-76p.
- 16 *Administrative Directives*, Dept. of Correction Chap. 2.8.

## FREEDOM FROM CRUEL AND UNUSUAL PUNISHMENT

The Eighth Amendment to the U.S. Constitution protects you from punishment under inhuman conditions, punishment excessive for the crime charged, and denial of proper medical care. It rests upon fundamental, though vague, considerations of human decency. The conditions that a court will consider cruel and inhuman change and grow broader as public opinion changes as to what constitutes decent and humane treatment.

### Conditions in Punishment Facilities

The Constitution requires certain minimum conditions when you are placed in administrative segregation, punitive segregation or isolation. These include providing basic implements of personal hygiene (soap, toothpaste, toothbrush); allowing you to maintain personal cleanliness by providing running water and toilet facilities in the cell, or use of bathroom facilities at reasonable intervals; at least one hour per day out of the cell for exercise; lights and reading matter; and some opportunity to communicate with other inmates.<sup>1</sup> It has also been declared unconstitutional to subject you to any punishment where there is any possible risk of loss of sanity.<sup>2</sup>

Correction Department Administration Directives (Directives) provide for the following:

- (1) cells with lights, toilet facilities and running water, or an adequate supply of drinking water, and reasonable access to toilet facilities for inmates in punitive and administrative segregation;
- (2) same diet as general population;
- (3) bedding consisting of linens, blankets and a mattress for those in administrative segregation, and blankets and a mattress for those in punitive segregation;
- (4) "comfort items" - toothbrush, toothpaste and soap for inmates in punitive segregation;
- (5) two showers a week and the opportunity for male inmates in segregation to shave at least twice a week;
- (6) a reasonable supply of periodicals for inmates in punitive segregation.<sup>4</sup>

### Medical Care

The Commissioner of Correction is required by statute to provide you with proper medical care.<sup>5</sup> The Eighth Amendment is violated when severe and obvious injuries are not treated. It is violated when treatment required to preserve life or health, in a situation known to correction officials, is not provided. It is violated when there is willful refusal to treat a known ailment - particularly where an inmate has requested such treatment.<sup>6</sup> It isn't necessary for prison officials to deliberately inflict suffering for the Eighth Amendment to be violated. Callous indifference is enough.<sup>7</sup>

Cruel and unusual punishment in regard to medical care was found in a case where an inmate, after surgery, was removed, without a medical discharge, from a hospital by corrections officials. The officials had not checked with the operating surgeons and had proceeded against their orders. In addition, the inmate was forced to walk on the leg which had required surgery. Corrections officials were held liable because of their deliberate indifference to the inmates' condition and to the surgeon's orders. The prison doctor was also held liable for deliberate indifference because he didn't provide adequate facilities or prescribed medication despite the surgeon's orders to the contrary.<sup>8</sup>

### Treatment Generally

The Eighth Amendment protects you from being beaten, physically abused, tortured, or subjected to similar cruelty at the hands of guards.<sup>9</sup> Correction officers are allowed to use reasonable force to subdue you if you are violent. But force which is excessive in the particular situation or which is applied maliciously and sadistically for the purpose of causing harm cannot be used.<sup>10</sup>

It has also been held to be cruel and unusual punishment where there has been prolonged or unnecessary handcuffing or binding,<sup>11</sup> where a person was kept in a hospital for the criminally insane as an insane defendant, unable to stand trial for an indefinite period of time or where there was no likelihood that he/she would ever be brought to trial if found to be sane.<sup>12</sup> When there has been any substantial deprivation of food, clothing, sanitation or medical care,<sup>13</sup> or when a person is confined to an institution which has conditions and practices so bad as to be shocking to the conscience of reasonable people, the courts will also find violations of the Eighth Amendment.<sup>14</sup>

## Footnotes

- 1 *LaReau v. MacDougall* 473 F 2nd 974 (2nd Cir. 1972); *Wright v. McMann* 460 F 2nd 126 (2nd Cir. 1972); *Sostre v. McGinnis* 442 F 2nd 178 (2nd Cir. 1971); *Osborne v. Manson* 359 F Supp 1107 (D. Conn. 1973).
- 2 *Sostre v. Rockefeller* 312 F Supp 863 (S.D., N.Y., 1970).
- 3 *Directives*, Chapter 2.7(a).
- 4 It would seem that the conditions described in the *Directives* do not meet the minimum constitutional requirements discussed above.
- 5 *Connecticut General Statutes*, 18-7.
- 6 *Church v. Hegstrum* 416 F 2nd 449 (2nd Cir. 1969); *U.S. ex rel Hyde v. McGinnis* 429 F 2nd 864 (2nd Cir. 1970); *Haines v. Kerner* 404 U.S. 519.
- 7 *U.S. ex rel Schuster v. Vincent* 524 F 2nd 153 (2nd Cir. 1975); *Bishop v. Stoneman* 508 F 2nd 1224 (2nd Cir. 1974).
- 8 *Martinez v. Mancuso* 443 F 2nd 921 (2nd Cir. 1971).
- 9 *Inmates of Attica Correctional Facility v. Rockefeller* 453 F 2nd 12 (2nd Cir. 1971); *Rhem v. Malcolm* 371 F Supp 594 (S.D., N.Y., 1974); *Argentine v. McGinnis* 311 F supp. 134 (S.D., N.Y., 1969); *Williams v. U.S.* 341 U.S. 97.
- 10 *Johnson v. Glick* 481 F 2nd 1028 (2nd Cir. 1973); *Fowler v. Vincent* 366 F Supp (S.D., N.Y., 1973).
- 11 *Lollis v. N.Y. State Department of Social Services* 322 F Supp 473 (S.D., N.Y., 1970).
- 12 *U.S. ex rel vonWolfersdorf v. Johnston* 317 F Supp 66 (S.D., N.Y., 1970).
- 13 *Bowers v. Smith* 353 F Supp 1339 (D. Vt., 1972).
- 14 *Martarella v. Kelley* 349 F Supp 575 (S.D., N.Y., 1972).

## FREEDOM FROM RELIGIOUS AND RACIAL DISCRIMINATION

Prison officials may not discriminate against you in any way for either racial or religious reasons. Prisons cannot be operated in any manner which segregates the races,<sup>1</sup> nor can you be punished or penalized by prison officials for your religious beliefs.<sup>2</sup>

You may attend religious services conducted by an institutional Chaplain unless your status doesn't permit you the freedom of the institution.<sup>3</sup> An hour each week is to be made available for group religious services.<sup>4</sup>

You may obtain personal copies of religious books and subscriptions to religious periodicals for purposes of religious study or inspiration,<sup>5</sup> and you will be allowed to keep some for your own use.<sup>6</sup> An institutional Chaplain can help you order the books and periodicals, which must be approved by the Library Committee.<sup>7</sup> You can also wear small religious medals representing your particular faith.<sup>8</sup>

If you belong to a religious faith having special needs which cannot be met by the services of an institutional Chaplain, you will be allowed to meet with other inmates of the same faith for religious services with the approval of the warden and under the supervision of a staff member. Such services are limited to members of that faith.<sup>9</sup> This does not mean, though, that ministers of that faith will be admitted to the prison to conduct worship for you.<sup>10</sup> However, the warden may approve of such admission after conducting a character check of the proposed minister.<sup>11</sup>

You may abstain from eating food which violates your religious beliefs.<sup>12</sup>

## Footnotes

- 1 *Lee v. Washington* 390 U.S. 333.
  - 2 *Sherbert v. Verner* 374 U.S. 398.
  - 3 *Directives*, Chapter 1.4, *Cruz v. Beto* 405 U.S. 319; *Wilson v. Beame* 380 F. Supp. 1232 (E.D. N.Y., 1974) held that inmates in segregation must be allowed to attend communal religious services.
  - 4 *Directives*, Chapter 1.4.
  - 5 *Directives*, Chapter 1.4, *Blazec v. Fay* 251 N.Y. S. 2nd 494 (App Div 2nd Dept., 1964).
  - 6 *Directives*, Chapter 1.4, *Sa Marion v. McGinnis* 284 N.Y. S. 2nd 504 (Supreme Court, Erie County, 1967).
  - 7 *Directives*, Chapter 1.4. See discussion of the operation of the Library Committee in Chapter on Free Communication.
  - 8 *Directives*, Chapter 1.4.
- In addition, *Abdullah v. Manson* (D. Conn., No. 15,606 decided 3/13/73), held that Muslims may wear modest head covering, and *Crooks v. Preiser* 74 Civ. 3829 (SD NY 1974) held that Muslim women may wear religious dress in prison.
- 9 *Directives*, Chapter 1.4, *Sa Marion v. McGinnis* supra.
  - 10 *Directives*, Chapter 1.4, *Sa Marion v. McGinnis* held that Black Muslims had a right to hold religious services officiated by a minister of their faith.
  - 11 *Directives*, Chapter 1.4, See *Sa Marion v. McGinnis* supra note No. 9.
  - 12 *Directives*, Chapter 1.4, *Sa Marion v. McGinnis*, supra, also held that Black Muslims must be allowed to abstain from eating foods which violate their religion and may substitute some other food available at the meal. *Kahane v. Carlson* 18 CL 2294 (2nd Cir. 11-26-75) held that an inmate was entitled to a diet sufficient to maintain him in good health without violating the dietary laws of his/her religion.

## WOMEN IN PRISON

This chapter is addressed to the special problems of women in prison. Of course the manual's other chapters pertain to women as well as men, but only areas uniquely affecting women will be discussed here.

### A. Sentencing and Conditions of Confinement.

In the past the Connecticut criminal and correctional systems treated men and women differently more than they do now. Until 1975 sentencing for most women was indeterminate, which meant that women were exposed to the possibility of being sentenced for longer periods of time than men who had committed an identical offense.<sup>1</sup> Judges, under this practice, did not set the period of confinement. The maximum term was three years, unless the crime for which a woman was sentenced carried a longer maximum term. In the latter case, the maximum was the maximum period for the offense. The practice of indeterminate sentencing for women was apparently based on a belief that women were more likely to be successfully "rehabilitated" than men. Thus, the indeterminate term was a way to allow prison officials to release a woman when she was "rehabilitated". This practice was declared to be an unconstitutional discrimination on the basis of sex,<sup>2</sup> and the indeterminate sentencing statute was finally repealed in 1975. Women aged 16-25 may still be sentenced for an indeterminate period, but men of this age group may also get an indeterminate sentence. For both women and men, the indeterminate sentence is not now required but is imposed at the discretion of the sentencing judge.<sup>3</sup>

In Connecticut the only women's institution is Niantic, which houses both pre-trial detainees and women who have been sentenced. For men in Connecticut there are 3 correctional institutions (prisons), 6 community correctional centers (jails), and a conservation camp. There are several practical effects of having only one women's institution. First, many women inmates suffer a more severe dislocation from family, friends, and community. This problem is especially acute for pre-trial detainees who may have a difficult time getting an attorney from their own community to come to see them at Niantic. Second, there is no system of classification assigning women to different institutions depending on their age and length of sentence. Third, women prisoners have fewer vocational and educational programs to choose from. Finally, programs offered in Niantic are likely to be based on what is thought to be suitable "women's work."

There are also advantages for women, however. They are usually treated in a less strict manner and are allowed to wear their own clothing. But these differences stem from stereotyped notions of women, the same kind of notions which led to the indeterminate sentencing system and the "sex-tracked" nature of the programs offered to women and men within the prisons.

### B. The Equal Rights Amendment

Differences in treatment and opportunities which are based on ideas about supposed psychological differences between men and women rather than those based on actual

physical differences appear to violate the "equal rights" amendment to the Connecticut Constitution which was adopted in November of 1974. This amendment added sex to the list of characteristics upon which it is lawful to base discriminatory treatment. It reads as follows:

No person shall be denied the equal protection of the law nor be subjected to segregation or discrimination in the exercise of his or her civil or political rights because of religion, race, color, ancestry, national origin or sex.<sup>4</sup>

What the Equal Rights Amendment means for women in prison is not as yet clear. It did force the abolition of the differences in sentencing procedures described above. One interpretation is that this type of constitutional amendment makes sexually segregated institutions unlawful except to the extent that rights of privacy mandate separate facilities for men and women within the same institution.<sup>5</sup> Even if segregated institutions are not banned, the amendment at least means that the number and quality of programs offered by various prisons must at least roughly be equal and that the types of programs offered should not be determined on the basis of beliefs about women's "psychology."<sup>6</sup>

Of course there are problems involved in the equalization of treatment of men and women within the prisons because of the lesser number of women involved. Rather than raising the conditions of women to that of men where men are advantaged and men to that of women where women are advantaged, there is a danger that the conditions of either sex would be lowered in order to achieve equalization.

Besides its effect on conditions within the various institutions, the ban on sex discrimination guarantees that women be treated equally in the granting and conditions of parole, sentencing, and all other conditions of confinement.

### C. Children

Problems which arise concerning children during incarceration often affect women more profoundly than anything else that occurs during that time. Although some of what follows affects men as well, it is included here because of more frequent relation of women. Thus a very brief description of the law as to parents and children as it relates to women in prison will be set forth to conclude this section. This description is only an outline meant to inform inmates of their rights in this area. Any woman who is involved in problems affecting the status of her children should try and get legal help, perhaps from her community's Legal Services Program if she cannot afford the services of an attorney.

Two Connecticut statutes provide for the placement of children at Niantic. One applies to children born to pre-trial detainees and women committed to the Department of Corrections for less than a year.<sup>7</sup> The other statute applies to women sentenced for a longer period.<sup>8</sup> Both statutes require the placement of children born within the institution to be made in cooperation with the welfare department. As to inmates sentenced for longer than a year, the statute provides for an administrative review of the placement where the child's mother objects in writing to the superintendent of Niantic. No provision is made for review upon objection of a pre-trial or "less than one year" mother to

the placement of her child. This is probably because in those cases the placement is for a shorter period of time. A woman in this category who objects to the placement of her child should still have an opportunity for review and thus should also write to the superintendent even though there is no specific provision for review.

Although the law in effect gives temporary custody of children born within the institution to the superintendent with power to make placements, the mother's rights to the child cannot be affected beyond the term of her imprisonment by this placement. Parental rights cannot be terminated<sup>9</sup> nor can a parent be removed as guardian.<sup>10</sup> without the parent receiving notice, a hearing and a chance to contest the termination of parental rights or removal of guardian. There is also, in all cases, a right to appeal any adverse determination made at the first hearing.

Thus a mother confined at Niantic cannot be deprived of her children unless it is in a proceeding of which she has had notice, a right to be present and a right to be heard. She must be allowed to leave the institution to attend any such proceeding. Should a woman be deprived of any of these rights and her children are illegally taken away, she can assert the illegality of this deprivation by bringing a writ of habeas corpus to regain their custody<sup>11</sup> in the Family Relations Session of the Superior Court.<sup>12</sup>

## Footnotes

- 1 C.G.S. 18-65 was repealed by Public Act 75-633.
- 2 *U.S. ex rel Robinson v. York*, 281 F. Supp. 8 (D. Conn. 1968); *Liberti v. York*, 28 Conn. Supp. 9 246 A2d 106 (1968).
- 3 P.A. 75-633.
- 4 Article V, Section 20 of the *Connecticut Constitution*.
- 5 Note, *The Sexual Segregation of American Prisons*, 82 Yale L.J. 1229, 1261-1262 (1973).
- 6 *Id.*
- 7 C.G.S. 18-69a.
- 8 C.G.S. 18-69. These statutes are of doubtful validity because 1) they mandate regulations which have never been promulgated and 2) they appear to create an irrebuttable presumption that the children's fathers are unfit to have custody, *Stanley v. Illinois* 405 U.S. 645.
- 9 See C.G.S. 45-61 through 45-61k.
- 10 See C.G.S. 45-43.
- 11 C.G.S. 52-466.
- 12 C.G.S. 51-182c.

## DETAINERS & SPEEDY TRIAL

One of the problems you may face is the "detainer." A detainer is a notice from a law enforcement agency in one jurisdiction to correction officials in another jurisdiction that there is a criminal charge pending against an inmate of the prison in the second jurisdiction. The detainer system works in the following manner:

- Joe Smith is an inmate of a prison in State A.
- There is a criminal charge or warrant outstanding against Joe Smith in State B.
- When State B finds out that Joe Smith is a prisoner in State A, it issues a *detainer* against Joe to the prison officials of State A.
- This notice, or *detainer*, from State B tells State A that there are outstanding criminal charges against Joe Smith in State B and requests State A officials to notify State B shortly before Joe Smith is released from prison.
- When Joe Smith is released from prison in State A, the charges pending in State B are immediately brought against him.

Detainers can have several adverse effects on you, including stress and worry, loss of institutional privileges, reduction of parole opportunities, and other negative effects on your correctional program.

One way to have the detainer removed is by requesting a trial on the pending charges. The way to do this depends on whether or not the state issuing the detainer is a party to the Interstate Agreement on Detainers. Most states and the United States are parties to the agreements. Connecticut is one and we have included a list of all the states which are parties to the Agreement and the location of the legislation on their statutes.<sup>1</sup> If a state is not a party to the agreement, its procedures don't apply. If this is your case, you should consult an attorney. In any case that is a good idea.

Another way in which the detainer might be removed is to have a lawyer who represents you negotiate with the prosecutor in the other state.

### A. Procedures For Resolving Detainers Pursuant To The Interstate Agreement On Detainers

Once you learn that both the state issuing the detainer and the one in which you are incarcerated are parties to the Agreement, you may take the following steps:

- (1) Write a letter to the Prosecutor's Office of the jurisdiction issuing the detainer, requesting a final disposition of the charges listed in the detainer. The letter must contain certain information about your current sentence and identify the detainer you are seeking to resolve. See Appendix B for a sample letter.

- (2) Give the signed letter to the warden or superintendent (or other office designated to handle detainer matters) of the institution in which you are confined, with a request that it be mailed to the appropriate authorities along with a Department of Correction Certificate containing the particulars of your current sentence. The warden or other official will mail the request for final disposition and the certificate of sentence to the prosecutor's office of the jurisdiction issuing the detainer and will send a copy, as required by the agreement, to the Chief Judge of the court in which the charge is pending.

Once the letter of request for a final disposition of the detainer charge is received by State B, the prosecutor there has only two alternatives: he/she must either drop the charge (thereby removing the detainer) or bring you to trial within 180 days of their receipt of the request.

There is an important legal side effect of the request for final disposition of detainer charges under the terms of the Interstate Agreement. A letter to a particular jurisdiction requesting final disposition of a specific detainer charge will be considered as a request for final disposition of charges listed in *all* detainers which have been issued against you by *that jurisdiction*. Take, for example, an inmate in Colorado who has two detainers lodged against him by California — one for burglary and one for larceny. If he requests a final disposition of only the burglary charge under the provisions of the Interstate Agreement his letter will be considered by California — a request for final disposition of both the burglary *and* the larceny charges which have been filed against him by detainers. This would be so even if the detainers were issued by different prosecutors within the state of California and the charges are pending in different cities. Unless an inmate follows the procedure set forth above he/she will not be entitled to relief.<sup>2</sup> On the other hand, if the inmate has requested a trial and no action has been taken within 180 days by the authorities in the state lodging the detainer, all of the charges must be dismissed and the detainer removed.<sup>3</sup>

#### **B. Procedures For Resolving Detainer When The Interstate Agreement Does Not Apply**

Under the Sixth Amendment to the United States Constitution and Article 1, Section 8 of the Connecticut Constitution, you have a right to a speedy trial. Several court cases have interpreted these constitutional provisions to apply to situations where you have charges placed against you in a state other than the one in which you are incarcerated.

There are two steps to dealing with detainers by this method. The first step is a letter which requests the state issuing the detainer to schedule a speedy trial on the pending charges. (See Appendix D for sample.) Usually this letter of request is sufficient to obtain an early trial date. If no action is taken on the request, however, it is necessary to use step two, filing a "Motion for a Speedy Trial," with the court in which the detainer charges are pending. (See Appendix E for sample.) If the motion is denied or no action is taken, you have a choice of remedies. Either you can file a petition for a writ of habeas corpus in the Federal Court for the district where you are incarcerated seeking removal of the detainer(s) from your institutional file,<sup>4</sup> or you can file a petition for habeas corpus in the Federal Court for the jurisdiction where the court which issued the detainer sits, seeking an order for either an immediate trial or dismissal of the indictment.<sup>5</sup>

It is important to remember that the request for an immediate trial on the detainer charges must be initiated by you or your attorney. After this request is made, the state issuing the detainer must make a good faith effort to bring you to trial. If it does not, there may be grounds to obtain a dismissal of the charges through a "Petition for a Writ of Habeas Corpus" in Federal Court. Detainers . . . . .

The Connecticut Supreme Court has explained the right to speedy trial as follows:

" . . . the state must proceed without unreasonable or undue delay (citations omitted). Each situation must be judged on the facts of the particular case; a delay may be waived and waiver may be implied when the defendant does not object to it (citations omitted). The rule generally stated is that the prosecution is entitled to a reasonable time for preparation and the defendant is to be free from vexations, capricious and offensive delays."

(*State v. Williams* 157 Conn. 114, 249 A 2d 245, cert den'd 395 U.S. 927 (1969))

You may want to be familiar with the cases listed in the footnote 6 to understand the basis for a motion for a speedy trial and subsequent appeal of its denial.

APPENDIX A

Sample Letter To Request Final Disposition Of Detainer Charges

NOTE: This letter should be addressed to the office of the prosecutor who will prosecute the charges or to the person who filed the detainer. It must contain a certificate of the conditions of the sentence now being served which will be issued by the Department of Corrections or other proper office upon request of the inmate. A carbon copy of this letter and the certificate must be sent to the Chief Judge of the court in which the charges will be tried. The Interstate Agreement requires that the warden, superintendent or some other official designated by the Department of Corrections mail the letter and certificate for the inmate.

Date .....

Address of person who filed the detainer or of Prosecutor's Office in the issuing jurisdiction.

Dear Sir:

I am presently an inmate at the .....(A)....., serving a sentence of .....(B)..... years after my conviction of .....(C)..... in the .....(D)..... Court of .....(State)..... on ..... 19.....

On .....(F)....., 19....., I was indicted in the .....(G)..... Court in the State of .....(State)..... on the charge(s) of .....(H)..... On .....(I)....., 19....., a detainer based on that (those) charge(s) was filed with .....(J)..... by .....(K)..... There has been no action taken on this detainer since that date.

On the basis of the Interstate Agreement on Detainers Act, I hereby request that a final disposition be made of the (indictment, information, or complaint) now pending against me. Pursuant to Article III of the Act, I have asked the Department of Corrections (or appropriate office) to send with this letter a certificate indicating the conditions of the sentence which I am now serving.

Sincerely,

(Your Signature)

cc: (Chief Judge of Court where charge is pending)

## APPENDIX B

On the following page is a sample letter which can be used as a model for a letter to be written to the state which files the detainer. This letter must contain the following information:

(NOTE) The letters in parenthesis are a key to the sample letter to show where the information belongs in the letter.)

- (A) The name of the prison where the inmate is serving his/her sentence.
- (B) The length of the sentence being served.
- (C) The crime or crimes of which the inmate was convicted and for which he/she is now serving a sentence. (Include the numbers of the Statute section violated)
- (D) The court which convicted the inmate.
- (E) The date on which the court convicted the inmate.
- (F) The date of the indictment on which the detainer is based.
- (G) The court which issued the indictment on which the detainer is based.
- (H) The charges on which the detainer is based.
- (I) The date on which the detainer was filed.
- (J) The office where the detainer was filed.
- (K) The name of the person or officer who filed the detainer.

APPENDIX C

Sample Letter Of Request For A Speedy Trial

NOTE: This letter should be sent to the Prosecutor's Office which will prosecute the charge or to the person who filed the detainer. A certificate from the Department of Corrections or proper office indicating the conditions of sentence now being served should be sent with the letter. A copy of the letter and certificate should be sent to the Chief Judge of the court where the charge is pending. The letters in parenthesis below are keyed to the list of information given in Section 1. The same information is needed here. Unlike the procedures under the Interstate Agreement on Detainers, it is the prisoner's responsibility to mail this letter of request and the Corrections Department certificate to the jurisdiction which issued the detainer.

Date,.....

Address of person who filed the detainer or of the Prosecutor's office in the issuing jurisdiction.

Dear Sir:

I am presently an inmate at the .....(A)....., serving a sentence of .....(B)..... years after my conviction of .....(C)..... in the .....(D)..... Court of .....(State)..... on .....(E)....., 19.....

On .....(F)....., 19....., I was indicted in the .....(G)..... Court in the State of .....(State)..... on the charge(s) of .....(H)..... On .....(I)....., 19....., a detainer based on that (those) charge(s) was filed with .....(J)..... by .....(K)..... There has been no action taken on that detainer since that date.

I would greatly appreciate your taking the necessary steps to remove this detainer from my records. If that is not possible, I request that I be tried on this charge at the earliest possible date. I base this request on the right to a speedy trial guaranteed by the Sixth and Fourteenth Amendments to the U.S. Constitution, as interpreted by *Klopfer v. North Carolina*, 386 U.S. 213, *Smith v. Hooy*, 393 U.S. 374, and *Dickey v. Florida*, 398 U.S. 30. I would appreciate immediate action on this matter so that a formal motion for a speedy trial will not be necessary.

Sincerely,

.....(Your Signature).....

cc: Chief Judge of the Court

APPENDIX D

Sample Motion For A Speedy Trial

IN THE ..... COURT OF ..... OF THE STATE OF .....

STATE OF ..... )
V )
(Name of Inmate) )
..... )
)
)
)

No. of Case (Leave Blank).....

MOTION FOR SPEEDY TRIAL
UNDER THE SIXTH AND FOURTEENTH
AMENDMENTS TO THE UNITED STATES CONSTITUTION

Comes now the defendant, .....(your name)....., pro se, and petition the Court that he/she be granted a speedy trial in the above-mentioned case. As the basis for this Motion, plaintiff states the following reasons:

1. On ....., 19....., Defendant was indicted in this court on the charge(s) of ....., under .....(statutory cite).....

2. On ....., 19....., Defendant was convicted in the ..... court of .....(state)..... of ....., and sentenced to ..... years at .....(name of prison)..... A certificate from the .....(state)..... Department of Corrections, specifying the conditions of the sentence imposed under this conviction, is attached to this motion as Exhibit A.

3. On or about ....., 19....., Defendant was notified by the .....(state)..... Department of Corrections that a "detainer" had been entered against him by .....(name of person issuing detainer)..... of the (State's Attorney's Office) of .....(state)..... This detainer notified the Department of Corrections of the indictment specified in paragraph #1, supra, and requested that the ...(name of person issuing Detainer).... be notified shortly before the Defendant's release from .....(name of prison).....

4. Since that date, no effort has been made by the (name of prosecuting office in issuing state) to finally dispose of these charges.

5. Defendant has made repeated efforts to be brought to trial on the charges specified in paragraph #1: to wit, letters of ....., 1971 . . . copies of which are attached to this Motion as Exhibit B. (if applicable)

6. Because the indictment has not been acted upon, and Defendant has not been afforded a trial within a reasonable period of time, his/her opportunity for a fair trial has been diminished in the following ways:

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\*To be filed with the court in which detainer charges are pending.

7. Because the detainer has not been acted upon or removed from Defendant's records at .....(state)..... Department of Corrections, his/her treatment program has been adversely affected in the following ways: (if applicable)

(list any restrictions on institutional program or privileges caused by the detainer and any restrictions on parole opportunities.)

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8. If the detainer is not acted upon, Defendant's program in the .....(state)..... Department of Corrections may be adversely affected in the following respects: (if applicable)

(list any restrictions on institutional programs or privileges which may be caused by the detainer and any possible restrictions on parole opportunities.)

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9. Defendant desires to have the matter disposed of at the earliest possible date, reserves the option, after subsequent investigation, to present further evidence of the extent to which his/her right to a fair trial has been fatally prejudiced by the delay in bringing him/her to trial and to make appropriate motions on that basis, and waves his/her right to challenge his/her extradition to the state of ..... with respect to this matter.

10. In light of the circumstances in paragraphs No. 1-8, supra, Defendant respectfully submits that he/she is entitled to be brought to trial immediately.

Respectfully submitted, pro se

(inmate's signature or Attorney's).....

Name of Defendant/Petitioner.....

Prison Number .....

Address .....

## Footnotes

1 *Conn. General Statutes*, Sections 54-186 through 4-192.

### Complementary Legislation:

Ariz.—A.R.S. §§ 33-481, 33-482.  
Ark.—Ark. Stats. §§ 43-3201 to 43-3208.  
Cal.—West's Ann.Pen.Code §§ 1389 to 1389.7.  
Colo.—1969 Perm.Supp., C.R.S., 74-17 to 74-17-7.  
Conn.—C.G.S.A. 54-186 to 54-192.  
D.C.—D.C.C.E. §§ 24-701 to 24-705.  
Fla.—F.S.A. §§ 941.45 to 941.50.  
Hawaii—HRS § 734-1.  
Idaho—I.C. §§ 19-5001 to 19-5008.  
Ill.—S.H.A. ch. 38, § 1003-8-9.  
Ind.—I.C. 1971, 11-1-7-1 to 11-1-7-7, 35-2.1 to 35-2.4.  
Iowa—I.C.A. §§ 759A.1 to 759A.8.  
Kansas—K.S.A. 22-4401 to 22-4408.  
Me.—34 M.R.S.A. §§ 1411 to 1419.  
Md.—Code Supp. art. 27 §§ 616A to 616R.  
Mass.—M.G.L.A. c. 276 App. §§ 1-1 to 1-8.  
Mich.—M.C.L.A. §§ 780.601 to 780.608.  
Minn.—M.S.A. § 629.924.  
Mo.—V.A.M.S. §§ 222.160 to 222.220.  
Nev.—N.R.S. 178.620 to 178.640.  
N.H.—R.S.A. 606-A:1.  
N.J.—N.J.S.A. 2A:159A-1 to 2A:159A-15.  
N.M.—1953 Comp. §§ 41-20-19 to 41-20-23.  
N.Y.—McK. CML § 580.20.  
N.C.—G.S. §§ 148-89 to 148-95.  
N.D.—NDCC 29-34-01 to 29-34-08.  
Ohio—R.C. § 2963.34 et seq.  
Ore.—ORS 134.605 to 134.665.  
Pa.—19 P.S. §§ 1431 to 1438.  
S.C.—Code 1962, §§ 17-221 to 17-228.  
S.D.—SDCL 23-24A-1 to 23-24A-34.  
Tenn.—P.A. 1970, c. 560.  
Va.—Code 1950, §§ 53-304.1 to 53-304.8.  
Vt.—28 V.S.A. §§ 1501 to 1509, 1531 to 1537.  
Wash.—RCWA 9.100.010 et seq.  
Wis.—W.S.A. 976.05.  
W.Va.—Code, 62-14-1 to 62-14-7.  
Wyo.—W.S. 1957, §§ 7-408.9 to 7-408.15.  
U.S.—Dec. 9, 1970, Pub. Law 91-538, 84 Stat. 1397. 18 U.S.C.A.App.

2 *Grant v. Hogan* 505 Fed. 1220 (3rd Cir. 1974).

3 *Busque v. Moore* 26 Conn. Supp. 469.

4 See *U.S. ex rel Watson v. Norton* 335 F. Supp. 1324 (D Conn. 1971).

5 See *Braden v. 30th Judicial Circuit Court of Kentucky* 410 U.S. 484, 493.

6 *Smith v. Hooy*, 393 U.S. 374.

*Dickey v. Florida* 398 U.S. 30, 26.

*Barker v. Wingo* 407 U.S. 514.

Anno: Accused's Right to Speedy Trial 31 L. Ed. 2d 905.

ABA Standards Relating to Speedy Trial.

*Strunk v. U.S.*, 412 U.S. 434.

*Moore v. Arizona* 414 U.S. 25.

## ACCESS TO THE COURTS

One of the most essential rights you have is the opportunity to challenge an unlawful conviction and to seek redress for violations of your constitutional rights. The U.S. Supreme Court has held that prison regulations and practices which obstruct access to courts or the availability of legal representation are invalid.<sup>1</sup> The Connecticut Constitution is even clearer, specifically guaranteeing access to the courts to all citizens. (Article First, Section 1A).

The attorney who is appearing for you in any legal matter (called "attorney of record") is allowed to visit you during regular institutional business hours.<sup>2</sup> Other attorneys may visit providing you consent and the attorney of record gives written approval to the warden.<sup>3</sup>

You and your attorney must be given privacy when visiting. Private interviews should be provided; corrections officers should not be within hearing range and your interview can't be bugged.<sup>4</sup>

In protecting your right to get to court, various decisions have prohibited prison officials from impeding or interfering with correspondence between you and your attorney,<sup>5</sup> public officials and the courts.<sup>6</sup>

Cases have also determined that you cannot be punished or threatened with punishment for pursuing legal remedies,<sup>7</sup> even cases against prison officials<sup>8</sup> or cases which challenge prison conditions;<sup>9</sup> nor can your law books be confiscated.<sup>10</sup> Courts have also held that you cannot be punished for or prevented from providing legal help to other inmates.<sup>11</sup> But in a recent case the Supreme Court refused to intervene where a state inmate was transferred to another prison because he had circulated a petition, addressed on a letter to United State District Judge, protesting his removal from the library where he was assisting other prisoners.<sup>12</sup> You have a right to seek, by suitable means, financial support for effective representation.<sup>13</sup>

## COMMISSION ON CLAIMS

Connecticut has an agency, the Commission on Claims, to consider and act on some types of claims against the state.<sup>14</sup> If any of your personal property is lost or stolen because of the carelessness of any employee of the Corrections Department or you receive serious injury while working at your job you can file a claim.<sup>15</sup> The Commission on Claims can either award damages in any amount up to five thousand dollars (\$5,000)<sup>16</sup> or it can give you permission to sue the state of Connecticut.<sup>17</sup>

In order to bring a claim you must file a notice of claim,<sup>18</sup> in 2 copies, within 1 year after the date of the injury. The notice of claim must include the following information:

- (1) Your name and address and the name and address of your attorney or other person acting for you;

- (2) A brief statement of facts your claim is based on, including the date, time, place and circumstances;
- (3) How much money you're asking for;
- (4) A request for permission to sue the state, if you are looking for such permission.

The Claims Commissioner is supposed to have a hearing on your claim, "as soon as practicable"<sup>19</sup> after receiving your notice of claim. The Claims Commissioner must reach a decision on your claim within 90 days after the hearing is held and send you a written copy of the decision,<sup>20</sup> from which there is presently no appeal.<sup>21</sup>

There are several important practical problems with the procedure of the Commission on Claims which may require that you have the assistance of a lawyer when you bring a claim with the Commission on Claims.<sup>22</sup>

The hearings have only been held in Hartford.<sup>23</sup> Therefore, unless you can get a special type of habeas corpus petition (called habeas corpus ad testificandum) prepared, and signed by a state court judge you and any inmate witnesses you may have may not be able to come to or testify at the Commission hearing.

The Commission has discretion to subpoena witnesses on your case. This means that unless you *specifically ask* the Claims Commissioner to order that Corrections Department employees or records be brought to the hearing, he won't do so. Even if you do ask, he is not required to do so.

#### Footnotes

- 1 *Procutier v. Martinez* 416 U.S. 396; *Ex Parte Hull* 312 U.S. 546.
- 2 *Administrative Directives, Department of Correction*, Chap. 3.4 (Directives).
- 3 *Directives*, Chap. 3.4.
- 4 *Directives*, Chap. 3.4. See also *Rhem v. McGrath* 326 F Supp. 681 (S.D. NY, 1971), where the court held that prison officials cannot interfere with private consultations between inmates and their attorneys.
- 5 *Wright v. McMann* 460 F 2nd 126 (2nd Cir. 1972), *Lathan v. Oswald* 359 F. Supp. 85 (S.D. NY, 1973), *Christman v. Skinner* 468 F 2nd 723 (2nd Cir. 1972).
- 6 *Wells v. McGinnis* 344 F Supp. 594 (S.D. NY, 1972).
- 7 *Christman v. Skinner*, supra, *Sczerbaty v. Oswald*, 341 F. Supp. 571 (S.D. NY, 1972) *Lathan v. Oswald*, supra.
- 8 *Sczerbaty v. Oswald*, supra.
- 9 *Carothers v. Follette* 314 F. Supp. 1014 (S.D. NY, 1970).
- 10 *Corby v. Conboy* 457 F 2nd 251 (2nd Cir. 1972).
- 11 *Lathan v. Oswald*, supra; *Johnson v. Avery* 393 U.S. 483; *Wilson v. Beame* 380 F. Supp. 1232 (E.D. NY, 1974).
- 12 *Montanye v. Haymes* —U.S.— 44 LW 5051 (June 26, 1976).
- 13 *Butler v. Preiser* 380 F. Supp. 612 (S.D. NY, 1974).
- 14 *Connecticut General Statutes*, 4-142.
- 15 Public Act 76-136 recently allowed inmates to file claims, but only for job-related injuries resulting in death or permanent handicap.

16 *Connecticut General Statutes*, 4-158.

17 *Connecticut General Statutes*, 4-160.

18 *Connecticut General Statutes*, 4-147.

19 *Connecticut General Statutes*, 4-151. The Claims Commissioner will ask the Commissioner of Correction to investigate your claim and submit a report to him/her on the results of the investigation. Under the present rules of the Claims Commission neither the claimant or his/her attorney/representative is allowed to see this report.

20 *Connecticut General Statutes*, 4-154.

21 *Connecticut General Statutes*, 4-164. If you discover new evidence which may have resulted in a different decision you can request a rehearing of your claim. You must send the Claims Commission 2 copies of your application for rehearing, which must include a statement of what new evidence you have and how it relates to your original claim. *Connecticut General Statutes*, 4-156.

22 The organizations listed in the resources section may be able to provide you with an attorney or legal advice/assistance.

23 This rule is *not* required by law and, if applied to prevent use of the Claims Commission by inmates may deny due process of law.

## HOW TO GET INTO COURT

You have the constitutional right to seek correction of grievances and/or violations of your constitutional rights. You can do this in a number of different ways (which are called remedies):

1. You can go through whatever grievance procedure is available in the institution and then bring the grievance to the Ombudsman; or
2. You can go right to court by filing a petition for a writ of habeas corpus, or by using other state court procedures (whatever applies to your situation) or you can bring a complaint under the Federal Civil Rights Act<sup>1</sup> (42 USC Section 1983).

Whenever possible you should first exhaust your administrative remedies. Each of these remedies will be explained in this chapter. (You can get sample legal forms for each of these remedies through the prison library or by writing to the CCLU Foundation, 57 Pratt St., Hartford, Conn. 06103).

### Grievance Procedure

Grievances concerning your treatment in the institution or the conditions there can be brought to your institutional counselor or the Guard Captain (if the complaint involves a corrections officer), the Assistant Warden, the Warden or the Commissioner of Corrections.

You do not have to bring your complaint to one of these people, you can ask for the Ombudsman's help.

If you wish to bring the complaint to the attention of the Commissioner of Corrections you may place the complaint in one of the "Commissioner Boxes" which are available in every institution, He should give you a written reply and keep a copy of the complaint and his reply in his office.<sup>2</sup>

If you are not satisfied with the handling of your complaint you can bring it to the attention of the Connecticut Correctional Ombudsman<sup>3</sup> by either:

1. Conveying it to him in person, or;
2. Placing a written, signed complaint in the "Ombudsman Box" provided in each institution.

If you cannot write, the Ombudsman will hear the complaint orally. If you can only speak and write a language other than English the complaint may be submitted in that language — the Ombudsman will arrange for the services of a translator. The Ombudsman will notify you in writing within ten days that he has either accepted your complaint for investigation or that he can't or won't handle it and the reasons for his decision.

The Ombudsman investigates complaints concerning acts, omissions, decisions or recommendations when:

1. They are contrary to law or regulations;
2. They are unreasonable, unjust or result from administrative rules or regulations which are unreasonable or unjust;
3. They are not explained or inadequately explained;
4. They involve the improper use of discretion including discretion based on irrelevant conditions;
5. They are likely to add to institutional tension because of vague practices and procedures.

The Ombudsman is obligated to maintain the confidentiality of your name, anything told or written to him/her, details of your complaint and his/her findings and conclusions, with some exceptions. If for any reason he/she feels that your name and/or the details of your complaint should be revealed for the purpose of conducting an investigation, he/she must tell you beforehand and ask for your written permission. If you decide not to give your permission or you decide to withdraw it later on, nothing else will be done on your complaint. Any information concerning a criminal act, a potential danger to life or a serious threat to security won't be kept confidential.

If the Ombudsman can't handle your complaint quickly he/she should notify you in writing and tell you what has already been done.

After he/she completes the investigation he/she will either find that your complaint was justified and recommend changes in the rule, regulation or procedure which brought the complaint about or he/she will find that your complaint wasn't justified and give you his/her reasons in writing.

The Ombudsman can submit his/her recommendations first to the warden and then to the Commissioner of Corrections.

If he/she does this he/she will inform you in writing of whatever final action the Department of Corrections takes and when his/her recommendations are not accepted by the Corrections Department he/she will ask you in writing if you want him/her to make his/her recommendations public and give you the option of dropping your complaint at that time if you don't.

The Correctional Ombudsman has no power to force the Corrections Department to do anything. As a result he/she is limited in what he can do for you. If your problem is a minor one, he/she should be given the opportunity to assist you.

If, on the other hand, your complaint involves a violation of your constitutional rights there is little the Ombudsman can do to help you and you should consider court action (a habeas corpus petition, a writ of mandamus or relief under the Federal Civil Rights Act-42 USC 1983 – *But you should definitely read the explanation of each of these remedies and the requirements for bringing such an action before going ahead – it will save you a lot of wasted time and aggravation.* And even if the problem is beyond the Ombudsman's power to change, he/she can often find important things about the complaint which should help you decide whether to sue and how to plan your case if you do file suit.

3. You can also contact the Legal Assistance to Prisoners program which is connected with the Connecticut Prison Association, 340 Capitol Ave., Hartford, Conn. 06106. (Tel. 566-2030)

This is a private organization and is not under the jurisdiction of the State Department of Corrections or any other state agency. It provides civil legal assistance to all prisoners in Connecticut.

4. The Civil Legal Clinic at the University of Connecticut School of Law in West Hartford, Conn. 06117 (Tel. 523-4841) also offers legal assistance to prisoners.

Other agencies which may be able to assist you appear in the section under "Resources" in this booklet.

## I. WHAT IS A WRIT OF HABEAS CORPUS?

The writ of habeas corpus has many different types of uses – One is to attack the legality of a conviction, another is to attack the conditions of confinement. But before defining the writ of habeas corpus, we will briefly consider it in perspective with the rest of the system.

In many ways, your trial was the "widest open" opportunity you will ever have to examine the factual and legal case against you. This is because both factual and legal issues can be discussed at trial, briefs prepared on them, evidence introduced, etc. If you were convicted in a state superior court, your appeal would go to the Connecticut Su-

preme Court. If you were convicted in a court of common pleas, your appeal would go to the appellate division of the Superior Court.

If a legal error is committed during your trial, you may appeal your conviction to a higher court, but you may not appeal on the question of whether the jury or judge made the correct factual determination. For example, you may appeal the question of whether the acts the jury could have found you performed were sufficient to legally constitute the crime of burglary. But you may *not* appeal the question which the jury or judge determined as to whether you physically performed these acts. (It is a basis for appeal that there was insufficient evidence to find certain crucial factual matters, but if there was any *reasonable basis* for the trial court to find these factual matters, the appeal will be denied as to that ground.)

The only issues that the appellate courts will ordinarily look at are legal questions (sometimes called "issues of Law") presented by the record of the case. Legal questions are the types of questions that judges, not juries, generally decide. Examples of these questions would be: whether or not the defendant has been denied a speedy trial, whether or not evidence discovered by search should be admissible; and whether or not a new trial should be granted.

Appellate courts do not call witnesses. Furthermore, the appellate courts will often only consider those parts of your trial that are written down and those things which you or your lawyer objected to during the trial and pre-trial proceedings. If your lawyer at trial failed to make appropriate objections and you can prove that his/her failure to object was not the result of some trial strategy (some conscious decision made after thinking over all the possible tactics) you may have a claim that you were denied adequate representation by counsel. This is a hard claim to prove, but it has been done.

The duty of the Connecticut Supreme Court in the criminal justice system is to make sure that there were no big mistakes made before or during the trial. There will always be *some* mistakes in every trial, but in order to have a case reversed on appeal, the mistake involved must be very serious — either your conviction or guilty plea resulted from a process or proceeding which treated you illegally or unfairly.

In the event that the Supreme Court makes a mistake in determining whether or not there was error in the way the trial court convicted you or whether or not that error was "harmless" (not big enough to hurt your case), you may then be able to bring your case to the United States Supreme Court. Even if you are denied in the United States Supreme Court, usually by refusal to grant a petition for certiorari, you may be able to attack your conviction by way of petition for writ of habeas corpus. The writ of habeas corpus is almost always available to attack a conviction that was illegal. (See list of common guilty pleas or trial defects in Appendix.)

It is, however, the last step in the Criminal Justice System, and it is usually only meant to be used after you have tried everything else and everything else has failed.

It is a general rule that habeas corpus attacks on convictions will not serve as substitutes for appeal.<sup>4</sup> — If you didn't appeal you may not be able to get a writ of habeas corpus.

Habeas corpus cannot be used to retry issues of fact. The rules regarding factual questions and legal questions are the same as they were in the case of an appeal. However, the rule that the error must be large enough to really hurt you is even tougher in habeas corpus<sup>5</sup> than it was on appeal. This means that many of the issues that the Connecticut Supreme Court would consider on appeal will not be considered on habeas corpus.

*Remember two things:* First: If you want to attack the legality of your conviction, and you have not appealed, you must prove that you did not, after talking it over with your lawyer, deliberately decide not to raise your constitutional claims by direct appeal to the Supreme court (this is not the case if you are attacking the conditions of your confinement). Second: The Writ of habeas corpus is changing all the time — it is generally becoming available to more inmates, and is expanding in scope to cover more issues and claims.

## A. The Writ Generally

### 1. Definition of "A Writ of Habeas Corpus"

The writ of habeas corpus is a piece of paper, signed by a judge, ordering the person in charge of a prison or jail, such as a Warden, Superintendent, or Sheriff, to bring one of the inmates in his/her custody to court.

When you have a problem which you want to bring to the attention of a judge by way of habeas corpus you file a *petition* for a writ of habeas corpus. When the judge receives your petition he/she will then decide, usually after a hearing, whether or not to *issue* or *grant* the writ of habeas corpus. If the judge is persuaded that your claim is a good one he/she may issue the writ.

## Habeas Corpus

Your first step is filing a petition with the clerk of the Connecticut Superior Court, alleging that you are being confined in violation of your constitutional rights. If you want a lawyer to represent you, you should ask that one be appointed for you, and you should file a sworn affidavit with the court stating that you don't have enough money to hire a lawyer. (Forms for the petition and the affidavit are available in each institution.) Once an attorney is appointed he/she has a duty to come and interview you and take care of the case as quickly as possible.

If you decide to represent yourself (pro se) then you next want to file an amended petition setting out in more detail your claims. Once you are prepared for a hearing on your petition you should send a letter to the clerk of the Superior Court (keep a copy for yourself) for the County in which the institution is located requesting that your case be placed on the trial list.

## Appeal from Denial of Habeas Corpus

If the judge who heard your habeas corpus petition denies it, you have ten days from the date of his/her decision in which to file a petition for certification that a question is involved in the decision which ought to be reviewed by the Connecticut Supreme Court.<sup>6</sup> The petition for certification is an appeal of the judge's decision. A form for this petition and a form for an affidavit swearing that you can't afford to pay for a lawyer will be

provided with your copy of the judge's decision. The petition should either be made to the judge who heard your case or to a justice of the Connecticut Supreme Court.<sup>7</sup> The petition when signed and the sworn affidavit should be sent to the clerk of the Superior Court who will forward it to the judge or justice.

If the petition for certification is denied, or when granted and the Connecticut Supreme Court denies your petition for writ of habeas corpus, you have "exhausted your state remedies," you have one of two choices. Either you can seek review by the U.S. Supreme Court by petitioning for a writ of certiorari<sup>8</sup> or you can ask a lower Federal Court to hear your petition (which is then a Federal habeas corpus petition).

### Federal Habeas Corpus

The primary function of Federal habeas corpus is to test the constitutionality of your detention — to determine in Federal court whether your conviction or the conditions of your confinement violate the constitution. A Federal judge will look at your conviction, or the conditions under which you are being confined, to determine whether you were (or are being) denied due process or equal protection of the law guaranteed by the Fourteenth Amendment to the United States Constitution, including those protections in the first ten amendments now considered essential to, and incorporated within, the Due Process Clause.<sup>9</sup>

The usual relief granted to a successful habeas corpus petitioner is release from custody in the case of an illegal conviction or an order requiring the correction of unconstitutional prison conditions.

### Preconditions to the issuance of a writ of habeas corpus

In order for you to qualify for a Federal writ of habeas corpus your petition must first show that: (1) you are "in custody"; (2) your detention is in violation of the United States Constitution; and (3) you have exhausted the remedies available to you on the state level to obtain the relief sought.

### The Meaning of "In Custody"

The meaning of "in custody" does not necessarily mean that you are actually in a jail or prison. You need not even be currently in a penal institution to file a petition for habeas corpus. If you have been released on parole, or you are on probation, it is still considered "in custody" for purposes of Federal habeas corpus because of the related problems (such as difficulty in obtaining jobs, inability to vote, etc.) that may follow from your conviction.<sup>10</sup>

Moreover, if you have filed a petition for habeas corpus during your detention or parole, the Federal jurisdiction is *not* defeated (the case does not become moot) simply because of your release prior to the completion of the Federal habeas corpus proceedings.<sup>11</sup>

Federal habeas corpus can even be used to test the validity of a sentence that you have not yet started to serve. For instance, a prisoner serving consecutive sentences is "in custody" under any one of the sentences for the purposes of Federal habeas corpus jurisdiction, and can attack the validity of the second or later sentences while serving the earlier sentence.<sup>12</sup> (The same, of course, is true of concurrent sentences.) Thus, it is not always true that a petition for Federal habeas corpus, even though successful, results in your immediate release. If the attack on the second of two consecutive sentences is successful, for example, you may still be lawfully confined under the first sentence.

Federal habeas corpus may be used to test the validity of a prior conviction that resulted in an increased sentence in a subsequent prosecution — for instance, where the prior conviction is used as a basis for sentencing you as a habitual offender. You can also attack the validity of a prior state conviction on Federal constitutional grounds when the effect of the prior sentence is to deprive the trial judge of the option she/he would have otherwise have had to grant probation.

## *2. Issues that will be heard on Federal Habeas Corpus Petition*

In order to prevail in a Federal habeas corpus proceeding, you must show that your conviction or detention violates the United States Constitution. Although formerly all Federal constitutional issues which were raised by the state procedure in your case could be raised in a Federal habeas corpus action, the Supreme Court recently held that illegal search and seizure questions cannot be raised.<sup>12a</sup> In this connection, it is important to remember that the Due Process Clause of the Fourteenth Amendment "incorporates" most of the rights guaranteed by the first ten amendments to the Constitution — it makes these rights fully applicable to state prisoners.

It is also important to remember that Federal habeas corpus is *not* a substitute for an appeal. It can only be used if the errors or conditions complained of rise to the level of a denial of constitutional rights — so that the entire conviction and/or detention are unlawful.

## *3. Exhaustion of State Remedies*

The purpose of the exhaustion doctrine is to give the state courts a first opportunity to correct any constitutional errors that may have crept into the state criminal proceedings, or which exist in state prison conditions, before relief is sought in a Federal court. Thus, if at the same time you wish to petition a Federal court it is possible to raise the same issue in a state court — and that issue has never before been passed upon in the same case by the highest available state court — then you have not exhausted your state remedies.

Suppose, however, that the Federal constitutional issue which you seek to raise on Federal habeas corpus was not raised (through no fault of your own) at the trial (in a case where you are challenging your conviction). This might occur in one of the following circumstances, among many others: (1) no procedure existed at the time of the trial to test the constitutionality of the evidence or procedure challenged; (2) the law has changed since the trial; or (3) you were so badly represented during the trial that an issue that should have been raised was not raised.

At the same time you wish to seek Federal habeas corpus relief, ask yourself: "Are there any procedures *now available* by which I could present the same claim for resolution by the state courts?" If so, you must first use those procedures. If no remedy is available under state law at the time you wish to raise your claim, then you need not do anything further to exhaust state remedies.

The exhaustion of state remedies refers *only* to those remedies in existence at the time you apply for Federal habeas corpus relief. The doctrine is not applicable to remedies that were available to you in the past, but are no longer available.<sup>13</sup>

But, if you deliberately decide not to appeal or use any other state remedy available to you, the Federal judge can deny you habeas corpus relief altogether. Ordinarily though, Federal habeas corpus relief will not be denied where the bypassing of state remedies has been the result of mere inadvertence, mistake, neglect, or misunderstanding of state procedural law. In some instances, when the risks that may be faced by a prisoner who pursues a particular state remedy substantially outweigh the benefits that may accrue to him/her, a Federal court may find that the decision to bypass the state remedy was excusable. For instance, in one case the petitioner was sentenced to life imprisonment under a conviction of murder. The U.S. Supreme Court held that his failure to appeal his conviction in the New York state courts was not a "deliberate" bypassing of state remedies, since he was faced with the "grisly choice whether to sit content with life imprisonment or to travel the uncertain avenue of appeal, which if successful, might well have led to retrial and death sentence." The court found that, under the circumstances, his failure to appeal was not "merely a tactical or strategic litigation step, or in any way a deliberate circumvention of state procedures."<sup>14</sup>

No general rule can be stated as to whether a Federal court will find that the decision to bypass a state remedy was deliberate unless you, having been fully informed of your rights under the state law, and understanding those rights, participated in the decision to waive them. As the Supreme Court warned: "a choice made by counsel not participated in by the petitioner does not automatically bar relief."<sup>15</sup>

## B. Where to File

A petition for Federal habeas corpus relief must be filed either with the clerk of the Federal District court in which the institution where you are being held is located or (2) the office of the district court in which the state court that convicted and sentenced you is located.

If you want the assistance of an attorney with your habeas corpus petition you can contact one of the organizations listed in "Sources/Resources" who may provide you with one or you can ask the court to appoint one for you. In either case you will need to file a motion and affidavit with the court. Go to the prison library or contact the Connecticut Civil Liberties Union, 57 Pratt St., Hartford, Conn. 06103. Some common habeas corpus claims were set out in previous chapters.

## Bringing a Section 1983 Suit

### A. Who can Use Section 1983?

Section 1983 although part of the Civil Rights Act can be used by anyone. The person who starts the suit does not need to be an American citizen.<sup>16</sup> The law refers to "any citizen of the United States or any other person within the jurisdiction thereof." "Within the jurisdiction" simply means you were physically within the U.S. when you were deprived of your rights. The fact that you are in prison does not take away your rights to sue under Section 1983.<sup>17</sup>

## B. *What Can You Sue About?*

Not every injury you suffer or every violation of your rights is covered by Section 1983. In order to sue, the actions you are suing about must violate your Federal rights regarding conditions or treatment in prison, and they must have been done with power from the state or local government ("under color of state law").

### 1. *Violations of your Federal Rights Regarding Conditions or Treatment in Prison*

Section 1983 does not cover all the ways in which prison officials mistreat prisoners. There are two limits:

First, you need to show that the acts you are suing about violate either the U.S. Constitution or a law passed by the U.S. Congress. Only a very few Federal laws grant rights which apply to prisoners. In practice, prisoners generally use Section 1983 to enforce rights guaranteed by the U.S. Constitution.

Second, your suit has to be about conditions of treatment in prison. You cannot use Section 1983 to challenge the fact or duration of your imprisonment and obtain immediate or speedier release from prison.<sup>18</sup> It isn't necessary to go through any Correction Department administrative procedures before bringing suit under 1983<sup>19</sup> or to show exhaustion of state remedies at all.<sup>20</sup> A 1983 suit can also be used to recover money damages from prison officials.<sup>21</sup>

Sometimes a prison suit handled by a lawyer will include claims based on state law as well as Federal law. You can sometimes do this in a Section 1983 suit if the action you are suing about violates both state *and* Federal law. (You can't use Section 1983 to sue about an action that violates only state law.) But it is tricky to try this without an experienced lawyer, and usually it won't make a very big difference.

### 2. *Under Color of State Law*

You cannot use Section 1983 to sue a private citizen who acted without any connection to the government or any governmental power. But a person can exercise power from the government even though he/she doesn't work directly for it. For example, a trustee or a private citizen such as a doctor, who mistreats you while he/she is working for prison officials. "Concerted action of private parties and state officials has consistently been held to be sufficient . . . for 42 USC 1983 . . ."

One final word. When Section 1983 says that the action you sue about must have been under color of the law, it does not mean that the action has to have been legal under the state law.<sup>22</sup> It only means that the person you sue must have been working for the prison system at the time of the acts you're suing about or he or she was working for some other part of the state or local government or exercising power granted by state or local government.

The constitutional rights you are entitled to, and which you can bring suit for violation of, were set out in previous chapters of this book. Some of the basic forms you will need to begin your suit can be obtained from the prison library. (See Sources/Resources section for the names and addresses of some organizations who may be able to provide you with an attorney.)

### Writ of Mandamus

A writ of mandamus is a court order commanding a public official to perform a legal duty required of him/her.<sup>23</sup>

In order to obtain a writ of mandamus, you must show the following:

- 1) The official is legally obligated to perform the duty and has no discretion. For example, the statute or rule imposing the duty uses "shall" or "will". The duty is generally considered ministerial<sup>24</sup> and is enforceable by a writ of mandamus. Though a court will not usually issue a writ of mandamus where the official is given discretion in performing a duty, if you can prove that he/she acted "capriciously or arbitrarily, and not in the honest exercise of discretion or judgement,"<sup>25</sup> you may be able to persuade the court to issue the writ anyway.
- 2) You have a clear legal right to have the duty performed (for example, if you are sick or injured and you are refused proper medical care.)<sup>26</sup>
- 3) You have no other remedy (there is no other way available to you to actually enforce the right.)<sup>27</sup>
- 4) You requested performance by the official and he/she refused to do it.<sup>28</sup>

If the action you seek to have performed is an emergency you can ask the court to issue the writ immediately.<sup>29</sup> (A sample writ can be obtained from the CCLU, 57 Pratt St., Hartford, Conn. 06103.

## Footnotes

- 1 42 USC Section 1981 et seq, particularly sec. 1983. Jurisdiction is under 28 USC sec. 1343 (3).
- 2 Telephone interview with Commissioner Raymond Lopes, November 12, 1975.
- 3 All information concerning the Ombudsman was taken from "The Connecticut Correctional Ombudsman." Report of the First Year pp 25-28.
- 4 See *Wozculewicz v. Cummings* 143 Conn 624 and *Vena v. Warden*, 154 Conn. 363.
- 5 *Vena v. Warden*, Supra @ p 367. It is important to realize that the appeal requirement only applies if you had a trial. If you pleaded guilty without a trial then there is no obstacle to petitioning for a writ of habeas corpus.
- 6 *Connecticut General Statutes* 52-470.
- 7 *Connecticut General Statutes* 52-470.
- 8 See *U.S. ex rel Carrono v. Richmond* 279 F2d 170 2d Cir, 1960) and 28 U.S.C. Section 1257.
- 9 In *Stone v. Powell* -US- 44 LW 5313 (1976) the Supreme Court held Federal habeas not available to test whether evidence claimed to be illegally seized under the Fourth Amendment should have been excluded at trial.
- 10 *Jones v. Cunningham* 371 U.S., 236.
- 11 *Carafas v. LaVallee* 391 U.S. 236.
- 12 *Peyton v. Rowe* 391 U.S. 54.
- 12a *Stone v. Powell* - U.S. - 49 LED. 2d 1067 (1976).
- 13 See *Wilwording v. Swenson* 404 U.S. 249, Denial of habeas corpus petition by state court and affirmation by State Supreme Court constituted exhaustion of state remedies so that inmate could bring Federal habeas petition.
- 14 *Fay v. Noia* 372 U.S. 391 (1963). In this case the petitioner's failure to seek direct appeal was held excusable.
- 15 *Fay v. Noia* Supra.
- 16 *Robeson v. Fanelli* 94 F. Supp 62 (SDNY, 1950).
- 17 *Cooper v. Pate*, 378 U.S. 546.
- 18 *Preiser v. Rodriguez* 411 U.S. 475.
- 19 *Houghton v. Shafer* 392 U.S. 639.
- 20 *McNeese v. Board of Education* 373 U.S. 668.
- 21 *Sostre v. McGinnis* 442 F2d 178 (2d Cir. 1971); *Wright v. McMann* 460 F2d 126 (2d Cir. 1972).
- 22 *Monroe v. Pope* 365 U.S. 167 (1971).
- 23 See *Connecticut General Statutes*, 52-485 and 52-486.
- 24 *Sweda v. Laughlin* 29 Conn. Sup. 149.
- 25 *The State v. Erickson*, 104 Conn. 542.
- 26 *Sweda v. Laughlin*, Supra.
- 27 *State ex rel Heimov v. Thompson*, 131 Conn. 8.
- 28 *Ballas v. Woodin*, 155 Conn. 283.
- 29 *Varanelli v. Luddy*, 132 Conn. 113.

## APPENDIX

### SOME COMMON CLAIMS IN HABEAS CORPUS

#### A. Common Claims in Attacking Your Incarceration

See previous chapters of this handbook for an explanation of your constitutional rights. You can raise violation of these rights in a habeas corpus petition.

#### B. Common Claims in Attacking Your Conviction

##### I. Defects in the Plea of Guilty

1. Before the guilty plea was received, the defendant was not advised of his/her rights.
  - a) Right to counsel;
  - b) Right to trial and to prepare a defense;
  - c) Right to a jury;
  - d) Right to call and confront witnesses;
  - e) Right to remain silent;
  - f) Right to appeal.
2. The defendant was persuaded to plead guilty because of promises by the judge or lawyers, and those promises have not been honored.
3. The defendant was persuaded to plead guilty because of threats from the judge or lawyers.
4. Failure of the court to fix the degree of the crime.

##### II. Defects in the Trial

##### A. Denial of Fundamental Rights

1. Denial of right to counsel
  - a) The defendant was not advised of the right to counsel at preliminary examination;
  - b) The defendant was not advised of the right to counsel at arraignment;
  - c) Any failure to provide counsel to an indigent without an intelligent waiver
  - d) The defendant was not given a reasonable time to secure an attorney;
  - e) Interference with effective communication between defendant and his lawyer;
    - i) unreasonable visitation hours for counsel;
    - ii) consultation room was bugged and consultation was deliberately overheard;
  - f) Ineffectiveness of appointed counsel — defense so inadequate as to deprive the defendant of the right to counsel;  
(Note: It is almost impossible to win this case in a habeas corpus proceeding. In general, you must be able to show that your trial was reduced to a farce or sham through your attorney's lack of competence, diligence, or knowledge of the law.)

g) Counsel was absent at the time of sentencing.

2. Denial of right to a speedy trial

- a) The time between arrest and trial exceeded the limits proscribed by law;
- b) The time between the alleged offense and the defendant's arrest was unreasonable and prevented the defendant from effectively preparing his defense;
- c) The prosecutor's reason for the delay was erroneous.

3. Denial of right to a jury trial

- a) The defendant was not advised of the right to a jury trial;
- b) The defendant was denied the right to jury trial without legitimate waiver;
- c) The jury panel was unconstitutionally selected (systematic exclusion of blacks and other minorities);
- d) Jury misconduct at the time of trial or deliberation.

4. Denial of right to be present at trial

- a) The defendant was excluded from his own trial;
- b) The defendant was insane (or temporarily insane) at the time of trial.

5. Denial of right to remain silent

- a) A coerced or involuntary confession was used against the defendant;
- b) The defendant was forced to take the stand against his/her will.

6. Denial of right to confront witnesses

- a) The defendant and his lawyer were not permitted to cross-examine witnesses;
- b) The defendant was not permitted to call witnesses in his/her behalf.

*B. Misuse or Exclusion of Evidence*

- 1. Knowing use of perjured testimony by the prosecution;
- 2. Knowing suppression of material evidence by the prosecution;
- 3. Exclusion of evidence on a key defense.

## PRIVACY

Privacy is the basic desire to be let alone. Courts have not yet recognized a constitutional right to privacy for sentenced inmates,<sup>1</sup> but the generally increasing scope of privacy rights outside and your obvious need for privacy make it probable that some privacy rights will exist for inmates. Where constitutional privacy rights exist, they can be invaded only where a search is "reasonable"<sup>2</sup> or the state's interest is compelling.<sup>3</sup> While these standards obviously permit greater invasion of your privacy than could happen outside, they also suggest that there are limits to the state's powers.

### A. Cell Searches

Prison authorities have the right to search inmates, with very few restrictions. They say they need this power to prevent smuggling, possession of contraband, and the making of tools which could be used to escape. The Fourth Amendment requirements for a search warrant and probable cause may not apply in prison.<sup>4</sup> That does not mean that a prison authority can search an inmate for any reason, at any time, or in any way he pleases. Within each prison there should be a set of reasonable rules and procedures made known in advance to you. The Fourth Amendment should be construed to provide that searches be conducted with maximum respect and minimum discomfort to the inmates, that only prohibited items may be confiscated, all other items removed in the search being replaced without damage, that inmates have a right to be present during the search and given a list of the items confiscated, and that searches will occur only at reasonable times or in emergencies.

The Connecticut Department of Correction has declined to publish its policies concerning searches within prisons, apparently taking the position that any search under any circumstances is legal.<sup>5</sup>

### B. Strip Searches

Inmates have for many years been subjected to searches of their bodies and body cavities. The state generally claims the right to conduct such searches as necessary to prevent contraband, including drugs, from entering the institution. Several courts have commented negatively on such practices or related practices, or upheld them only after a careful scrutiny of the state's claim of interest.<sup>6</sup> They may be unconstitutional as cruel and unusual punishment if conducted without substantial individualized justification.<sup>7</sup> Other relevant considerations are whether the searches are conducted in nonpublic areas, by medically trained persons and/or under hygienic conditions.

### C. Sexual Practices

The prison prohibits any form of sexual contact with other persons or animals and defines sexual contact as any touching "of the sexual or intimate parts" for sexual gratification.<sup>8</sup> This rule contrasts with state criminal statutes which permit most sexual practices between consenting adults. Nothing in the discipline code prohibits private masturbation. There has not been litigation over the constitutionality of these rules or similar rules in other states.

**D. Records**

The Department of Correction keeps extensive records about each inmate. To date these records have not been available to you nor have they been open to public inspection. In 1976 the state legislature passed a statute regulating the keeping and use of personal records which include the department's records about you. After the statute becomes effective, July 1, 1977, you will be able to see the record under the provisions of the act.<sup>9</sup> Additionally, the statute gives you a remedy if your record is revealed to someone who has no statutory right to see it.<sup>10</sup> And the Department may not collect or include information which is not necessary for its lawful purposes.<sup>11</sup>

## Footnotes

- 1 For pretrial detainees some courts have recognized a right of privacy. *Rhem v. Malcolm* 507 F2nd 333 (2nd Cir. 1974) *Detainees of the Brooklyn House of Detention v. Malcolm* 520 F2nd 393 (2nd Cir. 1975). It is hard to see any general reasons why sentenced inmates should be entitled to less privacy than pretrial detainees, but courts have not yet so ruled. But in *Lanza v. New York* 370 US 139 (1962) the Supreme Court ruled that the visiting room of a jail was not a protected area unless being used for a protected purpose.
- 2 Constitution of the United States, Amend. 4.
- 3 *Roe v. Wade* 410 US 113 (1973) *Stanley v. Illinois* 405 US 645 (1972).
- 4 *Lanza v. New York* supra. But *Lanza* which involved "bugging" of the public visiting room of a jail, does not hold that there are no places within a prison protected by the Fourth Amendment.
- 5 Directives, Chapter Two 2.5 (not available to public).
- 6 *Rochin v. California* 342 US 165 (1952) *Sostre v. Preiser* 519 F2nd 763 (2nd Cir. 1975) *Black v. Amico* 387 V. Supp. 88 (W.D.N.Y. 1974).
- 7 *Bell v. Manson* USDC D. Conn. B-76-84 among other things challenges a general practice of strip-searching pretrial detainees on their return from court. It is awaiting decision.
- 8 Directives 2.7 Part IV Section 13, "Sexual Misconduct." Violation of this rule subjects an inmate to possible loss of up to 90 days good time.
- 9 P.A. 76-421 Section 4(g). But see also Section 5 which permits the agency to withhold medical or psychiatric parts of the record if it determines that disclosure to you would be detrimental to you. If that occurs you may petition the court to overrule the agency P.A. 76-421 Sections 6, 8.
- 10 P.A. 76-421 Section 8.
- 11 P.A. 76-421 Section 4(e).

## PAROLE: GRANTED, DENIED, OR REVOKED

When you become eligible for parole, the Connecticut Board of Parole decides whether you should be granted or denied parole, when your parole should be revoked and when you should be discharged from parole.

### Parole Eligibility

You become eligible for parole consideration:

- 1) If you are at Somers, Enfield, Cheshire, Niantic and the Community Correctional Centers, serving a sentence with minimum and maximum terms, when you have completed the minimum term less "good time" and pre-sentence "jail time" credit.
- 2) If you are at Cheshire serving an indefinite term, (a) after completing 9 months of a 2 yr. maximum; (b) 12 months of a 3 yr. sentence; (c) 14 months of a 4 yr. sentence; (d) 15 months of a 5 yr. sentence.
- 3) If you are at Niantic serving an indefinite term and it is the first sentence, (a) after completing 6 months of a sentence not exceeding 3 yrs; (b) 9 months of a sentence between 3 and 5 yrs; (c) if more than 5 yrs, the Board should set a parole eligibility date within 2 months of admission to the Institution.  
If you are serving a second sentence: (d) after completion of 9 months; (e) in case of a sentence over 5 yrs. "c" above applies.
- 4) If you are serving a definite sentence at a Community Correctional Center you aren't eligible for parole.

### Parole Hearing

The decision to grant or deny you parole is made by a panel of the board 30-80 days prior to your parole eligibility date. You should be given written notice of the parole hearing at least 30 days in advance.

The only people presently allowed at the hearing besides you and the members of the Parole Board, are the recording secretary and your institutional counselor.<sup>1</sup>

Your witnesses can send the Parole Board a written statement supporting parole or they can speak to the chairperson prior to the hearing. He is supposed to prepare a memorandum of everything that is said to him/her and give a copy to each member of the hearing panel.

When you are called before the panel you should be given the opportunity to make a statement and present whatever documentary evidence you wish. You may also be asked questions by the panel.

The Board is given the authority to release you on parole if it believes that "there is a reasonable probability that such inmate will live and remain at liberty without violating the law and such release is not incompatible with the welfare of society."<sup>2</sup>

The panel considers the following factors when deciding whether or not to grant you parole:<sup>3</sup>

1. Offense
  1. Offense
  2. Number of counts
  3. Multiple offense
  4. Co-defendants
  5. Violence in offense
2. Criminal record
  1. Age at first commitment
  2. History of violence
  3. Number of prior arrests and/or convictions
  4. Number of suspended sentences, fines and/or nolles
  5. Number of prior incarcerations
  6. Number of prior paroles
  7. Number of prior parole revocations
3. Institutional adjustment
  1. Place of commitment
  2. Prison transfer
  3. Educational program or progress
  4. Job training or work
  5. Work or education release
  6. Extra-meritorious good time or commendation
  7. Number of furloughs
  8. Number of misconducts
  9. Number of prison punishments
  10. Number of prison infractions with violence
  11. Escape attempt from prison or custody
4. Employment history
  1. Longest continuous employment period
  2. Employment prior to arrest
5. Health
  1. Commitment to mental hospital
6. Efforts in solution of problems
  1. Alcohol problem
  2. Alcohol treatment
  3. Drug problem
  4. Drug treatment
  5. Educational program of progress
  6. Job training or work
  7. Work or education release
7. Parole plans
  1. Family criminal record
  2. Family stability
  3. Parole plans — job
  4. Parole plans — residence

After the panel is through talking to you, they will send you out of the room and make their decision. Then they will call you back and inform you of the decision. If you are granted parole, your release date will be set; if you aren't, or your case is to be continued pending further investigation, you should be informed in writing of the reasons for the denial and the evidence upon which the denial was based.<sup>4</sup> You should also be told the next date when you will be eligible for a parole hearing.

If, between the time parole is approved and you are actually released on parole, anything happens which causes the Parole Board to decide to take back parole approval, you have the right to be given notice of the charges, call witnesses, confront and cross-examine the people giving evidence against you, the presence of an attorney and a statement by the decision-maker, if cancellation is ordered, of the evidence relied on and the reasons for the cancellation.<sup>5</sup>

### Reorientation and Adjustment

You can be returned to prison for up to 60 days for "reorientation and adjustment." This happens whenever the Parole Division decides that because of unemployment, or because you don't have a "satisfactory" residence, or because you are having trouble arranging your parole program, there is a possibility you may become involved in criminal activity.<sup>6</sup>

When this is done the Parole Board must be notified within two days of your return and the chairperson must be told in writing within 5 days. You can't be confined for more than 5 days unless it is ordered by the chairperson of the Parole Board on the recommendation of the Commissioner of Corrections. You can then be confined for up to 60 days based solely on the chairperson's decision. The only appeal from this decision is to the chairperson or if he/she decides to a panel of the Parole Board.

When you are returned for "reorientation and adjustment" the Department of Corrections will place a parole violation warrant against you. If your "adjustment" is not satisfactory then your parole may be revoked and you will be kept in the institution.<sup>7</sup>

### Parole Violation and Revocation

If the Department of Corrections or the Parole Board believes that you have violated the terms of your parole they can obtain a parole violator's warrant and have you arrested. Once you have been taken into custody you are entitled to a preliminary hearing to determine whether there is probable cause or reasonable ground to believe that you have violated any of the conditions of your parole. The preliminary hearing must be conducted at or reasonably near the place of the alleged violation or arrest, as promptly as convenient after arrest as possible, by an individual not directly involved in the case.<sup>8</sup>

Prior to the preliminary hearing you should be given notice of the hearing stating that it will take place, that its purpose is to determine whether there is probable cause to believe you have violated your parole, what parole violations you are supposed to have committed,<sup>9</sup> and notifying you that you have a right to request representation by counsel.<sup>10</sup> This request should be granted when you claim that you didn't commit the alleged violations or even if the violation is a matter of public record, or uncontested, you have

strong reasons for what happened which would support a decision to continue your parole, and the reasons are complex or otherwise difficult for you to develop or present.<sup>11</sup> If your request for an attorney is refused, the reasons must appear in the record of the hearing.<sup>12</sup>

At the preliminary hearing you can appear and speak for yourself, present letters, other documents or witnesses on your behalf, and you can question the persons who have evidence against you (unless the hearing officer decides that identifying the informant will expose him/her to risk or harm).<sup>13</sup>

The hearing officer must make a summary of the hearing, including your responses, and a description of the evidence against you. Based on the evidence presented at the hearing, the hearing officer should decide if there is probable cause to hold you for a final parole revocation hearing. The officer should state the reasons for his/her decision and indicate the evidence he/she relied on.<sup>14</sup>

The Parole Board's procedure appears to allow you to be sent back to the same institution you were paroled from at which point apparently the required preliminary hearing would be held.<sup>15</sup>

Before the Parole Board can make the final decision to revoke your parole, you should be given a revocation hearing before a panel of the Board. You must receive written notice which indicates the charges against you; the date, time and place of the hearing, and which gives you a summary of the evidence against you<sup>16</sup> (the Board would only disclose the source of the evidence).<sup>17</sup>

You also have the right to representation by counsel at the revocation hearing but you must ask for appointment of an attorney if you can't afford one (the same standards apply as the ones set out for the preliminary hearing); the right to be heard in-person and to present witnesses and evidence in your behalf; and to confront and cross-examine witnesses giving evidence against you (unless the panel finds good cause for disallowing this).<sup>18</sup>

The Parole Board will not grant you a hearing if you have been convicted of new offenses; with sentences, "which exceed . . . one year . . . (ones) . . . which (have) . . . minimum terms . . . (which) . . . extend beyond the maximum terms of the original sentence."<sup>19</sup>

If you are in this situation you have a right of appeal to the chairperson who can order a hearing.

Following the hearing, if the Parole Board decides to revoke your parole, you should be given a written statement by the panel members of the evidence they relied on and their reasons for revoking your parole.<sup>20</sup> Parole Board procedure provides that you be given the reasons for revocation orally, but nothing else.<sup>21</sup>

You will be discharged from parole supervision when the Parole Board decides, by a unanimous vote, that you will "lead an orderly life." You must normally remain on parole for at least a year and at least one-half of the maximum you were originally sentenced to before you can be considered for discharge.

## Footnotes

- 1 A case challenging the failure of the Parole Board to apply the due process procedures required by the Connecticut Administrative Procedures Act to parole release hearings is currently on appeal to the Connecticut Supreme Court *Taylor v. Manson*.
- 2 Connecticut General Statutes 54-125.
- 3 Connecticut Commission on Parole Evaluation "Techniques and Rehabilitation, Staff Report," Chapter 5, P. 13, September, 1975.
- 4 *Haymes v. Regan* 525 F2d 540 (2d Cir. 1975).
- 5 *Williams v. U.S. Board of Parole* 383 F. Supp. 402. (D. Connecticut, 1974).
- 6 Connecticut Board of Parole Statement of Organization and Procedures (7/1/75) pp 14 (hereafter referred to as Board).
- 7 *Directives*, Chapter 4.6. The whole "reorientation and adjustment" procedure appears to violate the U.S. Supreme Court's decision in *Morrissey v. Brewer* (discussed below under parole violation and revocation).
- 8 *Morrissey v. Brewer*; 408 U.S. 471, 485-86. The law concerning the preliminary hearing is in a state of constant change. Whether the *Morrissey* principle concerning the preliminary hearing apply (or not) will depend largely on the facts of your case and what the courts decide the Supreme Court meant.
- 9 *Morrissey v. Brewer*, Supra.
- 10 *Gagnon v. Scarpelli* 411 U.S. 778.
- 11 *Gagnon v. Scarpelli*, Supra.
- 12 *Gagnon v. Scarpelli*, Supra.
- 13 *Morrissey v. Brewer*, Supra.
- 14 *Morrissey v. Brewer*, Supra.
- 15 *Board* pp 15, 16. This procedure is contrary to the law as expressed in *Morrissey* which the Parole Board must follow.
- 16 *Morrissey v. Brewer*, Supra.
- 17 *Board* p 17.
- 18 *Morrissey v. Brewer*, Supra.
- 19 *Board* p 17. This practice may not be legal. See *Moody v. Daggett* 45 U.S.L.W. 4017 (11-15-76.)
- 20 *Morrissey v. Brewer*, Supra.
- 21 *Board* p 19. This whole procedure is an obvious attempt by the Parole Board to give as little attention to your constitutional rights as is possible. Parts of it may be subject to attack on due process grounds.

## GETTING BACK YOUR LEGAL RIGHTS

When you are convicted of a crime, you lose certain rights, according to law. But you can regain these rights.

This Chapter tells you what rights you may have lost. It's a general guide on how to get them back.

This Chapter also tells you how to have police, court and prosecutor's records of your arrest erased. This is important if your arrest resulted in a nolle, if your case was dismissed, or if you were found not guilty.

**IMPORTANT:** Remember that an arrest is not the same thing as a conviction. An arrest does not make you lose your rights; a conviction does.

### A. YOUR RIGHT TO VOTE

In general, conviction for a felony automatically forfeits your right to vote in local, state and federal elections.<sup>1</sup> But conviction of a misdemeanor or of criminal nonsupport does not forfeit your rights. The registrars of voters do not have any power to change these rules.

Since the 1974 Amendment to the Constitution of Connecticut, a felony conviction results in a loss of voting privileges whether or not you were registered before your conviction. Under the old rule, you would only forfeit the right if you were registered at the time of conviction. People who registered to vote while in prison under the old rule may still be able to vote if they are still incarcerated for a felony conviction which occurred before the effective date of the amendment.

If you are eligible to vote and are in prison you may apply for an absentee ballot<sup>2</sup> not more than forty-five days before the election. The application form is prepared by the Secretary of the State and is sent to the town clerk of the town of your voting residence. If your application is in order the clerk will send you a ballot which you must fill out and return before the election. You should allow several days for this because of delays in mail handling.

If you were registered to vote in another state before being convicted of a felony in Connecticut, you should check the law of your home state to learn whether or not you can vote and how to go about it if you are eligible.

If you have lost your right to vote, you can get it back automatically by presenting written proof to the registrar of voters in the town where you lived that you have been discharged from custody and you have paid any fines assessed by the court as a part of your sentence.<sup>3</sup>

### B. OTHER RIGHTS YOU MAY HAVE LOST

Conviction of a felony or a misdemeanor also causes you to lose some *other* rights. The more serious the charges you were convicted of, the more rights you lose.

The Connecticut General Statutes (CGS) expresses a State policy to "encourage all employers to give favorable consideration to qualified individuals, including those who may have criminal conviction records.<sup>4</sup> This Statute also provides that you cannot be rejected for employment by the State of Connecticut or any of its state agencies or rejected in an application for professional licensing because of a criminal conviction, unless the agency in question shows:

1. That the crime committed was related to the job sought,
2. That there was information that you are not "rehabilitated" or,
3. That the time elapsed since the conviction is an important factor, justifying denial.

The Statute provides that your application has to be considered for any State employment position and requires that if your application is rejected the state agency must send you a statement of the rejection including the reasons for the rejection and the evidence presented that was a basis for the rejection.

You may appeal this rejection directly to the Court of Common Pleas for Hartford County within 20 days if you feel that you were unfairly rejected.

The general Connecticut State Personnel Office is located in the State Office Building at 165 Capitol Avenue in Hartford, Connecticut. Some state agencies may also hire directly through their agency. These main addresses may be found in the Hartford telephone directories or in some local directories.

### State Licensing Boards

To apply for a job that requires a license, you must apply to the board of examiners in charge of giving the license sought. In most cases they are listed in the Hartford telephone directory under "Connecticut, State of, Licensing Department."

Many license boards, however, still use "good moral character" as a criterion for obtaining a license. In determining good moral character, questions concerning your criminal record may be asked. You should contact the State Board for Occupational Licensing, 101 Lafayette St., Hartford (566-3290) for further information concerning the requirements for a particular license.

**Important:** Conviction of a felony may have caused you to lose a business or professional license you already had.

Conviction of a felony also keeps you from getting a permit to operate a bar or package store, or from being a bartender or working in a business that sells liquor. To regain your right to work in or own a liquor business, you must first get back your right to vote. If your voting rights are restored, you must then petition the Liquor Control Commission, 165 Capitol Avenue, Hartford, Connecticut 06115, telephone 566-2288, for a liquor permit or for permission to work in a liquor business.

The right to own and possess pistols and revolvers is also revoked if you have been convicted of a felony.

### To Regain Your Work License Rights

There are also other licenses that may have some restrictions for someone with a criminal record. However, these restrictions of licensing boards cannot automatically be a basis for rejection.<sup>5</sup>

### When Applying For A Job

Remember, nothing erases a criminal conviction, either felony or misdemeanor, except a full pardon from the Board of Pardons.<sup>6</sup> There is no law to keep an employer from considering your conviction when you apply for a job.

Important: You have *no right* to withhold the fact that you have been convicted unless your record was erased under Section 54-90. If your record was so erased, you may consider yourself never arrested and may so swear.

### C. LOSS OF YOUR DRIVER'S LICENSE

You do *not* automatically lose your driver's license because of any conviction of crime. If your license lapsed while you were serving time, just apply for a new one when you are released.

Important: Your license may be revoked or held by the Department of Motor Vehicles because of the nature of your crime. If this is so, you must apply in writing to the Commissioner of Motor Vehicles. Since each case is different, you should get in touch with the Department of Motor Vehicles, Hearings Section, 60 State Street, Wethersfield, Connecticut 06109, telephone 566-5250 for advice on what to do.

The Commissioner may order a hearing, refuse your application or give you your license back. If you are turned down, you can appeal to the Court of Common Pleas where you live. See a lawyer for help with your appeal.

### D. ERASURE OF ARREST AND COURT RECORDS

If you were arrested for a felony or misdemeanor but the charge was *dismissed* or you were found not guilty, police and court records are automatically erased, if the arrest happened after October 1, 1969.

If the charges against you were dismissed or you were found not guilty before October 1, 1969 police and court records can be erased if you file a petition to the court where you were tried.

If the charges against you were nulled, police and court records are automatically erased after 13 months. The Clerk of the Court where the records are kept and law enforcement agencies are prohibited from disclosing any information contained in erased records or even acknowledging that such records exist.

You should apply to the clerk of whichever court you appeared in for the right form.

The form may be used whether your case was dismissed or you were found not guilty. You can fill out the form yourself. You do not need a lawyer. There is no fee charged by the court.

If the charge against you was nolle, dismissed or you were found not guilty and you have never been convicted, but the State Police have your fingerprints and picture, you can get them back. You should get in touch with your local State Police-Headquarters. It may take as long as 60 days to get this done.

### E. INMATE MARRIAGES

In order for you to be allowed to marry the following requirements prescribed by the Department of Correction regulations must be met:

1. You must make a written request to the warden.
2. The warden will approve your request after obtaining:
  - a. Proof that all laws and procedures relating to marriage are complied with (age of majority or parental consent, blood test, dissolution of prior marriages, etc.) and you have taken care of any cost involved.
  - b. A favorable report from a local Family Service Agency which will, at the request of the person you are marrying, investigate the "appropriateness" of the marriage.

If your marriage request is denied, the warden should tell you that your request will be approved once all the requirements above are met and both parties have been counseled with respect to any problems posed by the marriage. You have the responsibility of persuading a justice of the peace or member of the clergy to come to the prison. The ceremony can be attended by immediate families or others by approval of the warden.<sup>8</sup> Where possible you will be given a furlough so that you can get married in your community.

A marriage between you and another inmate must meet all of the requirements above with the warden or a designate acting as "local Family Service Agency." Wardens must send a report to the Deputy Commissioner for Institutional Services who will give final approval or disapproval.

## Footnotes

- 1 Constitution of Connecticut Article Sixth, Section 3, as amended, Amendments to the Constitution of Connecticut, Article VII, C.G.S. Sec. 9-45, 9-46.
- 2 C.G.S. Sec. 9-40a, 9-135 through 9-158n especially 9-140.
- 3 PA 75-354.
- 4 C.G.S. 4-61n through 4-61r.
- 5 C.G.S. 4-61n.
- 6 C.G.S. Sec. 18-26, 54-90(d).
- 7 Administrative Directives, Department of Correction, Chapter 1.3 (2/15/73).
- 8 This requirement should only apply to a ceremony held in an institution. There is no legal basis for requiring the warden's approval of wedding guests when the ceremony is conducted outside the institution.

## COMMUNICATIONS

### Introduction

The courts have generally limited actions by prison officials which violate your First Amendment Rights. Some of the rights the First Amendment protects include your rights concerning mail, receipt of publications, association in certain instances and contacts with the media. The discussion which follows will indicate what Correction Department regulations affect these rights, and how the courts have dealt with the First Amendment.

### I. MAIL

You may write to and receive mail from anyone you want to in an unlimited amount.<sup>1</sup>

The only exceptions to this rule at the present time are the following:

- (1) You can't write to a victim of any criminal offense if you have served or are now serving a sentence, or if your case is pending for a trial,
- (2) You can't write to a person under 18 if his/her parent or guardian objects in writing,
- (3) You can't correspond with an inmate in a different institution unless he/she is a member of your family,
- (4) You can't correspond with a parolee without the express permission of your warden and the parole supervisor.

#### 1. *Outgoing*

Once you place outgoing mail in an envelope and it is sealed, it will not be opened unless there is "reasonable evidence" that the envelope contains contraband.<sup>4</sup> Department rules define the following indications as "reasonable evidence":<sup>5</sup>

- (1) Envelopes which are unusually thick.
- (2) Envelopes of unusual weight.
- (3) Envelopes containing unidentifiable objects.
- (4) Envelopes containing contraband identifiable through use of fluoroscopic or other detection device.

Outgoing mail should be inspected only in your presence. If there is no contraband, you can re-address the letter and mail it.<sup>6</sup>

#### 2. *Incoming*

Incoming mail will be opened and inspected for contraband and money. Your mail should not be read or rejected without prior written authorization of the warden.<sup>8</sup> The Correction Department will allow your mail to be read if the warden thinks that there are "indications creating a reasonable belief" that any of the following conditions exist:<sup>9</sup>

- (1) Your mail concerns sending contraband into or out of the institution or contains contraband.
- (2) Your mail concerns plans to escape.
- (3) Your mail concerns plans for activities in violation of institutional rules.
- (4) Your mail concerns plans for criminal activity to be conducted within the institution.
- (5) Your mail itself is in violation of institutional rules.
- (6) Your mail contains material which would cause you emotional trauma or provide some suggestion of your emotional state as a potential suicide case.

The authorization to read mail must be in writing and must state your name, the reason(s) for reading your mail, and for how long a period of time your mail will be read. The warden's designee may be authorized to read your mail for up to 60 days, but the authorization can be renewed by the Commissioner.<sup>10</sup>

- (1) Your name
- (2) The reason(s) for reading your mail
- (3) How long your mail will be read. The warden's designee can be authorized to read your mail for up to 60 days, but the authorization can be renewed by the Commissioner.

The Connecticut Correction Department's procedure for "reviewing" incoming mail appears to conflict with the recent U.S. Supreme Court decisions — *Procunier v. Martinez*.<sup>11</sup> There, the court stated that when prison officials decide to censor or reject a letter, you must be notified in writing that a letter is being censored or rejected and you must be given the reason(s) for the proposed action. The author of the letter (whether it's you or a person on the outside) must be given a reasonable opportunity to protest the decision, and the complaints must go to some one other than the official who disapproved the letter.<sup>12</sup>

The only exception to the Correction "review" procedure is for "privileged correspondence"<sup>13</sup> which includes mail from attorneys, judges and courts, the President of the United States, the Governor, any Representative or Senator of the State of Connecticut or the United States, the Head of any State or Federal Administrative Agency, the Office of the Commissioner of Correction, the Council of Correction, the Commission on Human Rights, the Correction Ombudsman, the Chairman of the Board of Parole, Parole Officers, the Warden and Assistant Wardens.<sup>14</sup> Under no circumstances may privileged correspondence be read.<sup>15</sup>

The First Amendment also protects your right to think and to express your thoughts on paper. A recent case held that you cannot be punished solely for putting your thoughts on paper or for having documents with these thoughts on them in your possession in your cell.<sup>16</sup>

## II. PUBLICATIONS

You must put renewals and original orders for books, magazines, newspapers and other periodicals through the institutional librarian.<sup>17</sup> First, though, the Library Committee must review and approve it. Periodicals which arrive without prior approval will be held until review is made.<sup>18</sup>

The review procedure begins when the institutional librarian refers publications to the Library Committee.<sup>19</sup> The Committee examines periodicals and decides if they are acceptable.<sup>20</sup> Publications will be rejected if they <sup>21</sup>

- (1) concern plans and techniques of escape;
- (2) give instructions for the making of drugs or poisons;
- (3) advocate disruption in that they pose a clear threat to the security, discipline or order of the institution;
- (4) pose a clear threat to the security, discipline or order of the institution through the advocacy of racial, religious or nationality hatred;
- (5) provide information regarding criminal skills (lock-picking, safe-cracking, etc.);
- (6) give instructions for the construction of weapons, explosive, or incendiary devices
- (7) give instructions in combative skills; or
- (8) would be unacceptable under U.S. Postal Regulations 21a.

The Library Committee must notify you when publications are referred to it, the action it takes concerning your publications, and when it rejects one, the way you can appeal the decision.<sup>22</sup>

If you want to challenge the decision of the Library Committee, you can appeal to the Library Review Committee, which must hear the appeal within 30 days.<sup>23</sup>

The Review Committee can either uphold or reject the Library Committee's decision. If it upholds the decision, it will tell you when you can have the publication reconsidered, and it will promptly inform you of this decision.<sup>24</sup>

Each issue of an approved periodical will be reviewed. If a particular issue is questioned, the warden must forward a copy to the chairperson of the Library Review Committee within 5 days of receipt at the institution,<sup>25</sup> and the review committee will meet and render a decision within 5 days.<sup>26</sup> If the issue is approved, the warden will be notified, and the periodical will be distributed. If it is rejected, the warden must inform you of the reason(s) for such rejection.<sup>27</sup>

Any books you want must be reviewed by someone whom the warden designates for this purpose and, if necessary, by the Library Committee.<sup>28</sup>

There have been a number of cases challenging the right of prison officials to withhold periodicals from inmates.<sup>29</sup> The courts have held that you are entitled to receive publications through the mail, including publications about prisoners' unions, if mailed by your attorney, unless prison officials can prove that the publication presents "a clear and present danger to prison discipline or security".<sup>30</sup>

One case held that, before literature is withheld, you are entitled to notice of the pending decision, an opportunity to object (either personally or in writing), and a decision by a body that can be expected to act fairly.<sup>31</sup>

Although *Procurier v. Martinez* (see footnote 11) dealt only with letter mail, the principles the court expressed there should apply equally to publications.

### III. MEDIA

You are allowed to write to members of the news media and to receive correspondence from them.<sup>32</sup> You may be photographed by the press if you sign a written release.<sup>33</sup> But under present Connecticut rules the media are not permitted to interview you personally,<sup>34</sup> even if you request such an interview.

### IV. ASSOCIATION

While the Federal court in Connecticut has held that inmates have no right to form prison unions,<sup>35</sup> another court did say that inmates have a right to join together to solicit funds for payment of defense costs of inmates and former inmates.<sup>36</sup> This decision seems to be in direct conflict with Correction Department regulations which allow only one fund drive per year, and then only if the money collected goes to medical research and treatment causes.<sup>37</sup>

## Footnotes

- 1 *Administrative Directives*, Dept. of Correction, Chapter 3.5, par. 2 (Directives).
- 2 *Directives*, Chapter 3.5, par. 2.
- 3 A somewhat similar situation was discussed in *LeMon v. Zelker* 358 F Supp. 554 (S.D. NY, 1972) where the court held that prison officials could not prevent an inmate from writing to a child, who he contended was his child, living with his common-law wife. The court stated that it made no difference that the child was illegitimate or not legally related to the inmate.
- 4 *Directives*, Chapter 3.5, par. 4 (b).
- 5 *Directives*, Chapter 3.5, par. 4 (b).
- 6 *Directives*, Chapter 3.5, par. 4 (b).
- 7 *Directives*, Chapter 3.5, par. 4 (c) indicates that you can only receive certified or cashier's checks or money orders from anyone on your visiting list. You need permission from your institutional counselor to send money out of the institution.
- 8 *Directives*, Chapter 3.5, par. 4 (d).
- 9 *Directives*, Chapter 3.5, par. 11 (a).
- 10 *Directives*, Chapter 3.5, par. 11 (b).
- 11 *Procunier v. Martinez* 416 U.S. 396.
- 12 *Procunier*, supra @ p. 416-417.
- 13 Interdepartmental message, 10-29-74.
- 14 *Wolff v. McDonnell* 418 U.S. 539 stated that the Constitution may require that mail only be opened in the presence of the inmate.
- 15 *Directives*, Chapter 3.5, par. 5 (d).
- 16 U.S. ex rel *Larkins v. Oswald* 510 F 2nd 583 (2nd Cir. 1975); *Sostre v. McGinnis* 442 F 2nd 178 (2nd Cir. 1971).
- 17 *Directives*, Chapter 3.5, par. 9.
- 18 *Directives*, Chapter 3.5, par. 9.
- 19 *Directives*, Chapter 3.7, par. 2(a) (4).
- 20 *Directives*, Chapter 3.7, par. 2(b) (2).
- 21 *Directives*, Chapter 3.7, par. 4.
- 21a The constitutionality of postal regulations may on occasion be questionable, but that subject is outside the scope of this booklet.
- 22 *Directives*, Chapter 3.7, par. 2(b) (4).
- 23 *Directives*, Chapter 3.7, par. 2(c) (2).
- 24 *Directives*, Chapter 3.7, par. 2(c) (3). There is presently a case awaiting decision in the Federal District Court in Hartford which challenges, as a violation of due process, the procedure for reviewing rejective publications.

- 25 *Directives*, Chapter 3.7, par. 3 (a).
- 26 *Directives*, Chapter 3.7, par. 3 (b).
- 27 *Directives*, Chapter 3.7, par. 3 (c) & (d).
- 28 *Directives*, Chapter 3.7, par. 5 (a) (2).
- 29 *Fortune Society v. McGinnis* 319 F. Supp. 901 (S.D.N.Y., 1970); *Sostre v. Otis* 330 F. Supp. 941 (S.D.N.Y., 1971); *Paka v. Manson* 387 F. Supp. 111 (D. Conn., 1974); *Goodwin v. Oswald* 462 F. 2nd 1237 (2nd Cir. 1972).
- 30 *Paka v. Manson* supra; *Goodwin v. Oswald*, supra.
- 31 *Sostre v. Otis*, supra.
- 32 *Directives*, Chapter 3.8, par. 1 & 2.
- 33 *Directives*, Chapter 3.8, par. 4.
- 34 *Directives*, Chapter 3.8, par. 5.
- 35 *Paka v. Manson*, supra; *Goodwin v. Oswald*, supra.
- 36 *Butler v. Preiser* 380 F. Supp. 612 (S.D.N.Y., 1974).
- 37 *Directives*, Chapter 1.5.

## SOURCES/RESOURCES

Alcohol and Drug Dependence Division  
Department of Mental Health  
Division Out-Patient Clinic  
Ground Floor, 2 Holcomb Street  
Hartford, CT 06112  
Phone: 566-3124

*The Alcohol and Drug Dependence Division, a division of the State Department of Mental Health, provides a variety of residential and out-patient rehabilitative services, on a state-wide basis, for Connecticut residents and their families. In addition, limited funds are also available to other programs in the area.*

Citizens for Humanizing Criminal Justice  
311 Temple Street  
New Haven, CT 06511  
Phone: 562-8035  
Prison Family Line: 865-2111

*CHJC is a citizens' advocacy and action group working for basic change in the criminal justice system. They hold up for scrutiny large-scale problems or abuses in the criminal justice system; through their Prison Family Project, they provide information and advocacy to New Haven area families and friends of Connecticut prisoners in dealing with the prison system.*

Civil Legal Clinic  
Louis Parley, Director  
University of Connecticut  
West Hartford, CT 06117  
Phone: 523-4841

*The clinic, which is within the law school, provides legal assistance to prisoners.*

Connecticut Civil Liberties Union  
57 Pratt Street  
Hartford, CT 06103  
Phone: 247-9823

*In general, the CCLU defends, in the courts and elsewhere, the constitutional right to inquiry and expression, due process of law, equal protection of the laws and privacy.*

Connecticut Prison Association  
340 Capitol Avenue  
Hartford, CT 06106  
Phone: 566-2030

*In addition to the general services offered, the Connecticut Prison Association offers a referral service and an employment service to those who need help. Civil Legal assistance to all incarcerated individuals in Connecticut is also available. For legal assistance, write to Legal Assistance to Prisoners at the above organization.*

Connecticut Renaissance, Inc.  
21 Taylor Place  
Westport, CT 06880  
Phone: 226-3353

*This agency offers services in drug treatment, rehabilitative services, and in-patient and out-patient care. In addition, there is also a Half-way house and a drug prevention program.*

Connection, Inc.  
308 Washington Street  
Middletown, CT 06457  
Phone: 344-0402

*This agency accepts males and females ages 16-30. The program deals with drugs, alcohol and correction release. Persons involved should be able to work or go to school and should have completed or have been involved in a therapeutic setting prior to admission. There is a \$30 charge, which includes all services.*

Fairfield Hills Hospital (Adam House)  
Adolescent Services  
Box W  
Newtown, CT 06470  
Phone: 426-2531 ext. 330

*Adam House (Adolescent Developing and Maturing) is a residential, therapeutic community for adolescents between the ages of 14-18. This program is mainly for adolescents with behavioral problems, including those related to poor impulse control as manifested in truancy, running away, etc. The basic goal of Adam House is to help such individuals learn new and better ways of behaving. This is accomplished through the treatment program which stresses responsibility.*

Fairfield Hills Hospital (Edon House)  
Drug Dependency Service  
Box W  
Newtown, CT 06470  
Phone: 426-2531 ext. 657, 658

*The Drug Dependency Service at Fairfield Hills Hospital provides two types of services: Detoxification and Long Term Residential Treatment. Detoxification is accomplished through the administration of medications such as methadone to relieve withdrawal symptoms.*

Interchange Youth Services Bureau  
80 Main Street  
Danbury, CT 06810  
Phone: 748-1249 - Hot-line 743-5529

For the Interchange Re-Entry Program call 748-1249

*Interchange is a non-profit community based Youth Service Bureau, serving Danbury and eleven surrounding towns. The overall goal of the program is focused on preventing juvenile delinquency and providing youngsters with positive alternatives that will enhance their personal growth. This is done through programs such as Operation O.P.A.L. (Organization for Positive Alternatives in Life) which provides individual counseling; Project Place where youngsters with problems at home are provided with volunteer host homes and many more.*

Liberation Clinic  
125 Main Street  
Stamford, CT 06901  
Phone: 324-7511

*This agency offers an evaluation approach with drug, social, vocational and legal histories, as well as psychiatric and physical evaluations, after which placements are made. Inpatient, Methadone Maintenance or out-patient care is also offered. Work is also done on an out-patient basis, in conjunction with such institutions as half-way houses, community release and the Parole department.*

National Lawyers Guild  
853 Broadway  
Room 1705  
New York, NY

*This organization provides publication services which contain information about prisoners' rights. Some of this material is available free or at a discount rate to prisoners.*

National Prison Project  
American Civil Liberties Union Foundation  
1346 Connecticut Avenue, N.W.  
Washington, D. C.  
Phone: (202) 331-0500

*This agency makes legal challenges in the courts involving the due process rights of prisoners and other prisoner issues, including freedom of inquiry, equal protection, and privacy.*

New Directions, Inc.  
253 Captains Walk  
P. O. Box 1163  
New London, CT 06320  
Phone: 447-3041

*New Directions offers services to individuals through the Court Advocacy program in an attempt to avoid incarceration and/or further involvement with the court. Project Prep (Private Public Resources Expansion Project) provides services to pre-release and released inmates to assist them during their re-entry into society. In addition, there is Norconan, which provides a free testing service to the public. This includes I.Q. and personality tests.*

New Haven Half-Way House  
599 Howard Avenue  
New Haven, CT 06519  
Phone: 777-9890

*New Haven Half-Way House offers an alternative halfway between institutional and independent living. The goal is to help members move out into the community as happy, stable and productive citizens. The house helps its members to find jobs, expand their social lives, and, in general, to become part of the local community.*

Ombudsman  
James Bookwalter  
Hartford Institute of Criminal and Social Justice  
15 Lewis Street  
Hartford, CT 06103  
Phone: 527-1866

*The Ombudsman listens to inmate complaints and seeks to resolve them whenever possible. Generally, the Ombudsman receives complaints about treatment or rules which violate the law or which are unreasonable. The complaints can involve action taken by officials which you do not understand or which involve unequal treatment of inmates.*

*The Ombudsman can make recommendations to prison officials and, if necessary, to the public.*

*At publication time the Ombudsman handled complaints in the Somers, Enfield, Hartford, and Niantic institutions.*

Perception House  
P. O. Box 407  
Willimantic, CT 06226  
Phone: 423-7731

*Perception House is a rehabilitative program primarily for drug and alcohol abusers. The program offered is a combination of residential and out-patient services whose goal is to teach drug and alcohol abusers to accept responsibility for their lives and actions. In general, the program is designed to help individuals find themselves and enable them to function and survive in society as happily as possible.*

Prison Visitation and Support  
Fay Knopp, National Visitor  
5 Daybreak Lane  
Westport, CT 06880  
Phone: 227-7476

*This agency organizes visits and attempts to meet the needs of men and women in Federal prisons. Visits are usually national in scope.*

Project Masterkey, Inc.  
245 Post Road, East  
Westport, CT 06880  
Phone: 227-8181

*The goals and objectives of the Masterkey program are to provide release plans for persons in prison who are soon to be released either on parole or through completion of sentence. Masterkey's prime objective is the release of as many prisoners as possible, and providing alternatives to incarceration.*

TEAM, Inc.  
256 Main Street  
Derby, CT 06418  
Phone: 735-9388

*TOP – The Team Offender Program offers help in all areas to prisoners. The program is open to individuals presently incarcerated in correctional centers in New Haven or correctional institutions such as Cheshire, Somers and Enfield. In addition, Top helps individuals to find jobs, finish their education, and also provides counseling services.*

Yale Legal Assistance Program  
Yale Law School  
New Haven, CT 06520  
Phone: 436-2211

Sources/Resources

ADULT RE-DIRECTION  
NOW, INC.

Willie Days 111  
232 North Elm Street  
Waterbury, CT 06704  
757-1256

ALUMNI HOUSE

181 Union Street  
Waterbury, CT  
754-5312

BLUE HILLS HOSPITAL

Alcohol and Drug Dependence Div.  
51 Coventry Street  
Hartford, CT  
566-3390

CADRES HOUSE

(Community Service Center)  
190 Wethersfield Avenue  
Hartford, CT  
566-7390

CATHOLIC FAMILY SERVICES

Norman Richey  
132 Grove Street  
Torrington, CT 06418  
482-5558

CATHOLIC FAMILY SERVICES

Winston Johnson  
244 Main Street  
Hartford, CT 06103  
522-8241

COMMUNITY RETURN

Robert Elliot  
First Congregational Church  
Latham Park, Room 307  
Stamford, CT 06904  
325-0416

COMMUNITY YOUTH HOUSE

(Wilfred X. Johnson Community  
Youth House)  
138 Sargeant Street  
Hartford, CT  
246-1649

CONNECTICUT HALF-WAY HOUSE

(FEMALE)  
(Hartford House)  
10 Irving Street  
Hartford, CT  
527-7211

CONNECTICUT HALF-WAY HOUSE

(MALE)  
(Watkinson House)  
138 Collins Street  
Hartford, CT  
527-0101

CONNECTICUT JAYCEES  
INSTITUTIONAL ASSISTANCE  
PROGRAM (C.J.I.A.P.)

135 Burnside Avenue  
East Hartford, CT 06108  
528-9623

CO-OP

UNITED WAY OF EASTERN  
FAIRFIELD COUNTY  
George Wilkinson  
181 Middle Street  
Bridgeport, CT 06604  
334-5106

COUNCIL OF CHURCHES OF  
GREATER BRIDGEPORT

Rev. Frank S. Denton  
3030 Park Avenue  
Bridgeport, CT 06604  
374-9471

CROSSROADS, INC.  
Y.W.C.A.  
48 Howe Street  
New Haven, CT  
865-3541

DAUSS/INTERCHANGE  
Jay Kapner  
80 Main Street  
Danbury, CT 06810  
748-1249

DAYTOP, INC.  
Coram Road  
Shelton, CT  
735-9301

DECISIONS, INC.  
Margaret Rogers  
1119 Racebrook Road  
Woodbridge, CT 06525  
397-2468

DRUG HELP, INC.  
900 Watertown Avenue  
Waterbury, CT  
757-9831

DRUG LIBERATION HOUSE  
119 Main Street  
Stamford, CT  
359-3134

EDON HOUSE  
(Fairfield Hills Hospital)  
Box W  
Newtown, CT  
428-2531

ERAH HOUSE  
Charter Oak Place  
Hartford, CT  
247-4636

GOODWILL  
165 Ocean Terrace  
Bridgeport, CT  
368-6511

GREATER BRIDGEPORT REGIONAL  
NARCOTICS PROGRAM  
(Regional Half-way House, Regional  
Narcotics Center)  
392 Prospect Street  
Bridgeport, CT  
333-4105

GROUP LIVING PROJECT  
Y.W.C.A.  
42 Howe Street  
New Haven, CT  
777-2539

GUENSTER HOUSE  
276 Union Avenue  
Bridgeport, CT  
576-8168

JOHN MAGEE HOUSE  
84 Norton Street  
New Haven, CT

KENDALL A.A. HOUSE (FEMALE)  
21 Church Street  
Waterbury, CT  
753-6990

LIBERATION HOUSE  
588 Howard Avenue  
New Haven, CT 06519  
777-6500

MARATHON HOUSE  
900 Watertown Avenue  
Waterbury, CT  
757-9437

MORRIS A.A. HOUSE (MALE)  
271 South Main Street  
Waterbury, CT  
757-7211

NEW BRITAIN HUMAN  
RESOURCES AGENCY  
Frank Ortiz  
35 Court Street  
New Britain, CT 06052  
225-8601

NEW DIRECTIONS

Patricia Meher  
253 Captain's Walk  
New London, CT 06320  
447-3041

NEW HAVEN HALFWAY HOUSE

Will Thayer  
599 Howard Avenue  
New Haven, CT 06504  
777-9890

NEW HAVEN PRE-TRIAL SERVICES  
COUNCIL DIVERSION PROGRAM

269 Orange Street  
New Haven, CT 06501  
777-2328

OPPORTUNITIES INDUSTRIALIZA-  
TION CENTER;  
ADULT REDIRECTION PROGRAM

20 Perry Street  
Waterbury, CT 06708  
756-7987

PERCEPTION HOUSE

215 Valley Street  
Willimantic, CT  
423-7731

POOR PEOPLES FEDERATION

Bobby E. Smith  
1229 Albany Avenue  
Hartford, CT 06112  
278-7570

PRISON LTD.

197 Dixwell Avenue  
New Haven, CT 06511  
624-2263

PRISON STORE, INC.

P. Robert Willey  
48A Wintonbury Mall  
Bloomfield, CT 06002  
242-6482

PROJECT MORE  
HILL NEIGHBORHOOD  
CORPORATION

Kenny Kiensler  
P. O. Box 7005  
611 Congress Avenue  
New Haven, CT 06510  
777-6371

QUINEBAUG VALLEY HEALTH &  
WELFARE COUNCIL

Charles Shur  
80 Main Street  
Putnam, CT 06260  
928-6569

RENAISSANCE (DAY CENTER)

21 Taylor Place  
Westport, CT  
226-3353

RENAISSANCE (RESIDENT  
FACILITY)

Route 12  
Wauregan, CT  
774-1113

RESURRECTION HOUSE

586 Main Street  
New Britain, CT  
225-4641

SPEAR, INC.

72 Danbury Road  
Wilton, CT  
838-4858

TEAM OFFENDER PROGRAM  
TEAM, INC.

Gordon Courtmanche  
256 Main Street  
Derby, CT 06418  
735-9388

TRI-RYC

(Douglas House)  
559 Howard Avenue  
New Haven, CT  
624-3079

## Sources

### 1. "Reporters"

Prison Law Reporter, American Bar Association, Seattle, Washington.

(The Prison Law Reporter ceased publishing in Dec. 1974, but it still provides a good starting point.)

Clearinghouse Review, National Clearinghouse for Legal Services, 500 N. Michigan Avenue, Suite 2220, Chicago, Illinois 60611.

Corrections Digest, (For corrections personnel), Washington Crime News Service, Annandale, Virginia.

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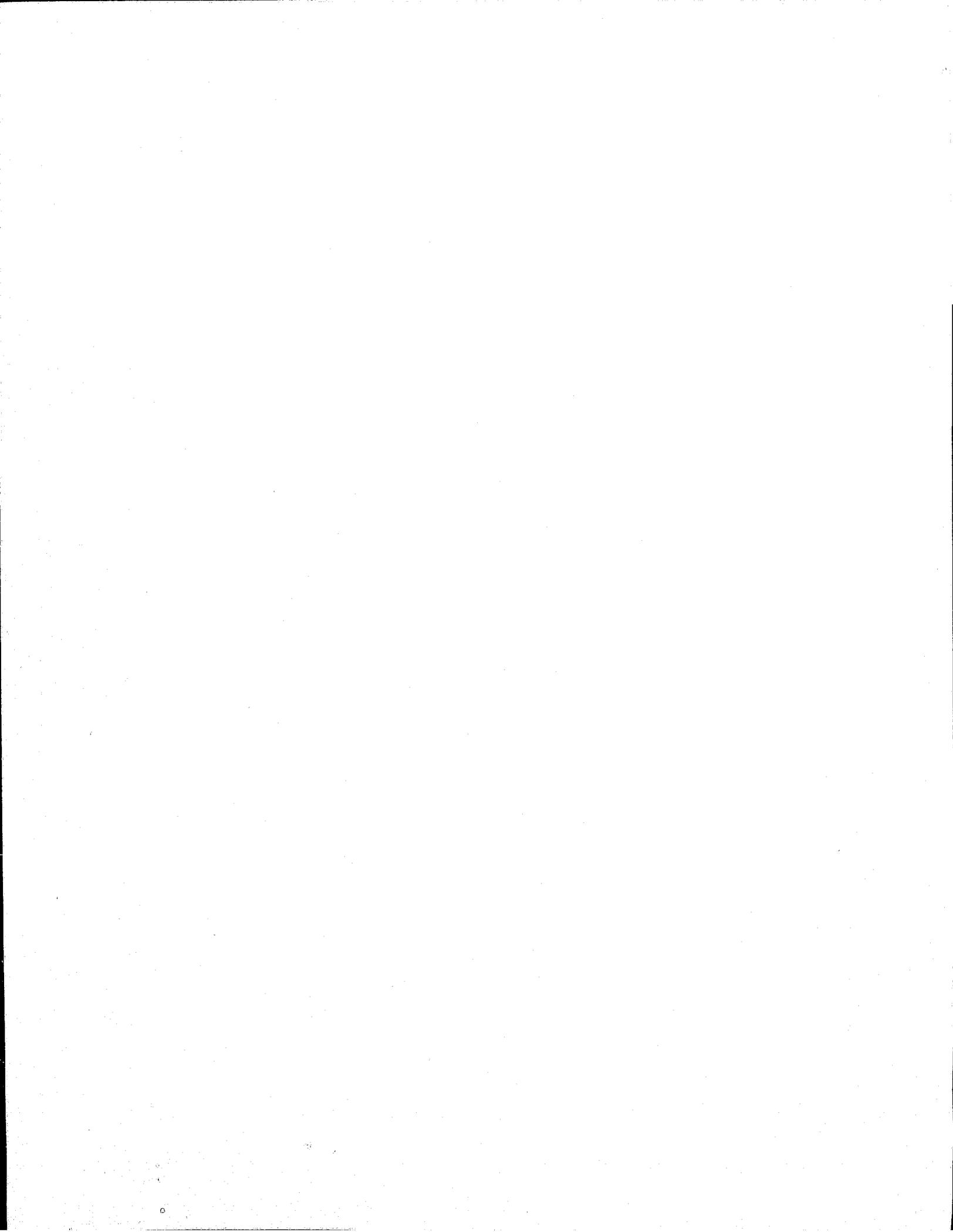
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