

# PRO NEWS

UPDATES FROM THE VERMONT PRISONERS' RIGHTS OFFICE

## RUTLAND SEX OFFENDER ORDINANCE STRUCK DOWN

A court has struck down the Rutland City law that had banned sex offenders from many Rutland neighborhoods. . In his decision, Judge Hoar ruled that the city of Rutland could not label human beings "nuisances," even sex offenders.

The ordinance should no longer affect release planning. But remember, DOC can still approve or disapprove residences based on DOC's own policies.

*Doe v. City of Rutland*, No. 261-5-16 Rdev (Vt. Super. Ct. Dec. 8, 2017). PRO Attorneys Emily Tredeau and Patricia Lancaster litigated this case.



### This Issue

Rutland Ordinance	P. 1
Grievances: The Basics	P. 2
Rule 11(f)	P. 3
Hep C Treatment Update	P. 4

## Welcome to PRO's Newsletter

Dear Clients and Readers,

Our office has always been proud to represent those under sentence by and incarcerated in Vermont.

In recent years, we have given much thought to how to share important information and recent legal victories with our clients.

Recently, we were inspired by our colleagues at Prisoners' Legal Services of New York, who publish a monthly newsletter, *Pro Se*. PLSNY's newsletter contains information about recent court decisions, pro se victories, and changes in DOC policies. From what we understand, their clients find the newsletter incredibly helpful.

Therefore, we have decided to experiment with a similar model in the hopes of bringing you important timely information.

We hope you find this news letter helpful. Please send us your feedback in the form of:

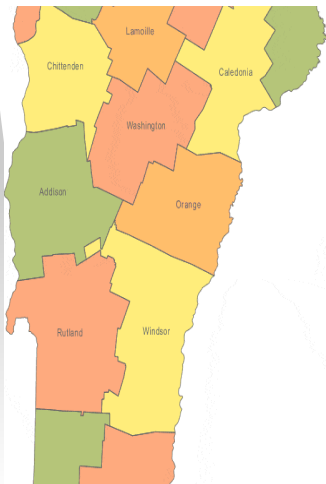
- Facility/ DOC news to share
- Pro Se Victories
- Questions about DOC Policies

We will select submissions for publication. Please send questions to be addressed, concerns, or possible featured stories to our office:

Prisoners' Rights Office  
Re: PRO Newsletter  
6 Baldwin St., 4th Floor  
Montpelier, VT 05633

We wish you all a wonderful spring,

The staff of the Prisoners' Rights Office





# ALL ABOUT GRIEVANCES

## How, When, and Why to Do Them



### STEPS IN THE GRIEVANCE PROCESS

There are four steps in the grievance process:

1. Informal Complaint
2. Formal Complaint
3. Appeal to Corr. Exec.
4. Appeal to Commissioner

#### Step One: Informal Complaint (VT DOC Grievance Form #1)

This must be filed within ten BUSINESS DAYS of the incident you're grieving. DOC's response is due within 48 hours on the same form.

#### Step Two: Formal Complaint (VT DOC Grievance Form #2)

If you do not agree with DOC's response, you have the right to file Grievance Form #2 on this same issue.

You have Fourteen Business Days to file this form after you were supposed to have received a response to your informal complaint.

DOC's response is due Twenty Business Days thereafter.

#### Step Three: Appeal to Corrections Executive (VT DOC Grievance Form #5)

After you receive your response to Grievance #2 OR after DOC was supposed to have responded,

DOC's response is due 20 business days later.

#### Step Four: Decision Appeal to Commissioner: VT DOC Grievance Form #7

You have up to 10 business days to file this final appeal from the date the response was due in Step 3. If you did not receive a decision by the time it was due in Step 3 you can move onto this step.

The Commissioner's Final decision is due 20 business days later.

### FREQUENTLY ASKED QUESTIONS

#### AFTER GRIEVING: FILING A RULE 75

If DOC did not adequately address your issue through the grievance process or if they did not respond, you may begin a court case called a "Rule 75." This case is also called a "Review of Governmental Action." A Rule 75 asks the Judge and Court to review what DOC did (or failed to do).

If you want to file a Rule 75 it must be done within thirty days of receiving a response to Grievance #7.

In order to file a Rule 75, send the county civil court:

1. A Rule 75 Petition
2. An Application to Waive Costs and Fees (otherwise known as an "IFP")
3. Complete all grievances first

**Q: DOC didn't respond to my informal complaint. What should I do?**

**A:** Continue with the grievance process. You can move ahead to Step 2 if DOC did not respond to your informal complaint within 48 hours.

**Q: Do I need to keep copies of my grievances:**

**A:** Yes.

**Q : Do I really need to grieve this issue? I've talked about it with m :**

**YES!** Courts generally will dismiss cases about grievances unless you properly grieve it.

**Q: What is a business day under DOC policy?**

**A:** Monday-Friday. State holidays are not business days. A list of state holidays is below:

2018 State Holidays

- Mon. May 28
- Wed. July 4
- Thurs. August 16
- Mon. September 3
- Mon. November 12
- Thurs. November 22
- Tues. December 25



## PRO SE VICTORY

*Wool v. Menard*  
2018 VT 23

# RULE 11 & PCR'S

### Rule 11(f)

Vermont Rule of Criminal Procedure 11 deals with guilty pleas. Rule 11(f) has been the subject of much recent litigation. It requires that a defendant admit to facts related each element of the crime charged during a change of plea hearing.

This means that it not good enough to just indicate that you understand the charges to which you're pleading. To satisfy Rule 11(f) you also need to admit to the underlying facts, not just say that you understand them.

### *In re Stocks & In re Bridger*

In 2014, the Vermont Supreme Court decided *In re Stocks* about Rule 11(f). The court concluded that Rule 11(f) was violated where the trial court never asked the defendant whether he admitted the truth

of the allegations he was pleading guilty to.

For the next several years, some trial courts began applying a different standard—the “substantial compliance” standard—to change of plea hearings, in violation of the *Stocks* ruling. Under substantial compliance, courts could conclude that Rule 11(f) wasn't violated if the State showed a defendant admitted the underlying facts, even if it wasn't perfect.

In 2017, the Supreme Court took up *In re Bridger* about Rule 11(f). In that case, the Court concluded that a defendant must admit to the underlying facts when pleading guilty and that substantial compliance does not apply. The Court said that it is essential that a defendant admit to the facts underlying his or her plea, not just agree with them.

In a concurring opinion, Justice Dooley commented that he believed that the *Bridger* opinion was retroactive and that the principles in the opinion applied to cases prior to the decision in that case.

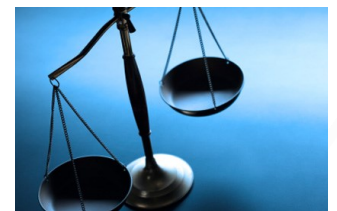
### Recent Arguments About Retroactivity

After Justice Dooley's comment, the Supreme Court took up this issue of retroactivity in connection with four pending cases. Attorney Seth Lipschutz argued the case and explained that *Bridger* was not really new law, but rather a continuation of *Stocks*.

The Court is currently considering these arguments and has not released an opinion yet. As soon as they do, we will include a discussion of the opinion in our next edition of Pro Se.

The Supreme Court of Vermont concluded that a lower court must rule on Mr. Wool's claim that DOC violated Vermont law when it failed to obtain multiple bids for a telephone contract. The Court ruled that DOC was required to solicit three or more bids whenever it contracted services for inmates, including telephone contracts. The Court also concluded that, as an inmate, Mr. Wool had the right to have telephone services provided to him at the lowest reasonable cost.

Now, the case will again return to Washington County Civil Division for further proceedings.



### NEXT STEPS:

### HOW TO DETERMINE IF YOU HAVE A RULE 11(F) CLAIM

There are several ways to determine if you have a Rule 11(f) claim:

1. If you have you transcript from your Change of Plea hearing AND our office has not reviewed it yet, you may send it to us for a Rule 11(f) review. Just note your request in a cover letter.
2. If you do not have a copy of your Change of Plea transcript, you can write to us and request a Rule 11(f) review and we can order your transcripts for you.



# HEPATITIS C TREATMENT UPDATE SEEKING PLAINTIFFS

Hepatitis C treatment has been a concern for many people, both in and out of prison. Older treatments lasted as long as a year, had serious negative side effects, and a low cure rate. New treatments, like Harvoni, last only around twelve weeks, and are almost 100% effective with few or no side effects. The only problem is that they are very expensive, although the cost has come down some.

Our office had been successful in requiring DOC to treat a few people with advanced stages of Hepatitis C. Unfortunately, we were not able to get treatment for most people because even people in the community were not able to get treated until they were very sick. Now that Medicaid has approved treatment for people in the community, DOC has promised to follow community guidelines for treatment in prison.

Recently, in Massachusetts and Florida, judges have ordered the Department of Corrections in those states to provide new Hepatitis treatment to people with advanced stages of the disease. We hope that the next step will be securing treatment for all hepatitis patients.

If you have Hepatitis C, please ask for treatment from your medical provider. If you are refused treatment, please contact our office to discuss next steps.