# REPRODUCTIVE (IN)JUSTICE IN CANADIAN FEDERAL PRISONS FOR WOMEN

**FINAL REPORT FOR THE 2019-2020 REPRODUCTIVE JUSTICE WORKSHOP PROJECT**

**Martha J. Paynter RN PhD(c) | February 2021**

***Prepared for the Canadian Association for the Elizabeth Fry Societies***

# Reproductive (In)Justice in Canadian Federal Prisons for Women

**Final Report for the 2019-2020 Reproductive Justice Workshop Project**

Martha J. Paynter RN PhD(c)
February 2021

Prepared for the Canadian Association for the Elizabeth Fry Societies
Ottawa, Ontario, Canada

## Acknowledgements

Thank you to Senator Yvonne Boyer and to Veronica Cammozi in the office of Senator Boyer.

Thank you to elders Jane Abram, Flo Blois, Mary Lee, Lois MacDonald, Dixie Lee Vance, Amy Victor, Shirley Ivanauskas-Ward and Wilna Masuskapoe.

Thank you to Correctional Service Canada staff Brigitte Lavigne, Heather Power, Brittney Borgatti, Meredy Mielke, Lavada Belanger, Candice Lee and Sonia Hutchinson.

Thank you to local Elizabeth Fry Society and Canadian Association of Elizabeth Fry Societies staff and volunteers Darlene MacEachern, Emilie Coyle, Rye Dutton, Jackie Omstead, Kelly Potvin, Kassandra Churcher, Patti Tait, and Toni Sinclair. Cover Art by Cherylanne James.

# TABLE OF CONTENTS

Introduction . . . . . 7

The CAEFS Reproductive Justice Workshop . . . . . 13

Thematic Analysis . . . . . 22

Reactions to the CAEFS Reproductive Justice Workshop . . . . . 42

Recommendations & Calls for Advocacy . . . . . 43

Conclusion . . . . . 49

References . . . . . 50

# INTRODUCTION

This project began in response to the findings of the External Review of Tubal Ligation in the Saskatoon Health Region, led by Senator Yvonne Boyer and Dr. Judith Bartlett (Boyer & Bartlett, 2017). The review was prompted by media reports in 2015 of forced sterilization of Indigenous women in the Saskatoon Health region. Boyer and Bartlett (2017) used a community engagement approach to welcome women to be interviewed about their experiences of forced or coerced sterilization. Boyer and Bartlett interviewed seven women who bravely came forward for their review. At present, at least 100 women have joined in class action lawsuits for damages stemming from the experience across several provinces. People who are incarcerated may not have known how or have had access to communication pathways to contribute their stories to the review or to join the class. In fact, incarcerated women may not even know of either process, or of the issue of forced sterilization itself. Senator Boyer sought to reach these women.

Senator Boyer supported the Canadian Association of Elizabeth Fry Societies (CAEFS) to engage with currently incarcerated people in federal prisons for women to discuss sterilization. To be trauma-informed (SAMHSA, 2014) and in recognition of health literacy and access to health information challenges for incarcerated women (Donelle & Hall, 2014; Donelle, Rempel & Hall, 2016), CAEFS decided to broaden the scope to include other issues of reproductive autonomy and oppression.

Reproductive Justice, as a concept, was developed by Black American feminists 25 years ago (Ross, 2017; Ross & Solinger, 2017). Critiquing the focus of feminist activism on the right to abortion as centring the concerns of white women, Reproductive Justice expands concepts of reproductive rights to include the right to self-governance over one's body, to not have children, to choose to have children and to parent those children in safe and sustainable communities. Incarceration as a new parent and / or during the period of reproductive age is a barrier to being able to choose to parent and to parent children you do have (Shlafer, Hardeman & Carlson, 2019). Through education about these broad conceptualizations of reproductive rights, CAEFS Reproductive Justice workshops sought to empower incarcerated women to bring forward their concerns to CAEFS advocates.

Incarceration itself impedes reproductive justice by restricting the reproductive potential of certain populations and by destroying family connections. This is

especially true for Indigenous prisoners. The rate of incarceration overall in Canada is approximately 114 per 100,000 people (Public Safety Canada (PSC), 2019) and yet rates of incarceration among Indigenous people are as high as 1377.6 per 100,000 population (Owusu-Bempah et al., 2014). As of January 2019, Indigenous women comprise 42% of federally incarcerated women[1] (Office of the Correctional Investigator (OCI), 2020). At the end of 2018, 676 women were incarcerated in federal facilities (PSC, 2019). The population of federally incarcerated Indigenous women increased 60.7% over the past ten years (PSC, 2019). Although since 1998 the overall crime rate decreased 36.3% and the rate of adults charged decreased by 15.9%, the federal incarceration of women is steadily rising (PSC, 2019).

Most incarcerated people in federal women's facilities have young children and/or are of "reproductive age". Public Safety Canada (PSC) (2019) reports that 42.6% of Indigenous prisoners are under the age of 30, compared to 31.6% of non-Indigenous prisoners. The median age of Indigenous women prisoners is younger than that of non-Indigenous prisoners: 30 compared to 35. Indigenous prisoners are more likely to be classified to a medium or maximum-security compared to non-Indigenous prisoners (PSC, 2019), and higher security classification may result in additional restrictions on visits, programs and health service access.

People are also in prison longer. While women do receive on average shorter sentences than men due to differences in their charges (PSC, 2019), the average amount of time prisoners serve prior to receiving parole has increased from 32.1% of the sentence in 2006-7 to 37% in 2016-17 (PSC, 2017). Indigenous prisoners spend a higher proportion of their sentences in custody than non-Indigenous prisoners (PSC, 2019). For all, life sentences increased 23% from 2008 to 2018 and 24% of prisoners are serving a life or indeterminate sentence (PSC, 2019).

Prisons are dangerous and threaten general health and safety. The rate of suicide within federal prisons is close to five times that in the general Canadian population and the rate of homicide is ten times as high as in the general population (PSC, 2019). Health is the most common topic of complaints to the Office of the Correctional Investigator of Canada (PSC, 2019). A gender breakdown of complainants is not publicly available.

Access to health information is severely restricted from incarcerated individuals as they have no access to the Internet and limited access to health promotion programs and education. Federally incarcerated women report high rates of

1 While available statistics usually present all people in federal prisons for women as identifying as women, in this report and in this project, we recognize that trans and nonbinary people may be incarcerated in either the federal facilities for men or for women. Our participants include trans and nonbinary people in the federal facilities designated as "for women".

post-traumatic stress disorder, substance use, and self-harm (Tam & Derkzen, 2014). Eighty percent of federally incarcerated women report a substance use disorder (Farrell MacDonald, Gobeil, Biro, Ritchie & Curno, 2015). Forty-six percent of federally incarcerated women are prescribed psychotropic medication (Farrell MacDonald, Keown, Boudreau, Gobeil, & Wardrop, 2015). As peripartum depression is the most common complication of pregnancy, and prior mental illness is the strongest risk factor for peripartum depression, women who experience incarceration are at elevated risk.

Increasing incarceration and length of sentences for women, a global trend, results in more and longer disruptions in reproduction and family formation and threatens reproductive wellbeing. American researchers recognize the effects on reproduction have a heightened impact on racialized families (Sufrin, 2018; Jones & Seabrook, 2017). Federal prison sentences may stretch across much of their twenties and thirties, causing people to experience isolation from their children and cause family breakdown. The children of those who are in prison risk becoming part of the foster care system. Although only 7.7% of children in Canada are Indigenous, Indigenous children represent 52.5% of those removed from their families by the state (Canada, 2020). It is estimated that there are 14790 Indigenous children in state care (Canada, 2020); 4300 of them are under the age of four Canada (Barrera, 2017). It is believed more Indigenous children have been separated from their families through foster care than were ever separated from their families through the Residential School system. The incarceration of Indigenous women is a recognized continuation of colonial, genocidal processes such as the Residential Schools and the Sixties Scoop (Smylie & Phillips-Beck, 2019). A significant proportion of people experiencing incarceration were themselves in foster care in their youth, demonstrating the intergenerational impact of criminalization and its impact on reproductive justice.

By preventing reproduction, dislocating children from their parents to the foster care system, and placing mothers at greater risk to their health and survival, the incarceration of Indigenous women in Canada meets the United Nations (1948) definition of genocide:

> Any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
>
> a. Killing members of the group;
> b. Causing serious bodily or mental harm to members of the group;
> c. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
> d. Imposing measures intended to prevent births within the group;
> e. Forcibly transferring children of the group to another group.

***Increasing incarceration and length of sentences for women, a global trend, results in more and longer disruptions in reproduction and family formation and threatens reproductive wellbeing.***

## The Reproductive Health of Incarcerated Women in Canada

Correctional Service Canada (CSC) is responsible for the delivery of health services for federally incarcerated people. The Office of the Correctional Investigator (OCI) is the "watchdog" for federal prisons, collecting complaints and publishing annual reports about conditions of confinement. To our knowledge, neither CSC or OCI have ever published a report on the reproductive health of federally incarcerated women.

There is little research examining the reproductive health of people incarcerated in prisons for women in Canada. A 2019 international scoping review of maternal health among incarcerated women found no studies in Canada (Paynter et al., 2019). A 2020 international scoping review of health outcomes associated with participants in Mother Child Programs in prisons found no studies in Canada (Paynter et al., 2020). There is only one known study of the sexual and reproductive health of federally incarcerated women. Zakaria et al. (2010) found 84% had had oral, vaginal or anal sex before incarceration, however 31% of women had had oral, vaginal or anal sex in the past six months of incarceration.

There are a growing number of reproductive health studies regarding provincially incarcerated prisoners, conducted under the leadership of Dr. Fiona Kouyoumdjian in Hamilton, Ontario. Kouyoumdjian et al. (2018) found women who are incarcerated in Ontario are more likely to be overdue for cervical cancer screening than the general population, with 53% of imprisoned women overdue. Prisoners have increased risk of cancer compared with the general population (Kouyoumdjian et al., 2017). The most common new cancer diagnoses among women prisoners are breast, lung and cervical (Kouyoumdjian et al., 2017). A thorough narrative review of research among prisoners in Canada found no data on breast cancer screening measures in any level or type of carceral facility (Kouyoumdjian et al., 2016).

A 2014 survey found 82% of provincially incarcerated women in Ontario had been pregnant; women were pregnant an average of four times; 77% had experienced an unintended pregnancy; and 5% were pregnant at the time of the survey (Liauw, Foran, Dineley, Costescu & Kouyoumdjian, 2016). Furthermore, 80% of respondents at risk of an unintended pregnancy were not using contraception and 57% of had undergone a therapeutic abortion (Liauw et al., 2016). A retrospective cohort study of 544 prison births compared to 2156 controls in Ontario found elevated risk of preterm birth, low birth weight, and small for gestational age among those women who had ever experienced incarceration (Ramirez, Liauw, Costescu, Holder, Lu & Kouyoumdjian, 2020).

While there is a great deal of work to do with respect to understanding incarcerated people's reproductive health experiences, knowledge, and needs, the CAEFS Reproductive Justice workshop had three preliminary goals:

1. To inform people experiencing incarceration in federal prisons for women about their reproductive rights;
2. To learn from workshop participants about their priority concerns, key questions, and suggestions to advance reproductive rights and health; and
3. To empower participants with tools and understanding to support their assertion of reproductive autonomy in the future.

## Reproductive Justice Workshop Development and Facilitation Process

In spring and summer 2019, the facilitator (Martha Paynter) developed a two-hour reproductive justice workshop with input from CAEFS representatives and CSC's Women Offender Sector leadership and elders. The content evolved over the course of the workshop delivery in response to the interests and questions raised by the participants.

The workshops were held at: Nova Institution for Women in Truro, Nova Scotia (October 2-3); Okimaw Ohci Healing Lodge in Maple Creek, Saskatchewan (October 8); Edmonton Institution for Women (EIFW) in Edmonton, Alberta (November 4-6); Grand Valley Institution for Women (GVI) in Kitchener, Ontario (November 19-20); and Fraser Valley Institution for Women (FVI) in Abbotsford, British Columbia (January 9-10, 2020).

In each location, the facilitator was accompanied by a CAEFS representative and an elder – either external or internal to the Institution. The facilitators brought refreshments to each location and provided printed booklets of the material and certificates of participation to the participants.

The facilitation team approached discussions with a trauma-informed lens. There is clear evidence of pervasive childhood abuse among people who are incarcerated, and higher rates among incarcerated women than men (Bodkin et al., 2019). Trauma-informed approaches include: (1) Consciousness of the extent to which trauma affects a population, and the diverse types of traumatic experiences; (2) Recognition that trauma sequalae include substance use disorders, mental illnesses, and behavioural responses; and (3) Using the understanding of trauma and its effect to change practices (SAMHSA, 2014). This consciousness of trauma in individual project participants did not preclude consideration of socio-economic structural determinants of health and wellbeing, such as poverty, racism, ableism, homophobia/transphobia, and other forms of discrimination and exclusion

*...women who are incarcerated in Ontario are more likely to be overdue for cervical cancer screening than the general population, with* ***53% of imprisoned women overdue.***

and their impact on reproductive health. The workshops were conducted with compassion, understanding, empathy, and nonjudgment.

## Workshop Participation

On a given day in the federal carceral system for women, approximately 676 women are incarcerated (Public Safety Canada, 2019). Approximately 200 people experiencing incarceration participated in the CAEFS Reproductive Justice workshops across the five English-language federal prisons for women.

At Nova Institution for Women, the workshops were held in the chapel. Health care and chaplain staff attended. We held two sessions to which people with minimum, medium and maximum-security classifications were invited. Approximately 30 people participated.

At Okimaw Ohci Healing Lodge, the workshop was held in the spiritual lodge. Approximately 20 people participated, and several staff people joined us. We smudged with participants at the beginning of the day and spent the day with them in their programs, including the Horse Program unique to Okimaw.

At Edmonton Institution for Women, we smudged at the beginning of our sessions with Elder Flo Blois and the people incarcerated in the secure unit. We held four sessions, 2 in the secure unit, with approximately 6 participants each, one in general population in the gym, with 25 participants, and one in the minimum house, with approximately 12 participants. Staff were present for several of the sessions.

At Grand Valley Institution for Women, we held three sessions. Elder Lois MacDonald kindly provided an introduction and land acknowledgement. The first session was in the minimum house, with approximately 15 participants. We had two sessions in the main campus with medium and maximum unit participants, about 20 in each session. At Grand Valley, three students attended one of the sessions. Several staff were present in the main campus sessions.

At Fraser Valley Institution for Women, we smudged at the beginning of our sessions with Elder Dixie Lee Vance, Amy Victor, and Shirley Ivanauskas-Ward. The first session was held in the gym of the general compound, with approximately 20 participants. The second was held with members of the general population in a program room, with approximately 10 participants. The third was held with four women from the maximum-security unit and the last was held in the minimum house, with approximately 10 participants. Several staff were present for the sessions, including a representative from health care.

The facilitator analyzed transcribed notes from the sessions for thematic analysis.

# THE CAEFS REPRODUCTIVE JUSTICE WORKSHOP

## Overview

The workshop includes five main sections:

1. Introduction to the scope of reproductive health
2. Introduction to legislation in Canada protective of reproductive rights
3. Introduction to the theory and philosophy of reproductive justice
4. Discussion of reproductive oppression in Canada
5. How the United Nations Bangkok Rules (2010) promote reproductive justice.

Where possible, the workshops were facilitated in a circle format. After a land acknowledgement, each participant introduced themselves and where they were from. Participants were encouraged to ask questions and contribute comments throughout. At the end of each session participants were asked to go around the circle and share final thoughts.

## Reproductive Health

Reproductive health has a significant influence on personal wellbeing and must be examined with attention to sex and gender, as well as intersecting factors such as Indigenous identity. We opened the sessions by asking about what reproductive health meant to the participants. Participants volunteered a wide range of responses:

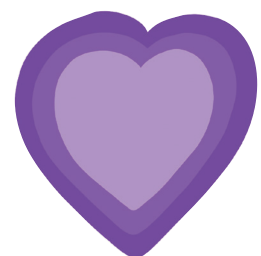
*"Women's health"*

*"The cycle of life"*

*"Having children"*

*"Safe sex"*

*"Sovereignty over our bodies".*



We discussed how reproductive health includes physical, mental and emotional wellbeing; social aspects of reproduction; access to health services; experiences across the lifespan and across all genders. As defined by the World Health Organization (2008):

> *Reproductive health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes. Reproductive health therefore implies that people are able to have a satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide if, when and how often to do so.*

In the workshops, we described that an examination of reproductive health can include but is not limited to discussions regarding:

1. Physical health: menstruation and menstrual disorders; pain of the reproductive organs; sexually transmitted infections; gynecological infections; gynecological and breast cancers; surgery.
2. Sexual and reproductive health: sex; contraception; abortion; miscarriage; pregnancy including prenatal care; labour and birth; postnatal care; breastfeeding; sterilization; menopause.
3. Sexual violence: consent; harassment; assault; strip searching.
4. Emotional, mental and psychological sequelae of physical and relational reproductive health, such as peripartum depression and anxiety and PTSD.
5. Social impacts on reproductive behaviours, choices, and outcomes such as partnerships, family formation, custody and access.

The workshop was prepared with the intention of being nonclinical. However, participants sometimes had specific questions for which it was useful to have clinical knowledge to be able to respond, such as: *"What does an abortion involve?"* There was great curiosity about medical abortion in particular: *"It's an actual abortion pill, not a morning after pill?"* Participants had many general questions about sexual and reproductive health, such as, *"They said I only have to get a Pap every three years, is that true?"* Despite these questions, the overarching principles of the workshop could be facilitated by an advocate.

We explained how Commissionaire's Directive 800 (*Correctional Service Canada* (CSC), 2015) outlines health services in federal prison, and that the *Corrections and Conditional Release Act* (Canada, 1992) specifies health services must be delivered to professional standards. The United Nations Mandela Rules (United Nations, 2015) are international rules governing the treatment of prisoners around the word. These also specify state responsibility for prisoner health and how health care professionals must treat prisoners equally to patients in the

community. Participants often expressed how they felt they ought to have rights to health services but that they were unfamiliar with these aspects of federal and international law.

## Reproductive Rights

We started our discussion about reproductive rights with an introduction to the *Constitution Act*, the *Canadian Charter of Rights and Freedoms* (Canada, 1982). We used the cases of *R v. Morgentaler 1988* 1 SCR 30 and *Inglis v. BC 2013* BCSC 2309 to explain how Section 7, the right to life, liberty and security of the person, affirms reproductive justice. R v. Morgentaler was the case that resulted in the complete decriminalization of abortion in Canada. Inglis v. BC was a more recent case in which provincially incarcerated women in BC took the province to court for the right to have their babies live with them while they were incarcerated- a case they won. Participants usually expressed unfamiliarity with Section 7 of the Charter specifically and with the *Constitution Act* more generally, presenting an important area for future education.

When we asked what "security of the person" meant, usually participants said, "Feeling safe". When asked what makes them feel safe, participants volunteered:

> *"Saying no"*
>
> *"Standing up for myself"*
>
> *"Boundaries."*
>
> *"Not being invaded"*

This capacity for self-governance and body sovereignty may be jeopardized in the prison environment where submission to CSC authority is expected, and compliance is rewarded. As one woman stated, "*I was a favourite among the guards because I do what I'm told*". Another explained how advocacy is subdued, *"If we tried to stand up, we'd be sent back down (to the secure unit), labeled as troublemakers."*

*"If we tried to stand up, we'd be sent back down (to the secure unit), labeled as trouble-makers."*

## Reproductive Justice

In our introduction to the theory of Reproductive Justice, we began by explaining how 12 Black American feminists had come together in 1994 to critique the Clinton health reform proposals of the time and coined the name for the theory. We discussed the principles of Reproductive Justice advanced by organizations such as SisterSong (no date), including:

1. The right to bodily autonomy
2. The right to not have children
3. The right to have children
4. The right to freedom from sexual violence
5. The right to freedom of gender expression
6. The right to parent children in safe and sustainable communities.

Reproductive Justice theory is now understood to cover broad aspects of reproductive life and both individual and community wellbeing more generally. It includes the rights of sex workers to safety from criminalization, to safe working conditions, health services and fair wages. We used *Canada v. Bedford 2013 SCC 72* to discuss changing legal frameworks governing sex work in Canada. In Canada v Bedford, the Supreme Court found several laws that force sex workers to work in secrecy violate their constitutional rights. Workshops participants expressed strong support for the rights of sex workers.

Reproductive Justice theory includes the right to freedom from sexual violence. We used *R. v. Ewanchuk 1999* 1 SCR 330 to discuss the current definition of sexual assault as any unwanted sexual touching and consent as active and continuous. R. v Ewanchuk was a case where a potential employer was found to have sexually assaulted a job applicant. We discussed the failure of the courts to uphold that definition. For instance, in *R. v. Al-Rawi* 2018 NSCA 10, where a taxi cab driver was acquitted of sexually assaulting a woman found unconscious in his car. We also discussed persistent stereotypes that fail victims in court, such as former Justice Robin Camp's comments in a 2014 sexual assault trial when he asked why the victim failed to "keep her knees together" (R v Wagar, 2015 ABCA 327). The participants contributed thoughtful perspectives on the limits of justice for sexual assault complainants, particularly for women who have experienced criminalization and continued stigma and discrimination.

Reproductive Justice is explicitly anti-racist. We discussed how state and police violence against people of colour threatens their right to parent children in safe and secure communities, and used the recent Wortley report (Wortley, 2019) on disproportionate street identity checks of Black youth in Halifax for context. Participants explained street checks to each other: *"Stop and Frisk – that happened to me. In Saskatoon the youth centres give out little cards you can give to the police when they stop you for no reason. They say "Am I being charged? Am I being arrested?" And if not, they can't ask for your ID."* Some felt that street checks were intended to be triggering, to escalate: *"What if they are trying to get me mad?"* Over the course of the workshops, several participants stated they wanted more attention paid to the issues Black prisoners are facing, including the overrepresentation of Black children in foster care and Black women facing coerced sterilization.

Reproductive Justice is trans-inclusive. The participants were demonstrably open to trans and nonbinary people. On November 20, 2019, one participant told the group it was Trans Day of Remembrance, a day to remember those who have been killed through transphobic violence. We discussed the CSC Gender Dysphoria policy (CSC, 2017) that stipulates individual assessments will be used to determine where trans individuals may be incarcerated, at either facilities designated for men or women. As one participant stated: *"The policy – if a person identifies as a woman they can be in a woman's institution."* A small number of participants disclosed that they themselves identified as trans, nonbinary or Two Spirit, or that their family members were: *"There's two spirit people, stories in my family."* One participant said she had tried to help a trans person who was held in segregation get access to information about their rights. Demonstrating the need for continued education about changing norms and language, several participants asked: *"What's nonbinary?"*

The participants brought up shifts they had observed within the prisons with respect to LGBTQ2S+ rights. For example, one workshop participant stated that with respect to lesbian relationships: *"Rights, I will admit they are getting better. Women are allowed to live together if they are in a healthy relationship. That means following their correctional plan, rules, going to work, and can't be abusive."*

We briefly described how Reproductive Justice also includes environmental justice as parenting in a safe and sustainable community requires the physical environment be safe and sustainable. This principle of environmental justice was easily accepted by the participants. One participant said, *"The water in First Nations, that's about to reproductive health – it's impossible to enjoy the idea of having children and raising them in a safe way when the water is brown."*

## Reproductive Oppression

Reproductive control of Indigenous peoples is a long-standing aspect of colonial power in Canada and threatens family formation and ability to parent. Stote (2012, 2015) has extensively studied government policies supporting forced sterilization over the 20th century and their consequences. She characterizes coerced sterilization as one of many forms of colonial violence imposed on Indigenous peoples, part of a genocide. For example, during the period in which the *Sexual Sterilization Act* operated in Alberta, from 1928 to 1972, Indigenous people were disproportionately declared mentally defective and then subjected to sterilization. The rate of sterilization of Indigenous people rose to 25% in some places at the end of this period. While sterilization is an unexplored area of research in Canadian prisons, Roth and Ainsworth (2015) describe high volumes of forced sterilizations among women incarcerated in the United States (US): 100 in California between 2006 and 2010 alone. These authors remark that

***…several participants stated they wanted more attention paid to the issues Black prisoners are facing, including the over-representation of Black children in foster care and Black women facing coerced sterilization.***

sterilization, in the form of tubal ligation, is not a procedure required to treat an illness, but rather to eliminate the ability to have children. In Summer 2020, after the Reproductive Justice Workshops were complete, a Black nurse named Dawn Wooten courageously blew the whistle on forced sterilizations happening in a Georgia Immigration and Customs Enforcement (ICE) detention centre.

In the workshop, we discussed how the history of reproductive oppression in Canada centres on the reproductive control of Indigenous women and their prevention from having and parenting children. While the legislation promoting sterilization is one example, others include the Residential Schools, Sixties Scoop, and what is now being described as the Millennium Scoop, to describe the disproportionate representation of Indigenous children among youth in state care.

The legacy of Residential Schools among people experiencing incarceration is clear. In 2001 it was estimated that 15-20% of incarcerated Indigenous people survived Residential Schools (Trevethan, Auger, & Moore, 2001). Many participants in our workshops identified themselves as children of survivors of the Residential School system. The elders on the facilitation team often led this section of the discussion, sharing their experiences and those of their families and communities. They described how difficult it was to know who you were, coming out of Residential schools, and how *"They silenced us, took our language."*

Furthermore, we discussed how the Calls to Justice and the Final Report of the National Inquiry into Murdered and Missing Indigenous Women and Girls (NIMMIWG, 2019), released in June 2019, shed light on the ways in which reproductive control was a precursor to other violence women and girls experienced. The participants expressed strong interest in learning more about the MMIWG Inquiry and its findings.

## The Bangkok Rules

We devoted the last section of the workshop to an overview of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules) (2010) that pertain to reproductive justice (United Nations, 2010). The *Corrections and Conditional Release Act* (Canada, 1992) does not speak to unique provisions for reproductive health or family wellbeing, nor does the Commissioner's Directive governing Health, CD-800 (CSC, 2015). However, the Bangkok Rules, adopted unanimously by the UN General Assembly in 2010, specify that women prisoners are to receive gender-specific health care (Rule 10.1) and have several sections specific to the needs of the children of incarcerated women.

In the workshops, we presented some of the Rules most relevant to Reproductive

Justice (see Box 1). We discussed complementary international law, such as the United Nations Convention on the Rights of the Child (United Nations, 1989) articles that support the Best Interest of the Child and the right to be parented; the United Nations Mandela Rules (United Nations, 2015) governing the treatment of prisoners, specifically in relation to restrictions on solitary confinement and health care professional actions; and the *Corrections and Conditional Release Act* sections governing responsibility for health services. We discussed how the Commissioner's Directive 768 (CSC, 2016) governs the Institutional Mother Child Program in federal prisons for women.

### *Box 1: The Bangkok Rules*

While we were only able to briefly address some of the most pertinent of the Bangkok Rules, the participants were all unfamiliar with them and very enthusiastic about their potential. *"These are fantastic."*

### *Box 1: Abridged "Bangkok Rules" and Reproductive Justice*

1.1 Account shall be taken of the distinctive needs of women prisoners in the application of the Rules.

2.2. Prior to or on admission, women with caretaking responsibilities for children shall be permitted to make arrangements for those children, including the possibility of a reasonable suspension of detention.

3.1 The number and personal details of the children of a woman being admitted to prison shall be recorded.

4.0 Women prisoners shall be allocated, to the extent possible, to prisons close to their home or place of social rehabilitation, taking account of their caretaking responsibilities, as well as the individual woman's preference and the availability of appropriate programmes and services.

5.0 The accommodation of women prisoners shall have facilities and materials required to meet women's specific hygiene needs, including sanitary towels provided free of charge.

6.0 The health screening of women prisoners shall include comprehensive screening to determine needs.

7.1 If the existence of sexual abuse or other forms of violence before or during detention is diagnosed, the woman prisoner shall be informed of her right to seek recourse from judicial authorities.

7.2 Whether or not the woman chooses to take legal action, prison authorities shall endeavour to ensure that she has immediate access to specialized psychological support or counselling.

8.0 The right of women prisoners to medical confidentiality shall be respected at all times.

10.1 Gender-specific health-care services equivalent to those n the community shall be provided.

10.2 If a woman prisoner requests that she be examined or treated by a woman physician or nurse, a woman physician or nurse shall be made available, to the extent possible.

| | |
|---|---|
| 11.1 | Only medical staff shall be present during medical examinations unless exceptional circumstances exist. |
| 12.0 | Individualized, gender-sensitive, trauma-informed and comprehensive mental health care and rehabilitation programmes shall be made available for women prisoners with mental health-care needs. |
| 17.0 | Women prisoners shall receive education and information about preventive health-care measures, including on HIV, sexually transmitted diseases and other blood-borne diseases. |
| 18.0 | Preventive health-care measures of particular relevance to women, such as Papanicolaou tests and screening for breast and gynaecological cancer, shall be offered to women prisoners on an equal basis. |
| 19.0 | Effective measures shall be taken to ensure that women prisoners' dignity and respect are protected during personal searches, which shall only be carried out by women staff. |
| 20.0 | Alternative screening methods, such as scans, shall be developed to replace strip searches and invasive body searches, in order to avoid the harmful psychological and possible physical impact of searches. |
| 22.0 | Punishment by close confinement or disciplinary segregation shall not be applied to pregnant women, women with infants and breastfeeding mothers in prison. |
| 23.0 | Disciplinary sanctions for women prisoners shall not include a prohibition of family contact. |
| 24.0 | Instruments of restraint shall never be used on women during labour, during birth and after birth. |
| 25.0 | Women prisoners who report abuse shall be provided immediate protection, support and counselling, and their claims shall be investigated by competent and independent authorities, with confidentiality. |
| 26.0 | Women prisoners' contact with their families, including their children, and their children's guardians and legal representatives shall be encouraged and facilitated by all reasonable means. |
| 27.0 | Where conjugal visits are allowed, women prisoners shall be able to exercise this right. |
| 28.0 | Visits involving children shall take place in an environment that is conducive to a positive experience. |
| 40. | Prison administrators shall develop and implement classification methods addressing the gender-specific needs and circumstances of women prisoners to ensure appropriate and individualized planning and implementation towards those prisoners' early rehabilitation, treatment and reintegration into society. |
| 48.1 | Pregnant or breastfeeding women prisoners shall receive advice on their health and diet. |
| 48.2 | Women prisoners shall not be discouraged from breastfeeding. |
| 49.0 | Decisions to allow children to stay with their mothers in prison shall be based on the best interests of the children. |
| 54.0 | Prison authorities shall recognize that women prisoners from different religious and cultural backgrounds have distinctive needs and may face multiple forms of discrimination. |

## Follow Up

Participants were encouraged to contact CAEFS to follow up with concerns or complaints, and to seek support from CAEFS advocates inside as well as health care providers, counsellors and elders at the institutions. We discussed the likely next steps, such as additional learning materials and resources about the legislation and inquiries we discussed.

The participants expressed doubt about the possibility of experiencing bodily autonomy in the context of prison. They emphasized feeling that their bodies are under surveillance and control and that systems perpetuate restrictions on reproductive justice. However, participants also expressed gratitude and satisfaction about the workshops, stating they found them educational and helpful, *"If you keep that in mind, that you have a right, that makes you stronger."*

*"If you keep in mind that you have a right, that makes you stronger."*

# THEMATIC ANALYSIS

From analysis of notes collected in the nearly twenty workshops, significant themes emerged and are presented here. The themes include:

1. Sexual Assault, Trauma and Trafficking;
2. Reproductive Control of Indigenous People;
3. Prison and Separation from Children;
4. Prison and Reproductive Health Care; and
5. Prison and Violations of Bodily Autonomy.

## Sexual Assault, Trauma and Trafficking

### *Precursor to Criminalization*

Sexual trauma is recognized as a significant determinant of young women's criminalization (Saar, Epstein, Rosenthal & Vafa, 2014; Simkins, Hirsh, Horvat, & Moss, 2004). As Dirks (2004) describes, the early experience of sexual abuse so commonplace among incarcerated women threatens development of a strong sense of self and may result in enduring shame, vulnerability and victimization in adulthood. Prison is non-rehabilitative and a site for further trauma. As one participant said, it is, *"More trauma, more trauma, more trauma. What is the point of being told to work on yourself when there just keeps being more trauma."*

Reproductive justice includes the right to bodily autonomy and to freedom from sexual violence. Many participants described the threats to these rights they navigated before incarceration. For example, some participants discussed how experiences of sexual and physical abuse led to their criminalization, because they "had had enough" and reacted violently against victimization:

> *"Women in prison can be victim, victim, victim to abuse their whole life and then they finally react. She finally says enough. And now she's in jail."*
>
> *"It was bad enough being in the paper at the time, I couldn't stand to go to trial. I pled out. After years of abuse, I snapped."*
>
> *"That's why I am here. I said no all the way down the hallway. And I ended up [committing an act of violence against her assailant]."*

Participants discussed the risks to women of being arrested because of so-called "pro-arrest" policies that require at least one person be arrested when police are

called to a domestic dispute.

An Indigenous leader in one of the sessions disputed the idea of prison as potentially rehabilitative after such lived experiences of trauma: *"What do you mean you are going to rehabilitate them? They need to be habilitated. Not to be going back to where they were, the trauma…we want them to start a fresh journey."*

### *Consent*

Each session included discussion about the definition of consent to sex as active and continuous, and that the age of consent in Canada is 16. Discussions also covered how silence and passivity - or, as participants suggested, *"being on life support"* and *"being too drunk"* – mean you cannot consent. The participants shared strategies they use to try to stay safe: *"I teach my daughter never be alone. Don't get in a cab alone. Don't leave your drink. I teach my sons to respect women"*; *"I share my Google location with a friend."*

Recognizing most sexual assault is experienced with people known to victims, some participants explained how their hope for connection created circumstances that made it difficult to continue active consent. *"A woman might change her mind because it's too rough, thinking it's going to be making love but it's not what's happening, thinking it will make her happy"* As one participant explained, *"Everyone wants love".*

Some participants felt women are at increased risk of sexual assault because of the poisoning of substances on the market, making it more difficult for women to control their situations: *"If you're involved in the drug scene, you have to be careful. This guy convinced her to take G. After an hour we went to go get her. She was passed out."* Fentanyl and the overdose crisis have an impact too. As one participant said, *"Weed can be laced with fentanyl. The drug situation we deal with today affects reproductive health."*

The R v. Ewanchuk decision, which clarified that sexual assault includes all unwanted sexual touching, and that consent must be active and continuous, was revelatory and validating for some participants. One participant shared how she was being touched by her boss when she was a teenager. When she complained, she was fired. The participants felt complainants are held to different standards than alleged perpetrators, *"When it's a man, they don't bring up their sexual history (in trial)".*

As we discussed the disappointing verdict in the R. v Al-Rawi decision, in which a taxi driver was accused of sexually assaulting a customer who had been found unconscious, participants volunteered that assault in cabs *"happens all the time"*; and how frustrating it is to be told cabbing is safer than driving under

***Women in prison can be victim, victim, victim to abuse their whole life and then they finally react. She finally says enough. And now she's in jail.***

the influence, or walking alone, *“we get in a cab because that’s what we are supposed to do,”* only to face the risk of assault by the driver.

Several participants talked about how criminalization intersects with risk of sexual assault. Participants felt women with experience of criminalization or sex work are less likely to be believed:

> *“You are a tried criminal; you have a record. Who are they going to believe?”*
>
> *“The victim is a drug addict, a career criminal, a prostitute.”*
>
> *“They say anything they can to manipulate, like ‘Oh she was dopesick, she’d say anything.’”*
>
> *“I’m a drug dealer, I party, I’m a drug user, I’ve been to prison – who is going to believe me if I call the cops?”*
>
> One person asked, *“why do we take people’s word when they say they have witnessed other crimes, like murder, but not sexual assault?”*

Several participants disclosed experiences of sexual assault. Participants shared words of comfort and solidarity among each other.

Participants described police perpetrating sexual assault. Participants felt there is a lack of accountability when police officers perpetrate assault, and fear among victims to come forward: *“How many cops lost their jobs?”* They also recognized that #MeToo is changing the terrain: “*One person will come out, then 50. Nobody wants to be that first to come out.”* The participants linked lack of accountability for police who perpetrate sexual assault to police “starlight tours”, where people are left without adequate winter clothing outside of city limits. A participant disclosed this had happened to her as a teenager.

In the workshop, we discussed the difference between coercive sex trafficking and sex work. The participants discussed how they felt “man camps” for resource extraction industries drive trafficking. The participants talked about how early in life girls are being trafficked and how, like Tina Fontaine, these young girls are spoken about in the media as if they are adults.

Participants were informed that the Edmonton Elizabeth Fry Society has a funded program to offer four hours of legal advice for sexual assault survivors. This program is expected to be expanded to Newfoundland, Saskatchewan. Quebec and PEI.

### *Personal Searches in Prison*

The participants conceived of strip searches in prison as a major violation of their reproductive autonomy. The participants contrasted what we had discussed

about consent with the reality of regular forced personal searches asking, *"Why is it okay for them to do it within the institutions?"* Given the extent of sexual trauma in the participants' history, they found strip searches to be another regular violation: *"I was getting patted down and her hand went up my shorts. It can be really triggering. One girl, it set her off."* Long periods of institutionalization had, for some, resulted in the normalization of strip searching: *"I thought it was normal until somebody said that."* In several workshops, participants described being first strip searched as young girls held in youth facilities. This early violation set the stage for submission and loss of self worth.

*You are a tried criminal; you have a record. Who are they going to believe?*

In her study of the strip-searching experienced by five formerly incarcerated women in Canada, Hutchison (2019) found women described the experience as "dehumanizing, humiliating, degrading, and as a replication of the violence they experienced in the community" (p.75). In her 2018 analysis of strip-searching data across CSC women's facilities, Balfour (2018) found great variation and arbitrary use of strip searching: from 2004-2009, of the 1154 non-routine post-search reports she analyzed, 49% were from just one facility - the Nova Institution for Women.

Participants described searches as particularly problematic in relation to seeking health services: *"As they get their meds, her searches are handsy. One girl was in tears because she (the Correctional Officer) is so touchy, touchy."* A participant said they did not feel that they can argue or refuse strip searches and that any attempts for self-advocacy are used against them because, *"You know too much."*

One participant wondered if body scanners were an alternative to strip searching, but worried: *"Those body scanners, how do they affect pregnant women?"* Another participant asked how strip searching would be handled for trans individuals: if *"I am transitioning to being a man...what gender will be searching?"*

## Reproductive Control of Indigenous People

Indigenous women make of 42% of federally incarcerated women (Office of the Correctional Investigator, 2020). In some of the institutions, most of the women who attended the workshops self-identified as Indigenous. The workshop content included an overview of the colonial history of reproductive oppression of Indigenous communities; this material was usually familiar to the participants. Elders also provided invaluable teachings during the workshops. A small number of participants knew about the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) (2007), which "constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples" (p.14). Many participants expressed interest in learning more about UNDRIP, which we had not explicitly included in the workshop content. (See https://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf)

## Residential Schools, Sixties Scoop, and Foster Care

In the discussion about Residential Schools and the Sixties Scoop, some participants described members of their families being removed and placed with white families: *"In the Sixties Scoop, if you didn't have a bed for your kid, it was taken away from you."*; *"My Indigenous son was taken, without proof of doing anything to harm him. He was placed with a (non-Indigenous) family. There were cultural differences, and he was abused. My son sees police in our home, and he throws up."*

All participants were familiar, and many had experienced as youth, the current overrepresentation of Indigenous children in foster care: "*Some of the homes that they put these children in are worse (than the poverty or neglect they are being removed from). I am against Family Services. I'll always be against them. I was in foster care. It was gross and disgusting. Are there programs to help women with this?"*

The intergenerational impact was apparent: participants who had been in foster care now experiencing the removal of their own children for placement in foster care; their parents' institutionalization in Residential Schools and their institutionalization in prisons: *"I was raised by grandparents who went to Residential Schools. My mom was affected, she couldn't raise me right. I was affected."; "my grandmother was a part of it. She only talks about it when she's drunk."*

For many of the women, traumatic early separations from their family, including placement in the foster care system or in youth carceral facilities, marked an early start to intergenerational cycles of family dislocation: *"At 11 I was put in foster home by my father, all my family was contacted and didn't take me".*

Non-Indigenous participants recognized the harm Indigenous communities and individuals experienced: *"I'm not Indigenous but I am doing all the Indigenous programs. Being white, I see the difference in how Indigenous women are treated. There needs to be more support, culturally. It's hard to see what Indigenous women go through, what their kids go through."* They recognized the double standards, and their white privilege: *"There may have been money in my family, but there was abuse. It was possible for me (as a white person) to get help. It makes me mad, the inequality. People say Native people ask for so much but look what was took from them. There are different expectations, assumptions when you are Indigenous."*

Removal from community to the foster care system was one way in which participants talked about family disintegration. We also talked about how thousands of Indigenous women and girls have gone missing or been murdered in Canada.

## Murdered and Missing Women and Girls

In some sessions, participants spoke about how they were directly affected by the ongoing crisis of murdered and missing Indigenous women, girls and Two Spirit people. One participant spoke about those who had died or disappeared, articulating that *"There are bones with no names. And names with no bones."*

These deaths and disappearances forced the dislocation of a family and community, with intergenerational impact: *"My mom died when I was a child and I was in 37 different foster homes."*

In some of the facilities, participants described how they honoured murdered and missing women with events and tributes: *"At our MMIW event in October, two women spoke. One, she was abducted, and police wouldn't take her statement because she was 'intoxicated'. Her sister was murdered. They found the body."*

The criminalization of Indigenous women at the same time as the lack of protection and value for the lives of Indigenous women generated fear and distrust of police forces.

*People say Native people ask for so much but look what was took from them.*

## Sterilization

Hospitals are another institution responsible for interference in the reproductive freedom and safety of Indigenous women. Indeed, it was increasing concern about forced and coerced sterilization practices that first generated interested in developing the Reproductive Justice workshop.

In several institutions we were asked to explain sterilization. Many of the participants were familiar with the issue of forced sterilization and shared their knowledge and experience:

> *"My sister was at the hospital, she had a C-section for her twins, and they were holding up her hand to the paper, to consent to sterilization."*
>
> *"I had 6 kids. My son was one month old. I always told my grandma I was going to have nine kids. My doctor convinced me (to get tubes tied)."*
>
> *"I was watching (a friend's) six-year-old while she was in labour. She told me that they tied her tubes. I don't think she consented. She cried and all she said was "they tied my tubes.""*

For one participant, this happened in the context of criminalization: *"When I got arrested, I got my tubes clamped."* One woman told us that her mother had been told by a doctor that she had had enough kids.

For some women their lives changed after they consented to the procedure, and they wished they still had the chance to have another baby: *"Me too. I was convinced to get my tubes tied too. I had six kids, but I lost one."* The inability to get pregnant now was affecting their relationships, such as for one participant who said, *"The guy I'm with now wants me to have it reversed but that costs a lot of money."*

One participant asked about the "rules" about sterilization: *"Is there a law after three C-sections you must have your tubes removed because it is too dangerous? This happened to me".* For incarcerated and institutionalized people, there can be an assumption that all aspects of your life are governed by someone else's rules.

One participant thoughtfully considered how health care providers could participate in this type of coercion: *"I wonder how the nurses felt, I wonder what they would say if we asked them (re Indigenous women forced sterilization). How would they even start with decolonization?"*

Several participants said they had been offered tubal ligation but also had no difficulty declining: *"I had 3 and my doctor asked if I was done and I said no."*

Participants connected the discussion of forced sterilization to concern about coercion in relation to contraception. As one said, *"A lot of doctors are trying to promote birth control constantly [but you] won't get your moon time."* They felt it was important for health care providers to understand the importance of menstruation as ceremony for Indigenous people.

Participants wondered about the possibility of reversing sterilization, and about the extent to which men were required to be involved in their decision-making about it.

## Prison

As one participant said, *"you could say prisons are the new Residential School."* The participants felt the over-incarceration of Indigenous people began in the youth criminal justice system and had an impact on generations after. Participants described the prison as a replacement for the Residential Schools, *"In this institution, 80% of the people here are Indigenous."*

## Prison and Separation from Children

### *Separation*

The psychological theory that mother-child attachment is an evolutionary, instinctive survival mechanism was pioneered almost seventy years ago by Bowlby (1952).

He argued disrupting attachment to the mother in the first two years of a child's life constitutes "maternal deprivation", with long term emotional, cognitive and social consequences for the child's development. This research now has almost 70 years of development and it well established (Benoit, 2004). Poehlmann (2005) has extensively researched the negative effects of separation from parents on the children of incarcerated parents in the US. The participants spoke about how the criminal justice system is harder on women, even though the result is harder on families: *"It's a double standard when women do something bad. It's like 'how dare you because you are a caregiver' but with men it is 'boys will be boys'."*

For Indigenous women, prison is another form of institutional reproductive oppression. Almost all incarcerated parents are separated from their children. The arrest of a parent is traumatic for children, and their parents are not there to explain what is happening: *"I've seen women bawling their eyes out, because their kids don't know they've been arrested, they were at daycare."*

One woman said the separation from their children and barriers to see their children had caused her to lose hope. Others expressed how wanting to be with their children affected their cases, for example, they would plead guilty in order to expedite returning home: *"I only pled out because of them."* Others thought by pleading guilty they would at least have certainty about where they would be incarcerated: *"I pled out, to be here, to have stability so my kids could visit me here. I'm supposed to get visits twice a week. I haven't seen my kids."* As one woman said, *"In a room of 80 women, maybe one is close to family."*

Some were worried about how separation during incarceration would affect their relationship with their children, *"I feel like my baby I gave birth to before here, I'm not going to be as close to her"*. Some were terrified of how their children were coping without them, *"You can't do house arrest for drug charges (so I had to be incarcerated). My kid has never been away from me."* Others worried how their children were being treating by the people they were with: *"He tried to get full custody of her while I am in here. He puts her in child endangerment every day. He's not answering phone calls. My mom can't do anything."* One participant said her friend inside, *"Has to take sleeping pills at night because she is worried about her kids."*

One participant said federal incarceration prevents them from being able to address family court matters: *"If you have a Family Court date, you are not brought to your Court date (from jail/prison). People won't even know (of the date). But we will be taken for traffic court."*

As we discussed the Bangkok Rule #2 regarding women's rights to make arrangements for their children or have detention suspended, some participants wondered, *"Wouldn't people get pregnant to avoid jail?"* and, *"Does this mean*

***Is there a law after three C-sections you must have your tubes removed because it is too dangerous? This happened to me.***

*that we can just do whatever we want?"* Participants discussed how accountability does not require incarceration. One woman said, *"If I could go home, I would but there is no prison for women, no halfway house so I'm stuck."*

### *Visits*

People incarcerated in prisons for women receive very few visitors. The participants described visiting with children was difficult and infrequent due to distance, paperwork, poverty, and stigma: *"I don't see my family, they are too far away."* For example, at FVI we asked a programs officer how many of the women receive visitors and she said about four out of the total population. The prisons are isolated. Participation in video visits requires the same permissions and paperwork as in-person and may take a long time to actualize. The Office of the Correctional Investigator's 2013 Report on Self Harm pointed to lack of visitation as a significant contributor to chronic self-harming actions among incarcerated women.

Infrastructure to support visitation was under-resourced. At the time of our sessions in Edmonton, the Acting Warden explained that the Parent and Family Visitation house (capacity for ten) is full of overflow inmates, so no one gets those visits: *"There is no PFV (Personal and Family Visit house)"* There is also significant bureaucracy and waiting to receive authorization for visitors: *"I applied weeks ago for visits. They haven't done anything with the papers."* The participants expressed feeling discouraged, *"It's a frigging wait. Nothing gets done."*

Several participants described how they lost access to their children as punishment for "behaviours" inside, including mental illness. This is a direct violation of the Bangkok Rules:

> *"If you get a dirty urine you get your visits suspended."*
>
> *"They took my visits away because of my suicide attempt. They said it was "due to my behaviours"."*
>
> *"In (provincial facility), you can have phone privileges taken away for the rest of your incarceration."*

Some felt it was external family who were punishing them, that family members were using their caretaking responsibilities while they are inside to punish or influence the women's children, such as taking away visits depending on behavior etc. Requiring the significant support of family members put some of the participants in a position of vulnerability and dependence.

The Creating Choices report (Taskforce on Federally Sentenced Women, 1990), a collaborative initiative between CSC and the voluntary sector in the late 1980's to redesign federal corrections for women, called for the closure of the central Prison

for Women in Kingston and the creation of cottage-type, community-connected facilities in the various regions of Canada. Despite the six regional institutions that currently exist, participants felt they were no closer to seeing their children: *"I've been arrested all across Canada. (On intake) We're asked for our common-law partner's name, if we are single or married. Nobody gives a (sic) about our kids."* One participant said she was asked by CSC staff, incredulously, *"Are you going to want visits with your kids? Can they travel here?"*

One woman commented that when she was incarcerated, she was transferred to a prison, *"As far away from my children as possible."*

### *Child and Family Services*

Struggling with provincial departments of Child and Family Services[2] emerged as a dominant theme in the workshops and a dominant concern in the participants' lives. *"I don't think they recognize how much it disrupts the family to take the mother out of the home."*

Participants described the removal of their children as often abrupt and perceived to be without any preventative measures. As one participant said, "I would have loved to have had help from Child Welfare before they took my children". And another, *"Child and Family Services – it's supposed to be the last resort, but taking your kids is the first thing they do. Take your kids and leave you to the wolves."*

Participants recounted how their experiences of Child Protection order enforcement were influenced by sexism and classism. They felt Child Protection was *"easier on men"* with caretaking responsibilities, especially when it came to visitation access. They felt there is less Child Protection enforcement and involvement for those not living in poverty.

Participants spoke of pleading out to gain certainty and stability to facilitate visitation, only to face frustrating waits and lack of control. One participant described how the removal of her children launched the spiral that resulted in her criminalization: *"I wouldn't even be here if they hadn't taken my kids away. If they had helped me with my addictions. I wouldn't have lost hope. They don't give you a chance."*

***They took my visits away because of my suicide attempt. They said it was "due to my behaviours".***

2 Also called Child Protection Services, Community Services, etc.

The participants shared strategies with each other for dealing with Child and Family Services:

> *"When you don't keep track of something (work you are doing to reunite with your children) they don't count (it)."*
>
> *"Even in jail, it's good to keep in touch with CPS (Child and Family Services). They'll count your sobriety time for while you are in jail. And keep a paper trail."*
>
> *"Accomplish the list of things social services wants you to accomplish to get custody, do them while you are in here."*

One participant wanted to know what her rights were to see her child, *"If you request CPS (Child and Family Services) to bring your child for a visit and they deny you – is that a violation of our human rights?"* But some had lost hope and were defeated, *"The system is set up for us to fail, we may as well roll over and not fight."*

The participants often raised- and explained to each other – the practice of hospital "birth alerts", where mothers are flagged for Child and Family Service involvement and child removal at birth. One participant shared this had happened to her 18 months prior. The participants discussed how people who have had children in the foster care system before, or who were foster children themselves, are vulnerable to losing their children as soon as they are born: *"Being a foster kid doesn't mean I should have to give up my rights (to parent)."* As a participant stated, this system does not account for how circumstances shift, *"They do not take into account whether a person has changed (since the last child was apprehended)."* The National Inquiry into Murdered and Missing Women and Girls called for their end, and several provinces have now promised to ban birth alerts (Manitoba) or already initiated a ban (British Columbia).

Participants shared strategies for managing child removal: *"In Alberta, you can get your parenting rights back. Permanent doesn't mean permanent in Alberta. You can get your kids back. You can fight it."*

But for people in a federal institution from multiple provinces, lack of clarity and proximity to the provincial Child and Family Services processes is challenging: *"Every province is different."* For example, *"Nova Scotia starts adoption process as soon as 12 months from apprehension".*

One participant explained how changes with respect to Indigenous children in her province resulted in a longer time period to sort things out: *"Now they keep them [Indigenous children] long term [in foster care], because Ward and Council have to*

*agree to them being adopted."* However, others felt that, *"The foster care system does not enable children to be placed within their own culture"* and that they *"Bypass family to put child in foster care".*

Participants also spoke about being fearful of calling the police when they experience domestic abuse because of the chance of their children being removed by Child Protections Services.

### *Parenting Program in Prison*

Participants described minimal supports available to support them as parents while incarcerated: *"There is a program, you can read aloud a book, have it recorded and sent to your kid."* There were few human resources devoted to this type of support: *"There is one parenting group facilitator."* Even where programs are offered, those held in maximum security do not have access: *"Max unit doesn't have the same programs."* And, *"Not all people get out of max, to medium or minimum where they can take these programs."* Others described how only the people who are eligible for the institutional Mother Child Program get to participate in parenting programs: *"There are programs for parenting for people in the Mother Child program but not for everybody else."*

Several participants asked for access to a parenting program to help them get ahead in the process of reuniting with their children on the outside, *"I think you should have access to parenting classes to help people who are raised not right, to learn."* All types of programs were needed and absent: *"Program for parenting, strategies, co-parenting. Relationships between parent and child."*

Some felt there needed to be more pragmatic support to prepare people for release so they could succeed as parents, *"Rebuilding relationships. The hardest part for women is people taking a chance on them."*. They had practical ideas, such as "a list of places that will employ you with a criminal record." And, *"In the provincial jail in BC, a month before release, they have a call with welfare, so you have your monthly support portion ready. You get $50 on release."*

### *Mother Child Program*

The Mother Child Program (MCP) is available to mothers experiencing federal incarceration according to criteria and limitations stipulated in Commissionaire's Directive-768 (CSC, 2016) (Box 2).

***Being a foster kid doesn't mean I should have to give up my rights (to parent).***

### *Box 2: The Mother Child Program Eligibility Criteria*

**Mothers**

14. A mother can be considered for participation in the residential component of the Mother-Child Program with their child if:

    a. they are classified as minimum or medium security, or are maximum security and are being considered for medium security

    b. they have been screened against the relevant provincial child welfare registries to verify whether information exists that should be considered in the decision-making process

    c. the child welfare agency is supportive of their participation

    d. there is no current assessment from a mental health professional indicating that the mother is incapable of caring for their child due to a documented mental health condition of the child or the mother

    e. they have not been convicted of an offence against a child or of an offence which could reasonably be seen as endangering a child. An inmate who does not meet this eligibility criterion may be considered for participation if a psychiatric or psychological assessment determines that the inmate does not present a danger to their child

    f. they are not subject to a court order or other legal requirement prohibiting contact with their child or children.

15. An offender may apply for the residential component of the Mother-Child Program while in the Structured Living Environment (SLE), Structured Intervention Unit (SIU) or Enhanced Support House (ESH ) but cannot participate in the full-time program while residing in one of these areas; they can be considered for participation in the part-time residency program using the private family visiting unit location.

**Children**

16. A mother's child is eligible to be considered for participation in the residential component of the Mother-Child Program if they are:

    a. not older than four years of age (no longer eligible at the fifth birthday) for full-time residency in a living unit, or

    b. not older than six years of age (no longer eligible at the seventh birthday) for part-time residency in a living unit, or

    c. under the age of majority for part-time residency using the private family visit unit location.

There is little empirical research about the Mother Child Program in Canada; some authors describe it as difficult to qualify for, and underused (Brennan, 2014; Miller, 2017). One of the requirements of participants is that they accept involvement of provincial Child and Family Services. Some workshops participants had been incarcerated for long enough to recall when the program was very different, such as when there were day care facilities on site that prisoners', community members' and correctional officers' children attended together.

At the time we visited EIFW, we met two infant participants in the Mother Child Program, and one joined our session at the minimum house. At GVI, one mother with a young infant joined our workshop in the minimum house. There were no children at Okimaw when we visited, although participants said a baby was recently sent to live with family elsewhere in the province. At Nova, although we were informed of at least one mother-baby pair, they did not participate in the sessions. At FVI, we met one new baby participant and were informed of another older child in the program. Although participation may be low, the program appears to be operating in every institution at present.

***We all have babies and want to be with them.***

Many participants who had children on the outside said they had never been provided information about applying to the Mother Child Program. Many were unaware of the basic requirements, such as children be under age five for full-time co-residence, and under 12 for part-time participation.

The Mother Child Program was a salve to people who had witnessed separation of other incarcerated women from their children, *"I've seen women have their babies and they get taken away right at the birth." Compared to that trauma, "It grounds me to have babies around."*

However, many of the women were distraught that they could not participate because the Mother Child Program had such strict eligibility criteria, limited space, and delays to receive approval. *"I have put in multiple applications."* It seemed unfair that some women got to participate and others not: *"We all have babies and want to be with them."* Some had experienced the program in the past but could not participate now: *"My son, I had him here before, but not this time."* The program limitations were not clearly understood:

> *"I think right now there are three moms, and only four spaces. Or is it five?"*
>
> *"I know they have it here, the Mother child program."*
>
> *"I think there's more kids here."*

There were a few participants who objected to the presence of children in the prison, *"Children shouldn't be exposed to people in prison who have committed crimes against children."*

The process to join the Mother Child Program is complex and daunting, especially for women who begin their federal sentence with a newborn and are experiencing multiple dimensions of transition in their lives. *"There needs to be a process for women who give birth on remand, so they don't have a big delay when they come here, to get in the Mother Child Program."*

Some participants described how eligibility had changed over time. In 2016, Correctional Service Canada opened minimum security units (MSUs, or Annex buildings) in four prisons. The MSUs are outside of the main compound fence (Office of the Correctional Investigator, 2016). As a result, some of these facilities now restrict the Mother Child Program to mothers residing in the MSU, despite CD-768 stipulating both medium and minimum security will be considered. *"Here you have to be in min, wait six months, there are no beds in GP (general population). When they first opened, the double rooms (in GP) were for mothers and babies. In 2003. They never got used."*

Although not described in CD-768, we learned of several policies governing the Mother Child Program. For example, when a woman is being considered, she must be living in a unit that has a second person who must have gone through required programs and First Aid and be available to provide respite care for the mother. The mother cannot participate in programs if she does not have a babysitter; however, parole is conditional on completion of programs.

One participant felt that women were reluctant to have Gladue reports on their files because they worried it would affect their ability to qualify for the Mother Child Program. Gladue reports provide recommendations to the court about sentencing based on information about Indigenous peoples' experiences including Residential Schools, foster care, abuse, health issues, or substance use. (Native Women's Association of Canada, 2015). There is worry that Gladue factors, such as childhood experiences of abuse and dislocation from family, may be interpreted as risks that result in higher level security classification and greater restrictions on prisoners.

## Prison and Reproductive Health Care

### *Pregnancy*

Although the workshops were held in federal prisons, many of the participants described what it was like to be pregnant while in provincial facilities. For one woman, it was a confusing time, and she was often denied services: *"When you are pregnant in (provincial facility), it took forever. I would request services and be denied. The urine screen came back negative, so they denied me prenatal vitamins for like four months. But I had an ultrasound before I went in, saying I was pregnant."*

One participant said when she went into labour in a provincial facility, no one believed her. Another shared her experience of infant loss after being pregnant while incarcerated.

Several participants described being placed in solitary confinement or restraints while pregnant in provincial facilities:

> *"I was pregnant in (a provincial facility). They took my clothes and put me in a babydoll."*
>
> *"When I had my last child, they put me in seg. In (provincial facility)."*
>
> *"I know a woman at (provincial facility) who was shackled in pregnancy two weeks ago."*
>
> *"I was huge. I was seven months pregnant. I remember they cuffed and shackled me at the doctor's office."*
>
> *"When I was pregnant, I was handcuffed and shackled and I fell going up the stairs."*

Although 22 states in the United States have legislation to ban the shackling of prisoners during labour and delivery (Ferszt, Palmer & McGrane, 2018), Canada does not have specific legislation or policy in place to prohibit the practice. The *Corrections and Conditional Release Act* (CCRA) (Canada, 1992) does not speak to unique provisions for pregnancy and delivery, nor does the Commissioner's Directive governing Health (CD-800).

Perinatal care availability was described as inconsistent across facilities. The geographic and physical isolation of the Okimaw Ohci creates concerns with respect to pregnancy complications. The Deputy Warden there described it as impossible to keep women experiencing high risk pregnancy at a site that is several hours away from specialty medical care, and as a result people with higher-risk pregnancies would be moved to EIFW or elsewhere, missing out on the unique opportunities available at Okimaw.

### *Assisted Reproduction*

Participants had many questions about the legality and costs associated with assisted reproductive technologies such as IVF, sperm and egg donation, and surrogacy. Same-sex couples asked about their options. We discussed the *Assisted Reproduction Act* (Canada, 2004). Elders shared teachings about Indigenous practices in choosing partners and family lineage.

### *Menstruation*

For Indigenous participants and those following Indigenous teachings, menstruation is conceptualized as a ceremony of "moontime." In the workshop, the discussion of contraception options that may result in cessation of menstruation led an Indigenous leader to comment that she objected *"To Depo or anything that would suspend you having menstrual cycles. Because from a traditional standpoint, your cycles and the cleansing of your body is part of the Creator's way of keeping us healthy. So it would be cessation of ceremony. Your cycle is a ceremony in and of itself and you would be taking away from the*

***I was pregnant in (a provincial facility). They took my clothes and put me in a babydoll.***

*natural course."* She was concerned Indigenous women, having been removed from their communities, might not know about these teachings and ceremonial implications when they make decisions about contraception. *"There are the old ways and the new ways, the ceremony of menstrual cycle and the importance of dealing with unwanted pregnancy...they contradict each other. How might this implicate people seeking care from white nurses and not being aware of their teaching? For example, if they were adopted out?"*

One participant did express the change in feelings about menstruation she experienced when she came to Okimaw Ohci: *"I was ashamed until I came here and learned about my moontime."*

The 2017 Senate report, Life on the Inside: Human Rights in Canada's Prisons, found women at Joliette prison were only provided one type of sanitary pad and that tampons had to be purchased through canteen. A participant said that at Edmonton Institution for Women, prisoners are charged for tampons. The World Health Organization (2010) report on Prison and Health insists on the necessity for adequate provisions of sanitary products and bathing facilities. Although menstrual hygiene supplies are provided in federal institutions, some participants said it was not enough, and degrading to have to ask for more. *"Bring a box! Why don't they bring a box? You ask for tampons and they bring you three. We don't want to ask the male staff for tampons."*

### *Menopause*

A few older participants described menopause as an overlooked area of reproductive health, the symptoms of which make incarceration more difficult. *"I'm menopausal. They don't offer any natural things. They say to take (medication) for your nighttime sweats. But that's for sleeping. I don't have trouble sleeping, it is the sweating. And there are increasing older women here. It would be nice if they would recognize."*

Adelina Iftene published Punished for Aging, a book collating interviews with 197 older men in federal prison in Canada, in fall 2019, just as we were beginning the workshops. Iftene was unable to interview older women in prisons for women, and the reproductive other health concerns of older women necessitate a gender analysis of aging in prison.

### *Trans Health*

Several participants who identified as trans women expressed that they found it was hard to get medication and be taken seriously as a trans woman while incarcerated. One participant shared that she was told she had to wear makeup everyday to *"pass"* and be considered a woman, but then would be punished for being *"too provocative"* or for *"trying to be sexy."* The women were caught between struggling to access what they needed to look *"enough"* like a woman

while also feeling coerced to look like a certain stereotype of womanhood to be in compliance with institutional expectations.

### *General Health Services*

As some participants pointed out, it is not possible to have reproductive health when you are physically and/or emotionally unwell; reproductive health is part of the whole body, and the whole body faces threats to health while inside. Participants described significant restrictions on access to health services. For example, Okimaw Ohci had been without a psychologist offering therapy for close to two years. At another facility, a participant said the psychologist was always quitting because *"Every time they try to help us, they get blocked."*

At Nova Institution for Women, the participants described advocating for over four years to be allowed to access the community-based sexual assault support centre. We were informed by participants that the prisons lacked drug and alcohol addictions counsellors and spiritual care. Several participants said when they bring complaints to CSC they are ignored or misinformed. Some felt it was invasive to have correctional officers present in their medical appointments.

Participants commented on the lack of trauma-informed approaches. Elders spoke of being trained in trauma care but not being "allowed" to use those skills with the prisoners. The participants said sometimes men are facilitating "rehabilitative" programming for the women but given their histories of abuse at the hands of men, they could not possibly experience this as rehabilitative.

### *Isolation from Information and News about Reproductive Rights*

Participants mentioned a few existing programs they found valuable and wanted more access to while inside, such as the Walls 2 Bridges (W2B) programs and education about HIV offered by the Native Women's Association of Canada (NWAC), *"In W2B we learn about the treaties. Sovereignty over your body. Sovereignty in general."* However, there are security restrictions to participation, *"(Only security) Level 3 can take the HIV Hep C course offered through NWAC."*

Incarcerated people may lack access to information about how laws governing reproductive rights are changing. For example, at one facility, the participants were very interested in learning about the *Assisted Reproduction Act* (2004), and in discussing the ethics of payment for participation in egg or sperm donation and surrogacy. At another, the participants wanted to understand Canada v. Bedford decision (2013) and the current state of criminalization of the purchasing of sex, *"In Saskatchewan a woman can sell herself but it's not legal to buy sex."* One participant clarified, "*That's a national law.*" In all the facilities, participants were interested in the availability of mifepristone (medical abortion), which only appeared on the market in Canada in 2017.

*One (trans) participant shared that she was told she had to wear makeup everyday to "pass" and be considered a woman, but then would be punished for being "too provocative" or for "trying to be sexy."*

## Prison and Violations of Bodily Autonomy

### *Violence in Prison*

Participants described experiencing verbal and physical violence that violated their bodily autonomy.

> *"Anyone who's been in the jail system has seen someone be abused. That's a normal part of jail."*
>
> *"At (provincial facility), a CO (correctional officer) said to us "What new vaginas do we got here?"*
>
> *"They called the inmates, "Whore""*
>
> *"One girl (was severely injured). They said she was "faking it""*
>
> *"They don't care, you have to be dying to get help."*

Other participants spoke about the degradation they felt having their movements under surveillance and control. *"I can't go to the bathroom unless they open my door."* The surveillance served to silence the participants: *"Because they are in control, we are quiet."*

The participants also described being policed in their physical relationships with other women while incarcerated. As one woman said, *"I'm not free to just be a person. How they treat people in here… someone is going to kill themselves."* Several participants described homophobic comments and threats they experienced from correctional officers.

Participants spoke out about violations of prison policies that made them feel threatened, such as when unaccompanied male guards appeared on their units: *"Not all the time do they announce the staff on the range. Sometimes it is two men at a time. A man should always be with a woman. That's against the law. A man coming on the unit should be announced."* The participants communicated many types of surveillance by male guards that they found violating, such as coming into the rooms as women are just getting out of the shower.

One participant described being physically assaulted by male guards while under suicide watch.

One described being held in restraints at a provincial facility while she needed to use the bathroom, *"At one point they weren't taking off cuffs when you went to the bathroom"*.

### *Segregation*

The CAEFS Reproductive Justice workshops were held around the time of the implementation of federal changes to administrative segregation and *"structured intervention units (SIUs)"*. The participants expressed skepticism about whether there would be real changes, *"They haven't explained what really the protocol for the new SIU is. The big difference is more time, 4-5 hours a day, with elders."* Another explained, *"They just give you more hours outside of your cell. But what are you supposed to do? Walk back and forth?"* They described the experience as dehumanizing: a woman in segregation was taken out for a walk, *"Like a dog."*

Many described being stripped naked and placed in segregation in provincial facilities, *"We have a problem across the provincial jails."* Lack of public understanding of what happens inside was a problem, *"I don't think the public know people are tossed into provincial seg naked."* The participants asked for answers as to how they could experience such mistreatment, *"At (provincial facility), you're naked in seg. How can you be?"*

The participants stated that institutional response to expressions of suicidal ideation was punishment, *"When you say you feel suicidal, they put you in seg, they strip you down, put you in a babydoll, you get no water, no mattress. You are reaching out for help and that's what you get."* The experience was bleak, *"I got a whole lot of nothing, I was dry celled."*

Dry celling is the practice of holding someone alone in a cell, under constant supervision, with no water or plumbing. They are monitored until their body expels suspected contraband. If they do not, this can go on indefinitely. For example, Lisa Adams endured 16 days in a dry cell in Nova Scotia. She challenged the province on the practice in court, resulting in a ban on dry celling in Nova Scotia facilities. (Luck, 2021).

One described the effect of segregation, *"You are eating bitterness."*

***I don't think the public know people are tossed into provincial seg naked.***

# REACTIONS TO THE CAEFS REPRODUCTIVE JUSTICE WORKSHOP

The participants overwhelmingly expressed positive feedback about the sessions and appreciated the information. We would have a roundtable in the smaller groups to talk about what women came away from the session feeling or knowing. Participants said:

> *"I've never heard about this. But I'm going to pay attention now."*
>
> *"This is all new. I never knew any of this."*
>
> *"There are things that were red flags to us but we didn't know there is a legal standpoint."*
>
> *"I appreciate you being here. This is wonderful This is the first time seeing something like this. This is progress."*
>
> *"I'm inspired to do stuff. It opened a different perspective of reproductive justice."*

Unfortunately, some said the information was too little and too late. *"I'm here and now it's too late. In Provincial Jail, I could have been like (to my lawyer), 'Go fight harder for me'."* Another participant said, *"I'm actually a little pissed off. A system that's supposed to help you, it's just punishment."*

One participant said *"This stuff is really cool. I'm going to be contacting my mother – understanding where she is coming from."*

Finally, the workshops were validating. One woman said, *"Thank you for listening to our story. We've told it multiple times and I finally feel like it's being heard."*

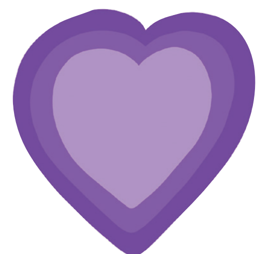
# RECOMMENDATIONS & CALLS FOR ADVOCACY

The Reproductive Justice workshops were unlike much informational programming available to people in federal prisons for women because the content and approach highlighted human rights and institutional obligations towards the towards them and their experiences, as opposed to focusing on their institutionally defined deficits and their needs to improve. The participants expressed sincere appreciation for the content in the CAEFS Reproductive Justice workshop and wanted more. The participants not only want information about their rights while inside, but about their health generally.

The Recommendations put forward here are Calls to Advocacy for CAEFS. CAEFS is a prison abolition organization. It is inappropriate to recommend investment in the federal prison system to remedy identified concerns with reproductive health and rights. It is problematic to call for increasing programming available within the prison walls when the aim is decarceration. However, as Edmonton Elizabeth Fry Society Executive Director Toni Sinclair describes it, there is a need for a harm reduction approach to addressing reproductive heath, rights and justice for people who are currently incarcerated. Advocating for immediate remedial action to address human rights violations does not preclude advocacy for non-carceral approaches.

Reproductive Justice is fundamental to wellbeing, to feel safe and right with oneself. Incarceration is a threat to bodily autonomy because it is the very confining and controlling of the body. Incarceration separates families, breaks bonds, alienates, and destroys connection. Ending incarceration is the path to Reproductive Justice.

While recognizing the organization faces resource restrictions, as CAEFS works towards an abolitionist future, it can use its national advocacy position to advance deeply needed action, education, support and services.



## Legal Reform

1. Advocate for the adoption of the Bangkok Rules into the *Corrections and Conditional Release Act* to bring a gender transformative approach to federal legislation governing corrections.
2. Advocate for the adoption of the Mandela Rules into the *Corrections and Conditional Release Act* to bring health and health services to the forefront of federal legislation governing corrections.
3. Advocate for the implementation of UNDRIP into Canadian law.
4. Join advocacy efforts to completely decriminalize sex work in Canada and support sex worker-led organizations' leadership in this advocacy.

**CAEFS Response**: *CAEFS accepts all the recommendations for Legal Reform proposed in this report. Recommendations 1-3 will be incorporated into our* ***emergent legislative reform and public engagement strategy.***

*CAEFS is committed to network-wide education opportunities and relationship building with organizations that work explicitly for the rights of sex workers.*

## Education in Federal Prisons for Women

5. Continue to facilitate reproductive justice workshops with federally incarcerated women, parolees, and advocates in community. The workshops should be in partnership with Indigenous elders. The elders in our sessions were critical and framed the discussion about reproductive justice in the context of Indigenous cultural and spiritual practice. The workshops do not require clinical expertise. CAEFS regional advocates could lead facilitation. The disruption, delay and denial of of chosen families caused by incarceration is a key concern among federally incarcerated women and demands specific advocacy and informational response.
6. Advocate for people in federal prisons to understand what constitutes informed consent for health care services.
7. Provide federal prisons for women with at minimum copies of the *Charter of Rights and Freedoms*, the *Corrections and Conditional Release Act*, the United Nations Convention on the Rights of the Child, the Bangkok Rules, the Mandela Rules, the Truth and Reconciliation Commission (2015) and the report from the National Inquiry into Murdered and Missing Indigenous Women and Girls. These documents support people to understand their rights and to self-advocate.
8. Develop synthesized documents on the *Charter of Rights and Freedoms*, the *Corrections and Conditional Release Act*, the United Nations Convention on the Rights of the Child, the Bangkok Rules, the Mandela Rules, the Truth and Reconciliation Commission Report and the report from

the National Inquiry into Murdered and Missing Indigenous Women and Girls that are appropriate for the literacy level of people in federal prisons for women and that highlight relevant subsections pertaining to federally incarcerated women. These documents would complement Human Rights in Action, with a focus on reproductive justice and the rights to not only bodily autonomy and to health care, but also to parent in safety and sustainable communities.

9. Advocate for improved high-quality parenting education opportunities and consistency in that programming across the federal facilities.
10. Advocate for education about the meaning of UNDRIP.

**CAEFS Response**: *CAEFS accepts all the recommendations for Education in Federal Prisons for Women proposed in this report, while noting that recommendation 6 is an existing and ongoing practice of our regional advocates. We are in the beginning stages of developing a chapter on Reproductive Justice for our Human Rights in Action Handbook (HRIA), and adapting the training to include a section on Reproductive Justice. Furthermore, we plan to include synthesized documents (as described in recommendation 8) in this updated HRIA Handbook. We have requested that these documents, in their entirety, be made available on the T-Drive of each federal prison for women and have made hard copies available to all of our peer advocacy teams. We are also in the process of strengthening our existing partnerships with Indigenous-led organizations, and building new connections with others.*

## Education for the Legal Profession

11. Advocate at the national level for inclusion of the Best Interest of the Child consideration in presentence reports. The a 2018 case law review by the Canadian Friends Service Committee (the Quakers) shows how underused these considerations are. The impact of inclusion of Best Interest of the Child to support criminal court decisions to keep families together must then be measured
12. Advocate at the national level for inclusion of the Best Interest of the Child consideration in parole hearing decisions.
13. Liaise with law schools and Bar Associations to develop and deliver training for law students and lawyers for gender-based considerations for sentencing and parole, such as parenting responsibilities and early childhood need for bonding with the primary parent.
14. Develop partnerships with Pro Bono Students Canada and other law student groups to advance knowledge mobilization opportunities regarding gender-based considerations for sentencing and parole.

*The disruption, delay and denial of chosen families caused by incarceration is a key concern among federally incarcerated women and demands specific advocacy and informational response.*

**CAEFS Response**: *CAEFS accepts all of the recommendations for Education for Legal Professionals proposed in this report. We will incorporate recommendations 11-13 into our* ***emergent legislative reform and public engagement*** *strategy. We have an existing partnership with PBSC and will take up recommendation 14 in future collaborative projects.*

## Health Care Provision in Federal Prisons for Women

15. Liaise with health professional schools and licensing authorities to develop and deliver training for health professional students and health professionals regarding responsibilities under their professional codes of conduct and the Mandela Rules for the compassionate, comprehensive, and confidential health care of people experiencing criminalization.
16. Advocate for and facilitate local Elizabeth Fry Society staff, volunteers and advocates to meet with and engage CSC health care staff to improve transparency, communication and outcomes.
17. Develop familiarity with best practice guidelines for reproductive health, such as Society of Obstetricians and Gynecologists of Canada guidelines for prenatal care, in order to assess appropriateness of services available in federal institutions.
18. Advocate for the federal Office of the Correctional Investigator to highlight reproductive health indicators in its annual reports.
19. Advocate for autonomous mental health care providers be made available to support people in prison who experience miscarriage, infant loss, and separation from their children. These experiences are extraordinarily traumatic and, in the carceral context, are likely to result in significant mental and emotional harm.

**CAEFS Response**: *CAEFS accepts all of the recommendations for* ***Health Care Provision in Federal Prisons for Women*** *proposed in this report, while noting that recommendation 16 is already a part of our Regional Advocacy practice. We will incorporate recommendation 15, 17, and 19 into our emergent long-term education and public engagement strategy. We have requested a standing meeting with the Office of the Correctional Investigator, where we will bring recommendation 18 forward.*

## Personal Searches

20. Advocate for the complete cessation of strip searching. It is traumatizing and retraumatizing for people who have experienced sexual assault.

**CAEFS Response**: *This has been CAEFS' longstanding position and CAEFS accepts the recommendation to continue to advocate for the complete cessation of strip-searching.*

## The Mother Child Program

21. Advocate for increased transparency regarding the federal institutional Mother Child Program. Necessary information includes rates of participation, distribution of participants across sites, differences between Indigenous and Non-Indigenous rates of participation, duration of participation, and reasons for changes in active participation.
22. Advocate for the federal Office of the Correctional Investigator to highlight the Mother Child Program and the impact on children of incarcerated parents in its annual reports.
23. Participants clearly wish for improved access to the institutional Mother Child Program among federally incarcerated mothers. Necessary improvements would include expediting applications, supporting applicants in their assessments with Child and Family Services and addressing infrastructural issues such as space limitations.
24. Continue to advocate for non-carceral supportive housing options for all incarcerated mothers to live with their children, such as the Section 81 houses described in the *Corrections and Conditional Release Act*.

**CAEFS Response**: *CAEFS accept recommendations 21, 22, and 24 for The Mother Child Program in Federal Prisons for Women. Recommendations 21 and 24 will be integrated into our ongoing advocacy work. We hope to address recommendation 22 through standing meetings with the Office of the Correctional Investigator.*

*CAEFS advocates for the decarceration of mothers in prison. As such, we are unable to accept recommendation 23, but do agree that there needs to be more support for mothers who are incarcerated. We commit to addressing infrastructural issues (such as space limitations) by advocating that fewer mothers be sentenced to prison in the first place. While CAEFS does not have the capacity nor mandate to directly assist with applications, we will continue to refer clients needing application assistance to their local Elizabeth Fry Society, or other service-provider, for support.*

## Child Protection Services and Family Court

25. Support incarcerated people in federal facilities across the country to clearly understand provincial legislation and policy governing child protection and foster care where they are located. To facilitate this, CAEFS may produce a comparative synthesis of legislation across provinces and territories
26. Advocate for people in federal prisons for women to be provided with timely information, access to legal representation and transportation to family court proceedings. CAEFS must audit how such access is operationalized across the institutions.

**CAEFS Response**: *CAEFS accepts all recommendations for Child Protection Services and Family Court proposed in this report. As part of our ongoing Breaking the Cycle project activities, we are working to provide people incarcerated in federal prisons for women with access to more legal information, resources, and supports.*

## Young Women and Girls

27. Provide advocacy and support to young people in youth detention centres, recognizing the pipeline from the youth criminal justice system to the adult system.
28. Advocate for sexual health education with a strong focus on consent for young women and girls in the criminal justice system. CAEFS can liaise with Action Canada and provincial sexual health organizations to facilitate access to this education.

**CAEFS Response:** *CAEFS does not currently have capacity to take up the recommendations proposed for Young Women and Girls directly. We remain open to supporting organizations who are already engaged in supporting individuals at youth detention centers and note both recommendations as potential areas for future work.*

## Provincial Carceral Facilities

29. Expand CAEFS advocacy to enhance presence and engagement with women, girls, trans and nonbinary people incarcerated in provincial facilities.
30. Advocate for arms-length investigator roles, similar to the federal Officer of the Correctional Investigator, in every province and territory.

**CAEFS Response**: *CAEFS does not currently have capacity to take up the recommendations proposed for Provincial Carceral Facilities. We will continue to support the work of our provincial counterparts and our local societies in their provincial advocacy work. We have passed along recommendation 30 to these regional bodies and local societies.*

# CONCLUSION

The CAEFS Reproductive Justice workshops were conceived of as a response to the forced and coerced sterilization of Indigenous women, and the need to reach women unable to participate in the external review process led by Senator Yvonne Boyer. The CAEFS Reproductive Justice workshops recognize the breadth of Reproductive Justice includes self-governance of one's body, consent to reproductive health care, and the rights to both control one's one reproduction and to parent.

The workshops expose the incompatibility of reproductive justice with the overincarceration of Indigenous women in Canada and the separation of all incarcerated mothers from their children. We envision a future where people are sovereign over their bodies, sovereign over their decisions to shape their families, and live with their children in safe and sustainable communities. As one participant said, *"We need to be beating the drum louder."*

> *"We need to be beating the drum louder."*

# REFERENCES


Balfour, G. (2018). Searching prison cells and prisoner bodies: Redacting carceral power and glimpsing gendered resistance in women's prisons. Criminology & Criminal Justice, 18(2), 139-155.

Barrera, J. (2017). Indigenous child welfare rates creating humanitarian crisis. CBC News. Retrieved from: https://www.cbc.ca/news/indigenous/crisis-philpott-child-welfare-1.4385136

Benoit, D. (2004). Infant-parent attachment: Definition, types, antecedents, measurement and outcome. Paediatrics & Child Health, 9(8), 541-545.

Bodkin, C., Pivnick, L., Bondy, S., Ziegler, C., Martin, R., Jernigan, C., & Kouyoumdjian, F. (2019). History of Childhood Abuse in Populations Incarcerated in Canada: A Systematic Review and Meta-Analysis. American Journal of Public Health, 109(3), E1-E11.

Bowlby, J. (1952). Maternal care and mental health. World Health Organization Monograph. Retrieved from: http://darkwing.uoregon.edu/~eherman/teaching/texts/Bowlby%20Maternal%20Care%20and%20Mental%20Health.pdf

Boyer, Y., Bartlett, J. (2017). Tubal ligation in the Saskatoon Health Region: the lived experience of Aboriginal women [external review]. Saskatoon Health Region. Retrieved from: https://www.saskatoonhealthregion.ca/DocumentsInternal/Tubal_Ligation_intheSaskatoonHealthRegion_the_Lived_Experience_of_Aboriginal_Women_BoyerandBartlett_July_22_2017.pdf

Brennan, S. (2014). Canada's Mother-Child Program: Examining its emergence, usage and current state. Canadian Graduate Journal of Sociology and Criminology. 3(1). DOI: http://dx.doi.org/10.15353/cgjsc-rcessc.v3i1.84

Canada (1982). *Constitution Act*.

Canada (1992). *Corrections and Conditional Release Act*. Retrieved from: https://laws-lois.justice.gc.ca/eng/acts/C-44.6/

Canada (2004). *Assisted Reproduction Act*

Canada (2020). Reducing the number of Indigenous children in care. Retrieved from: https://www.sac-isc.gc.ca/eng/1541187352297/1541187392851

Canada v. Bedford 2013 SCC 72

Canadian Friends Service Committee (the Quakers) (2018). Considering the Best Interests of the Child when Sentencing Parents in Canada https://quakerservice.ca/wp-content/uploads/2018/12/Considering-the-Best-Interests-of-the-Child-when-Sentencing-Parents-in-Canada.pdf

Carter Ramirez, A., Liauw, J., Costescu, D., Holder, L., Lu, H., & Kouyoumdjian, F. (2020). Infant and Maternal Outcomes for Women Who Experience Imprisonment in Ontario, Canada: A Retrospective Cohort Study. Journal of Obstetrics and Gynaecology Canada: JOGC doi: 10.1016/j.jogc.2019.11.068

Correctional Service Canada (CSC) (2015). Commissioner's Directive 800: Health Services. Retrieved from: http://www.csc-scc.gc.ca/politiques-et-lois/800-cd-eng.shtml

Correctional Service Canada (CSC) (2016). Commissioner's Directive 768: The Institutional Mother-Child Program. Retrieved from: https://www.csc-scc.gc.ca/lois-et-reglements/768-cd-en.shtml

Correctional Service Canada (2017). Gender dysphoria. Retrieved from: https://www.csc-scc.gc.ca/lois-et-reglements/800-5-gl-eng.shtml

Dirks, D. (2004). Sexual Revictimization and Retraumatization of Women in Prison. Women's Studies Quarterly, 32(3/4), 102-115.

Donelle, L., & Hall, J. (2014). An Exploration of Women Offenders' Health Literacy. Social Work in Public Health, 29(3), 240-251.

Donelle, L., Rempel, E., Hall, J. (2016). An assessment of Canadian criminalized women's health information preferences and health literacy skills. Universal Journal of Public Health, 4(1), 16-22. DOI: 10.13189/ujph.2015.040103}

Farrell MacDonald, S., Gobeil, R., Biro, S. M., Ritchie, M. B., & Curno, J. (2015). Women Offenders, Substance Use, and Behaviour, Research Report R358. Ottawa, ON: Correctional Service of Canada.

Farrell MacDonald, S., Keown, L.A., Boudreau, H., Gobeil, R., Wardrop, K. (2015). Prevalence of Psychotropic Medications Among Federal Offenders, Research Report R373. Ottawa, ON: Correctional Service of Canada.

Ferszt, G. Palmer, M., McGrane, C. (2018). Where does your state stand on shackling of pregnant women? Nursing for Women's Health, 22(1), 17-23. https://nwhjournal.org/article/S1751-4851(17)30335-5/pdf

Hutchison, J. (2019). "Bend Over and Spread Your Butt Cheeks": Access to Justice for Women Strip Searched in Prison, Annual Review of Interdisciplinary Justice Research, 8. Edited by Steven Kohm, Kevin Walby, Kelly Gorkoff, and Katharina Maier The University of Winnipeg Centre for Interdisciplinary Justice Studies (CIJS). Retrieved from: https://docs.wixstatic.com/ugd/3ac972_7d01e1def43d40b7bb6b122c959ba6bb.pdf

Iftene, A. (2019). Punished for Aging. Toronto: University of Toronto Press.

Inglis v. BC 2013 BCSC 2309

Jones, C., & Seabrook, R. (2017). The New Jane Crow: Mass Incarceration and the Denied Maternity of Black Women. Race, Ethnicity and Law. Published online: 25 May 2017; 135-154. https://doi.org/10.1108/S1521-613620170000022011

Kouyoumdjian, F., McConnon, A., Herrington, E., Fung, K., Lofters, A., Hwang, S. (2018). Cervical Cancer Screening Access for Women Who Experience Imprisonment in Ontario, Canada. JAMA Network Open. 2018;1(8):e185637. doi:10.1001/jamanetworkopen.2018.5637

Kouyoumdjian, F., Pivnick, L., Mcisaac, K., Wilton, A., Lofters, A., & Hwang, S. (2017). Cancer prevalence, incidence and mortality in people who experience incarceration in Ontario, Canada: A population-based retrospective cohort study. PloS One, 12(2), E0171131.

Kouyoumdjian, F., Schuler, A., Matheson, F., & Hwang, S. (2016). Health status of prisoners in Canada: Narrative review. Canadian Family Physician Medecin De Famille Canadien, 62(3), 215-222.

Liauw, J., Foran, J., Dineley, B., Costescu, D., & Kouyoumdjian, F. (2016). The Unmet Contraceptive Need of Incarcerated Women in Ontario. Journal of Obstetrics and Gynaecology Canada, 38(9), 820-826.

Luck, S. (2021). Nova Scotia to ban practice of 'dry celling in jails. CBC News. https://www.cbc.ca/news/canada/nova-scotia/nova-scotia-to-ban-controversial-prison-practice-of-dry-celling-in-jails-1.5865086

Miller, K. (2017). Canada's Mother-Child Program and incarcerated Aboriginal mothers: How and why the program is inaccessible to Aboriginal female offenders. Canadian Family Law Quarterly, 37(1), 1-23.

National Inquiry into Murdered and Missing Indigenous Women and Girls (NIMMIWG) (2019). Final Report. Retrieved from: https://www.mmiwg-ffada.ca/final-report/

National Inquiry into Murdered and Missing Indigenous Women and Girls (NIMMIWG) (2019). Calls for Justice. Retrieved from: https://www.mmiwg-ffada.ca/final-report/

Native Women's Association of Canada (2015). What is Gladue? https://www.nwac.ca/wp-content/uploads/2015/05/What-Is-Gladue.pdf

Office of the Correctional Investigator (2013). Risky Business. Retrieved from: https://www.oci-bec.gc.ca/cnt/rpt/pdf/oth-aut/oth-aut20130930-eng.pdf

Office of the Correctional Investigator (2016). Annual Report 2015/2016. Retrieved from: https://www.oci-bec.gc.ca/cnt/rpt/annrpt/annrpt20152016-eng.aspx

Office of the Correctional Investigator. (2020). Indigenous people in federal custody surpasses 30%. Retrieved from: https://www.oci-bec.gc.ca/cnt/comm/press/press20200121-eng.aspx

Paynter, M.J., Drake, E., Cassidy, C., & Snelgrove-Clarke, E. Maternal Health Outcomes for Incarcerated Women: A Scoping Review. Journal of Clinical Nursing, 28(11-12), 2046-2060. Published online February 20. doi: 10.1111/jocn.14837

Paynter, M., Jefferies, K., McKibbon, S., Martin-Misener, R., Iftene, A., Tomblin Murphy, G. Mother Child Programs for Incarcerated Mothers and Children and Associated Health Outcomes: A Scoping Review (2020). Nursing Leadership. 33(1), 81-99.doi:10.12927/cjnl.2020.26189

Poehlmann, J. (2005). Representations of Attachment Relationships in Children of Incarcerated Mothers. Child Development, 76(3), 679-696.

Public Safety Canada (2019). Corrections and Conditional Release Statistical Overview 2018. Retrieved from: https://www.publicsafety.gc.ca/cnt/rsrcs/pblctns/ccrso-2018/ccrso-2018-en.pdf

R. v. Al-Rawi 2018 NSCA 10

R. v. Ewanchuk 1999 1 SCR 330

R v. Morgentaler 1988 1 SCR 30

R v Wagar, 2015 ABCA 327

Ross, L. (2017). Reproductive Justice as Intersectional Feminist Activism. Souls, 19(3), 286-314.

Ross, L., & Solinger, L. (2017). Reproductive Justice: An Introduction. University of California Press.

Roth, R., & Ainsworth, S.L. (2015). "If They Hand You a Paper, You Sign It": A Call to End the Sterilization of Women in Prison. Hastings Women's Law Journal. Retrieved from: https://repository.uchastings.edu/hwlj/vol26/iss1/3/

Saar, M., Epstein, R., Rosenthal, L., & Vafa, Y. (2014). The sexual abuse to prison pipeline. Retrieved from: https://www.law.georgetown.edu/poverty-inequality-center/wp-content/uploads/sites/14/2019/02/The-Sexual-Abuse-To-Prison-Pipeline-The-Girls%E2%80%99-Story.pdf

SAMHSA. (2014). Concept of trauma and guidance for a trauma-informed approach. Retrieved from: https://ncsacw.samhsa.gov/userfiles/files/SAMHSA_Trauma.pdf

Senate of Canada (2017). Life on the Inside: Human Rights in Canadian Prisons. Retrieved from: https://sencanada.ca/en/sencaplus/news/life-on-the-inside-human-rights-in-canadas-prisons/

Shlafer, R., Hardeman, R., & Carlson, E. (2019). Reproductive justice for incarcerated mothers and advocacy for their infants and young children. Infant Mental Health Journal, 40(5), 725-741.

Simkins, S. B., Hirsh, A. E., Horvat, E., & Moss, M. B. (2004). The school to prison pipeline for girls: The role of physical and sexual abuse. Children's Legal Rights Journal, 24(4), 56-72.

Sister Song (no date). Reproductive Justice. Retrieved from: https://www.sistersong.net/reproductive-justice/

Smylie, J., & Phillips-Beck, W. (2019). Truth, respect and recognition: Addressing barriers to Indigenous maternity care. CMAJ : Canadian Medical Association Journal = Journal De L'Association Medicale Canadienne, 191(8), E207-E208.

Stote, K. (2012). The coercive sterilization of Aboriginal women in Canada. American Indian Journal of Culture and Research. 36(3), 117-150.

Stote, K. (2015). *An Act of Genocide: Colonialism and the Sterilization of Aboriginal Women*. Halifax: Fernwood Publishing.

Sufrin, C. (2018). Making mothers in jail: Carceral reproduction of normative motherhood. Reproductive Biomedicine & Society Online, 7, 55-65.

Tam, K., & Derkzen, D. (2014) Exposure to Trauma Among Women Offenders: A Review of the Literature, Research Report, R333. Ottawa, ON: Correctional Service of Canada.

Taskforce on Federally Sentenced Women (TTFSW) (1990) Creating Choices. Retrieved from: http://www.csc-scc.gc.ca/women/choice1e-eng.shtml

Treventhan, S., Auger, S., Moore, J-P., MacDonald, M., Sinclair, J. (2001). The effect of family disruption on Aboriginal and non-Aboriginal inmates. Retrieved from: https://www.aboriginallegal.ca/assets/prisons_effectoffamilydisruption.pdf

Truth and Reconciliation Commission of Canada (2015). Calls to Action. Retrieved from: http://trc.ca/assets/pdf/Calls_to_Action_English2.pdf

United Nations (1948). Convention on the Prevention and Punishment of the Crime of Genocide. Retrieved from: https://www.un.org/en/genocideprevention/genocide.shtml

United Nations (1989). Convention on the Rights of the Child. Retrieved from: https://www.unicef.org.uk/rights-respecting-schools/the-rrsa/introducing-the-crc/

United Nations (2007) United Nations Declaration on the Rights of Indigenous Peoples

United Nations (2015). United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). Retrieved from: https://cdn.penalreform.org/wp-content/uploads/1957/06/ENG.pdf

United Nations Office on Drugs and Crime. (2010) The Bangkok Rules: Rules for the Treatment of Female Prisoners and Non-Custodial Measures for Women Offenders. Retrieved online: https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf

Wortley, S. (2019). Halifax, Nova Scotia: Street Checks Report. NS Human Rights Commission. Retrieved from: https://humanrights.novascotia.ca/sites/default/files/editor-uploads/halifax_street_checks_report_march_2019_0.pdf

World Health Organization (2008). Integrating poverty and gender into health programmes: A sourcebook for health professionals (Sexual and reproductive health) Retrieved from: https://www.who.int/gender-equity-rights/knowledge/poverty-gender-in-health-programmes-sexual-reproductive-health/en/

World Health Organization (2010). Prison and Health. Retrieved from: http://www.euro.who.int/__data/assets/pdf_file/0005/249188/Prisons-and-Health.pdf

Zakaria, D., Thompson, J., Jarvis, A., Bourgotta, F. (2010). Summary of Emerging Findings from the 2007 National Inmate Infectious Diseases and Risk-Behaviours Survey. Correctional Service of Canada