

# Decriminalizing Race

The case for investing in community  
and social support for imprisoned  
racialized women in Canada

Heather Lawson





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# Decriminalizing Race

The case for investing in community and social support for imprisoned racialized women in Canada

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## Executive summary

The COVID-19 pandemic shines a spotlight on overcrowded institutions in Canada, including prisons: in federal penitentiaries, the COVID-19 infection rate for prisoners is nine times higher than the general infection rate in Canada.

At the same time, movements across North America have called for substantive law enforcement reform and the dismantling of systemic racism.

Together, these developments call the prison system into question.

This report examines the criminalization of racialized women, Canada's fastest growing prison population. In the last 10 years, the incarceration rate of women sentenced to federal institutions has increased by 32.5% despite the fact that the rate of women accused of a *Criminal Code* offence decreased by 15% between 2000 and 2017.

Indigenous and Black women are both disproportionately represented in prisons. Despite Indigenous and Black women accounting for 4.3% and 3%, respectively, of Canada's adult female population, they make up nearly half of all prisoners in federal women's institutions.

Over-policing, trauma, poverty, and sex work are key factors in explaining why racialized women are disproportionately jailed for their responses

to marginalization. Once in prison, programs that are supposed to help reintegrate offenders back into the community fail to be relevant to specific populations and issues.

For example, programs for Indigenous prisoners and those with substance use needs are not appropriately designed for the people they are intended to serve. Community-based programming offering support to marginalized groups before coming into contact with the justice system is a superior and cost effective approach.

The federal prison environment itself is antithetical to release and reintegration. The practice of separating families, solitary confinement, and a reliance on use of force to control inmates are ways in which the prison system contributes to the disenfranchisement of communities.

Public Safety Canada pegs the average cost of incarcerating a single inmate in a women's institution at \$191,843 per year. In total, approximately \$110 million is spent each year on keeping about 600 individuals in federal women's prisons. It costs far less to keep people out of prisons.

Community supervision, for example, costs 74% less than incarceration. In a study published by Homeless Hub, the costs of existing institutional responses to homelessness including shelters, affordable housing, and group homes were compared. With the exception of psychiatric hospitals, every response was less expensive than holding someone in jail.

The amount of money spent on federal women's prisons would be more effectively spent on addressing the root causes of incarceration: racism, colonialism, poverty, trauma, and mental illness. Even a fraction of what is spent on incarceration would have widespread benefits for individuals and communities if it was spent, instead, on sustained, culturally appropriate social support.

The mishandling of social distancing measures and subsequent COVID-19 outbreaks have shown prisons to be a threat to public health. That racialized women with few social supports have become the fastest growing prison population in Canada points to an over-reliance on criminalization to address problems such as trauma, addiction, poverty, and mental illness.

Focused measures to reduce the prison population as well as to invest in and improve community, health, and social services would be a much more effective strategy for ensuring safety for all. With ongoing movements to address and dismantle systemic racism and colonialism, it is more crucial than ever to end the harm perpetuated by imprisoning those already disenfranchised in Canadian society.

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## Introduction

Women, particularly young racialized women, are Canada's fastest growing prison population. In 1991 the large-scale report by the Task Force on Federally Sentenced Women, *Creating Choices*, was written to document gendered experiences of criminalization for women and to intervene in the rising population of women's federal jails. Since that report, the number of women sentenced to federal jails has risen 200%.<sup>1</sup>

Today, two converging issues are forcing Canadians to reimagine the effectiveness of and reliance on prisons. First, COVID-19 has cast a spotlight on many institutions and their inability to manage a pandemic due to overcrowding, poor sanitary practices, and a lack of oversight. This affects prisons acutely, resulting in outbreaks and unsafe living conditions for the 39,579 individuals imprisoned in Canada.<sup>2</sup> Concurrently, movements to defund police departments across the globe and demonstrations against racism after recent police killings of Black and Indigenous people in Canada have forced many to reexamine the practices of law enforcement broadly.

With some analysis of provincial and territorial jails, this report focuses mainly on the factors contributing to the number of racialized women in the federal penitentiary system.<sup>3</sup> Additionally, it will examine the factors contributing to the growth of the population of imprisoned racialized women as well as their experience within the Canadian legal system as 'offenders'. It will also examine the myriad of ways in which prisons fail incarcerated women, especially the most marginalized, despite high levels of funding. The report argues—and research conclusively shows—that these funds would be more effectively spent on treating the root causes of incarceration. Alleviating poverty, increasing the quality and quantity of services available for those coping with trauma, dismantling the enduring effects of racism and colonization, and providing needed support for families before individuals come into contact with the justice system would create stronger and safer communities.

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## COVID-19

The COVID-19 pandemic has illuminated how government institutions are managing this health crisis. Prisons have not fared well. They are overcrowded, operating at 102.2% capacity.<sup>4</sup> Inmates live in close quarters and interact with multiple staff members a day in order to secure their basic needs. Conditions in Canadian prisons have had disastrous consequences.

In a CBC news analysis, it was shown that as of July 2020, COVID-19 infection rates are nine times higher in some Canadian jails compared to the general public. Nationally, the infection rate among the general Canadian population is 2.87 people for every 1,000 people. In provincial/territorial jails the average infection rate is 13.94 people for every 1,000 people and 26.41 people for every 1,000 people in federal jails. B.C. and Quebec have the worst disparities between the federal prison infection rate and the general population infection rate—64.26 and 93.37 per 1,000, respectively.<sup>5</sup>

Despite the obvious vulnerability of prisons to COVID-19 outbreaks, the crisis is being poorly managed, with inadequate protection for inmates, their family members, and staff at penitentiaries. A preliminary study written by experts at the University of Toronto's Dalla Lana School of Public Health analyzed testing procedures and COVID-19 outcomes from March 30 to April 21, 2020. The study found that nearly three-quarters of Canadian penitentiaries had a lower rate of testing than the general public and nearly one-quarter of the penitentiaries reported administering zero tests.<sup>6</sup>

Joelle Beaulieu, an inmate at the Joliette Institution for Women, has filed a class action lawsuit against Correctional Services Canada for its mishandling of the pandemic at Quebec institutions.<sup>7</sup> The filing alleges that federal prison officials did not act fast enough to implement protection measures against the virus. Other complaints from inmates include corrections staff being told not to wear masks in order to reduce panic, little communication with family members outside of penitentiaries to keep them informed about the state of the prisons and the health of their loved ones,<sup>8</sup> and the practice of medical isolation for those exhibiting symptoms being virtually no different from solitary confinement.<sup>9</sup>

As demonstrated throughout the pandemic, those most marginalized by Canadian society have faced the worst outcomes. Two specialized units for Inuit inmates at the Federal Training Centre in Quebec have been swept with a serious outbreak: 162 confirmed cases as of July 16, 2020.<sup>10</sup>

In Ontario provincial jails, over 2,300 inmates have been released from custody in order to counteract crowded conditions.<sup>11</sup> While release from incarceration is important, the Canadian government needs a long-term decarceration strategy, not an ad-hoc effort at the height of a global health crisis. While the pandemic has elevated the need for decarceration, the evidence about the crime rate in Canada and overall effectiveness of prisons has long pointed to a need for alternatives to imprisonment.

COVID-19 has revealed that imprisonment is a threat to public health. Although a decarceration strategy is more crucial than ever, the need to

invest in social support rather than prisons exists independent of the crisis. The ways in which racialized women have been criminalized for escaping abuse, poverty, and mental illness are a primary component of that need for better support.

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## Racialized women and the justice system

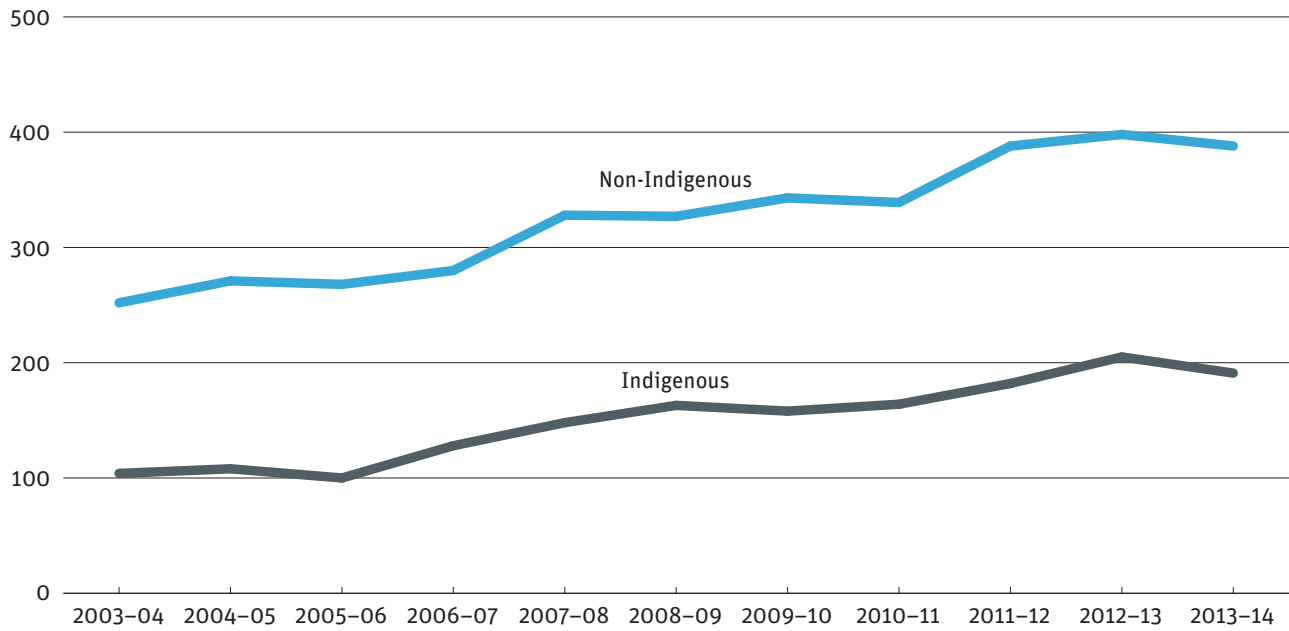
These are some things that could get you arrested in Canada: driving over the speed limit, being drunk in public, trespassing, stealing a pack of gum. The list goes on. Illegal acts are incredibly common: in a survey nearly 40% of youth reported engaging in one or more acts of delinquency, including violence, acts against property, or the sale of drugs.<sup>12</sup> It is plainly true that 40% of Canadian youth are not in prison. As Angela Davis points out in *Are Prisons Obsolete?*, it is not an act of wrongdoing that makes one a criminal but rather being caught, arrested, and convicted.<sup>13</sup> Who is criminalized is a different matter than who commits a criminal act. Trends in prison populations show that criminalization is determined by racist constructions of crime. In *Policing Black Lives*, Robyn Maynard refers to this as the criminalization of race.<sup>14</sup> In this section trends in crime and arrest rates will be analyzed as well as some of the ways in which racialized women are uniquely and increasingly criminalized in Canada.

### Crime and imprisonment rates

Trends in Canadian police-reported crime rates in comparison with prison population rates point to increased criminalization of non-violent offences. In 2013, the police-reported crime rate was at its lowest point since 1969.<sup>15</sup> From 1998 to 2017, the overall police-reported crime rate fell by 36%.<sup>16</sup> Statistics Canada has pointed to a variety of factors in the decreasing crime rate, including an aging population, changing police practices, the rise of technology, shifts in unemployment, variations in alcohol consumption, neighbourhood characteristics, and changing attitudes towards risky/illegal behaviour.<sup>17</sup> Arrest rates, however, have not mirrored the falling crime rate, only declining by 16% over the same period.<sup>18</sup> While these decreases have contributed to a gradual decline in the general federal incarceration rate, this is not the case for women. The incarceration rate of those federally sentenced to a women's institution has risen by 32.5% in the last 10 years.<sup>19</sup>

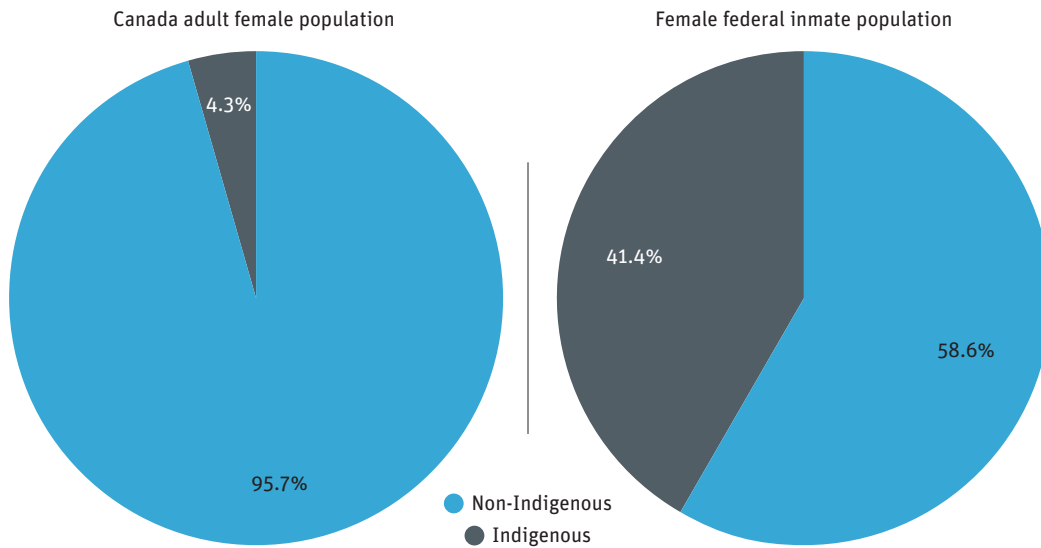


**FIGURE 1** Indigenous and non-Indigenous female prison population comparison



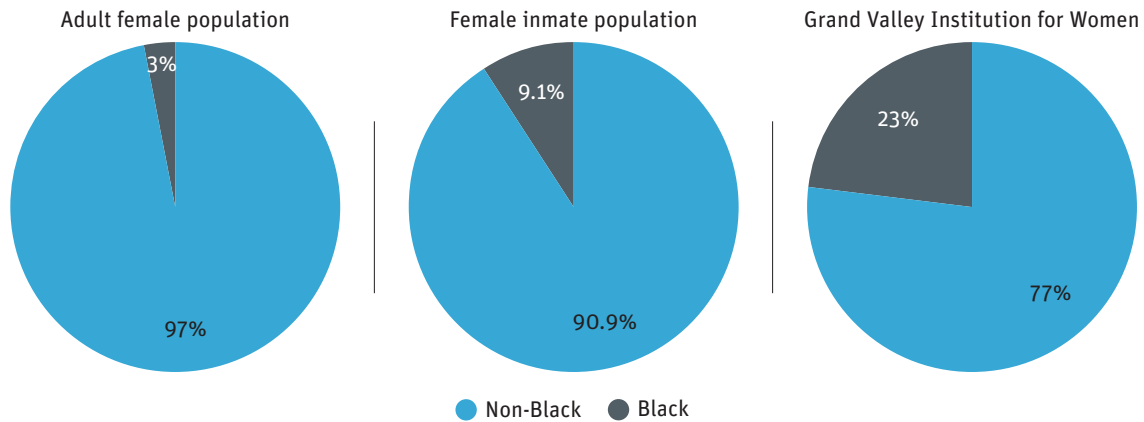
Source Office of the Correctional Investigator

**FIGURE 2** Indigenous vs. non-Indigenous adult female vs. federal female inmate populations (2013 data)



Source Office of the Correctional Investigator

**FIGURE 3** Black vs. non-Black adult female, federal inmate, and Grand Valley female inmate populations (2013)



Source Office of the Correctional Investigator

This is disconcerting, given that the rate of women specifically accused of a *Criminal Code* offense has also decreased: falling 15% between 2009 and 2017.<sup>20</sup>

Despite only accounting for 4.3% of the adult female population, Indigenous women make up just over 40% of federally sentenced women. They have become the fastest growing prison population, increasing by 60% over the last 10 years in federal prisons.<sup>21</sup>

Black women represent another growing subset of the prison population disproportionate to the general population. Black women make up 3% of the adult female population in Canada but they represent 9.12% of federal inmates in women's institutions. The majority of Black women inmates are held at the Grand Valley Institution for Women, a federal prison in Ontario, where 23% of the population is Black.<sup>22</sup>

The stated operation and mission of Correctional Services Canada (CSC) as it relates to women's corrections is this: "CSC's safe and supportive environment provides opportunities that empower women to live with dignity and respect. CSC: [helps] women offenders rebuild their lives as law-abiding citizens and [creates] safer communities for all."<sup>23</sup> The growing rate of incarcerated racialized women runs counter to this mission.

The recidivism rate, which is the rate at which a convicted criminal reoffends, is very high in Canada. A 2003-04 Correctional Services Canada study examining female offenders estimated that women have a reconviction rate of 38% in Canada.<sup>24</sup> We also know that eight of every 10 female inmates

have a prior conviction.<sup>25</sup> This suggests the existence of a marginalized population repeatedly entering the prison system.

Marginalization, and the ways in which racialized women are required to cope with marginalization, are used to turn them into criminals.

### **Trauma, coping, and hyper-responsibility**

Racialized women in Canada are both under- and over-policed. For example, Indigenous women in Vancouver are more likely to receive a street check than any other group.<sup>26</sup> At the same time, years of mistreatment, abuse, and negligence towards racialized people in Canada means that law enforcement cannot be relied upon in times of need. A report by Pivot Legal Society, a legal advocacy organization in Vancouver, found that the majority of individuals surveyed who had been criminalized for drug use said that they would never call the police if in trouble.<sup>27</sup>

Racialized women, in particular, are expected to make up for the lack of protection that those who are more privileged count on. The Canadian Association of Elizabeth Fry Societies (CAEFS) and the Native Women's Association of Canada (NWAC) calls this hyper-responsibility.<sup>28</sup> One especially disconcerting example of hyper-responsibility takes the form of responses to violence. Racialized women facing intimate-partner violence have learned in a variety of ways that law enforcement does not exist to help them. With escalating violence, one must depend on self-defence. Women are increasingly getting charged for domestic violence as a result of zero-tolerance policies that require officers on the scene to make an arrest.<sup>29</sup> Worse, women generally need to use weapons to defend themselves against larger partners. This means that mandatory minimum sentences then apply to the charge as well. This is a common experience and was a consistent thread of testimony during the Inquiry into Missing and Murdered Indigenous Women and Girls.<sup>30</sup>

The kinds of criminal offences for which most women are sentenced in federal prison—those that are viewed as most serious by the court system—are homicide, attempted murder, robbery, major assault, and drug trafficking/importation.<sup>31</sup> Importantly, these violent offenses occur, a majority of the time, as an act of self-defence or against a partner that has been abusive. In 1998, for example, the majority of the 68 women serving a life sentence for murdering their intimate partners had been abused by their partner prior to the offence.<sup>32</sup>

The majority of incarcerated women are criminalized for behaviours used to cope with trauma, poverty, and mental health issues.<sup>33</sup> Histories of family

and sexual violence are especially prevalent among racialized incarcerated women. Seven out of 10 (72%) of federally sentenced Indigenous women and 48% of non-Indigenous federally sentenced women report experiencing abuse during childhood.<sup>34</sup> This raises issues regarding the experience of women in prisons. Rather than addressing traumatic circumstances as a means to reintegrate, life in prison is traumatic itself.

Consider the use of strip searches. This invasive practice is a routine part of life in prison. Humiliating and degrading, strip searches should be understood as state-sanctioned sexual violence. For those with histories of sexual assault, they can trigger previous trauma. Worse still, up to 30% are not done in accordance with policy.<sup>35</sup> In the 2018-19 Annual Report of the Correctional Investigator, strip searches were reported to dissuade women from participating in visits, activities, and programs because they knew that they could be conducted upon entering or leaving.<sup>36</sup> The default occurrence for “random” searches is set at a ratio of 1:3. This means that upon leaving for or returning from certain activities, there is a one in three chance that an inmate will have to undergo a strip search for no justifiable reason.

The correctional investigator has stated that there is no evidence that increasing or decreasing the practice of strip searches would have any demonstrable effect on the safety or security of the institution.<sup>37</sup> There is reason to dispute this claim. The Use of Force Coding Project tracking regions and circumstances where use of force incidents occur indicate that 15% of use of force incidents occurred during strip searches.<sup>38</sup> Abolishing the use of strip searches likely would have a demonstrable effect on safety: they would make the individuals that are subject to them much safer.

## Poverty

Starting from the point of contact with law enforcement, the Canadian penal system is stacked against those living in poverty. Beyond over-policing, low-income Canadians are more likely to be detained when they are arrested, to be denied bail, to plead guilty to a charge, and to struggle to reintegrate.<sup>39</sup> The feminization<sup>40</sup> and criminalization of poverty are two processes impacting racialized women. Angela Marie MacDougall, the executive director of Battered Women’s Support Services (BWSS), has had a career as a frontline worker specializing in supporting women falling through gaps in Canada’s social services web.<sup>41</sup> The women she works with are often poor, racialized, and have a history of criminalization or are at risk of being criminalized.

MacDougall highlights some of the ways in which racialized women are experiencing these processes.

Poor neighbourhoods in Canada are over-policed and those living in them have an increased likelihood of being stopped by the police. This is highlighted by a case study in Toronto mapping police hot spots.<sup>42</sup> Officers have an enormous amount of discretion when it comes to whom they charge and what with. According to MacDougall, this allows for racist practices. She also notes a sustained and troubling trend in police officers viewing women as offenders rather than victims when called to a scene. This is especially harmful to those experiencing sexual and intimate-partner violence. Another trend she sees on the rise in her work is that immigrant women, and especially those with noticeable accents, are being discriminated against by police officers.

MacDougall also discusses the compounding effects of a lack of available social support for poor women and how women are socialized and rewarded for staying in relationships. In her experience, this leads to women being charged for crimes that they are party to and often play a minimal role in. This is supported by observations documented by the correctional investigator. Just over half (53%) of federally incarcerated Black women are serving time for Schedule II drug offences.<sup>43</sup> A Schedule II substance is defined as having high potential for abuse and a common example is cocaine. Interviews held with Black women at Grand Valley Institution indicated that most were incarcerated for drug trafficking and many indicated that their reason for carrying drugs across international borders was that they were living in poverty. Some also reported being forced into the act by violent partners or family members.

Criminalization and poverty work together to form a nearly inescapable cycle. Poverty enables conditions that are used to justify heightened police activity as well as supplies push factors towards crime, while a criminal record makes it extremely difficult to secure employment and other supports upon release.<sup>44</sup>

## **Sex work**

Sex work is a highly gendered and racialized industry in Canada; there are also many trans and gender non-conforming sex workers in the industry. One of the reasons for this is related to severe discrimination in other industries and workplaces. In Canada, purchasing sex work is illegal while supplying services is not. However, the environment of sex work is still heavily

criminalized, according to Kerry Porth, an activist, former sex worker, and sex work policy consultant at Pivot Legal Society in the Downtown Eastside of Vancouver, B.C.<sup>45</sup>

Current laws in Canada follow the nordic model, which criminalizes the purchasers rather than sex work. Though framed as protecting sex workers, this model endangers them. Criminalizing those that purchase sex work pushes the industry further underground. It also makes it so that clients are less willing to provide referrals, insist on exchanging services in less safe locations, like their own cars rather than public hotels, and leave the workers generally less able to negotiate their terms of service.

Sex work remains a highly criminalized environment. Many sex workers are still arrested on charges adjacent to their work without technically being arrested under prostitution laws. Porth notes that sex workers are generally harassed and surveilled by police officers. Street checks are a common practice in areas with a high concentration of street-based sex workers. Though estimates suggest that street-based workers make up only 20% of sex workers in Canada,<sup>46</sup> they face the most negative consequences of enforcement efforts. Street-based sex workers usually lack social support and are the most endangered and penalized by current sex work legislation.

Indigenous and racialized women are overrepresented in the street worker population. They are marginalized by the attitudes and laws surrounding their work and by racism that results in them being targeted by police and treated more harshly in the justice system. During a street check, sex workers are often arrested for loitering, possession, or other charges that are unrelated to sex work and would most likely not have been pressed if not for their work.

Sex work, poverty, and interpersonal violence are often entangled in ways that leave individuals in highly precarious situations and with few ways to seek safety. In the Downtown Eastside of Vancouver, where Porth is based, she hears from many Indigenous workers that once lived in the North that they rely on sex work for housing, transportation, and to fulfill other basic needs.

Porth identifies several avenues as opportunities for decarceration and reduction of the marginalization that sex workers face. The most important: a review of Canadian legislation and the decriminalization of sex work. Two others that would improve conditions for many in Canada include funding for affordable housing and accessible child care.

Current events emphasize the need for these measures. The COVID-19 pandemic has left sex workers incredibly vulnerable. A drastic drop in demand leaves many who were already poor worse off. Additionally, Porth highlights

that clients take advantage of stressful situations, requesting riskier services or paying lower rates. Because of the criminalization of sex work, workers are not eligible for benefits like the Canada Emergency Response Benefit (CERB) or Canada Emergency Student Benefit (CESB). Decriminalization would help to create less risky work environments for sex workers and facilitate access to established social supports.

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## Prison failings in reintegration and prevention measures

Prisons, at least according to Correctional Services Canada, aren't intended to be solely punitive institutions.<sup>47</sup> Reintegration efforts in the form of special programming have been introduced to address the rising incarceration rate of Indigenous people, people with mental illness, and those with a history of trauma and substance use. These measures sidestep the root of these issues. The idea that prisons can exist to both punish people for engaging in coping behaviours and reduce or eliminate the incidences of these behaviors through programming and reintegration measures without addressing poverty, colonialism, or systemic racism, is questionable at best. Additionally, the programs that have been implemented to address illness and inequality are ineffective. Accessible community programming provided to individuals before coming into contact with the justice system is a far superior and cost-effective way to address issues such as addiction and poverty.

The programs offered in women's institutions have failed for a variety of reasons. A 2017 Auditor General of Canada report found that Correctional Services Canada is failing to effectively administer programs on several levels, from initial referral to delivery.<sup>48</sup> This audit was done to evaluate Correctional Services Canada's response to the federal report *Creating Choices: The Report of the Task Force on Federally Sentenced Women*.<sup>49</sup> *Creating Choices* highlighted the need for gender-specific reintegration programming to effectively address the gender-specific causes of incarceration. But, in the 30 years since that report, programs in prisons appear to have had little impact.

Program implementation has done little to convey that reintegration is a priority of corrections staff or to address the realities of criminalized women. For one, the classification tool that Correctional Services Canada uses to determine the security level of female offenders, the custody rating tool, was created over 25 years ago and is based on a sample of male offenders. This tool is also used to refer women to correctional programs. Because it was not

created to be used to refer people to programs, it systematically diminishes the opportunity for individuals to attend programs that meet their needs. A tool that was designed specifically for women offenders, which reviews their classification after the initial tool is used, was frequently overridden by corrections staff. Twice as many female offenders are placed in higher security classification than recommended by this second tool. This matters greatly because security classification is taken into consideration when decisions about release and parole are made. Women can't reintegrate if they aren't reintroduced. The practice of regularly placing women in higher security classifications than warranted suggests that Correctional Services Canada adopts a punitive approach that favours incarceration for longer periods to one that emphasizes decarceration and return to community.

Beyond program referral, the administration of programs does not align with their intended purposes. Two examples are programs for Indigenous women and safe injection sites for intravenous drug users.

### **Programs for Indigenous women**

One reason that prison programs for Indigenous women fail is that they do not take adequate stock of the diversity of Indigenous groups in Canada. Commissioners of the Inquiry into the Missing and Murdered Indigenous Women and Girls heard that Indigenous women were seemingly arbitrarily transferred between institutions. Being in institutions far from their communities means that the programs for Indigenous women, and the elders involved in administering them, have less meaning to them because they are less familiar with their traditions. This is significant, given the long legacy of the Canadian government's efforts to fracture community ties among Indigenous groups and the cultural genocide committed against them. If access to Indigenous programming is recognized as a crime-prevention strategy, removing individuals from their communities in order to imprison them should be discouraged and/or banned.

### **Prison needle exchange program**

In a Correctional Services Canada study, over three quarters, and nearly all Indigenous, federally sentenced women surveyed were identified as having moderate to high substance use needs.<sup>50</sup> Thirty percent of federally sentenced women report having a lifetime of drug use.<sup>51</sup> In June 2018, the Prison Needle Exchange Program began in two institutions. The Prison Needle Exchange



Program establishes safe injection sites in prisons. As of now, it is in all five federal women's prisons. In the 2018-19 Annual Report of the Office of the Correctional Investigator, concerns were expressed about the effectiveness of the program. First, it does not necessarily meet the clinical needs of drug users. It is a one-to-one syringe exchange rather than a program based on the need and demand of users. The correctional investigator also noted that the program seems to have built-in barriers, making enrollment inaccessible. Due to this, as of April 2019, the investigator stated that there were only a "handful" of people enrolled nationwide.<sup>52</sup> There are over 600 federally incarcerated women. If only those with lifetime drug use were enrolled in the program, there would be about 200 women using the safe injection sites in the federal prisons alone. Across nine prisons—women's and men's—there are only 50 registered.<sup>53</sup>

In comparison, safe injection sites outside of prisons are used by many. In a year-and-a-half of operation, the Clarence Street supervised injection site in Ottawa had 14,731 visits and served over 500 individuals.<sup>54</sup> That one public site serves 10 times the amount of people served in nine sites across federal prisons brings into question the actual availability and efficacy of harm-reduction initiatives behind bars.

Programming for Indigenous offenders and drug users are similar in their failings: they do not adequately meet the needs of the people they are created for and increasing their availability to people at risk of criminalization, before they come into contact with the justice system, would be a far more effective approach to rehabilitation. These deficiencies, coupled with the problems faced by racialized women in prison that will be illustrated in the following section, suggest that reintegration is, at best, an afterthought of the carceral system.

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## Problems for imprisoned women

As highlighted, prisons don't prioritize reintegration. Many aspects of prisons are actively antithetical to release, reintegration, and healing. Conditions inside prisons are notoriously harmful. One condition is the practice of strip searches. Other conditions that magnify the punitive approach of the criminal justice system, and disproportionately affect racialized women, include the separation of families, segregation, and use of force.

## Separating children from their parents

The separation of Indigenous families has long been a colonial project carried out through the residential school system, the '60s scoop and, today, the child welfare system. There are three times the amount of Indigenous children in state care than there were in residential schools at the height of their use.<sup>55</sup> Two-thirds (64%) of incarcerated Indigenous mothers are single parents, making them the primary caregivers for their children.<sup>56</sup> This contributes to the overrepresentation of Indigenous children in the care of the state.

About 400 federally sentenced women are parents.<sup>57</sup> There is a program in place that allows mothers to raise their children in correctional facilities, the Mother-Child program, which was implemented in 2001 and underwent many policy changes in 2008. These changes saw a stark decrease in the number of women participating in the program.<sup>58</sup> For one, the program was no longer available to those convicted of a serious or violent offence. While the welfare of children must be a top priority, this condition affects women sentenced with violent crimes while defending themselves and their children in violent homes. Secondly, the program requires that mothers must allow their children to be strip searched to participate.<sup>59</sup> This is a condition many do not wish to subject their child to due to the invasiveness of the practice. The age ranges allowed also decreased; the program now only applies to children age four and under on a full-time basis and children aged six and under on a part-time basis.<sup>60</sup> Despite the number of mothers in prison, in 2017 only 10 women participated in the program.<sup>61</sup> As of 2011, none of the women in the program were Indigenous. Some factors reported as likely contributing to this include: Indigenous children being taken into the care of Child Protection Services, the refusal to assist with the costs of transporting children to the institutions, and the lack of facilities in Northern communities—disproportionately affecting Inuit women and those from rural areas.<sup>62</sup>

While an emphasis on keeping families together is important, prison ought to be treated as a last resort. Family support and support for single parents in the forms of shelters, affordable housing, and accessible child care should be prioritized in order to keep families together outside of penal institutions.

## Segregation

As of December 1, 2019, the practice of segregation, commonly known as solitary confinement, became (sort of) illegal. Bill C-83, an amendment to

the *Corrections and Conditional Release Act*, eliminates administrative and disciplinary segregation. The Government of Canada is investing \$448 million in support of this bill.<sup>63</sup> The intention is to end segregation and replace units with Structured Intervention Units. There is little discernible difference between the two. The main change is that inmates were subject to 23 hours a day of segregation but can now only be confined in Structured Intervention Units for 20 hours per day. Former Minister of Public Safety, Ralph Goodale, conceded that the physical infrastructure of Structured Intervention Units are virtually indistinguishable from segregation units. He maintains that this change is still substantive: “What makes segregation segregation is not the physical cell; it is the lack of human contact. It is the isolation.”<sup>64</sup> It’s worth repeating that Structured Intervention Units will still isolate inmates for 20 hours per day. As Senator and former Canadian Association of Elizabeth Fry Societies Executive Director Kim Pate has written in the *Globe and Mail*, this is little more than expensive and cruel “rebranding.”<sup>65</sup>

Though the effects of the recent legislation remain to be seen, given the similarity of Structured Intervention Units to segregation units, it is worth understanding the use and impact of segregation prior to December 2019. Segregation has been overwhelmingly criticized and shown to have incredibly harmful psychological impacts.<sup>66</sup> Segregation in federal prison is either administrative or punitive. It is important to note that while inmates can request to be placed in segregation, this often occurs because they are unsafe and see no other choice. People were also placed in administrative segregation if they were believed to be a threat to themselves. This occurs after severe mental health episodes, suicidal acts, and self-injury. Acts of self-harm in prison are widespread and have increased over the years: the number of self-injury incidents has more than tripled in women’s federal prisons between 2003 and 2013, when there were 901 incidents recorded.<sup>67</sup> The study *Self-Injurious Behaviour in the Kingston Prison for Women*<sup>68</sup> reports that these incidents of self-harm are undetachable from histories of abuse and mental illness.

Despite the rebranding, segregation is commonplace in Canadian prisons. One in four Canadian prisoners will spend time in segregation.<sup>69</sup> Indigenous women tend to be segregated more frequently than their non-Indigenous counterparts and for longer periods of time.<sup>70</sup> In 2003, the Human Rights Commission reported that one Indigenous inmate had spent 567 days in segregation.<sup>71</sup> Beginning in 2006, an Indigenous woman spent over 1,500 days in segregation.<sup>72</sup> In a publication from the Canadian Human Rights Commission containing interviews with former inmates, it was reported that

white and Black inmates were held to different standards; an action resulting in a white woman being segregated for 24 hours would justify three weeks of segregation for a Black woman.<sup>73</sup>

Correctional Services Canada's use of segregation exacerbates present issues and ignores the roots of dangerous and self-injurious behaviour: trauma, abuse, and mental illness. The shift from segregation to Structured Intervention Units illustrates the inadequacy of prisons to meaningfully address issues faced by the majority of inmates and demonstrates that these are issues better addressed outside of the carceral system.

### **Use of force**

In 2018-19, use of force incidents reached their highest recorded level.<sup>74</sup> Correctional Services Canada has stated that it aims to decrease use of force to manage inmates. Recently, the Engagement Intervention Model was developed to replace the Situation Management Model. The new model is meant to emphasize “the importance of non-physical and de-escalation responses to incidents and to clearly distinguish response protocols for situations involving physical or mental health distress.”<sup>75</sup> The 2018-19 Annual Report of the Office of the Correctional Investigator, states that implementation of the new model has been ineffective and the office continues to review inappropriate and/or unnecessary use of force incidents. *Table 1* describes the most common forms of use of force generating incident reports to the Office of the Correctional Investigator in women's institutions.

Trends illuminated by the Office of the Correctional Investigator's Use of Force Coding Project highlights that the percentage of use of force incidents against racialized, transgender, intersex, and mentally ill inmates is growing. Note that the categories (excluding the female category) include incidents at men's and women's federal prisons.

Use of force in the year of the model change illustrates that the planned shift to non-violence and de-escalation has not been implemented by corrections staff. Additionally, those subject to violence tend to be racialized and/or mentally ill. Bearing witness and being subject to state-violence is traumatic and contradictory to the goal of “creating safer communities for all.”

The environment of prison magnifies and adds to the trauma experienced by criminalized women. Rather than restoring cycles of violence, the separation of families, solitary confinement, and use of force all contribute to these cycles. The need for decarceration is evident when examining the environment of prison itself.

**TABLE 1** Forms use of force in women’s institutions

Reported incidents reviewed by Office of the Correctional Investigator		159
Most common measures used	Frequency of measures	
Physical handling	128	
Restraint equipment (handcuffs/leg irons)	54	
Inflammatory agent (pepper spray)	48	
Pointing inflammatory agent with verbal orders	20	
Soft (pinel) restraints	9	
Shield	4	
Emergency Response Team	3	
<b>TOTAL</b>	<b>266</b>	

**TABLE 2** Use of Force Coding Project and marginalized inmates

Person involved in incident	2017-2018	2018-2019
Female	9.6% (126)	9.9% (154)
Transgender/intersex	8 inmates	14 inmates
Indigenous	46.9% (649)	45.0% (697)
Black	12.6% (164)	16.1% (249)
Person with mental disorder	39.6% (516)	45.2% (700)
Engaged in self-injurious behaviour	13.6% (177)	15.7% (244)

## Decriminalizing and investing in community

Comparing the cost of imprisoning women in Canada to the cost of establishing accessible housing, emergency shelters, and mental health programs highlights the need for decarceration and divestment in prisons. Canadian carceral spending demonstrates that a very large amount of money that could be allocated elsewhere is spent on a relatively small number of individuals. This expenditure does little to support, and actively harms, marginalized women caught in Canada’s justice system.

### Carceral spending

Carceral spending is a huge expenditure in Canada and a growing one. From 2007-08 to 2016-17, expenditures on federal corrections increased by 19.8%, from \$2.02 billion to \$2.41 billion.<sup>76</sup> A 2018 report from Public Safety

**TABLE 3** Cost of expansion of federal women’s prisons

Institution	Expansion	Total cost using PBO average
Nova Institution for Women	14 beds	\$3,638,516
Grand Valley Institution for Women	40 beds	\$10,395,760
Edmonton Institution for Women	40 beds	\$10,395,760
Fraser Valley Institution for Women	20 beds	\$5,197,880
<b>TOTAL</b>	<b>114 beds</b>	<b>\$29,627,916</b>

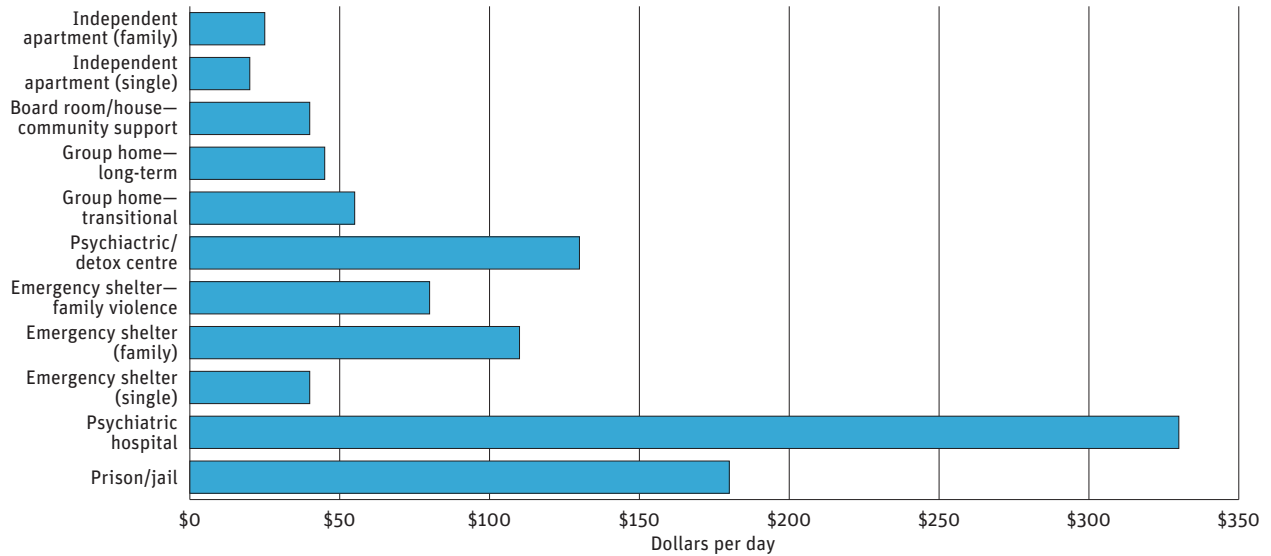
Canada pegs the average cost of incarcerating a single inmate in a women’s institution at \$191,843 per year.<sup>77</sup> That is \$525 per day per inmate. With approximately 600 inmates in federal women’s prisons, that works out to about \$110 million a year.<sup>78</sup>

The expansion of prisons has also contributed greatly to government expenditures. In 2014, Correctional Services Canada expanded four of the five women’s institutions.<sup>79</sup> This involved adding 114 beds across the four prisons. The Office of the Parliamentary Budget Officer reports the cost of expansion for women’s prisons is \$259,894 for each bed,<sup>80</sup> the equivalent of roughly \$29 million to expand Canada’s women’s prisons.

It costs much less to keep people out of prison. Community supervision costs 74% less than incarceration.<sup>81</sup> A 2017 report from the Auditor General of Canada concluded that \$4 million in custody costs could have been saved if the 225 women released on parole in the 2016-17 fiscal year had been prepared for release by their first parole eligibility date.<sup>82</sup> A 2006 study by Homeless Hub estimated the cost of homelessness in Canada.<sup>83</sup> Part of this analysis involved comparing institutional responses to homelessness, like prisons. With the exception of psychiatric hospitals, every analyzed form of housing currently available in Canada for those living in poverty was less expensive than prison.<sup>84</sup>

While an allocation of funding into services that decrease reliance on the prison system is crucial to countering the rate of incarcerated racialized women, it’s important to note that funding isn’t the sole solution. Angela Marie MacDougall, executive director of Battered Women’s Support Services, makes the point that funding services like Battered Women’s Support Services, though crucial, don’t address how many organizations are structured and operate in ways that uphold white supremacy. This makes these services less useful and even harmful to racialized women.<sup>85</sup>

**FIGURE 4** comparative costs of responses to homelessness: existing insititutional emergency and supportive options (averaged across four cities)



Source Steve Pomeroy, Homeless Hub

## Conclusion

The COVID-19 pandemic has been helpful in illuminating the need for decarceration in Canada. Before the health crisis, the purpose of prisons seemed to be an extremely expensive housing strategy for those most marginalized. That racialized women with few social supports have become the fastest growing prison population in Canada points to an over-reliance on criminalization to address problems such as trauma, addiction, poverty, and mental illness. Elevated action to reduce the prison population as well as to invest in and improve community, health, and social services would be a much more effective means to ensure safety for all. A fraction of Canadian carceral spending would serve far more if used to increase community programs and social services. Additionally, legislation decriminalizing substance use and sex work would increase the safety of many and reduce the number of people caught in prisons’s revolving door. With ongoing movements to address and dismantle systemic racism and colonialism, it is more crucial than ever to end the harm perpetuated by imprisoning those already disenfranchised in Canadian society.

# Appendix A

## A note on the limitations of this report

MUCH OF THE data publicly available about federal prisons is about Indigenous women. Little information from Correctional Service Canada (CSC) is disaggregated further by race or other social identities. This reduces the ability of research to speak to the unique experiences of all racialized women. The lack of racially disaggregated data in Canada is one of many ways in which the justice system operates with little transparency and public oversight. Additionally, this report is meant to document common experiences among those serving time in federal women's institutions. This includes trans, non-binary, and Two-Spirit individuals. The experiences of these inmates are also largely unknown to policymakers and the general public. However, trans, non-binary, and Two-Spirit people have unique experiences of criminalization and prisons. At the same time, they face additional barriers accessing social and institutional support.<sup>86</sup> Finally, this report is written by a white woman with no notable personal experience of being criminalized. It is written with the goal of supplying context to this issue and with the hope that the data, trends, voices and experiences of those affected will inform transformative change. It could not have been written without them making their stories, both in and outside of prison, known.



# Notes

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**3** Sentencing determines whether a person is sent to a federal or provincial/territorial jail: provincial/territorial jails imprison those sentenced for fewer than two years while federal jails are used for sentences over two years. Canada has five federal women's institutions that are governed by Correctional Services Canada (CSC). Limiting the scope to federal incarceration is helpful in analyzing funding and national trends in crime and incarceration rates but it is important to keep in mind that those federally sentenced make up a small portion of Canada's entire prison population. While there are about 600 incarcerated in women's institutions, about 6,000 people are serving time in women's provincial/territorial jails.

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