



Children of Incarcerated Caregivers

## 2024 Canada Prison Nursery Country Report

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Children have lived in Canadian prisons with their mothers for at least 150 years. Archival disciplinary records show incidents related to caretaking of children in the first women's penitentiary dating back to the 1850s and 1860s.<sup>1</sup> Today, the Mother-Child Program (MCP)<sup>2</sup>, a federal policy, allows young children to live with their mother in the country's five federal facilities for women, as well as a healing lodge for incarcerated Indigenous women. One province offers a similar program in one of its jails.

Little data is collected on the MCP's outcomes or benefits to women or their children. But independent researchers have found that very few people, especially Indigenous women, have participated in the program since its inception.

While the country's top corrections department seeks to expand the MCP in the coming years, some advocates encourage sentencing reform and community alternatives that avoid parental incarceration entirely.

### Canada's Prison System

In Canada, the criminal legal system is divided into two jurisdictions: federal and provincial/territorial. Provincial jails hold people who have been sentenced to less than two years and those held pre-trial, while federal prisons typically incarcerate those who have been sentenced to two years or more.<sup>3</sup> The Correctional Service Canada (CSC),<sup>4</sup> under the Minister of Public Safety, governs federal institutions that house women, including five prisons and a healing lodge.<sup>5</sup> There are an additional 44 adult provincial facilities where women are incarcerated.<sup>6</sup>

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<sup>1</sup> Ted McCoy, "Emily's Maternal Ideal: Pregnancy, Birth, and Resistance at Kingston Penitentiary," *Journal of the Canadian Historical Association* 27, no. 1 (2016): 211, <https://doi.org/10.7202/1040529ar>.

<sup>2</sup> "Commissioner's Directive 768 Institutional Mother-Child Program," Correctional Service Canada, Government of Canada, accessed August 3, 2023, [https://www.csc-scc.gc.ca/politiques-et-lois/768-cd-en.shtml#D\\_Mother\\_Child\\_Program](https://www.csc-scc.gc.ca/politiques-et-lois/768-cd-en.shtml#D_Mother_Child_Program).

<sup>3</sup> "Correctional Service Canada," Frequently Asked Questions, Government of Canada, accessed August 3, 2023, <https://www.canada.ca/en/correctional-service.html>.

<sup>4</sup> "Correctional Service Canada," Government of Canada, accessed August 3, 2023, <https://www.canada.ca/en/correctional-service.html>.

<sup>5</sup> "Women's Facilities," Correctional Service Canada, Government of Canada, accessed August 3, 2023, <https://www.csc-scc.gc.ca/women/002002-0003-en.shtml>.

<sup>6</sup> Martha Paynter, "Reproductive (In)Justice in Canadian Prisons for Women," PhD diss., (Dalhousie University, 2022); 115, <https://dalspace.library.dal.ca/handle/10222/81693>.

Roughly 32,000 people were incarcerated in Canada in 2021.<sup>7</sup> Of the adult population, 7 percent of those incarcerated in federal prisons were women.<sup>8</sup> Women are the fastest growing prison population in Canada, despite a decline in the overall number of people experiencing incarceration over the past five years.<sup>9</sup> Additionally, women of color are disproportionately incarcerated.<sup>10,11</sup> Five percent of Canada's population are Indigenous women, but nearly 50 percent of federally sentenced women are Indigenous.<sup>12</sup>

Four to 10 percent of incarcerated women are pregnant.<sup>13</sup> Most are separated from their infants soon after birth,<sup>14</sup> though a small number reside with their children in residential units within prison facilities. Additionally, two-thirds of incarcerated women have one or more dependent children, and the majority of these women were primary caregivers prior to imprisonment.<sup>15</sup> It is common for children to be placed in state care when their mother is incarcerated,<sup>16</sup> although it is not known how many pregnant women give birth and lose access to their child or how many children enter foster care.<sup>17</sup>

In Canada, children of incarcerated parents are said to experience “systemic invisibility,” which describes a lack of programming and research on their needs and their exclusion from criminal justice or social policy.<sup>18</sup> “[T]he pervasive ignorance about the experiences of Canadian children of prisoners was striking,” writes Else Marie Knudsen, assistant professor in Trent University's Department of Social Work.<sup>19</sup> “While these children make up a sizable population, and the experience and outcomes of parental incarceration appear to be significant, they are often hidden from view, subject to layers of invisibility.”<sup>20</sup> She concludes that “[t]his invisibility is likely to be

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<sup>7</sup> “Canada,” World Prison Brief, accessed August 3, 2023, <https://www.prisonstudies.org/country/canada>.

<sup>8</sup> “Canada,” World Prison Brief.

<sup>9</sup> Amanda Dowling and Colleen Fulton, “Prison Nurseries: A Review of Maternal and Infant Rooming in Outcomes for Incarcerated Mothers,” *Canadian Journal of Midwifery Research and Practice* 16, no. 2 (2017): 36, <https://www.cjmrp.com/files/prison-nurseries.pdf>.

<sup>10</sup> Andrea Knittel and Carolyn Sufrin, “Maternal Health Equity and Justice for Pregnant Women Who Experience Incarceration,” *JAMA Network Open* 3, no. 8 (2020), <https://doi.org/10.1001/jamanetworkopen.2020.13096>.

<sup>11</sup> Jamil Malakieh, “Adult and Youth Correctional Statistics in Canada, 2018/2019,” *Juristat, Statistics Canada*, December 21, 2020, <https://www150.statcan.gc.ca/n1/pub/85-002-x/2020001/article/00016-eng.htm>.

<sup>12</sup> Paynter, “Reproductive (In)Justice,” 1, 152.

<sup>13</sup> Dowling and Fulton, “Prison Nurseries,” 36.

<sup>14</sup> Dowling and Fulton, “Prison Nurseries,” 36.

<sup>15</sup> Dowling and Fulton, “Prison Nurseries,” 36.

<sup>16</sup> Martha Paynter, Clare Heggie, Lauren Matheson, Claire Rillie, Dominica Beals, and Mirinda Bray, “Maternal Incarceration in a Provincial Prison in Canada: A Qualitative Study,” *Journal of Advanced Nursing* 78, no. 7 (2022), <https://doi.org/10.1111/jan.15154>.

<sup>17</sup> Paynter, “Reproductive (In)Justice,” 127.

<sup>18</sup> Else Marie Knudsen, “The Systemic Invisibility of Children of Prisoners,” in *Prisons, Punishment, and the Family: Towards a New Sociology of Punishment*, ed. Rachel Condry and Peter Scharff Smith (Oxford University Press, 2018).

<sup>19</sup> Knudsen, “Systemic Invisibility,” 288.

<sup>20</sup> Knudsen, “Systemic Invisibility,” 288.

far from innocuous; children of prisoners deserve the practical and abstract benefits of being recognized, heard, and valued.”<sup>21</sup>

## Federal Mother-Child Program

Canada’s modern policy regarding children living with their incarcerated mothers was born of a government task force that investigated women’s corrections in the late 1980s.<sup>22</sup> Researchers surveyed women in federal facilities to understand barriers between them and their families.<sup>23</sup> Their report recommended more education and counseling services and adding regional facilities for mothers to be closer to their families, as well as a residency program for new and pregnant mothers to live with their babies in prison.<sup>24</sup>

Today, the Mother-Child Program operates in all five federal facilities for women, as well as the Okimaw Ohci Healing Lodge for incarcerated Indigenous women. However the CSC indicates that its “ability to accommodate participation in the *residential* component of the Mother-Child Program is dependent on institutional capacity” (emphasis added).<sup>25</sup>

The federal MCP allows some children to live full-time or part-time with their mothers who are incarcerated.<sup>26</sup> Children under the age of five – the age at which most go to school – are eligible for full-time residency, while those under the age of seven are eligible for part-time residency in a living unit.<sup>27,28</sup> Part-time residency may include overnight visits on weekends, holidays, and/or during the summer.

Each women’s institution has six to eight beds in residential units dedicated to the Mother-Child Program. The living units are located in minimum or medium security housing.<sup>29</sup> Four institutions have six-bed apartments available in their minimum-security units, outside the perimeter fence. The mother-child pair may be placed in two connecting rooms or one larger room. The units are typically furnished with a crib, changing table, high chair, and other baby equipment.<sup>30</sup>

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<sup>21</sup> Knudsen, “Systemic Invisibility,” 300.

<sup>22</sup> Raizel Robin, “Moms Raising Their Babies in Canadian Prisons,” *Broadview*, July 4, 2018, <https://broadview.org/moms-raising-their-babies-behind-bars/>.

<sup>23</sup> Robin, “Moms Raising Their Babies in Canadian Prisons.”

<sup>24</sup> Correctional Service Canada, “Creating Choices: The Report of the Task Force on Federally Sentenced Women,” April 1990, <https://www.csc-scc.gc.ca/women/toce-eng.shtml>.

<sup>25</sup> “Institutional Mother-Child Program,” Correctional Service Canada.

<sup>26</sup> Marie-Lynn Beriau (Acting Director General of CSC’s Women Offenders Sector) and Brigitte Bouchard (Acting Deputy Commissioner of CSC’s Women Offenders Sector) in an interview with the author, August 2023.

<sup>27</sup> “Institutional Mother-Child Program,” Correctional Service Canada.

<sup>28</sup> Beriau and Bouchard, interview.

<sup>29</sup> Correctional Service Canada, email message to author, Feb. 1, 2024.

<sup>30</sup> Cristina Howorun, “Program Allows Incarcerated Women to Raise Their Children Inside Canadian Prisons,” *CityNews*, May 24, 2023, <https://toronto.citynews.ca/2023/05/24/program-incarcerated-women-raise-their-children-prisons-canada/>.

The institutions do not offer daycare, educational programming, or guaranteed medical services, with the exception of emergency care for the kids. Instead, mothers may be approved to accompany the children to doctors appointments, educational classes, and other activities in the community, like swimming lessons.<sup>31</sup> “We really want to have the baby going out as much as possible with their mother so they have contact with the community on a regular basis,” Brigitte Bouchard, acting deputy commissioner of the CSC’s Women Offenders Sector, told Children of Incarcerated Caregivers (CIC).<sup>32</sup> Children may also leave to visit with family. They are subject to “non-intrusive” searches using scanners upon their return.<sup>33</sup>

To enroll in the residential units, mothers must apply for the program and meet the following qualifications:

- They are classified as minimum or medium security, or are maximum security and being considered for medium security;
- They have been screened via child welfare registries to determine whether information exists that should be considered in decisions about their stay;
- The provincial child welfare agency is supportive of their participation;
- There is no current assessment from a mental health professional indicating that the mother is incapable of caring for their child due to a mental health condition;
- They have not been convicted of an offense against a child or an offense that could be reasonably seen as endangering a child;
- They are not subject to a court order or other legal requirement prohibiting contact with their children or others.<sup>34</sup>

The mother must identify an “alternate caregiver” in the community to care for the child in the event of an emergency, as well as a babysitter within their institution to watch their child while they attend mandatory programming.<sup>35</sup> The babysitter must meet the same eligibility requirements as parents and complete First Aid and CPR training. They are screened by child welfare agencies for any information that may indicate that they pose a risk to a child.<sup>36</sup>

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<sup>31</sup> Beriau and Bouchard, interview.

<sup>32</sup> Beriau and Bouchard, interview.

<sup>33</sup> “Commissioner’s Directive 768 Institutional Mother-Child Program,” Correctional Service Canada, Government of Canada, accessed August 3, 2023, [https://www.csc-scc.gc.ca/politiques-et-lois/768-cd-en.shtml#D\\_Mother\\_Child\\_Program](https://www.csc-scc.gc.ca/politiques-et-lois/768-cd-en.shtml#D_Mother_Child_Program).

<sup>34</sup> “Institutional Mother-Child Program,” Correctional Service Canada.

<sup>35</sup> “Institutional Mother-Child Program,” Correctional Service Canada.

<sup>36</sup> Correctional Service Canada Women Offenders Section, email message to author, December 14, 2023.

After an application is submitted, the prison parole officer will hold a case conference with the facility's mother-child coordinator to review the application.<sup>37</sup> The coordinator will request an assessment by a child welfare agency to “determine whether participation in the program is in the best interests of the child” and consult with the chief of mental health. They may request a community assessment, too, to determine if the pair has familial support to participate. The mother's application then goes through a “robust” review process.<sup>38</sup> The parole officer presents a recommendation to a review board and, ultimately, the Institutional Head for consideration.

If they are not accepted, they may submit a rebuttal to the institutional head and a grievance against the decision.<sup>39</sup> For those who are not accepted or age out of the program, their children typically go to live with family or are placed in the foster care system. Prison staff work with mothers to develop a transition plan for children departing the program.<sup>40</sup>

CSC also operates a non-residential component of the MCP program.<sup>41</sup> All women are eligible for the activities, which may include escorted or unescorted temporary absences for family contact and parental responsibilities; private family visits; video visits; recordings of the mothers reading stories; and/or pumping and storing breastmilk for babies.<sup>42</sup>

### **Participation and Impact**

Global advocates for prison nurseries typically view them as a way to reduce trauma from maternal incarceration. They cite positive outcomes for incarcerated mothers and their children, including bonding that promotes child development, breastfeeding which is associated with positive health outcomes for mothers and babies, and reduced recidivism.

However, the Correctional Service of Canada's MCP has not been formally evaluated by the government to determine its impacts or effectiveness, and data, including participation rates, is not publicly available. CSC confirmed in an interview with CIC that four women were participating in the residency program on either a part-time or full-time basis as of January 2023.<sup>43</sup>

Independent research indicates that the MCP has been severely underutilized and unequally administered since its inception. Researchers have found very low rates of MCP participation

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<sup>37</sup> “Commissioner's Directive 768 Institutional Mother-Child Program,” Correctional Service Canada, Government of Canada, accessed April 24, 2024, <https://www.canada.ca/en/correctional-service/corporate/acts-regulations-policy/commissioners-directives/768.html#9>

<sup>38</sup> “Institutional Mother-Child Program,” Correctional Service Canada.

<sup>39</sup> “Institutional Mother-Child Program,” Correctional Service Canada.

<sup>40</sup> “Institutional Mother-Child Program,” Correctional Service Canada.

<sup>41</sup> Beriau and Bouchard, interview.

<sup>42</sup> Correctional Service Canada Women Offenders Section, email message.

<sup>43</sup> Beriau and Bouchard, interview.

over the past two decades, particularly among Indigenous women.<sup>44,45</sup> Martha Paynter, assistant professor of nursing at the University of New Brunswick, found that there were 133 mothers in the MCP program between 2001 to 2018.<sup>46</sup> Because of irregularities in tracking across the time period, it is unclear how many children participated and whether they were part-time or full-time. An Office of the Correctional Investigator report indicated 154 participants over 20 years, ranging from one to 24 mothers.<sup>47</sup> “Long-standing low participation rates suggest that the program is not meeting the needs of the vast majority of incarcerated mothers,” it concluded.

Advocates working at the Canadian Association of Elizabeth Fry Societies— a nonprofit that provides advocacy and support to women and gender-diverse people impacted by criminalization<sup>48</sup>— reported that declining MCP participation was due to changes in eligibility criteria enacted in 2008 (CSC says these were revised in 2016 to correct this)<sup>49</sup>; overcrowding in prisons which resulted in a lack of space for mothers and their children; and the “increasingly punitive nature of corrections,”<sup>50</sup> as well as “hidden requirements” and the subjective approval by wardens.<sup>51</sup> Many mothers reported they were unaware of the application process or felt participation was impossible given its strict eligibility requirements.<sup>52</sup> Those who did not qualify reported “extreme distress, characterizing the process as unjust and arbitrary.”<sup>53</sup> Some mothers opted not to apply for MCP because of concerns about prison safety and hygiene.

Researchers have also highlighted unequal access to the MCP program for Indigenous or Aboriginal women.<sup>54</sup> Many have been deemed ineligible due to assessments of their “security risk” – they are more likely to be classified as maximum security.<sup>55</sup>

The over-classification of Aboriginal offenders, and especially female Aboriginal offenders, as maximum security is likely due to the fact that the [Custody Rating] Scale fails to account for cultural or gender issues,” writes researcher Kayliah Miller.<sup>56</sup> “The

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<sup>44</sup> Kayliah Miller, “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, no. 1 (2017), <https://gladue.usask.ca/sites/gladue1.usask.ca/files/gladue//resource405-2d31042a.pdf>.

<sup>45</sup> Paynter, “Reproductive (In)Justice,” 7-8.

<sup>46</sup> Paynter, “Reproductive (In)Justice,” 220.

<sup>47</sup> Canada Office of the Correctional Investigator, Annual Report 2021-22; 30, <https://oci-bec.gc.ca/sites/default/files/2023-06/annrpt20212022-eng.pdf>.

<sup>48</sup> Canadian Association of Elizabeth Fry Societies, accessed August 3, 2023, <https://caefs.ca/>.

<sup>49</sup> Correctional Service Canada Women Offenders Section, email message.

<sup>50</sup> Paynter, “Reproductive (In)Justice,” 8.

<sup>51</sup> Martha Paynter, Clare Heggie, Ruth Martin-Misener, Adelina Iftene, and Gail Tomblin Murphy, “Advocates’ Perspectives on the Canadian Prison Mother Child Program,” *SSM Qualitative Research in Health* 2 (2022), <https://doi.org/10.1016/j.ssmqr.2022.100189>.

<sup>52</sup> Paynter, “Reproductive (In)Justice,” 220.

<sup>53</sup> Paynter, “Reproductive (In)Justice,” 220.

<sup>54</sup> Martha Paynter, Keisha Jefferies, Shelley McKibbin, Ruth Martin-Misener, Adelina Iftene, and Gail Tomblin Murphy, “Mother-Child Programs for Incarcerated Mothers and Children and Associated Health Outcomes: A Scoping Review,” *Nursing Leadership* 33, no. 1 (2020), doi:10.12927/cjnl.2020.26189.

<sup>55</sup> Miller, “Incarcerated Aboriginal Mothers.”

<sup>56</sup> Miller, “Incarcerated Aboriginal Mothers,” 12.

scale does not consider the systemic and historical factors that affect the lives, circumstances and experiences of Aboriginal women.”<sup>57</sup>

Additionally, the requirement that mothers have a nearby support person is prohibitive for Indigenous mothers whose family and community live far from institutions, Martha Paynter said in an interview with CIC.<sup>58</sup>

Some mothers who were accepted into the MCP viewed it as a preferred alternative to separation and described feeling supported by other mothers and women in their facility.<sup>59</sup>

“Being here and being with his mother is a thousand times better than being in foster care,” Danielle Ouellette, who was incarcerated at the Edmonton Institution for Women in Alberta, told CityNews Toronto. “There [were] some times where it was not really the best environment for him to be in ... but, given the alternatives, it was a no-brainer for me to bring him here.”<sup>60</sup>

Other mothers and Elizabeth Fry advocates described the program as problematic for a number of reasons, including increased surveillance from the prison and child welfare systems during and after incarceration and inadequate healthcare for moms and their children.<sup>61</sup> Advocates indicated that the MCP was treated like a privilege that prison staff could rescind, and that parents could be removed from the program if others complained about their parenting.<sup>62</sup> CSC has since made policy changes to address these concerns, like allowing pumping and storage of breast milk.<sup>63</sup>

Paynter, a professor and abolitionist who has done extensive research on the MCP, opposes the policy, prison nurseries, and prisons generally. In an interview with CIC, she said:

[The MCP policy] makes prison more acceptable and prison is not acceptable. Not only does prison recreate the genocidal residential school system that we had in Canada, it is an extension of that system . . . The children of residential school survivors are incarcerated at incredible rates, but now we’re also institutionalizing their babies.

We do not have evidence of the impact of these programs, or of the relative impact of these programs compared to keeping families together in community. For the very few people who get to participate, they love being with their baby.

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<sup>57</sup> Miller, “Incarcerated Aboriginal Mothers,” 12.

<sup>58</sup> Martha Paynter (Assistant Professor in the Faculty of Nursing at the University of New Brunswick) in an interview with the author, July 2023.

<sup>59</sup> Paynter et al., “Advocates Perspectives.”

<sup>60</sup> Howorun, “Inside Canadian Prisons.”

<sup>61</sup> Paynter et al., “Advocates Perspectives.”

<sup>62</sup> Paynter et al., “Advocates Perspectives.”

<sup>63</sup> “Institutional Mother-Child Program,” Correctional Service Canada.

But it creates this hierarchy within prison, which is already a product of such a hierarchical, classist and racist society, between those mothers who are acceptable enough to be approved to have their children with them and the vast majority of mothers who are deemed to be not. It perpetuates inequality. It perpetuates institutionalization.<sup>64</sup>

## Looking Forward

As the population of women in Canadian prisons grows, advocates have varying views on how to address maternal incarceration. CSC plans to expand the MCP in the coming years.<sup>65</sup> Others, like Paynter, advocate for sentencing reform, community alternatives, and/or abolition to prevent incarceration and parental separation altogether.

CSC is currently revising its MCP policies. Changes include expanding the definition of “mother” to be more inclusive of non-biological caregivers and kinship bonds; updating its eligibility requirements to remove barriers for Indigenous women; and collecting, tracking, and publicly reporting data on participation.<sup>66</sup> The changes could be implemented as soon as 2025. “My personal hope is for this program to be accessible to all mothers [who are] incarcerated and for the children to be able to benefit from this program and break some cycles . . .,” Bouchard told CIC. “It’s really to reunite these children with their mother and enhance the capacity of the mother to sustain a normal or productive life so she can care for her children.”<sup>67</sup>

Opponents of the MCP and/or its expansion offer solutions that would reduce the prison population and eventually end maternal criminalization. “An abolitionist approach to examination of the MCP recognizes [it] as a prison expansionist project that not only normalizes the incarceration of pregnant people and parents of young children but incarcerates the newborns themselves,” Paynter and her colleagues write.<sup>68</sup>

The Canadian Friends Service Committee (CFSC) describes the MCP’s existence as “misdirected social investment.”<sup>69</sup> CFSC recommends sentencing reform in which judges consider whether an individual is a parent or caretaker and the best interest of their child.<sup>70</sup> Under Canadian law, judges are not currently required to do so. Researcher Else Marie Knudsen also recommends that Canada establish a process for including children’s views and

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<sup>64</sup> Paynter, interview.

<sup>65</sup> Beriau and Bouchard, interview.

<sup>66</sup> Beriau and Bouchard, interview.

<sup>67</sup> Beriau and Bouchard, interview.

<sup>68</sup> Paynter et al., “Advocates Perspectives.”

<sup>69</sup> Canadian Friends Service Committee, *Breaking the Silence: Dialogue on Children of Incarcerated Parents*, 2019; 18, <https://quakerservice.ca/wp-content/uploads/2019/05/Breaking-the-Silence-Report-2019.pdf>.

<sup>70</sup> Canadian Friends Service Committee, *Considering the Best Interests of the Child When Sentencing Parents in Canada*, December 2018, <https://quakerservice.ca/wp-content/uploads/2018/12/Considering-the-Best-Interests-of-the-Child-when-Sentencing-Parents-in-Canada.pdf>.



consideration of their best interests in sentencing and bail decisions about their parents, as well as the creation of a national Commissioner for Children and Youth Rights.<sup>71</sup>

To honor children’s rights under international agreements, Knudsen recommends that all children of incarcerated parents at both federal and provincial institutions have the opportunity to regularly meet with their parents in a “safe, child-friendly, accessible, and supported environment.”<sup>72</sup>

Additionally, CFSC supports non-custodial alternatives to pretrial incarceration for mothers, including promises to appear or house arrest, as well as restorative justice approaches.<sup>73</sup> Carceral alternatives like house arrest and electronic ankle bracelets are contested by other advocates because they rely on surveillance and confinement of mothers.

Alternatives that “center support and autonomy” are favored among abolitionists and those seeking to decarcerate.<sup>74</sup> These include community-based solutions like supportive housing models and greater utilization of a Canadian law that allows an “offender” to be transferred to the care and custody of an Indigenous authority.<sup>75</sup> Section 81 of the Corrections and Conditional Release Act<sup>76</sup> essentially allows Indigenous mothers to serve their sentence in their home communities, but, according to advocates like Paynter, it is infrequently applied.<sup>77</sup>

## Provincial Mother-Child Program

At the provincial level, one known facility allows children to live with their mothers in prison. British Columbia established its mother-child policy in 1973 and operated an MCP at Alouette Correctional Centre for Women (ACCW) from its opening in 2004 until 2008 when the program was shut down by the Ministry of Public Safety.<sup>78</sup> It was reopened in 2014 after the Supreme Court of British Columbia ruled its closing violated the law.<sup>79</sup> Only two women participated in the program from its reopening to July 2020.<sup>80</sup>

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<sup>71</sup> Else Marie Knudsen, *The Rights of Canadian Children of Incarcerated Parents: Alternative Report to the United Nations Committee on the Rights of the Child, for Canada’s Periodic Review (5th/6th)*, April 15, 2022; 5.

<sup>72</sup> Knudsen, *The Rights of Canadian Children*, 9.

<sup>73</sup> Canadian Friends Service Committee, *Breaking the Silence*.

<sup>74</sup> Paynter et al., “Maternal Incarceration.”

<sup>75</sup> Corrections and Conditional Release Act, S.C. 1992, c. 20, <https://laws-lois.justice.gc.ca/eng/acts/C-44.6/page-8.html#h-106452>.

<sup>76</sup> Corrections and Conditional Release Act, S.C. 1992, c. 20.

<sup>77</sup> Paynter, interview.

<sup>78</sup> *Inglis v. British Columbia (Minister of Public Safety)*, 2013 BCBS 2309, 7 (CanLII).

<sup>79</sup> *Inglis v. British Columbia*, 2013 BCBS 2309.

<sup>80</sup> British Columbia Ministry of Public Safety and Solicitor General, Response Package, FOI Request PSS-2020-04728, 1, <https://www2.gov.bc.ca/enSearch/detail?id=7AFDBC16F15F42E289E9F7DDB0F80C40&recorduid=PSS-2020-04728&keyword=foi&keyword=request&keyword=mother&keyword=child&keyword=program>.

## Legal Case

Since its inception, Alouette’s Mother-Child Program allowed incarcerated mothers and their babies to live at the facility together with approval from the government’s Ministry of Children and Family Development. The department was tasked with deciding whether such arrangement was in the best interests of the child. The program was canceled without official evaluation of the program’s risks or benefits, based on claims that babies were not within the mandate of the British Columbia Corrections Branch and did not need to be accommodated. Babies who would have stayed with their mothers in prison were placed in foster care.<sup>81</sup>

Two incarcerated women challenged its closing, and the case (“*Inglis v British Columbia*”) was ultimately brought before the British Columbia Supreme Court. Evidence presented suggested that both mothers and infants derived significant benefits from rooming together, from breastfeeding, and from developing attachment, and that this resulted in positive outcomes for both mothers and children.<sup>82</sup>

The court ultimately ruled that the decision to cancel the program “violated the rights to security of the person and liberty” – specifically Sections 7 and 15 of the Canadian Charter of Rights and Freedoms.<sup>83,84</sup> The court also found that separating mothers from their babies resulted in stigma and psychological stress to mothers and affected the well-being of the children.<sup>85</sup> Additionally, the court decided the closure results in differential treatment amounting to discrimination, a violation of the plaintiffs’ equality rights. As one source summarized:

The Court reasoned that the decision deprived mothers and infants of the benefit of the Child Family and Community Service (CFCS) Act,<sup>86</sup> which mandated making decisions about infants on a case-by-case basis according to the best interests of the child. This exacerbated intersecting disadvantages faced by incarcerated women who are disproportionately aboriginal and have histories of addiction, abuse, mental health issues, poverty, and involvement with child welfare systems. The Court thus found there to be discrimination against mothers on the enumerated grounds of race, ethnicity, disability and sex, and against infants on the analogous grounds of family status.<sup>87</sup>

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<sup>81</sup> *Inglis v. British Columbia*, 2013 BCBS 2309, 13, 126.

<sup>82</sup> *Inglis v. British Columbia*, 2013 BCBS 2309, 8-9.

<sup>83</sup> *Inglis v. British Columbia*, 2013 BCBS 2309, 10.

<sup>84</sup> Constitution Act, 1982, <https://laws-lois.justice.gc.ca/eng/Const/page-12.html>.

<sup>85</sup> *Inglis v. British Columbia*, 2013 BCBS 2309, 187.

<sup>86</sup> Child, Family and Community Service Act, RSBC 1996, c. 46, [https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/96046\\_01#section4](https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/96046_01#section4).

<sup>87</sup> “*Inglis v. British Columbia (Minister of Public Safety)*,” Global Health and Human Rights Database, 2013, <https://www.globalhealthrights.org/inglis-v-british-columbia-minister-of-public-safety/>.

The guiding principles of British Columbia’s CFCS Act state that “a family is the preferred environment for the care and upbringing of children and the responsibility for the protection of children rests primarily with the parents.”<sup>88</sup> Under the CFCS Act, determining the best interests of the child includes the following factors:

- (a) the child’s safety;
- (b) the child’s physical and emotional needs and level of development;
- (c) the importance of continuity in the child’s care;
- (d) the quality of the relationship the child has with a parent or other person and the effect of maintaining that relationship;
- (e) the child’s cultural, racial, linguistic and religious heritage;
- (f) the child’s views;
- (g) the effect on the child if there is delay in making a decision.<sup>89</sup>

The court’s decision is not binding for other provinces or the federal government. The government – which did not appeal the decision – was given six months to reinstate the program.<sup>90</sup> When it resumed the program in 2014, corrections officials indicated that the institution had upgraded its facilities to improve the environment for babies and that it would offer prenatal and parenting programs.<sup>91,92</sup>

### **Alouette’s MCP**

New mothers can participate in Alouette’s MCP program if they have given birth while incarcerated at ACCW.

“The Mother-Child Program provides a managed system of support and services and supports the mother-child bond through appropriate programming and community support in order to prepare for a strong family structure upon release that is in the best interests of the child,” writes the B.C. Ministry of Public Safety and Solicitor General.<sup>93</sup>

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<sup>88</sup> Child, Family and Community Service Act, RSBC 1996, c. 46.

<sup>89</sup> Child, Family and Community Service Act, RSBC 1996, c. 46.

<sup>90</sup> The Canadian Press, “Canada Expanding Rarely Used Program that Lets Mothers Live with Children in Minimum Security Prisons,” *National Post*, May 19, 2014, <https://nationalpost.com/news/canada/canada-expanding-rarely-used-program-that-lets-mothers-live-with-children-in-minimum-security-prisons>.

<sup>91</sup> The Daily Courier, “B.C. Jail Complies with Court Order, Relaunches Program for Mothers, Babies,” June 16, 2014, [https://www.kelownadailycourier.ca/prairies/bc/article\\_b683105b-ffa7-5a8a-9daf-a89611fe49a8.html](https://www.kelownadailycourier.ca/prairies/bc/article_b683105b-ffa7-5a8a-9daf-a89611fe49a8.html).

<sup>92</sup> Linda Givetash, “Mother-Child Prison Program Giving Babies, Mothers ‘A Better Chance,’” *The Canadian Press*, July 17, 2016, [https://www.thestar.com/news/world/mother-child-prison-program-giving-babies-mothers-a-better-chance/article\\_05174981-c23d-5ef0-b6be-84d6f69d294a.html](https://www.thestar.com/news/world/mother-child-prison-program-giving-babies-mothers-a-better-chance/article_05174981-c23d-5ef0-b6be-84d6f69d294a.html).

<sup>93</sup> Ministry of Public Safety and Solicitor General, Response Package.

Prison case managers should inform pregnant women about support services like the MCP and discuss eligibility requirements if they're interested.<sup>94</sup> A selection panel determines eligibility. If approved, they can reside with their child for up to 24 months or longer on a case-by-case basis.<sup>95</sup> If a mother is not approved or chooses not to participate, she should receive appropriate counseling and support following the removal of her child.<sup>96</sup>

There is little information publicly available about the MCP program.

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<sup>94</sup> Ministry of Public Safety and Solicitor General, Response Package.

<sup>95</sup> Ministry of Public Safety and Solicitor General, Response Package,

<sup>96</sup> Ministry of Public Safety and Solicitor General, Response Package.