



International Centre for Criminal Law  
Reform and Criminal Justice Policy

# Opportunities for Equitable and Effective Bail Reform

**An Annotated Bibliography Exploring Intersecting Inequities  
in Women's Bail and Remand Experiences in Canada**

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## Acronyms

AOJO	Administration of Justice Offence
BC	British Columbia
CAEFS	Canadian Association of Elizabeth Fry Societies
CCLA	Canadian Civil Liberties Association
Charter	Charter of Rights and Freedoms
CJS	Criminal Justice System
CRC	Convention on the Rights of the Child
DOJ	Department of Justice
ICCLR	International Center for Criminal Law Reform and Criminal Justice Policy
ICON	Integrated Case Outcome Network
IPV	Intimate Partner Violence
JHSO	John Howard Society of Ontario
LEAF	Women's Legal Education and Action Fund
MCCSS	Ministry of Children, Community, and Social Services
NWAC	Native Women's Association of Canada
NSPC	Nova Scotia Public Prosecution Service
SCC	Supreme Court of Canada
UAPP	University of Alberta Prison Project
UN	United Nations
WHC	Women's Health Clinic

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## Introduction

Bail law reform has become a highly politicized issue in Canada, reflecting polarizing demands to both lessen and increase restrictions in granting bail. While some scholarly literature assesses and critiques bail and remand law and processes, there is exceptionally limited gender-disaggregated data and research on adult women's bail and remand experiences.<sup>1</sup> When assessing women's interactions with the criminal justice system (CJS), most scholarly research and government publications speak about women's unique offence patterns and gendered pathways to criminalization and then jump to assessing women's imprisonment experiences, largely excluding any consideration of women's pre-trial and trial experiences.

In 2023-2024, we gathered and assessed the available literature on women and bail and women and remand in Canada. We engaged with primary data in the form of government-published statistics, select case law and secondary research, reviewing more than 250 sources including some comparative international research. With this literature review, we present our key findings. The annotated bibliography below captures some of what we know about women's bail and remand experiences within the Canadian context. Our contribution builds on the work we have previously done through the International Center for Criminal Law Reform and Criminal Justice Policy (ICCLR) on the rights of criminal justice-involved parents, especially women and their children.

In brief, the 31 annotations focus attention on the urgent need for primary research on how seemingly neutral bail laws and practices uniquely impact women, especially due to intersecting identities such as race, parenthood, and other social factors. Our contribution is crucial and timely. In Canada, the national remand rate for women now surpasses that of men, with women making up over 75% of provincial and territorial custody admissions in 2022/2023. Our literature review and the annotations illustrate the importance of not only addressing the social determinants of women's criminal justice involvement but also investing in more effective community-based alternatives for women, with a focus on mental health and substance use services. This is of particular importance when one considers the mainly non-violent offences that women commit and that many justice-involved women have complex, overlapping, and unmet social, economic, parenting, and physical and mental health needs, which are often compounded by trauma.

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<sup>1</sup> Our use of gender-binary language reflects the available research on women and their experiences with bail and remand in Canada. We also use the term "vulnerable groups" in alignment with Canadian legal language. However, we recognize that the concept of vulnerability is complex, often failing to acknowledge the agency, strengths, and resilience of equity-denied and equity-deserving groups while obscuring the state's responsibility for creating and maintaining structural conditions that contribute to vulnerability.

## A Brief Overview of the Bail Process in Canada

In Canada, people who are arrested for committing a criminal offence may be released by the police, with or without conditions, on an undertaking or recognizance for certain offences. Alternatively, they can be detained by the police pending a judicial bail hearing, which legally must be held within 24 hours or as soon as otherwise possible.<sup>2</sup> At a bail hearing, a justice of the peace, or a judge, decides to either release or detain an accused person in custody pending trial. If the accused person is released, this is referred to as judicial interim release or, more commonly, bail. Remand is the term used when an accused person is detained in a provincially or territorially designated remand facility prior to trial, sentencing, and/or on appeal. These decisions are directed primarily by section 515 of the *Criminal Code*.<sup>3,4</sup>

The decision to detain an accused person is guided solely by three specific considerations: (1) to ensure the accused person appears in court as required, (2) to protect public safety, including the safety of any victims or witnesses, in relation to the potential risks the accused person poses if released in the community, and (3) to maintain public confidence in the justice system, which is assessed in relation to the strength of the prosecution’s case and the severity of the offence.<sup>6,7</sup> These are the only legal justifications for bail or remand, which cannot be used to punish, enforce treatment, expedite or delay the justice process, or persuade an accused person to plead guilty. Additionally, bail and remand decisions cannot be based on legally prohibited grounds of discrimination.<sup>8, 9,10</sup>

### REMAND RECAP

**What is Remand:** The detention of an accused person in custody while awaiting trial or sentencing.

**Who is in Remand:** Legally innocent individuals charged with a crime who are denied bail or are unable to meet bail conditions.

**How Long is a Remand Stay:** It can be days, months, or years. In 2023, the average remand stay in BC was 54 days.<sup>5</sup>

<sup>2</sup> *Criminal Code*, RSC, 1985, c. C-46, section 503, paragraph 1.

<sup>3</sup> Department of Justice Canada [DOJ]. *Fact Sheet: The Bail Process*. 2024. <https://www.justice.gc.ca/eng/cj-jp/bail-caution/index.html>

<sup>4</sup> Julian Walker. *Bill C-48: An Act to Amend the Criminal Code (Bail Reform)*. Library of Parliament. 2024.

<https://top.parl.ca/staticfiles/PublicWebsite/Home/ResearchPublications/LegislativeSummaries/PDF/44-1/44-1-C48-E.pdf>

<sup>5</sup> Province of British Columbia. *Profile of BC Corrections*. 2024. <https://www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/corrections/reports-publications/bc-corrections-profile.pdf>

<sup>6</sup> DOJ, *The Bail Process*

<sup>7</sup> Walker, *Bill C-48*

<sup>8</sup> BC Prosecution Service. *Crown Counsel Policy Manual: Bail-Adults (BA1)*. Government of British Columbia. November 22, 2022.

<https://www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/prosecution-service/crown-counsel-policy-manual/bai-1.pdf>

<sup>9</sup> DOJ, *The Bail Process*

<sup>10</sup> BC Prosecution Service. *Media statement: BC Prosecution Service Releases Further Bail Data*. Government of British Columbia. March 26, 2024.

<https://www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/prosecution-service/media-statements/2024/24-09-bcps-releases-further-bail-data.pdf>

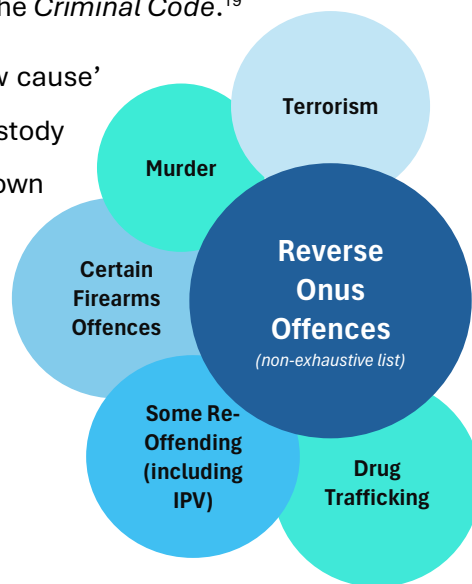
If bail is granted, an accused person may be released with or without conditions through an undertaking, on their own recognizance, with a cash or personal surety, or under a bail program. The *Criminal Code* prescribes the conditions of release the courts can impose. These can include, but

- THE ONLY LEGAL REASONS ACCUSED CAN BE DENIED BAIL
- TO ENSURE THE ACCUSED APPEARS IN COURT
- TO PROTECT PUBLIC SAFETY
- TO MAINTAIN PUBLIC CONFIDENCE IN THE CJS

are not limited to: attending court as required; reporting to a police officer; depositing a passport; residing with or being under the supervision of a surety;<sup>11</sup> geographic or spatial restrictions on movement; no-contact and/or non-association restrictions, especially concerning victims and witnesses; restrictions on consuming alcohol and other drugs and on possessing drug paraphernalia; weapons prohibitions; and/or being under a curfew or house arrest.<sup>12,13,14,15,16,17,18</sup> Both bail and remand are subject to

judicial review and variation as guided by various provisions of the *Criminal Code*.<sup>19</sup>

For most criminal offences, the onus or responsibility to ‘show cause’ that bail should be denied and the accused remanded to custody pending trial rests with the Crown prosecutor (known as ‘Crown onus offences’). However, there are, quite controversially, a growing number of serious offences where this onus reverses or shifts to the accused person, who must prove why they should be released.<sup>20,21,22,23</sup>



<sup>11</sup>A surety is a person who assumes responsibility for supervising someone on bail.

<sup>12</sup>BC Prosecution Service, *Crown Counsel Policy Manual*

<sup>13</sup>*Criminal Code*, 1985, section 515 paras 1-4.

<sup>14</sup>DOJ, *The Bail Process*

<sup>15</sup>Nova Scotia Public Prosecution Service [NSPS]. *Fair Treatment of African Nova Scotians and People of African Descent in Criminal Prosecutions (FTANS)*, 2024, <https://novascotia.ca/pps/publications/fair-treatment-african-nova-scotians-policy.pdf>

<sup>16</sup>Public Prosecution Service of Canada. *Public Prosecution Service of Canada Deskbook: Guideline of the Director Issued Under Section 3(3)(c) of the Director of Public Prosecutions Act. 3.18 judicial interim release*. Government of Canada. (2024). <https://www.ppsc-sppc.gc.ca/eng/pub/fpsd-sfpg/fps-sfp/tpd/p3/ch18.html>

<sup>17</sup>Paul Robinson, Taylor Small, Anna Chen, and Mark Irving. *Over-Representation of Indigenous Persons in Adult Provincial Custody, 2019/2020 and 2020/2021*. Juristat: Statistics Canada. 2023. <https://www150.statcan.gc.ca/n1/en/catalogue/85-002-X202300100004>

<sup>18</sup>Walker, *Bill C-48*

<sup>19</sup>BC Prosecution Service, *Crown Counsel Policy Manual*

<sup>20</sup>DOJ, *The Bail Process*

<sup>21</sup>Walker, *Bill C-48*

<sup>22</sup>Nicole Myers. *The Crisis in Canada’s Bail System is not one of an overly lax or lenient system*. Submission to the House of Commons’ Standing Committee on Justice and Human Rights, Study of Canada’s Bail System. March 2, 2023. <https://uwindsor-law.libguides.com/c.php?g=738996&p=5328964>

<sup>23</sup>As the Department of Justice Canada (2024, para 5) describe, reverse onus offences involve serious conduct that are ‘of particular public concern’. The reverse onus offences cover several categories and range from murder/attempted murder to someone alleged to have committed an indictable offence while released on bail for another indictable offence to a non-permanent resident who commits an indictable offence to various firearms and weapons offences and offences that were committed using firearms or other weapons to certain types of alleged reoffending where the accused has a history of non-compliance with various types of court orders. For a complete list, see the Department of Justice, 2024, para 5.

If an accused person released on bail violates or breaches their bail conditions, their bail can be altered or revoked, and they can be remanded to detention in provincial or territorial custody. They also may be less likely to receive bail in the future. Additionally, they may be subject to failure to comply charges under section 145 of the *Criminal Code*, often referred to as an Administration of Justice Offence (AOJO).<sup>24,25,26,27,28,29,30</sup> As our annotations below reveal, it is well acknowledged that AOJOs can create additional challenges for an accused person and can amplify the effects of criminalization.<sup>31,32,33,34,35,36,37</sup> Corroborating the Canadian literature, in a 2024 visit, the Working Group on Arbitrary Detention of the Office of the High Commissioner for Human Rights<sup>38</sup> showcased how unrealistic bail conditions often lead to breaches, additional AOJOs and cyclical criminalization. These were identified as systemic barriers that hinder effective and equitable Canadian bail processes. There are ongoing calls by scholars and other stakeholders for legislative bail reforms that either decriminalize or divert AOJOs, including a failure to comply with bail conditions.<sup>39</sup>

It is important to emphasize that the bail system in Canada is complicated by constitutionally divided government responsibilities. The federal government is responsible for creating and amending criminal law and procedure, while the provinces and territories retain responsibility for administering justice. The provincial/territorial responsibility for administering justice has resulted in widely varying bail practices across the country. For example, there is variance in whether a justice of the peace or a judge presides at a bail hearing, delays and other inefficiencies in the bail process, the

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<sup>24</sup> BC Prosecution Service, *Crown counsel policy manual*

<sup>25</sup> *Criminal Code*, 1985, section 515 paras 1-4.

<sup>26</sup> DOJ, *The Bail Process*

<sup>27</sup> NSPS, *Fair Treatment of African Nova Scotians*.

<sup>28</sup> Public Prosecution Service of Canada, *Public Prosecution Service of Canada Deskbook*

<sup>29</sup> Robinson, et al., *Over-representation of Indigenous persons*

<sup>30</sup> Walker, *Bill C-48*

<sup>31</sup> Bennett and Larkin, “Project Inclusion”

<sup>32</sup> Berger, Myers and Deshman, “Still Failing”

<sup>33</sup> Hannaford, “Issues surrounding pre-conviction”

<sup>34</sup> Stewart, “The Illusion of Liberty”

<sup>35</sup> Sylvestre et al., *Red Zones and Other Spatial Conditions*

<sup>36</sup> Yule and Schumann, “Reflections from accused”

<sup>37</sup> Carolyn Yule and Laura MacDiarmid. “5 ways to reform Canada’s bail system to benefit both the public and the accused,” *The Conversation*. January 18, 2023. <https://theconversation.com/5-ways-to-reform-canadas-bail-system-to-benefit-both-the-public-and-the-accused-197513>

<sup>38</sup> Office of the High Commissioner for Human Rights. *Working group on arbitrary detention: Preliminary findings from its visit to Canada (13 to 24 May 2024)*. 2024 <https://www.ohchr.org/sites/default/files/documents/issues/detention-wg/statements/20240524-wgad-eom-ca-pf.pdf>

<sup>39</sup> Berger, Myers and Deshman, “Still Failing”



types and conditions of release the courts typically impose, and the availability of bail supervision programs.<sup>40,41,42,43,44,45</sup>

We also wish to underscore that in Canada, bail and remand decisions are guided by several constitutionally protected rights and freedoms. These include liberty rights that are guaranteed by section 7 of the *Charter of Rights and Freedoms (Charter)*, a section 11(e) right to the presumption

**R. v. St-Cloud [2015] SCC 27**  
Elevated the tertiary ground to an independent and equally important basis for denying bail, applicable beyond just exceptional cases

**R. v. Antic [2017] SCC 27**  
Reaffirmed the presumption of innocence and the right to reasonable bail, emphasizing the need for consistency and restraint

**R. v. St-Cloud [2015] SCC 27**  
Clarified that individuals must receive a bail review after 90 days in custody and emphasized that pre-trial detention should be a last resort

**R. v. Zora [2020] SCC 14**  
Stressed the importance of restraint and careful review in setting bail conditions and warned against overly restrictive conditions

of innocence, and section 11(d) rights not to be denied bail without just cause.<sup>46,47,48</sup>

As the Hannaford<sup>49</sup> annotation suggests, there may be other *Charter* arguments, such as a section 12 argument, which protects against cruel and unusual punishment for people with disabilities, including those with substance dependence, from harsh bail conditions that could be seen as cruel and unusual punishment. Because of racialized and other systemic inequalities in bail

decisions, and given our focus on women, section 15 substantive equality rights might also apply if bail and remand processes are discriminatory. The SCC has interpreted section 7 and section 11 *Charter*-protected rights in relation to bail and remand in several landmark cases, including *R v Antic*, 2017 SCC 27; *R v Hall*, 2002 SCC 64; *R v Morales*, [1992] 3 SCR 711; *R v Pearson*, [1992] 3 SCR 665; *R v St-Cloud*, 2015 SCC 27; *R v Zora*, 2020 SCC 14.<sup>50,51</sup>

<sup>40</sup> Berger, Myers and Deshman, “Still Failing”

<sup>41</sup> Kyle Coady. *Assessments and Analyses of Canada’s Bail System*. Research and Statistics Division, Department of Justice Canada. 2018. <https://www.justice.gc.ca/eng/rp-pr/jr/rib-reb/bail-liberte/index.html>

<sup>42</sup> DOJ. *Just facts: Bail Violations, AOJOs and Remand*. Research and Statistics Division. 2017. <https://www.justice.gc.ca/eng/rp-pr/jr/jf-pf/2017/oct01.html>

<sup>43</sup> DOJ. *Just facts: Trends in Bail Court Across Canada*. Research and Statistics Division. 2018. <https://www.justice.gc.ca/eng/rp-pr/jr/jf-pf/2018/dec01.html>

<sup>44</sup> Berger, Myers and Deshman, “Still Failing”

<sup>45</sup> Abby Deshman and Nicole Myers. “Set Up to Fail: Bail and The Revolving Door of Pre-Trial Detention.” Canadian Civil Liberties Association and Education Trust. 2014. <https://cccla.org/wp-content/uploads/2021/07/Set-up-to-fail-FINAL.pdf>

<sup>46</sup> Public Prosecution Service of Canada, *Public Prosecution Service of Canada Deskbook*

<sup>47</sup> Walker, *Bill C-48*

<sup>48</sup> The Supreme Court of Canada has provided guidance to the courts, *inter alia* emphasizing the constitutional presumption of innocence and that accused persons will be granted bail (*R v St-Cloud*, 2015 SCC 27) in accordance with the ladder principle. The ladder principle means that an accused person will be granted the earliest and least restrictive form and conditions of release needed to manage the security risks they pose (*R v Antic*, 2017 SCC 27; *R v Zora*, 2020 SCC 14). Specifically, the ladder principle or principle of restraint was codified by section 493.1 of the *Criminal Code* in 2019 as part of the Bill C-75 reforms requiring a peace officer, justice or judge to give “... primary consideration to the release of the accused at the earliest reasonable opportunity, on the least onerous conditions that are appropriate in the circumstances ... and that are reasonably practicable for the accused to comply with”. See, e.g., Walker, 2024. *Bill C-48*

<sup>49</sup> Hannaford, “Pre-Conviction Abstention Conditions”

<sup>50</sup> For a discussion of these cases, see Public Prosecution Service of Canada, *Public Prosecution Service of Canada Deskbook*

<sup>51</sup> Walker, *Bill C-48*

## Polarizing Demands for Bail Law Reform

Canadian bail laws were last comprehensively reformed in 1972. Since then, in response to a range of concerns expressed by scholars, practitioners, and other stakeholders, together with an effort to codify guidance provided by the SCC, the Government of Canada introduced piecemeal reforms in 2019 and, then again in 2023. These reforms reflect increasingly polarizing demands to both lessen and strengthen restrictions in granting bail.

As summarized by Walker,<sup>52</sup> pre-2019 concerns about bail and remand included the increasing size of the remand population, detaining people who are presumptively innocent, increasing CJS costs associated with detention and inefficiencies (including delays), the number and reasonableness of bail conditions, and systemic inequities or discrimination in accessing reasonable bail. Specifically, the overrepresentation of racialized and marginalized groups of people in the CJS, including Indigenous and Black people, as well as low-income and unemployed people, people experiencing homelessness, and people facing mental health and substance use challenges were identified as a key criminal justice concern.

Accordingly, in 2019, the enactment of Bill C-75, *An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts*, sought to modernize and make Canadian bail laws more efficient by introducing

several reforms. These reforms included: (1) increasing and structuring the ability of police to release criminally accused people, (2) legislating the ‘principle of restraint’ for police and courts to ensure the earliest and least onerous forms of release for criminally accused people, which includes exercising restraint in the use of sureties, while also ensuring that bail conditions are reasonable and relevant to the offence and to safeguard public safety; (3) requiring courts to consider systemic discrimination and the circumstances of Indigenous (Aboriginal) accused persons and the members of other ‘vulnerable groups’ given the disparate impacts of the bail system on these populations and their overrepresentation in the criminal justice system; (4) diverting and streamlining the

### Summary of Bill C-75 Reforms (2019)

**Reverse Onus:** Some persons accused of intimate partner violence must convince the court they should be released

**Principle of Restraint (s. 493.2):** Favours the earliest possible release with reasonable conditions necessary for public safety

**Consideration of Vulnerable Populations (s. 515(13.1)):** Courts must consider the circumstances of Indigenous accused persons and those from vulnerable groups

**Judicial Referral Hearings:** Provides an alternative procedure when someone fails to comply with a release order

<sup>52</sup> Walker, *Bill C-48*

adjudication of certain non-harmful administration of justice offences; and (5) creating a reverse onus for people seeking bail when accused of intimate partner violence offences when they have prior convictions for this same conduct.<sup>53,54</sup>

Summary of Bill C-48 Reforms (2023)
<b>Reverse Onus:</b> Expansion of who must convince the court they should be released
<b>More Stringent Bail Conditions:</b> Aims to enforce tougher bail conditions for individuals identified as high-risk
<b>Concerns:</b> Critics argue these reforms may increase remand rates and disproportionately impact marginalized groups, undermining efforts to reduce systemic discrimination in bail

Four years later, in 2023, after several incidents of violence allegedly committed by people released on bail with prior violent histories, and amid considerable media and political debate about Canada’s ‘lenient’ and ‘catch and release’ bail system, including a letter from all provincial and territorial Premiers to the Prime Minister urging the federal government to “... take immediate action to strengthen Canada’s bail

system”,<sup>55</sup> the Government of Canada enacted Bill C-48, aiming to strengthen Canada's bail system. These 2023 reforms added reverse onus exceptions where the accused must prove why they should not be detained, especially for repeat violent offences involving firearms.<sup>56,57</sup> The 2023 amendments now also require that when bail courts order a judicial interim release, they must provide a statement indicating they have considered not only the safety and security of the victims of an offence but also the safety and security of a community.<sup>58</sup>

These latter 2023-introduced amendments to fix a ‘lax’ or ‘lenient’ bail system have attracted significant criticism from bail and remand scholars, legal practitioners, and advocacy organizations for not being evidence-informed and for not accurately reflecting what scholars describe as an already ‘rigorous’ bail system evidenced by the proportion of adults who are remanded to

<sup>53</sup> Department of Justice. *State of the Criminal Justice System: Focus on Women*. Government of Canada. 2020. <https://www.justice.gc.ca/eng/cj-jp/state-etat/2021rpt-rap2021/>

<sup>54</sup> Walker, *Bill C-48*

<sup>55</sup> Government of Canada. *Letter To Prime Minister from Premiers*. [Para 1]. 2023. <https://www.justice.gc.ca/eng/trans/bm-mb/other-autre/cbs-scmlc/lettre-lettre.html>

<sup>56</sup> Gordon Campbell and Nicole Myers. “Smart Bail Initiatives: A Progressive Approach to Reforming Canada’s Bail System.” The National Police Federation. 2023. [https://npf-fpn.com/app/uploads/securepdfs/2023/07/NPF-Bail-Reform-Paper\\_PDF-Copy\\_EN.pdf](https://npf-fpn.com/app/uploads/securepdfs/2023/07/NPF-Bail-Reform-Paper_PDF-Copy_EN.pdf)

<sup>57</sup> Walker, *Bill C-48*

<sup>58</sup> *Criminal Code*, 1985, section 515 para 13

custody.<sup>59,60,61,62,63,64,65,66</sup> The 2023 reforms also highlight the increasing tension between the *Charter* rights of an accused person under section 11(d) to be presumed innocent until proven guilty and section 11(e) to not be denied reasonable bail without just cause, versus public safety rights.<sup>67,68,69,70,71</sup> As noted, an accused person’s section 7 liberty rights are also potentially engaged if reasonable bail is denied without just cause. And there may be other potential violations of section 12 (cruel and unusual punishment) and section 15(1) legal equality rights for the members of racialized and other marginalized groups who are overrepresented in the CJS,<sup>72,73,74</sup> and, as we contend, for criminal justice-involved women who, although under-represented in the criminal justice system, may face disproportionate adverse impacts.

Additionally, we would be remiss not to acknowledge the social context issues that can precipitate criminal justice involvement in Canada and BC specifically. Most notably, these include the housing crisis, the ongoing toxic drug crisis and inadequate systems of care for addressing mental health and wellbeing in our communities.<sup>76</sup> Indeed, international and Canadian scholarship have recently emphasized key social determinants of adult criminal justice involvement to encompass a variety of factors. These factors include housing instability,

<b>Imprisonment vs. Community Supervision: The Cost for Women<sup>75</sup></b>
<b>Federal Custody (Annually)</b>
\$259,654 per person
<b>Community Supervision (Annually)</b>
\$38,418 per person

<sup>59</sup> Barbra Schlifer Commemorative Clinic, Canadian Association of Elizabeth Fry Societies (CAEFS), Luke’s Place, Women’s Legal Education and Action Fund (LEAF). *Proposed amendments to Bill C-48 and important considerations about the bail system: A brief on Bill C-48, An Act to amend the Criminal Code (bail reform)*. Submitted to the Senate Standing Committee on Legal and Constitutional Affairs. September 22, 2023. <https://www.schliferclinic.com/wp-content/uploads/2023/10/2023-09-22-Bill-C-48-Submission-FINAL.pdf>

<sup>60</sup> Berger, Myers and Deshman, “Still Failing”

<sup>61</sup> Canadian Bar Association. *Resolution: 24-07-A — Right to Reasonable Bail in Canada*. 2024. <https://www.cba.org/AGM/Resolutions/Archived-Resolutions/24-07-A>

<sup>62</sup> Myers, *The Crisis in Canada’s Bail System*

<sup>63</sup> Benjamin Roebuck. *Submission to the Senate Committee on Legal and Constitutional Affairs: Study of Bill C-48 An Act to Amend the Criminal Code (Bail Reform)*. Office of the Federal Ombudsperson for Victims of Crime, Government of Canada. October 2023. <https://www.canada.ca/en/office-federal-ombudsperson-victims-crime/recommendations-recommandations/2023-24/20231018.html>

<sup>64</sup> Michael Spratt. “The Liberal’s Bill C-48, which toughens bail conditions, is not ‘smart on crime.’ It’s dumb policy.” *Canadian Lawyer*. September 29, 2023. <https://www.canadianlawyermag.com/news/opinion/the-liberals-bill-c-48-which-toughens-bail-conditions-is-not-smart-on-crime-its-dumb-policy/380110>

<sup>65</sup> Walker, *Bill C-48*

<sup>66</sup> Yule and MacDiarmid, “5 Ways to Reform Canada’s Bail System”

<sup>67</sup> Campbell and Myers, “Smart Bail Initiatives”

<sup>68</sup> Myers, *The Crisis in Canada’s Bail System*

<sup>69</sup> Canadian Bar Association, *Resolution: 24-07-A*

<sup>70</sup> Native Women’s Association of Canada (NWAC). *Brief on Bill C-48: An Act to Amend the Criminal Code (Bail Reform)*. Prepared for the Standing Senate Committee on Legal and Constitutional Affairs. 2023. [https://sencanada.ca/Content/Sen/Committee/441/LCJC/briefs/2023-09-25\\_LCJC\\_C-48\\_Brief\\_NWAC\\_e.pdf](https://sencanada.ca/Content/Sen/Committee/441/LCJC/briefs/2023-09-25_LCJC_C-48_Brief_NWAC_e.pdf)

<sup>71</sup> Walker, *Bill C-48*

<sup>72</sup> Hannaford, “Pre-Conviction Abstinence Conditions”

<sup>73</sup> Mukisa Kakembo. “Name It, Then Change It: Addressing Anti-Black Racism in The Canadian Criminal Justice System.” Nova Scotia Barristers’ Society. 2020. <https://nsbs.org/wp-content/uploads/2021/01/AntiBlackCJSPaperMK2020.pdf>

<sup>74</sup> Walker, *Bill C-48*

<sup>75</sup> Public Safety Canada. *Corrections and Conditional Release Statistical Overview, 2022 Annual Report*. Government of Canada. 2024.

<https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/ccrso-2022/ccrso-2022-en.pdf>. The community supervision cost is not gender disaggregated.

<sup>76</sup> Butler and LePard, *A Rapid Investigation into Repeat Offending*

untreated trauma, unmet mental health needs, problematic substance use, histories of child welfare involvement, early contact with the police, and experiences of everyday racism and systemic discrimination. They affect individuals in under-resourced communities with unequal access to education, employment opportunities, and housing. And these social determinants disproportionately impact the members of Indigenous and Black communities.<sup>77,78</sup>

The 2023 reforms do not address the root causes or social determinants of crime we are seeing in many communities. In fact, the 2023 reforms are expected to contribute to even higher rates of denying bail. It is anticipated that groups already overrepresented in the CJS will increasingly be denied bail and remanded to custody. These adverse impacts are expected to affect Indigenous and Black accused people, low-income people, those who are unemployed, people experiencing homelessness, and people with mental health and substance use challenges.<sup>81,82,83,84,85,86,87</sup> The

<b>The Cost of Denying Bail in BC<sup>79</sup></b>
<b>BC Provincial Custody (Daily)</b>
\$401 per person
<b>Average Remand Stay (54 days)<sup>80</sup></b>
\$21,654 per person

potential adverse impacts of bail and remand processes for racialized accused are also recognized at the provincial and territorial level, where anti-racism guides have been developed for criminal justice decision-makers.<sup>88,89</sup>

We expect these reforms will also adversely affect adult women, whose national remand rate of 75.3% has significantly increased in the past 20 years and now exceeds the remand rate for adult men (see Table 1). A consistent

message of the annotations we summarize below is the pressing need to invest in more community-based resources that are proven to be more promising, including more cost-effective and equitable

<sup>77</sup> Ruth McCausland and Eileen Baldry. “The Social Determinants of Justice: 8 Factors That Increase Your Risk of Imprisonment.” *The Conversation*. April 16, 2023. <https://theconversation.com/the-social-determinants-of-justice-8-factors-that-increase-your-risk-of-imprisonment-203661>

<sup>78</sup> Akwasi Owusu-Bempah and Zilla Jones. *A Roadmap for Transformative Change: Canada’s Black Justice Strategy*. Government of Canada. 2024. <https://www.canada.ca/en/department-justice/news/2024/06/release-of-the-external-steering-group-report-an-important-milestone-in-the-development-of-canadas-black-justice-strategy.html>

<sup>79</sup> Statistics Canada. *Table 35-10-0013-01 Operating Expenditures for Adult Correctional Services*. 2024. <https://doi.org/10.25318/3510001301-eng>

<sup>80</sup> Government of British Columbia. *Profile of BC Corrections*. 2024. <https://www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/corrections/reports-publications/bc-corrections-profile.pdf>

<sup>81</sup> Barbra Schlifer Commemorative Clinic et al., *Proposed Amendments to Bill C-48*

<sup>82</sup> Berger, Myers and Deshman, “Still Failing”

<sup>83</sup> Canadian Bar Association, *Resolution: 24-07-A*

<sup>84</sup> Danardo Jones. “Race Is Closely Tied to Who Gets Bail — That’s Why We Must Tread Carefully on Bail Reform.” *The Conversation*. April 5, 2023. <https://theconversation.com/race-is-closely-tied-to-who-gets-bail-thats-why-we-must-tread-carefully-on-bail-reform-201943>

<sup>85</sup> Myers, *The Crisis in Canada’s Bail System*

<sup>86</sup> Yule and MacDiarmid, “5 Ways to Reform Canada’s Bail System”

<sup>87</sup> NWAC, *Brief on Bill C-48*

<sup>88</sup> Legal Aid Ontario. *Raising Anti-Black Racism at Bail: Practical guide*. 2024. <https://www.legalaid.on.ca/in-briefs/anti-black-racism-resource-guides-for-bail/>

<sup>89</sup> NSPS, *Fair Treatment of African Nova Scotians*.

in addressing the complex social, economic, and public health issues that intersect with criminal justice involvement.<sup>90,91,92</sup>

As the annotations reveal, there remain calls for comprehensive, rights or principles-based, evidence-informed, and practical reforms to Canada's bail system. Indeed, there are significant concerns that efforts to further 'strengthen' the bail system, especially if not evidence-based or equity-informed, will contribute to ever-increasing remand populations and the overrepresentation of racialized and marginalized communities, including women, who revolve in and out of the criminal justice system without ever receiving the appropriate supports they need to break this cycle.<sup>93,94,95,96,97</sup> Additionally, not considering the peripheral or collateral impacts of bail and remand processes on the children of accused parents can create negative effects for the children and their communities to a level which is not yet fully understood.<sup>98,99,100,101,102</sup>

## The Rights of Criminal Justice-Involved Women and Their Children

We embarked on this project because of our decade-long interest in the rights of criminal justice involved parents, especially women, and the rights of their children. Much of this work has been published in collaboration with the ICCLR and aims to guide systemic change and provide practical guidance for criminal justice decision-makers and other key stakeholders, including criminal justice-involved women and their families.<sup>103,104,105,106</sup> As part of this research, we became acutely aware of a lack of government-published gender-disaggregated statistics on women's criminal justice experiences, which are only periodically published every few years by government entities

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<sup>90</sup> Gillian Balfour. "Exploring The Victimization, Criminalization, and Incarceration of Women in Canada." In *Diversity, Crime, and Justice in Canada (Third Edition)*. Barbara Perry (ed.). (Oxford University Press. 2022) pp. 201-224.

<sup>91</sup> Jane Barker and D. Sharie Tavcer (eds). *Women and the Criminal Justice System: A Canadian Perspective (Third Edition)*. (Toronto: Emond, 2023).

<sup>92</sup> Elizabeth Comack. *Coming Back to Jail: Women, Trauma, And Criminalization*. (Halifax: Fernwood Publishing, 2018).

<sup>93</sup> Berger, Myers and Deshman, "Still Failing"

<sup>94</sup> Jones, "Race is Closely Tied to Who Gets Bail"

<sup>95</sup> Myers, *The Crisis in Canada's Bail System*

<sup>96</sup> Barbra Schlifer Commemorative Clinic et al., *Proposed Amendments to Bill C-48*

<sup>97</sup> Yule and MacDiarmid, "5 Ways to Reform Canada's Bail System"

<sup>98</sup> Megan Capp. *The Parenting Experiences of Mothers in Conflict with the Law*. Vancouver: International Centre for Criminal Law Reform and Criminal Justice Policy. June 2023. <https://icclr.org/publications/the-parenting-experiences-of-mothers-in-conflict-with-the-law/>

<sup>99</sup> Hayli Millar and Megan Capp. "Parental Rights of Criminalized People." In *Sage Encyclopedia of Crime and Gender* (in-press). J. Stamatel (ed.) (Sage, 2025).

<sup>100</sup> Hayli Millar and Yvon Dandurand. "The Best Interest of the Child and the Sentencing of Offenders with Parental Responsibilities." *Criminal Law Forum*, 29. (2018). 227-277. <https://doi.org/10.1007/s10609-017-9340-9>

<sup>101</sup> Hayli Millar. *Children's rights and the sentencing of parents facing criminal sanctions*. Vancouver: International Centre for Criminal Law Reform and Criminal Justice Policy. June 2023. <https://icclr.org/publications/childrens-rights-and-the-sentencing-of-parents-facing-criminal-sanctions/>

<sup>102</sup> Hayli Millar, Yvon Dandurand, Vivienne Chin, Megan Capp, Richard Fowler, Jessica Jahn, Barbara Pickering and Allan Castle. *Considering The Best Interests of The Child in Sentencing and Other Decisions Concerning Parents Facing Criminal Sanctions: An Overview for Practitioners*. Vancouver: International Centre for Criminal Law Reform and Criminal Justice Policy. July 2023. <https://icclr.org/publications/considering-the-best-interests-of-the-child-in-sentencing-and-other-decisions-concerning-parents-facing-criminal-sanctions-an-overview-for-practitioners/>

<sup>103</sup> Capp, *Mothers in Conflict with the Law*

<sup>104</sup> Millar and Capp, "Parental Rights of Criminalized People"

<sup>105</sup> Millar and Dandurand, "The Best Interest of the Child"

<sup>106</sup> Millar et al., *Best Interests of The Child in Sentencing*

like Statistics Canada<sup>107,108</sup> and the DOJ.<sup>109,110</sup> It was equally clear there is little Canadian or international research assessing how pre-trial processes impact women, most of whom have dependent children and many of whom are sole or primary carers.<sup>111</sup>

Criminal justice decisions at all stages can negatively impact the well-being of both parents and their children, affecting their ability to maintain family relationships. As parents move through the justice system and face sanctions, including imprisonment, children often experience multiple traumatic events. However, these unique situations cannot be easily generalized to all children. We also recognize and appreciate that children must have their voices and best interests considered, especially in situations where they are the direct or indirect victims of their parent's alleged criminal conduct. In addition to sentences of imprisonment, decisions related to arrest, charges, bail conditions, and community-based sentences can both temporarily and permanently disrupt the parent-child bond. Financial penalties and pre-trial detention can further exacerbate the situation by causing job and housing loss. These dynamics may pressure parents, particularly women, to plead guilty or accept unsafe surety arrangements.<sup>112,113,114</sup>

International and domestic human rights law, including the *Convention on the Rights of the Child (CRC)*, which Canada ratified in 1989, support the rights of parents and children to maintain family ties at all stages of the criminal justice process. Article 9 of the *CRC* recognizes the child's right to maintain personal relations and direct contact with a separated parent unless it is against their best interests. It also supports the child's right to know the whereabouts of a detained or imprisoned parent unless it harms the child's well-being. These rights further support visitation and communication between detained or imprisoned parents and their children. Furthermore, children have an independent right under Article 3 of the *CRC* to have their best interests<sup>115</sup> considered in

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<sup>107</sup> Tina Hotton Mahony, Joanna Jacob and Heather Hobson. *Women and the Criminal Justice System*. In *Women in Canada: A Gender-Based Statistical Report*. Statistics Canada. 2017. <https://www150.statcan.gc.ca/n1/en/pub/89-503-x/2015001/article/14785-eng.pdf?st=PCajz4hl>

<sup>108</sup> Laura Savage. *Female Offenders in Canada, 2017*. Canadian Centre for Justice Statistics. 2019. <https://www150.statcan.gc.ca/n1/pub/85-002-x/2019001/article/00001-eng.htm>

<sup>109</sup> DOJ, *State of the CJS: Focus on Women*

<sup>110</sup> DOJ, *The Bail Process*

<sup>111</sup> Despite Rule 3 of the *Bangkok Rules* requiring governments to register 'the number and personal details of children' for women who are admitted to prison, few prisons systems record or publish these data. This omission applies to Canada. For Canada and countries like Canada, it is usually estimated that sixty percent or more of the adult women admitted to prison have dependent children.

<sup>112</sup> Capp, *Mothers in Conflict with the Law*

<sup>113</sup> Millar and Dandurand, "The Best Interest of the Child"

<sup>114</sup> Amanda McCormick, Hayli Millar and Glen Paddock. *In the best interests of the child: Strategies for recognizing and supporting Canada's at-risk population of children with incarcerated parents*. University of the Fraser Valley. 2014. [https://cjr.ufv.ca/wp-content/uploads/2015/05/Children-with-Incarcerated-Parents\\_Amended.pdf](https://cjr.ufv.ca/wp-content/uploads/2015/05/Children-with-Incarcerated-Parents_Amended.pdf)

<sup>115</sup> In Canada and other countries, the best interests of the child principle has been interpreted and applied in ways that have created significant colonial and other harms, especially for Indigenous Peoples. As Canadian laws increasingly reflect, we too emphasize the need for the best interests of the child principle to be grounded in a culturally specific lens, reflecting in particular the rights of Indigenous Peoples, including to substantive equality and cultural continuity, as well as the cultural integrity rights of other diverse racial/ethnic communities in Canada. These other diverse communities include Black children who, like Indigenous children, continue to be highly overrepresented in provincial and territorial child welfare systems.



criminal matters involving their parent and to express their views consistent with Article 12, especially when a parent is a sole or primary caregiver. Other relevant *CRC* articles include Article 2, which protects against discrimination based on the parent's actions, and Articles 6, 26, and 27, which safeguard a child's development and socio-economic well-being. Given the overrepresentation of Indigenous and Black parents in the Canadian criminal justice system, Article 30 of the *CRC* protects a child's cultural, religious, and linguistic identity, in line with the *United Nations (UN) Declaration on the Rights of Indigenous Peoples*. Article 20 of the *CRC*, which addresses children deprived of their family environment, and the *UN Guidelines for the Alternative Care of Children*, require criminal justice actors to ensure proper alternative care arrangements are made when remanding or sentencing a primary caregiver. Articles 5, 7, and 18 emphasize the importance of parents' primary responsibility for their child's upbringing and development, ensuring *CRC* provisions are interpreted to support parents in caring for their children.<sup>116,117,118</sup>

The *UN Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (Bangkok Rules)*, now in their fifteenth year of operation, prioritize non-custodial measures for pregnant women and primary caregivers. They focus on the importance of addressing the needs of children and promote alternatives to imprisonment, urging consideration of the best interests of the child in pre-trial detention (remand) and sentencing decisions. The *Bangkok Rules* also call attention to the importance of detaining women close to their children and protecting access to healthcare and nutrition for pregnant and breastfeeding women.<sup>119</sup>

International legal guidance on these various rights suggests that governments should prioritize non-custodial measures for pregnant women and primary caregivers, protect the rights of children affected by parental imprisonment, and consider children's best interests in all decisions that affect them.<sup>120,121</sup>

Despite these existing protections, the application of these rights remains inconsistent in criminal justice practice, where the focus remains on parental rights rather than the independent rights of the child. When it comes to experiences of bail and remand, the application of these rights seems basically non-existent. As we have documented elsewhere, the lack of a gender-responsive approach towards criminal justice decision-making, including bail and remand decisions, can have

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<sup>116</sup> Millar and Capp, "Parental Rights of Criminalized People"

<sup>117</sup> Millar and Dandurand, "The Best Interest of the Child"

<sup>118</sup> Millar et al., *Best Interests of the Child in Sentencing*

<sup>119</sup> Millar and Capp, "Parental Rights of Criminalized People"

<sup>120</sup> Millar and Capp, "Parental Rights of Criminalized People".

<sup>121</sup> Millar and Dandurand, "The Best Interest of the Child"



significant periphery effects or collateral consequences for women, which have, to date, been very minimally considered.<sup>122,123</sup>

Having a better understanding of women's bail and remand experiences takes on heightened importance in view of growing global imprisonment rates for women, including remand detention, where there has been a 60% increase in the number of imprisoned women in the past twenty years, compared to a 22% increase for men. Tellingly, in the twenty years between 2000 and 2022, the number of women imprisoned globally increased from 466,000 to 740,000 women. On average, women and girls now comprise 6.9% of the global prison population.<sup>124,125</sup> International researchers and advocacy organizations attribute these increases for women specifically to the criminalization of poverty and inequality and punitive populism, including harsh drug policies. More generally, they attribute growing global imprisonment rates for both women and men to the overuse of pre-trial detention, to a lack of non-custodial alternatives, and to extreme sentencing.<sup>126,127</sup>

As Table 1 below illustrates, in Canada, despite generally declining or stabilized police-reported crime rates, the number of women admitted to provincial/territorial custody is small but has increased in the past twenty years. For example, the number of provincially/territorially imprisoned women increased by 2,178 women in the past twenty years. These increases are especially noticeable for remanded women where 3,255 more women were remanded to custody than twenty years ago. Indeed, a growing proportion of women admitted to provincial and territorial custody are being remanded rather than sentenced.<sup>128</sup> This proportion has increased from 66.4% twenty years ago to 69.8% ten years ago and now stands at 75.3%, which is slightly higher than the proportion of remanded men (71.3%).

As our annotations reflect, we find these data deeply concerning where now less than 25% of women in provincial/territorial custody are sentenced women who have been tried and convicted for their alleged criminal offence. We are also attentive here to regional differences. In 2022/2023, the

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<sup>122</sup> Millar and Capp, "Parental Rights of Criminalized People"

<sup>123</sup> Millar and Dandurand, "The Best Interest of the Child"

<sup>124</sup> Helen Fair and Roy Walmsley. *World Female Imprisonment List (fifth edition)*. World Prison Brief and Institute for Crime and Justice Policy Research. 2022. [https://www.prisonstudies.org/sites/default/files/resources/downloads/world\\_female\\_imprisonment\\_list\\_5th\\_edition.pdf](https://www.prisonstudies.org/sites/default/files/resources/downloads/world_female_imprisonment_list_5th_edition.pdf).

<sup>125</sup> Penal Reform International. *Global Imprisonment Trends, 2023*. Penal Reform International. 2024. <https://www.penalreform.org/global-prison-trends-2023/>

<sup>126</sup> Fair and Walmsley, *World Female Imprisonment List*

<sup>127</sup> Penal Reform International, *Global Imprisonment Trends*

<sup>128</sup> In Canada, there is divided government responsibility for corrections. Women who are sentenced to less than two years are imprisoned in territorial and provincial correctional facilities, while women who are sentenced to two or more years are imprisoned in federal regional prisons.

remand rates for women in some provinces and territories, such as Nova Scotia, Ontario, Northwest Territories, and Nunavut, exceeded 80% and, in some cases, 85%.<sup>129</sup>

**Table 1: Ten-year interval comparisons of provincial/territorial remand and sentencing admissions for men and women in Canada: 2002-2003 to 2022-2023<sup>130</sup>**

Time	Sex	Remand Admissions	Sentenced	Total Admissions
2002 - 2003	Women	12,147 (66.4%)	6,137 (33.6%)	18,284 (100%)
	Men	103,365 (62.2%)	62,766 (37.8%)	166,131 (100%)
	<b>Total (Men &amp; Women)</b>	<b>115,512 (62.6%)</b>	<b>68,903 (37.4%)</b>	<b>184,415 (100%)</b>
2012-2013	Women	15,763 (69.8%)	6,817 (30.2%)	22,580 (100%)
	Men	107,817 (64.6%)	59,010 (35.4%)	166,827 (100%)
	<b>Total (Men &amp; Women)</b>	<b>123,580 (65.2%)</b>	<b>65,827 (34.8%)</b>	<b>189,407 (100%)</b>
2022-2023	Women	15,402 (75.3%)	5,060 (24.7%)	20,462 (100%)
	Men	87,691 (71.3%)	35,219 (28.7%)	122,910 (100%)
	<b>Total (Men &amp; Women)</b>	<b>103,093 (71.9%)</b>	<b>40,269 (28.1%)</b>	<b>143,362 (100%)</b>

Source: Statistics Canada, Adult custody admissions to correctional services by sex: Annual Table: 35-10-0015-01 (formerly CANSIM 251-0021). Release date: 2024-03-19.

There are also striking racialized disparities associated with provincial/territorial admissions. In 2022/2023, Indigenous individuals made up 31.46% of all remand admissions in Canada—nearly double the percentage from 2002/2003 (16.21%) and significantly higher than 2012/2013 (23.58%).<sup>131</sup> The disparity is even more pronounced in British Columbia, where 34.94% of remand admissions in 2022/2023 were Indigenous persons.<sup>132</sup> These figures exclude individuals whose Indigenous identity was unknown, meaning the actual percentage may be even higher.

According to Statistics Canada, examining provincial/territorial custody trends for 2020/2021 and 2021/2022, Indigenous women were overrepresented in provincial correctional facilities at a rate 15.4 times higher than for non-Indigenous women while also exceeding the overrepresentation rate for Indigenous men.<sup>133</sup> In addition, Indigenous female youth are highly overrepresented in youth

<sup>129</sup> Data on file with the authors.

<sup>130</sup> Excludes people whose sex was unknown. We recognize that other bail and remand scholars like Myers (2024) use average daily counts rather than admissions statistics, but average daily count statistics are not publicly available in gender-disaggregated form.

<sup>131</sup> Statistics Canada. *Table 35-10-0016-01: Adult Custody Admissions to Correctional Services by Indigenous Identity*. 2024. <https://doi.org/10.25318/3510001601-eng>

<sup>132</sup> Statistics Canada, *Table 35-10-0016-01*

<sup>133</sup> Robinson, et al., *Over-Representation of Indigenous Persons*

custody admissions, accounting for sixty percent of youth custody admissions in 2018.<sup>134</sup> In fact, there is considerable evidence of systemic bias resulting in Indigenous and Black people being more likely to be denied bail than their non-Indigenous counterparts.<sup>135,136</sup> There is also some evidence that Indigenous women who are granted bail are subject to more conditions in comparison with Indigenous men and non-Indigenous women, which contribute to AOJOs.<sup>137,138,139</sup> Still, much more work needs to be done to fully understand these realities and variations across the provinces and territories.

In Canada, the number of federally sentenced women has also significantly increased, growing fourfold in the past forty years from 144 women in 1990/1991 to 583 women in 2023/2024.<sup>140</sup> The situation is especially acute for Indigenous women, who, as of 2022, represent half of federally sentenced women. Equally concerning is the fact that federally sentenced Indigenous women account for 65% of women who are in maximum security custody, which reduces access to (especially culturally supportive) programming and services, among other adverse impacts. Indigenous women are also overrepresented in segregation (now Structured Intervention Units).<sup>141</sup>

A related concern is the number of women and girls who have died or been killed due to the intentional use of force by police or while in custody—whether in police detention, on remand or serving a prison sentence. While the federal and provincial governments do not publish these data, a scholarly-NGO-created Tracking (In)Justice law enforcement transparency and accountability database reveals there were 28 police-involved deaths involving cisgender and transgender women and female youths (ages 12 to 17 years), while an additional 129 cisgender and transgender women and female youths died in the custody of police, adult and youth corrections, immigration, and mental health care agencies in the past 23 years. The deaths of women and girls in custody are attributed to various factors, including natural causes, accidental death, and suicide, or where the cause is undetermined or unknown. Troublingly, Indigenous women and girls are highly

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<sup>134</sup> Scott Clark. *Overrepresentation of Indigenous People in The Canadian Criminal Justice System: Causes and Responses*. Department of Justice Canada. 2019. <https://www.justice.gc.ca/eng/rp-pr/jr/oiip-cjs/p4.html>

<sup>135</sup> Robinson, et al., *Over-Representation of Indigenous Persons*

<sup>136</sup> DOJ, *The Bail Process*

<sup>137</sup> Rogin, "Police-Generated Evidence in Bail Hearings"

<sup>138</sup> Rogin, "Gladue and Bail"

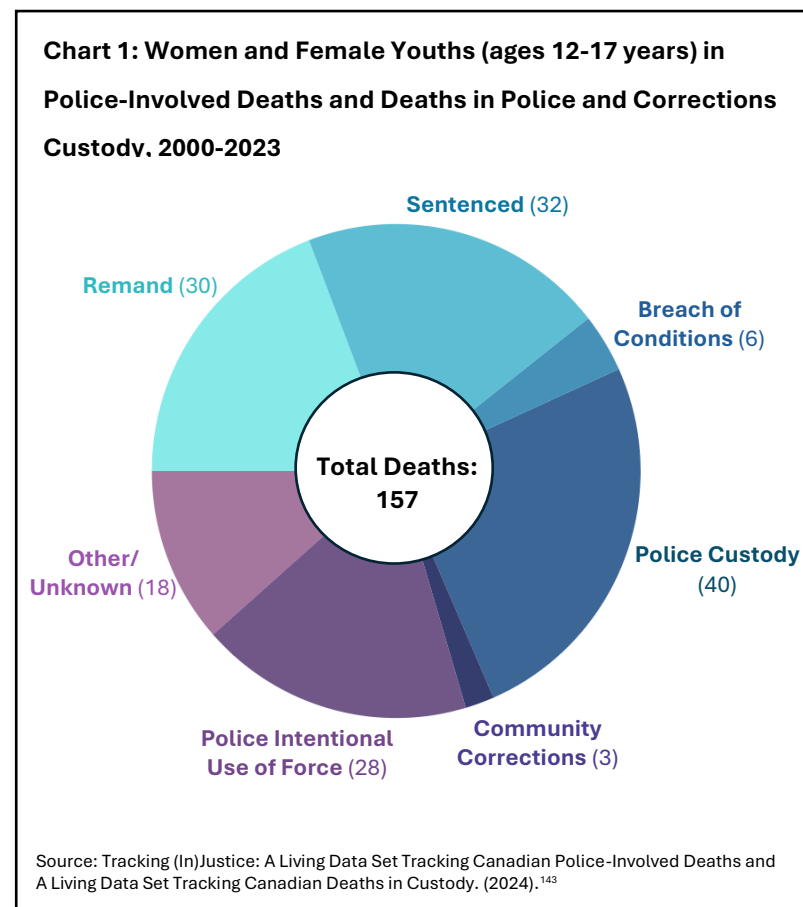
<sup>139</sup> Jillian Rogin. *The Application of Gladue to Bail: Problems, Challenges and Potential*. [LLM Thesis, York University]. 2014.

<http://digitalcommons.osgoode.yorku.ca/llm/14>

<sup>140</sup> Office of the Correctional Investigator. *Annual Report 2023-2024*. Government of Canada. 2024. <https://oci-bec.gc.ca/sites/default/files/2024-10/Annual%20Report%20EN%202024%20-%20WEB.pdf>

<sup>141</sup> Public Safety Canada. *Parliamentary Committee Notes: Overrepresentation (Indigenous Offenders)*. Government of Canada. 2023. <https://www.publicsafety.gc.ca/cnt/trnsprnc/brfng-mtrls/prlmntry-bndrs/20230720/12-en.aspx%202023>

overrepresented, accounting for 47 (30%) of the 157 deaths. These data also exclude several women who have died in police use of force incidents or while in police and corrections custody in 2024.<sup>142</sup>



Given these global and national trends in women's imprisonment where women are the fastest-growing prison population and our commitment to promoting fair and effective bail reform for justice-involved women and their children, our literature review and annotations were guided by the question: What does the existing literature reveal about women's bail and remand experiences in Canada?

### **Annotated Bibliography Key Findings**

In 2023-2024, we assessed the available literature on women

and bail as well as women and remand in Canada. We engaged with primary data in the form of statistics and select case law as well as secondary research reviewing more than 250 sources, including some comparative international research (see Appendix A for a summary of our literature review methods). We looked at research on bail and remand in Canada, research on women and the criminal justice system, and research on women's bail and remand experiences. While there is scarce literature on women's bail and remand experiences, the available literature suggests some concerning gender disparities that merit additional primary research and public policy attention.<sup>144</sup>

<sup>142</sup> Data on file with the authors.

<sup>143</sup> Data Justice and Criminology Lab, Institute of Criminology and Criminal Justice, Carleton University; The Centre for Research & Innovation for Black Survivors of Homicide Victims (The CRIB), at the Factor-Inwentash Faculty of Social Work, University of Toronto; Ethics and Technology Lab, Queen's University; the Canadian Civil Liberties Association. Available <https://trackinginjustice.ca/explore-the-data/>

<sup>144</sup> Our annotations are admittedly selective and include only sources that made a direct reference to women or girls *and* bail or remand. We have excluded some same-authored publications, opting to flag these with footnotes instead. Unusually, we have included some advocacy and graduate-level research simply because there is so little published peer-reviewed research on women and bail and remand in Canada.

A first, and glaringly stark, observation is that there is limited data and research on bail and remand in Canada. While there are some published and accessible government statistics on provincial/territorial remand populations, there are almost no government-published statistics on bail.<sup>145</sup> It is only recently that the Government of Canada has started to publish analyses of bail, primarily from 2018 onwards, none of which provide a gender-disaggregated analysis.<sup>146,147,148</sup> In addition, there are a select few Canadian scholars and their graduate students who conduct bail and remand research, and some of this research relies on the same datasets, which can make comparisons challenging. Overall, much of the available research on bail and remand is regionally specific, focusing especially on the provinces of Nova Scotia, Ontario, Manitoba, Saskatchewan, Alberta, British Columbia, and the Yukon.<sup>149,150,151</sup> Some of the bail and remand research is also now quite dated since it was published ten or more years ago.

As we detail above and with our annotations below, a key takeaway from the existing empirical evidence is that, rather than being too lax or lenient, the bail system is, as some scholars describe, "rigorous."<sup>152,153</sup> This is evidenced by the increasing proportion of adults who are remanded to custody. It is important to note, however, that perceptions of rigour based on high numbers of people in custody do not equate to effectiveness or efficiency. Moreover, as we and many others have emphasized, the proportion of adult men and women who are remanded to custody raises significant concerns about constitutionally protected rights to liberty, to be presumed innocent until proven guilty by an impartial court of law, and to reasonable and timely bail.

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<sup>145</sup> As an exception, the BC Prosecution Service released bail data in 2023 and 2024 in response to intense public and political pressure, although these data are not gender-disaggregated, available < <https://www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/prosecution-service/media-statements/2024/24-09-bcps-releases-further-bail-data.pdf> >.

<sup>146</sup> Coady, *Assessments and Analyses of Canada's Bail System*.

<sup>147</sup> DOJ, *Bail Violations, AOJOS and Remand*.

<sup>148</sup> DOJ, *Trends in Bail Court Across Canada*.

<sup>149</sup> Berger, Myers and Deshman, "Still Failing"

<sup>150</sup> Robinson, et al., *Over-representation of Indigenous Persons*

<sup>151</sup> Deshman and Myers, "Set Up to Fail"

<sup>152</sup> Berger, Myers and Deshman, "Still Failing"

<sup>153</sup> Yule and MacDiarmid, "5 Ways to Reform Canada's Bail System"

Second, in relation to criminal justice-involved women, specifically, we know that although women represent slightly more than half of the Canadian population, they are a comparatively small proportion of people accused, convicted, and imprisoned for committing crimes, representing about 26% of accused persons generally and 27% of persons accused of violent crimes according to 2019 police-reported data. Women primarily commit property offences (39% versus 32% of male accused in 2019) and, to a lesser extent, administration of justice offences and drug-related crimes.<sup>154,155</sup> These offences are often connected with their low socio-economic status and a lack of access to education and employment, alongside efforts to support themselves and their children as frequently single parents. Some scholars and practitioners describe these as “survival crimes” or “crimes of survival.”<sup>156,157</sup> Paralleling their commission of fewer police-reported crimes, women account for a smaller proportion of adults before the criminal courts, for example, representing under one-fifth of cases (19%) in 2018/2019. They also represent a smaller proportion of people who are convicted and sentenced to imprisonment.<sup>158</sup>

Third, the 31 annotations reveal several actual and potential gender inequities for women in relation to both bail and remand laws and practices that merit further research investigation and public policy analysis and attention. For example, women may experience differential access in obtaining bail in view of their gendered social and economic circumstances and frequent role as single parents. This can include not owning a house, not living in a stable housing situation, not having stable employment, or not having access to legal

- 1 LIMITED DATA & RESEARCH ON BAIL AND REMAND
- 2 BAIL IS NOT OVERLY LENIENT
- 3 WOMEN'S CRIMINALIZATION IS SURVIVAL-DRIVEN
- 4 BARRIERS TO BAIL ARE GENDERED & SYSTEMIC

<sup>154</sup> DOJ, *State of the CJS: Focus on Women*

<sup>155</sup> Adult criminal court data for 2022/2023 largely reflect these same patterns where 29% of adult women's cases were for crimes against the person, while 24.9% were for property crimes, 21.1% were for administration of justice offences, and 7.6% were for federal statutes that include drug offences. Statistics Canada. Table 35-10-0173-01 Key indicator results and absolute change for annual data, adult criminal court and youth court <https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=3510017301>

<sup>156</sup> Cass Kislenco. “Crime Data Must Be Placed in Context, Expert Warns.” *The Maple*. August 24, 2023. <https://www.readthemaple.com/crime-data-2022-placed-in-context-expert-warns/#:~:text=Then%20there%20are%20what%20Singh,were%20just%20before%20the%20pandemic>

<sup>157</sup> Binny Paul. “Overrepresentation of Indigenous Women in Jails Hits Record Levels In BC: Most Convictions Come from What One Expert Refers To As Survival Crimes.” *The Tyee*. May 13, 2022. <https://thetyee.ca/News/2022/05/31/Overrepresentation-Indigenous-Women-In-Jail/>

<sup>158</sup> DOJ, *State of the CJS: Focus on Women*

counsel and other resources.<sup>159,160,161,162</sup> There is a concern, too, that women who have fewer resources and less access to social supports may use personal sureties that place them at an ongoing risk of intimate partner violence.<sup>163,164</sup> Moreover, women's differential access to bail is racialized, where Indigenous and Black women experience disproportionate adverse impacts.<sup>165,166,167,168,169,170</sup> Women who live in small, remote, and rural communities are also at a heightened disadvantage since court proceedings may be at significant distances from where the women live and where the women may be expected to find their own transport back to their community when released from detention.<sup>171,172,173</sup>

Additionally, women and girls may experience judicial paternalism in the imposition of more treatment conditions as part of their judicial interim release,<sup>174,175,176,177</sup> and that may also reflect racialized disparities for Indigenous women.<sup>178</sup> There are concerns that imposing unnecessary and unreasonable bail conditions, which are unrelated to the legal grounds for detention or the alleged offence—especially abstention conditions—serve as a form of pre-trial punishment.<sup>179,180,181</sup> These restrictive conditions can contribute to violations of bail conditions and subsequent convictions for AOJOs, thus amplifying women's cyclical criminalization.<sup>182,183,184,185,186,187,188,189</sup>

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<sup>159</sup> Jones et al., "Voices of Remanded Women in Western Canada"

<sup>160</sup> Addario, "Six Degrees from Liberation"

<sup>161</sup> Bressan and Coady, *Guilty Pleas Among Indigenous People in Canada*.

<sup>162</sup> Bucerius et al., "Prison as Temporary Refuge"

<sup>163</sup> Myers and McDermott, "Legally A Jailer, Practically A Carer"

<sup>164</sup> Stewart, "The Illusion of Liberty"

<sup>165</sup> Berger, Myers and Deshman, "Still Failing"

<sup>166</sup> Addario, "Six Degrees from Liberation"

<sup>167</sup> Sean Gallop. "11(e) Shattered: The Historic and Continued Breaching of Indigenous Persons Right to Reasonable and Timely Bail." *Manitoba Law Journal*, 44:6 (2021) 170-193. <https://doi.org/10.29173/mlj1301>

<sup>168</sup> Benjamin Ralston. *The Gladue Principles: A Guide to The Jurisprudence*. Indigenous Law Centre, University of Saskatchewan. 2021. <https://indigenoulaw.usask.ca/publications/the-gladue-principles.php>

<sup>169</sup> Rogin, *Police-Generated Evidence*

<sup>170</sup> Jonathan Rudin. *Indigenous People and the Criminal Justice System, 2nd Edition*. (Emond Canada, 2022).

<sup>171</sup> Comack, *Coming Back to Jail*

<sup>172</sup> Rogin, *Police-Generated Evidence*

<sup>173</sup> Rogin, "Gladue and Bail"

<sup>174</sup> John Howard Society of Ontario (JHSO). *Unequal Justice. Experiences And Outcomes of Young People in Ontario's Youth Bail System*. 2021. <https://johnhoward.on.ca/wp-content/uploads/2021/03/Unequal-Justice-Report-Final.pdf>

<sup>175</sup> Hannaford, "Pre-Conviction Abstention Conditions"

<sup>176</sup> Rachel Schumann, *Gendered Bail?*

<sup>177</sup> Sprott and Doob, "Gendered Treatment"

<sup>178</sup> Rogin, *The Application of Gladue to Bail*

<sup>179</sup> Rogin, "Gladue and Bail"

<sup>180</sup> Pelvin, "Remand as A Cross-Institutional System"

<sup>181</sup> Holly Pelvin. *Doing Uncertain Time: Understanding The Experiences of Punishment in Pre-Trial Custody*. [Doctoral dissertation, University of Toronto]. 2017. <https://utoronto.scholaris.ca/server/api/core/bitstreams/00b9a831-36c9-4c0b-92bb-53b60893914a/content>

<sup>182</sup> Berger, Myers and Deshman, "Still Failing"

<sup>183</sup> Comack, *Coming Back to Jail*

<sup>184</sup> Stewart, "The Illusion of Liberty"

<sup>185</sup> Hannaford, "Pre-Conviction Abstention Conditions"

<sup>186</sup> Bennett and Larkin, *Project Inclusion*

<sup>187</sup> Sylvestre et al., *Red Zones and Other Spatial Conditions*

<sup>188</sup> Carolyn Yule and Laura MacDiarmid. "'It's A Set Up': Examining the Relationship Between Bail Conditions and The Revolving Door of Justice." *Current Issues in Criminal Justice*, (2024) 1–18. <https://doi.org/10.1080/10345329.2024.2400825>

<sup>189</sup> Yule et al., "The Paradox of Pre-Conviction Punishment"

There are also concerns that certain bail conditions may have unanticipated gendered effects or adverse impacts for women. These conditions, such as 'no contact' orders, geographic or spatial restrictions like red zones, curfews, or house arrest restrictions, can hinder women's access to rehabilitative and other resources and to their children and can affect women's ability to parent their children. Women may experience various losses from both bail and remand, including the temporary and/or permanent loss of their children, the loss of employment, and the loss of housing, as several authors of the annotations below reveal.<sup>190</sup> Given the parenting status of most criminal justice-involved women, the loss of employment and housing will almost certainly adversely affect the lives of their dependent children.

With respect to women and remand, as Table 1 above reveals, a growing number (15,402 admissions) and an alarming proportion (75.3%) of women who are in provincial/territorial custody are held in remand and are not persons who have been tried and convicted or sentenced by a court of law. This is deeply troubling, especially given the overrepresentation of Indigenous women, who accounted for 42% of female custody admissions in provincial/territorial correctional services in 2020/2021.<sup>191</sup> We again emphasize that this trend raises vital human rights concerns given the constitutionally guaranteed right to reasonable bail (section 11(e) of the *Charter*) and to be presumed innocent until proven guilty by a fair and impartial court of law (section 11(d) of the *Charter*). This is considered alongside SCC guidance from *Antic* (2017), *Zora* (2020), and other key appellate bail decisions. It also relates to legislatively and judicially mandated social context decision-making, such as Gladue principles and Impact of Race and Culture Assessment (IRCA) submissions, which aim to address systemic discrimination against Indigenous and Black women in the criminal justice system.

The number and proportion of women who are being remanded to custody is equally concerning and seems illogical given the gendered nature of women's offences, which are mainly property and non-violence offences. It is also concerning when one considers women's gendered pathways to criminalization that frequently include extensive histories of violence and trauma, combined with poverty, and often as sole parent families. This can cause detrimental impacts to affected women and their dependent children, where we know almost nothing about the effects of bail and remand on parenting or on the rights of children to have their best interests considered. As is well established in the literature on women and criminal justice, many criminalized women, especially Indigenous

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<sup>190</sup> Capp, *Mothers in Conflict with The Law*

<sup>191</sup> DOJ, *The Bail Process*





women, present to the CJS as having high needs, and these needs are frequently interpreted by the justice system as indicators of risk.<sup>192,193</sup>

The available research also problematically suggests that some women may perceive or experience remand as beneficial by providing temporary access to safety from violence, shelter, and health services, including detoxification and other programs and services

that are not otherwise available in the community.<sup>194,195</sup> However, as noted above, these are not legally valid reasons for denying bail or detaining someone in custody and likely infringe women's constitutionally protected liberty (s.7) and substantive equality (s.15) *Charter* rights and potentially internationally protected rights via the *Bangkok Rules*. These 'benefits' speak loudly to a lack of community-based resources and non-carceral supports for women and ignore the many potential adverse effects of remand for women. This was a key concern identified by several of the authors of the annotations below.

In fact, women experience significant hardships when held in remand. Conditions are often worse than those for sentenced individuals, as access to rehabilitation and other programs is limited or nonexistent. This issue is likely even more severe for women due to their smaller numbers in the system. There are growing concerns about deteriorating conditions in remand for women, including overcrowding and lockdowns in some women's corrections facilities.<sup>196</sup> In Montreal, a class-action lawsuit has been filed against a women's correctional facility that houses both provincially sentenced and remanded women, alleging inhumane treatment and poor living conditions.<sup>197</sup> The case highlights systemic issues such as inadequate healthcare, restricted access to rehabilitation

<sup>192</sup> Balfour, *Victimization, Criminalization, and Incarceration of Women in Canada*

<sup>193</sup> Ivan Zinger [Correctional Investigator of Canada]. *Ten Years Since Spirit Matters: A Roadmap for The Reform of Indigenous Corrections in Canada*. Office of the Correctional Investigator. 2023. <https://oci-bec.gc.ca/sites/default/files/2023-10/Spirit%20Matters%20EN%20%C3%94%C3%87%C3%B4%20Web.pdf>

<sup>194</sup> Jones et al., "Voices of Remanded Women in Western Canada"

<sup>195</sup> Bucerius et al., *Prison as Temporary Refuge*

<sup>196</sup> Jason Warick. "Crowding At Sask. Women's Jail Has Reached Crisis Levels, Says Advocate." *CBC News*. July 14, 2024.

<https://www.cbc.ca/news/canada/saskatoon/crowding-at-sask-women-s-jail-has-reached-crisis-levels-says-advocate-1.7262677>

<sup>197</sup> Jacob Serebrin. "Class-Action Lawsuit Alleges Cruel and Unusual Treatment at Laval Women's Jail." *The Gazette*. August 19, 2024. <https://www.montrealgazette.com/news/article416593.html>

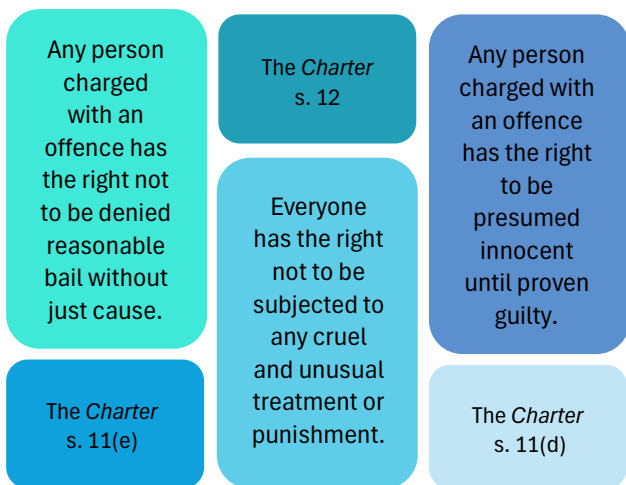
programs, and insufficient winter clothing.<sup>198</sup> The amount of time a woman spends in remand is unpredictable and can range from a few hours to days to months to years.<sup>199</sup> This lack of predictability makes it challenging for women to maintain a connection with their children and/or plan for alternative childcare despite the *Bangkok Rules*, which state that women should be afforded this opportunity (Rule 2). We know very little about remanded women’s access to their children, including their exercise of visitation and communication rights.

“Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.”

The *Charter* s. 15

As several of the annotations below reveal, women’s remand experiences may additionally contribute to other existing inequities, including amplifying adverse physical and mental health conditions, contributing to a loss of employment and housing, having less access to legal counsel

and an impeded ability to prepare an adequate legal defence; and facing a greater likelihood of subsequently being convicted (including women being pressured to plead guilty so that they can return to the community to parent their children) and sentenced to a term of imprisonment. Ominously, as Chart 1 above reflects, several women and female youths have died while remanded to custody, and there is comparative international research evidence suggesting that women on remand have much higher (double the) rates of self-harm than sentenced women.<sup>200,201</sup>



<sup>198</sup> Trudel Johnston & Lespérance. *Ongoing Class Actions: Inhumane Treatment of Women Incarcerated at Leclerc Prison*. N.d. <https://tjl.quebec/en/class-actions/inhumane-treatment-of-women-incarcerated-at-leclerc-prison/>

<sup>199</sup> Statistics Canada. *Table 35-10-0024-01 Adult Releases from Correctional Services by Sex and Aggregate Time Served* <https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=3510002401>. Although the vast majority of women remanded to custody appear to spend one month or less in custody when comparing the ten-year intervals of 2002/2003 to 2012/2013 to 2022/2023, the category of ‘unknown/aggregate time served’ is so large for 2022/2023 that we do not consider the data sufficiently reliable to report them. Data on file with the authors.

<sup>200</sup> Niall McTernan, Eve Griffin, Grace Cully, Enda Kelly, Sarah Hume and Paul Corcoran. “The Incidence and Profile of Self-Harm Among Prisoners: Findings from The Self-Harm Assessment and Data Analysis Project 2017–2019.” *International Journal of Prison Health*, 19(4), (2023) 565-577. <https://doi.org/10.1108/ijph-02-2023-0012>

<sup>201</sup> Prison Reform Trust. *Why Focus on Reducing Women’s Imprisonment? England and Wales*. London: Prison Reform Trust. 2022. <https://prisonreformtrust.org.uk/wp-content/uploads/2022/08/Why-women-2022-briefing.pdf>

At the same time, the available research on women and bail and remand points to the potentially positive benefits for Indigenous women of social context decision-making like *Gladue* submissions, Indigenous court workers, specialized Indigenous courts, and restorative justice mechanisms. To date, these benefits, and those of Indigenous Justice Centres,<sup>202</sup> are under-explored and merit further investigation. Likewise, there is limited assessment of the impact of IRCA submissions for Black women and/or their children. In this regard, it is concerning that the recent codification of “vulnerable groups” does not expressly include women, who are increasingly represented in remand detention and as persons sentenced to imprisonment. Remarkably, the 2019 *Criminal Code* amendments in sections 493.2 and 515(13.1) fail to explicitly recognize the differential gendered impacts of bail and remand for women.<sup>203</sup> Finally, given a lack of public knowledge and prevalent public misinformation on bail and remand in Canada, we feel it vital to underscore that most women who are charged with a criminal offence, including women who are remanded to custody, are ultimately *not* convicted; only 37% of criminal court cases involving accused women resulted in convictions in 2022/2023.<sup>204</sup> Moreover, most women convicted of a criminal offence receive a community-based sentence rather than a term of imprisonment. In this regard, there is also a striking lack of intersectional or gender-based analysis plus (GBA+) research and commentary on how community-based sentences impact women and their children.

While the 2019 amendments to the *Criminal Code* require justices to consider the unique circumstances of Indigenous and other vulnerable accused, they lack a gendered lens. The provisions, such as *Gladue* and IRCA submissions, are designed to address overrepresented populations but remain gender-neutral, failing to account for the distinct realities of women—many of whom are mothers—and the intersecting factors that shape their justice experiences.

In summary, there is little concrete data and research on the impacts women experience in relation to bail and remand laws and processes (e.g., loss of child custody, loss of employment, further victimization, and differential economic impacts). Most existing research on these topics involves small and often regionally specific sample sizes and qualitative interviews. It is imperative that we work to add to the existing knowledge base presented here to develop evidence-informed, effective,

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<sup>202</sup> Indigenous Justice Centres are part of the BC First Nations Justice Council BC First Nations Justice Strategy (2024) available <<https://bcfnjc.com/wp-content/uploads/2024/04/The-BC-First-Nations-Justice-Council-Justice-Strategy-2024.pdf>> that provide free legal and outreach services for Indigenous people facing criminal and child protection issues.

<sup>203</sup> Notably the 2019 *Criminal Code* amendments requiring justices of the peace and judges granting bail to consider the unique circumstances of Indigenous accused and ‘other vulnerable’ populations lack an intersectional or gendered lens. Much like *Gladue* and IRCA submissions, these provisions are gender-neutral and do not expressly recognize the unique circumstances of women and girls or that most justice-involved adults are parents. And there are few if any empirical assessments of the impact of these new *Criminal Code* “vulnerable group” provisions where in fact the available evidence suggests a limited impact for women and especially Indigenous women. We also know very little about other diverse groups of women: gender diverse women; women who are economically disadvantaged; women who have children; women living in remote, rural, and small communities; women with disabilities including mental health and substance dependence challenges and how women’s intersecting identities affect their bail and remand experiences.

<sup>204</sup> Data on file with the authors.

and equitable bail strategies that preserve and uphold the rights of all justice-involved people and consider the unique experiences of criminal justice-involved women and their children.

## Conclusion and Recommendations

In view of our review of the literature and the annotations below, as well as the many gaps in our knowledge about adult women's bail and remand experiences, we join other scholars in calling for the government publication of bail statistics. We assert these should be gender-disaggregated, along with all other police-reported crime and criminal justice data. We also join other scholars and stakeholders in supporting the greater use of adult diversion and alternative measures for less serious administration of justice offences, including violations of bail conditions, and by implementing practical reforms like greater access to legal counsel and the expansion of court attendance reminder programs and bail beds.<sup>205,206,207</sup>

We concur that provinces such as BC likely need to significantly increase their investments in community-based alternatives, especially for mental health and substance use. These alternatives have documented efficiencies, such as lower costs, particularly for women whose offences are primarily property-related and are often driven by survival needs. They also offer greater effectiveness in addressing complex crime and public health issues, as well as the economic and other inequities experienced by many criminal justice-involved women.<sup>208,209,210</sup>

In particular, we advocate for primary research on women's intersectional bail and remand experiences. Toward this end, we are collaborating with the International Centre for Criminal Justice Reform and Criminal Justice Policy to pursue funding for primary research on women's bail and remand experiences in the province of British Columbia. We have chosen to focus on BC, given provincial/territorial responsibility for the administration of justice and highly varied bail practices across the provinces and territories. Our proposed primary research will address a major knowledge gap in Canadian criminology and criminal justice, including in university curriculum. In particular, we anticipate that our primary research findings will contribute to rights or principles-based, gender-responsive, evidence-informed, and practical bail reforms that address the unique needs of criminal justice-involved women while also contributing to public safety and community wellbeing.

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<sup>205</sup> Addario, *Six Degrees from Liberation*

<sup>206</sup> Berger, Myers and Deshman, "Still Failing"

<sup>207</sup> Butler and LePard, *A Rapid Investigation into Repeat Offending*

<sup>208</sup> Myers, *The Crisis in Canada's Bail System*

<sup>209</sup> Yule and MacDiarmid, "5 Ways to Reform Canada's Bail System"

<sup>210</sup> Comack, *Coming Back to Jail*

Additionally, we expect that our findings will contribute to increased public awareness as there currently seems to be significant misinformation about bail and remand in Canada, and in particular, within the province of BC. Law reform, especially the legislative recognition of systemic bias factors, often excludes women and fails to assess gaps in community-based (non-carceral) alternatives for women. We aim to begin to fill that knowledge void in a way that centers impacted women's voices directly.

## Annotated Bibliography

**Addario, L. (2002). *Six degrees from liberation: Legal needs of women in criminal and other matters*. Department of Justice Canada, Research and Statistics Division.**

[https://publications.gc.ca/collections/collection\\_2009/justice/J3-10-20E.pdf](https://publications.gc.ca/collections/collection_2009/justice/J3-10-20E.pdf)

In this Department of Justice commissioned study, Addario examines the legal aid and other legal needs of criminally accused, criminally convicted, and victimized women, including but not limited to survivors of intimate partner violence and sexual assault and extending to child apprehension. Through a literature review and case law analysis, Addario found that economic and social factors heavily impact women's interactions with the criminal justice system. Despite being charged with less serious crimes, Addario found that the proportion of women remanded to custody is roughly equal to that of men (citing 1996 Statistics Canada data). According to Addario's review of the literature, Indigenous and Black women are more likely to be denied bail and remanded to custody. Indigenous women and women from remote and rural communities who are denied bail are likely to be detained in facilities located in the geographic south of Canada, which pose unique transportation issues and can increase the barriers they face in maintaining contact with their children. Addario argues that bail criteria such as perceived strength of family ties, a lack of stable housing, employment status, and community ties are gendered and racialized, disproportionately disadvantaging racialized women. These criteria often fail to consider the systemic barriers and historical inequities that have marginalized the members of Indigenous and Black communities, leading to assumptions that Indigenous and Black women lack stability or community support. These stereotypical assumptions appear to contribute to the disparate rates of pre-trial detention for Indigenous and Black women. Among other recommendations, Addario advocates for a

reassessment of bail criteria to mitigate these intersecting gendered and racialized disparities. She also proposes providing better legal support for women interacting within the justice system, such as access to adequate legal representation at bail hearings.

Keywords/Themes: Accessible legal representation, bail, child apprehension, economic marginalization, gendered stereotypes, Indigenous and racialized women, justice-involved women, legal aid, R v. Hall (SCC, 2002), remand, systemic issues, victimization.

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**Bennett, D., & Larkin, D.J. (2018). *Project inclusion: Confronting anti-homeless & anti-substance user stigma in British Columbia*. Pivot Legal Society.**

<https://dx.doi.org/10.14288/1.0378608>

"Project Inclusion," authored by Bennett and Larkin on behalf of Pivot Legal Society, is a qualitative research report examining lived and living experiences of the pathways to experiencing homelessness and using substances as well as the impacts of policing and criminalization on these experiences. The research team visited ten undisclosed communities within BC's five health regions, conducting interviews with 76 individuals, including 35 women. They also conducted six focus groups and interviewed or surveyed 119 service providers. Importantly, Bennett and Larkin interviewed people whose 'bail conditions negatively impacted their lives' (p. 74). The report highlights how stringent bail conditions (specifically paraphernalia prohibitions, abstinence conditions, and red zones) often exacerbate the difficulties faced by the members of equity-deserving and marginalized communities, such as Indigenous Peoples, those who are experiencing homelessness, and those who use substances. These barriers are shown to often lead to breaches and subsequent criminal charges (i.e., cyclical criminalization). The authors' findings underscore the necessity for courts to use the least restrictive bail conditions and to release individuals without conditions unless necessary, which they outline as not only being preferable but legally required. Specifically, s. 515(10) of the *Criminal Code* states that restrictive bail conditions are justified only for three reasons: "to ensure attendance at trial; to protect public safety; or to maintain confidence in the administration of justice" (p.76). Enforcing stringent conditions for any other reason would, therefore, breach the legal framework designed to safeguard the rights of the accused.

While the study is limited by its lack of a gender-disaggregated analysis of bail conditions for women, it does provide individual insights into individual women's experiences with breaches. For example,

one woman shared how she was jailed for five days for breaching a condition simply because she needed to buy tampons, while another woman spent 18 days in detention for attempting to reach the hospital with a broken foot. The study also highlights a lack of data and transparency in tracking police-imposed release conditions and court-imposed bail conditions, pointing to a critical data gap that requires further investigation and reform. This data gap emphasizes the broader need for greater scrutiny and accountability in how bail conditions are applied and monitored.

Keywords/Themes: Bail conditions, drug use, homelessness, lived experience, overrepresentation, marginalized populations, pre-trial detention, stigma, systemic issues, women.

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**Berger, L., Myers, N.M., & Dushman, A. (2024). *Still failing: The deepening crisis of bail and pre-trial detention in Canada*. Canadian Civil Liberties Association (CCLA).**

[https://ccla.org/wp-content/uploads/2024/02/CCLA\\_Bail-Reform-Report-2024.pdf](https://ccla.org/wp-content/uploads/2024/02/CCLA_Bail-Reform-Report-2024.pdf)

In their second national study<sup>211</sup>, Berger, Myers, and Dushman, on behalf of the Canadian Civil Liberties Association (CCLA) and the Canadian Civil Liberties Education Trust, explore the implementation of post-2014 bail law reforms and the impact of COVID-19 (2020-2022) on bail practices and remand trends in Canada. The study includes an examination of remand statistical trends across the country, court observations (n=1284 bail appearances), and interviews with 33 criminal justice professionals (genders unspecified) in four provinces (BC, Manitoba, Ontario, and Nova Scotia). Unfortunately, the authors provide minimal gender-disaggregated analysis despite 18% (n=232) of the 1284 bail appearances observed being women (see Appendix E: Court Observations Data Report, p. 75). However, this nationwide study offers critical insights into the ongoing in/efficiencies in the bail process, forms and conditions of release, breaches of bail conditions, and systemic discrimination in bail practices, particularly concerning mental health, substance use, socioeconomic status, the experiences of people living in rural and remote communities, and Indigenous, Black, and other racialized accused persons.

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<sup>211</sup> Dushman and Myers, "Set Up to Fail"

Their first landmark report "Set Up to Fail: Bail and the Revolving Door of Pre-trial Detention" by Dushman and Myers, representing the CCLA and Education Trust, examines the dysfunctions of the Canadian bail system. Conducted in five provinces/territories (BC, Yukon, Manitoba, Ontario, Nova Scotia), the study utilized court observations (n = 718; 14.1% women) and interviews with criminal justice professionals (n = 35). Despite including women in the sample, the report lacks a detailed gender analysis. Key findings revealed that the bail system disproportionately affects marginalized populations, leading to unnecessary pre-trial detentions and restrictive bail conditions that set individuals up for failure. Recommendations included reducing pre-trial detention, limiting restrictive bail conditions, addressing systemic delays in bail hearings, and supporting marginalized communities. This 2014 and subsequent 2024 reports significantly contribute to understanding systemic bail issues in Canada while also highlighting the need for further research on women's and gender non-binary persons' experiences in bail and remand processes due to a lack of a detailed and ideally intersectional gender analysis.



The authors conclude that legal reforms, such as Supreme Court of Canada decisions and Bill C-75, have not resulted in a significant cultural shift in bail practices, with individuals remanded to custody now making up more than 70% of those in provincial and territorial custody in the four jurisdictions studied (p. 51). Key findings include some improvements in more timely bail hearings, reduced reliance on surety release in certain jurisdictions, and increased awareness of the need for tailored and appropriate bail conditions. Nonetheless, challenges remain post-COVID. These include access to virtual bail hearings, ongoing concerns about the criminalization of bail breaches, and continued discriminatory impacts of bail and remand on Indigenous, Black, and other racialized individuals.

The authors recommend targeted "rights-respecting" amendments to the Criminal Code, such as decriminalizing bail breaches, improving the efficiency and quality of bail decision-making, and enhancing support for those released on bail. Suggested improvements also include providing transportation for arrested and released persons (a particularly pressing issue for people living in remote and rural communities), enhancing bail supervision programs, implementing court attendance reminder programs, offering "bail beds" housing options, investing in mental health and substance use supports, and improving data collection.

Keywords/Themes: Adverse/discriminatory impacts of bail and remand on the members of Indigenous, Black and racialized communities, bail breaches, bail conditions, bail law reform, bail practices, Bill C-75, COVID-19 impacts, criminal justice in/efficiencies, cultural shifts, remand trends, remand/pre-trial detention, Supreme Court of Canada decisions, sureties, systemic issues, types of bail releases, virtual/remote bail hearings.

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**Besney, J., Angel, C., Pyne, D., Martell, R., Keenan, L., & Ahmed, R. (2018). Addressing women's unmet health care needs in a Canadian remand center: Catalyst for improved health? *Journal of Correctional Health Care, 24*(3), 276-294.**

<https://doi.org/10.1177/1078345818780731>

In this study, conducted from November 1, 2014, to October 31, 2015, at an undisclosed Canadian maximum-security remand facility, Besney et al. examine the impact of remand on women's healthcare needs encompassing mental health, reproductive health, support for sexually transmitted diseases, gynecological health, and preventative care. Utilizing a mixed-methods approach, the study includes quantitative and qualitative data collection. There were 420 requests



to participate in the Women's Health Clinic (WHC), and 109 women completed at least one assessment. The quantitative component involved a retrospective chart review, while the qualitative component included focus groups with incarcerated women (n = 11) and healthcare providers (n = 6). The study highlights the complex health needs of criminal justice-involved women who are remanded to custody, underscoring significant implications for their health during bail and pre-trial detention. The authors found that pre-trial detention exacerbates health issues and creates barriers to necessary care.

The study authors also document an increase in remanded and provincially sentenced women and Indigenous women, identifying health disparities within these populations and comparing percentages for 2008/2009 and 2013/2014. By highlighting one remand facility and focusing exclusively on women, the researchers emphasize the physical, mental, and social health needs of remanded women. The authors advocate for establishing a WHC within correctional facilities to provide comprehensive, gender-specific, and culturally sensitive health services. They recommend enhanced case management and patient navigation services to ensure continuity of healthcare and support for women transitioning back into the community.

Keywords/Themes: Access to health, bail conditions, healthcare needs, imprisonment impacts, length of time in remand, systemic issues, women in remand.

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**Bucerius, S., Haggarty, K., & Dunford, D. (2021). Prison as temporary refuge: Amplifying the voices of women detained in prison, *The British Journal of Criminology*, 61(2), 519–537. <https://doi.org/10.1093/bjc/azaa073><sup>212</sup>**

The qualitative study by Bucerius, Haggarty, and Dunford investigates the experiences of remanded women in three remand centers in western Canada, exploring how remand can serve as a temporary refuge from everyday hardships. Through interviews with 88 incarcerated women, 55% of whom were Indigenous, the study findings highlight how women's remand experiences relate to victimization,

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<sup>212</sup> Bucerius, S., Haggarty, K., & Berardi, L. (2023). The everyday life of drugs in prison. *Crime and Justice*, 52, 83-123. <https://www.journals.uchicago.edu/doi/10.1086/726139>

As part of the University of Alberta Prison Project (UAPP) study, the authors examined the experiences of substance use in prisons, focusing on how remanded and sentenced men and women acquire and use substances, including: opioids, methamphetamine, and cocaine. Through interviews with 734 inmates (576 men and 158 women) from four institutions, two of which were remand centres, one of which was a mixed remand and sentenced facility, and one of which was a sentenced facility, it highlights the creative adaptations prisoners make to use drugs and the impact on daily prison life, such as intoxication and withdrawal. Notably, 85 of the 158 women were in remand, and the study emphasizes women's involvement in introducing substances into remand centres.

substance use, access to housing/food/health care, and respite from everyday realities. The study reveals that many women view remand as a preferable alternative to their community circumstances, as it offers safety, shelter, food, and access to health supports that are often unavailable on the outside. Bucerius et al. recommend addressing unmet social support needs that lead women to view imprisonment as a preferable alternative to their community conditions. They call for improved support systems outside the prison and within communities to reduce the reliance on imprisonment to meet women's basic needs. These findings provide critical insights into the socio-economic and personal challenges faced by many remanded women, the gaps in existing social support systems, and the overrepresentation of Indigenous women among remanded populations.

Keywords/Themes: Cyclical criminalization, health, housing precarity, marginalization, women's experiences of prison, poverty, refuge, remand, social support, structural violence, substance use, victimization, women in remand, and women's health.

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**Butler, A., & LePard, D. (2022). A rapid investigation into repeat offending and random stranger violence in British Columbia. Executive summary and recommendations. Government of British Columbia.**

[https://news.gov.bc.ca/files/Prolific\\_Offender\\_Report\\_BCFNJC\\_submission.pdf](https://news.gov.bc.ca/files/Prolific_Offender_Report_BCFNJC_submission.pdf)

Commissioned by the Government of BC, Butler and LePard investigated pandemic-related repeat offending and random stranger violence in British Columbia. These crimes are often attributed to people with mental health and substance use needs, and the report focuses on improving responses to the resulting real/perceived public safety challenges. The authors draw on interviews with over 60 stakeholders, including mayors and city officials, health authorities, criminal justice representatives (police, Crown Counsel, community courts, corrections), specialized mental health outreach teams, community agencies, academics and researchers, retail representatives, a submission by the BC First Nations Justice Council, and a review of relevant literature. Although offering limited gender analysis of women and bail and remand, the report provides some analysis of pandemic bail and remand trends and post-pandemic public safety concerns in BC communities. It also highlights the lack of available and adequate social supports for many criminalized individuals. A key recommendation put forward by the authors is the substantial need for investment in bail and transitional housing, particularly the establishment of dedicated "bail beds." These

accommodations are essential for ensuring that individuals within the justice system, especially those with mental health and substance use needs, have access to safe and stable housing. The report identifies the current shortage of such housing as a major barrier, causing significant delays and inefficiencies within the mental health system and complicating the effective management and rehabilitation of accused/offenders. In relation to women, the authors note the importance of specialized courts, including drug treatment courts, culturally appropriate housing, Indigenous-designed harm reduction programs, more treatment places for women, and addressing violence against Indigenous women and girls.

While the report offers comprehensive and practical recommendations for systemic reform, including increasing the use of therapeutic bail orders<sup>213</sup> and creating specialized mental health units, the focus remains on broader systemic issues without delving into gender-specific outcomes. Despite this gap, the rapid review provides valuable insights into the intersection of mental health, substance use, and perceptions of increasing violence and repeat offending in BC communities while advocating for a more integrated and multidisciplinary approach.

Keywords/Themes: Criminal justice system, mental health, public safety, repeat offending, substance use, therapeutic bail orders, transitional housing.

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**Bressan, A. & Coady, K. (2017). *Guilty pleas among Indigenous people in Canada.***

**Department of Justice.** <https://www.justice.gc.ca/eng/rp-pr/jr/gp-pc/gp-pc.pdf>

Bressan and Coady of the Research and Statistics Division of the Department of Justice explored the comparatively high rate of guilty pleas among Indigenous Peoples in Canada, identifying systemic, social, and cultural factors contributing to this trend. They conducted 25 semi-structured telephone interviews with justice system professionals, including court workers, lawyers, members of government and service providers, across Canada (excluding New Brunswick and Newfoundland) between November 2016 and January 2017. Although the study lacked a focus on women, it revealed justice professional perceptions of the unique factors that contribute to guilty pleas among Indigenous Peoples. Based on themes arising from the interviews, the study authors suggest that “social vulnerabilities related to income, housing, addictions, and mental health” (p. 19) may contribute to more frequent justice system contacts and guilty pleas. They also note how linguistic

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<sup>213</sup> “Therapeutic bail (sometimes called therapeutic sentencing delay) involves agreement between Crown and defence counsel to delay sentencing while a person undertakes treatment or programming, which can result in avoiding a criminal conviction” (p.14)

barriers and unique Indigenous cultural values, such as those emphasizing agreement, cooperation and taking responsibility, may contribute to (false) guilty pleas. The authors note the many adverse effects (downstream impacts) of guilty pleas for Indigenous Peoples, ranging from loss of family, including loss of custody of their children, loss of connection to community and trauma associated with imprisonment. They also emphasize the importance of paying attention to cyclical criminalization associated with administration of justice offences. Bressan and Coady suggest that addressing systemic inequities (such as how the criminal justice system incentivizes guilty pleas) and providing culturally appropriate supports (for example, an Indigenous court worker program, legal aid, specialized courts, access to restorative justice mechanisms, cultural competency training for justice system professionals and Gladue reports) could help reduce the overrepresentation of Indigenous Peoples in the criminal justice system. They also stress the importance of investing in “more front-end social supports for poverty, housing, addiction, and mental health” to avoid initial contact with the criminal justice system (p. 19).

Keywords/Themes: Bail, guilty pleas, Indigenous Peoples, justice alternatives, overrepresentation, remand, social vulnerabilities.

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**Comack, E. (2018). *Coming back to jail: Women, trauma, and criminalization*. Halifax: Fernwood Publishing.**

In her book, sociologist and criminologist Elizabeth Comack reflects on what has changed for women admitted to a Manitoban provincial correctional facility (the Women's Correctional Centre) in the 20 years since her last study at the former Portage Correctional Institution. Based on interviews with 42 women, Comack examines how women's lived experiences of trauma, violence, and loss connect with their involvement in crime and their treatment by the criminal justice system.

A key focus of Comack's study is the impact of stringent pre-trial bail conditions and systemic barriers to accessing bail, particularly for Indigenous women and those in remote and rural communities. She highlights Manitoba's zero-tolerance policy for bail violations, illustrating how easily women can inadvertently breach conditions—such as forgetting court dates, being at a prohibited address, or consuming alcohol—leading to the amplification of criminal charges. Comack effectively conveys how these systemic barriers and strict conditions often result in women

being caught in the 'criminal justice net' and held in remand, sometimes leading to guilty pleas even when they are innocent or have valid legal defences.

Following the women's experiences through court, remand, and imprisonment, Comack critiques the paradox of gender-responsive reforms in a punitive system, questioning the effectiveness of rehabilitative efforts in spaces designed for punishment. She concludes by calling for system-wide decolonization, expanded community-based supports, and a critical reassessment of why so many women are being imprisoned.

Keywords: criminalized women, colonialism, neo-liberalism, patriarchy, racism, Indigenous peoples, violence, trauma as sociological, colonial trauma, collective trauma, personal trauma, loss, getting bail, bail conditions, bail breaches, remand/pre-trial detention, trial, pleading guilty, community-based sentencing conditions, prisoning, segregation, dry cells, prisoning, going to jail, reintegration, early release conditions.

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**Hannaford, A. (2020). Issues surrounding pre-conviction abstention conditions on persons suffering from illicit substance addictions. *Manitoba Law Journal*, 43(5), 39-64. <https://journals.library.ualberta.ca/themanitobalawjournal/index.php/mlj/article/view/1222/1207>**

In her discussion paper, focused through the lens of the methamphetamine crisis in Manitoba, Hannaford examines the legal and human rights implications of imposing abstention conditions on individuals who rely on substances. She explores these implications for both licit and illicit substances during the pre-conviction phase, particularly in bail situations. Hannaford argues that onerous abstention conditions are often counterproductive and unrealistic in comparison to the support available, leading to bail breaches, additional AOJO charges, and prolonged remand detention. She critiques current legal practices, highlighting section 11(d) (presumption of innocence) and 11(e) (reasonable bail) *Charter* rights and a potential s. 12 *Charter* rights argument "against the imposition of onerous bail conditions on people suffering from addictions as cruel and unusual punishment" (p. 39). Hannaford shows support for Bill C-75 and, in particular, subsection 523.1(3), which allows judges to more holistically consider individual circumstances and the dynamics that led to a breach.

Although there is no explicit gender analysis, Hannaford highlights two key cases involving women, *R v Omeasoo* (a 2013 Alberta provincial court decision) and *R v Denny* (a 2015 Nova Scotia provincial court decision), where the courts found that abstention conditions imposed on women with reliance

on alcohol were unreasonable and harmful, further reinforcing the need for judicial discretion and health-oriented approaches. Overall, Hannaford underscores the urgent need for legal reforms that prioritize support and consider the unique challenges faced by individuals who use substances. She also stresses that reasonable bail for Indigenous Peoples requires a Gladue analysis.

Keywords/Themes: Abstention conditions, AOJOs, bail, bail conditions, Charter rights, judicial discretion, pre-conviction, rehabilitation, right to reasonable bail, Section 12 Charter argument, substance abuse, treatment alternatives.

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**John Howard Society of Ontario (JHSO). (2021). Unequal Justice. Experiences and outcomes of young people in Ontario's youth bail system.**

<https://johnhoward.on.ca/wp-content/uploads/2021/03/Unequal-Justice-Report-Final.pdf>

In one of a handful of studies that directly address the gendered effects of bail on women and girls (female youths) in Canada, the John Howard Society of Ontario conducted a comprehensive study of the youth bail system using quantitative data from the Ministry of the Attorney General's Integrated Case Outcome Network (ICON) (n = 159,301 youth bail hearings, 2006-2017) and the Ministry of Children, Community, and Social Services (MCCSS) database (n = 64,111 youth admissions, 2006-2015) which includes demographic information. Qualitative insights were gathered from unspecified stakeholders via online surveys (n = 45) and a think tank event (n = 49), as well as from youth with lived and living bail experience via face-to-face interviews (n = 2) and focus groups (n = 13). The report reveals significant gender differences in bail outcomes, with female youth facing higher rates of mental health issues, substance use, and trauma. It also shows the courts are more likely to impose bail conditions pertaining to substance use treatment for girls and argues this is due to a more paternalistic judicial approach. The report also highlights systemic delays, overuse of sureties, and racial disparities. The JHSO advocates for gender-sensitive and culturally relevant programs, increased funding for diversion and restorative justice programs, and discharge planning to address the unique needs of female youth in the bail system.

Keywords/Themes: Community-based alternatives, gender, legal paternalism, legal reforms, psychological impact, pre-trial detention, race, risk aversion, social impact, systemic and gender-based inequalities, treatment conditions, youth bail system.

**Jones, D., Bucerius, S., & Haggarty, K. (2019). Voices of remanded women in western Canada: A qualitative analysis. *Journal of Community Safety & Well-Being*, 4(3), 44-53.**  
<https://doi.org/10.35502/jcswb.103>

In one of the few studies that directly address women's remand experiences in Canada, Jones, Bucerius, and Haggarty conducted a qualitative study as part of the University of Alberta Prison Project (UAPP) in an undisclosed Western Canadian remand centre, interviewing 39 women to gain insights into their lived and living remand experiences. The study authors uncovered themes such as high rates of victimization, profound distrust of the criminal justice system, the severe impact of imprisonment on parenting and the ability to maintain a connection with children, the prevalence of substance use and mental health issues, and the pragmatic, contextual benefits (e.g., access to housing, safety from personal victimization, and forced detoxification in relation to substance use) of remand. Some women perceived imprisonment as a temporary refuge from harsher conditions outside, pointing to failures in systemic social supports. The study's gender-responsive analysis and its recommendations for enhanced social services (such as access to stable housing), victim support (protection from victimization), parenting assistance, and more adequate and accessible substance use, and mental and physical health services provide guidance for reforming the remand system to meet women's unique gendered needs more effectively.

Keywords/Themes: Distrust of police, incarcerated parents, justice-involved parents, marginalization, mental health, parenting, remand, substance use, trauma, women.

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**Kanters, A. (2018). *Women in incarceration in Alberta: Backgrounder*. Elizabeth Fry Society of Calgary.** <https://elizabethfrycalgary.ca/wp-content/uploads/2018/10/PCOP-Backgrounder.pdf>

Authored by Kanters to support the 2018 evaluation of the Prison Community Outreach Program (PCCOP) offered by the Elizabeth Fry Society of Calgary, this literature review discusses women's imprisonment in Alberta using data from government databases, academic articles, and grey literature. The author highlights that remand populations frequently outnumber sentenced populations, especially in Alberta (70% in 2015/2016<sup>214</sup>), leading to significant adverse or

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<sup>214</sup> Reitano, J. (2017). *Adult correctional statistics in Canada, 2015/2016*. Statistics Canada. <https://www150.statcan.gc.ca/n1/pub/85-002-x/2017001/article/14700-eng.pdf>

downstream impacts, including family separation, disruption to children, and job loss. Kanters discusses the unique social situations and intersectional characteristics of women who engage in criminal behaviour and come to the attention of the criminal justice system, including describing their relationships with substances, poverty, their children, and trauma. She also emphasizes that remanded individuals often lack access to supportive programs available only to sentenced people, contributing to instability and economic hardship. Remanded individuals may lose their housing and employment due to being detained—despite maintaining the presumption of innocence—which significantly hinders reintegration if they are later released on bail or are found not guilty. By highlighting these issues, Kanters calls for targeted reforms, especially at the provincial and territorial levels, and improved data collection to address the unique needs of remanded women in Canada.

Keywords/Themes: Bail, community-based options, family separation, female offenders, remand, systemic issues, women

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**Kellough, G., & Wortley, S. (2002). Remand for plea. Bail decisions and plea bargaining as commensurate decisions. *The British Journal of Criminology*, 42(1), 186-210.**

<https://doi.org/10.1093/bjc/42.1.186>

In this quantitative study, Kellough and Wortley examine the influence of individualized personal judgments and risk assessments in Canadian bail and remand decisions. Conducted over six months in two Toronto bail courts, the research analyzed over 1,800 (71.2% male) criminal cases through court observations, document analysis, tracking cases via the Ontario Attorney General's system, and interviews with persons remanded to custody. The results indicate that personal identity factors, such as race and gender, play a significant role in whether someone is held in custody or released before trial. Men are more often detained than women, while women are more likely to have their charges dropped. The study also shows that those detained before trial are more likely to plead guilty, while those released are more likely to have charges dismissed. Although the research is dated, it discusses gender disparities in bail decisions and plea bargaining. The authors highlight the importance of subjective police assessments in bail/remand decisions and show that Crown counsel use pre-trial detention to coerce guilty pleas, suggesting the need to address these disparities, particularly for the members of marginalized communities.



Keywords/Themes: Bail, guilty pleas, remand, risk aversion, subjective biases

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**Mackenzie, S. (2020). *Beyond Cash Bail: Evaluating the Relationship Between Racial Disparities and Pre-Trial Detention Rates in the Province of Alberta*. [Honors Thesis, Department of Public Policy, University of North Carolina at Chapel Hill]**

<https://doi.org/10.17615/mqta-1p08>

Mackenzie's honours thesis examines rising pre-trial detention rates in Alberta, focusing on the over-representation of Indigenous Peoples. Specifically, the author (citing Statistics Canada, 2019 data) outlines that Indigenous Peoples comprised 41% of those admitted to custody in 2018, an increase from 36% in 2008, while Alberta's overall remand population has grown to 70% versus sentenced persons. To uncover the cause of this trend, the author investigates how certain bail conditions, such as abstention from alcohol or drug consumption and maintaining permanent housing, appear gender and race-neutral but disproportionately affect Indigenous Peoples. The mixed-methods research includes interviews with 12 Alberta provincial court judges and analyzes court data. Mackenzie's findings indicate that bail conditions often become unmanageable for Indigenous individuals due to systemic issues like higher rates of substance use, community displacement, and housing insecurity. Mackenzie also points out that judges reported that cash conditions were imposed in approximately half of the cases they presided over, contradicting the legal frameworks of *R v. Antic* and Bill C-75 stipulating cash should be a last resort. Mackenzie asked judges about the potential consequences of pre-trial detention in relation to false guilty pleas and found that there was an awareness that the conditions and pressure of pre-trial detention often led to a defendant pleading guilty. There was also widespread awareness about the failure of social safety nets as a precursor to criminal activity. Although the thesis does not provide any gender-disaggregated information, it does briefly mention how, for women with children, detention may lead to negative consequences for both the child and the parent.

Keywords/Themes: Bail practices, Bill C-75, cash bail, conditions, Gladue, Indigenous over-representation, racial disparities, remand, systemic issues.

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**Mitchell, M. (2023). *Reducing the overrepresentation of Indigenous Peoples in Canadian prisons: Bail and the promise of Gladue courts.* [Doctoral dissertation, University of Ottawa]. <https://ruor.uottawa.ca/items/3a4d9a21-9af4-49ab-81f7-a621037876ff>**

In her PhD thesis, Mitchell employs quantitative analysis to investigate bail practices from 2001 to 2017 at two Toronto courthouses, Old City Hall and College Park, comparing Gladue bail cases with conventional bail cases. She utilizes two primary datasets: an event-based dataset, which includes cases stemming from a single event (n = 188,202), and a person-based dataset, which includes all charges against a person that were handled together on the same day at a specific courthouse (n = 141,709). The sample included 26,381 women (18.6%), although there was no significant gender-disaggregated analysis. The main gender comparison was found in Table 5.5, where Mitchell presented a breakdown of Gladue bail status by gender.

The key findings reveal that Gladue bail cases generally require more court appearances and longer processing times than conventional cases, but that Gladue Courts have generally achieved more equitable bail outcomes. However, their effectiveness is hindered by the high rates of early guilty pleas and the frequent waiving of the right to bail in Gladue cases. Indigenous Peoples, in these cases, continue to face higher rates of conviction and imprisonment compared to those in conventional bail courts. Indigenous women experience more pronounced systemic inequalities and biases, as evidenced by their higher rates of imprisonment. In 2018/2019, they represented a larger proportion of admissions to provincial and territorial jails (42%) and sentenced admissions to federal facilities (41%), surpassing the rates for Indigenous men (28% and 29%, respectively)<sup>215</sup>. Mitchell recommends implementing interventions to encourage Indigenous accused to seek bail in Gladue Court, allowing these specialized courts to have a more significant impact on bail outcomes. Additionally, she calls for enhancing the efficiency of the bail process to reduce the time accused persons spend in remand awaiting a bail decision.

Keywords/Themes: Bail, bail process times, Gladue Court, guilty pleas, Indigenous Peoples, remand, women.

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<sup>215</sup> Citing Malakieh, J. (2020). *Adult and youth correctional statistics in Canada, 2018/2019*. *Juristat*, 40(1), Cat. No. 85-002-X. <https://www150.statcan.gc.ca/n1/en/pub/85-002-x/2020001/article/00016-eng.pdf?st%20=2J80Xxn0>

**Myers, N., & McDermott, J. (2024). Legally a jailer, practically a carer: Release on bail subject to surety supervision. *Canadian Journal of Criminology and Criminal Justice*, 65(4), 3-23. <https://doi.org/10.3138/cjccj-2023-0038><sup>216</sup>**

Myers and McDermott draw on data from a larger study of the bail process in Ontario and British Columbia. The broader study, conducted in 2016, encompasses court observations, an analysis of 500 case files, and interviews with 120 individuals with experience with the bail system. This segment focused on sureties utilizing convenience and snowball sampling methods to conduct 32 interviews ( $n = 14$  women; 43.8%). All the participants had previously (75%) or were currently (25%) acting as a surety, and over 50% of the time ( $n = 18$ ), the accused was a family member. The findings indicate that sureties frequently feel unsupported and lack the authority to enforce bail conditions. Through qualitative analysis, significant tensions were identified between sureties' legal responsibilities and their relationships with the accused. These results question the effectiveness of surety supervision as a risk management strategy, suggesting a need for reassessment to better support sureties and ensure compliance with bail conditions. The study primarily discusses the effects of bail conditions on sureties, focusing on their experiences and the challenges they face in supervising the accused. It does not delve deeply into the effects of bail conditions on the accused themselves, and it has limited relevance for provinces like BC, as this study confirms that sureties are rarely, if ever, used in this province. It also lacks an analysis of the gendered effects of sureties, especially for women in intimate partner violence situations who may accept returning to unsafe living conditions to be granted bail (See Stewart, 2022, below).

Keywords/Themes: Bail supervision, failure to comply, pre-trial detention, risk management, surety.

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**Parkes, D., & Cunliffe, E. (2015). Women and wrongful convictions: concepts and challenges. *International Journal of Law in Context*, 11(3), 219-244.**

<https://doi.org/10.1017/S1744552315000129>

Parkes and Cunliffe investigate the gendered and racialized dimensions of wrongful convictions of women. The authors reviewed cases from various countries, including Canada, the USA, the UK, and Australia involving convictions for murder, child abuse, drug crimes, and rape. They demonstrated

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<sup>216</sup> See also Schumann, Rachel and Yule, Carolyn (2023) "'He's in jail now and I don't feel bad'": Analyzing Sureties' Decisions to Report Bail Violations," *International Journal on Responsibility*: Vol. 6: Iss. 1, Article 9. DOI: <https://doi.org/10.62365/2576-0955.1073> . Available at: <https://commons.lib.jmu.edu/jjr/vol6/iss1/9>

how criminal justice systems often fail to address women's unique needs, like pleading guilty to prevent their children from having to testify in court and/or to ensure parenting continuity as the sole care providers for their children, reinforcing systemic gender biases. They argue that the traditional focus on factual innocence in the criminal justice system neglects the broader injustices and gendered stereotypes that disproportionately affect women. For example, women are often expected to conform to specific behaviours, like showing appropriate levels of grief or passivity, and when they deviate from these expectations—such as by not displaying the expected emotional responses during police investigations and trials—they may be perceived as less credible or more culpable. This narrow focus overlooks the social and legal dynamics that can pressure women into accepting guilt, even when they might have valid defences like self-defence.<sup>217</sup> Although the paper does not primarily focus on bail or remand, it highlights how charge stacking and plea-bargaining often compel women to plead guilty, with the inclusion of Canadian cases emphasizing its relevance to discussions on how pre-trial procedures may impact false guilty pleas and wrongful convictions among women. This study underscores the need for a more nuanced and intersectional understanding of wrongful convictions that account for the unique gendered experiences of women within the justice system.

Keywords/Themes: Family violence, gender bias, guilty pleas, systemic issues, wrongful convictions.

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**Pelvin, H. (2019). Remand as a cross-institutional system: Examining the process of punishment before conviction. *Canadian Journal of Criminology and Criminal Justice*, 61(2), 66-87. <https://doi.org/10.3138/cjccj.2018-0012.r2>**

In this qualitative study, Pelvin (2019) explores the lived experiences of pre-trial detention by focusing on arrest, court appearances, and daily life in custody. Through in-depth interviews with 120 remanded accused people (60 men and 60 women) in four maximum-security Ontario prisons, the study reveals significant hardships imposed before conviction. Remanded individuals reported harsh conditions such as limited access to services, extended confinement, inadequate food and clothing on court days, and barriers to communication with lawyers and family. Frequent lockdowns were cited as worsening these conditions. Although the study includes both men and women, it lacks a detailed analysis of gender-specific differences. However, in the appendix of an earlier

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<sup>217</sup> Parkes and Cunliffe reference examples of women (nearly) pleading guilty to manslaughter or murder that were later acquitted citing Sheehy, A. E. (2014) *Defending Battered Women on Trial: Lessons from the Transcripts*. Vancouver: UBC Press.

version of the study, Pelvin shares the demographic and life details of her interview participants.<sup>218</sup> This study deepens our understanding of pre-trial as a form of punishment by highlighting the often-overlooked hardships that remanded individuals endure, such as inadequate food on court days and the potentially humiliating requirement to attend court in the clothing they were arrested in. Key recommendations emphasize the need to recognize the inherently punitive nature of remand, address these unnecessary hardships, and consider the combined impact of police, courts, and correctional facilities in reform efforts. The study also calls for more detailed gender analysis to better understand the differential effects of remand on women and gender non-binary individuals compared to men.

Keywords/Themes: Arrest, bail, courts, jails, punishment, pre-trial custody, remand.

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**Roach, K. (2023). Canada's false guilty pleas: Lessons from the Canadian registry of wrongful convictions. *The Wrongful Conviction Law Review*, 4(1), 16-47.**

<https://doi.org/10.29173/wclawr92>

Roach's quantitative study of false guilty pleas in Canada highlights their substantial impact on equity-deserving and marginalized communities, including women, Indigenous Peoples, racialized individuals, and those with cognitive impairments. Analyzing 15 cases from the Canadian Registry of Wrongful Convictions, Roach's research reveals that women made up 40% of these false guilty pleas, with an average sentence of ten months. Systemic issues like pre-trial detention pressures and plea-bargaining incentives significantly influenced these decisions, leading many to plead guilty to lesser charges to avoid harsher penalties. Notably, many of these pleas were influenced by the flawed testimony of pathologist Charles Smith, whose incorrect conclusions about infant deaths pressured women into pleading guilty to serious charges like murder or infanticide, often in exchange for reduced sentences<sup>219</sup>. These wrongful convictions were later overturned when Smith's testimony was discredited, exposing a systemic problem with faulty expert evidence. In a previous study, Roach (2015)<sup>220</sup> also identified linguistic barriers and negative stereotypes as significant factors

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<sup>218</sup> In her Appendix on 'characteristics of interviewees', Pelvin (2017) shares brief biographical information for her 120 anonymized interviewees, 60 of whom are identified as cisgender and transgender women including their age, Indigeneity and racial identity, marital status, parenting status and number of children, health status, and time spent in remand at four maximum security institutions in Ontario. See Pelvin, H. (2017). *Doing uncertain time: Understanding the experiences of punishment in pre-trial custody*. [Doctoral dissertation, University of Toronto] at pp. 231-244. <https://utoronto.scholaris.ca/server/api/core/bitstreams/00b9a831-36c9-4c0b-92bb-53b60893914a/content>.

<sup>219</sup> The Public Prosecution Service of Canada (2019) cites the faulty testimony of Charles Smith as one of the causes of women being 3 times as likely as men to be exonerated of a crime that never occurred. (<https://www.ppsc-sppc.gc.ca/eng/pub/is-ip/ch10.html#fnb506>)

<sup>220</sup> Roach, K. (2015). The wrongful conviction of Indigenous Peoples in Australia and Canada. *Flinders Law Journal*, 17, 202-262. <https://ssrn.com/abstract=2739386>

contributing to the wrongful convictions of Indigenous Peoples, particularly Indigenous women who may have valid defences, such as self-defence, in cases of intimate partner violence.<sup>221</sup> These findings led Roach to recommend programs to improve the cultural competence of justice system professionals and to review bail and remand processes to better support people who may be vulnerable, including women and Indigenous Peoples.

Keywords/Themes: Bail review, false guilty pleas, marginalized communities, plea bargains, pre-trial detention, wrongful convictions.

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**Rogin, J. (2017).<sup>222</sup> Gladue and bail: The pre-trial sentencing of Aboriginal people in Canada. *The Canadian Bar Review*, 95(2), 325-356.**

<https://cbr.cba.org/index.php/cbr/article/view/4411>

Rogin examines the interpretation and application of the principles established in *R v Gladue* and reaffirmed in *R v Ipeelee* during the bail phase by analyzing an unspecified number of bail cases involving Indigenous accused. Her qualitative analysis focuses on how courts implement the Gladue framework within judicial interim release (or judicial bail) while excluding cases with pending appeals or sentencing and youth cases due to differing statutory provisions and legal principles. Rogin's analysis reveals gaps in current practice, including the failure of criminal justice professionals to fully consider how conditions of release contribute to the over-incarceration of Indigenous Peoples and the problematic application of Gladue principles during the bail phase, which often undermines the presumption of innocence and results in pre-trial sentencing. A limiting factor of the study, however, is Rogin's lack of a gendered lens. While there are specific mentions of individual female accused persons in the cases of *R v Pierce* and *R v Silversmith* and their circumstances, Rogin does not broadly address women's issues. Nonetheless, the findings contribute to the discussion of bail as they shed light on some of the underlying causes of the over-incarceration of Indigenous Peoples.

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<sup>221</sup> See also Pate, K. [The Honourable] (2022). *Injustice and miscarriages of justice experienced by 12 Indigenous women: A case for group conviction review and exoneration by the Department of Justice via the Law Commission of Canada and/or the Miscarriages of Justice Commission*, Senate of Canada. [https://sencanada.ca/media/joph5la2/en\\_report\\_injustices-and-miscarriages-of-justice-experienced-by-12-indigenous-women\\_may-16-2022.pdf](https://sencanada.ca/media/joph5la2/en_report_injustices-and-miscarriages-of-justice-experienced-by-12-indigenous-women_may-16-2022.pdf)

<sup>222</sup> See also Rogin, *The Application of Gladue to Bail*

Rogin's 2014 LLM thesis examines the application of Gladue principles during the bail phase for Indigenous Peoples in Canada, highlighting how current practices often exacerbate systemic issues, particularly for Indigenous women. She found that these women face higher bail denial rates and stricter conditions due to challenges like unemployment, experiencing homelessness, and child welfare scrutiny, further deepening their social and economic struggles. Rogin advocates for a stronger legal framework to better integrate Gladue principles into bail decisions to address these systemic challenges and improve justice outcomes for Indigenous populations.

Keywords/Themes: Bail, colonialism, Gladue principles, Indigenous accused, judicial interim release, over-incarceration, presumption of innocence, pre-trial sentencing, sureties, systemic issues.

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**Rogin, J. (2023). Police-generated evidence in bail hearings: Generating criminality and mass pretrial incarceration in Canada. *Dalhousie Law Journal*, 46(1), 199-227.**

<https://digitalcommons.schulichlaw.dal.ca/dlj/vol46/iss1/8/>

In this paper, Rogin critically examines the influence of police-generated evidence on bail hearings in Canada, arguing that reliance on potentially biased and unverified police synopses and criminal records significantly contributes to systemic biases and the extensive use of pre-trial detention. These practices disproportionately affect Indigenous, Black and other racialized and marginalized populations, including refugees, leading to higher rates of pre-trial detention and coerced guilty pleas. Rogin emphasizes the critical need for accuracy in criminal records, pointing out that errors in the list of prior convictions can result in unjust pre-trial outcomes, particularly for refugees. Citing a Statistics Canada Report,<sup>223</sup> Rogin specifies that AOJOs make up about 10% of police-reported crimes in Canada, with an increasing rate of charges, especially among women, despite a decline in other crime rates. Further findings indicate that these AOJO convictions frequently lead to future bail denials, disproportionately impacting Indigenous and Black accused persons. The strict bail conditions and release orders further compound pre-trial detention rates for the members of these communities.<sup>224</sup> To address these systemic discrimination issues, Rogin recommends ensuring the accuracy of criminal records, prioritizing rehabilitation over punitive measures in bail conditions, and reducing overly restrictive conditions that disproportionately affect the members of marginalized and equity-deserving communities. Although Rogin's paper provides valuable insights into how racialized communities are impacted by police synopses and criminal records, she does not deeply explore how these issues uniquely affect women, highlighting a gap in our understanding of their gendered implications.<sup>225</sup>

Keywords/Themes: Bail hearings, mass imprisonment, police-generated evidence, pre-trial detention, racial biases, subjective bias, sureties, systemic issues.

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<sup>223</sup> Burczycka, M., Munch, C. (2015). *Trends in offences against the administration of justice*. Statistics Canada; Canadian Centre for Justice Statistics. <https://www150.statcan.gc.ca/n1/en/pub/85-002-x/2015001/article/14233-eng.pdf?st=sGj6E-bO>

<sup>224</sup> Cites *R v EB*, 2020 ONSC 4383; *R v LC*, 2020 ONSC 5608 and *R v Quannaaluk*, 2020 QCCQ 2524 in interpreting s. 493.2 of the *Criminal Code*.

<sup>225</sup> See also Urzua, V. (2023). Pre-trial Detention and Bail: Criminalization of Legally Innocent Women in Canada. *Academic Journal of Criminology*, 2(2). <https://doi.org/10.21428/58a8fd3e.ae2420e2>

**Schopp, Z. (2022). *The effects of an accused's previous experience in the Canadian bail system.* (Publication No. 30168721) [MA Thesis, Queens University]. PQDT Open. <https://www.proquest.com/openview/d7fa8328aa41a2ba897629b170a0e139/1?pq-origsite=gscholar&cbl=18750&diss=y>**

Schopp's MA thesis investigates the impact of prior encounters with the criminal justice system on accused individuals' experiences during bail and remand. Utilizing qualitative interviews with 30 accused persons, including 15 participants who identify as women, from Myers' (2015-2016) study<sup>226</sup> on people with bail experience in Toronto and Vancouver, Schopp finds that previous experience enhances knowledge and understanding of the bail process, reduces stress and uncertainty, and fosters improved relationships with legal and criminal justice professionals, thereby mitigating the punitive aspects of the bail and remand process. A review of Schopp's Appendix, which details participant demographics, criminal history, and bail conditions, revealed that women and trans participants frequently faced additional challenges, including financial instability and restrictive conditions such as curfews and mandatory addresses.<sup>227</sup> Meanwhile, men with more extensive criminal histories were subjected to fewer conditions. Schopp underscores the need for reforms to address these inequities and ensure a more equitable bail process, providing valuable insights into how past criminal justice experiences shape individuals' navigation of the system. While the thesis does not explicitly center on a gender analysis, the Appendix provides brief synopses that touch on gendered experiences.

Keywords/Themes: Bail, over-incarceration, public safety, punitiveness, remand.

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**Schumann, R., & Yule, C. (2022). *Unbreaking bail?: Post-antic trends in bail outcomes.* *Canadian Journal of Law and Society*, 37(1), 1-28. <https://doi.org/10.1017/cls.2021.43>**

In this quantitative study, Schumann and Yule investigate bail outcomes in Ontario, Canada, comparing periods before (n=258; 19% women) and after (n=222; 18% women) the Supreme Court

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<sup>226</sup> Myers, N. (2015/2016). *Surveillance and control pre-trial: Supervision and conditions of release on bail*

<sup>227</sup> In Appendix A, Schopp (2022, pp. 112-115) summarizes demographic and other characteristics for 30 interview participants including 15 cisgender and transgender women with bail and remand experiences drawing on data from Myers (2015-2016) SSHRC funded study of 126 people involved in the bail process in Toronto and Vancouver. The characteristics of Schopp's interview participants include the court location, racial identity of the accused, citizenship status, the presenting offence/s, prior bail experience, prior failures to appear or comply, housing and employment status, type of legal representation, type of release (including a surety and cash release, bail program), release conditions, time spent in remand, and losses resulting from bail and remand. We anticipate there is likely some overlap between these participants and those identified in the Stewart (2022) study.



of Canada's *R v Antic* decision. This ruling reinforced the ladder principle, emphasizing that accused individuals should be released at the earliest opportunity and under the least restrictive conditions possible. Although the study includes females as an extra-legal control independent variable, it does not provide a detailed gender analysis to assess the impact of the *R v Antic* decision on women. Nonetheless, the authors make notable findings, revealing that post-*Antic*, the odds of individuals being released on their own recognizance have doubled, and the imposition of behaviour-modifying conditions has lessened, with a significant decrease ( $OR = 0.29$ ;  $p = 0.001$ ) in the odds of receiving a substance use prohibition.<sup>228</sup> Additionally, there is a notable increase ( $OR = 1.93$ ;  $p = 0.03$ ) in using bail supervision programs. These results suggest that while the legal reaffirmation has positively influenced bail practices by encouraging less restrictive releases, it has also led to a greater dependence on supervision programs to monitor pre-trial behaviour.

Keywords/Themes: Bail conditions, bail court, bail supervision, *R v Antic*, SCC.

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**Schumann, R. (2013). *Gendered bail?: Analyzing bail outcomes from an Ontario courthouse*. [Master's Thesis, The University of Guelph].**

<http://hdl.handle.net/10214/6687>

In one of the only direct studies on women and bail in Canada, Schumann's MA thesis analyzing 118 bail outcomes from an Ontario courthouse (with 115 valid cases, including 22 women) reveals that gender plays a significant role in bail decisions. Among the 17 accused denied bail, only 6% were women. However, this does not imply that women received more lenient treatment; rather, the conditions imposed on their release varied by gender.<sup>229</sup> Women were more often required to adhere to conditions related to accessing supports for mental health and substance use (43% for women compared to 22% for men). This finding suggests that although women were granted bail more frequently, the terms of their release were often more stringent, reflecting complex (and potentially paternalistic) gender dynamics in judicial bail decisions. The study underscores the need for further research into gender disparities in bail and remand decisions to inform equitable and effective criminal justice policies for women.

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<sup>228</sup> See also the Berger, Myers & Deshman, 2024 annotation above which reveals similar findings.

<sup>229</sup> This is an important finding given some comparative although now dated American research suggesting that women with children in the USA are treated more leniently by the courts and are more likely to be granted bail. See, e.g., Turner, K.B. and Johnson, J.B. (2006). The Effect of Gender on the Judicial Pretrial Decision of Bail Amount Set. *Federal Probation: A Journal of Correctional Philosophy and Practice*, 70(1). <https://www.uscourts.gov/federal-probation-journal/2006/06/effects-gender-judicial-decision-bail-amount-set>

Keywords/Themes: Bail, bail conditions, gender disparities, judicial discretion, legal and extra-legal factors.

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**Sprott, J., & Doob, A. (2010). Gendered treatment: Girls and treatment orders in bail court. *Canadian Journal of Criminology and Criminal Justice*, 52(4), 427-441.**

<https://doi.org/10.3138/cjccj.52.4.427>

In this quantitative study, Sprott and Doob explore gender differences in bail conditions within the youth justice system. Using data from a Toronto youth court from 2003 to 2008, the authors analyzed 279 bail cases ( $n = 47$  girls). They aimed to determine if girls are more likely than boys to receive treatment conditions, including, but not limited to, behaviour intervention classes or counselling. Consistent with the subsequent findings of the JHSO 2021 study, their findings indicated that girls are significantly more likely than boys to be ordered to attend treatment programs as a bail condition, with 51% of girls receiving such orders compared to 34% of boys. This gender disparity is more pronounced in non-violent cases, where 55.6% of girls were given treatment conditions versus 21.9% of boys. The study highlights a persistent gender bias in the imposition of rehabilitative conditions, with girls more frequently subjected to treatment-based bail conditions.

Keywords/Themes: Bail conditions, female youth, gendered treatment, young offenders.

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**Stewart, E. (2022). *The illusion of liberty: Examining the experiences of accused on judicial interim release (bail) in Canada*. [Master's Thesis, Queens University]**

<https://www.proquest.com/openview/f8645cf905b469d24e1dfe0a89ffc979/1?pq-origsite=gscholar&cbl=18750&diss=y>

Stewart's MA thesis provides a qualitative study of the experiences of accused individuals on judicial interim release in Canada, highlighting the significant impact of supervision and bail conditions. Through interviews with 30 individuals in Ontario, including 15 women, drawing once again from the Myers (2015-2016) study, Stewart demonstrates that these bail conditions, though intended to offer some measure of freedom, are often so restrictive and punitive that they create what Stewart describes as an "illusion of liberty." In her Appendix, which includes summaries of each participant's demographics, criminal history, and experience with the bail system, Stewart shows that these

conditions disproportionately affect women.<sup>230</sup> Many women struggle to secure suitable sureties due to unreliable or non-existent kinship networks, often resulting in harsher bail conditions or even remand. Stewart also draws attention to the troubling reality that some women are forced to rely on abusive or coercive partners or family members as sureties, which further exacerbates their vulnerability. This dependence on unsafe sureties highlights systemic flaws in the assumption that all accused have access to healthy and non-threatening support networks. Additionally, the appendix details how women with substance use dependencies find it particularly difficult to comply with abstinence conditions, leading to frequent re-arrests and a cycle of recriminalization. These findings expose deeper intersectional gendered issues within the justice system, where the imposition of nearly impossible conditions often sets accused individuals, especially women, up for failure, severely impacting their mental health and ability to comply with bail terms.

Keywords/Themes: Bail conditions, bail supervision, failure to comply, social context factors

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**Sylvestre, M-E., Blomley, N., Damon, W. & Bellot, C. (2017). *Red zones and other spatial conditions of release imposed on marginalized people in Vancouver*. Social Sciences and Humanities Research Council of Canada.**

<http://dx.doi.org/10.13140/RG.2.2.35261.36325>

Sylvestre et al. conducted a comprehensive study in Vancouver, combining both quantitative and qualitative methods, to explore the imposition of spatial restrictions, such as red zones<sup>231</sup> and no-go orders, on the members of marginalized communities, like substance users, sex workers, and political protesters. The quantitative data was sourced from the JUSTIN database, covering 94,931 court cases involving 30,505 individuals. These quantitative data were complemented by qualitative insights from group discussions and interviews with 18 people under bail or probation restrictions, along with an additional 18 interviews from a related project.<sup>232</sup> Six legal professionals, including judges and lawyers, were also interviewed to provide further context. While the study did not provide detailed demographic information for the sample, it did offer some key statistics, revealing that

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<sup>230</sup> In her appendix, Stewart (2022, pp. 103-106) summarizes some of the demographic and other characteristics of her 30 participants, 15 of whom are cisgender and transgender women drawing on interviews from the Myers (2015-2016) study. These characteristics include age, gender and racial identity, parental status and/or number of children, economic and/or housing status, educational status, prior criminal record, prior bail experience, prior failure to comply, drug and alcohol use, disability and/or health status, mental health status, length of time on judicial interim release (bail), type of legal representation. We anticipate there is likely some overlap between these participants and those identified in the Schopp (2022) study.

<sup>231</sup> Red zones are specific areas where accused individuals are prohibited from entering.

<sup>232</sup> Damon, W. (2014). *Spatial tactics in Vancouver's judicial system*. [Unpublished graduate thesis] Simon Fraser University. <https://summit.sfu.ca/item/14152>

17.9% of the 74,408 bail orders issued were to women and 82.1% to men. Despite including gender as a variable, the study lacks a focused gender-specific analysis. Still, the findings underscore the widespread use and frequent breaches of especially red zone conditions, particularly in the Downtown Eastside, and highlight their often punitive and disproportionate nature, which generally fails to reduce crime or support rehabilitation. The authors call for significant reforms to bail practices, advocating for a stronger emphasis on unconditional release and harm reduction strategies that target the root cause of the offence.

Keywords/Themes: Bail conditions, bail law, bail practice, marginalized groups, red zones.

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**Webster, C. M., Doob, A. N., & Myers, N. M. (2009). The parable of Ms. Baker: Understanding pre-trial detention in Canada. *Current Issues in Criminal Justice*, 21(1), 79–102. <https://doi.org/10.1080/10345329.2009.12035834>**

Webster et al. explore the increase in pre-trial detention rates in Canada from 1978 to 2007, a trend that contrasts with the corresponding decline in crime rates.<sup>233</sup> Through an analysis of statistical data on imprisonment and remand, they discuss the case of Ms. Baker, who, despite being arrested for a relatively minor offence—possession of a stolen laptop and breach of probation—was kept in pre-trial detention, underscoring deeper systemic issues. The authors reveal a significant gender disparity, with the rate of women in remand in 2007 being six times higher than in 1978, whereas the rate for men merely doubled. The overall tripling of the remand population during this period is primarily attributed to procedural inefficiencies, such as the growing number of court appearances and frequent, often unwarranted, adjournments. These factors, combined with a risk-averse culture within the justice system, have led to increasingly prolonged pre-trial detentions. The authors advocate for reforms to streamline the bail process, expedite decision-making, reduce unnecessary detentions, and address gender disparities to enhance fairness in pre-trial practices.

Keywords/Themes: Bail process, court efficiency, judicial interim release, pre-trial detention, remand, risk aversion.

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<sup>233</sup> See their Appendix A for more details on the declining crime rates.

**Yule, C., & Schumann, R. (2022). Reflections from accused: Advice on navigating life on bail. *The Howard Journal of Crime and Justice*, 62(4), 516-534.**

<https://doi.org/10.1111/hojo.12537>

Yule and Schumann's study, based on interviews with 108 adults (25% women), examines how individuals navigate bail conditions. The participants identify three strategies: complying with the system, recognizing its flaws, and working within it. Many find bail conditions overly restrictive, setting them up for failure and emphasizing the need for personal responsibility, resources, and respectful behaviour in court. Although women are included, their specific experiences are not deeply analyzed. Nonetheless, the authors emphasize that bail conditions often impose severe hardships and exacerbate existing challenges such as poverty, mental health issues, and substance use. This makes compliance difficult for those lacking resources or support, which often includes the members of equity-denied and deserving groups such as women and racialized minorities. These stringent conditions frequently lead to higher rates of non-compliance and subsequent charges. The authors call for judicial restraint in imposing bail conditions and more support for accused individuals.

Keywords/Themes: Bail, conditions, gender, mental health, race, reform, substance use, systemic flaws.

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**Yule, C., & Schumann, R. (2019). Negotiating release? Analysing decision-making in bail court. *Canadian Journal of Criminology*, 61(3), 45-66.**

<https://doi.org/10.3138/cjccj.2018-0028>

Yule and Schumann examine how the interactions between defence attorneys, Crown prosecutors, and Justices of the Peace (JPs) influence the imposition of bail conditions in Canadian courts. Utilizing data from 257 (involving 49 women) observed bail hearings in southern Ontario; the researchers found that a culture of cooperation among court participants often leads to the imposition of numerous restrictive bail conditions. Despite legal mandates to impose the least restrictive conditions necessary, the study reveals that JPs frequently align with Crown recommendations and tend to add more restrictive conditions. The research highlights the overuse of conditions in both consent and contested bail cases and calls for reforms to ensure bail decisions adhere more closely to legislative and judicial principles. While the study includes women in its sample (19%), it does not specifically analyze gender differences in bail outcomes. The findings

suggest a need for systemic changes to reduce the imposition of excessive bail conditions, which can have disproportionate impacts on equity-deserving and marginalized groups, such as racialized persons, women and substance users.

Keywords/Themes: Adversarial system, bail, bail conditions, bail outcomes, court culture.

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**Yule, C., Schumann, R., MacDiarmid, L., & Dunleavy, B. (2023). The paradox of pre-conviction punishment: The experience of living with bail conditions. *Journal of Crime and Justice*, 46(2), 155-157. <https://doi.org/10.1080/0735648X.2022.2112264>**

Yule et al. investigate the punitive effects of bail conditions by conducting interviews with 47 adults, 30% of whom are women. The study highlights how bail conditions can range from manageable to highly intrusive, with some participants likening the experience to imprisonment. These conditions often intensify existing socio-economic struggles, leading to increased stress and a higher risk of non-compliance. For example, one woman recounted how her bail conditions severely strained her relationship with her stepmother, leaving her feeling trapped in her own home. Others shared how the compounded challenges of mental health issues, experiencing homelessness, and the stigma associated with bail exacerbated their distress. Additionally, child custody problems surfaced, with some women losing custody due to non-communication orders, resulting in emotional turmoil and family disruption. The economic impact was also significant, as many women found it difficult to maintain employment while adhering to bail supervision requirements.

The authors emphasize that bail conditions, rather than offering relief, often magnify existing vulnerabilities, making it challenging for individuals to comply and increasing the risk of breaches. These breaches can lead to additional charges and legal complications through AOJOs, entangling individuals in an ongoing cycle of legal difficulties. This paradox reveals that while bail is intended to provide freedom, it often creates a different kind of confinement, complicating lives and further entrenching individuals in the criminal justice system. The authors call for greater judicial caution in imposing conditions and stress the importance of strong community support to alleviate these challenges.

Keywords/Themes: Bail, community supervision, conditional release, justice-involved parents, pains of imprisonment, pre-conviction punishment, social support needs.

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## Appendix A: Methodology

Our research began with a review of literature on women in the criminal justice system, the rights of justice-involved parents and their children, systemic inequities in the justice system, social context decision-making, and bail and remand. We searched for secondary literature related to bail and remand for women and girls in Canada, conducting our review from March 1 to May 31, 2024. Our goal was to gather a well-rounded understanding of how gender influences pre-trial detention and bail decisions.

To ensure a comprehensive search, we used a variety of search terms, including "women," "female," "girl," "bail," "remand," and "pre-trial detention." We expanded our scope with additional terms such as "mother," "parent," "arrest," "bias," "inequality," "criminal justice system," "bail system," "release conditions," "accused," "offender," "sentencing," "criminalization," "guilty plea," "overrepresentation," "reform," "custody," "risk aversion," "systemic racism," "gender," "Gladue," "substance use," "court," "mental health," "addiction," "victim," "Canada," and "British Columbia".

We searched multiple databases, including Google, Google Scholar, Google Books, the UFV Library Database, and LiteRev, filtering results for scholarly articles published between 2014 and 2024 in disciplines such as law, social sciences, humanities, women's studies, psychology, criminology, social work, and sociology. Our initial search identified approximately 650 documents with potentially relevant titles. To refine this list, we conducted keyword searches within these documents for "bail" and "remand," which narrowed the selection to 320 sources. Articles with fewer than 10 mentions of these terms were closely reviewed to determine their relevance to justice-involved women in Canada. Further filtering using gender-specific terms such as "she," "her," "women," "woman," "female," "girl," and "gender" reduced the selection to 195 articles. After excluding non-Canadian sources, 145 documents remained.

The 145 sources represented a diverse range of materials, including peer-reviewed journal articles, government reports and statistics, publications from non-profit organizations, and other scholarly and policy-focused documents. These sources explored a broad spectrum of topics, including how police determine release, the role of specialized courts, bail conditions and outcomes, women's experiences in remand, wrongful convictions, and the effects of racialized discrimination on marginalized groups. Additional areas of focus included experiencing homelessness, substance use, socio-economic disparities, policy reform, and the impact of trauma and victimization.

Collectively, these topics provided insight into the bail and remand process, as well as the unique experiences and challenges faced by criminalized women within the justice system. The sources comprised approximately 115 reports, advocacy papers, and non-scholarly analyses, alongside 30 sources based on primary research. Few studies focused specifically on bail practices in British Columbia, and even fewer provided gender-disaggregated data. Our review also incorporated an existing database of sources compiled by Millar and Capp.

To ensure the final selection was highly relevant, we conducted a detailed review of the 145 documents, assessing whether bail and remand were central topics and whether women's experiences were explicitly discussed. This process narrowed the selection to 42 papers for potential inclusion in our annotated bibliography. After a final evaluation by our research team, we excluded 9 additional sources for reasons such as focusing on broader justice reform without addressing bail and remand specifically, failing to differentiate between remanded and incarcerated women, lacking gender-specific data, or discussing women in the justice system (e.g., crime involvement, imprisonment) without reference to bail or remand.

The final annotated bibliography consists of 31 sources. While relatively few provide a dedicated gendered analysis or comparative perspective, they were included for their contributions to understanding women's experiences with bail and remand. Our findings highlight significant gaps in research, particularly in British Columbia, and reinforce the need for further studies to examine how gender impacts bail and remand decisions in Canada.



## Appendix B: Acknowledgements and Author Biographies

### Acknowledgements

We are exceptionally grateful to the University of the Fraser Valley for the funding provided by two small research grants that we used to support the research assistance of Raelyn O'Hara. Raelyn managed our literature review and the creation of a database of secondary research sources. Raelyn also led the writing of the bibliographic annotations, while further creating a separate infographic about women and bail and remand in Canada and assisting with copyediting of the final document.

### Author Biographies

**Hayli Millar** (she/her) is an Associate Professor of Criminology and Criminal Justice at the University of the Fraser Valley and a Senior Associate of the International Centre for Criminal Law Reform (ICCLR). Hayli holds postgraduate degrees in law (Ph.D., University of Melbourne, Australia) and criminology (M.A., Simon Fraser University, Canada). Hayli has lived and worked internationally as a long-term consultant to the United Nations and as a gender and development specialist for the Asian Development Bank. Hayli specializes in comparative and critical socio-legal research and has worked on research projects in Canada and internationally on alternative dispute resolution, Indigenous-led community justice, transitional (post-conflict) justice, migration and human trafficking, and the rights of justice involved women and children. Hayli's intersectional research on systemic inequities aims to improve the realization of human rights and access to justice for the members of racialized and marginalized (oppressed) groups. She has published technical reports and peer-reviewed chapters and articles on the enforcement of anti-trafficking laws and the legal rights of justice-involved parents and their children. Hayli's research with Dr. Tamara O'Doherty on the racialized, gendered, and mediatized dimensions of trafficking in persons prosecutions was cited by the Supreme Court of Canada in *R v Kirkpatrick* in 2022 (2022 SCC 33).

**Megan Capp** (she/her) is a scholar/practitioner with many years of experience developing, implementing, and overseeing community-based initiatives for those who have traditionally been under supported – especially for those currently living unsheltered or precariously housed. She currently serves as the Associate Director of Housing and Community Justice for Archway Community Services and the Executive Director of CEDAR Outreach Society of BC. She is a proud board member of both the Canadian Coalition for Children of Incarcerated Parents and the International Coalition for Children of Incarcerated Parents. She holds a Masters degree in in

Conflict Analysis and Management from Royal Roads University where her thesis focused on access to justice – particularly for women and those in situations of vulnerability. She is currently a doctoral student at the United Nations mandated University for Peace where her research focuses on understanding the experiences of Canadian children when their parent reintegrates after a period of imprisonment. Her research portfolio consists of work on access to justice, including in civil and family law spaces, restorative justice, understanding the experiences of children of incarcerated parents, children and women's rights, and criminal justice reform.

**Raelyn O'Hara** (she/her) is a criminology and social justice researcher focusing on addressing systemic inequities through research, policy analysis, and advocacy for alternative justice. She holds a Bachelor of Arts in Criminal Justice from the University of the Fraser Valley and a Master of Science in Criminology with Forensic Psychology from Middlesex University in London, UK. Her master's thesis explored public opinion on the criminalization and use of drugs in Canada, highlighting how societal attitudes shape justice policies and contribute to systemic inequities. Raelyn has supported youth in conflict with the law, contributed to restorative justice initiatives, and collaborated on research projects examining a wide range of justice-related issues, including social context, policy reform, and access to justice.



## **International Centre for Criminal Law Reform and Criminal Justice Policy**

### **ABOUT ICCLR**

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