

Mothers in Prison

“For me, the biggest problem of being a mother in prison is that I can’t care for my children. You can write to them and maybe talk on the phone. But you can’t make decisions for them; you are stripped of it. You are not a mother in prison.”¹

- There is a lack of legal aid and advocacy to assist women with family law and child welfare challenges.
- There is a trend among females that are being incarcerated in Canada, especially British Columbia; Young women (particularly between 20 and 34) are being arrested and incarcerated for shorter, provincial sentences. Many of these women have young children, from which they will be separated.²
- In 2004, 32% of single mothers were unemployed.³
- In 2003, 38% of families with the mother as the lone parent had incomes that were below the low-income tax cut-off, compared to 13% of father-headed lone parent families, and 7% of non-elderly two parent families.⁴
- It is common in society to see a woman go to prison and be thus deemed a “bad” mother. Yet if a mother commits a crime and does not receive jail time, the stigma does not apply for pathological reasons. The focus on pathology and the label of a criminalized woman as a “bad” mother takes away from the lack of social and economic power she faces in society, and the reasons she commits crime.⁵
- Prior to the criminalization and imprisonment of their mothers, children were most likely to live with their mother before prison and most wish to live with their mothers once they are released from prison.⁶

¹ Baunach, Phyllis Jo. *Mothers in Prison*. New Jersey: Transaction Books, 1985 at vi.

² Vis-Dunbar, Megan. *Child Apprehensions in BC Correctional Facilities*. On line: http://www.bccla.org/positions/children/08Child_Apprehensions.pdf.

³ Statistics Canada. *Mother’s Day by the Numbers*. On line: http://www42.statcan.ca/smr08/smr08_047-eng.htm

⁴ Ibid.

⁵ Correctional Service of Canada. *Understanding Violence by Women: A Review of the Literature*. On line: <http://www.csc.scc.gc.ca/text/prgrm/fsw/fsw23/fsw23e04-eng.shtml>

⁶ Ibid at xii.

- While incarcerated, most mothers try to retain custody of their children and try to avoid social service involvement for fear that the state will make their children permanent wards of the state.
- Women and children maintain their relationships by using all available methods, which include letters, phone calls and visits.⁷
- The living arrangements of children whose mothers are imprisoned varies; about 60% live with grandparents (typically maternal), 17% live with other relatives, and 25% live in non-familial settings (such as foster care).⁸
- Almost 90% of children whose fathers are in prison continue to live with their mothers.⁹

Hugo Case

- In South Africa, the constitution takes into account and protects the individuality of the members of their country through the recognition that: “[E]quality should not be confused with uniformity; in fact, uniformity can be the enemy of equality. [Equality] does not presuppose the elimination or suppression of difference.”¹⁰ Their constitution outlines that a person cannot be unfairly discriminated against for any reason, including (but not limited to) gender, age, race and sexuality.¹¹
- This fair and just outlook on society also applied to the incarceration of those who broke the law. Persons who were or would be incarcerated on May 10th, 1994 would obtain a special remission of their sentence if they were (1) under the age of 18, (2) a mother with minor children under the age of 12, and (3) all disabled persons. This applied to people serving all sentences except murder, culpable murder, robbery with aggravating circumstances, assault with intent to do grievous bodily harm, child abuse, rape and other sexual offences, and trading in or cultivating dependence producing substances.¹²
- Hugo attempted to have his incarceration remitted because though he was a father, he was a single parent with a child under the age of 12 years old. His wife died just after the child’s birth, leaving Hugo as the sole caretaker of his son. This case attacked the common

⁷ Ibid at xii.

⁸ Simmons, Charlene Wear. *Children of Incarcerated Parents*. Sacramento CA: California Research Bureau, 2000.

⁹ Ibid

¹⁰ National Coalition for Gay and Lesbian Equality & Another v Minister of Justice and Others, 1999 cited in *Chapter 9 The Constitutional Dimensions of Affirmative Action in SA*, on line:

<http://uir.unisa.ac.za/bitstream/10500/2012/8/10chapter9.pdf>

¹¹ *Chapter 9 The Constitutional Dimensions of Affirmative Action in SA*. On line:

<http://uir.unisa.ac.za/bitstream/10500/2012/8/10chapter9.pdf>

¹² Ibid.

assumption that the mother's place is in the home and that they do the majority of child rearing. This conception of women has been a large part of their struggles to become equal members in the workforce, and entrenched gender roles into societies.¹³

- The final decision of the case was that Hugo was being discriminated against, but the law remained applying only to mothers unless the male could prove he needed to be released for the benefit of the child.¹⁴

Case Example: Grand Valley Prison for Women

- In September of 2005, an inspection was conducted at the Grand Valley Prison for Women. It was conducted by the HM Chief Inspector of Prisons for England and Wales.¹⁵
- One of the topics covered in the inspection was mothers and children in the prison. In the seven years that the prison had been open, 13 children had lived with their mothers in the prison.¹⁶
- A child in this prison is provided with a cot with a mattress and bedding, and age appropriate chairs. The mother had access to a supply of clothing for babies, but was expected to provide everything else herself. This meant that the mother needed to rely on family outside the prison for support (if this was a viable option) for food, clothes, and other supplies for the child.¹⁷
- The mothers and children are placed in one of the normal residential buildings that has larger rooms. However, there is no child appropriate decoration except for a mobile over the bed, and posters on a bulletin board in the bedroom.¹⁸
- There is no separate bathroom for the children.¹⁹
- It was recommended that women raising their children in prison should be entitled to the same state benefits to which they would be entitled if they were raising their children in the

¹³ *The President of the Republic of South Africa and the Minister of Correctional Services v. John Phillip Peter Hugo*. On line: <http://www.saflii.org/za/cases/ZACC/1997/4.pdf>

¹⁴ Ibid.

¹⁵ Her Majesty's Inspectorate of Prisons. *Grand Valley Institution for Women*. On line: http://www.csc-scc.gc.ca/text/prgrm/fsw/wos25_GrandValley/GrandValley_e.pdf at page 5.

¹⁶ Ibid at 26.

¹⁷ Ibid at 27.

¹⁸ Ibid at 26.

¹⁹ Ibid at 26.

community. It was also recommended that the prison should provide child care facilities that also meet community standards.²⁰

- On February 15, 2008, Public Safety Minister Stockwell Day was quoted in the *Globe and Mail* as being concerned about “the message that is sent to serious offenders when they are permitted to retain custody of a child while incarcerated”.²¹ Several months later, the Minister announced that the Mother-Child Program would exclude mothers from the program who have been convicted of ‘serious’ crimes, with no requirement that the nature or context of their convictions be linked to their abilities to parent. He also indicated that women who would not permit their children to be strip-searched should not be permitted to participate in the mother-child program.²²

Types of Mother-Child Contact in the Prison Program

- Prior to the Minister’s aforementioned revisions, the aim of the mother-child program was to establish and maintain the bond between a mother and child, and to reduce the effects of separation on adaptation and social functioning of the mother and her child. Furthermore, there were three types of possible mother-child contact in prison:
 - 1. Full-Time Residency - for children aged 0-5 years, whereby, if it is in the best interests of the child, s/he may reside with her/his mother full time in prison.
 - 2. Part-Time or Occasional Residency - if it is in the best interests of the child, s/he may visit with her/his mother on some weekends and holidays.
 - 3. Regular Visits: if it is in the best interests of the child, s/he may visit with her/his mother in the visiting area of the prison – provided there is someone willing to transport the children and be present during the visits, this can allow the mother to maintain regular access to her children.²³

Impact of Incarceration on Families

- Mothers are most often the primary caretakers of children. It is accepted in almost every culture that the mother is the more nurturing, caring, and involved parent in a child’s life.²⁴

²⁰ Ibid at 28.

²¹ *Globe and Mail. Canada: Bringing up a Baby while Behind Bars.* On line: <http://www.theglobeandmail.com/news/national/article21651.ece>

²² Leclerc, Melisa. *Minister Day Tightens Rules for Mother-Child Program to Ensure Child Protection.* Ottawa: Public Safety Canada, 2008.

²³ Labrecque, Rachel. “Study of Mother-Child Program.” *Correctional Service of Canada*, 1995. On line: www.csc-scc.gc.ca/text/prgrm/fsw/fsw24/toce-eng.shtml

²⁴ Bartol, C.R. & A.M. Bartol. *Criminal Behavior*, 8 ed. Upper Saddle River: Pearson Education, 2008.

- Parental support is most important between ages nine through adolescence, when the child is dealing with issues of peer pressure, school, friendships, and puberty.²⁵
- Sixty-six percent of women in prison have children, and only five percent of those children remain in their original household while their mother is incarcerated.²⁶
- A study in England showed that the average length of a sentence for women is 42 days; even though this may sound relatively short, in this time, most women lose their places of residence and too often custody and contact with their children.²⁷
- In addition to the separation from their parents, children of incarcerated mothers are more likely to experience extreme poverty, as well as being more likely to witness or be victims of violence.²⁸
- In Moncton, New Brunswick, an initiative was undertaken to attempt to prevent delinquency in children through in-home support, social training, and parental programs and groups provided to families with children aged 5-12. The results were positive although funding support was never adequate to meet all of the needs of the children and their parents.²⁹
- Attachment Theory states that when a child is mistreated, having a secure attachment figure to turn to may have a moderating and protective effect. The most natural attachment is that of a mother and child. Children with mothers that are available to develop secure attachments have better self-efficacy, form better internal working models and cognitive processes, and are less likely to turn to substance use and abuse to deal with negative emotions.³⁰
- When a child's mother is taken away from them and thrown into prison, her child(ren) may face residential disruptions, school changes, separation from siblings, foster care or periods of time spent with convenient but inappropriate caretakers, feelings of shame, isolation and guilt, and even trauma from witnessing their mother's arrest.³¹

²⁵ *Ibid*

²⁶ "The Story Behind the Lost Daughters Campaign." *The Howard*, 2008, at 4.

²⁷ "Women in prison: incarcerated in a man's world." *Penal Reform International*, 2008, at 1.

²⁸ *Ibid*.

²⁹ *Ibid* at 23.

³⁰ Reinert, Duane and Carla Edwards. *Child Physical and Verbal Mistreatment, Psychological Symptoms, and Substance Use: Sex Differences and the Moderating Role of Attachment*. (Maryville: Journal of Family Violence, 2009) at 589.

³¹ Cunningham, Alison and Linda Baker. *Invisible Victims: The Children of Women in Prison*. On line: http://www.lfcc.on.ca/Voices_Report-Invisible_Victims.pdf at 2.

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