

CANADIAN GIRLS IN CUSTODY

by

Susan Brown
B.A. (Hons.), Wilfrid Laurier University, 2007

THESIS SUBMITTED IN PARTIAL FULFILLMENT OF
THE REQUIREMENTS FOR THE DEGREE OF

MASTER OF ARTS

In the
School of Criminology

© Susan Brown

SIMON FRASER UNIVERSITY

Summer 2011

All rights reserved. However, in accordance with the *Copyright Act of Canada*, this work may be reproduced, without authorization, under the conditions for *Fair Dealing*. Therefore, limited reproduction of this work for the purposes of private study, research, criticism, review and news reporting is likely to be in accordance with the law, particularly if cited appropriately.

APPROVAL

Name: Susan Brown
Degree: Master of Arts
Title of Thesis: Canadian Girls in Custody

Examining Committee:

Chair: **J. Bryan Kinney, Ph.D.**
Assistant Professor of Criminology

David MacAlister, LL.M.
Senior Supervisor
Associate Professor of Criminology

Sheri Fabian, Ph.D.
Supervisor
Lecturer, School of Criminology

Jennifer L. Schulenberg, Ph.D.
External Examiner
Assistant Professor of Sociology
University of Waterloo

Date Defended/Approved: August 19, 2011

Partial Copyright Licence



The author, whose copyright is declared on the title page of this work, has granted to Simon Fraser University the right to lend this thesis, project or extended essay to users of the Simon Fraser University Library, and to make partial or single copies only for such users or in response to a request from the library of any other university, or other educational institution, on its own behalf or for one of its users.

The author has further granted permission to Simon Fraser University to keep or make a digital copy for use in its circulating collection (currently available to the public at the "Institutional Repository" link of the SFU Library website (www.lib.sfu.ca) at <http://summit/sfu.ca> and, without changing the content, to translate the thesis/project or extended essays, if technically possible, to any medium or format for the purpose of preservation of the digital work.

The author has further agreed that permission for multiple copying of this work for scholarly purposes may be granted by either the author or the Dean of Graduate Studies.

It is understood that copying or publication of this work for financial gain shall not be allowed without the author's written permission.

Permission for public performance, or limited permission for private scholarly use, of any multimedia materials forming part of this work, may have been granted by the author. This information may be found on the separately catalogued multimedia material and in the signed Partial Copyright Licence.

While licensing SFU to permit the above uses, the author retains copyright in the thesis, project or extended essays, including the right to change the work for subsequent purposes, including editing and publishing the work in whole or in part, and licensing other parties, as the author may desire.

The original Partial Copyright Licence attesting to these terms, and signed by this author, may be found in the original bound copy of this work, retained in the Simon Fraser University Archive.

Simon Fraser University Library
Burnaby, British Columbia, Canada

STATEMENT OF ETHICS APPROVAL

The author, whose name appears on the title page of this work, has obtained, for the research described in this work, either:

(a) Human research ethics approval from the Simon Fraser University Office of Research Ethics,

or

(b) Advance approval of the animal care protocol from the University Animal Care Committee of Simon Fraser University;

or has conducted the research

(c) as a co-investigator, collaborator or research assistant in a research project approved in advance,

or

(d) as a member of a course approved in advance for minimal risk human research, by the Office of Research Ethics.

A copy of the approval letter has been filed at the Theses Office of the University Library at the time of submission of this thesis or project.

The original application for approval and letter of approval are filed with the relevant offices. Inquiries may be directed to those authorities.

Simon Fraser University Library
Simon Fraser University
Burnaby, BC, Canada

ABSTRACT

At the intersection of their age and gender, girls' rights are often an oversight in human rights discourse. Girls, whose lives are characterized by violence, multiple oppressions and over-policing, are especially vulnerable to rights violations due to the gendered/raced/classed nature of the criminal justice system. Using semi-structured qualitative interviews with 20 girls in British Columbia, this research documents girls' experiences in police jail cells. Findings suggest girls' face a number of threats to their safety, dignity and equality while in police custody that constitute violations of international standards for children held in detention. These include pre-trial detention for social welfare and punishment purposes; denial of basic necessities, clothing and medical attention; discriminatory routine practices, such as strip-searching and camera surveillance; harassment; psychological and physical violence. These are discussed with reference to international human rights and existing research to situate their experiences within a broader analysis of girls' rights and equality.

Keywords: Girls; Human Rights; Criminalization; Feminist Criminology; Police

DEDICATION

In memory of Ashley Smith

To all the young women who courageously shared their truth

“True speaking is not solely an expression of creative power; it is an act of resistance, a political gesture that challenges the politics of domination that would render us nameless and voiceless. As such, it is a courageous act.” - bell hooks

& for all the future Emmas & Angelas

~May you continue to rise~

...
*You may shoot me with your words,
You may cut me with your eyes,
You may kill me with your hatefulness,
But still, like air, I'll rise.*

...
*Out of the huts of history's shame
I rise
Up from a past that's rooted in pain
I rise*

...
*Leaving behind nights of terror and fear
I rise
Into a daybreak that's wondrously clear
I rise*

-Maya Angelou

ACKNOWLEDGEMENTS

I would like to extend the deepest gratitude to the many people who I am so fortunate to have in my life and, without whom, this thesis would not have been possible. First, I truly could not have asked for a better committee. I am immensely grateful to Professor David MacAlister, my senior supervisor, for supporting and guiding me through this very challenging research. Thank you for your thoughtful and thought provoking feedback, for your patience, sense of humour and assistance with navigating the twists and turns in seeing this project to its completion.

To Sheri Fabian, I have grown so much in my time at SFU, and much of this I can attribute to your mentorship. Your commitment, hard work and passion for teaching is outstanding and I am so honoured to count myself among your students. Thank you for inspiring me, believing in me, and fostering my own passion for pedagogy and qualitative (even quantitative) research. Above all else, thank you for your friendship.

Mom and Dad, words are not sufficient for expressing how grateful I am for your love and unwavering support. You are the source of my strength, courage and drive to keep doing what I love. Thank you for believing in me and being there for me. I am who I am today because of you and owe all of my success to your guidance, teaching and love. I love you both so very much.

Annabel Webb, there is not enough room on this page to list everything for which I am grateful to you. Leading by example, your vision, commitment and hard work has changed my life, stirring in me the determination to focus my life's work on making this world a better place and inspiring the hope that change is possible. In addition to your integral contributions in helping me throughout this project, I am so appreciative and grateful for your friendship, mentorship, kindness and encouragement. You & family have been like a second family to me here, thank you all for your laughter and youthful energy!

Asia Czapska, your strength, courage, commitment and hard work is truly inspiring. I have learned so much from you and am deeply grateful for your support, thoughtful insights, guidance and friendship.

Thank you to all the people on the hill who contribute to making it such a pleasant place to be, including Liz Elliott, Margaret Jackson, Kouri Keenan and Melissa Roberts. I would like to thank my many friends whose support has been integral to the completion of this work. I would particularly like to thank Denise, Caitlin, Cristina, Pauline, Andrew, Nick & Karen. Love you all so much!

Finally thank you to the organizations whose participation and support made this research possible, including: Broadway Youth Resource Centre; Boys and Girls Club of Kamloops; Justice for Girls; Urban Native Youth Association; Kamloops and District Elizabeth Fry Society; Aboriginal Friendship Society; Britannia Youth/ Teen Centre & The Gathering Place.

TABLE OF CONTENTS

Approval	ii
Abstract	iii
Dedication	iv
Acknowledgements	v
Table of Contents	vii
1: Introduction	1
2: Theorizing Girls Human Rights	5
2.1 The Social location of criminalized girls	5
2.1.1 Poverty	5
2.1.2 Violence	7
2.1.3 Damaging home-lives	8
2.1.4 Aboriginal young women and the legacy of colonialism	9
2.1.5 What we don't know <i>will</i> hurt <i>them</i>	10
2.2 Theory: Intersections in law	12
2.3 Women's rights & youth justice: Jailing girls at the intersection	16
2.4 Intersectionality	18
2.5 Situating the present research	21
3: Legal Context	23
3.1 The history of juvenile justice law reform in Canada	23
3.1.1 <i>The Juvenile Delinquents Act</i>	23
3.1.2 The <i>JDA</i> & girls: Incorrigibility and sexual immorality	24
3.1.3 The <i>Young Offenders Act</i>	26
3.1.4 Girls & the <i>YOA</i>	27
3.1.5 <i>The Youth Criminal Justice Act</i>	33
3.1.6 Girls & the <i>YCJA</i>	41
3.2 Summary	47
4: Research Design & Methodology	48
4.1 Methodological approach	48
4.2 Ways of knowing: Feminist epistemology & evaluative criteria	49
4.2.1 Credibility & validity	52
4.3 Consciousness raising & action	54
4.4 Raising their voices: Feminist research with girls	57
4.5 Methods	61
4.5.1 Research question	61
4.5.2 Data collection	61
4.5.3 Sampling strategy	63

4.5.4	Sample	65
4.5.5	Coding & analysis	66
4.6	Ethics	68
4.6.1	Research ethics approval	68
4.6.2	Informed consent	69
4.6.3	Feminist & social justice ethics	71
4.6.4	Researcher & advocate: Navigating the love-hate relationship	72
4.6.5	Reciprocity and living up to promises	77
4.7	Methodological limitations.....	78
5: Locked up for their own good: Girls detained for social welfare & punishment.....		80
5.1	Police as agents of child protection & discipline	80
5.2	Social welfare with an iron fist	83
5.2.1	<i>“Breach babies”</i>	84
5.2.2	Unbecoming of a lady: Public intoxication	87
5.2.3	Good cop, bad cop: Police take charge when child welfare fails	90
5.2.4	Stepping in for parents.....	92
5.3	Police discipline: She’ll learn soon enough.....	95
5.3.1	<i>You got quite the mouth on you</i>	96
5.3.2	<i>That will put the scare into her</i>	99
5.4	Criminalization instead of protection: The failure to respond to violence.....	100
5.4.1	Failure to respond to abusive partners	101
5.4.2	Prostitution, gangs and drugs	103
5.5	Summary	105
6: Where violence is routine: Girls in the cellblock.....		106
6.1	Dignity & best interests	107
6.2	Equality & non-discrimination	109
6.3	Deprivation & denial.....	115
6.3.1	<i>“You can’t just shun me off”: Denial of basic necessities</i>	116
6.3.2	Denial of clothing	118
6.3.3	Medical attention.....	124
6.4	The violence of routine practices & the security regime	126
6.4.1	Handcuffs & restraints.....	126
6.4.2	Strip-searching.....	129
6.4.3	Big brother is watching: Cameras in cells	136
6.4.4	Exposure to adult males	140
6.4.5	Police (ab)use of force	143
6.4.6	Getting tough on bad girls.....	144
6.4.7	When gender, race & class collide.....	148
6.5	Summary	151
7: Conclusion: Discussion & recommendations		153
7.1	Girls’ rights & detention in police lock-ups	153
7.1.1	Girls’ oppression & inequality: Criminalizing girls for the state’s failure to protect them	153
7.2	Policy recommendations & future research	155

7.3	Police discretion & accountability	155
7.3.1	Advancing girls' rights	158
7.4	Implications for Bill C-4	159
	Appendices	161
	Appendix A: Interview schedule with young women.....	161
	Appendix B: Key informant interview schedule.....	166
	Reference List	167

1: INTRODUCTION

Signalling a continued emphasis on shifting the approach to youth justice towards a get-tough, crime control model, the Conservative government is poised to present new crime legislation in fall 2011. They are expected to revive *Bill C-4* (Department of Justice, 2010; Library of Parliament, 2010), a collection of amendments that died during their days as a minority government in 2010 *that* aimed to amend the *Youth Criminal Justice Act (YCJA)*(S.C. 2002, c. 1).

The proposed amendments, with the stated goal of “emphasiz[ing] the importance of protecting society” (Department of Justice, 2010), aim to replace the existing sentencing principles of “meaningful consequences,” “rehabilitation” and “reintegration,” with an approach dominated by “deterrence and denunciation.” (Department of Justice, 2010). To this end, the Bill proposes to make it easier to sentence youth to custody, impose adult sentences on them and hold them in pre-trial custody, among other measures (Department of Justice, 2010).

However, many critics are justifiably concerned about the potential impact this shift may have, given extensive research and experiential evidence indicating that “tough on crime” approaches and harsher penalties are not only ineffective, but harmful methods of responding to criminalized youth (Canadian Criminal Justice Association, 2010). Furthermore, in a case of apparent amnesia, the current government appears to have wholeheartedly forgotten the impetus for shifting from the *Young Offenders Act* (R.S.C. 1985, c. Y-1) in the first place, which was to reduce high rates of youth imprisonment that left Canada red-faced in the international community due to

comparatively high youth custody rates (Bala, Carrington & Roberts, 2009, p. 133; Denov, 2004, p. 6).

These amendments also appear to diverge from international human rights standards for incarcerating children, which specify that deprivation of liberty is only to be used as a last resort. Furthermore, the *Convention on the Rights of the Child (1989)*, to which Canada is a signatory, stipulates that sentencing must emphasize rehabilitation and respect for the dignity and future development of the child above all other factors (Article 40.1 Convention on the Rights of the Child, 1989). Of particular concern, is the impact that a punitive turn will have on historically marginalized groups. Criminal “justice” and law are inherently gendered, racialized and classed systems of social control that have historically upheld systemic oppression and been the site of grave human rights abuses against marginalized people.

At the same time, the *Youth Criminal Justice Act (YCJA)(2002)* is so new that there has been little time to adequately assess its impact. As hoped, overall trends indicate that incarceration rates did drop significantly, fewer youth are being processed “formally” through the courts and crime rates have also slightly decreased (Bala, Carrington & Roberts, 2009). However, pre-trial custody rates have actually increased under the legislation, and there appear to be disproportionately racialized and gendered impacts of the legislation (Calverly, Cotter & Halla, 2010, p. 9; Sprott & Doob, 2009, p. 40). From a human rights perspective, there has been almost no assessment of the YCJA’s impact, and dearth of detailed information and research on its implementation (See Denov, 2004, for one example).

One area of concern is the total lack of oversight and knowledge surrounding the use of police pre-trial detention, treatment and conditions in police holding cells. Since a primary strategy of the YCJA has been to increase police discretion with youth, this

represents an important gap in our understanding about the impact of this legislation in an important area of human rights.

The present research is situated within a lacuna of knowledge in a policy area that has potentially deleterious implications for Canadian youth. In the case of criminalized girls, who are often racialized and poor, this is particularly acute given the layers of intersecting oppression and inequality they experience. The purpose of this exploratory research regarding girls' experiences in police holding cells is three-fold. The first is to contribute to the emerging body of literature regarding the gendered nature of youth justice in Canada using a feminist lens and privileging their voices. The second is to situate their experiences within an international human rights framework in an effort to advance an analysis of their experiences that is grounded in an understanding of the unique oppression and inequality they face at the intersection of their age and gender. The third is to use this research to highlight policy concerns and advocacy objectives with respect to potential human rights and social justice repercussions of youth justice legislation.

Through a qualitative analysis of semi-structured interviews with 20 girls and young women in three regions of British Columbia, this thesis documents their stories. Their narratives provide a glimpse into a world that often goes unnoticed, and they raise disturbing human rights questions about the practice of detaining girls (and boys) in police holding cells. Although this research is exploratory, their tales offer a broader commentary on conditions and quality of life for marginalized girls in Canada, pointing to discrimination, systemic inequality and an overall failure on the part of the Canadian state to protect them.

Findings indicate the experiences of these girls in police holding cells are gendered in ways that undermine their equality and human rights. Their reports suggest

that they are held in police jails for social welfare purposes and punishment, despite legislative provisions prohibiting this. They are also arrested and detained in response to failures to protect them from violence, mainly perpetrated by family members, boyfriends, pimps and drug dealers. Furthermore, while in police custody, they experience humiliating treatment and multiple human rights violations, including gender-based discrimination, denial of basic necessities, humiliating practices and various forms of physical and psychological violence.

This thesis is organized in the following manner. Chapter 2 opens with a summary of available information about the socio-economic characteristics and backgrounds of criminalized girls in Canada. The second half of this chapter establishes the theoretical framework, contextualizing a discussion of girls' human rights within feminist and intersectional approaches. Chapter 3 outlines the historical development of youth justice law in Canada, using a review of relevant literature to highlight the gendered social and legal construction of criminalized girls over three distinct phases of law reform. Chapter 4 details the methodological approach and research design for the present research, ending with a discussion of ethical considerations and limitations. Chapter 5 is the first of two results chapters. Situated within a discussion of international and domestic laws regarding the lawful use of pre-trial detention, the themes that emerged from young women's narratives suggest they were detained for social welfare, punishment and protection. Chapter 6, the second results chapter, outlines girls' experiences while in custody, detailing their experiences within an analysis of international human rights standards for the detention of children. Discussion of results foreground the gendered/raced/classed nature of their experiences. This thesis concludes in Chapter 7 with a brief summary, followed by policy and research recommendations.

2: THEORIZING GIRLS HUMAN RIGHTS

2.1 The Social location of criminalized girls

Criminalized girls' age, race, gender and economic class socially locate them at the intersection of multiple layers of systemic oppression before they ever come into contact with the 'justice' system. Documentation of the social conditions they were born and raised into consistently confirms that they face repeated and compounding threats to their survival, a reality that is perhaps more accurately characterized as "war[fare] on girls" (DeKeseredy, 2011, p. 53). Rather than helping or 'healing', the criminal justice response often adds a new layer of state sanctioned oppression that is more coercive and systematic. This section reviews the available literature detailing the backgrounds and experiences of criminalized girls, in an effort to contextualize their involvement with systems of crime control.

2.1.1 Poverty

The connections between gender, homelessness, poverty and criminalization have been well established in the literature (Belknap & Holsinger, 2006; Berman, *et al.*, 2009; Chesney-Lind & Shelden, 2004; Chesney Lind, Morash & Stevens, 2008; Czapska, Webb & Taefi, 2007; Reid, Berman & Forchuk, 2005; Reitsma-Street, 2005b). Adult women in prison are disproportionately poor. Comack found that 80% of female inmates in federal prisons were unemployed when they were incarcerated, 48% had less than a grade nine education and, not surprisingly, at least four fifths of women in custody are there for offenses that are poverty related (Comack, 2006, p. 67).

There is very little information about the extent of girl poverty and homelessness, because, as Berman, *et al.* (2009) note, little research is conducted about poverty and homelessness in Canada and the work that is available rarely looks at girls' unique experiences. Overall, child poverty and homelessness are serious problems in Canada, an issue highlighted by the UN Committee on Economic, Social and Cultural Rights stating that homelessness is a national emergency in Canada. It is estimated that girls make up 30-50% of homeless youth, and Aboriginal girls account for 40% of all homeless girls (Czapska, Webb & Taefi, 2007). Girls in poverty are particularly vulnerable, as they have less legal autonomy and little access to formal means of financial support. For example, Comack (2006) points out that young women are less likely to be employed and have less access to jobs than adult women (p. 66).

Available research indicates that criminalized girls come from backgrounds of poverty where they experience abhorrently high rates of physical and sexual violence, abuse, neglect, lack of adequate, safe housing, nutrition and other necessities of life (Acoca, 1998; Belknap & Holsinger, 2006; Belknap & Jiwani, 2001; Chesney-Lind & Shelden, 2004; Dekeseredy, 2011; Gavazzi, Yarcheck & Chesney-Lind, 2006; Gilfus, 1992; Irwin & Chesney-lind, 2008; McCreary Centre Society, 2007; McDaniels-Wilson & Belknap, 2008; Pasko, 2008; Reid, Burnman & Forchuk, 2005; Totten, 2000; Winchell & Bayes, 2008) . Furthermore, in a recent study conducted by the Elizabeth Fry Society in British Columbia, discussions with girls in custody revealed they felt that housing was a most pressing need (Winchell & Bayes, 2008).

Criminalized girls often come from homes where they are denied access to health care and education, which further limits their social and economic equality as they grow up (Pasko & Chesney-Lind, 2010). Consequently, many have been apprehended by child protection agencies, where appalling treatment and conditions often continue

(Carlen, 1989; Gilfus, 1992). Girls frequently run away to escape the horrors of their home-lives, and end up living in various types of substandard living conditions that range from 'sleeping rough' to living in crack houses or with older 'boyfriends' who exploit them for a place to sleep, money and drugs (Czapska, Webb & Taefi, 2007; Reid, Berman & Forchuk, 2005, p. 241). Thus, there are complex, intertwining links between poverty and violence that create a dangerous recipe for young women and make it more likely they will come in contact with the criminal justice system.

2.1.2 Violence

Extreme violence has characterized the lives of all criminalized teenage girls, save perhaps a few anomalies (Acoca, 1998; Belknap & Holsinger, 2006; McDaniels-Wilson & Belknap, 2008; Pasko & Chesney-Lind, 2010; Reid, Berman & Forchuk, 2005; Reitsma-Street, 2005b) . Their experiences of violence range from physical and sexual violence, to witnessing it in their homes, communities, schools, foster homes and eventually in police stations and prisons. While it is impossible to know the full extent of their exposure to violence, there is an extensive body of research documenting this issue (Acoca, 1998; Belknap & Holsinger, 2006; Chesney-Lind & Shelden, 2004; Gilfus, 1992; McDaniels-Wilson & Belknap, 2008; Pasko & Chesney-Lind 2010). Most estimates suggest that between 40% and 75% of criminalized girls have been abused (Chesney-Lind & Shelden, 2004, p. 145). One study of self reported victimizations by girls in custody found that one in four girls reported they had been sexually abused by a (mainly male) family member, while more than 50% indicated they had been sexually abused by a non family member (Belknap & Holsinger, 2006). Gilfus (1992) reports similar findings and in another American study 92% of female respondents in custody reported they had been victimized, 40% had been victims of sexual abuse (Acoca, 1998). Canadian studies found girls are disproportionately more likely to be sexually

abused. In *Violence Prevention and the Girl Child*, researchers report that 84% of reported sexual abuse victims in Canada are girls (Berman & Jiwani, 2001).

Furthermore, reports of girls in custody in British Columbia have found histories of abuse to be endemic inside prison walls, with one study finding that 55% of females incarcerated had experienced physical assault, and 33.8% had been victims of sexual assault. These rates are greater when race is factored in, with 75% of Aboriginal girls reporting physical abuse and 57% identifying sexual abuse histories (Alvi, 2009). Another BC study conducted in 2000 found 92% of their sample of girls in custody reported past physical abuse, with 75% of young women reporting past abuse in a 2004 update of this study (McCreary Centre Society, 2006). As much of the violence experienced by girls is within their families, many young women who are criminalized come from dysfunctional or damaging homes.

2.1.3 Damaging home-lives

Again in Belknap and Holsinger's (2006) study, 47% of girls indicated they had been raised by people other than their parents, and 14% of these girls indicated they would rather live in juvenile prison than at home. Corrado, Odgers and Cohen (2000) found that 57.4% of girls in their study had been kicked out of their homes and 87.8% had left home. However, the notion that children 'choose' to leave home must be problematized (Berman, *et al.*, (2009), as girls often leave to escape threats of violence and abuse at home, or neglect (Chesney-Lind & Shelden, 2004; Berman, *et al.*, 2009; Reid, Berman & Forchuk, 2005). These decisions are compounded by poverty, stigmatization and failures of the child welfare systems to protect or offer safe and adequate alternatives (Reid, Berman & Forchuk, 2005). Furthermore, until 1984 in Canada, and continuing to this day in the United States, running away was considered a status offence for which girls could be punished and incarcerated (Chesney-Lind &

Shelden, 2004; Feld, 2009). Gilfus found 15 of 20 girls reported that their first “delinquent event” was for running away from home (p. 77). Furthermore, despite the decriminalization of status offences in Canada, research indicates that running away from home is still criminalized indirectly, through administrative offences, bootstrapping and “up-criming”¹ (Brown, Chesney-Lind & Stein, 2007; Chesney-Lind & Irwin, 2004; Chesney-Lind & Shelden, 2004; Pasko & Chesney-Lind, 2010; Feld, 2009; Sprott & Doob, 2009). In many interviews and case study reports, dysfunctional family lives and abuse were prevalent throughout each girl’s narrative (Acoca, 1998; Pasko, 2008; Pasko & Chesney-Lind, 2010; Reid, Berman & Forchuk, 2005). Furthermore a recent study in British Columbia indicates that 73% of youth in custody have been in child services care (McCreary Centre Society, 2007).

2.1.4 Aboriginal young women and the legacy of colonialism

The legacy of systemic racism rooted in colonization marginalizes and excludes Aboriginal people in ways that put them greater risk of coming into contact with the justice system and they are frequently more heavily policed (Monture-Angus, 2002). Criminalized girls are disproportionately Aboriginal and likely to be living in poverty. In Canada, the most recent statistics suggest that 35% of young females in secure custody are Aboriginal and this group represents 27% of all females held in remand for the years 2005-2006 (Alvi, 2009; Milligan, 2008). An estimate from 2004 by the Ministry of Children and Family Development (MCFD) in British Columbia (B.C.) suggests that 47% of the entire youth population in B.C. custody is Aboriginal (McCreary Centre Society, 2007). This number climbs much higher in rural areas, where the Prince George, B.C. detention centre reported that over 75% of girls were Aboriginal in 2008 (Winchell & Bayes, 2008).

¹ These concepts are defined and elaborated upon in chapters 3 and 5.

As is demonstrated by the literature, these girls face higher rates of abuse, homelessness, poverty, mental health, substance abuse and ultimately higher incarceration rates than other racial minorities and caucasian females (Belknap & Jiwani, 2001; Chesney-Lind, Morash & Stevens, 2008; Gavazzi, Yarcheck & Chesney-Lind, 2006). In Canada, Aboriginal girls are disproportionately likely to experience violence, as up to 75% report experiencing sexual abuse before the age of 18 (Berman & Jiwani, 2001). Aboriginal females frequently grow up on reserves, where conditions of poverty are so extreme that some lack clean, running water to drink. Homes on reserves are often overcrowded and more likely to need major repairs (Canadian Association of Elizabeth Fry Societies, 2011). Aboriginal women and girls are disproportionately poor. In 2005, 36% of indigenous women are living in poverty. On average they earn \$12,300 per year, which is \$5000 below what non-indigenous women average. While the average number of people on social assistance is 5%, 35% of people residing on reserves are on social assistance (Canadian Association of Elizabeth Fry Societies, 2011).

2.1.5 What we don't know *will* hurt *them*

Unfortunately, official statistics on criminalized youth are insufficient to get a detailed sense of which youth are over and under-represented demographically at any stage of the criminal justice system. Youth justice statistics that are disaggregated by gender only became available in 2005 (Spratt & Doob, 2009). Also, the Department of Justice does not collect demographic information on racial minorities, except Aboriginal youth, to avoid promoting discrimination and stereotypes. While there is merit to this position, particularly because such figures over-simplify the extent and harm of racial

profiling (MacAlister, 2011; Melchers, 2011),² the lack of official empirical data, combined with a dismissal of 'qualitative' research on racial profiling contributes to the "discourse of denial" that permits continued discrimination (Henry & Tator, 2011).

In the absence of official data, dominant 'truths' about criminalized girls are dictated and reproduced through media depictions of rare and anomalous events. Chesney Lind and Eliason (2006) identified a disturbing pattern in depictions of young female offenders in the media where pop culture images are extensively based upon patriarchal assumptions about 'good' girls and femininity, employing stereotypes of race and sexual orientation. Such portrayals paint a perception of violent criminals as ethnic minorities and lesbians by essentializing the 'masculine' qualities of their identities. Chesney-Lind (2006) points out that such "backlash media stories" have disproportionately harmful impacts on racialized girls (p. 13).

The perpetuation of these myths and stereotypes also have damaging consequences for girls whose freedom and livelihoods rest on the discretionary judgment of justice officials. Gaarder, Roderiguez and Zatz's (2004) analysis of probation files found probation officers subscribed to sexist attitudes about the girls on their caseloads, describing their clients as "liars", "manipulators" and "promiscuous" (p. 556). Reminiscent of antiquated myths about women that informed early criminology

² The January 2011 issue of the Canadian Journal of Criminology and Criminal Justice outlines the debate surrounding racial profiling and systemic racism in the Canadian justice system. Much of this hinges upon the point that racial profiling can only be understood through an understanding of police subculture, because it is far too complex to capture in aggregated data that only reflects the numbers of people arrested (Henry & Tator, 2011; Melchers, 2011). Part of the challenge also comes from the fact that official statistics and intelligence are based upon knowledge generated within a culture embedded with racism (overt and/or systemic) (MacAlister, 2011). Consequently, the information generated may in fact reproduce and reify racist beliefs. This, however, does not minimize the urgent need for more information about racial profiling and systemic racism.

theories,³ probation officers accused girls of “fabricating reports of abuse” in an effort to garner sympathy and manipulate their way out of punishment (Gaarder, *et al.*, 2004, p. 556). In their analysis, Gaarder *et al.* (2004) note that not only is the assessment discriminatory, but it is too individualistic. Given their histories, girls’ behaviours need to be understood as coping and survival strategies, rather than as problem behaviour. Probation officers also articulated biased assumptions about their families, referring to them as ‘trashy’ and recording sexist judgements about the girls’ single mothers (Gaarder, et al., 2004, p. 548). The authors conclude that stereotypes obscured and diverted attention away from the reality of girls’ lives in most probation files. Consequently, the social contexts of poverty, violence and neglect were erased and girls were stigmatized, pathologized and punished (Gaarder, et al, 2004, p. 575).

Thus there is a real need to ensure that research with, and about, criminalized girls adequately captures their histories and social locations in order to disrupt stereotypes and assumptions about their ‘character.’ Their histories of poverty, violence, neglect and gender/racial discrimination must remain at the forefront in theorizing and developing a response to criminalized young women. It is argued herein that research and advocacy strategies, then, be grounded in a feminist intersectional approach to inform human and equality rights strategies as the basis for developing the most appropriate response.

2.2 Theory: Intersections in law

The tradition of feminist theory has been to maintain a delicate balance between engaging with and rejecting legal strategies in the movement for equality. This is, of course, a logical dilemma given the function of the law as a state institution that structures and maintains oppressive capitalist, colonialist and patriarchal systems of

³ See, for example, Otto Pollak’s *The Criminality of Women* (1950). He argued that women’s law breaking was characterized by greater deception and manipulation, and that this was related to sexual deviance (Chesney-lind & Shelden, 2004, p. 103).

oppression. Yet it is because of this role that many subjugated groups, such as the labour, civil rights and women's movements, have gained ground in the fight to challenge discrimination. There is debate about whether these gains have reallocated power in a sustainable way, but there is no doubt that relations have shifted.

The strength of legal strategies partly comes from law's role in constructing legal 'subjects' and thus defining their legal 'identity' (Smart, 1998, p. 26). In western liberal democracies, the social contract is one between the state and its 'subjects.' Entitlement to protection is only granted to those who are legally identified as 'subjects.' Indeed, the first struggle for the civil rights and women's movements was to establish themselves as 'legal subjects' or 'persons' under the law⁴. This precipitated nearly a century of legal battles to challenge exclusion and discrimination on the basis of identity and assert equality rights.

However, many feminists are justifiably cautious about engaging with the law because it emerged from (and clings to) patriarchal, colonialist and capitalist roots. It does not operate in a vacuum, and is highly susceptible to the dominant socio-political culture and ideology – operating in tandem with the economy, state, and media to uphold power structures. Systemic oppression is a battle that needs to be fought on all fronts; focusing only on one, at the expense of others, will lead to frustration and superficial victories.

Carol Smart (1998) argues that law must be thought of as a 'gendered process' (p. 25), which means it is both useful and potentially harmful to women due to the power

⁴ Before women could secure legal rights, they had to challenge the legal definition of "person" under the law. They achieved women's legal status in what has come to be known as the *The Person's Case (1929)*, where section 24 of the *British North America Act (now Constitution Act, 1867)* was amended to allow women to become senators, a role reserved only for those defined as 'persons.' (Global perspectives on Personhood, 1999).

it contains to “construct categories” (p.26). Seeing law as a process, Smart (1998) argues

...we can deconstruct law as gendered in its vision and practices, but we can also see how law operates as a technology of gender...that is to say we can begin to analyse law as a process of producing fixed gender identities rather than simply as the application of law to previously gendered subjects. (p.26)

If viewed as alive and moving then law becomes a devil to dance with; the exclusions and categories it creates become less static and less potent.

law is not simply law... not a set of tools or rules which we can bend into a more favourable shape... the desire to be political has been confused with the desire to be practical, and thus law has continued to occupy a conceptual space in our thinking which encourages us to collude with the legalization of everyday life. We must be critical of this tendency without abandoning law as a site of struggle. (Smart, 1998, p. 31)

Thus Smart advocates the importance of viewing law as a playground, or battlefield, in an on-going project of social justice, rather than a source of freedom and equality.

Laureen Snider, on the other hand, is far more pessimistic (Daly & Maher, 1998; Snider, 1998):

...laws, however complex and ambiguous, do not generally wreak havoc upon dominant groups. They are practically never interpreted in ways which threaten the rights of males or upper class people because both dominant ideology and social practice direct judges away from this... (Snider, 1998, p. 254).

Thus for Snider, law is forever compromised in its capacity to promote equality because those who wield power in the institution belong to the dominant groups, and regardless of who they are as individuals, they are co-opted by virtue of their perspective and the interests they have to protect. She imagines a very narrow potential for law to promote social justice and change for feminist legal strategies. First, she sees legal strategies as useful when there is a need to prevent laws from being used to further oppress women and to protect the achievements already won (Snider, 1998, p. 254). In other words,

feminists should engage to fight or stop potentially harmful legal reforms and judicial determinations from creating or furthering women's oppression. Secondly, feminists can use legal strategies to assert 'concrete rights.' She is careful to articulate that she is not referring to abstract rights, such as the "right to equality," but, rather, rights to the conditions necessary to realize abstract rights, such as the "right to adequate housing", "universal medical care" or "child care" (Snider, 1998, p. 254).

Thus, there is some consensus among feminist legal scholars that engaging law to some degree in the struggle for social change is unavoidable, and at times, strategically useful – but it should never occur at the expense of political and social empowerment (Snider, 1998, 254). This is particularly true when it comes to removing barriers to the full participation and enjoyment of rights that are necessary to even begin naming injustice and oppression.

With this in mind, the purpose of this research is to advance girls' struggles for equality and social justice using a human rights based strategy. Doing this necessarily requires engaging with law, as the very notion of human rights operate in and are borne of western liberal legal systems. Engaging in this strategy, at this time, is fundamentally important, because a gap exists in the current human rights regime where girls' rights have slipped through the cracks of overlapping human rights laws and jurisdictions due to their intersecting age and gender (Taefi, 2009). Criminalized girls, in particular, are vulnerable to numerous threats to their rights. These are often layered, beginning with state failures to meet their basic social and economic rights throughout their childhoods that set them on a trajectory for criminalization, where continued abuses and rights denials occur. When their criminalization is framed within a rights analysis it becomes possible to expose the layers of human rights concerns with respect to Canadian girls.

2.3 Women's rights & youth justice: Jailing girls at the intersection

Theoretically, criminalized girls' human rights have not received a lot of feminist attention in criminology. There has been a significant amount of work done on the media construction of criminalized girls, girls' violence, girls as victims of violence, 'pathways' to crime and some on conditions of confinement. However, there has been little in the way of feminist analysis on the impacts of youth criminal justice law reform and human rights law for girls in Canada.

While the work done by feminist criminologists documenting the backgrounds, pathways and treatment of criminalized girls is extremely valuable (see, for example, Acoca, 1998; Belknap & Holsinger, 2006; Chesney-Lind & Shelden, 2004; Pasko, 2008), this work alone is not enough to advance the social changes necessary to respond adequately to systemic human rights violations. Furthermore, this work is often framed within a liberal comparative analysis that aims at highlighting the differences between girls' experiences and behaviour from dominant groups. While this is necessary to lay the groundwork for formal equality, it is insufficient for substantive equality claims. Advocacy and reform based solely upon this logic places emphasis on tinkering with programs and 'measures' to make them 'gender sensitive.' Not enough attention is paid to fundamentally challenging the legal frameworks that uphold girls' marginalization and maintain the oppressive social conditions that initially bring them to the attention of police.

Focusing on criminalized girls' needs results in individualizing, pathologizing and programming them, rather than urging a systemic analysis of the human rights violations that most of these 'needs' actually highlight, including discrimination, poverty, neglect, abuse and male violence. The logical result of this has been to build up the

infrastructure to make confinement and institutionalization seem gender friendly, yet what is really needed is a dismantling of oppressive systems of power that lie at the root of their criminalization.

To do this, more empirical evidence and analysis that situates girls' experiences within domestic and international human rights law and supports 'rights based' policy reform is needed. Unfortunately, an adequate analysis of the complexity of securing girls' rights is not built into, or explicitly articulated in, any binding human rights conventions at the international level, leaving a pernicious gap that prevents girls from fully enjoying the entitlements to protection they are supposed to be afforded as girl-children (Taefi, 2009 p.353).

Despite a growing awareness and burgeoning international movement around global failures to protect the rights of girls, calls to recognize the intersecting oppression of girls at the nexus of their age and gender have been met with resistance by some policy makers, feminists and children's rights activists alike (Taefi, 2009; Besson, 2005). This erasure is able to persist due to the unspoken assumption that girls' rights are covered under women's rights or under children's rights (Taefi, 2009).

However, as Besson (2005) and Taefi (2009) point out, the *Convention on the Rights of the Child* is written in gender-neutral language, relying on Article 2, the non-discrimination clause, as the only official provision that can be called upon to assert girls' equality rights within the children's rights framework. This sets up a very narrow interpretation, whereby direct discrimination is more easily remedied, but indirect discrimination and substantive socio-economic rights become much more challenging to advance.

From the standpoint of criminalized girls this is particularly problematic because they are subjected to many added layers of state intervention, surveillance and

institutionalization, which are a direct extension from life at the intersection of multiple oppressions. Yet, at the same time, they are legally constructed as androgynous subjects despite their heavily gendered social, economic and political realities. This renders the gender-based oppression and discrimination invisible. Furthermore, their age means that they do not have the same rights and entitlements that adult women use to call attention to and challenge these same forces (Taefi, 2009). Thus criminalized girls are located within a matrix of formal and informal institutional power structures, but have fewer rights protections, positive rights guarantees and a “diminished sense of entitlement” (Webb & Czapska, 2010, 1.3.5.1) to basic human rights. Theoretically, this oversight is possible only outside of an analysis that accounts for how age, gender, race and class conspire to marginalize girls in specific ways. Taefi (2009) promotes using a theoretical framework that is informed by intersectionality.

2.4 Intersectionality

The seeds of intersectionality are attributed to critical race theorist Kimberle Crenshaw (1991), who used it to conceptualize how race and gender compound one another to create an intersecting oppression experienced by women of colour. While it is a relatively new theoretical approach, many feminist and anti-oppression writers have embraced it as a strategy to illuminate the truly complex reality of social oppression, and the reality that systems of power are not distinct, but rather are mutually dependent and reinforcing (Burgess-Proctor, 2006; Daly & Maher, 1998; Hancock, 2007, p. 64; McCall, 2005).

Crenshaw (1991) used this approach to highlight how black women’s struggles for equality during the civil rights movement were impeded by the multiple oppressions that they faced in the women’s movements and the black civil rights movement. They faced racial discrimination in the women’s movement and faced sexist discrimination in

the largely male dominated civil rights movement. As a consequence, their lived experiences were marginalized in both of the movements that their struggles for equality were located, where they faced an oppression 'greater than the sum of its parts.'

Thus, intersectionality requires recognizing that power is dynamic, not static, and that it operates through various channels in any given context. The task, then, for intersectional theorists is to foreground the multiple oppressions operating in girls' and women's lived experiences. This requires close attention to girls' and women's multiple social locations, and rather than analytically focusing on each separately, locating analyses of power at the *intersection* of these multiple forms of discrimination.

It is no surprise that this analysis emerged first as a feminist approach, as the primary focus of feminist theory has been to develop it from the lived experiences of women (MacKinnon, 1989). Thus, rather than emphasizing objectivity, feminism has embraced girls' and women's subjective experiences as a means for exposing how systems of power operate at multiple levels to maintain oppression, and often mutually reinforce one another. Hence the famous mantra, "the personal is political" (Hanisch, 1969), which aims to convey how girls and women use their private experiences of discrimination to inform political and legal strategies by connecting these to broader social forces and institutions.

Feminist theorists also stress the importance of understanding women's social positions as "relational", meaning that focus must be on the process by which multiple identities (race, gender and class, for example) interact with one another to shape women's experiences (Way, 2004, p.86). In addition, intersecting oppressions operate at different levels within society through multiple "systems of discrimination and subordination" to produce a form of "trans-identity which is experienced at the individual, structural and policy levels" (Hankivsky & Cormier, 2009, p.4). Thus, identities at any

given time are shaped not only by the 'categories' that define them, but also by the social location in which they occur. This notion is particularly useful to understanding girls and women in the justice system as it embodies all three levels (individual, structural and policy) as they *act upon* the lives of the most socially oppressed and marginalized. Importantly, this approach has also been embraced by indigenous feminists in Canada, and thus has the potential to offer a framework for foregrounding the deeply rooted discrimination and inequality that Aboriginal girls and women experience where colonialism, poverty and patriarchy coalesce (Monture-Angus, 2002).

The key to adequately conceptualizing criminalized girls' experiences of oppression, then, is to highlight the complexity and depth of the oppressions at their nexus, while maintaining an analysis that is fluid and dynamic. This requires understanding that each girl's lived experience of her arrest, detention, subsequent criminalization and over-policing, must be unpacked to expose any discrimination, inequality and the shifting power dynamics at play. These must then be situated within a tangled matrix of systemic power relations, where she is disadvantaged in multiple, inter-dependent ways by her race, class, gender and age.

McCall (2005) refers to this approach as "intercategorical." She discusses a typology of intersectional approaches, where there are three main ways of examining intersectional oppression: Intracategorical, anticategorical and intercategorical (p. 1773).

This approach

...begins with the observation that there are relationships of inequality among already constituted social groups, as imperfect and ever changing as they are, and takes those relationships as the center of analysis. The main task of the categorical approach is to explicate those relationships, and doing so requires the provisional use of categories (McCall, 2005, p.1785).

Thus, unlike the first two approaches which seek to disrupt existing categories of identity, intercategorical approaches acknowledge an “empirical reality” to social categories and seek to use those as analytical “anchor” points for which to understand intersecting oppressions (McCall, 2005, p. 1785). Theoretically, then, the purpose of this paper is to examine girls’ experiences in police city cells, as they define them, to develop an intersectional analysis of how they are treated and constructed by law.

2.5 Situating the present research

In summary, this analysis suggests that advancing social justice and equality for criminalized girls at this moment in Canada requires documenting the experiences of girls in their families, communities, public systems and state institutions to examine how power relations operate in those sites. The purpose of this research is to contribute to legal strategies in at least two ways in order to advance girls’ human rights and respond to girls’ legal invisibility at the cross-hares of age and gender (as well as race, class, ability and sexual identity) (Taefi, 2009).

The first involves asserting girls’ rights at the international level, particularly the *Convention on the Rights of the Child* (CRC) (1989) and the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW) (1979), both of which Canada is a signatory to (Taefi, 2009). The second is to use those rights to inform national, provincial, regional and institutional policies that perpetuate discrimination and inequality.

To that end, this thesis offers an analysis of girls’ experiences in police city lock ups⁵ to locate and understand how criminalization and detention of girls threatens their access to social justice, rights and equality as they experience and define them. It is

⁵ The terms police “holding cell,” “lock up,” “city cell,” “jail” and “cellblock” are used interchangeably for the purpose of this paper.

hoped that the gaps that render injustices against girls invisible can be addressed by documenting and analysing the impact of the YCJA in the context of girls' rights, as articulated in international law. Ideally, in turn, this should enhance girls' rights and access to those rights. Most importantly, however, it is hoped that violations against criminalized girls' dignity and equality revealed in this, and other research, will be stopped upon naming them and the systemic processes that perpetrate them.

3: LEGAL CONTEXT

Although it is power that engenders the most serious forms of crime, it is powerlessness that produces the most persistent patterns of criminalization. (Carlen, 1988, p. 91)

3.1 The history of juvenile justice law reform in Canada

Youth justice is a relatively contemporary concept in Canadian criminal justice, and its evolution can be traced through three legislative reforms, beginning with the *Juvenile Delinquents' Act (JDA)* (1908), followed by the *Young Offenders Act (YOA)* (1984) and the current *Youth Criminal Justice Act (YCJA)* (2003).

3.1.1 The Juvenile Delinquents Act

The *JDA* established youth justice in an approach that was child welfare oriented, positioning the state as a disciplinary parent for 'wayward' youth whose parents could not control them. This was achieved through the *Parens Patriae* Doctrine, which can be "traced back to medieval England where it had more to do with property law than children" (Chesney-Lind & Shelden, 2004, p. 160). This doctrine grants the state legal responsibility for ensuring the wellbeing of children, and establishes the legal authority to apprehend and incarcerate them. Youth adjudicated and sentenced under the *JDA* could be sent to reformatories and industrial schools for indefinite periods of time for 'rehabilitation' (Chesney-Lind & Shelden, 2004, p.173; Sprott & Doob, 2009). This process of criminalization and apprehension had distinctly gendered impacts for girls who were incarcerated for offences that were linked to gender role expectations. The

punishment regime was also gender specific, aimed at reforming girls into 'proper' young ladies (Sangster, 1996).

3.1.2 The *JDA* & girls: Incurrigibility and sexual immorality

For girls, the *JDA* created a particularly nasty combination of paternalism, chivalry and patriarchy that manifested in disproportionate numbers of them being adjudicated for two status offences: 'incurrigibility' and 'sexual immorality' (Sprott & Doob, 2009, p. 130-131). The focus, when it came to girls, was less about any criminal dangers they posed to society, and more about coercively socializing girls who threatened to transgress norms of 'proper' femininity (Chesney-Lind & Shelden, 2004, p. 170). Chesney-Lind & Shelden (2004), paint a historical picture of western juvenile justice as characterized by a blatant "obsession" (p. 167) with girls' sexuality. Focusing on the United States, they found that in 1920, 93% of those accused of status offences were girls, and 65% of them were for "immoral sexual activity" (Chesney-Lind & Shelden, 2004, p. 171). They also point out that 77% of girls who were held in pre-trial detention, were detained for treatment of "venereal diseases" (p. 171). "Girls were three times more likely to be sentenced to training schools than boys," where the focus was on correcting their sexuality and shaping them into obedient, dependent 'good' girls (Chesney-Lind & Shelden, 2004, p. 167). In Canada, the pattern was similar, where girls were more likely than boys to be brought to court and sentenced to custody for sexual immorality (see Sprott & Doob, 2009, pp. 131-140 for a detailed analysis).

Incurrigibility offences also offered an interesting lens for observing patriarchy in action through the justice system. Again, girls were more likely to be sentenced to custody for these status offences in both Canada and the United States. These cases often involved girls who fought with their parents, or for general rule breaking that was considered unbecoming of young 'ladies', such as, truancy, and curfew violations

(Chesney-Lind & Irwin, 2004, p. 53; Chesney-Lind & Shelden, 2004, pp. 171- 172; Reitsma-Street, 2005a). For instance, in the United States, 51% of status offences were the result of parental referrals (Chesney-Lind & Shelden, 2004, p. 171) and 31% of girls' status offences were for "unruliness in the home" (p.172).

These practices were also racialized and classed, with girls living in poverty and Aboriginal young women being apprehended by state institutions in far greater numbers than middle and upper class white girls (Balfour, 2006, p. 155; Chesney-Lind & Shelden, 2004, Sangster, 2002 p. 291). Sangster's (1996) research in Ontario found that refugee and "working class" girls were disproportionately sentenced to reformatories for incorrigibility and sexual deviance. This was often associated with fears that they were drinking and corrupting men. Sangster (1996) also found a connection to views about sex with non-white men, citing one example where a young white woman was committed by her parents, for "running around with an Indian boy" (p. 257).

Aboriginal girls, too, bore the brunt of coercive social control measures at the intersection of colonialism, patriarchy and poverty. They have historically been at an increased risk of apprehension and institutionalization in residential schools, reformatories, prisons, and child welfare (Sangster, 2002, p. 66). Views that Aboriginal girls were "backwards," "childish and savage," led to their increased incarceration in reformatories and training schools (Sangster, 2002, p. 69). A contributing factor to their high rates of incarceration was the racist perception that their parents were too primitive, stupid or morally corrupt to provide care for them or teach them proper values and behaviours (Sangster, 2002, p.71).

The *Parens Patriae* doctrine provided the justification for apprehending girls from their families and communities, denying them civil protections guaranteed to adults and indefinitely depriving them of their liberty for behaviours that were not crimes, but

threatened to upset the prevailing patriarchal ethic (Chesney-Lind & Shelden, 2004, p. 163; Sprott & Doob, 2009). This historical paradox highlights the insidiousness of “total institutions” (Bilsky & Chesney-Lind, 2011), whereby atrocities can become routinized and twisted through ideology to appear as though they are protective. In this case the child-saving movement largely shaped the response, and their focus was aimed directly at girls’ sexuality (Chesney-Lind & Shelden, 2004; Sprott & Doob, 2009). Consequently, this paved the way for increased monitoring (Chesney-Lind & Shelden, 2004, p.167) and brutal institutionalization of young women to reprogram them into proper housewives for their future consumers (See Chesney-Lind & Shelden, pp.168-169, for discussion of the gendered institutional regime).

3.1.3 The *Young Offenders Act*

By the 1970s and 1980s there was a growing recognition of the injustice of status offences, and Canada eliminated them in response to the realization that some children were being institutionalized for minimally harmful, normal, youthful behaviours (Reitsma-Street, 2005a). This reform can be contextualized within the post-war era’s emphasis on civil liberties and universal, inalienable human rights and freedoms that are ultimately reflected in the entrenchment of the *Charter of Rights and Freedoms* (1982). This ethic underpinned the 1984 overhaul of youth justice legislation, resulting in the enactment of the *Young Offenders’ Act*, which answered some of the failures of the *JDA* by emphasizing due process, civil and human rights (Denov, 2004).

In establishing procedural protections and due process, the *YOA* shifted youth justice out of the realm of ‘child welfare’ and into the realm of ‘criminal justice,’ with a view to “holding youth responsible” and placing less emphasis on their social environment (Library of Parliament, 2010, p. 5). At the same time the act retained the important legislative distinction between youth and adults, reaffirming the notion that

children are to be dealt with in a manner appropriate to their age, vulnerability and stage of development.

While the YOA did away with status offences altogether, it was amended in 1986 to include a new form of offence to respond to youth offending: Failure to comply with a disposition.

Section 26. A person who is subject to a disposition... and who wilfully fails or refuses to comply with that order is guilty of an offence punishable on summary conviction. (*Young Offenders Act*, R.S.C. 1985, c. Y-1.; 1986)

Court dispositions included the possibility of conditions as part of a sentence or bail requirement:

Section 20 (B) (l) impose on the young person such other reasonable and ancillary conditions as it deems advisable and in the best interest of the young person and the public. (*Young Offenders Act*, R.S.C. 1985, c. Y-1.)

Again, like the *JDA*, the impact of these amendments had particular implications for girls.

3.1.4 Girls & the YOA

The reforms left the ideological roots of paternalism and patriarchy intact which meant that patriarchal assumptions and values that informed the criminalization of girls' transgressions under the previous act were still operating. With status offences 'officially' off the table, girls' behaviours were being framed as 'criminal' in new ways, despite little evidence that their activities were any different from previous behaviours.

The persistent gendered/gendering effect of youth justice law became evident upon detailed examinations of girls' delinquency from 1986 and beyond. The new failure to comply charges (in addition to existing administrative charges in the *Criminal Code*) under the YOA appeared to be used as a means for dealing with girls who continued to disobey parents, and as a means for ramping up punishment for those deemed more

'difficult' to reform. The new offences created an avenue to "bootstrap" girls by "upcriming" them, relabelling relatively minor behaviours as dangerous and criminal (Brown, Chesney-Lind & Stein, 2007; Chesney-Lind, 2010; Feld, 2009; Sprott & Doob, 2009). This occurred through the use of conditions that often focused on protecting her from making bad decisions or saving her from neglectful, abusive families, pimps, drug dealers and exploitive boyfriends by controlling aspects of her private life (such as behaviour/ demeanour at home, curfew, attendance at school, social lives, mobility and substance use) (Brown, Chesney-Lind & Stein, 2007; Sprott, 2004). This practice, however, is still based upon the paternalistic assumption that the state is responsible and needs to step in when her parents are failing to keep her in line.

In their research with criminal justice officials about Crown decision making under the YCJA, Moyer and Basic (2005), found that under the previous YOA legislation many conditions placed on youth were unabashedly paternalistic, often not directly related to the offence, and appeared to be used for social welfare purposes.

Respondents [defence lawyers] linked bail and probation conditions with both "paternalism" and "wanting to help." [...] conditions imposed by the youth court were excessive, burdensome and unrelated to the offence. The conditions only increased the likelihood of breaches, which in turn lead to more conditions and ultimately to custody... (Moyer & Basic, 2005, p. 14)

The impact of this seemingly 'softer' offence category has very specific implications for girls. For the primarily low income, racialized young women whose lives are characterized by the gendered impacts of poverty, male violence, displacement and neglect, the 'justice' system can be used as a coercive substitute for child protection.

Some Crown were ambivalent about the implication that probation breaches were used for social welfare purposes, especially for females... "unfortunately we need to look at this situation like parents", the Crown charged a 15 year old prostitute with failing to reside where her probation order specified. (Moyer & Basic, 2005; p.17)

Furthermore, the reality of marginalization and involvement in the criminal justice system brings with it more surveillance, and thus, as girls' behaviour becomes more policed it becomes much more likely that she will be caught for breaching one of many unrealistic court orders (Dean, 2005).

A study by Sprott (2004) examining failure to comply convictions under the YOA, found that the most significant predictor of sentence severity for a failure to comply case was the severity of previous sentences. The implication, she points out, was that a custody sentence would put a youth in greater danger of receiving more incarceration for subsequent breaches (Sprott, 2004, p. 3). The net result is a cycle of criminalization for behaviours that are not serious and that resemble those previously constructed as 'status offences' under the *JDA*, such as, truancy, missing appointments, running away, family 'altercations,' substance use, entering 'no-go' zones or associating with people whom they are not supposed to contact (Chesney-Lind & Shelden, 2004; Sprott & Doob, 2009; Totten, 2000, p.11).

Thus, many 'breaches'⁶ can be directly related to conditions of poverty, violence and colonialism. In these cases it is possible that justice officials either fail to see these socio-economic contexts, or they do, but view it as their role to protect her in the absence of any other forms of protection. Unfortunately, while girls' criminalization throughout that period remained quite low, even for administrative charges, these charges made up a disproportionately high number of their overall caseloads (Sprott & Doob, 2009, 145). This pattern was particularly evident in the proportion of girls sentenced to custody for administrative offences. In the early part of this century over 30% of girls' sentences were for convictions where "failure to comply" was "their most

⁶ This refers to any form of administrative charge that involves breaching a condition handed down by an official of the criminal justice system, including police officers (Officer in Charge Undertakings); judges and probation officers.

serious offense,” compared to roughly 17% for boys (Sprott & Doob, 2009, p. 145). Overall, according to a 1997 profile, “failure to comply” accounted for 17% of all custody sentences, and ‘failure to appear’ accounted for 11%. At the same time, ‘failure to appear’ accounted for 7% of all youth charges, the fourth most common youth charge (Stevenson, Tufts, Hendrick & Kawalski, 1998, pp. 47-48).

A concurrent trend during this period was the growing number of youth in custody. Between 1992/3 and 1996/7, the proportion of youths sentenced to custody rose from 31% to 34% (Stevenson, *et al.*, 1998, pp.47-48). This trend was also gendered as the rate of young women, and their proportion of those sentenced to custody outpaced the growth rate of young males. The proportion of convicted girls receiving custody sentences went up 6% over this three-year period from 19% to 25% (Stevenson, *et al.*, 1998, pp. 47-48; Totten, 2000, p.12).

While the practice of “bootstrapping and upcriming girls” is not conclusively linked to their rising rates of incarceration, there is some evidence to this effect that merits further discussion. Many charges against girls during this period were for relatively minor behaviours, making their rising rates of incarceration puzzling. In fact, there is little evidence that their behaviour changed at all during this period; rather, what changed, was the social construction and relabelling of their behaviours. (Chesney- Lind & Shelden, 2004; Feld, 2009; Sprott & Doob, 2009; Totten, 2000). Adolescent girls were more likely than boys to be charged with theft under \$5000, common assault and failure to appear (Stevenson, *et al.*, 1998, p. 27). The reported trend in charges of violence against girls indicated their rates of common assault rose steadily over a period of ten

years, while their rates of “major assault”⁷ and robbery remained low and rose only slightly during the same period (Stevenson, et al., 1998, p. 28).

Interestingly, age was predictive of harsher treatment, where younger girls were treated more punitively. For instance, girls under 15 were more likely to be charged than boys under 15. Girls 12-13 accounted for 22% of all adolescent girls charged, 14-15, 43% and 16-18, 35%. The proportion of boys charged rose dramatically for 16-18 year olds (36% at 14-15 to 49%) (Stevenson, et al., 1998, p. 27). A possible explanation for this may be found in the chivalry hypothesis, which posits that when women and girls fail to conform to expectations of proper feminine behaviour, they violate an unspoken gender social contract among men and women. When this agreement is broken, men are no longer bound to uphold their side of the contract to treat them with the chivalry afforded to women who do display feminine characteristics (Visher, 1983). Since police officers are predominantly male, Visher (1983) suggests that this chivalrous exchange is present in their interactions with women (Visher, 1983). Therefore, perhaps police are more likely to charge younger girls in an act of paternalism and protection, while older girls may be treated with more. Alternatively, older girls may be viewed as ‘unsalvageable’ and thus less worthy of paternalistic protection.

In addition to rises in sentenced custody, the increasing use of pre-trial custody was also a major concern under the YOA. Over and above the civil rights questions associated with detaining children in jail when they are still legally presumed innocent, there was worry that jails were relied upon for social welfare purposes (Bala, 1994, p. 261; Moyer & Basic, 2005). Moyer and Basic (2005) conducted a study of pre-trial

⁷ The Canadian Centre for Statistics uses the term “major assault” in this report to conceptualize: “more serious forms of assault, i.e. assault with a weapon or causing bodily harm (level 2) and aggravated assault (level 3). Assault level 2 involves carrying, using or threatening to use a weapon against someone or causing someone bodily harm. Assault level 3 involves wounding, maiming, disfiguring or endangering the life of someone.” (Stevenson, Tufts, Hendrick & Kawalski, 1998, p. 23)

detention and found that 45% of their sample (of arrested youth) were held by police, and 60% were subsequently released on consent by the Crown (p. 12). Given that the role of Crown is to determine whether there are legal grounds to detain a person prior to conviction, this means that 60% of children whom police detained were deemed fit to be released according to law. Unfortunately there is little available information to assess the police decisions to detain the 60% subsequently released.

There is substantial research from Canada and the United States that pre-trial detention was often used for “social welfare purposes,” specifically, lack of stable living environment, parental involvement or neglect, abuse and truancy (Bala, 1994; Carrington and Schulenberg, 2003, p. 224; Schulenberg, 2010; p. 121; Varma, 2002, p. 146; Moyer and Basic, 2005; Chesney-Lind & Shelden 2004). In their sample of detained youth, however, Moyer and Basic (2005) found that only 12% were held solely on grounds that they had “no stable place to live” (p.8). The authors note that interpretation may be ambiguous as the prevailing factors motivating detention are unclear for cases with multiple detention grounds (Moyer & Basic, 2005, p. 8).

By the late 1990s rates of sentenced and remand incarceration were so high that the international community began to view Canada as a prolific youth incarcerator, threatening to tarnish Canada’s brand as a squeaky-clean ‘human rights’ defender. The main problems with the system were identified as an over-use of courts, formal processing and custody (Corrado, Gronsdahl, MacAlister & Cohen, 2010; 398; Moyer, 2005; Spratt & Doob, 2009), especially for minor offences such as breaches and property crimes. Other issues driving policy reform included the use of punishment and prisons as social welfare strategies and additional failures of procedural and due process mechanisms.

3.1.5 *The Youth Criminal Justice Act*

By the late 1990s pressure was on policy makers to revise legislation to reduce the youth prison population and respond to offending youth in a less punitive manner. Particular areas of concern were the overall use of incarceration, especially for minor offences and administrative offences, as well as rising rates of youth in pre-trial detention (Bala, Carrington & Roberts, 2009; Carrington & Schulenberg, 2009; Moyer, 2005; Moyer & Basic, 2005; Nunn, 2006; Sprott & Doob, 2009; Department of Justice Canada, 2007).

Overall, it is the *Criminal Code* (R.S.C., 1985, c-C.-46) of Canada that establishes the legal authority for police to release or detain those whom they arrest for committing criminal offences. Under this law, the police only have the authority to arrest a person under ss. 494 and 495, and the authority to detain a person (in all but the most serious cases) for the following reasons:

- (i) to establish the identity of the person,
 - (ii) secure or preserve evidence of or relating to the offence,
 - (iii) prevent the continuation or repetition of the offence or the commission of another offence, or
 - (iv) ensure the safety and security of any victim of or witness to the offence; or
- (b) that if the person is released from custody, the person will fail to attend court in order to be dealt with according to law.⁸

(Criminal Code, R.S.C., 1985, c-C.-46, s. 497)

⁸ If a person is arrested with a warrant, police may be required to detain them if the warrant does not specifically grant them the authority to release the person (s. 499 (1)). However, in a somewhat contradictory provision, they still retain the discretion to release any person in their custody (regardless whether they have a warrant or not) pursuant to s.503 (Department of Justice, 2007).

Once these objectives are achieved police are expected to release a person “as soon as practicable” (*Criminal Code*, R.S.C., 1985, c-C-46, s. 497(1)), although the precise definition of ‘practicable’ is not clear.

In order to achieve the objective of reducing high rates of youth detained pre-trial, the *Youth Criminal Justice Act* (2003) established additional limitations on pre-trial detention of young people. Under s. 29 the law creates a ‘presumption’ that youth should not be held prior to being tried in court (Department of Justice, 2007). This is contextualized within the broader goal of the act to emphasize that, generally, youth should not be adjudicated through the formal justice system and that ‘informal’ measures should be used for almost all, save a few exceptions (Carrington & Schulenberg, 2005; Schulenberg, 2006; Sprott & Doob, 2009). Sections 29 (1) and (2) specifically address police and court-initiated pre-trial detention placing clear restrictions on its use, and making reference to the general limits on all use of custody outlined in section 39 of the act.

29. (1) A youth justice court judge or a justice shall not detain a young person in custody prior to being sentenced as a substitute for appropriate child protection, mental health or other social measures.

(2) In considering whether the detention of a young person is necessary for the protection or safety of the public under paragraph 515(10)(b) (substantial likelihood-commit an offence or interfere with the administration of justice) of the Criminal Code, a youth justice court or a justice shall presume that detention is not necessary under that paragraph if the young person could not, on being found guilty, be committed to custody on the grounds set out in paragraphs 39(1)(a) to (c) (restrictions on committal to custody)

39. (1) A youth justice court shall not commit a young person to custody under section 42 (youth sentences) unless

(a) the young person has committed a violent offence

(b) the young person has failed to comply with non-custodial sentences;

(c) the young person has committed an indictable offence for which an adult would be liable to imprisonment for a term of more than two years and has a history that indicates a pattern of findings of guilt under this Act....”

(*Youth Criminal Justice Act*, 2003)

Thus, there is a clear message that pre-trial custody should almost never be used, and indeed there are very narrow circumstances under which any custody should be used in response to youth. Furthermore in *R. v. C.D.K* [2005] the Supreme Court of Canada has interpreted the definition of ‘violent offence’ to be very limited (*R. v. C.D.K.*, [2005] 3 S.C.R. 668; See Bala, Carrington & Roberts, 2009 for a detailed discussion of this issue).

The act also specifically states that the least restrictive alternatives must be used with youth and stresses “limit[ing] the *intrusiveness* [emphasis added] of any measure imposed on a youth under the act” (Sprott & Doob, 2009, p. 93). To this end, a range of ‘informal’ police measures were officially legitimated under the law, giving the police discretion to screen youth out of the formal system. (Carrington & Schulenberg, 2008, p. 352; Feld, 2009; Chesney-Lind & Shelden, 2004).

Carrington and Schulenberg (2008) note that the *YCJA* “structures” this police discretion in a way that the previous legislation did not, to make it imperative that informal measures be explored (p. 350). This is dictated in Section 4(c) where it says such measures are “presumed adequate” for non-violent offences, and, that they should be considered in all cases (Schulenberg, 2006, p. 430). Informal measures include any option a police officer uses short of laying a charge (Carrington & Schulenberg, 2008, p. 354). The *YCJA* gave new form to existing ‘informal’ measures police can take, including no further action, warnings, taking a youth home, involving parents, taking

youth to a police station or diverting to a community program, under the umbrella of extra-judicial measures (Schulenberg, 2006, p. 430).

Unfortunately, there is very little empirical information describing the use of 'informal' measures by police because many do not record them, there are no consistent reporting protocols in place, and practices vary substantially by detachment and jurisdiction (Carrington & Schulenberg, 2005, p. 12; Department of Justice Canada, 2007, p. 10; Moyer, 2005, p.10). To illustrate the degree of variation in police practices, Moyer found that police in Halifax detained 22.1% of youth at the same time that Vancouver police detained 87.1% of youth in the year following the implementation of the *YCJA* (Moyer, 2005, p.10).

In their 2005 analysis examining post-*YCJA* changes in police charging practices, Carrington and Schulenberg found a significant reduction in the number of formal charges by police, and an increase in the use of informal charges, indicating that the act was successful in achieving its goal of "increasing police discretion" to use informal measures (p. 143). At the same time, there was a subsequent increase in remand rates in some areas, with no evidence of decreases in remand rates across the country (Carrington & Schulenberg, 2005, p.143).

Unfortunately, there is very little research available on police discretion and decision-making (Carrington & Schulenberg, 2003; 2005; 2008; Department of Justice Canada, 2007; Schulenberg, 2006; 2010), and particularly research that differentiates police practices with girls and male youth, nor adults and youth. Additionally, almost all of the studies available predate the *YCJA*.

Carrington and Schulenberg have published widely on mixed-methods research they conducted in 2002, just before the *YCJA* was enacted, and have regularly updated their analysis of the same data in subsequent years. In Schulenberg's (2010) report on

interviews with police in 2002 on police discretion, 62% of officers reported using 'informal' measures extensively with youth (p. 118). In terms of the types of measures used, 90% used warnings, 75% brought youth home or to the police station, 69% referred to extrajudicial measures programs (pre-charge) and 27% held youth for questioning at a police station or home (p. 118). In this same sample, police also indicated that they considered temporary detention of a youth in a holding cell, without laying a charge as a legitimate 'informal' sanction. "Sometimes just detain[ing] [her/] him for a couple of hours is enough. It's an alternative measure that [s]he will never forget..." (Schulenberg, 2010, p. 120).

It is important to note that there is also a legislative distinction between police detention for a judicial interim release (JIR) hearing and the decision not to release a youth pursuant to the Criminal Code (s. 497), insofar as the former invokes 'formal' law, and the latter still falls within the realm of 'informal' police discretion. There is a dearth of information about the conditions and circumstances regarding where, why and for how long youth are held when they are not released right away upon arrest. While the existing literature on police discretion is rich and offers some basis for assessing police decisions, much of it focuses on the police determination to use formal or informal action, and thus it is not directly applicable to police decisions to hold a youth under s. 497.

In a study conducted in 2002 (prior to the implementation of the *YCJA*), Schulenberg found that officers viewed informal action along a "continuum," from more to less intrusive. The focus on level of "intrusiveness" is clearly driven by the emphasis placed on it by the *YCJA*, whereby the least intrusive measures are expected to be used (Schulenberg, 2010, p. 119). Officers' assessments of intrusiveness appeared to hinge on the level of penal law applied, with detention in jail for a JIR hearing considered the

most 'intrusive' option, and 'no further action' considered the least. Furthermore, Schulenberg (2010) found that police viewed a summons to appear, without arrest, as less intrusive than arresting a youth and taking them back to the station to make a referral to a diversion program (Schulenberg, 2010, p. 119). Thus, it appears that the determination of intrusiveness by police officers is based upon whether a formal legal process is involved, rather than on the level of physical intrusiveness (i.e. temporary deprivation of liberty).

In an earlier report, 27% of police stated they would bring a youth back for questioning even if they knew they were not going to charge him/her (Carrington & Schulenberg, 2003, p.35). Some police officers also report that they would prefer arresting a youth and taking them back to the police station, rather than taking them home. Some expressed the view that it is a useful way of teaching youths a lesson, a strategy which could be considered a form of specific deterrence and/or punishment. Schulenberg (2010) quoted one officer who stated that it provided an opportunity for them to:

still be informal... but to do it on your own turf [and] keep control of the situation... [when] you go to their home it really does change the dynamics. (Schulenberg, 2010, p. 118-119)

The reasons they cited for holding a youth for a JIR hearing ranged from incapacitation, punishment, social control or protection to social welfare concerns (Carrington & Schulenberg, 2003, p. 71-71; Schulenberg, 2006, p. 436; Schulenberg, 2010, p. 118-121). Twenty percent of police officers stated they would detain for "the best interests of the youth", including lack of social services, to get them to detox, to remove them from prostitution, to address their attitude and to deal with gang-related incidents (Carrington & Schulenberg, 2003, p. 71).

A further 25% of police officers indicated they would hold a youth in detention until they sobered up if they were intoxicated (Carrington & Schulenberg, 2003; 2005 p. 70). They admit using alcohol or drug addiction as a justification for detaining a youth in pre-trial, as captured in one officer's statement to the authors:

...[many officers use drugs and alcohol as] a tool you can hold over their head because you know you'll look okay at the end in our little report, youth arrested by police, placed in detention centre, wipe your hands until it comes down to sentencing... (Carrington & Schulenberg, 2003, pp. 218-219)

In this same study from 2002, Carrington and Schulenberg (2003) also found that police were more likely to use detention (if circumstances warranted) as a way of sending a message to parents whom they decided were not controlling their children adequately (e.g. were not interested in being contacted about the child), or who 'minimized the seriousness' of their children's offences (pp. 238-239). They indicated that it was a way to "reinforce that the behaviour was criminal" and will "make them [the parents] more accountable" (p. 35). This is particularly concerning as police, in this case, are punishing children for their parents' perceived failures.

Finally, police were more likely to hold youth in detention when their parents were not interested in parenting them or dealing with their infraction. In fact, a consistent finding in the little research available on police discretion with youth, was that police officers deploy harsher measures against children whose parents are viewed as neglectful or who are not in the picture (Carrington & Schulenberg, 2003, pp. 238-239; Pasko & Chesney-Lind, 2010, p. 39; Schulenberg, 2010, pp.121-123). In Pasko and Chesney-Lind's (2010) study, police saw detention as a means of protecting girls from dangerous families, pimps, boyfriends and streets. They also viewed it as an opportunity to get girls' needed services, such as health care, that they would not be able to access otherwise (Pasko & Chesney-Lind, 2010, p. 39).

Compounding the questions around how police use their discretion is the underlying normative assumption of our system that police independence is sacrosanct, and therefore there is a great deal of resistance to oversight (Carrington & Schulenberg, 2008, p. 352-354). This issue is readily obvious in the uphill battle to establish independent oversight over the RCMP in British Columbia and elsewhere, despite blatant problems surrounding police internal investigations that have been demonstrated through some horrific and high profile examples of police brutality (See B.C. Civil Liberties Association, 2010, for more discussion).

Consequently, there is no *mandatory*⁹ reporting mechanism under the *YCJA* for enforcing or monitoring police discretion and use of extra-judicial measures with youth (Department of Justice, 2007). Furthermore, the Canadian Uniform Crime Reporting survey only reports how many youth were charged, or “chargeable but not charged,” with offences (Carrington & Schulenberg, 2008, p. 354). Although the *YCJA* mandates much broader police discretion in responding to youth, it established no *meaningful* accountability measures to ensure compliance with the new law, not to mention the various national and international human rights laws regulating the treatment of criminalized youth.

As we approach nearly a decade of juvenile justice under the *YCJA*, patterns are beginning to emerge suggesting that the success of it is measured. While many are quick to point to the substantially lower rates of youth sentenced to custody, rates of pre-trial detention are not dropping at the same pace. In fact, recent data from 2010 indicates that rates of youth held in remand have surpassed the proportion of youth in sentenced custody (Calverly, Cotter & Halla, 2010, p. 9). In all, 52% of youth in custody

⁹ Many departments follow the Uniform Crime Report 2.2 guidelines (see, for example the Vancouver Police Department policy, 2006, S.1.6.47.ii), however there is no legislated requirement to do so in the *YCJA* (Department of Justice, 2007).

in 2008/2009 were being held in pre-trial custody. While this rate is down slightly from 2007/2008 (-3%), it is still 16% higher than it was in 2005/2006 (p. 27).¹⁰ While the most recent data indicate this downward trend is continuing as rates of remand custody are lower for the third year in a row, Potter and Calverly (2011) report that remand rates are still higher than those in sentenced custody (p. 18).

Also, it is important to remember that figures reporting remand rates do not capture youth held in police detention who were released without charges or released on bail. Yet it is conceivable that most, if not all of the youth in remand were held in police jails for some period of time prior to being remanded at their judicial interim release hearing. The Department of Justice (2007) confirms there is no way to determine conclusively whether police detention practices have changed under the YCJA (p. 3) and no reliable information available to determine officially how many youth have seen the inside of a police holding cell, nor the details of their detention.

3.1.6 Girls & the YCJA

Amidst the scant evidence on the impact of the law, there are clear indications of racialized and gendered patterns that are not favourable to marginalized girls. While recent data on youth incarceration indicate minor decreases in all incarceration rates (sentenced/remand), levels of incarceration for Aboriginal girls remain very high and their representation in pre-trial custody is the only one growing. The rate of incarceration for Aboriginal girls increased by 26% from 2004/2005 to 2008/2009, while the rate of non-Aboriginal girls decreased by 8% over the same period (Calverly, *et al.*, 2010, p. 14). Aboriginal girls account for 34% of girls on remand, 44% in sentenced custody and 31% of those on probation. Their rates of representation are higher than those of Aboriginal

¹⁰ This is almost directly proportionate to decreases in the rate of youth in sentenced custody. These rates are down for boys by 21.8% and 13.7% for girls over the same period (Calverly, Cotter & Halla (2010), p. 27, Table 9).

males (Calverly, *et al.*, 2010, p.14). Aboriginal youth also spent more time in remand (p.14).

The rate of girls in sentenced custody has been decreasing at a slower rate than males since 2005/06. Girls' rates dropped 14%, while males dropped 22%. Interestingly, remand rates have increased at the same pace for males and females at approximately 17% (Calverly, *et al.*, 2010, p. 10). However, this trend is also racialized, as the gendered difference is disproportionately due to larger increases in Aboriginal girls sentenced to custody. In 2007/2008 the proportion of all female youth in custody grew 18.6%, while non-Aboriginal girls proportions decreased by 5%. This same pattern repeated in 2008/2009 (p. 30, Table 12). The most recent numbers do not provide details according to gender or race (Potter & Calverly, 2011).

Since the *YCJA* is still relatively recent, and due to the gaps in empirical evidence surrounding the systemic criminalization of girls, it is difficult to conclusively assess what is happening. However, one can extrapolate using clues derived from what we know about the gendered nature of law and criminal justice. To begin, rates of custody for administrative offences remain high; the gendered implications of which were established in the preceding section. In 2008/2009 "Other Criminal Code" violations accounted for 29% of youth on remand and 13% in sentenced custody (Calverly, Cotter & Halla, 2010, p. 10).

Secondly, recent court statistics highlight a growth in formal court processing of crimes that other research indicates girls are often accused of (Alvi, 2009; Chesney-Lind & Sheldon, 2004), including common assault and property crimes (Milligan, 2010, p. 9). This is not necessarily due to increases in charges being brought to court for these crimes, but rather to slower decreases in the rates of cases for these crimes relative to others. For example, the drop in completed court cases for administrative offences from

2002/2003 to 2008/2009 was 8.4%, while crimes against property dropped 31.6% (Milligan, 2010, p. 25).

In research examining decision-making pre and post YCJA, Moyer (2005) found slight increases (45% to 52%) and no decreases in police detention of youth at arrest (p. 9). Of these, there was an 8.6% increase in the number of youth detained by police for 'less serious' violent offences (common assault) who had no prior records, a 13% increase in those detained who have 3 or more past convictions, and a 19% increase in those detained who had past probation breaches (Moyer, 2005, p. 12). In light of what is known about the nature of girls' alleged offending, particularly the fact that they are more likely to be charged with common assault and more likely to be apprehended for breaches, the gendered implications of these trends emerge.

With respect to increases in assault, this trend may be indicative of continued "upcriming" of girl's behaviour, where behaviours once viewed as status offence type behaviours and family disputes are now defined as 'assault' (Brown, Chesney-Lind & Stein, 2007; Feld, 2009). Brown, et al., (2007) suggest that, in the United States, the substantial increases in girls' arrests for assault are related to the practice of "upcriming" and "relabeling" (bootstrapping) which are closely connected to decreased social tolerance for youth aggression and resultant policies against any form of violence, such as mandatory arrest and school zero tolerance. Consequently, more policing is occurring in spaces not traditionally monitored by law enforcement (such as schools and homes), and girls are being arrested in situations they would not have been in the past (p. 1254). Feld (2009) supports this, adding that the police decision to label certain behaviour as 'assault' is key to understanding this trend. Buzawa and Hirschel (2010) examined domestic assault cases, to see whether there was any evidence of differential treatment of girls in comparison to adults and male youth. They found that for

“aggravated and simple assault, juvenile females have the highest arrest rates” (p. 46). They further found that, while gender was more predictive of assault, age was more predictive of arrest, and youths had a greater likelihood of arrest when adults were the victim (p. 50).

A particularly concerning finding was that girls were arrested in 48% of cases that involved an adult male as the ‘victim’, whereas boys were arrested in 45% of similar cases (Buzawa & Hirschel, 2010, p. 46). At the same time, adult males were only arrested in 36.5% of cases where the victim was a young female (Buzawa & Hirschel, 2010, p. 47). Overall, Buzawa and Hirschel (2010) found that charges were less likely to be laid against adult males and females when they perpetrated the same acts against the girls (and boys) (p.47). They concluded that girls’ aggression is more likely to be criminalized than adult and male aggression in minor assault cases and cited concern regarding the over criminalization of girls and the concurrent “failure to protect youth from violence” (p. 50).

Moyer (2005) also found increases in the numbers of youth released on police undertakings¹¹ (pp. 9-10). She reports that the use of police release undertakings included more conditions, rather than less on each order under the new legislation (Moyer, 2005, p. 11). Sprott and Doob (2010) found that girls (29%) were more likely than boys (20%) to be released from police detention on an undertaking (p. 436). Interestingly, their research found that the primary gendered difference in terms of the types of conditions applied to youth was that girls were more likely to receive treatment programs and counselling than boys. Sprott and Doob (2010) connect this to the historical pattern of paternalism where girls have been subjected to more invasive

¹¹ “Police undertaking” is the term used in the source (Moyer, 2005, pp. 9-10). The author does not specify, but, based upon the discussion and the content of Table 6 (p. 10), the construct appears to include all forms of undertaking, including both Officer In Charge and Justice of the Peace issued undertakings.

measures in response to what are essentially social welfare concerns. Additionally, they highlight the concern that girls are legally innocent at this stage of the judicial process, and that imposition of this condition effectively “criminalize(s) the failure to submit to a “mental health or other social measure,” contrary to the aims of the YCJA (Sprott & Doob, 2010, p. 438-439).

In fact, there is persisting evidence that “pre-trial detention is still being used in several jurisdictions to address social welfare needs” (Department of Justice Canada, 2007 p. 3). In Moyer and Basic’s (2005) study of Crown decision-making under the YCJA, Crown attorneys affirmed this sentiment, stating that

The typical pattern for the homeless in all age groups is that the bail hearing is adjourned until a workable release plan can be developed. Depending on the circumstances the plan is arranged by child welfare, probation or defence counsel – or a combination thereof. (Moyer & Basic, 2005, p. 37)

The implication is that officials stall the justice process, leaving youth in pre-trial detention in order to respond to social welfare needs. Furthermore this suggests that pre-trial custody in response to social welfare concerns may be a tolerated practice by people at all levels of decision making in the justice system. Again, the reality of this is very gender and racially specific for marginalized girls.

Therefore, there is some evidence that paternalism and chivalry continue to operate in criminal justice decision making with girls. Two further examples from Moyer’s 2005 research illustrate this:

A 16 year old was picked up by police because she was past her curfew and with her best friend with whom she was not supposed to be in contact...Her foster parent said she suffers from severe post-traumatic stress syndrome because she had been sexually abused. She had been in 41 placements...Described as a ‘breach baby’ and a “frequent flyer” by the Crown, she had received custody for her last four breaches... the court ordered her detained. (Moyer, 2005, p. 36)

A [17 year old] sex worker, an intravenous drug user, was arrested for stealing \$200 worth of goods from a department store when she was under the influence of morphine. She had no fixed address. Six months earlier she had been convicted of assault and mischief and placed on probation. Since then, she had accumulated four administration of justice convictions, including failure to attend court. The Crown recommended detention on the primary ground and the recommendation was accepted by the court. (Moyer, 2005, p. 36)

For police, there is no doubt that subjective belief systems have an influence, and some research suggests this has an impact on decisions to arrest young women. Visher (1983) found that police used different criteria when responding to male and female offenders, and that 'extra-legal' factors (i.e., age, gender, race) were more influential on their decision than legal, or situational factors, such as 'severity of the offense' (p. 21). Furthermore, Visher (1983) found that police were more chivalrous with women who displayed *appropriate* gender behaviour, and were more likely to arrest antagonistic, aggressive or hostile women (p. 22). Other research on police discretion notes the important role that demeanour plays in the decision to arrest (Carrington & Schulenberg, 2003). Carrington and Schulenberg (2003) also cite Morash (1984) who found that girls were handled more informally by the police, but were treated more harshly when they "offended paternalistic stereotypes" (p. 201). Interestingly, Carrington and Schulenberg (2003) also found that police in jurisdictions where prostitution is higher were more likely to consider the demeanour of the accused (p. 224).

Location and time of day were also factors in police treatment, whereas girls who transgressed gender expectations and were arrested at night or in public spaces were treated more punitively (Visher, 1983, p. 10). Race and age seemed to have an impact on discretion, whereby younger girls and black girls were treated more harshly irrespective of the crimes they were accused of committing (Visher, 1983, pp. 15-17). Visher (1983) also cites previous research by Datesman and Scarpitti (1980) who found that African American females were treated more severely than non-African American

women (p. 9). Carrington and Schulenberg (2003) found that Aboriginal youth also had a higher probability of being charged (p. 224). However, they note that most officers reported they did not consciously consider gender or race as influential in their decision-making (p. 224).

3.2 Summary

This review highlighted the gendered nature of youth justice legislation in Canada. Trends indicate that girls' deviance is constructed through patriarchal and paternalistic practices that remain embedded in the legal system, despite major legislative reforms. Under the *JDA* these were manifest in the distinctly child welfare and social control related practices of criminalizing girls for 'incurability' and 'sexual immorality.' When the *YOA* ushered in a more punitive based approach to youth justice, girls' deviance was reconstructed as criminal through administrative offences. Finally, the potential that girls' behaviour will continue to be relabelled and upcrimed, despite the legislative reform of the *YCJA*, is suggested by available information regarding gendered police discretion. In the next chapter, discussion turns to the methodology and research design of the current study.

4: RESEARCH DESIGN & METHODOLOGY

4.1 Methodological approach

This research is situated within a feminist methodological perspective. Feminist research methods are often categorized as ‘emancipatory,’ as they begin with the assumption that people exist within a matrix of social locations that operate to exclude and oppress certain people. From this base assumption, feminist methods not only seek to expose social and institutional relations of power, but also contribute to shifting those power structures (McCotter, 2001).

Cook and Fonow (1990) articulate a similar view of research in their widely accepted definition of feminist research. According to Cook and Fonow (1990), while there are a diversity of methods and assumptions that fall under the rubric of feminist methods and praxis, there are five core features that all feminist research shares (p. 72).

These principles include:

- 1) reflexively attending to the significance of gender and gender asymmetry in shaping the social world;
- (2) “consciousness raising” as a central goal and focus of research;
- (3) “challeng[ing] the norm of objectivity that assumes [a false dichotomy] between the subject and object of research and that [dismisses] personal...experiences as unscientific”;
- (4) concern from ethical implications of research and recognition of the exploitation of women as objects of knowledge; and
- (5) emphasize the empowerment of women and transformation of patriarchal social institutions through research. (pp. 72-73)

To elaborate upon these principles, the first part of this chapter is organized into two main sections: (1) “Ways of knowing: feminist epistemology and evaluative criteria;” (2) “consciousness raising & action.” The section following those discusses the research

design, highlighting how this project applies these principles. A discussion of ethics follows this. Finally, the chapter concludes with a discussion of limitations.

4.2 Ways of knowing: Feminist epistemology & evaluative criteria

Epistemology refers to the realm of philosophic inquiry that engages with the question of *how we know what we know* (Palys & Atchison, 2008). This is of central importance to any discussion of research design as research is first and foremost a journey to uncover new knowledge. Feminist research seeks to trouble traditional ways of knowing the world by challenging the assumption that truth can only be derived through objectivity and the repression of personal experience (Acker, Barry & Esseveld, 1991; Cook & Fonow, 1991). Conventional ways of knowing, when viewed through a feminist lens, function to reinforce dominant power relations by privileging the knowledge of those who possess social power and have access to the resources to construct 'truths' (Cook & Fonow, 1990; Fonow & Cook, 1991; Maynard, 1994; Reinharz, 1992; Stanley & Wise, 1990).

Feminist epistemology embodies the view that knowledge is socially and politically constructed, and that this process is embedded with power dynamics. The emphasis of feminist epistemology is to be attentive to the way that power operates through the research process in order to privilege people and 'ways of knowing' that are often marginalized in dominant culture and research methods (Cook & Fonow, 1990; Fonow & Cook, 1991; Reinharz, 1992; Stanley & Wise, 1990).

To this end, the focus in feminist research is on relationships, process and ethics, with a view to disrupting power relations within the research in order to challenge dominant power structures. The process begins with identifying the privilege and bias that the researcher brings to the research and assessing how this shapes the questions

asked and decisions made (Fonow & Cook, 1991; Kirby & McKenna, 1989; Palys & Atchison, 2008; Stanley & Wise, 1990).

Feminist research embraces the role of the researcher as a subjective participant, while maintaining a strong commitment to empirically sound research. To overcome the influence or perception of bias, feminist researchers strive for transparency by building in measures for tracking the process of knowledge production. This is not unique to feminist traditions, but is a feature of all qualitative and constructivist research traditions where there is a need to justify the quality and credibility of the research (Lincoln & Guba, 1985; Schwandt, Lincoln & Guba, 2007).

An added challenge specific to feminist research comes from its emancipatory purpose, particularly the focus on uncovering power systems and an orientation towards action and social change (Acker, Barry & Esseveld, 1991; Fonow & Cook, 1991; Keinman, 2007; Mies, 1991). This sometimes leads to the perception that feminist researchers are ideologically driven, or that their commitment to ethics and principles of credible research are overshadowed by political motivations and ideology in their research. A detailed discussion aimed at clarifying these goals is reserved for the next section, what is important here is the added challenge presented to feminist researchers in establishing the value and credibility of their research, in light of these epistemological divergences from traditional positivist research.

Reflexivity is employed as a qualitative research strategy for overcoming the challenges presented in the preceding paragraphs (Ortlipp, 2008). Fonow and Cook (1991) refer to this as “the tendency of feminists to reflect upon, examine critically and explore analytically the nature of the research process...using it to gain insight into the assumptions about gender relations underlying the conduct of inquiry” (p. 2). This strategy typically involves the use of measures to enhance trustworthiness and validity

through transparency, including well documented decisions and reflexive evaluation in field notes, research journals and reporting (Fonow & Cook, 1991; Kirby & McKenna, 1989; Ortlipp, 2008; McCotter, 2001; Stanley & Wise, 1990; Wainwright, 1997). It is essential that reflexivity be visible to function as a check on the researcher's subjectivities and biases, providing evidence upon which readers can assess the credibility of the research (Maynard, 1994; Ortlipp, 2008; Stanley & Wise, 1990). Much like the requirement that justice must be *seen* to be done, reflexivity must be *seen* to be done.

Stanley and Wise (1990), outline five key aspects of the research process that reflexive researchers should focus on:

...the relationship of the researcher and participant; emotion as a research experience; the intellectual autobiography of researchers; manage[ing] the differing realities and understandings of researchers and researched; and the complex question of power in research and writing (p. 23).

"Rigor" is an important element of this process. According to Maynard (1994) this requires the researcher be "clear about assumptions, the nature of the research process and the criteria against which good knowledge can be judged" (p. 25). This means, that reflexivity needs to be built into the process, so that it is consistent and on-going. This also means consistent re-evaluation of research decisions to ensure they are in line with the research question and ethical considerations guiding the research. In some cases this may mean making changes to the research design, and remaining fluid and flexible to meet the needs of the research and participants (Reinharz, 1994, p. 22).

Reflexivity is essential for assessing trustworthiness, credibility, transparency, and reliability (dependability) (Golafshani, 2003, p. 602; Lincoln & Guba, 1985; Schwandt, Lincoln & Guba, 2007). The next section outlines the standards of evaluation that feminist researchers use to establish the credibility and value of their work, before

moving on to discuss how reflexivity and validation strategies were used to inform the current research.

4.2.1 Credibility & validity

Given the challenges posed by feminist researchers, as with most qualitative inquirers, to the epistemological assumptions underpinning dominant positivist traditions, feminist researchers are critical of the view that standards of 'good research' must adhere to traditional notions of 'validity,' 'reliability' and 'generalizability.' Instead, as articulated by Lincoln and Guba (1985), standards need to be derived from critical and constructivist epistemological perspectives that do not apply standards that are incompatible with the goals and assumptions upon which the research rests. To this end, many qualitative and feminist researchers articulate the need to redefine validity in a way that fits with the underlying epistemological stance of critical, qualitative research (Fonow & Cook, 1991; Stanley & Wise, 1991). With a critical view to the notion that research is objective, other methods for assessing the credibility of research must be sought.

Wainwright (1997) points to the standards of qualitative research outlined by Lincoln and Guba (1985), where the primary focus is on establishing credibility and trustworthiness (Wainwright, 1997, p. 8). Putting epistemological assumptions aside, Lincoln and Guba (1985) maintain that the over-arching quality underpinning the evaluation of any research is "trustworthiness" of the researcher and research (p. 290). From this premise, they establish a set of qualitative evaluation criteria based upon standards that parallel traditional quantitative criteria. Lincoln and Guba (1985) conceptualize the term "credibility" as the qualitative parallel to internal validity, which refers to whether findings accurately represent the multiple lived realities of researched populations (p. 296). Lincoln and Guba outline five strategies that researchers can use

to assess credibility: Internal checks or activities to enhance credibility (prolonged engagement; persistent observation; triangulation); external checks to enhance credibility (peer debriefing); negative case analysis; referential adequacy; and member checking (p. 301).

Prolonged engagement refers to whether the researcher was in the field long enough to derive a comprehensive and accurate sense of the culture and to build enough trust with participants to avoid any misunderstandings or misinterpretations (Lincoln & Guba, 1985, p. 301). Persistent observation involves “depth” of observations, whether the researcher was able to identify and thoroughly engage with the key issues and characteristics most important to participants (Lincoln & Guba, 1985, p. 304). Peer debriefing is a means of providing an external check on the researcher’s potential bias, emotions and influence on the research process through dialogue with carefully chosen peers (Lincoln & Guba, 1985, p. 308). Triangulation is the use of multiple sources, methods and/or theories to compare findings and assess their credibility (Lincoln & Guba, 1985, p. 305).

Negative case analysis involves the use of cases that appear to contradict the hypothesis to refine the theoretical interpretation of results until there are no excluded cases, in an effort to ensure inclusion of all multiple realities in the analysis. Referential adequacy refers to checking findings against past data to determine whether it is accurate (Lincoln & Guba, 1985, p. 301). Finally, member checking involves establishing whether the research participants agree with the researcher’s interpretations, handing them the analysis to review, comment, and if necessary, revise (Lincoln & Guba, 1985, p. 301).

Again, reflexivity plays an important role in establishing the credibility of qualitative research. “The main challenge [becomes] demonstrating validity rather than

achieving it” (Wainwright, 1997, p. 9). To achieve this researchers must maintain transparency, employing measures that document their trustworthiness, including well documented decisions and reflexive evaluation, field notes, and research journals (Ortlipp, 2008; McCotter, 2001; Wainwright, 1997).

In addition to establishing credibility of findings, additional criteria have been employed to assess the emancipatory goals that characterize feminist research. McCotter (2001) argues that feminist researchers must assess the catalytic validity of their research, as well. Catalytic validity is concerned with the ‘action’ component of the research and refers to whether the research has had some positive impact on the lives of participants (McCotter, 2001, p. 12). In other words it captures the ‘consciousness raising’ potential of the project. The ‘action’ orientation of feminist research is discussed in the following section.

4.3 Consciousness raising & action

Feminist research methods are distinguished by the express focus placed on both challenging power relationships within research and the goal of using knowledge from the ground to inform and effect social change (Fonow & Cook, 1991, p.6; Mies, 1991). This focus is epistemologically rooted in the belief that ‘knowledge’ and ‘truth’ are political constructions, and that the production of knowledge is an inherently political process (Mies, 1991). From this basis, feminist research aims to challenge dominant constructions of marginalized and oppressed populations by privileging their voices and experiences to shape knowledge about them.

“Consciousness raising” is at the heart of how feminism achieves what, at first appear to be contradictory goals from a traditional perspective (i.e. the pursuit of truth and political/social change), and is what distinguishes feminist methods from traditional

approaches. The process is informed by the view that women and girls are experts of their own lives, and that methods which do not adequately foreground their experience, and *perceptions of* their experiences, contribute to gender-based oppression by alienating and objectifying women and girls in ways that devalue their experiences of being in the world (MacKinnon, 1989, pp. 96-98).

Consciousness raising seeks to invert dominant power relations by generating the analysis from girls' and women's lives. Through investigation of their daily lived realities, including, families, relationships, jobs and routine experiences, a shared theory emerges that is based upon an analysis of women's collective experiences (MacKinnon, 1989, pp.83-105). Thus, feminist method privileges consciousness raising, rather than knowledge generated from 'expert' or 'official' sources, based upon the view that participants (girls, in this case) live in the world, and have been formed by it, therefore possessing an intimate expertise about it (MacKinnon, 1989, p. 98).

At the same time, consciousness raising is itself a form of action that contributes to social change using the knowledge generated from the ground. Fonow and Cook (1991) outline three ways that feminist research accomplishes this. First, the research process raises the consciousness of the researcher, attuning her to power as it operates in the participants' lives and in her own life as well. Second, it raises consciousness regarding research method and epistemology, with respect to power and inequality in research. Finally, it can function as a form of consciousness raising for participants through research techniques, whereby different ways of asking questions and generating expressions of knowledge (they provide examples of role playing, simulations or psychodrama) actually unearth new ways of understanding experience for all involved (pp. 3-4).

Mackinnon's analysis builds on the last point, as she asserts that by locating theory on the ground, not only does consciousness raising challenge assumptions of truth and knowledge that uphold women's oppression, but it also assumes girls' and women's agency to change this (p.101). As a way of knowing about social conditions, consciousness raising shows women their situation in a way that affirms they can act to change it (MacKinnon, 1989, p.101). Therefore it not only has the potential to build consciousness, it can build a sense of agency to facilitate social change.

At risk of resurrecting clichéd terms, feminist consciousness-raising is about making women see how "the personal is political" (Hanisch, 1969, p. 204; Crow, 2000, p. 82). In fact, with respect to research methods, Keinman, (2007), builds upon the links in first wave feminism's focus on politicizing women's daily lives to connect it more closely to epistemology. She states:

The personal is political" implies that (a) we cannot understand our beliefs, feelings and behaviours without putting them into the larger context of oppression and privilege; (b) any action we take- individually or collectively- has consequences for reinforcing or challenging unfair patterns; and (c) "the personal" is not synonymous with "the private," and can be experienced in realms conventionally thought of as public (for example sexual harassment on the street or at work). (Keinman, 2007, p. 65)

Here she hits on another key element of feminist research: the emphasis on the role that emotion plays in research. Unlike traditional perspectives, emotion is considered a valid part of the research process in feminist work. Not only is it central to one's experience of the world, but it is also an influential feature of the research process that requires reflexive attention (Fonow & Cook, 1991, p. 9; Keinman, 2007, p. 65).

Keinman (2007) also emphasizes the important connection between individual action, emotion and effecting political change through feminist research (p. 65). Indeed, Fonow and Cook (1991) point out that due to its emancipatory approach,

epistemological stance, and focus on women's equality, feminist research is inherently situated within the broader women's movement. Consequently there are unique responsibilities and dilemmas associated with that location. Feminist ethics dictate that the purpose of the research is to privilege silenced voices so that they are *heard*. First, research must be action oriented in order to avoid contributing to the objectification of participants (Fonow & Cook, 1991 p. 9). More importantly, while the primary aim of research is to identify power relations through lived experience, these power relations can only be changed in ways that benefit the participants if those results are disseminated and used to inform change. Janet Finch asserts that the researcher has a dual ethical obligation, first to protect the participants in the research relationship, and secondly, to ensure that her work will advance, rather than hinder, the overall struggle for women's equality (Finch, as cited by Fonow & Cook, 1991 p. 9). These two obligations do not necessarily conflict with one another, but compound to produce additional ethical concerns for feminist research.

4.4 Raising their voices: Feminist research with girls

The current research was designed to embody feminist research standards and ethics, foregrounding the goal of inverting power structures in knowledge production that traditionally silence girls' voices in defining their experience. This is achieved by critically engaging these young women in developing their own narrative of their experience. Criminalization is an inherently gendered social and political process of identity construction. Criminology and criminal justice are often the domains of 'medical/psychiatry experts,' 'professionals,' 'justice officials' and 'academics.' Consequently, criminalized people are generally the 'objects' of research. This means knowledge claims about crime and criminality run the risk of reinforcing systemic power relations that operate in their lives. The gender and age (class and race) of criminalized

girls means they are extremely marginalized socially and politically, adding urgency to the existing need to foreground their perspectives. With their voices absent, the system responds to their behaviour in ways that erase their histories of violence, poverty and discrimination, which often means criminalizing them (Chesney-Lind & Shelden, 2004). The aim here is to explore young women's lived experiences of police city cells in an effort to unearth whether, and how, this experience is gendered, racialized and classed, with the purpose of inserting their voices into the dialogue and thus contributing to social change. At the same time, in an act of consciousness-raising, asking questions about their experiences, which may not have not been raised in the past, creates a potential for them to think about their experience in new ways.

Furthermore, the process is a powerful form of consciousness-raising for the researcher, raising her awareness of power as it operates in the lives of participants, but also, through reflexivity, about power in research relationships. The entire process is one where benefits to the researcher are substantial. In return, she bears an ethical responsibility to ensure that these truths are not only accurately reported, but that they are reported and *heard* in order to satisfy the objective of contributing to social change (Fonow & Cook, 1991, p. 9). This refers to "catalytic validity" (McCotter, 2001, p.12), and is achieved through reflexivity, privileging wishes or concerns of participants and allies, as well as active dissemination of research findings.

A final point that has been raised in discourse among feminists about the tension between traditional and contemporary schools of research over the role of theory is that one must be cautious not to assume women's experiences are sufficient to speak to the issue at hand entirely. Indeed, Maynard (1994) contends that in some cases participants have not considered how their experiences may be connected to larger processes. In these cases, Maynard (1994) argues, "feminists have an obligation to go

beyond experience in order to... connect experience to understanding through theory” (pp. 23-24). Part of the challenge then becomes negotiating between the voices of participants and the outsider perspective provided by theory. What remains of utmost importance is informing these research decisions with the underlying principles guiding feminist research, committing and adhering to ethical conduct and remaining focused on the feminist goal of facilitating social and political change. This is achieved through reflexivity.

Reflexivity was achieved in this research through regular dialogue with advocates and committee members, journaling and on-going review of literature. This process involved constant re-evaluation of values, ensuring that all research decisions were consistent with the ethics and objectives of the research. This research built reflexivity into the process through the use of a research journal, which documents research decisions, important events, brainstorming and ideas pertaining to the research. Through journals and other sources of documentation, the researcher can produce a “trail” of assumptions and analyses, essentially documenting the subjectivity of the researcher throughout the process, effectively building in transparency measures to enhance ‘validity’ and ‘trustworthiness’ (Ortlipp, 2008). The journal served as a living document assisting in reflecting on decisions during the research process, analysis and reporting.

Secondly, on-going dialogue with organizations and people working in the field of study were maintained in order to receive feedback and advice throughout the research as a form of “member checking” and “peer debriefing” (Lincoln & Guba, 1985, p. 314; Lofland & Lofland, 2006, p. 94). While the original intention was to involve the young women in the analysis by providing them an opportunity to comment on the results, this was not realistic in practice. These young women face many challenges in their lives,

and expecting them to remain engaged and involved at that level is neither fair, nor feasible for many of them. That said, all young women were offered the opportunity, and they were all provided a chance to review notes and make any comments, requests or feedback immediately following the interview.¹² In practice, to overcome their absence during the analysis phase, “member checking” was accomplished through dialogue with allies and advocates of the young women. This involved lengthy conversations regarding the broader systemic issues, contextualizing broad findings and themes according to their historical knowledge and experience. “Key informant” interviews also served this function and literature was used to assess the credibility of findings.

In addition to using reflexivity to assess the accuracy of data and analysis, it was used as a means of checking the emotional impact of this research on the researcher. Acknowledging “emotion as a research experience” is an important pillar of feminist research (Stanley & Wise, 1990, p. 23). Investigating a topic that involves repeatedly bearing witness to stories of neglect, violence and oppression is emotionally challenging (Liebling & Stanko, 2001) and the complexity of this is discussed in a later section. The process of debriefing and self-care was an essential component of this research. The researcher regularly engaged in debriefing sessions with women at Justice for Girls, establishing a plan for maintaining confidentiality and data integrity while addressing the difficult emotional issues that arose. Journaling was also used, in combination with literature to attend to emotional and self care needs.

¹² While offered the opportunity, none of the young women requested to review these notes.

4.5 Methods

4.5.1 Research question

The research question was developed in partnership with a non-profit organization whose mandate is to advocate for girls living in poverty, who have been homeless, and/or criminalized. Together we identified the question: What are girls (aged 12-18) experiences of being arrested and placed into police holding cells? The question was informed by the agency's experience working with young women, and the urgent need for more systematic documentation about experiences in police holding cells. The lack of publicly available information about the conditions or people held in these cells enhanced the need for this research. Attempts to retrieve official information, including formal Freedom of Information requests (under the *Freedom of Information and Privacy Act*, B.C.) were denied. In some cases this was justified as necessary for *security purposes*, while for other information, authorities admitted that they simply did not have it, or collect it (such as the numbers of people held overnight for intoxication).

4.5.2 Data collection

Primary data were collected using in depth, one-on-one semi-structured qualitative interviews. Participants were asked to respond to approximately 30 closed and open ended questions regarding their backgrounds and their experiences in police holding cells. Interview questions were developed with a previous understanding of common issues that girls face in prisons that had been informed by human rights standards, literature and the experience of advocates. However, the interview schedule was flexible, so that interviews were fluid and open to changing contexts. For example, sometimes participants addressed issues contained in later questions, and those questions were omitted. In other cases, probing questions were required to elicit more information. Some young women were very detailed in their responses, while probing

questions were asked of others who were less so. At times, the young women brought up issues and questions that were unanticipated and not on the original schedule; this took the interview in new directions. These required further questions for elaboration and clarification. Interviews were conducted between September 2009 and February 2010. Interview sites included coffee shops, youth drop in centres, offices and homes in Vancouver and Kamloops. All but three interviews were audio recorded, and written notes were taken for every interview.

In addition to interviews with girls, other sources were used to develop the researcher's understanding of the subject area. These included cell-block tours, key informant interviews and secondary data. Three key informant interviews were conducted. These interviews were conducted with staff members at Justice for Girls, the Boys and Girls Club of Kamloops, and the Elizabeth Fry Society of Kamloops. A tour of the Surrey and New Westminster police cell-blocks were also conducted to provide a sense of the physical space and environment. Key informants were identified on the basis of their knowledge and experience working with young women, and an effort was made to ensure that an interview took place in each of the two main jurisdictions (Lower Mainland and Okanagan). Since a cell-block tour was completed in the Lower Mainland, it would have been diligent to view a cell in the Okanagan as well. However, due to time constraints, a cell-block tour was not arranged in the Okanagan.

Additional secondary data were collected using public policy documents, case law, legislation and media sources. Royal Canadian Mounted Police (RCMP) policy manuals were obtained from the Federal headquarters in Ottawa and Vancouver Police Department policies were available online.

4.5.3 Sampling strategy

Sampling was accomplished using purposive sampling and snowball sampling, relying upon community gatekeepers. Atkinson and Flint (2001) note that snowball sampling is the best approach when dealing with “hidden” populations (p. 33). The target population was particularly difficult to reach, as they are largely invisible in public landscapes. Furthermore, they frequently do not trust strangers, and are unsurprisingly wary of people positioned as professionals or authorities. These challenges were exacerbated by the sensitivity of the topic and the realistic fears¹³ they have in exposing their experiences due their relative powerlessness and sometimes shame or embarrassment. For these reasons, sampling was conducted in three stages.

The first stage involved mapping out local community organizations and drop-in centres that could help facilitate communication and access to the young women. Once relevant local community organizations were identified, a letter was drafted and meetings were set up with eight organizations to discuss the aims of the research and determine if, and how, the organization could assist with locating participants. Additionally, agencies were asked to circulate information about the project to other community organizations they felt could be of assistance.

In the lower mainland, separate strategies were used with each participating organization. Some agreed to circulate information among staff, others organized meetings to discuss the research with staff and provide them an opportunity to ask questions and offer advice. In some cases, organizations simply agreed to make contact if they knew potential participants, while others agreed to display posters

¹³ Their fears primarily stem from intimidation of police, social workers and other people in authority. Due to over-policing and surveillance and the over-documentation of their lives these young women have learned not to share information about themselves. They have also learned to fear and distrust “systems” people and people in authority because these relationships are often coercive and sometimes punitive. These fears are also sometimes exacerbated by fears that they have of reprisal from gangs and pimps, if they are street involved.

soliciting participation. Some agreed to allow outreach accompaniments, while others provided space in their drop-in community centre to discuss the research with young women. Posters were also circulated among other community organizations via list serves and word of mouth. The posters included a brief statement about the purpose of the research and offered participants an honorarium of twenty dollars, food and bus fare for participation in the research.

The same strategy was deployed in Kamloops, but was conducted within a much shorter time frame, and involved multiple phone calls and emails to community organizations in the weeks preceding the two day visit. In Kamloops, presentations and meetings were held at a number of drop-in centres, an outreach walk along was conducted, and one organization provided a guided tour of the community. The outreach walk was scheduled for one evening and lasted approximately 2.5 hours. The researcher accompanied an outreach worker on a regular route that involves walking through downtown streets and alleys to do outreach with youth who are street entrenched. Typically, the role of the outreach worker is to reach out to youths and to be available if they need assistance (such as referrals to shelters, services, or other). Often they do this by saying hello, introducing themselves and offering snacks, coffee, health and hygiene products (such as clean needles, condoms, soap). Outreach workers tend to have a very good sense of what the real day to day lives are of youth on the street, and because they are not official 'systems' people and are familiar faces, sometimes have good trusting relationships with youth. The accompaniment, then served as an opportunity for the outreach worker to introduce the research to youths they work with and offer them the opportunity to (either immediately, or at a later time) do an interview.

Using this strategy, girls were introduced to the researcher by staff in these organizations (who had obtained permission from the young women to do so), or they

self identified after seeing a poster, and interviews were arranged. Usually, the interviews were conducted within 24 hours of contact, and in a place convenient to the participant. Ensuring that the girls felt safe in the chosen location, and that their privacy was respected was a primary concern when deciding where to hold the interview. One interview was moved when there was a mutual agreement that the location was not conducive to the interview.¹⁴

4.5.4 Sample

In total, 22 interviews were conducted with young women in Vancouver and Kamloops, British Columbia. The young women ranged in age from 16 to 24, but all had been held in police city cells when they were under the age of 18 and legally considered minors. Ten participants self-identified as indigenous. All of the young women indicated they lived in conditions of poverty; seventeen had been, or currently were, in Ministry of Family and Development Services (MCFD) care. Others lived with family, and some resided with friends. Six revealed that they had been homeless at one time. While four interviewees stated they had not finished high school, most were either presently enrolled in school, were planning to attend school, or were taking a short break from studies. Some attended alternative education programs.

¹⁴ Most interviews were conducted in quiet offices generously provided by local youth organizations (including Broadway Youth Resource Centre, Urban Native Youth Association, Elizabeth Fry Society in Kamloops and Justice for Girls). However one young woman requested to be interviewed in a coffee shop, despite being made aware of the potential risks associated with privacy and the nature of the interview questions. Shortly after the interview began some other people entered the coffee shop who she knew. We agreed to stop the interview at that time and moved to another location.

Two interviews were omitted from the analysis. This decision was made because there were inconsistencies in the narrative for one young woman¹⁵ that were unverifiable and too confusing for inclusion. The other interview was omitted because the young woman did not fit the sample criteria, as she was older than 18 when she was held in custody. The interview was still conducted for ethical reasons, and she was still provided her honorarium. Thus, the total number of interviews with young women included in the analysis is 20.

4.5.5 Coding & analysis

Data and analysis were completed using NVivo 9 qualitative analysis software. Interviews were fully transcribed and coded in multiple stages. The first stage began with “open coding.” This involves “condensing and organizing data into categories that make sense” based upon the research topic (Lofland & Lofland, 2006 p. 201). It is important to note that since the research question was generated with the goal in mind of documenting experiences for the purpose of social change and was informed by previous reports from girls, the process of open-coding did not begin from a place of complete naiveté regarding the topic. It is therefore, important to acknowledge that there was already pre-existing knowledge with respect to the types of ‘open codes’ that were developed. To respond to this, a number of questions to guide coding were identified based upon existing knowledge, and then sources were analysed a second time to

¹⁵ Her descriptive information is included in the overall sample characteristics, including her race, gender and age. This assessment was made because the content of her interview contained references to events and stories with mixed up facts (dates, times, details) that made her account confusing and raised questions about which facts were correct. This decision was made during the analysis phase, upon reviewing the transcript. This created a difficult ethical dilemma because the purpose of this research was to privilege the voices of participants and to disrupt the dominant power relations that silence girls’ voices. In this context the emphasis must remain on upholding the girls as experts of their experience. In choosing to omit the interview the researcher is participating in the very knowledge-power dynamic that enables the use of knowledge to uphold power relations. At the same time, the researcher is ethically bound to ensure that findings are accurate and credible. Balancing these two conflicting ethical concerns was nearly impossible to reconcile. The decision was made to omit the interview in the absence of any meaningful way of validating the information, but to leave her information in the descriptive sample so that she remains present in the analysis.

identify any additional themes or patterns emerging that were not identified in the first round of coding. First, the researcher developed codes based upon pre-existing knowledge about human rights law, as this largely informed the development of the research question. The question was asked: what do girls' narratives tell us about the government and institutional adherence to formal human rights and international standards for youth in detention? Additionally, the question was asked: what do their experiences tell us about how their social identities (gender inequality, poverty and racism) shape their experiences? Once open-codes were developed, they were reviewed and a process of thematic coding began. At this point, key attributes were also identified to develop an overview of the sample characteristics according to variables that were identified as important in the literature, such as poverty, family background, the number of times they had been held in cells and types of behaviours that precipitated their detention.

Approximately 80 to 100 open codes were developed from the interviews. These codes were then condensed in a process of focused and thematic coding. This involved reviewing the open codes, comparing and contrasting their content to find similarities and differences. Nodes were then condensed into broader themes.

The next step involved an iterative process of moving back and forth between the data, legal definitions, feminist theory and criminological research about girls and women in the criminal justice system. Surveys of relevant media stories, existing legal documents, including human rights laws, domestic legislation and case law were reviewed and analysed in an effort to contextualize findings from the data. Key informant interviews were also used to contextualize and clarify information from the narratives.

To achieve credibility (Lincoln & Guba, 1985) and qualitative “rigour” as advised by Palys and Atchison (2008, p.310), cross comparisons between interview transcripts and other data sources were used to verify details, identify and verify themes. These were then contextualized within relevant theory and literature to build the analysis. Throughout the process the emphasis was on ensuring that girls’ voices and definitions of their experiences were foregrounded. This was achieved by reviewing patterns and themes of interest for inclusion in the analysis, and then identifying key quotations that were rich and thick enough in description to convey the complexity and colour of the young woman’s experience. The chosen quotations were then used to provide evidence for the analysis, using literature and other data to support the interpretation. Using lengthy quotations to paint the picture of their experience ensured that their voices drove, and were foregrounded in the analysis.

4.6 Ethics

4.6.1 Research ethics approval

The research received ethics approval from the Simon Fraser University Research Ethics Board on February 18, 2009. The research was deemed minimal risk to participants’ health, safety and well-being. This means that the potential benefits of the research outweighed potential risks to participants, and further that there was a realistic and adequate plan in place to mitigate and prevent risks. The main risks cited were related to participants’ age with respect to informed consent, confidentiality given the nature of the research topic, and the potential for emotional stress arising from the interview questions. These issues are discussed in the following sections.

4.6.2 Informed consent

Informed consent was obtained through oral recording and the use of informed consent forms. An informed consent statement was read out loud at the beginning of the interview, which covered confidentiality, voluntary participation, as well as the scope and planned use of the research.

Confidentiality is vitally important, particularly when working with vulnerable groups of people who are accustomed to people in positions of authority having and sharing intimate, personal details about them. To maintain confidentiality, each young woman was asked to choose a pseudonym. Their real names and identifying information are not included on any written documents associated with the research and in some cases the researcher does not know their real names. The names provided in this report are pseudonyms.

Due to their age, however, there was one exception to the confidentiality guarantee. British Columbia's *Child, Family and Community Service Act* (R.S.B.C. 1996, c. 46, ss. 13 and 14) requires that authorities be alerted should information arise indicating a child is in need of protection from physical, psychological or sexual harm. Participants were made aware of this during the informed consent process. Fortunately, apart from the abuses perpetrated by police officers and the Canadian government (for which this thesis serves as the initial report), there were no reports of specific and/or immediate threats to safety that would legally necessitate reporting pursuant to sections 13 and 14 of the *act*. However, this does highlight a gap in the mandatory reporting policy whereby there does not appear to be a requirement to report systemic institutional child abuse.

The young women were informed that the research could raise sensitive issues that could trigger negative emotions. Participants were informed that they could

terminate the interview at any time and were provided an opportunity for questions before they were asked to confirm whether or not they agreed to participate in the research.

Furthermore, an agreement was made with advocates at Justice for Girls, to offer support, debriefing and referrals to young women immediately following, and anytime after the interview for girls who requested it. It is also noteworthy that the young women were often referred through people that they trusted, including counsellors and outreach/support workers. In these cases, care was taken to ensure that they could access support from these people after the interview if preferred. This meant notifying Justice for Girls (without identifying the young woman) that an interview was taking place, and ensuring that they would be available for support. This also involved providing the organization's contact information so the participant could contact them, and/or offering to contact the organization for her if she preferred that option. This was by no means compulsory; it was an option provided to ensure their emotional safety.

Two amendments to the original ethics approval were made. The first sought approval to obtain consent to interview girls under the age of 18 directly from those girls if they did not have a capable legal guardian to provide consent on their behalf. This involved drafting and submitting a new consent form applicable to this population for approval from SFU's Director of Research Ethics (DORE).

The second amendment sought approval to conduct key informant interviews to supplement and support findings from the interviews with girls. This involved submitting an interview schedule and consent forms to the DORE for review. These interviews were mainly used in the analysis as a means of contextualizing the girls' stories, identifying trends and assisting with clarification of certain processes discussed in the girls' interviews. Interviews were conducted with staff members at Justice for Girls, Boys

and Girls Club of Kamloops, and Elizabeth Fry Society in Kamloops. A tour of the Surrey and New Westminster police cell blocks were also conducted to provide a sense of the physical space and environment.

4.6.3 Feminist & social justice ethics

This research presented a number of complex ethical considerations that had to be addressed and revisited throughout the research project. The research was designed with the intention of theoretically and practically challenging systems of social and political power that are frequently reproduced through academic research. The aim was to privilege the voices of the young women whose experiences are too frequently lost in the white noise of the larger discussion surrounding criminalization, social inequality, women's and/or "children's" rights. To achieve this, the researcher-participant relationship had to be cautiously navigated, to ensure the researcher's privilege and bias did not eclipse the participants' voice. This involved careful planning, to ensure meaningful informed consent, that no harm would come to participants, and that they knew their participation was voluntary. This also meant that they were offered the opportunity to review notes at the end of the interview, to ensure that they were accurate. They were informed that they had the right to omit information if they decided in retrospect, or during the interview, that they did not want that information included.

One of the most pressing concerns with respect to this research was how to navigate the delicate ethical question of whether and how the harms perpetrated against the young women should be addressed. In essence this refers to an aspect of "catalytic validity" (McCotter, 2001, p.12) as it involves the social change, or action, objective of the research. The research itself aims to address the harms discussed by raising awareness and urging political action to prevent future harms by changing the system. This type of research also provides girls a forum to bear witness, construct their own

narrative of their experiences, and name the violence they have endured, connecting this to other girls' experiences and the political context. While this offers a long term abstract solution, short term concerns remain about how to address the immediate harm and trauma experienced by these girls and how to deal with the feelings reignited through the interview process. In collaboration with Justice for Girls, two strategies were conceived. The first was discussed above with respect to responding to the immediate emotional needs of the girls. In addition to offering an immediate source of support, the research also offered concrete, long term benefits to the young women in the form of identifying a network of support and resources that they may not otherwise have accessed.

Secondly, the research addresses the broader harms of institutional violence to which these young women are perpetually exposed, by offering a positive outlet for challenging systemic discrimination and inequality embedded in law. It is hoped that this will contribute to social change for criminalized and incarcerated girls and draw attention to their treatment and conditions in custody. Should the girls choose to participate, this will offer a positive opportunity to address the harms and contribute meaningfully to changing the system.

4.6.4 Researcher & advocate: Navigating the love-hate relationship

The feminist epistemological approach guiding this research has been explicit, with a clear focus on using this work to foreground girls' voices in defining their experiences. The purpose of which is to effect social change. This is an uneasy situation to navigate from the beginning, within a research world that privileges objectivity and elimination of researcher bias as gold standards for research methods. A feminist approach to research necessarily shapes the questions that are asked, the methods employed, and the interpretation of findings. Thus this research focuses on

aspects of the girls' experience that highlight gendered/raced/classed power relations. This is further complicated by the reality that working as a feminist advocate for girls potentially creates the perception of an added level of bias that needs discussion. This requires transparency, trustworthiness and attention to credibility.

There are obvious tensions when one's work is tied up with one's research, as it offers many new ways that the knowledge produced could be influenced by the researcher's own interests and bias. However, the dual role as advocate and researcher are more compatible than they may appear. Feminist advocacy is ethically situated and concerned with the same issues that feminist research is with respect to responsibilities and relationships.

Feminist advocacy is premised upon the notion that, research participants/ people seeking advocacy (girls, in this case) are the experts of their own experiences. Their personal definitions of what girls need shape the advocacy; the advocate's role is to help critically examine the available solutions so that the girls' can decide what is best for them. Feminist advocates simply provide resources and help her implement the decision she has made. A feminist advocate is ethically obligated to ensure that the young woman's interests come first, and she (the young woman) is the only person who can define those interests. Secondly, the feminist advocate, like the feminist researcher, is ethically accountable to the women's movement. What this means is that her ethical responsibilities with respect to equalizing the power dynamic in the relationship with young women and her ethical duties extend beyond her concern to the young women to include the broader concerns of women's equality, as a group. Thus, decision-making and acting ethically in her day to day life is bound up with her commitment to equality and social justice. How she conducts herself has ramifications not just for those she is researching/advocating, but for the broader movement. This obligation operates as an

accountability and integrity check on the advocate, ensuring she is honest, ethical and reflexive. Advocates, like researchers, employ consciousness raising, reflexivity and debriefing as strategies in their work. They do this to address the emotional aspects of the work and as means of developing an analysis of power in their own lives.

However, while feminist advocacy and feminist research are compatible endeavours in terms of values, ethics and processes, this does not imply that there are no conflicts or concerns with respect to this dual role. Feminist researchers sometimes confront the perception that feminist research is biased due to its concern with power relations (Liebling & Stanko, 2001, p. 428). It must be emphasized that the values of advocacy reinforce and support the ethical principles and epistemological standards of feminist research, especially when it comes to the credibility of the work. Both employ rigorous ethical standards to honesty and integrity in knowledge production. The purpose of both is to interrupt and invert power relationships to privilege young women's voices and definitions. What those voices say, regardless of whether they support or refute the researcher's own views, beliefs or assumptions constitute the 'truth' of the research. As Gorelick (1989) puts it:

...commitment to a set of questions does not imply a commitment to a particular set of answers. If we know the answers, why bother doing the study? And because feminists want to understand the world in order to make it better, we cannot afford to be blinded by our own assumptions. (Gorelick, as quoted by Keinman, 2007, p.11)

This adds extra imperative to checking assumptions and biases through reflexivity, as both researchers and advocates. One concern with the present research, as articulated below, is that member checking was not reasonably possible. Ideally, this should have been used to enhance credibility. Efforts were made to during the research to provide girls with an opportunity to comment on or revise the notes and initial interpretations made by the researcher, but none of the young women chose this option.

The dual advocate/researcher role also means that the impetus to use the research to promote action is emphasized. Advocacy requires that action be taken when inequality and discrimination are uncovered, and this necessarily influences the goals of the research. This action, of course, must be led by young women and can only be taken on when young women agree to it. Again, their voices and interests must be privileged. The compounding impact of advocate and researcher can take a heavy emotional toll on the researcher, which may influence both the research and the work, particularly when dealing with very difficult issues, such as violence against girls.

The violence that the researcher and advocate must bare witness to can become overwhelming (see, for example, Liebling & Stanko, 2001), particularly when participants are marginalized, young and vulnerable. Liebling & Stanko (2001) discuss the challenges that arise when researchers must not only witness violence, they must try to convey the brutality and reality of violence to a world that is desensitized and somewhat “ambivalent” to the true harm of that violence. Challenging this ambivalence by naming the harm can mean grappling with the fears (real or imagined) associated with challenging any conventional practice. This means risking the perception that the research will be dismissed as biased or overly emotive. The researcher must cautiously balance the goals of exposing the violence, with the goals of action that could be compromised if the research is dismissed.

The emotional impact is further intensified for a researcher whose own identity is bound up in experiencing discrimination as a woman, while at the same time is capable of reproducing racist or classist oppression as a woman of white and class privilege. The dilemma creates an added impetus to be careful to ensure that these relations are not reproduced in the research; this, in turn, can be stress inducing. It is the action component of the work, combined with a feminist focus on girls’ agency and strength

that mitigates these stresses. The emotional impact of both roles is exacerbated by the requirement to navigate the two intertwined pieces of work as entirely separate endeavours. As discussed below, addressing this requires careful planning and attention to self-care, debriefing and reflexivity.

The intertwined nature of the advocate/researcher role raises another ethical concern. It means that caution with respect to confidentiality and anonymity was required. This was addressed through agreed upon standards and protocols, both within the advocacy organization and the research to uphold young women's safety, privacy and confidentiality above all else. It was agreed that no work related to the research would be accomplished, discussed or physically situated on the premises of the organization, outside of agreed upon debriefing meetings with the director of the organization. No documents containing names, locations, dates or information about participants were discussed or brought to these meetings. The stated purpose of these meetings was to offer emotional debriefing for the researcher and to report on any updates with respect to the pieces of the research that involved the organization (mainly whether there were any young women who had requested support). This did not occur during the research.

Beyond these ethical concerns, the dual role as an advocate served to strengthen this research in many ways, from a credibility and ethical standpoint. First, work in the organization provided many opportunities to develop in-depth knowledge with respect to the lived realities of criminalized young women. This enhanced the credibility requirements of "prolonged engagement" and "persistent observation" (Lincoln & Guba, 1985, p. 301-304). Secondly, working as an advocate reinforced the ethical and moral imperative to produce sound, accurate and ethical knowledge for all the reasons discussed in the above paragraphs. Finally, it offered many practical ways to

strengthen the ethical merits of this work, ensuring and assisting with a plan for advocacy and support for the young women.

To balance the role as advocate, the supervisory committee offered an accountability check on the accuracy and credibility of the research methods, providing necessary critical feedback with respect to the research design, collection and analysis, to ensure that standards of research were adhered to. They were particularly pivotal in ensuring that the researcher's dual role was transparent and that careful attention was paid to reflexivity throughout the process. Finally, the researcher also engaged in a process of personal reflexivity. This involved consistent evaluation of the research process to ensure that the two pieces of work remained separate, ensuring that the voices and interests of participants were prioritized, adhering to strict ethical standards and plans.

4.6.5 Reciprocity and living up to promises

From an ethical perspective, all research participants sacrifice energy, time and potential emotional distress when they participate in research. In some cases, the return for their participation may not offer tangible benefits to their day to day lives. Concomitantly, the researcher benefits in many tangible ways, and thus the potential for exploitation of participants is always present and researchers must be mindful of this at all times. Political and socio-economic power relations that characterize research with marginalized populations further exacerbate the power differential. In an effort to balance this power dynamic in the present research, an honorarium of twenty dollars was provided to participants along with bus tickets and some healthy snacks.¹⁶ The existence of this power imbalance also required on-going commitment by the researcher

¹⁶ No funding was provided to assist with the costs of providing the honorarium. A bursary was awarded by the School of Criminology to offset costs for travel and other small expenses however.

to operate with integrity, by keeping promises, remaining open and reflexive to the needs of participants and to the larger research goals.

The overarching socio-political power imbalances created by the researcher's social, white and class privilege relative to participants was addressed through on-going dialogue with advocates at Justice for Girls, the supervisory committee and regular interrogation of the role that privilege plays in shaping the questions and approaches to developing the research agenda. Engaging in regular reflexivity was also a key aspect of this, ensuring that decisions privileged the research objectives over the researcher's proved a challenging and on-going process. Assessing power in any given situation necessarily involves asking the questions "who is benefitting?" and will potential "benefits outweigh any potential negative outcomes?"

4.7 Methodological limitations

There are some important limitations in this research that must be identified. First, it is important to note that this research is exploratory, and while this is also viewed as a strength, the findings must be interpreted as starting points. For instance, due to the lack of available information on this topic, more research needs to be done to assess the dependability and transferability of this knowledge. While much care was taken to contextualize findings within available research, and using additional sources (key informants, secondary sources), there are many gaps in the knowledge pertaining to girls' human rights, and their socio-economic realities. Concurrently there are gaps in information about police holding cells and the practice of arresting and detaining youth in these facilities. Despite these challenges, this is also a strength of the research, as it means knowledge in this area is being built from the grassroots, from the perspectives of people who have the least social power in this context. In this context, the emancipatory roots of this research are strengthened.

Secondly, related to the nature of the topic, there is a lapse in time between the events and the interview for the young women. In some cases, they have been in custody multiple times, and it is possible that time frames and chronology may be confused. Some events may have been forgotten, reinterpreted through new lenses or even repressed. From a qualitative perspective, this may not be entirely problematic as this epistemological standpoint acknowledges the role of individuals in constructing their perception (Lincoln & Guba, 1985; Palys & Atchison, 2008) and thus would presumably accept repression or re-interpretation of memories as a part of the phenomenological construction of one's own reality. Indeed, how one constructs their experience is frequently a focal point for qualitative analysis, especially interview research (Palys & Atchison, 2008). Accordingly, while this leaves a slight gap in the research findings, it does not compromise the goals of the research.

Third, some practical challenges in data collection meant that the research took longer than anticipated. This was mainly due to the difficulty in accessing the population. As a consequence, there were gaps in time between interviews, and further gaps in time between data collection, analysis and writing. A strength of in-person, in depth interviews, and a goal of feminist methods, is the layers of nuance and detail that emerge from the interaction between the interviewer and interviewee. Thus, a long lag between data collection and analysis may limit this, as details and nuances from the interviews may be forgotten over time.

5: LOCKED UP FOR THEIR OWN GOOD: GIRLS DETAINED FOR SOCIAL WELFARE & PUNISHMENT

Interviews with 20 young women, between the ages of 16 and 24, who have been detained in police lock ups across three jurisdictions in British Columbia revealed a number of patterns regarding their treatment. These themes have been divided into two separate sections, based upon two key areas of concern with respect to girls' human rights. The first (Chapter 5) discusses to the use of police lock ups for reasons that are prohibited under domestic and international laws. Themes include police detention for social and/or child welfare issues and the use of police holding cells as a form of punishment. The second (Chapter 6) outlines themes related to conditions and treatment of girls while in police custody. Themes identified include deprivation and denial of basic necessities, the violence of jail environments and routines, use of force and discrimination. The analysis situates their experiences within a framework of girls' human rights that foregrounds social and economic inequality at the intersection of their age, gender, race and class.

5.1 Police as agents of child protection & discipline

Most of the girls interviewed had been arrested on multiple occasions and many had been detained in police lock-ups more than once. The types of crimes they were arrested for varied, some were clearly violent and the girls did not minimize the harm they caused in some cases. Without dismissing the reality that some of the girls committed serious crimes, those were rare and the vast majority of their offences were

minor. Indeed, many would not be criminal if adults had committed them, such as missing school or running away (Irwin & Chesney-Lind, 2008; Sprott & Doob, 2009).

Three themes emerged with respect to the reasons that girls were incarcerated. First, many girls' accounts detailed circumstances that suggested they were locked up for reasons that can be characterized as protection and social welfare. These included failing to comply with dispositions, substance use, in response to child welfare and/or parental failures to care for them; none of which are sanctioned under current international and national laws. In other cases, girls' accounts revealed, based upon their perceptions and interactions with officers, a pattern of paternalistic responses from the police, suggesting that detention was used as a means of discipline for bad attitudes and behaviour, to scare them or teach them a lesson. Either scenario, however, violates the existing legislative criteria for jailing youth pre-trial.

The third theme refers to concerns that women's anti-violence advocates have been calling attention to for years: the failure of the police to respond to male violence against girls and the subsequent criminalization of girls' responses to that violence. Again this represents a state failure to protect girls' positive right to be free from violence, and then perpetuates a further harm by criminalizing *girls* for trying to protect themselves.

Internationally and domestically, the law is very clear about the rare circumstances that would permit incarceration of anyone under the age of 18. Article 37(b) CRC states:

No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.

The recommended interpretation of this is articulated in *General Comment No. 10 (2007)* issued by the Committee on the Rights of the Child which states that Article 56 of the Riyadh guidelines should be applied. This article says:

In order to prevent further stigmatization, victimization and criminalization of young persons, legislation should be enacted to ensure that any conduct not considered an offence or not penalized if committed by an adult is not considered an offence and not penalized if committed by a young person.

These principles are equally applicable to sentenced and pre-trial custody, but the CRC highlights the crucial distinction that makes deprivation of liberty prior to a trial a *de facto* encroachment on civil rights. “The use of pre-trial detention as a punishment violates the presumption of innocence.” Thus the committee maintains “the law should clearly state the conditions that are required to determine whether to place or keep a child in pre-trial detention...The duration of pre-trial detention should be limited by law and be subject to regular review” (Paragraphs 78-88).

Despite being officially non-binding, the language in Article 17 of the *1990 Rules for the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (JDL)* is even stronger:

Juveniles who are detained under arrest or awaiting trial ("untried") are presumed innocent and shall be treated as such. Detention before trial shall be avoided to the extent possible and limited to exceptional circumstances

Finally, recall that the Liberal Canadian Government was careful to limit the conditions under which a youth can be held in pre-trial custody, with the explicit intent of excluding the use of pre-trial detention as social welfare or punishment. Despite this, girls’ narratives of their arrests, detention and interactions with the police imply a pattern of police detention for social welfare, disciplinary purposes and protection.

5.2 Social welfare with an iron fist

The gendered nature of girls' criminalization for these forms of social welfare and protection bears no repeating from the historical review of the youth justice system and available data and analysis of current trends in girls' charges and convictions. The girls' interviews offer detail on the subtle and complex ways that gender, age, race and class relations collide in their interactions with police and subsequently in detention. Four sub-themes have been packaged under the larger theme of 'social welfare.' These include detaining girls for breaches of police, court and/ or probation orders, intoxication, foster care or family disruptions and altercations.

Broadly, it is useful to keep the concepts of 'bootstrapping' and 'upcriming' in mind to begin theoretically conceptualizing the process of gendered social construction that is involved in criminalizing girls using these offence categories. The term 'bootstrapping' has been used to conceptualize situations where girls were jailed in response to behaviours that would not be criminal if anyone else committed them. These include, but are not limited to, acts formerly considered status offences under previous legislation, such as incorrigibility (being disruptive or defiant), missing school, running away from home, being in a no-go zone (similar to vagrancy) (Brown, Chesney-Lind & Stein, 2007; Dohrn, 2004; Feld, 2009). While administrative charges (breaches) and public intoxication are legally criminal, it can be argued that the actual behaviours to which they are applied are often rooted in social welfare or child welfare problems.

'Upcriming' refers to situations where minor assault (e.g. hair pulling, pushing, scratching) is dealt with through official criminal justice processes and where the police decide to lay a charge of assault (Brown, Chesney-Lind & Stein 2007). The latter is typically related to familial altercations, or in foster care and school settings when the police are called to resolve disputes (Brown, Chesney-Lind & Stein, 2007). This concept

captures the fundamentally important role that police play as gatekeepers, because behaviour is not criminal unless someone (they) labels it as such (Feld, 2009).

5.2.1 “*Breach babies*”¹⁷

Many of the interviewees reported that they were arrested and held in lock up for administrative offences, usually for violating a disposition (breaching police, court and/ or probation conditions). In total 17 (of 21) girls indicated that they had been held in a cell at least once for breaching¹⁸. Research on court orders and police undertakings indicates that girls receive more conditions on dispositions than boys do and that ‘failure to comply’ charges constitute a much larger proportion of case files for girls than boys (Moyer & Basic, 2005; Sprott & Doob, 2009; Sprott & Doob, 2010, p. 432). There is a paternalistic undertone to most orders, as conditions often include mandatory school attendance and curfews. They are also protectionist, including non-association orders with known offenders (often older boyfriends) and ‘no-go’ zones, aimed at stopping them from going to dangerous places. However, the impact of this results in the removal of some important civil protections for girls, offering police the authority to monitor and apprehend them at their discretion.

Interviewees’ descriptions of breach charges suggest they are routine aspects of their lives. For example, when asked what she has been breached for, Sophia shrugged and replied “mainly [being out] past curfew or missing a PO appointment” (Sophia,

¹⁷ This term was used by a Crown Attorney to describe a young woman who had been arrested for breaching conditions multiple times (Moyer & Basic, 2005, p. 44). It should be noted that this section refers to all forms of breaches, including police, court and probation orders.

¹⁸ During the interviews girls did not clarify what types of orders or undertakings they were breaching. They would use the term ‘breach’ to refer to all of them interchangeably. Upon later analysis, it did not appear that young women viewed the distinction as relevant to their experience, because all types of breaches had the same impact on their lives. In some cases girls had multiple orders at once, as well. Therefore, while the author acknowledges the important legal distinctions between different types of conditional orders, for the purpose of this discussion, the term ‘breach’ will refer to all types of conditions unless specified otherwise.

Aboriginal, GVRD), implying that she experienced this more than once by the age of 14. When asked what types of crimes they had been apprehended for, many of the girls listed a variety of offences that would fall under this category, including truancy, drinking alcohol, missing curfew, disturbing the peace, missing appointments and court dates.

Interviews revealed how common and normalized administrative charges are, and just how easy it is to become trapped in a cycle of criminalization for behaviours that are arguably common adolescent transgressions.

[Then I moved] here and got in a fight with a girl. I was charged with assault. So I was put on probation for that. And then I just kept having run ins after that. Like drinking. Like I would get caught drinking.... (Ashley, white, Okanagan).

Nonetheless, these transgressions bring with them weighty sanctions. The first time Ashley breached she was at a party. The police apprehended her and she was held in police custody for three days. The next time, she was held for seven days and subsequently sentenced to six months in a 24 hour supervision program.

Additionally, it is clear that there are compounding socio-economic issues and systemic failures operating below the surface:

I was really sick last year and I didn't go to school very much and it was on my order to go...so I got taken in for missing school ...they breached me or something and they didn't tell me that they breached me. My probation officer didn't tell me, and I had seen her the day before... (Lily, Aboriginal, Okanagan).

Thus, her situation highlights how, for marginalized young women, one fall through the institutional cracks after another will eventually land at criminalization. In her case, and without erasing her agency, there were a number of institutional responses that should have been deployed, either the health care system, education system, or her guardian should have been responding to the circumstances described. Yet, for Lily, because it was a probation condition, her lack of attendance at school was criminalized.

Furthermore, all these cases illustrate how close surveillance and scrutiny of girls' daily lives puts them at risk of being apprehended for breaching. In some cases police will go out on 'sweeps,' with appointed social workers in an effort to apprehend youth who are breaching, or on warrants for breaching (Schulenberg & Carrington, 2003).

I was 6 months pregnant with my son and I was sitting at Red Robin with my cousin and her social worker on her birthday. My arresting officer from that day, he walked in and saw me and he said I had a warrant and he took me in (Tatiana, white, GVRD).

A lot of the youth hang around at [location]. That is the meeting place for a lot of people. And Yankee 10 come around to just talk to us and...if they know you then they will, if it is your red zone, then they will come and talk to you and then they'll take you in if there is a warrant (B., Aboriginal, GVRD).

In other examples, girls' breaches are related to far more overt threats. For J.G., sexually exploited from a young age after she was violently 'recruited' from a group home and forced into drugs, prostitution and other street crimes under the threat of violence, appearing in court put her in more danger:

I would have run into the gang affiliate boyfriends that I had at the time. I was terrified. Anytime I would show up for court, and tried to go to a safe house or something, they would just show up at my court date and grab me (J.G., Aboriginal, Northern B.C.).

Her situation highlights the reality for exploited girls, where the concept of a 'safe' space is elusive. Showing up for court means the possibility of prison, often for crimes committed with, or under the threat of male gang members (car theft, prostitution related offences),¹⁹ which presents a new threat in the form of institutional violence and degradation. Alternatively, it means being released on more conditions only to be

¹⁹ It is difficult to capture and document how common it is for young women to be intimidated and harassed at their court dates. Advocates, however, maintain that this is very common for girls who are gang involved, addicted, street entrenched and/or exploited. Previous research has documented references to this in the past. See, for example, Belknap, Holsinger & Dunn, 2006.

apprehended by gang affiliates again. It is an impossible situation, where the decision to skip a court date is understandable, offering a sense of control in the context of multiple oppressions. Arguably the greater threat to justice in such cases is not missed appearances, but rather the repeated failures of the child welfare system combined with a failure to protect her from exploitation in the first place.

Thus, much like status offences under previous legislation, administrative charges create an insidiously slow and paternalistic process of criminalizing young women. More broadly, they provide a convenient mechanism for which to deflect attention from systemic failures, social injustice and criminal neglect onto the backs of teenage girls. With little oversight, and virtually no available data on the practices of breaching (Sprott & Doob, 2010, p. 430), there is also little accountability in this process.

5.2.2 Unbecoming of a lady: Public intoxication

Section 91 of the *Offence Act* and s. 41 of the *Liquor Control and Licensing Act* give police the authority to arrest and detain a person without charge for being intoxicated in public. The use of police lock-ups for detaining intoxicated people has been problematized by many advocates in Vancouver, with calls from indigenous organizations and the B.C. Civil Liberties Association to develop ‘sobering’ centres in response to the brutal death of Frank Paul²⁰ and multiple other reports of human rights abuses against indigenous and homeless individuals left to sober up in city jails (B.C. Civil Liberties Association, 2010; Frank Paul inquiry, 2007).

In the case of girls, however, the ‘drunk tank’, is more troubling. It not only presents grave threats to their safety and well-being, but it is also a violation of

²⁰ Vancouver Police officers arrested and detained Frank Paul, a 47 year old First Nations man, in December, 1998 for intoxication. He later died from hypothermia when police officers left him in a police car in an alley. A public inquiry was called in 2007 to investigate the incident.

International principles governing the detention of youth and Section 29.2 of the *Youth Criminal Justice Act*. Furthermore, at least one police policy and procedures manual is written to state that police only need to contact a youth's parents "if [emphasis added] the youth is sober enough to be released" (Vancouver Police Department, 2006, s. 1.12.17.4(a)), suggesting detention is used for welfare reasons, even when other safer alternatives might be available.

All but three of the young women interviewed reported they had sobered up in police detention at least once, most multiple times. Like breaches, the 'drunk tank' was a common feature of their young lives:

"...I've been put in the drunk tank LOTS! (Krystal, white, GVRD/Okanagan)"

"[S.B.] How many times have you been in the drunk tank?"

O: I honestly couldn't count" (Ophelia, Aboriginal, Northern BC)"

In some cases, girls were apprehended for no apparent reason other than their intoxication²¹:

I was at my friends' house and I was walking down the street, like stumbling. I sat down cause I was so drunk I couldn't walk. I sat down to catch my breath. I was like spinning. Then I got arrested and thrown in the drunk tank. I was like "I'm just going home" and they were like "that is what they all say..." (Lily, Aboriginal, Okanagan)

While in other cases girls were arrested for offences that were committed while they were intoxicated. Often this was at parties, possibly in response to fights and

²¹ It is possible that they were breaching conditions either by drinking, or in conjunction with drinking (such as missing curfew).

disturbances. Since reporting requirements are minimal and not subject to external review, the level of accountability is inadequate to prevent misuse of this practice.²²

Interviews with girls about their experiences are worrying from a human rights perspective. In some rather extreme examples, it is clear that there are child welfare issues at play. For Jenny, whose mom works two jobs as a single parent, the decision to keep her in lock up for being intoxicated (without charge) is directly related to issues around guardianship:

... 'cause then they said something about if no one comes to get us at a certain time we were going to go to YDC. I was scared then [that] I would go to YDC. And I was scared because I have never been to jail and I'm small. My mom works from like six in the morning until 3 in the afternoon. So... and I have no one else's phone number to give to them... (Jenny, white, GVRD).

For Ophelia, growing up in a very remote community of Northern B.C. as a young Aboriginal girl living in poverty with parents who were addicted, child 'protection' was handled by the RCMP:

The first time I went to the drunk tank I must have been 12. With my dad. Family moment. [She laughs]

[S.B.] you went to the drunk tank when you were 12?

Well yeah, because they'll keep you overnight until you sober up. [referring to her father]. (Ophelia, Aboriginal, Northern B.C.)

For other young women who show hostility or aggression, the drunk tank is an easily justified form of retribution or punishment:

I called the cop a pig in the back of the car. And he was like, 'that's it, you are going in the drunk tank' and they put me in the tank 'til I sobered up... they like to let you go early in the morning. It is the most brutal on your head. Even if they don't arrest you they just bring you in there to sober up.

²² The section of the VPD policy manual detailing 'procedures' for youth held for intoxication are not public. The omission is cited as justified because 'disclosure may be harmful to law enforcement' (s. 15(1) of the *Freedom of Information and Privacy Act*, B.C.; Vancouver Police Department, 2006, 1.6.47(iii)).

But instead of letting you sleep it off a little bit they just wait until you are sober enough to leave. (Julia, white, Okanagan)

It is also clear that conditions in the drunk tank vary by jurisdiction. In some cases the girls report being placed in a regular holding cell when other adults are being kept in the tank. In other situations girls describe being held directly in the drunk tank (not with adults). They describe these rooms as unclean, smelling of urine and vomit. In some drunk holding tanks, girls report that there are no toilets, only a drain and that they have been forced to relieve themselves on the floor.

... the drunk tank doesn't have a bed, It is really cold right. If like say you are wearing a little dress out, even if it is the summer or something it is like freezing! You don't get a blanket. Nothing. (Tara, white, Okanagan)

The use of the drunk tank then is a concerning practice from a number of perspectives. While it is lawful to detain publically intoxicated young people under the *Offence Act*, it does not seem to fit comfortably in the youth justice context, particularly with respect to s. 29(2) of the *YCJA*. Furthermore it poses a harsh contradiction to international standards regarding detention of youth without charges, and flies in the face of standards for conditions of detention.

5.2.3 Good cop, bad cop: Police take charge when child welfare fails

Police responses to problems with youth in foster care and group homes has recently gained attention in British Columbia after an 11 year old boy was tasered by police in response to an incident in his group home (Bouzane & Appleyard, 2011). It was subsequently found by the Representative for Children and Youth (B.C.) that there were many previously recorded incidents where police were called for minor disturbances (Representative for Children and Youth, April 21, 2011). Carlen's (1989) research with criminalized girls who had been in care focused on how they linked their experience in care directly to their subsequent criminalization. She found three points of

connection. The first were situations where young women's "quest for care" led them to act out, which led to punishment or "further restrictions" (Carlen, 1989, p. 91). The second was criminalization of their attempts to escape care. The third related to "young women's departure from care [that] precipitated her [path] into a series of crises involving poverty, homelessness and unemployment" (Carlen, 1989, p. 91). The connections between the child welfare system and the justice system were also suggested by the McCreary Centre Society's research that found 73% of youth in custody had previously been in the care of BC's Children and Family Services (McCreary Centre Society, 2007).

At least 17 of the girls interviewed had been in the care of the ministry at one time. Some of the girls discuss being put in jail when group home staff report them to police for being 'Away without Leave' (AWOL) from group homes or for breaching conditions. It may be that group home staff are more likely to report breaches than parents and families would, because they view it as their professional responsibility to do so. This may also be related to the institutional nature of group homes, whereby liability is prioritized. The impact for girls in care, however, who have already faced tremendous trauma and multiple oppressions, is increased criminalization.

Two young women reported that their first arrests were for conflicts with either social workers or group home staff.

Well my first time being arrested was ...they removed me from a foster home. I was really close to her and the lady didn't want me to go either. I was like to the social worker, I was like, I'm gonna like burn your building down. And because I said that, I was like crying...and they threw my stuff in garbage bags and they called the cops and I was arrested. That was like my first charge. Uttering threats or whatever...Cause like, say if you were in a group home and you got out of control they called the cops. I don't know. I was a bad kid. (Tara, white, Okanagan)

In her interview Tara talked about how difficult it was to be moved to one foster home after another. Having been in 29 separate foster homes, and experiencing multiple forms of violence, abuse and neglect, she eventually ran away.

The second young woman, Jen, without downplaying the severity of her actions, related her behaviour to the general sense of indignity and powerlessness that she felt as a child living in a group home.

I was in for public mischief. I trashed my group home that I lived in. ... they were supposed to give me some clothing allowances and they weren't giving us our clothing allowances because we hadn't eaten food during lunch. We didn't eat what they cooked us. We wanted something else, cause we didn't like the food. So they were withholding our clothing allowance funds for school. So I freaked out and I trashed the group home. I actually locked the group home staff out of the group home. (Jen, white, GVRD)

The police were called and Jen spent the night in a police lock up because she could no longer stay at the group home. Her social worker was not available to pick her up until the next day. According to interviews, the practice of being kept in jail because social workers are not available is not uncommon, and indeed it is police policy not to release youth without a legal guardian.²³

5.2.4 Stepping in for parents

The final sub-theme under social welfare is the role of families and parents. The involvement of parents is perhaps the most well established social welfare reason for which girls, in particular, are detained (Chesney-Lind 1977; Gavazzi, et al., 2006; Schulenberg, 2006; 2010). There are a number of examples from interviews which highlight how girls' parents, and police perceptions of their parents, factor into their experiences of being locked up. Police do have a legal obligation to release

²³ However, some of the girls reported that they were released without a capable guardian. In some cases this meant taking the bus home from jail in prison clothes (J.G. and Julia).

apprehended youth to capable guardians, so there is a very obvious connection between a parent's ability to pick up his/her child and being held in detention. However, this does not make jailing them in lock ups justifiable. Furthermore, interviews suggest that absence of a capable guardian is not necessarily the reason that girls are held, and that there are patterns of discrimination for girls experiencing multiple forms of racial and class barriers.

Like Ophelia, who was put in the drunk tank with her father, some girls talked about how their parents were known to police:

They are all white and they are dealing with a really big native population and they are all very racist. And they know my father really well, which means they don't like me either. I remember the first time they did a check on me. They were like... "you're xxx daughter aren't you?" and I'm like "ahhh fuck...yes" [laughs]. And they were like "following in his footsteps aren't ya? (Ophelia, Aboriginal, Northern B.C.)

A lot of them they know my dad. So when I tell them my last name, like one time I told this lady my last name and she was like, "oh your dad is _____ I bet eh." And I was like "yeah"...(Lily, Aboriginal, Okanagan)

Read in the context of research regarding the role that parents' attitudes and behaviour play in police discretion (Schulenberg, 2010), this may mean that these girls are labelled delinquent by virtue of the families they were born into, and subject to more criminalization and intrusive sanctions.

In other cases, girls are turned in by their parents. This illustrates an example of "upcriming," where girls' domestic conflicts are criminalized when parents turn to the police for help. This was the case for Ashley:

Yeah. Or I'd just be drinking with some friends. Or I would go home. Or my mom blow up from there.... My mom picked me up from a party and we got in a fight as we were driving. And then she stopped at a stop sign and I opened the door to spit and she thought I was trying to get out and she drove me to the police station. (Ashley, white, Okanagan)

This devastating reality is starkly obvious for street entrenched and homeless young women, where the police play a much more overt and coercive child welfare role:

I think I just had a probation breach. It was more or less that they would hold me there, then if I went to Burnaby Youth Custody they would bring me to court before or after but it was always just, like “you are sitting here for 72 hours because no one wants to come and get you” and then they would release me at like 5 o’clock in the morning. And then they would be like, “okay you gotta find your own way home.” ...cause I just kind of lived on the street and so they would pick me up and like they’d kick in a crack shack or something and they’d pick me up and they would hold me for 72 hours. (Julia, white, Okanagan)

It is important to contextualize Julia’s pathway to the street, as her displacement is rooted in a history of childhood abuse from which the police and the ministry failed to protect her:

It was...it was pretty harsh there. She was a real bitch. So I was just like, you know what I’m not going to stay home for my mom. I’m outta here. And my mom, was, she was pretty scary. I remember the last time I ran away the ministry wouldn’t get involved. She chased me on her bike. Like followed me. She was on her bike and she made me ride all the way to the cop shop. And she got this female officer to come out and she was like, “if my daughter is leaving home then I’m gonna make it worth it.” And she like punched me out in front of the cop. (Julia, white, Okanagan)

The variations in girls’ treatment based upon their family circumstances need to be read with an analysis of intersecting power relations. The extent to which they are subject to police intervention is shaped by their age, by their gender roles within the family, by their family’s social location in terms of race, class and gender (e.g., single mom) and whether they in fact live with family, are in ministry care, or live on the street. Systems of power operate at micro and macro levels in their lives, shaping how the police treat them.

These narratives fit with findings from previous research on girls’ criminalization. Gavazzi, *et al.*(2006), for example, analysed risk assessment files of youth to look at gendered differences in risk factors captured by the assessment instruments. They

found that girls were more likely to be detained for behaviours relating to “family related” or “out of control behaviour in homes” (p. 604). They also found that girls were more likely to run away (p. 608) and overall they found girls were detained more often due to problems at home, whereas boys were detained for ‘public safety concerns’ (p. 609). Chesney-Lind (1977) found that girls who were turned in for status offences by their parents in response to non-criminal behaviours (status offences) that “challenged the family structure or gender roles” were punished more severely than girls who had committed crimes in public (p.123). Chesney Lind (1977) theorized that this occurred because girls who had committed crimes in public were more likely to have their parents as “allies” and advocates in the justice system, whereas girls brought in by their parents did not enjoy the same privilege. At the same time, the types of crimes they were turned in for were steeped in assumptions about appropriate gender roles.

Overall, it appears that the pattern of detaining girls for social welfare related purposes continues, despite widespread acknowledgement that police detention and criminalization is not an appropriate response to such problems and policy reforms aimed at stopping it. The above examples highlight typical situations where girls were incarcerated, directly or indirectly, for reasons related to failures on behalf of their guardians, child welfare and other social institutions to provide for their health, development and protection.

5.3 Police discipline: She’ll learn soon enough

Detention prior to a trial should never be used as punishment, as it violates the presumption of innocence, a foundational principle of free democracy. This is particularly true for children who, by virtue of their age, require that police and courts take extra care and diligence in safeguarding their rights. Unfortunately, interviews with girls suggest that police used their discretion to put them in cells when they displayed

aggression and resistance, for the purpose of teaching them a lesson or scaring them. Again, neither of these reasons offer lawful justifications for holding girls.

5.3.1 You got quite the mouth on you

The available research on criminalized girls indicates that their aggression is met with disproportionate punitiveness by law enforcement (Schulenberg, 2006; Varma, 2002; Visher, 1983). For example, as long as thirty years ago, Visher (1983) found that girls who were viewed as ‘antagonizing’ were more likely to be arrested. This pattern was evident among interviewees’ accounts and particularly clear where girls were involved in incidents involving a number of other youth, where only some were arrested. Krystal was detained when:

Somebody I was with started a fight with one of the officers and apparently I was “antagonizing” and “encouraging them to beat up the cops. (Krystal, white, Okanagan)

From their stories, there was evidence that police responded to them much more aggressively when they ‘talked back’ or ‘mouthed off.’ This was a reality that did not escape the girls’ attention. They seemed very aware of the connection between their aggression and the officers’ decision to detain them over other young women.

Well we were drunk and we beat this person up and then...the cops came because someone in the house around us called the cops and then...they had us at gun-point and so we went on the ground. And I was really drunk so I was being cocky and kind of a cow. We all got put in the paddy wagon and everyone else got dropped off at home except me...

[S.B.] Why do you think?

I’d say because I was being the most cockiest and being the most loudest. But everyone else was doing it too so I don’t know.... And then...they were just like “you know we can take you to jail for talking back” and all this shit and I’m like okay. “go for it” They are very cocky. I don’t need to take that shit. (Jenny, white, GVRD)

Many of the young women recognize the injustice in this practice. While it is no excuse for violence or aggression, at the same time it appeared that this sense of

injustice and powerlessness is what fuelled their resistance. Alice's story provides a good example highlighting what she was going through and shedding light on how, at the age of 16, the arrest felt to her:

I was under the assumption that everyone was in the same boat as me. Which wasn't the case. There was only a certain few... I think that they just kind of took who was I guess the outspoken ones...which was most of the time me. No one read me my rights until umm, I was actually [at the] cop shop. Cause I was screaming around and going hysteric because I didn't know what was going on. Then they read me my rights. Of course at that time rights didn't mean really that much to me. I was like fuck you get me out of here. Call my parents you have no right to take me in. They were like Ms.[name] 'keep your mouth shut' "you got quite the mouth on you" and I was like fuck you... damn right I do. I wasn't the only one, I was like, why do you have me here? Why me? That is what I kept thinking...why me? I guess out of everything, and when it comes down to it they had to have somebody. Somebody had to have felt the 'justice' I guess of what they are supposed to be doing. I guess that is control order, or whatever, control or keep the peace. And so I was her. (Alice, Aboriginal, Okanagan)

Alice's story illustrates how the police response to girls who display hostility is equally aggressive and punitive. It also illustrates that, at least in some cases, police are willing to dismiss due process in favour of discipline and control. This practice may be justifiable in rare circumstances where immediate public protection requires it, but does not seem so in the context described, and seems difficult to support in most interactions with police.

Girls explain that they use aggression in an effort to assert their agency in situations where they have no control. This behaviour is often met with greater force by police who are trained to use force and coercion to maintain control.

[I tried to tell her] "Don't grab me like that! Just ask me to" and they did it again. And I told the cop that she was a 'feisty bitch' and she grabbed me and hucked me into the cell. (Katie, white, Okanagan)

When this is contextualized by their backgrounds of trauma, addiction, normal adolescent emotional challenges (i.e. puberty) and abuse by people who have authority,

emotional outbursts may be more readily understood. Without underplaying their potential to do harm, it hardly seems appropriate that youth be dealt with through a traditional policing and law enforcement approach that does not foreground their histories and social locations.

Finally, for girls on the extreme margins, the cruelty and punishment is much more explicit and direct:

...like in a crack shack or whatever. When they did the raid. Cause I was always just kinda out there when I got busted. I was never really, just quiet. But like I always tried to... go along with everything and stuff. But they were pretty rough. They are pretty mean... (Julia, white, Okanagan)

Julia recounts another story where the police officer's punitive response is abusive:

I had gotten busted in [name of grocery store] stealing and the security guard I was running from, he like pushed me and like kicked my feet out from under me and I flew into a display case and I had an indent this deep in my leg. Like I couldn't walk for two months. And um, when I was in the cell the cop made me hobble all the way to the door just so he could open the door, scream in my face and then slammed it in my face and made me walk back to my bed. (Julia, white, Okanagan)

For girls in these situations, the police have an unchecked and unprecedented amount of authority. This is namely because the girls survive in a culture of exploitation and illicit activities. Girls who are exploited and addicted are at the mercy of adult pimps and dealers, whose 'protection' (read: exploitation) requires they sacrifice the privilege to choose not to break the law. As a consequence, this means that girls are extremely vulnerable to police. Since they live on the wrong side of the law, they are over-policed and subject to the broad discretion of police officers. Consequently, some eventually learn that they do not have entitlements to rights or state protection and that their efforts to assert those rights will be met with punishment. So, they eventually stop resisting, accepting that 'too tight' handcuffs and lock-ups are simply a reality.

When I ran into cops because I figured that was the best policy. As long as I am not causing too much of a disturbance then I am not going to be arrested. But some of the girls that chose not to tolerate the way they were being talked to and mouthed off to the cops then absolutely they were totally arrested. But as long as you sit there and took the verbal abuse that they were giving you. They wouldn't arrest you. (J.G., Aboriginal, Northern B.C)

It was brutal. Like especially when they don't give you any blankets or anything. You get the chills. You are sick. You are puking. You are just... you're so ill. They just don't even care. ...I just pretty much cried and slept the whole time you were in there. Like there is nothing else you can do. The more you fight the worse it is going to be. And like, I've probably been in cells over 300 times. And just after like the tenth time you just learn. You just shut your eyes and sleep as much as you can. And just try and make it go away. (Julia, white, Okanagan)

5.3.2 That will put the scare into her

In addition to punishing girls for acting out, girls also felt the police used arrests and detention as a means of 'scaring' them.

They were a little rough around me before like, cause I was like breaking windows, and ...beatin' people up and...so they weren't very nice to me. Usually every time they saw me it was for something that I had done. So I don't think they liked me very much... They were respectful a little, but at the same time, they...well I love the officers that I get, they seem to be trying to scare me into not going back and doing what I was just doing. (Lily, Aboriginal, Okanagan)

However, an example Lily provides colours her perception of events:

I had fought this girl 'cause she had stolen my purse. And she like, swung at me so I beat her up. And like the officer came and he like threw me against his car. And like...I wasn't like resisting arrest or anything. He just like threw me against his car and then shoved me in the back seat. And I was like, I don't know, he wasn't very nice though...

[S.B.] did he charge you?

No. I think he was just scaring me (Lily, Aboriginal, Okanagan).

"That is when they were like...'well if you need us to put a little scare into her we can keep her over night until she sobers up." (Alice, Aboriginal, Okanagan)

This has a harmful emotional and psychological impact on the girls. Rather than feeling like the police will protect them, they view them as disciplinarians. Alice

describes what she was thinking when the police officer told her mother he could detain her longer to 'scare her' a little bit:

Kinda makes you feel like your rights, just kind of like, well you have no rights. Like you were at his whim. And he was like...he was like "well for the most part she was good while she was in here." You know, when you are that old and a police officer says something to your mom, it kind of dictates a lot. It is almost like he is judge and jury. Meanwhile he is not. So it gives you a little bit of like hatred towards him. Like sometimes I'm good, right; ...and then the cop is just like "yeah well, in our custody she was alright." She was a little bit aggressive and this and that. Like what do you think? I've never been arrested before. I don't know anything about this. And then my mom, because it has repercussions right, it all does when you are that young. Your parents will be like mad at you, or something is gonna happen when you get home. And I guess it is because the police have the right and the authority to just put themselves in your life. Because you let them I guess. Then to say something like that to your parents and it dictates who you are as a person. That is kind of, more or less what I got out of that. Like that is who I am. (Alice, Aboriginal, Okanagan)

5.4 Criminalization instead of protection: The failure to respond to violence

The failure to respond to violence and neglect is particularly important in the context of discussing girls' criminalization. Many people discuss histories of violence and abuse in the lives of criminalized girls as 'risk factors' and 'uniquely prevalent characteristics' of their involvement in criminal behaviour. Rarely, however, is it framed within a context that acknowledges the multiple institutional failures that enable it to persist. This should likely be considered a sub-theme of child welfare, and overlaps with many earlier sections, but given the scant attention that it receives, a separate discussion in this analysis is warranted. Two main patterns emerged from the girls' narratives: Failure to respond to abusive boyfriends and older men, and failure to respond to the violence perpetrated on girls involved in prostitution, drugs and gangs.

5.4.1 Failure to respond to abusive partners

Feminists fought hard to force politicians and law enforcement to respond to violence against women. The victory party did not last long. Mandatory arrest policies were intended to remove discretion from police to make arrests in domestic disputes. The intention was to ensure that police protected women in the short term by removing violent men, and by laying charges and prosecuting (Chesney-Lind, 2002; Chesney-Lind, 2010; Ferrero, 1998). However, implementation of these policies have proven disastrous for women as police began to arrest *them* in domestic violence incidents (Chesney-Lind, 2002, p. 83). This change may substantially explain the disproportionate increases in women's assault rates compared to men's (Chesney-Lind, 2010). Furthermore, in one study, 35% of the women who were arrested had been the ones to phone the police (Chesney-Lind, 2002, p. 83). Chesney-Lind (2002) also reports evidence that these trends were racialized and classed, where poor women of colour had higher rates of arrest (pp. 82-83).

Thus it appears that young women's efforts to defend themselves against abusive partners were being criminalized, even after the girls had reported the incident, or reported violence in the past. In the present research it was disturbing to hear similar stories about police inaction to violence perpetrated against girls and how this contributed to their criminalization. P. moved to Vancouver to escape an abusive ex-boyfriend:

I have just not had a lot of good experience with cops. When I have tried to get help from cops I haven't had any result come from it, at all... I had an ex-boyfriend who like, did crazy stuff. He was threatening me and he came to my house and he smashed all my stuff, like cars and stuff. I called the cops and they couldn't do anything because they have no evidence. He told me he did it, but that is not enough evidence clearly, but... This was why I moved to Vancouver because I was scared of him so I moved here to get away from him. Probably like six months ago. (P., white, Okanagan/GVRD)

Two of the young women's arrests and detentions were in response to violent incidents with boyfriends. In all three cases, police had failed to respond to their reports in the past. Christine was arrested for assaulting her boyfriend. While her actions were serious, she did not minimize or deflect that. Still, when her behaviour is contextualized by her ex-partner's history of violence towards her and his violence in this incident, the disproportionate police response to her actions is highlighted:

I went to my ex boyfriend's, well boyfriend at the time, I went to his house cause I heard that one of my best friends that I was really close to had sex with him. So I went to his house very angry and I just opened the door. I didn't knock or anything and I grabbed a wooden spatula. And I went up to his room where he was sleeping and I started hitting the bed to scare him. He obviously got up and he was scared. And I was pissed off so. We started fighting and the cops came. And then I arrested for breaking and entering. Cause I didn't knock, you know. And assault with a weapon. cause I used a wooden spatula... And like, they, ugh... I was hit really badly in my temples, in my head... by my ex boyfriend... It was pretty much a man like head butting you like 20 times.

[S.B.]: Has he hurt you before?

...I have called cops in the past and told them, like, "hey, you know...right now my boyfriend is assaulting me can you please come and help me." You know like take this guy to jail or do something. And so then like he runs away and the cops come. "we don't have proof of this" and blah blah blah. So, I've pretty much had to keep a constant, like, I had to email them to tell them what happened and give them a statement. Like, each time he did that kind of stuff. And to me that was kind of stupid, because like, when I got charged with assaulting him... I got put in jail, and all the other times, he assaulted me. (Christine, white, GVRD)

In this case her boyfriend was not arrested. Rose was arrested and spent the night in jail for hitting him and trying to get away after her boyfriend tried to rape her and violently assaulted her. She called the police for help, who, after taking statements from both, arrested her and not him. She describes her reaction:

Really? Really? You can see that I am the one being abused in this relationship. Like, that night, my boyfriend broke through, like, when we used to get into fights I used to lock myself in the bathroom to get away from him. That night he broke through the door. He punched and kicked through the door to get at me. But I'm the one that was arrested. I called the police asking for help. (Rose, white, GVRD)

The charges were later dropped after her lawyer, the crown and the judge concluded that she was clearly acting in self-defence and that the police had erred in arresting her.

5.4.2 Prostitution, gangs and drugs

As discussed earlier, for girls who are exploited through prostitution, drugs and gang violence, heavy policing and criminalization is a daily reality. During the YCJA reform, consensus developed that jailing youth for prostitution was not acceptable. Largely, this was based upon the understanding that child prostitution was actually exploitation, not crime. Thus it was a child welfare issue, not a criminal justice issue. This was, of course, encoded into the implementation of Section 29.1 of the new legislation. Officially, it appears that efforts have been successful to stop the practice of incarcerating youth for prostitution. However, those policy reforms and the current framing of girls' offences do not extend to the broader context of their lives, where prostitution is but one of many aspects of their exploitation. Consequently, girls who are abused and exploited in other ways are not constructed as 'exploited' youth.

Chesney-Lind and Irwin (2004) point out that girls in gangs have less social and economic power than males. Furthermore male gang members often "used rape and violence to control them" (p. 48). This compounded their decreased economic power in the drug economy, where physical strength and violence determine one's relative power (Chesney-Lind and Irwin, 2004, p. 48). As a consequence, girls are vulnerable to coercion by drug dealers and older male gang members under threat of violence, or exploitation through 'protection,' money and drugs to engage in drug, theft and violent criminal activity. Krystal provides a sense of how these illicit 'industries' are connected:

I sold drugs. I collected for other dealers. Umm... I worked in an escort agency for a while. I did the stripping for a while. A little bit of everything pretty much. (Krystal, white, Okanagan)

J.G.'s story highlights the complexities even further, describing how, not only was she stealing cars because she was forced to, but at other times stealing cars became a source of survival and resistance to male violence:

So I pled guilty to stealing four cars, and I got five months of house arrest... and two years of probation (J.G., Aboriginal, Northern B.C.) I had been up forever and was doing heroin at the time so I got really sick. It was horrible. And my family told me to just go to bed and when you get up we will deal with it. So I slept for a week and then I got up and I called the cops and I said, come get me. And I was honest with the judge and I said yeah, I was stealing these cars but I was stealing them because I had a boyfriend that is gang affiliated and he was telling me to. And I was scared. And stealing cars was better than actually turning tricks. I never stole a car that didn't belong to a trick. And I just thought as I was doing it, at the same time ... now go home and tell your wife why I have your car and your wallet (J.G., Aboriginal, Northern, B.C.).

The story emerging from Krystal and J.G.'s narratives is that their criminal activity is situated within a complex web of exploitation and oppression that too often goes unacknowledged by law enforcement. Thus, when they are criminalized, their exploitation is erased, and their resistance and agency twisted to look like dangerousness.

Julia's story provides an example of the failure by police to view her as a child in need of protection when she was arrested in raids on crack shacks with drug dealers and other organized street criminals:

They would just put me in the back of a car and be like "you are too young to be here." They would put me in the back of the car and like, like sometimes they will put you in there with like other people from the raid or whatever. And I mean, like they are scary people. And they're just like... you can... like they got AIDS and stuff and they're... you know, like they get into a fight with the cops and they are bleeding and they put you in the back of the car with them because they don't have enough cars there. You are just like "oh my god."

[S.B.] You were put in the car with adult men?

Oh yeah. Men. Women. Hookers. Dealers. It was all the same. Just because I was there. (Julia, white, Okanagan)

These stories illustrate the disastrous results for the most marginalized girls, when they are framed as criminal. What needs to be re-read into their stories are the multiple failures by police, child welfare and others responsible for the well being of children to recognize and respond to exploitation, abuse and neglect.

You feel like, even though you are being pimped, and it is the RCMP you want to go to for help because somebody is hurting you. You can't. Or you feel like you can't, because they are not going to believe you, or they will think less of you or that you don't mean anything to them. (J.G., Aboriginal, Northern B.C.)

Overall, the picture that emerges from the reasons that young women were incarcerated suggests that girls are being held for reasons that extend well beyond legal justifications for deprivation of liberty. Beyond these infringements upon their civil liberties, the layers of discrimination and social oppression characterizing their experience are very concerning.

5.5 Summary

Thus far, girls' stories indicate that police holding cells are serving as child welfare centres, sobering centres and places of punishment, despite policy and human rights standards that expressly prohibit the use of police jails for these purposes. Furthermore, their narratives highlight the gendered, raced and classed dimensions of this practice, when situated within an analysis that foregrounds relations of power in the institution and dominant culture. The next chapter uses human rights standards, with respect to minimum standards of treatment for child prisoners, to contextualize their reports regarding conditions and treatment in custody.

6: WHERE VIOLENCE IS ROUTINE: GIRLS IN THE CELLBLOCK

The trouble with Eichmann was precisely that so many were like him, and that the many were neither perverted nor sadistic, that they were and still are, terribly and terrifyingly normal (Arendt, 1964, p. 130)

The facility's disregard of the psychiatric illnesses virtually universal among the girls confined at the facility blinds its staff to the complex origins of the behavioral difficulties experienced by these girls. As a result, staff recurrently act from one paradigm, and one paradigm alone—the paradigm that if you punish unwanted behavior harshly, over and over again, the behavior will eventually improve. This is a brutal and entirely counterproductive response, one that can only worsen the emotional state of the girls so treated and lead to an increasingly sadistic and overly controlling attitude by staff (Grassian, 2009)²⁴

Conditions of confinement do not appear to receive much, if any, attention in policy discussions surrounding the use of incarceration for youth. The silence surrounding this may be related to any number of factors. Perhaps the reason is economic: improving standards of incarceration may hurt the bottom line. On the other hand, the reason may be purely ideological; get-tough on crime rhetoric permits 'criminals' to be dealt with harshly, mandating deterrence and retribution. Or, it may simply be due to an implicit trust among politicians and the public that the Canadian government, proud human rights defender, is a competent and safe guardian. Regardless, the question is rarely a focal point in youth justice discussions, save for

²⁴ Grassian, a psychiatrist, is an expert witness in a class action suit organized by five young women and the American Civil Liberties Union (ACLU) against the Texas youth Commission for their treatment while in detention. Retrieved: http://www.aclu.org/files/pdfs/womensrights/kcvtownsend_declarations.pdf

extreme and high profile incidents where death or serious injury has occurred (e.g. Willow Kinloch²⁵, or Ashley Smith²⁶).

Yet, depriving children of liberty is a serious infringement upon one of their most basic rights, bringing with it an enormous responsibility to provide for their well-being and safety. Despite the relatively brief nature of detention in police holding cells, this requirement carries no less force. In fact, given the presumption of innocence, their age, vulnerability and the nature of the crimes for which they are detained, one would expect that their detention would be heavily regulated and monitored to ensure strict adherence to human rights standards.

6.1 Dignity & best interests

People in detention, at all levels, retain the inalienable human rights protections enshrined in the *Charter of Rights and Freedoms*. Section 7 guarantees that “everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice” while Section 12 states that “everyone has the right not to be subjected to any cruel and unusual treatment or punishment.”

Internationally, specific standards governing conditions of confinement are well established in various United Nations rules and conventions. With respect to youth, there are four UN agreements, three non-binding and one binding, that specifically address standards of treatment and conditions of confinement. Articles 37 and 40 of the *Convention on the Rights of the Child* provide the only binding articulation of children’s

²⁵ Willow Kinloch was arrested for being intoxicated in public. Victoria police detained her in the cell-block and tethered her to her cell for her perceived misbehavior while in custody. She subsequently won a lawsuit against these officers for their misconduct in her treatment.

²⁶ Ashley Smith was a young woman who died tragically while incarcerated at the Grand Valley Institution for Women in Kitchener-Waterloo, Ontario. She had spent most of her young life as a child prisoner.

rights in detention. Article 37 was addressed in the preceding section, as it deals with the right not to be arbitrarily detained. However, Article 37, subsection (c) also provides that

Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age.

As one would expect, the guiding principles for the CRC hold that children require special attention due to their age and development. This principle is articulated in Article 3, which states that

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

The meaning of the term “best interests of the child” has been debated (Denov, 2004) because it is incredibly vague and subject to broad interpretation. The CRC made an effort to clarify the interpretation for the purposes of juvenile justice in its General Comment No. 10 (2007), stating that this term should be understood to mean that

Children differ from adults in their physical and psychological development, and their emotional and educational needs. Such differences constitute the basis for the lesser culpability of children in conflict with the law (Para 10).

In a later discussion the committee elaborates, noting that “the child’s best interests does not mean for the convenience of the state parties” (Para 85).

Finally, Article 40 details the standards for treatment of youth held in detention:

States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

The remaining UN documents that apply include the *UN Rules for the Protection of Juveniles Deprived of Liberty (1990)* (The JDL Rules); the *UN Minimum Rules for the Administration of Juvenile Justice (1985)* (Beijing Rules) and the *UN Guidelines for the Prevention of Juvenile Delinquency (1990)* (Riyadh Guidelines).

6.2 Equality & non-discrimination

The right to equality and to be free of discrimination are fundamental rights guarantees. Section 2 of the CRC stipulates that

States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

The special needs of girls in detention are also addressed under article 26.4 of the Beijing Rules

Young female offenders placed in an institution deserve special attention as to their personal needs and problems. They shall by no means receive less care, protection, assistance, treatment and training than young male offenders. Their fair treatment shall be ensured.

However, this principle is limited in its utility to Canadian girls as it is both non-binding and promotes a narrow liberal understanding of equality for girls. Both Besson (2005, p. 452) and Taefi (2009) assert that to establish full equality for girls this principle must be understood to mean substantive equality, not simply liberal equality.²⁷ The

²⁷ Liberal equality, sometimes defined as “equality of opportunity,” reflects a state of non-discrimination, whereby the state protects people from discrimination by ensuring that all people are on an “equal playing field.” It implies the removal of any formal barriers to one’s ability to achieve full equality. Substantive equality, or “equality of outcome,” is concerned with the impact of the policy, recognizing that equality means treating like-situated people alike and differently-situated people differently. Thus there is an implicit acknowledgement that due to biology men and women are inherently different, and therefore policy must reflect these differences in order to ensure that the outcome of any law does not disadvantage one. It is this form of equality that feminist and other human rights advocates are most concerned (Taefi, 2009, p. 366).

Committee on the Rights of the Child appears to embrace this interpretation in their *General Comment (2007)*, where they elaborate upon the interpretation of Article 2 stating that

States parties have to take all necessary measures to ensure that all children in conflict with the law are treated equally. Particular attention must be paid to de facto discrimination and disparities, which may be the result of a lack of a consistent policy and involve vulnerable groups of children, such as street children, children belonging to racial, ethnic, religious or linguistic minorities, indigenous children, girl children, children with disabilities and children who are repeatedly in conflict with the law (recidivists).

Through recognizing that states have a negative obligation²⁸ to ensure that policies and practices do not discriminate against marginalized girls in their effect, the committee affirms that policy makers must be cautious to ensure that policies reflect a comprehensive understanding of girls' social locations and do not reproduce systemic power relations.

Additionally, Besson (2005) argues that ensuring substantive equality can also mean that “specific protection measures” may be required to remedy historical abuses and discrimination. Since substantive inequality can be the compounded result of past and continued forms of discrimination against marginalized groups, states have a positive obligation to discontinue the broader process of systemic discrimination through individual policies (p. 452).

In addition to broader forms of gender oppression, substantive equality (namely protection measures) is a particularly pressing consideration with respect to violence and

²⁸ Negative obligations refer to one of two types of duties imposed upon states to ensure equality. Negative duties require that state's “abstain” from any form of discrimination and that they protect citizens from any discrimination. Positive duties, on the other hand, refer to the obligation on states to *promote* equality by establishing laws to ensure that all people can fully enjoy their rights and equality. These tend to apply to social and economic rights, which are the foundation of many equality rights – such as the right to adequate standard of living (Besson, 2005, p. 437). Thus in their interpretation of Article 2, the CRC is affirming a negative duty on states to protect marginalized populations from potential discrimination.

abuse against girls. Due to the on-going and pervasive nature of violence against girls, and extensive research documenting the extreme and multiple forms of abuse that criminalized girls have experienced (at the hands of family, friends, drug dealers, pimps, johns, strangers and institutional 'professionals'), conditions of confinement and routine practices which impact their physical safety and control over their bodies must not expose them to more violence, exacerbate or trigger the impacts of past abuse (Acoca, 1998; Belknap & Holsinger, 2006; Bilsky-Chesney-Lind, 2011; McDaniels-Wilson & Belknap, 2008). This right is also expressed in Article 19 of the *Convention on the Rights of the Child*, which states:

States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

This position was affirmed by the Supreme Court of Canada in *Weatherall v. Canada* [1993] (2 S.C.R. 872) with respect to the issue of cross-gender searches in prison. In this case, the appellant was a male inmate who was arguing discrimination on the grounds that the Corrections Canada policy allowed female guards to search male inmates, while male guards were prohibited from searching women inmates. La Forest J. ruled that the pervasiveness and nature of male violence against women, in the context of systemic patriarchy, created greater discrimination and harm in effect for women guarded by men than for men guarded by women. He states:

...equality does not necessarily connote identical treatment and, in fact, different treatment may be called for in certain cases to promote equality. Given the historical, biological and sociological differences between men and women, equality does not demand that practices which are forbidden where male officers guard female inmates must also be banned where female officers guard male inmates. The reality of the relationship between the sexes is such that the historical trend of violence perpetrated by men against women is not matched by a comparable trend

pursuant to which men are the victims and women the aggressors. Biologically, a frisk search or surveillance of a man's chest area conducted by a female guard does not implicate the same concerns as the same practice by a male guard in relation to a female inmate. Moreover, women generally occupy a disadvantaged position in society in relation to men. Viewed in this light, it becomes clear that the effect of cross-gender searching is different and more threatening for women than for men... (Weatherall v. Canada (Attorney General), [1993] 2 S.C.R. 872)

Notably, La Forest affirms that Canada has to promote both positive and negative duties to produce substantive gender equality. To do this, structural oppression must be named and inverted in policy and practice at all levels from the ground (i.e. lived experience). The implication being that systemic change can only occur when practices not only cease to perpetuate inequality, but actively restructure broader power relations to remedy inequality (positive obligation). This necessarily requires that some policies produce liberal inequalities, in order to respond to discrimination and promote substantive equality. Thus, in the context of girls, institutional and criminal justice policies and procedures must be very attentive to the lived experiences of girls' oppression. This means moving away from abstract notions of equality rights, towards embracing an understanding that the day to day interactions, routines and practices are where rights need to begin.

The Committee on the Rights of the Child also acknowledges the lasting impact of violence against girls and the added layer of discrimination this creates in their daily lives and the necessary acknowledgement that conditions of confinement and practices that impact upon their bodily integrity will have the potential of perpetrating or compounding that harm.

...Since girls in the juvenile justice system may be easily overlooked because they represent only a small group, special attention must be paid to the particular needs of the girl child, e.g. in relation to prior abuse and special health needs. Professionals and staff should act under all circumstances in a manner consistent with the child's dignity and worth,

which reinforces the child's respect for the human rights and fundamental freedoms of others, and which promotes the child's reintegration and his/her assuming a constructive role in society. (Article. 40 (1); Para 40)

For criminalized girls, then, institutional practices that are occurring within a backdrop of (male) violence, exploitation, neglect and degradation, systemic oppression is operating at multiple levels to intensify the harm and inequality, thus producing greater and sustained inequality. More than this, the cumulative nature of this oppression and the fact that she is still a developing child means that, unlike adult women, the impact of the violence is intensified. It becomes an affirming part of her narrative. This means that each act of violence and degradation that she endures at a young age will contribute to her development, rather than simply be intensified as a consequence of a horrific past. Simply put, her history is still being written.

Thus, in institutions where girls are confined and at their most vulnerable, extreme caution and care must be taken not only to abstain from discriminating in policy, but act to remedy inequality and oppression. This means radically altering the approach to dealing with criminalized girls in a way that foregrounds gender-raced-classed based oppression and violence, changing policies that reproduce systemic discrimination and restructuring power relations. For example, the knowledge regarding the multiple forms of sexual and physical violence girls experience daily, combined with the understanding that invasive procedures (such as strip-searching), trigger trauma from past violent victimization, particularly in male dominated environments, should lead to a drastic overhaul of security procedures that could unnecessarily infringe upon their right to dignity and bodily integrity. Furthermore, policies should be designed to strengthen every young woman's sense of entitlement to health, safety and well-being. Girls should be made to feel cared for, safe and empowered.

Within an intersectional analysis, this same argument can be advanced with respect to the lasting impacts of class and colonial discrimination. Compounded by gender-based discrimination, racialized and low-income young women experience extremely high rates of violence and added threats to their dignity and well-being on the basis of their social location. This is not only true in the context of overt racism and violence, but in routine policies as well. One particularly demonstrative example was a Burnaby Youth Custody Centre in British Columbia prison policy that required youth to be shackled in leg restraints during ceremonial sweat lodges (Dean, 2004). When situated within a backdrop of cultural genocide and colonialism, this policy perpetrated further racist abuse and affirmed the state's flippant disregard for Aboriginal traditions. For the youth involved, this practice constituted "an assault upon the dignity, spirit and culture of Indigenous youth" (David Dennis, as quoted by Justice for Girls, 2006, February 17) under the guise of security protocols.

Young women's experiences in police city cells are troubling, from both an equality and a human rights standpoint. Conditions and treatment reported by young women in this research constitute a violation of any person's human rights, but the harm and discrimination is compounded by their age, gender, race and class.

Most of the young women report that they were only held in custody from a few hours and/or overnight, while some young women report being held for longer periods of time. The girl who reported the lengthiest detention was held for a total of seven days, transferred between two Okanagan police stations. Again, however, the length of their confinement is not important from a human rights perspective, particularly when the quality of the experience is intensely harmful, and for some girls, frequent and routine. The layers of physical, emotional and psychological pain combine to create a very

overwhelming and degrading experience for girls who are already coming from raced, classed and often dangerous places.

The following section detailing girls' narratives of police detention is organized according to international human rights standards regarding the treatment of youth in custody in an effort to foreground their interpretation and lived experience at the intersection of many oppressive systems of power. The picture that emerges raises urgent human rights questions and concerns about the practice of detaining girls and youth in police jails. Girls report being subjected to many forms of institutional violence while in police custody. The term institutional violence, first used by Faith (1993) is useful for describing the multiple and sometimes hidden forms of violence that girls experience in institutional settings, such as jail. These refer to the physical and psychological environment, routine practices and treatment as well as direct forms of violence. It must also be noted that there is not sufficient space to detail the numerous reports that arose, and thus the present analysis focuses only on those that are most obviously gendered, given the scope and purpose of this discussion.

6.3 Deprivation & denial

Juveniles deprived of their liberty have the right to facilities and services that meet all the requirements of health and human dignity (JDL Rules, 1990, s. 31).

According to the girls' descriptions, cell conditions varied across jurisdictions. Some young women described the cells as very clean, and did not have any comments on how they looked. Others were held in cells that were dirty and exposed them to bodily substances, including blood, vomit, feces and urine.

I don't know how to explain it, but like, some girls don't like using the washroom so they use the floor. (Lily, Aboriginal, Okanagan)

Prevalent in all their accounts was the emotional and psychological impact of being held, which was summarized by one young woman who described her experience.

Just being cold, or dehydrated or hungry. Left for long periods of time without any...anything. I was scared. Because this became routine. I just thought...ugh. I mean you hear stories of cops taking girls and just throwing them into a cell and doing stuff to them. So I always had that in my mind because they never said anything or told me what I was being arrested for. (Samantha, Aboriginal, Okanagan)

Every girl interviewed reported being denied one or more basic necessities as defined by the JDL Rules and the *Standard Minimum Rules for the Treatment of Prisoners (1977)*. These included blankets, pillows, clothing, hygiene products, toilet paper, medical care, human contact, healthy food and access to a clean washroom.

6.3.1 “You can’t just shun me off”: Denial of basic necessities

They need to understand that if you ask for toilet paper you have the right to have toilet paper, or pads or tampons. If you are gonna hold me there I have now become your responsibility and that does not mean you can just shun me off and pretend I’m not there. If you are going to take responsibility of me, then you need to be responsible for MY needs. (Julia, white, Okanagan)

For the most part, interviewees indicated that they were not provided hygiene products of any sort, including soap, toothbrushes or even running water. Some did not express that this produced any substantial harm, because they were only detained overnight and they cleaned up when they went home. For others, particularly those who were detained longer, or who had specific needs, the anger and humiliation of being denied fundamental necessities was clear.

There was no toilet paper in there. There was nothing. There was just that round thing and I almost sat on that thing just to keep warm because I was SO cold. But I knew it was dirty, so I was just sitting up on this bench in the corner and I was like “fuck.” (Alice, Aboriginal, Okanagan)

Of particular concern from an equality and rights standpoint is the denial of feminine hygiene products.

I asked if he had a cloth or something like, you know, that I could clean myself off with because I had it like running down my legs and stuff. Because it took like forever. I called the guard for like, I don't know 30 fucking minutes cause I had just gotten my period and was bleeding. So yeah, he got me fucking paper towel. And I said what am I supposed to do and he was like "I don't know...figure it out." (J.G., Aboriginal, Northern B.C.)

Historically, the regulation of girl's sexuality and reproduction has had harmful and violent implications for girls. Pregnancy and menstruation have been used as sites of repression; their bodies constructed as abnormal objects to be controlled through 'expert' knowledges, media, institutional regimes and capitalist exploitation. The repercussions for young women have been disastrous. Institutional and medical discourses, for example, have reconstituted what are frequently rare, or in some cases, healthy and natural features of their sexuality, such as PMS and post partum depression, as diseases to be managed and 'cured' (Nicholson, 1995, p. 781). The forced sterilization of women in mental institutions during the mid-nineteenth century is demonstrative of the insidiousness of this level of regulation as women's sexuality was pathologized, and then punished through coercive physical repression.

Aboriginal girls experienced parallel forms of corporeal regulation. Racist constructions of "drunken," "dirty" or "primitive" "Indians" combined with patriarchal assumptions about "normal" bodies and "proper" female sexuality meant Aboriginal girls were subjected to greater social control and punishment, often in relation to commercial sexual exploitation (Balfour, 2006, p. 155). At the same time, the corporate medico-pharmaceutical industrial complex commodified the female body, often through shame and stigmatization. For instance, advertisements for feminine hygiene products aimed at teenage girls convinced young women that menstruation is embarrassing and that they must purchase expensive, often toxic and environmentally harmful products in order to conceal it.

Gendered, racialized, and age based power structures, then, are reaffirmed where young, mostly Aboriginal, female inmates are forced to ask for tampons from mostly male, white, adult guards, who ignore or deny their request. In confinement, the intersections of many historical forms of oppression conspire within the coercive prison regime to inflict a unique form of humiliation, shame and punishment on girls. Stripped of her liberty in a cold, empty cell, her body becomes an instrument of social and psychological repression. For girls who have experienced the violence of prostitution, sexual violence and/or physical abuse, the added layer of power is especially violent.

Like say you have your rag or something. Like, they won't give you girl products...I just stuffed like toilet paper in I guess. I had to show up to court like that too. Like it was so...like it was gross. (Tara, white, Okanagan)

The denial of feminine hygiene products is not only neglectful, but it invokes the legacy of oppressive institutional systems, including youth justice (as well as residential schools and child welfare institutions) for girls, where “punitive gender regimes” (Bilsky & Chesney Lind, 2011, p. 45) regulate and control young women through their sexuality. Findings from past research that report similar incidents suggest this is not isolated to police jails or even particular geographic regions, and is a systemic feature of coercive institutions. In Ontario, Totten (2000) found that girls were told to use toilet paper (p. 41), while in another U.S. study male guards were too embarrassed to get tampons and forced the girls to wait for another guard to come on shift before their requests were met (Acoca, 1998).

6.3.2 Denial of clothing

*The possession of personal effects is a basic element of the right to privacy and essential to the psychological well-being of the juvenile.
(Article 35, JDL Rules)*

To the extent possible juveniles should have the right to use their own clothing. Detention facilities should ensure that each juvenile has personal clothing suitable for the climate and adequate to ensure good health, and which should in no manner be degrading or humiliating...

(Article 36, JDL Rules)

Girls are routinely forced to remove articles of clothing when they are booked into cells. The booking process is like a ritualistic dismantling of the young woman, as she is stripped physically and mentally in order to be reconstructed as an inmate. Much like Garfinkle's (1956) *Conditions of Successful Status Degradation Ceremonies*, these rituals serve the purpose of re-defining her as dangerous, in need of control and possibly protection. Her identity is transformed through the institutional ritual and her "total identity" becomes one of "prisoner" in order to cement her subservience to police and guards. Garfinkle (1956) theorizes that the degradation ceremony is a necessary feature for shifting the power dynamic of any relationship, reducing the social status of one person to another. Of key importance to successful degradation are the normalization and routine nature of the procedures within the context of the institution (Garfinkle, 1956, p. 423). Further, the previous identity of the "denounced" person "must be completely replaced, by erasing any characteristics identifying them as part of the "tribe" (in this case, the guards or police officers), while their denounced characteristics symbolically identify them as different and "strange" (Garfinkle, 1956, p. 424).

Removal of clothing serves as one of many degradation ceremonies the young women must endure to reinforce their role as inferior. The distance between the "denounced" and "denouncer" is starkly evident in the costumes that each wears in the context of the cell-block. On one hand guards are dressed in full uniform, complete with weapons, radios, and restraint devices, emphasizing their authority, their strength, their social acceptability and professionalism.

Girls, on the other hand, are reminded of their vulnerability, weakness and the threat they pose to themselves and the institution, as they are deemed capable of using their clothing to do harm. The removal of physical effects reinforces the perception that they are risky, dangerous and in need of management. For example, J.G. recalls how, for her, the process reinforced her social label as threatening.

They took my socks even. Because other 'guests' can hang themselves with them. How the fuck anyone is gonna hang themselves with socks is beyond me. (J.G., Aboriginal, Northern B.C.)

The ceremony is then normalized in prisons as necessary for security purposes, protecting both the institution and the young woman from herself. Police policy cites confiscation of clothing as necessary to prevent prisoners from harming themselves or committing suicide. Girls understand this and have internalized the idea that this is a normal means of dealing with dangerous people, and that they themselves are dangerous people. Jail policies and practices are written in terms of liability and risk management, where the primary focus is not protecting the girls from themselves, but rather to protect the police from liability, should the young women harm themselves. This is exemplified in the emphasis upon documentation, where the focus is placed upon developing a record that can be used to protect the institution, should a serious incident or death occur (See Vancouver Police Department, 2006, S. 1.12.13 (i) b, for example). The underlying assumption of liability and risk management logic is that prisoners (young women) are mentally unstable and violent and that this violence is a known risk to the legitimacy of the institution. Therefore, procedures are designed to account and respond to them as such. Rather than providing support, or counselling, upon determining she might commit suicide, procedures require a series of documentation and reporting procedures (after providing an emergency medical response, if necessary). The focus then shifts to how to *safely* detain the prisoner:

The Jail NCO may direct alternative action by isolating the prisoner, moving the prisoner to an MDO (Mental Disorder) cell, replacing the prisoner's clothing with appropriate clothing for the situation, and by directing a special watch to ensure the prisoner's well being. The Jail Nurse will examine prisoners so detained in the Jail. (Vancouver Police Department, 2006, S. 1.12.13.(ii) 3)

While policy uses the term 'well-being,' it is difficult to ascertain how segregation, removal of their few remaining personal effects and increased surveillance promotes psychological and emotional 'wellness.' It does, however, prevent any further suicide attempts while police are legally liable for the girls' physical safety.

Research demonstrates that girls are consistently more likely to self-harm and attempt or commit suicide than male youth in custody (Chesney-Lind & Shelden, 2004; McCreary Centre Society, 2007; Totten, 2000), this has been identified as a consequence of past histories of trauma, abuse, re-traumatization within the institution and a lack of training and resources to help them (Totten, 2000). Some young women view this as a way of expressing emotion without lashing out at others in aggressive and violent ways (Totten, 2000, p. 27). In the context of liability and risks, however, this is erased. The young women are once again denied care and support, and are further oppressed as they are treated like threats to the institution. Their emotional pain is constructed as deviant and, unlike 'healthy' people, they are assumed capable of doing criminal things with their emotions.

Furthermore, the pathologization of self-harm in custody actually deflects attention away from the jail conditions that are arguably more harmful to their well-being and often contribute to the girls' self-harming. Faith (1993) found that women's self injury was a strategy for coping with the abhorrent conditions within correctional institutions and the associated trauma of this and their past victimizations. In a study from the United Kingdom, one young woman in custody indicated that she self harms

when “there’s nobody around to talk to...” (Douglas & Plugge, 2008). In Canada, Kilty (2006) argues that correctional policies framing adult women’s self-injury as ‘risk’ prioritize protection of the institutional regime over the women’s well-being.

Consequently, women are segregated to prevent self-injury, where the punitive segregation regime produces more isolation that may trigger further harm and trauma. Kilty (2006) posits that this practice may constitute a violation of women’s rights under sections 7 and 15 rights of the *Canadian Charter of Rights and Freedoms* (p. 174).

Theoretical implications and rationales aside, the impact of the practice of removing clothing is damaging for girls. First and foremost it is physically harmful. Girls report that the jail cells are very cold at all times of the year, yet they are required to remove warm layers and to weather the conditions without blankets and often barefoot.

I couldn’t sleep. Like it is SO cold, like having no bra, no jacket, no everything. Just like this slim beater. It is just like so cold. (Christine, white, GVRD)

Girls report that the police routinely take shoes or shoelaces, bras and any strings that they could potentially use to hang themselves. Their descriptions reveal that police can be disrespectful during the procedure:

...they took the string off my hoodie. My bra. And I was kind of like pissed off about that. I was like...what are you guys doing? You guys are taking my bra? And of course, like I couldn’t understand that shit. I just thought they were being perverts or weirdos... [they took] this really cool leather pendant. It was just really cool. My friend gave it to me. It had turquoise and it was awesome. They couldn’t get it off so they cut it off. And they were like “oh well” and I was like “oh well?” (Alice, Aboriginal, Okanagan)

Again, the gendered power dynamic where control is exacted through physical processes that necessarily, by virtue of her gender, sexualize her experience of confinement must be underscored. The age relationship as well, where sexualized interactions between teenage girls and adult men carry an additional level of harm. For

her, against a backdrop of sexual violence that is often perpetrated by adult men, this is yet another example.

The disregard for her personal belongings is also alarming. She is not the only young woman to report that her clothing or items were ruined or never returned. The message here is that *she* does not matter, her humanity is erased and her body is reduced to an abstract risk. The paternalistic control of denying girls access to their belongings is also embedded within a context where respect for liberal entitlements to private property are often not conferred to youth in the first place. Again, for homeless girls and those living in poverty the concept of ownership is elusive. For girls who are sexually exploited by men in return for clothes, cell phones, or other items, these practices reinforce the denigration of their self worth.

Once more, racism is also manifest in this practice, where young Aboriginal, homeless and addicted women experience this repression more harshly at the intersection of multiple oppressions.

They seemed to...uhhh, I kinda got the idea, well it is kinda bad to say that. But a lot of the Aboriginal youth got arrested a lot. So I got grouped as one of those kids who got arrested a lot. And treated really badly in Chilliwack. Like in Abbotsford I wasn't slammed to the ground or I wasn't made to do anything like that.

[S.B.]: When you say treated badly, what are some of the actions that it entailed?

*"In the holding cell. Like nothing to sleep on or a blanket. Uhh, lots of clothes taking off. Like uhh, down to my shorts and like my tank top."
(Samantha, Aboriginal, Lower Mainland)*

Samantha is aware that her youth and Aboriginality mean that she is over-policed, and consequently subjected to these practices time and time again. Violence becomes an ever more present feature of police interactions, escalating each time they have contact. For her, the level of physical control and discipline the police exert over

her is intricately connected to her race and operationalized in sexualized and violent ways.

6.3.3 Medical attention

Every juvenile shall receive adequate medical care, both preventive and remedial, including dental, ophthalmological and mental health care, as well as pharmaceutical products and special diets as medically indicated... (Article 40, JDL Rules).

Every juvenile has a right to be examined by a physician immediately upon admission to a detention facility, for the purpose of recording any evidence of prior ill-treatment and identifying any physical or mental condition requiring medical attention (Article 50, JDL Rules).

Another disturbing finding from young women's reports was that they were denied necessary medical attention while they were in cells. They indicate that their requests for attention were often blatantly ignored by guards or, in some cases, met with accusations that they were lying.

...I got two teeth pulled on Monday and I got put in there on Thursday. And I actually ended up getting an infection in my mouth. I had to pretty much beg for three days to see a doctor. Because I told them I was in that much pain. And they were just giving me aspirin. And that wasn't doing anything. And I said, you cannot refuse me medical attention, go get me a police officer right now so I could speak to him. And finally they got me one and he looked at my mouth and was like, we'll find someone to escort you. So I got to the hospital... They realized that I had a dry socket and an infection so they put me on antibiotics and T3s. (Ashley, white, Okanagan)

In one case the young woman reported that her injuries caused by police use of force were minimized and denied:

Oh that one time when that ummm, when I was slammed down to the ground. There was...my face was cut open so they stitched it up for me right after... it was after like many, many attempts to tell them that I was hurting and I think I was bleeding. Cause they just kind of did it and put me in the back of the car. My face was really hurting and I had cuffs on so I couldn't tell if I was bleeding or not and it was really dark. But I remember telling them I was hurting. Then the female cop came to the

back of the seat and she looked and there was this big gouge and she told me I had a gouge in my face. And she told me that I fell. And I'm like, 'No I didn't fall, your officer, slammed my face into the ground.' She's like 'you must have fallen'. I'm like 'no. I didn't fall.' They never listen to that. They just stitched it up and carried on with what they were doing. (Samantha, Aboriginal, Lower Mainland/Okanagan/ Northern B.C.)

Police disregard for the health of the young women was clear in a few accounts, despite policy that all people admitted in the holding cells are to have their injuries and health condition documented upon intake. In the case of intoxicated people, prisoners must be assessed by a medical professional (Royal Canadian Mounted Police, para. 4.4; Vancouver Police Department, 2006, para. 1.12.10.1; para. 1.12.1.1). However, upon being asked, only one of the interviewees stated that she had seen a nurse while detained. While, from a social control perspective, there are concerns about the use of routine medical check-ups in the context of detention, targeted assessments for acute injuries should function as an accountability measure for police use of force. The fact that this is not occurring amidst reports of police violence is concerning.

For girls who are addicted and detoxing, the denial of adequate medical care is dangerous:

I had swallowed my drugs. I started freaking out really, really bad once I was in the cell. And I was telling the officer: Like I am sick, I swallowed my drugs. Like I was tweaking out. And I probably really wasn't making any sense to him because I was terrified. I was sitting in the corner of the cell and I actually started banging my head off the wall. I didn't receive any medical attention. Three hours passed with me sitting on the floor rocking back and forth, scared out of my tree and balling my face off and pulling handfuls of my hair out and smacking my head against the wall. They just let me out. They just released me back into downtown Vernon. And I had swallowed like a half ball of crack. (J.G., Aboriginal, Northern, B.C.)

It was bad. Because you don't have like the proper...because like if you are detoxing you need proper water. You don't have the proper medical support either. Or psychological help either. Cause you are going crazy. You are thinking of all this stuff right. Cause you have nothing else to do right. (Tara, white, Okanagan)

Not only do guards leave young women to detox alone, there is evidence that they rely upon stereotypes and prejudice about addiction to justify the refusal to provide necessary care:

Um, I was taken to the hospital right away. They just did an x-ray and nothing was broken so they took me to cells like that. Like I didn't get any pain killers... the doctor gave me a prescription for T3s and they refused to give it to me because they were like, "oh, well you will probably just get high off of them." They wouldn't give me the T3s, they wouldn't give me the crutches and they just wouldn't give me anything for my leg (Julia, white, Okanagan).

Thus, addiction is not seen as a symptom or coping strategy for violence, poverty and neglect, but rather as deviant behaviour that warrants punishment instead of medical attention. Research has made the link between criminalized women's drug addiction and past victimization. It can be a form of self-medication, providing escape from the realities of poverty, violence and sexual abuse (Barker, 2009, p. 134).

6.4 The violence of routine practices & the security regime

6.4.1 Handcuffs & restraints

Recourse to instruments of restraint and to force for any purpose should be prohibited, except as set forth in rule 64....Instruments of restraint and force can only be used in exceptional cases, where all other control methods have been exhausted and failed, and only as explicitly authorized and specified by law and regulation. They should not cause humiliation or degradation, and should be used restrictively and only for the shortest possible period of time

(Articles 63 and 64, JDL Rules)

Despite this standard, girls are handcuffed as a matter of police routine, regardless of the reasons or circumstances of their arrest. Some girls report the humiliation of being gratuitously cuffed in front of their children, neighbours and employers when they were being arrested.

Well yeah, I was volunteering, right. At this therapeutic riding association, right. And I was like getting off the bus. It was in front of all the kids I was volunteering for and I see this cop sitting there and I'm like "oh god" and I knew right. Like I was trying to do better, but I was like yeah. It was embarrassing.

[S.B.]: what did they do?

T: well I just kept walking towards to go to volunteer or whatever, and the cop was like "[Tara] you are under arrest for robbery". In front of like everyone. (Tara, white, Okanagan)

In addition to being humiliating, they report that the cuffs are painful. During interviews the young women held up their arms to display the characteristic scars that handcuffs left on their wrists.

Oh yeah. You get, like sometimes, like if you were trying to move around and stuff and they had them too tight they could cut into your skin easily. Especially when it was cold. And they like, they, in the winter time they will make you stand outside instead of putting you in the back of a car. They'll just make you stand out there while they search the car and do whatever they need to do. Make sure someone is watching you. (Julia, white, Okanagan)

The process of being put into handcuffs was often violent, especially for girls who were aggressive or resistant. They described being pushed to the ground, their arms forcefully pulled behind their backs.

I was not being nice then they weren't very nice back to me. Which I guess I didn't know was the norm, or if it is not the norm. I don't know. I just know that it was like...I had bruises on my arms and stuff like that you know. I had bruises on my arm...from like...getting your arms pulled up behind your back and getting shoved around. (Alice, Aboriginal, Okanagan)

The potential for police to abuse the use of restraints, use them unnecessarily or as punishment was horrifically exemplified in the case of Willow Kinloch, who was tethered to a cell door for hours in a Victoria, B.C. police lock up. The incident was exposed in the media when surveillance footage was leaked publicly on the internet. Kinloch later won a settlement with the Victoria police for her treatment and two police officers were held responsible (CBC News, 2008, May 15). While none of the girls in this

research were tethered, two girls reported that they were held in restraints for an extended period of time and one young woman was, in her words “hog tied.” (J.G., Aboriginal, Northern B.C.)

In Kathy’s case, she was kept in shackles in her jail cell because police wanted “to make sure she was calm” (Kathy, Aboriginal, GVRD). Four point restraints, or shackles, are also routine during transport in sheriffs vans, to and from other police stations, youth detention facilities and court houses. While waiting for court, some girls are held in shackles for hours.

And like today when I had to go from the court cells to the court room. You gotta walk up all these stairs and like enter the court room from the side cause you are a prisoner. And I was still in shackles. Like I had to walk up all those goddam stairs in shackles. And they like make them so tight too. I wonder if I even have bruises. They were pretty tight. They just pinch at your ankles and they hurt so bad. (Ashley, white, Okanagan)

Ashley, who had been in lock up for seven days on a breach charge after being caught drinking alcohol at a party, lifted up her pant leg to show the gouges in her ankle. It is difficult to imagine why, at approximately 110 pounds and five feet, five inches tall, it was deemed necessary for Ashley to be shackled at her legs and arms for hours while she was transported from the RCMP jail cell to the court house and back.

Handcuff restraints appear to be routine control measures that are rarely questioned, and often exploited by police officers and guards as means of dominating inmates. Much like the situation in the Burnaby Youth Custody Centre, where Aboriginal girls were shackled during sweat lodges (Justice for Girls, 2006), however, restraints can contribute to larger social oppressions. In light of this, and the fact that girls rarely present grave threats to public safety, it hardly seems appropriate that they be cuffed as a matter of practice.

6.4.2 Strip-searching

No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment (Article 37, CRC).

States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society (Article 40, CRC).

States parties have to take all necessary measures to ensure that all children in conflict with the law are treated equally. Particular attention must be paid to de facto discrimination and disparities (Article 6, CRC).

The violence of strip-searching is perhaps one of the most heinous acts of sexual and psychological violence inflicted upon girls held in police custody. In the case of teenage girls, the security rationale is flimsy and the degradation is severe.

I just felt weird. They were like spread your legs...and I was like "what are you doing to me?" like that was scary. I had no idea what was going on at all. (B., Aboriginal, GVRD)

Strip-searches are considered necessary security measures for preserving evidence and as a means of preventing prisoners from bringing in prohibited items, such as weapons and drugs (e.g. Vancouver Police Department, 2006, para. 1.12.1. (v) 8). Not all girls were strip-searched upon entry into custody; however, when they were, they were told that it was policy. It is not entirely evident what factors enhanced girls' chances of being strip-searched, but in this research, and based upon patterns in their narratives, there appeared to be some evidence of systemic discrimination.

The Vancouver Police Department Policy on strip-searching identifies the criteria officers must consider in order to determine whether a strip-search is necessary. These include reason for arrest; criminal history of the accused; demeanour of the accused and

the likelihood of discovering evidence related to the offence (2006, para. 1.12.1. (v) 8. a-f). Given the broad discretion police are afforded, the apparent lack of oversight and existing evidence regarding police discretion with girls, women and other minorities (see, for example: Visher, 1983; Schulenberg, 2006; 2010), the potential for systemic discrimination exists. For instance, Aboriginal girls, by virtue of their overrepresentation in the criminal justice system, will have more extensive criminal records. Within the girls' own narratives, there appear to be some links between the details surrounding their strip-search and the types of crimes they were arrested for, their race, and/or their status as homeless/street entrenched youth.

Ashley, a young, non-Aboriginal girl who was in custody on a breach for being intoxicated was not strip-searched. In her interview she observed that she was treated much differently than the girl with whom she shared a cell. Although the other girl was also in custody for a breach, Ashley noted:

...They did take some pretty weird stuff from her. Like her being a known crack head. They strip-searched her and did what is called a squat and cough. And I was like 'WHAT?!?' She was like, did they do that to you? And I was like "no" and she was like 'what?' Just because she is a known crack head I guess. (Ashley, white, Okanagan)

While the circumstances are unclear, on the face of it Ashley's assessment appears likely, given that addicted and homeless girls are known to be subjected to harsher treatment (Pasko & Chesney-Lind, 2010) and that the other young woman was subjected to harsher treatment after having committed a parallel crime. Furthermore, the other girl's surprise that Ashley was not searched implies that she may be routinely treated in this way.

Sophia, a 14 year old Aboriginal girl describes her strip-search conducted in what she describes as an elevator, after getting arrested on a breach for being in her "red zone." She was clear that while there were no males present during her strip-search, in

accordance with international standards, there was a male police officer standing on the other side of the door.

They make you take off all your clothes, and open up your...down there and sit down and cough. Like spin around and stuff. They check your hair. Toes. Spread your toes. Lift up your arms. That's it...they leave the elevator door open half ways... so it is open. They just make you stand on the other side. (Sophia, Aboriginal, GVRD)

Christine, 16 years old, was arrested at a rave on a Friday night and charged with trafficking for trading a capsule of ecstasy in exchange for a bottle of water with an undercover officer. She was not taken into custody that night. When she failed to appear, a warrant was issued the next day for her arrest. She phoned and turned herself in a few days later. When the police arrested her at home she was taken into custody and strip-searched in the same 'elevator':

Well first we went to the adult holding cell. Which is where they strip-searched me. And they made me put my underwear on the elevator floor and they even kicked it and they dragged it on the floor. It was like a month ago...it was just recently that I went to the holding cell... I think it was November...cause the Friday they came out with the warrant... so it was xxxx (Date) and then the Monday or the Tuesday the cops came and took me from my house. I even called them up myself, cause like, I don't want to be the one looking like I'm...not mature, you know. I want to stand up for what I did. You know, I did it. You know, I was wrong, whatever. I'm gonna own up to what I did.

So we went to the adult holding cell. And like I said they stripped me down and they made me take off my underwear, my pants, my bra, my shirt, everything. They dragged my underwear on the floor...to make sure there were no drugs in my underwear. Then they made me cough. Made me squat and cough. And they made me, like, open up my ass cheeks. So, like...they think I had drugs in there. And I DIDN'T, ya know. Like I don't know what they were thinking. I don't know. But yeah and they made me do that and they wanted me to put on the underwear again. And it was kinda gross, because like you just kicked it on the floor, and you want me to put that on my private, you know. (Christine, white, GVRD)

The layers of unnecessary humiliation she describes are puzzling from an outside perspective; not only was she subjected to the degradation of the strip-search,

but the contempt officers' displayed by dragging her undergarments across the floor and suggesting she put them on again is disrespectful and an affront to her dignity.

Perhaps the routine nature of the strip-search desensitizes police officers to the harm that it inflicts and renders them capable of behaviours that, in any other context, would be considered atrocious acts of sexualized brutality on young women:

Like they wouldn't read me my rights until they were taking my belongings at the police station. They would just do whatever. Like they would bring a female in and they would strip-search you right there. In the street, they didn't care. Well. Like it was dark and it wasn't like [a main street]. It was out on a back road and we got pulled over. A bunch of us got followed and um, yeah. They thought that I was holding, like holding dope on me. And they like, made me pull my pants down and stuff and lift up my shirt to check under my bra and my crotch and everything. Like it was humiliating. I was like, I was probably about 16. (Julia, white, Okanagan).

As if the process was not harmful enough, when contextualized within the histories that most of these young women have of sexual and/or physical abuse, the re-victimization is tantamount to state perpetrated rape of teenage girls²⁹:

...umm... well it just feels invasive right, like. Cause you are taught like, you know, "no one is supposed to touch that right." And I have had bad experiences, like before, with that kind of thing. Right. And...

[S.B.]: with cops?

No. when I was a kid, like, right? And that kind of brings up those kinds of memories sometimes... you know? ... well I will just say that I had a sexually abusive experience as a child. And it would just bring up those memories kinda. Cause like, someone being rough. Someone in a stronger authority position, right. And there's nothing you can do about it. So, I guess. Kinda like that way. (Tara, white, Okanagan)

²⁹ While individual police officers cannot reasonably be expected to know the victimization history of any individual young woman that they are arresting, policy and practice should reflect an emphasis on preventing reasonably foreseeable harm. Given the wealth of evidence suggesting that the overwhelming majority of criminalized young women have been victimized, it may be argued that it would be reasonable to operate from the assumption that victimization has occurred, rather than not occurred. From this premise, it extends that a girl-centered, best interests of the child approach would assume a precautionary position, opting to avoid any potential for harm.

Canadian law and policy appears to acknowledge and conform to international standards, as well as the understanding that girls (and adult women) should never be searched by males³⁰ given the context of gender-based sexual violence and structural oppressions (Arbour, 1996, para. 2.4.1; Royal Canadian Mounted Police, 2009, para. 19.3.18; Vancouver Police Department, 2006 para. 1.12.1(v) 4; *Weatherall v. Canada* [1993] 2 S.C.R. 872). However, Tara goes on to discuss her experience and indicates that being searched by a woman did not make it any less traumatic. As she points out, it is the “authority” of the person conducting the search, the resultant powerlessness, lack of control over her body and the sexualized nature of the touching that triggers her.

Barker (2009) makes the connection between the concept of “traumatic sexualisation” (Finklehor & Browne, 1985, as cited in Barker, 2009, p. 120) to adult women’s experiences in prison.

Traumatic sexualisation refers to the way in which a child’s sexuality is shaped (by the abuse) in a way that is developmentally inappropriate and dysfunctional in an interpersonal sense. In prison this dynamic is replicated in instances of institutionalized assaults, such as pat-downs, frisks, strip-searches and, in some cases internal searches. Powerlessness, which was thought to be the most fundamental of the dynamics underlying child abuse, consists of the inherent power differential between the child victim of abuse and the abuser. (Barker, 2009, p. 120)

Thus, within a context of everyday experiences of subjugation, criminalized girls who regularly continue to experience powerlessness from parents, boyfriends, pimps, johns and drug dealers, the strip-search is yet another acute experience of oppression. It not only triggers past trauma, but as a young girl it is still a part of her development, and thus becomes one of many accumulated experiences of child sexual violence that

³⁰ All policy sources consulted provide an exception for “emergency” situations, but none offer a detailed interpretation of what constitutes an emergency (Arbour, 1996, para. 2.4.1; Royal Canadian Mounted Police, 2009, para. 19.3.18; Vancouver Police Department, 2006 para. 1.12.1(v) 4; *Weatherall v. Canada* [1993] 2 S.C.R. 872).

she will need to cope with as an adult (A. Webb, *Personal communication*, July 14, 2011).

Canadian case law recognizes that strip-searches are by definition harmful and humiliating. *R v. Golden* [2001] 3 S.C.R. 679 is considered the landmark case clarifying the law on strip-searching. In it the court stated that:

The importance of preventing unjustified searches before they occur is particularly acute in the context of strip-searches. Strip-searches are inherently humiliating and degrading for detainees regardless of the manner in which they are carried out and for this reason they cannot be carried out simply as a matter of routine policy (*R v. Golden* [2001] 3 S.C.R. 679, p. 4).

Furthermore, in the *Inquiry into Certain Events at Prison for Women in Kingston* (1996), Justice Louise Arbour reflected upon the reality that strip-searching is characterized by male power, regardless of the role men play in the actual act:

Women were forced to take their clothes off, at the command of men and in their presence. They either took their clothes off themselves, had their clothes removed by a female officer with the assistance of a male officer, or, in one case, one inmate had her clothes cut and ripped off her by a male officer. In all these circumstances, either a strip-search was conducted, and men participated in it, or, if what was done was not "a strip-search," then the men had no legal authority to compel the removal of the women's clothes in their presence. (Arbour, 1996, p.86)

What must be underscored then, is the enhanced indignity that strip-searching inflicts upon females in male dominated environments. In the case of holding cells, girls report that while female guards were made available for the physical pat down, men dominated the space, and in some cases were present "outside the door" (Sophia, Aboriginal, GVRD) when strip-searches were conducted.

Thus the compounding harms of strip-searches on girls arguably outweigh any risks girls may pose, and should be sufficient to prohibit their use entirely. When this is

considered in light of *R .v. Golden* [2001] 3 S.C.R. 679 it could be argued that the legal standard permitting a strip-search would never be met for girls:

In light of the serious infringement of privacy and personal dignity that is an inevitable consequence of a strip-search, such searches are only constitutionally valid at common law where they are conducted as an incident to a lawful arrest for the purpose of discovering weapons in the detainee's possession, in order to ensure the safety of the police, the detainee and other persons, or for the purpose of discovering evidence related to the reason for the arrest, in order to preserve it and prevent its disposal by the detainee. ... the factors set out ensure that when strip-searches are carried out as an incident to arrest, they are conducted in a manner that interferes with the privacy and dignity of the person being searched as little as possible. Attention to these issues will also ensure that the *proper balance* [emphasis added] is struck between the privacy interests of the person being searched and the interests of the police and of the public in preserving relevant evidence and ensuring the safety of police officers, detained persons and the public (para. 99).

Thus, with a legal standard that emphasizes balancing harms and benefits, subjecting girls to strip-searches could present an infringement on their Section 7, 8 and 15 rights under the *Charter of Rights and Freedoms*. The inherently degrading and humiliating nature of the strip-search, especially within the context of male dominated institutions, produces a particularly harmful effect when perpetrated against girls who have histories of multiple and sustained male violence (McDaniels-Wilson & Belknap, 2008). Their well-being and 'best interests' must be prioritized above abstract notions of 'risk' and 'security' justifying their use.

When further situated within a history of gendered, racialized and classed based social oppression where institutions (residential schools, training schools, psychiatric institutions) functioned to enforce social control through violent systems of discipline and punishment, the strip-search can be seen as a tool for subduing and reaffirming criminalized girls' deviance and exclusion at the nexus of multiple systems of power (Bilsky & Chesney-Lind, 2011; Dohrn, 2004). Sangster (2002) and Faith (1993) both illustrate how violence was a prominent feature of Canadian training schools for girls.

Girls were frequently victimized and humiliated through beatings, rape, sexual harassment and general assaults on their dignity, such as denial of toilet facilities (Faith, 1993).

6.4.3 Big brother is watching: Cameras in cells

“Sanitary installations should be so located and of a sufficient standard to enable every juvenile to comply, as required, with their physical needs in privacy and in a clean and decent manner (Article 34, JDL Rules).”

The highly sophisticated and securitized jail environment, combined with police obsessions with protecting themselves from liability and accountability comes at the expense of girls as human rights as ethics take a back seat to security. In a most Orwellian manner, after being pathologically stripped of their dignity and humanity during the booking process, girls are escorted and left alone in jail cells where they are isolated and ignored until they are released. This often means that their requests for information, basic necessities or simply somebody to talk go unnoticed.

I'm like crying, I'm put in this small ass cell and I have never been there before and I'm like scared. And I'm like “what is going on? Can you just tell me what is going on?” And they're like, they were just ignoring me. I think they said that “all I need to know is that you'll be going to court tomorrow morning”. And that is about it. You know, like every time I would buzz it, because like I want to know what is going on. It is like hours passing by and they didn't tell me ANYTHING. So ...like ...finally I just took some toilet paper and unravelled it, and made a pillow, and made myself, like, a sheet so I could like sleep on everything. (Christine, white, GVRD)

In addition to the disrespect for their right to be informed about their case, the fear and anxiety this created was evident:

Meanwhile I'm sitting in there and was like... “I need you to get a hold of my parents and let them know where I am.” It was like no one was listening to me. I took my sock off. And I got it wet in the sink. And I wrote my family's last name on the floor. And I was like: phone them. Like I was

sketched out. But you know, they just laughed about it. (Katie, white, Okanagan)

I was just yelling because I wanted someone's attention. I wanted someone to come and tell me, like what is going on. When am I getting out of here? It was like, what the hell? ...they wouldn't come talk to me. They were like, oh she is drunk, she is young, just leave her and let her pass out. Which I guess eventually kind of worked. But at the same time it was kind of like a mental game. It kind of made me feel really, alone. And you already do at that age feel alone. And are battling sometimes cause you are going through puberty. I just needed somebody. (Alice, Aboriginal, Okanagan)

In these examples, their only connections outside their small concrete cells include joining a chorus of [mainly adult] inmates screaming, yelling and crying in their cells; via one way communication through a (rarely answered) panic button; or the surveillance camera.

Kathy's report about being denied access to the washroom while she was in a drunk tank illustrates how this dynamic can be harmful. She repeatedly used the button to get the guards' attention so she could be escorted to use a proper washroom, because the cell she was in did not have one. The response she received from the guard on duty was "if you keep on pushing that button you are staying in here longer." Kathy eventually relieved herself on the floor, and in an expression of anger yelled into the camera and gestured with her middle finger (Kathy, Aboriginal, GVRD).

The greatest concern girls expressed, in addition to the psychological stress that isolation and the jail environment creates, was that their awareness that they were being watched at all times was humiliating and tormenting. The policies with respect to extent and use of cameras are not clear and vary across jurisdictions. National RCMP policies indicate that cameras are not to replace, only "augment," physical checks every 15 minutes, unless resources make physical checks infeasible (Royal Canadian Mounted Police, 2009, para. 5.0-5.4.3.3). The purpose outlined is to ensure "prisoner safety and well-being," as policies mandate constant monitoring of prisoners suspected of "suicidal

tendencies”(para. 5.4). The available Vancouver Police Department policies do not outline any protocols for video surveillance. The only mention of surveillance appears in the section on deaths and serious injury in custody (para. 1.12.13 (1) f), where the context suggests the purpose is to review the video to investigate the death after it has occurred. Thus, it is not entirely clear what the precise purpose of the video equipment is, although it can be surmised that it relates to security, risk management and liability. The outcome for girls, however, has been particularly harmful, who, in addition to having less contact with other people, also suffer the degradation of being monitored the entire time they are in the cell. It is a particularly cruel and unusual indignity to subject teenage girls to, as one girl describes

...like so I went to the washroom and I look up and there is a friggin' camera right there, staring at you. And I was like, I don't want to go to the washroom with you guys watching me go to the washroom... and I was yelling down the hallway trying to get a blanket or a mat for the metal bed that I am sitting on. And they did not acknowledge me for like hours and hours. I didn't get a blanket until like 2 in the morning. So finally I could use the washroom. I got the blanket so I could cover myself. Because I felt like, you know, I'm a 17 year old girl, I really don't want you looking at me going to the washroom... because in these stations they are mostly men. So like, 90% of the time the person who is going to be watching you is going to be a guy. It creeps me out. Just older men watching a young girl pee. It just grosses me out and I think it is perverse to be honest. (Jen, white, GVRD/Vancouver Island)

Again, for girls, the gendered reality of surveillance takes on sexualized and abusive connotations in a setting where adult males are monitoring teenage girls in captivity. This reality was central to many of the girls' concerns.

It is in the big corner of the room. And like when you are, when you are giving them all your stuff at the beginning you can see the cameras and they see you no matter what. Like you cannot even go in there and pee in private. They just watch you. It is one big screen that is split into like 12... [it was] males every time I was in there. Which, that was a very uncomfortable feeling. Knowing that some guy is watching you on the camera while you go and take a pee. Like it is a bit different when you are a guy. They don't care, they'll whip it out anywhere. It is a little more private when you are a girl. (Julia, white, Okanagan)

Indeed Hille Koskela's (2002) research on women's perceptions of surveillance found that women were most concerned about the voyeuristic nature of video monitoring. While some felt safe, most women reported that it evoked "different feelings than being watched directly in person" including irritation, anger, mistrust, and fear (Koskela, 2002, p. 269). The person doing the surveillance has a tremendous amount of power over the person being watched, setting up an insidious power dynamic. This is particularly true for young women confined in male dominated spaces. As Koskela points out, "surveillance can be a way of reproducing male power relations" because the "female body is still an object of gaze in a different way than the male body" (Koskela, 2002, p. 265). She goes on to note that until equality rights were legally adopted in the United States, the crime of "voyeurism" was legally constructed as one that only males could perpetrate (Koskela, 2002, p. 264).

In a cultural landscape dominated by sexualized depictions of young girls and women, the connection to pornography bears some attention. As Chris Hedges (2010) posits in his scathing critique on the culture of pornography:

...porn has become so embedded and accepted in the culture, especially among the young, that sexual humiliation, abuse, rape and physical violence have merged into a socially acceptable expression, once fear of retribution is removed. Absolute power over others almost always expresses itself through sexual sadism (p.74)

Pondering this argument in light of a discussion on the use of camera surveillance by male police officers on young females in custody should raise some concern about the routine nature of video monitoring. This is particularly true given reports, albeit rare, about police misuse of this technology (CBC News, September 1, 2010, *Jail Sex Video Scandal Spurs 6 Suspensions*; Koskela, 2002, p.265).

For many of the girls, the knowledge that they were on camera and their intuitive understanding of this dynamic, caused them to choose not to use the washroom for the duration of their confinement.

They had it, like, when I was walking in by the main office where they were taking all my shit off of me. Like “take your earrings off” and there was like a TV there that was split into four. I could see people in their cells. And I’m like “fuck” so like “when I go in here people are gonna be seeing me” so for hours I wouldn’t go pee. Because I KNEW they were bringing people in and that they were probably looking at me. So I was like “I’m not doing anything.” Fucked. Especially when I’m like how old? Not even supposed to be... I don’t know. So I wouldn’t go pee. Then finally I just had to. I remember when I did I like swore at them. I was like “are you fucking happy” like “you fucking pervs” “make me piss right in front of you”... I was just being like you know, just being a 17 year old... I was just pissed off. And then not too long after they let me go and I was like “fuck I coulda held it.” But I had to go. So I went. (Alice, Aboriginal, Okanagan).

The psychological harm hardly seems justifiable, especially given the girls’ backgrounds and the relatively minor nature of their *alleged* offences. Furthermore, this is another illustration of the potential for abuse that young women experience in a culture that prioritizes risk management and institutional liability over ethics and humanity.

6.4.4 Exposure to adult males

Juveniles under detention pending trial shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults. (Article 13.4 JDL Rules)

Finally, international standards are clear: children should never be imprisoned in adult facilities for any period of time. Canada has declared a reservation on Article 37(c) of the CRC,³¹ which has been interpreted to include a prohibition on detaining youth with adults (Committee on the Rights of the Child, 2003, p.3), and youth are still being locked

³¹ According to to the CRC committee, Canada has indicated it is willing to change this, however the committee is dissatisfied with the “slow process”, [reiterating] its concern with respect to the reservations maintained by the State Party...” (CRC, 2003, p. 3). Canada has not been reviewed by the CRC since this statement was made in the concluding observations during their last CRC periodic review.

in police and court cells with adults (Committee on the Rights of the Child, 2003, p. 3).

International standards also state that females must be held separately from males.

Overall, most girls report that they are routinely segregated from adults in the jails, to the extent that they are brought in through different doors and put in cells by themselves. This is confirmed by Vancouver Police Department Policy, which stipulates that youth are escorted through a “youth door,” into the booking area, which must be “put on lockdown” when youth are brought into custody (Vancouver Police Department, 2006, para. 1.12.1 (iii) 1-2). The RCMP policy also dictates that youth must be separated from adults (Royal Canadian Mounted Police, 2006, para. 4.3). However, girls still report that there are circumstances where they come into contact with adult males. In these circumstances they can be exposed to sexual harassment and intimidation.

The pervasiveness of male violence in their lives and over-policing of their communities mean there is potential that they may encounter their abusers in courtrooms or police stations:

...and then like...I uhh. I uhh... I used to hang out with a lot of bad crowds when I was younger so it kinda took me down the wrong path... it turns out that a person who was in the cell, was a guy that abused me, well didn't abuse me, but like a guy that I was with and tried to touch me, caress me and have sex with me a couple times. And it was like a gang member. Yeah, he was in there and it kinda shocked me. (Christine, white, GVRD)

While contact with adults and males in the police stations is relatively rare, it is commonplace for them to be held with men in Sheriffs' vans during transport:

[in the paddy wagon] one guy today when I was being transferred to the court cell. He was like “you are way to pretty to be in here... blah blah blah.” And then... the time before that... when they transferred me to the courthouse. ...one guy sitting across from me was being like creepy, I looked up and he was like “hey beautiful, what are you doing?” and I was looking at him. And was like “you are a fucking crack head. Don't talk to me.” Usually I wouldn't be really belligerent with those people but I like snapped. And he was like “oh... well fuck you. (Ashley, white, Okanagan).

The girls noted that, while they were separated by glass “cages” in the vans, being trapped in small spaces with adult men was very threatening.

I think the one part that was quite scary and odd for me. The next morning they woke me up stupidly early. my face is swollen from being upset and you know crying. they throw me in handcuffs again. and they throw me into this van and there are like a few guys, like 3 or 4 in their own cage. then there is this other guy in his own cage, and he looked like Charles Manson, i am not even kidding, like serial killer. Then they had me in my own cage. you know, it is kind of unnerving to be thrown into a van with a bunch of men in going to cells. (Jen, white, GVRD/Vancouver Island)

This neglectful practice that traps young women with extensive histories of abuse in confined spaces where they are exposed to more abuse is seemingly unnecessary and disrespectful of their rights, particularly given the relative level of threat these girls pose to the community. This was also an argument advanced by Grassian, a psychiatrist and expert witness in a class action lawsuit against a detention facility in Texas, who stated:

Current procedures for transporting girls to security can also trigger traumatic memories and images—memories of being grabbed, restrained, helpless and overpowered. Girls who are being compliant with staff are still handcuffed. (Grassian, 2009, para. 19)

Overall, there is a pressing human rights concern with respect to the policing of girls by officers who are overwhelmingly male. The layers of abuse and re-victimization are a part of a larger system of gender-based oppression that is racialized and classed, and that puts girls at risk of further abuse and neglect. As one young woman articulated, the central harms of her experiences with police come from being confined, subdued and policed by men. She relates this to the male violence she had experienced:

Traumatic. I have borderline personality disorder and PTSD because of the extent of the abuse that I have suffered at the hands of males. I have gone through probably some of the worst shit that anyone could survive through. It was always at the hands of males. So when I always had to deal with male police officers... whether they were restraining me, putting me in cells, or whatever. I was absolutely terrified... I had no idea whether or not I was safe. Or what these cops were gonna do to me. Or if they were gonna drive me up somewhere and kill me and throw me in a

fucking ditch. It was really traumatic. It was really sad. It really disgusts me the way that women get treated. And males. Don't get me wrong. I've seen them do some horrible shit to males.

I think with women it is different. I would rather get the shit kicked out of me. The bruises and cuts will heal quickly. The emotional and mental shit that police officers do to women. It is far more traumatic. They make it so that you have no hope. And that you feel that is where you belong and that you will never be anything more than that. (J.G., Aboriginal, Northern B.C.)

For a young woman who has experienced so much violence, the corporal punishment is less severe than the psychological anguish. In her case, J.G. experienced violence and harassment at the hands of police and reported that when she was as young as 13 years old, police officers chose to buy child sex rather than help her escape poverty, violence and exploitation.

The next section reviews girls' accounts of the various other forms of overt violence they experienced at the hands of police officers while in custody. Overall, the level of violence and harassment that girls report experiencing while in police custody raises concern. While some of it is extreme, other practices appear to be routine, even mandated, (ab)uses of force.

6.4.5 Police (ab)use of force³²

Respect for the dignity of the child requires that all forms of violence in the treatment of children in conflict with the law must be prohibited and prevented. (Committee on the Rights of the Child, General Comment No. 10, 2007)

³² It must be clarified that the definition of "use of force" contained in VPD policy refers to incidents where a weapon was discharged or where physical force was used that "cause[d] injury, resulting in medical attention being required or asked for" (Vancouver Police Department Regulations and Policy Manual, 2008, 1.12.14).. For the purpose of this report, however, use of force refers to any incident that the young woman defines as "force", such as pushing, holding down, kicking, tripping and other forms of physical aggression, but does not require that she sought out medical attention.

The carrying and use of weapons by personnel should be prohibited in any facility where juveniles are detained. (Article 65, JDL Rules)

Girls explain that they are frequently subjected to force during their initial arrests. It seems physical coercion is used when police are trying to apprehend and make the arrest. In these situations girls report being arrested at gunpoint, being shoved to the ground and hurt while police officers sat on them, put their knees on them and wrenched their arms behind their backs to handcuff them. Consistent with findings reported in the section on punishment, application of force seemed to be more severe for girls who violated gender-role expectations by showing aggression, and for those who were racialized or coming from poverty and addiction.

6.4.6 Getting tough on bad girls

For girls who report that they were resistant or aggressive during their arrests, physical force was commonly used to shut down and control their resistance.

S: they thought I was trying to resist arrest so he checked me down on the ground and put his knee on my head.

[S.B.]: what was that like?

S: I don't know it kind of pissed me off so I laughed at him. So he said "do you want me to do that again? But harder?"

[S.B.]: why did he say that to you?

S: because I was laughing at him. It seemed like he was trying to hurt me.

Sophia's description suggests that the use of force was not necessary, even gratuitous, and that it was used as a means of asserting dominance and control, particularly in light of the fact that she was verbally hostile, not physical.

Girls also report that they are subjected to violent arrests based upon the type of crime for which they were accused. Girls arrested for more serious or violent crimes

reported more police violence, even when they described themselves as compliant with arrest:

*well...I had fought this girl cause she had stolen my purse. And she like, swung at me so I beat her up. And like the officer came and he like threw me against his car. And like... I wasn't like resisting arrest or anything. He just like threw me against his car and then shoved me in the back seat.
(Lily, Aboriginal, Okanagan)*

I had a male police officer arrest me in Vernon again for a stolen car. And ummm... like...he was ...I was driving the car and he was behind me. And I knew that I was going to get busted. I was really high so I kind of tweaked out. So, I stopped the car and then I got out of the car. And I walked around to the police car and I told them that I had stolen the car that I was driving from a trick because he tried to rape me. So...and the cop got out of the car and asked if I had any weapons on me and I told him. "Yeah, I've got a pocket knife in my pocket". So he grabbed me and he slammed me over the fucking hood of his car... He slammed me over the hood of his car and had me by the back of my neck. Holding my head on the hood of the car, and then patted me down and stuff and put handcuffs on me and then put me in the back of the car. On the way to the cop shop he was telling me "you fucking whores are gonna learn one way or another." (J.G., Aboriginal, Northern B.C.)

In terms of police weapons, one young woman was tasered by police, three were pepper sprayed (one of whom was also the girl tasered) and one reported she was hit with a baton.

*... that particular incident I don't necessarily blame them for tasing me. I would rather have been tasered then shot. I got arrested for drug trafficking, again, and I got very angry and very belligerent and I went after the cop and I was very, very high at the time too. So I would never have done it if I was sober, but I did, and I went after him and I went after him really bad. I was kicking him and hitting him and spitting on him...
(Krystal, white, Okanagan)*

It is interesting that Krystal justifies their use of the taser. From an outsiders' perspective, consistent with international standards and judicial recommendations, tasers should rarely, if ever, be used on adults and should never be deployed against adolescents. To her, however, it appears that police violence is normalized. Her statement suggests she has internalized the belief that she is bad, dangerous and deserving of that violence.

The internalized sense that they deserve violence and the concomitant view that police violence is normal was evident in another young woman's statement when she states:

no I just like got choked out that one time. I've never been hit. (Tara, white, Okanagan)

On one hand Tara minimizes an act of violence that would have merited her arrest had she committed it, and on the other hand reveals the common-ness of police violence with the casual delivery of her statement and her awareness that people do get hit.

Girls often talked about how police use of force was in response to their attempts to resist or control the circumstances of arrest.

They got me into the building and they were like "you have to take out your piercings." And I was like fuck that. Why the fuck should I take them out? And he said you have to. And I said I don't fucking want to. So he was like I'm gonna go get the female cop. Cause he can't legally touch me. So she comes over and she tries to do it. And I fucking punch her in the face. And I don't know how but they managed to get me on the floor and I'm fucking scrapping it out with all of them. So what happened was, so one was holding my... and more were holding my arms. So she was sitting on me holding me by my throat taking them out.

[S.B.] She was holding your throat?

O: well that was the only way she could keep my head still.

[S.B.] what kinds of piercings did you have?

O: I had my lip pierced and my nose pierced.

[S.B.] how many officers were there?

O: there were four. Not including the one sitting on me. The four were male and the only one who was female was the one sitting on me. (Ophelia, Aboriginal, Northern B.C./GVRD)

Without minimizing Ophelia's violence and aggression, an objective assessment makes the police use of force appear unnecessary in the first place. One must remain critical of practices that can escalate to this level of force for concerns that could conceivably be reconciled in less inflammatory ways. The incident occurred because

she challenged the police who were insistent that she remove her piercings, possibly in accordance with policy based upon the determination that they represent a 'security risk.' However, for Ophelia, this represented an unnecessary threat to her bodily integrity. With a history of extensive violence by many people, including police, it is possible that her instinct in this situation was to resist their control and protect herself. Ryder (2006) found that past trauma and victimization was connected to girls' use of violence to defend themselves against perceived threats, and that they tended not to view their actions as violence (p. 143). This, as she and others note, is related to the fact that violence was an ever-present reality of their early development and is thus a normalized form of communication and expression (Ryder, 2006, p. 136; Brown, 2010, p. 180). For Ophelia, in the context of a police authority who are trained to control violence with violence, her outburst is met with force.

With an analysis of her past victimization, trauma and the culmination of this inside a police station laden with overt affirmations of her powerlessness and oppression, the requirement that she remove her piercings appears to be control for control's sake. It is a logical outcome of the routine police response to young women, who should ideally be met with care and support. Furthermore, despite the fact that she should not have been there in the first place, the security threat posed by her jewellery does not seem proportionate to the level of harm caused. What is clear from her account is the willingness by police officers to accept her challenge as a justification for force and to remove the piercings by any means necessary. As a consequence, Ophelia's narrative will include one more violent interaction experienced at the hands of people in authority who do have the power and resources to help her should they choose.

6.4.7 When gender, race & class collide

Clear from the girls accounts is that police violence is also racialized and classed. Addicted, homeless and Aboriginal girls reported the most extreme levels of violence. Julia recounts a situation where she was pepper sprayed and arrested when she was with an adult male the police were seeking:

...Not just personally at me. But like they came in and um, you know like I was sleeping on a bed and this one guy was fighting with the cops and he just unloaded a whole can of mace in the bedroom and it was just me and this other guy. Like I woke up and my eyes were burning and I couldn't see at all. And that is when they handcuffed me and put me in the back of the car. And they were like, "well we just released you a few days ago and so you might as well come with us again" and like they just put me in the cells like that. I had to use like...I had to sit over top of the umm ...the fountain. And just splash water in my eyes for like four hours. And they like, make you wear the same clothes that are like covered in pepper spray. So no matter what you do your whole body itches. You can't touch your face or touch your eyes. (Julia, white, Okanagan)

Julia's story reveals how, as a young sexually exploited and addicted girl, the police used mace on her, apprehended her for social welfare purposes, and placed her in detention without adequately responding to her medical needs that arose from their violent arrest. Thus, in the context of a police response, Julia's background and marginalization is erased and her dignity takes a backseat to criminal 'justice.'

This dynamic does not escape Julia's attention as she later connects the level of brutality she has experienced and witnessed to her social location on the margins, as a homeless and addicted girl. In the face of police violence, her status makes her very vulnerable:

...They just don't care. The second you put up a fight you could be on the ground, face in the dirt hands behind your back and if you move while they are trying to put the cuffs on the other will tase you. Like I've seen so much police brutality and like nobody really listens to a little strung out 15 year old. So you just kinda go with the flow. Just try and stay out of harm's way. (Julia, white, Okanagan)

For Aboriginal girls the overt and systemic racism means they are subjected to great levels of violence and verbal abuse. Part of this relates to the fact that many indigenous young women grew up on remote northern communities, where racism is embedded into the fabric of the community. For these young women, the risks can be terrifying at the nexus of their age and gender in a context of greater community tolerance for racist hatred and discrimination.

I was under the influence and he was being really rough. And uh, just a lot of rough handling and I remember screaming at him to not touch me. And he says, you are in no...like... you are in no state of mind to handle yourself. And I said yes I can. If you want me to do something just tell me. Just tell me to simply walk to the cell. And he was like, trying to shove me in and I got really angry and I turned around and I hit him. So, uh, a bunch of other cops came in and they tried to settle me down. And I was like, you can't touch me like that. You are a man and there is no female here. You can't touch me like that. (Samantha, Aboriginal, Lower Mainland/Okanagan/Northern B.C.)

In addition to J.G.'s description of police sexual exploiting her and harassing her, four other young women recounted their experiences of violent racism at the hands of police officers. In addition to the systemic racism embedded within the criminal justice system, overt racism is commonly used as a technique of subjugation and degradation. Police use racist slurs to denigrate and degrade the young women. These are sometimes combined with sexist stereotypes and other hateful comments that remind the girls they are marginal and unworthy. Kathy described her treatment by a female officer when she was arrested after being caught in her "red zone." As the police officer tackled her to the ground, Kathy heard her say: "chugs always getting drunk." Then later while putting her into her cell the officer responded to Kathy's resistance by calling her a "bitch" and then, "pulled her hand up high and hit [her] with something on the hip bone. It left bruises on the right side." The officer pushed her into the cell where she fell on her face. Fourteen year old Kathy articulates the take home message from these

interactions when she says: "it's like cops hate natives because they drink" (Kathy, Aboriginal, GVRD).

Another teenage girl describes racism as a common feature of her interactions with police:

They'll say "oh you are just a drunk. You'll always be a drunk." I think I've been called a chug before by them. Just brutal things. But most of the time I'm drunk so it is like, I don't take it into consideration and then I realize "that asshole called me a chug the other night when I was getting arrested." They've called me a bitch. (B.O., Aboriginal, Sunshine Coast /GVRD)

O: well, they will look at a native person and they are like, they just assume that we are all drunks and assume that we go stealing things and. When like I've got a good couple aunts that are sober and have jobs and they treat her just like the same... haha like my uncle xxx...he is a stereotypical like he is a drunk, he's a cokehead, he steals things...and they treat them both just the same.

[S.B.] did they ever use derogatory language, like call you names?

O: I've been called a chug...

[S.B.]: what is a chug?

O: it is a really, it is kinda like a rude thing to say about a native person. A chug is someone who drinks a lot.

...umm, a slut, a useless bitch... (Ophelia, Aboriginal, Northern B.C./GVRD)

The extent of the harm that sustained racism and abuse causes young women comes across in her description of her uncle, in the way that she has internalized the self-hatred and stereotypes even though she knows that it is not right. Furthermore, as with all of the young women, the racism is often coupled with sexist harassment and comments that deride her sexuality.

For girls who are discriminated in multiple ways, due to their gender, age, race and poverty, the impact of police harassment is disgraceful and damaging when they

use their authority and privilege to stamp out any remnants of a young girls' dignity while she is at her most vulnerable:

So as far as just being like out on the street corner and running into police officers and stuff. They really treat women out there like shit. They really really do. And it is sad because most of the women out of there are so young. And it is like, you know, they are still very impressionable, and no one wants to be out there. I don't give a shit what anybody says. Nobody truly wants to be that way. And when you run into cops, you know, and they call you a "fucking whore" or... you know, tell you to "get your fucking ass off the street" well, I mean, that is not helping. (J.G., Aboriginal, Northern B.C.)

6.5 Summary

Young women's narratives paint a picture of violence, degradation, humiliating treatment and discrimination that threaten their rights. Their experiences are further intensified within a context of interlocking social oppressions, deprivation of liberty and state failures to protect them in the first place. It is not an exaggeration to characterize their treatment as legislated neglect and abuse carried out by the police and sanctioned by the Canadian state.

When girls' experiences are surveyed collectively and contextualized within a historical narrative of systemic oppressions and their individual lived experiences of those oppressions, a dire picture emerges about the potential for mistreatment of girls in Canada. Beyond the failures to protect and provide for them in the first place, which causes them to live in dangerous places and deprives them of the opportunity to grow up healthy, educated and cared for, they are criminalized for choosing to survive and resist this oppression. Their time in police city cells may be fleeting, however, the violence and degradation that they endure is imprinted upon their cumulative experiences of abandonment, violence and discrimination. Furthermore, unlike the day to day violence they experience in their lives, this violence brings with it a more insidious debasement of their sense of worth and dignity. The 'official' nature of this experience solidifies their

exclusion, subjectively and objectively, where they internalize their label as deviant and the criminal justice system inscribes it in red, as their official social identities.

The young women reveal a web of systemic power relations, as they intricately draw connections between their detention by police to poverty, male violence, racism, neglect and survival. At the same time, the girls maintain their agency, recounting unapologetic defiance and resistance to abuse of power, balanced with the will and courage to surrender. Their honesty and willingness to face their own mistakes, to empathize with others and to name injustice, demonstrated genuine depth of character, intellectual and emotional intelligence. This must be read into the analysis at all points, and one would be remiss not to foreground their strength and resilience.

7: CONCLUSION: DISCUSSION & RECOMMENDATIONS

7.1 Girls' rights & detention in police lock-ups

Interviews with 20 girls about their experiences in police holding cells raise some disturbing human rights questions about conditions and treatment in detention, alongside broader concerns about why they are there in the first place. When contextualized within the gendered, racialized and classed history of the youth justice system, available evidence establishing multiple social oppressions, and framed within international human rights standards, their stories reveal layers of potentially egregious civil and human rights violations.

7.1.1 Girls' oppression & inequality: Criminalizing girls for the state's failure to protect them

Emerging from girls' narratives was evidence that, as established in the existing literature, their contact with police and criminalization is related to poverty, violence, neglect and discrimination. Throughout their accounts were descriptions of childhood poverty and neglect that often meant they were shuffled between foster homes. They reported experiencing multiple and sustained physical, sexual and psychological abuse in their homes, communities and institutions. Some of the young women described their experiences of sexual exploitation, often recruited and coerced by adult males. The depiction that emerges is one where the very state agents, obliged by human rights standards to protect these young women, neglected and failed to do so. The net result has been a slow, agonizing process of criminalization, wherein girls' survival and coping strategies were constructed as criminal or led them to commit illegal acts. The denial of young women's social and economic rights represents the first layer of violations these

young women described. Had these girls fully enjoyed their entitlements to equality (adequate housing, access to education, medical care and freedom from violence and discrimination) in the first place, they may not have seen the inside of a jail cell.

The further abuses and deepening oppression that these girls endured while in custody exposed them to yet another round of violence, trauma and neglect, this time state sanctioned. Inside police holding cells girls were held captive, while still legally innocent and sometimes absent of any charges, where they were treated with contempt and blatant disregard for their emotional, psychological and physical integrity. As girls, the humiliation and degradation they experienced was distinctly gendered and discriminatory. The outcome of their incarceration in city cells, when combined with their histories of abuse, poverty and violence, produce a whole new harm reflecting state failures to meet their standard of reasonable care as well as state perpetrated abuse.

As a consequence, detention in city cells also put these young women at increased risk of future incarceration and criminalization, since they are now more likely to have their personal lives monitored and over-policed, and are more likely to be charged and incarcerated in the future. At their young ages, the combined result of their experiences maintains their social exclusion and oppression, while imprinting more violence and trauma onto their emotional and psychological development. Thus, as a *coup de gras*, criminalization means denying many of these young women meaningful opportunities to enjoy basic human rights and equality entitlements in the future.

However, it is important not to minimize the young women's agency; they are the first to assert this, often conveying their remorse, empathy, forgiveness and compassion for others. In fact, in their interviews they frequently used self-blaming and self-denigrating language, revealing internalized self-hatred and stereotypes that come from

years of being let down, neglected and abused. Yet, at the same time, they demonstrate strength, courage, resilience and immense depth of character.

7.2 Policy recommendations & future research

As exploratory research, this project sought to examine girls' experiences in city cells to open discussion and raise questions for future research about the criminal justice response to their behaviours. The following section outlines some of these recommendations, with a focus on advancing girls' rights in policy, police accountability and the potential implications of *Bill C-4* (2010) or similar amendments.

7.3 Police discretion & accountability

While the evidence provided is enough to raise serious concern, due to the exploratory nature of the design, more research must be done to investigate civil and human rights concerns in police custody. A major impediment to doing research on this topic is the lack of transparency and accountability of police, and the concurrent failure on the part the Canadian government to make data available that are disaggregated and suitable for assessing systemic inequality.

At the moment, there is no formal, independent reporting policy in place for documenting "informal" sanctions and police decision-making at the arrest level. While individual departments have internal reporting requirements (for example, the Vancouver Police Department policy on report writing s. 1.16), it is unclear how often these policies are followed and whether they are adequate to protect against police misconduct. Furthermore these are not made available for external review, and as a consequence, there is no independent accountability mechanism and no way of assessing broader trends in police decision making.

Recent high profile incidents in police lockups illustrate the pressing need for more information and oversight. Examples include the death of Frank Paul, an Aboriginal man who died in police custody, the tethering of Willow Kinloch in Victoria (discussed earlier) and the tasing of a 16 year old girl in Manitoba (CBC News, November 4, 2009, "*RCMP defend Taser use on girl, 16*"). All three incidents came to the attention of media because the victims, or their families, have taken legal action.

Unfortunately, even when these events come to the attention of the public, there do not appear to be meaningful mechanisms for holding police accountable, and when there are, the penalties appear disproportionately minor and rarely acknowledge broader systemic failures (B.C. Civil Liberties Association, 2010). In British Columbia, for example, six male police officers were simply suspended for an incident where seven of them voyeuristically watched two intoxicated women have sex in a jail cell, where it was later determined that one woman was HIV positive (CBC News, September 1, 2010, *Jail Sex Video Scandal Spurs 6 Suspensions*). While these tales of police abuse and apparent impunity continue to pile up, relatively little public attention is given to the bigger questions of police accountability and oversight.

Recently, British Columbia announced a new *Independent Investigations Office* to look into allegations of criminal police misconduct (Ministry of Public Safety and Solicitor General, May 17, 2011). The government has yet to reveal how the office will be structured and what its mandate and scope will be. While this is an important step in the right direction, investigatory bodies are only useful insofar as they respond to official complaints and reports of misconduct. The picture emerging from young women's narratives, however, suggests that the abuse is routine and systemic, as it forms part of the institutional fabric of police services, beginning at the top with policies, and seeping all the way down to the organizational subculture. Furthermore, due to the reactionary

nature of investigative bodies, this strategy is not adequate to respond to abuses that are deeply rooted in social oppression and discrimination.

To this end, more research that privileges an analysis of police detention from the perspective of people who are negatively impacted by those policies is needed.

Routines and taken for granted procedures must be critically interrogated, particularly when it comes to vulnerable populations. This must be infused with a comprehensive analysis of interlocking social oppression. More research, then, should specifically target police discretion with girls and boys, the use of “informal” sanctions, conditions and treatment in police detention facilities.

Based upon discussions with girls, policies and systematic reporting protocols that would place the onus on police to justify and thoroughly document their decisions to detain a child are needed. Strict policies and sanctions must be enforced when police engage in misconduct or behaviour that harms a child. Furthermore, any child deprived of his/her liberty should never be put inside a police holding cell. The base operating assumption should be that conditions of confinement in jails constitute a *de facto* violation of their dignity and safety.

While acknowledging that there is a legitimate need for restraint and incapacitation in some rare and extreme cases, there must be safe and humane alternatives to police jails. What these alternatives look like, and who would be responsible, are questions that require careful deliberation. This dialogue must be driven and informed by the voices and experience of all youth, particularly those among the most marginalized. Most importantly, in any and all cases where a young woman is deprived of her liberty it is imperative that international minimum standards for the detention of girls must be implemented in policy and rigorously enforced in practice. At a very minimum, achieving this would require that those responsible drastically alter the

environment and approach to security in places where girls are housed, viewing their role as ‘care-givers’ rather than ‘security enforcers.’ This would necessitate a prohibition on the use of strip-searching, restraints, camera surveillance and use of force in any institution that detains girls. It would also require same-gender staffing, and careful attention to preventing harm and trauma. However, girls’ equality and human rights can never be achieved through a focus on responding to young women’s law breaking. This can only be secured when we, as parents, politicians, community members and care-givers, live up to our duty to protect them in the first place; providing for their needs with adequate housing, food, education, environment and care.

7.3.1 Advancing girls’ rights

Above all else, a recommendation emerging from this research is that respect for girls’ human rights be prioritized as a policy issue in Canada. This requires development and funding for research and programs that emphasize advancing girls’ social and economic rights entitlements as well as identifying and preventing human rights violations. These must be informed by an intimate and comprehensive understanding of their lived experiences that can only be achieved by girl-led initiatives and research that privileges their voices. In doing this, rights based strategies should promote “concrete” rights, such as adequate safe housing, access to state funded medical care, freedom from violence and protection from abuse. This research illustrates the unique forms of discrimination and oppression that girls face at the nexus of their gender, age as well as their race and class. In doing so, it is hoped that the need for girls’ rights strategies will inform future research endeavours, particularly for girls who are most vulnerable to state intervention.

More research must be done to understand the connections between criminalization and failures to provide for the social and economic rights of girls,

particularly the links between child welfare systems and criminalization. Research is also needed to examine the gendered and racialized impact of court sentences (i.e. the use of bail and probation orders) and conditions of confinement.

7.4 Implications for Bill C-4

Finally, in light of these recommendations, and the findings of this research, anticipated legislative amendments present some substantial concerns with respect to girls' rights and children's rights. If Bill C-4, which died on the table, is an indication of the amendments expected in Fall 2011, then this research raises some very salient concerns. Of utmost importance are the proposed provisions that will make it easier to detain children in pre-trial custody and will implement more punitive sanctions against violent offenders, including harsher penalties and public naming of violent offenders (Department of Justice Canada, 2010).

The collective impact of these provisions would likely have some girl specific implications. First, relaxing the limitations on the use of pre-trial detention would necessarily mean more girls would be exposed to potential gender specific forms of rights violations that were outlined in this research. Secondly, the current criteria for holding youth in pre-trial detention already disproportionately result in the detention of girls for minor behaviours. Expanding criteria to include "property offences" could only exacerbate that trend. Furthermore, the current law already appears to conflict with minimum international standards for pre-trial detention which stipulate that it must only be used as a "last resort." Thus, escalating the use of this practice will create a greater divergence from international consensus regarding just and humane treatment of youth in custody.

Third, the increased punitiveness towards youth ‘violence’ would be harmful for girls whose minor violence is disproportionately bootstrapped and upcrimed when charged with “simple” or “common’ assault.” This minor violence almost never presents a general risk to public safety, rarely involves strangers and often occurs at home or school (Buzawa & Hirschel, 2010, p.50; Chesney-Lind, 2010, p. 60; Sprott & Doob, 2009). Often, their violence is in response to others who are harming them. Fourth, these amendments would require that more resources be diverted to “crime control” and incarceration infrastructure, which would deprive essential social programs and initiatives of the funding they need to advance girls’ social justice and human rights.

Thus, to conclude, we are at a pivotal moment of change that could have serious ramifications for girls (and boys), and will continue to alter the landscape of criminology and policy for many years to come. The urgency with which we need critical, scholarly research that is driven by knowledges from the grassroots and aimed at disrupting and informing policy discussions cannot be underscored enough.

APPENDICES

Appendix A: Interview schedule with young women

Introduction

1. The purpose of this research is to find out about conditions in police holding cells (also called city cells or police lock ups). The focus is on police city cells. These are the cells that people who are arrested by the police are taken to – not youth detention facilities (where kids are sent after they have been convicted to serve an in custody sentence) or court lock ups (where they hold people who are appearing in court at the court house).
2. The information will be used as part of my master's thesis research and may be used to make changes to the way they are run in the future.
3. Before we begin, I want to go through an "informed consent" process with you. I am doing this to make sure that you understand everything that we are going to do today, understand that you have the right to opt out of this at any time, and to ensure that you have a clear idea of how this research will be used in the future. Please stop me at any time if you have any questions about this at all.
4. Do you have any questions before we begin?

Arrest

1. Describe what happened when you were arrested?
2. Was this the first time you were arrested?
 - a. Can you estimate how old were you the first time you were arrested by the police?
 - i. Can you estimate how many times? (provide range?)
 - b. Can you estimate how many times you have been held in custody? (provide range)
 - i. Police?
 - ii. Youth prison?
3. Thinking back to the time(s) you were arrested and put into a police holding cell: Can you walk me through the details of your arrest from the time the police arrived until you were put in holding
 - a. What were you arrested for?
 - b. What was it like?
 - c. What did they do?
 - d. Where did they take you?
 - e. Can you describe the different places you have been imprisoned?
 - i. Police lock-ups
 - ii. Pre-trial centre? (i.e. Burnaby youth? Other? Adult?)

iii. Court lock-ups

4. Did you feel like your rights were respected?
 - a. Can you provide examples?
 - b. Do you know what your rights are?
 - i. Can you provide me with an example?
 - ii. Did they contact a lawyer?
 - iii. Did they contact your parents?
5. How long were you held in custody?
6. How long were you in custody before you saw the judge?
7. Were you ever charged?
8. Where did they leave you/let you go to?
 - a. A parent/guardian?
 - b. Other?
 - c. When?

Cell Conditions (**Remind that we are only talking about City Cells – not court/youth detention centre**)

1. Tell me about your experience in cells.
2. Describe the police station.
3. Describe what your cell was like.
 - a. Size; smell; what was in there
4. Who was in the cell with you?
5. Were there people in the cells close to you?
6. What did the rest of the lock-up look like?

Basic Necessities

7. Were you provided all basic necessities that you needed?
 - a. Were you monitored while using the bathroom?
 - i. By female or male guards?
 - b. What about food?
 - i. How often did you eat?
 - ii. What was the food like?
 - c. Were you denied anything that you felt you needed? Explain.
8. Who supervised you?

Medical/Psychological Health

1. Were you given any medical attention while in custody? For what? What was provided? Or 'did you detox in cells?' 'was there any support' ...
 - a. What happened?
 - i. Were you sent to a psych unit? Medical unit?
 - ii. Did anyone examine you? Who? (Doctor/nurse?)
 - b. Were you given the option to say no?
 - c. Did they tell you why you needed to have this done?
 - d. Did you have access to female medical staff?
 - e. Did you feel this was a fair assessment?
 - f. Were you given any medications (psych/med)?

- g. Were you given access to any required medications you were previously prescribed/taking?
 - i. Can you provide details?
- 2. Did you detox while in custody?
 - a. Were you provided any support?
- 3. Were you exposed to any bodily substances (blood, urine, feces, semen, mucous, etc.); lice; other? Describe.
- 4. Were you exposed to any cleaning products, medical products (delousing); other types of chemical substances?
- 5. Were you ever pepper sprayed or did you see anyone else get pepper sprayed?
- 6. When you went to court, were you given an opportunity to shower? Comb hair; wear clothing that represented you?
 - a. Anything you would have liked to change?

Violence/Abuse/Mistreatment

1. Were you harmed by anyone in anyway by police officers (i.e. physically, psychologically, emotionally)?
 - a. Did anyone ever use physical violence against you?
 - b. Did anyone threaten you with violence?
 - c. Did anyone verbally harass you (call you derogatory names, for example)?
 - d. Did anyone make unwanted gestures, comments or threats of a sexual nature? Did anyone touch you in a sexual manner?
 - e. Probing questions for each of these (If answer "yes"):
 - i. By whom? (A police officer/guard/other inmate/ other?)
 - ii. Did you make a complaint?
 - iii. How was it dealt with?
 - iv. How did you feel about the way it was handled?
2. Did you ever feel like your physical or emotional safety was threatened while you were in lock up?
 - a. Would you be willing to talk about that?
 - b. Did you ever complain about it? What happened?
3. How did you feel about the the police officers, staff or other inmates?
 - a. Did you ever feel uncomfortable or creeped out around staff, police officers or other inmates?
 - b. Would you be willing to talk about it?
 - c. Did police officers ever watch you change; shower
 - d. Did you complain? What happened?
4. Were you ever strip-searched? How many times were you strip-searched?
 - a. Would you be willing to talk about it?
 - b. Why?
 - c. How often?
 - d. Were only female staff present?
 - e. Did you ever complain about a strip-search? What happened?
5. Were you shackled? When were you shackled? Would you be willing to tell me about that?
 - a. How long?
 - b. Describe the shackles?
6. Were you ever patted down by a police officer in city cells?

- a. Would you be willing to talk about that?
 - b. Have you ever experienced a ‘sketchy pat down’ by a police officer?
 - c. Did you complain? Why or why not? What happened?
7. Were tasers ever used in the holding cells?
 - a. Have you ever been tasered?
 - b. What happened?
 - c. What happened afterwards?
 8. What other types of punishments did police or guards use in holding cells?
 - a. Were you ever ‘punished’ for anything?

Discrimination

1. Did you ever feel like you were treated unjustly by the police? Civilian staff?
Other?
 - a. Please explain?
 - b. Can you provide an example??
 - c. Did you feel like this was related to your age, race, gender, culture, creed, ethnicity, sexual identity?
 - d. If you feel you were treated unjustly did you complain about it while you were still in jail??
 - i. If so, to whom?
 - ii. What happened?
 - iii. When you made a complaint, did you feel like you were listened to?

Experience after custody

1. Why did you eventually get released from the police holding cell?
 - a. No charges/ dropped charges?
 - b. Released on recognizance?
 - c. By a judge?
 - d. Other?
2. What happened when they released you?
 - a. Were you sent back to your parents/guardian?
 - b. Did you have a place to go?
3. If you feel you were treated unjustly when you were in custody, did you complain to anyone about it after your release?
 - a. If so, what happened?
 - b. Knowledge of rights and what now?
1. What rights do you think you had while detained in city cells)?
2. What would/did you do if you felt like your rights were not being respected?
3. Were there other things that you did to deal with the injustice?
 - a. How did you survive? (Art; talk with others; write?)

Demographic details

1. How old are you?
2. Who is your legal guardian?
 - a. Have you been in care?
3. How do you self identify?
 - a. What is your racial/cultural/ethnic identity?

- b. Sexual orientation?
- 4. What was the last grade in school that you completed?
- 5. Where were you living before/ when you were arrested and put in jail?

Conclusion

- 1. Do you have any questions?
- 2. Is there anything else that you would like to talk about or add before we end the interview?

Appendix B: Key informant interview schedule

1. Key informant information:
 - a. Can you describe the nature of your work with girls?
 - b. Can you briefly describe the scope of your experience with this issue?
 - c. How long did you/ have you been doing this work?
2. Police and lock-ups
 - a. What do you know/think about the approach that police use when dealing with girls?
 - b. What stories and reports have you heard about girls' experiences with police generally?
 - i. What do girls say the police say and do?
 - c. What types of reports have you heard from girls in police cells?
 - d. What have you heard about police use of force and police practices in cells?
 - e. What types of complaints have you heard from girls about police?
3. Systemic problems
 - a. In your experience what are the primary concerns specific to police responses to girls?
 - b. What issues/concerns do you think are most pressing?
 - i. What policy changes would you advocate for?
 - c. Do police seem to monitor and target certain groups more than others?
 - i. Who gets more attention? Why?
 - ii. Can you provide examples?
 - d. What forms of discrimination have you heard about?
 - i. Can you provide examples?
 - e. What is your opinion about the accountability measures in place?
 - i. e.g. Complaints procedures?
 - ii. Are they effective, adequate and accessible?

REFERENCE LIST

- Acoca, L. (1998). Outside/inside: The violation of American girls at home, on the streets, and in the juvenile justice system. *Crime & Delinquency* 44 (4), 561-589. DOI: 10.1177/0011128798044004006
- Acker, J., Barry, K., & Esseveld, J. (1991). Objectivity & truth: Problems in doing feminist research. In M.M. Fonow & J.A. Cook (Eds). *Beyond methodology: Feminist scholarship as lived research* (pp.133-153). Bloomington, Indiana: Indiana University Press.
- Alvi, S. (2009). Female youth in conflict with the law. In J. Barker (Ed.) *Women and the Criminal Justice System: A Canadian Perspective*. Toronto: Emond Montgomery Publications Limited.
- Angelou, M. (1978). *And still I rise*. New York, N.Y.: Random House Publishing.
- Arbour, L. (1996). Commission of inquiry into certain events at the Prison for Women in Kingston. Retrieved, July 24, from, http://www.justicebehindthewalls.net/resources/arbour_report/arbour_rpt.htm
- Arendt, H. (1964). *Eichmann in Jerusalem: A report on the banality of evil*. New York, N.Y.: The Viking Press.
- Atkinson, R and Flint, J (2001) Accessing Hidden and Hard to Reach Populations: Snowball Research Strategies. *Social Research Update*, 33. Retrieved, August 22, 2011, from <http://sru.soc.surrey.ac.uk/SRU33.pdf>
- Bala, N. (1994). What's wrong with YOA bashing? What's wrong with the YOA? Recognizing the limits of the law. *Canadian Journal of Criminology*, 36, 247-270.
- Bala, N., & Carrington, P.J. (2009). Evaluating the Youth Criminal Justice Act after five years: A qualified success. *Canadian Journal of Criminology and Criminal Justice*, 51, 131-167. doi:10.3138/cjccj.51.2.131
- Balfour, G. (2006). Regulating women and girls: Introduction. In G. Balfour & E. Comack (Eds.) (2006). *Criminalizing women* (pp. 155). Halifax: Fernwood Publishing.
- Barker, J.E. (2009). Coping strategies of women offenders. In J. Barker (Ed.) *Women and the criminal justice system: A Canadian perspective*. Toronto, ON: Emond Montgomery Publications Ltd.

- B.C. Civil Liberties Association. (2010). *Police involved deaths: The failure of self investigation*. B.C. Civil Liberties Association. Retrieved May 9, 2011, from http://www.bccla.org/othercontent/Police_involved_deaths.pdf
- Belknap, J., & Holsinger, K. (2006). The gendered nature of risk factors for delinquency. *Feminist Criminology*, 48(48), 48-71. doi:10.1177/1557085105282897
- Belknap, J., Holsinger, K., & Dunn, M. (1997). Understanding incarcerated girls: The results of a focus group study. *The Prison Journal*, 77(4), 381-404. doi:10.1177/003285597077004003
- Berman, H., Alvernaz, Mulcahy, G., Forchuk, C., Edmunds, K.A., Haldenby, A., & Lopez, R. (2009). Uprooted and displaced: A critical narrative study of homeless, aboriginal and newcomer girls in Canada. *Issues in Medical Health Nursing*, 30, 418-430. doi:10.1080/012612840802624475
- Berman, H., & Jiwani, Y. (2001). *Violence Prevention and the Girl Child Phase 2 Report: In the Best Interests of the Girl Child*. Retrieved April 25, 2011, from <http://www.harbour.sfu.ca/freda/reports/gc.htm>
- Besson, S. (2005). The principle of non-discrimination in the convention on the rights of the child. *International Journal of Children's Rights*, 13, 433-461.
- Bilsky, B., & Chesney-Lind, M. (2011). Doing time in detention home: Gendered punishment regimes in youth jails. In J.M. Lawston & A.E. Lucas (Eds.), *Razor wire women: Prisoners, activists, scholars, and artists* (pp. 31-48). Albany, N.Y.: State University of New York Press.
- Bouzane, B., & Appleyard, F. (2011, April 12). *Amnesty International 'very troubled' by case of 11-year-old*. Postmedia News. Retrieved, July 15, 2011, from <http://www.vancouversun.com/news/Taser+RCMP+criticized/4599435/story.html#ixzz1T1tasotV>
- Boyd, S., & Faith, K. (1999). Women, illegal drugs and prison: Views from Canada. *International Journal of Drug Policy*, 10, 195-207.
- Brown, L.M., Chesney-Lind, M., & Stein, N. (2007). Patriarchy matters: Toward a gendered theory of teen violence and victimization. *Violence Against Women*, 13(12), 1249-1273. doi:10.1177/1077801207310430
- Brown, M. (2010). Negotiations of the living space: Life in the group home for girls who use violence. In M. Chesney-Lind & N. Jones (Eds.) *Fighting for girls: New perspectives on gender and violence* (pp.175-202). New York, NY: State University of New York Press.
- Burgess-Proctor, A. (2006). Intersections of race, class, gender & crime: Future directions for feminist criminology. *Feminist Criminology*, 1(1), pp. 27-47. DOI: 10.1177/1557085105282899

- Buzawa, E. S., & Hirschel, D. (2010). Criminalizing assault: Do age and gender matter? In M. Chesney-Lind & N. Jones (Eds.) *Fighting for girls: New perspectives on gender and violence* (pp.175-202). New York, NY: State University of New York Press.
- Calverly, D., Cotter, A., & Halla, E. (2010). Youth custody and community services in Canada, 2008/2009. *Juristat*, 30(1).
- Canadian Criminal Justice Association. (2010, September 10). C-4 an act to amend the Youth Criminal Justice Act and to make consequential and related amendments to other acts: Brief to the Standing Committee on Justice and Human Rights. Retrieved from: www.ccja-acjp.ca/en/c4en/.html
- Canadian Association of Elizabeth Fry Societies (2011). Fact Sheet: Aboriginal Women. Retrieved August 22, 2011, from, <http://elizabethfry.ca/wwdcms/uploads/Aboriginal%20Women.pdf>
- Carlen, P. (1989). *Women, crime and poverty*. Bristol, United Kingdom: Open University Press.
- Carrington, P.J., & Schulenberg, J.L. (2003). *Police discretion with young offenders*. Ottawa: Department of Justice Canada.
- Carrington, P.J., & Schulenberg, J.L. (2005). *Impact of the youth criminal justice act on police charging practices with young persons: A preliminary statistical assessment*. Ottawa: Department of Justice Canada.
- Carrington, P.J., & Schulenberg, J.L. (2008). Structuring police discretion: The effect on referrals to youth court. *Criminal Justice Policy Review*, 19, 349-367. doi:10.1177/0887403407307240
- CBC News. (2010, September 1) *Jail Sex Video Scandal Spurs 6 Suspensions*. Retrieved, July 20, 2011, from, <http://www.cbc.ca/news/canada/british-columbia/story/2010/09/01/bc-rcmp-kamloops.html>
- CBC News (2008, May 15). *Tethered girl gets \$60,000 in lawsuit against Victoria police*. Retrieved August 22, 2011, from <http://www.cbc.ca/news/canada/british-columbia/story/2008/05/15/bc-tethered-girl-decision.html>
- Chesney-Lind, M. (1977). Judicial paternalism and the female status offender: Training women to know their place. *Crime & Delinquency*, 23, 121-130. doi:10.1177/001112877702300203
- Chesney-Lind, M. (2002). Criminalizing victimization: The unintended consequences of pro-arrest policies for girls and women. *Criminology and Public Policy*, 2(1), 81-90.
- Chesney-Lind, M. (2006). Patriarchy, crime and justice: Feminist criminology in an era of backlash. *2006, 1(1)*, 6-26. doi:10.1177/1557085105282893

- Chesney-Lind, M. (2010). Policing girlhood. In M. Chesney-Lind & N. Jones (Eds.) *Fighting for girls: New perspectives on gender and violence*. New York, NY: State University of New York Press.
- Chesney-Lind, M., & Eliason, M. (2006). From invisible to incorrigible: The demonization of marginalized women and girls. *Crime, Media, Culture* 2(1), 29-47.
- Chesney-Lind, M., & Irwin, K. (2004). Chapter 4: From badness to meanness: Popular constructions of contemporary girlhood. In A. Harris (Ed.) *All about the girl: Culture, power and identity*. (pp. 45-58). New York, N.Y.: Routledge.
- Chesney-Lind, M., Morash, M., & Stevens, T. (2008). Girls' troubles, girls' delinquency and gender responsive programming: A review. *The Australian and New Zealand Journal of Criminology* 41(1), 162- 189.
- Chesney-Lind, M., & Shelden, R.G. (2004). *Girls, delinquency and juvenile justice* (3rd ed.). Toronto: Thomson Wadsworth.
- Comack, E. (2006). Making connections: Class/race/gender intersections. In G. Balfour & E. Comack (Eds.) (2006). *Criminalizing women* (pp. 57-78). Halifax: Fernwood Publishing.
- Committee on the Rights of the Child. (2003, October 3). *Concluding observations: Canada. (34th session)*. Retrieved, July 24, 2011, <http://www.universalhumanrightsindex.org/documents/829/289/document/en/pdf/t ext.pdf>
- Cook, J.A., & Fonow, M.M. (1990). Knowledge and women's interests: Issues of epistemology and methodology in feminist sociological research. In J. McCarl Nielsen (Ed.) *Feminist research methods: Exemplary readings in the social sciences* (pp. 69-93). San Francisco, CA: Westview Press.
- Corrado, R., Odgers, C., & Cohen, I.M. (2000). The incarceration of female young offenders: Protection for whom? *Canadian Journal of Criminology*, 42(2), 189-207.
- Corrado, R., Gronsdahl, K., MacAlister, D.M., & Cohen, I. (2010). Youth justice in Canada: Theoretical perspectives of youth probation officers. *Canadian Journal of Criminology and Criminal Justice*, 52, 397-426. doi:10.3138/cjccj.52.4.397
- Crenshaw, K. (1991). Mapping the margins: Intersectionality, identity politics & violence against women of color. *Stanford Law Review*, 43(6), 1241-1299.
- Crow, B. (2000). *Radical feminism: A documentary reader*. New York, NY: New York University Press.
- Czapska, A., Webb, A., & Taefi, N. (2007). *More than bricks and mortar: A rights based strategy to prevent girl homelessness in Canada*. Vancouver, B.C.: Justice for Girls.

- Daly, K., & Maher, L. (1998). Crossroads and intersections: Building from feminist critique. In K. Daly & L. Maher (Eds.). *Criminology at the crossroads: Feminist readings in crime and justice* (pp. 1-15). New York, NY: Oxford University Press.
- Dean, A.R. (2005). *Locking them up to keep them safe*. Vancouver, B.C.: Justice for Girls.
- DeKeseredy, W. (2011). *Contemporary critical criminology*. New York, NY: Routledge.
- Denov, M.S. (2004). Children's rights or rhetoric? Assessing Canada's youth criminal justice act and its compliance with the UN convention on the rights of the child. *The International Journal of Children's Rights*, 12, 1-20.
- Department of Justice. (2007). *Pre-trial detention under The Youth Criminal Justice Act: A Consultation Paper*. Ottawa, Canada.
- Department of Justice. (2010). *Legislative summary of Bill C-4: An act to amend the Youth Criminal Justice Act and to make consequential related amendments to other acts*. Ottawa, Canada.
- Dohrn, F. (2004). All ellas: Girls locked up. *Feminist Studies*, 30(2), 302-324.
- Douglas, N., & Plugge, E. (2008). The health needs of imprisoned female juvenile offenders: The views of the young women prisoners and youth justice professionals. *International Journal of Prisoner Health*, 4(2), 66-76.
- Faith, K. (1993). *Unruly women: The politics of confinement and resistance*. Vancouver: Press Gang Publishers.
- Feld, B.C. (2009). Violent girls or relabeled status offenders? An alternative interpretation of the data. *Crime & Delinquency*, 55, 241.
doi:10.1177/0011128708330629
- Ferrero, K. (1998). Policing battered women. In K. Daly & L. Maher (Eds.). *Criminology at the crossroads: Feminist readings in crime and justice*. New York, NY: Oxford University Press, 209-245.
- Fonow, M.M., & Cook, J.A. (1991). Back to the future: A look at the second wave of feminist epistemology and methodology. In M.M. Fonow & J.A. Cook (Eds.). *Beyond methodology: Feminist scholarship as lived research* (pp. 1-15). Bloomington, IN: Indiana University Press.
- Frank Paul Inquiry. (2007). *Backgrounder: The Davies Commission*. Retrieved July 20, 2011, from, <http://www.frankpaulinquiry.ca/backgrounder.php>
- Gaarder, E., Roderiguez, N., & Zatz, M.S. (2004). Criers, liars and manipulators: Probation officer's views of girls. *Justice Quarterly*, 21(3), 547-578.

- Garfinkel, H. (1965). Conditions of successful status degradation ceremonies. *American Journal of Sociology*, 61, 420-24.
- Gavazzi, S., Yarcheck, C.M., & Chesney-Lind, M. (2006). Global risk indicators and the role of gender in a juvenile detention sample. *Criminal Justice and Behaviour*, 33(5), 597-612. doi:10.1177/0093854806288184
- Gilfus, M.E. (1992). From victims to survivors to offenders: Women's routes to entry and immersion in street crime. *Women and Criminal Justice*, 4, 63-89.
- Global Perspectives on Personhood Conference. (1999). *The Persons Case*. University of Calgary. Retrieved, July 28, 2011, from <http://people.ucalgary.ca/~gpopconf/person.html>
- Golafshani, N. (2003). Understanding reliability and validity in qualitative research. *The Qualitative Report* 8 (4), 597-607. Retrieved from <http://www.nova.edu/ssss/QR/QR8-4/golafshani.pdf>.
- Grassian, S. (2009). *Declaration: K.C. v. Townsend (Case 6:09-cv-00012-C)*. United States District Court for the Northern District of Texas San Angelo Division. Retrieved, July 14, 2011, from http://www.aclu.org/files/pdfs/womensrights/kcvtownsend_declarations.pdf
- Hancock, A.M. (2007). When multiplication doesn't equal quick addition: examining intersectionality as a research paradigm. *Perspectives on Politics*, 5(1), 63-80. 10.1017/S1537592707070065
- Hanisch, C. (1969). *The personal is political*. Retrieved, August 22, 2011, from <http://carolhanisch.org/CHwritings/PIP.html>.
- Hankivsky, O., & Cormier, R. (2009). *Intersectionality: Moving women's health research and policy forward*. Vancouver: Women's Health Research.
- Hedges, C. (2010). *Empire of illusion: The end of literacy and the triumph of spectacle*. New York, NY: Nation Books.
- Henry, F., & Tator, C. (2011). Rejoinder to Satzewich and Shaffir on "Racism versus professionalism: Claims and counter-claims about racial profiling." *Canadian Journal of Criminology and Criminal Justice*, 53, 65-74. Doi: 10.1017/S1537592707070065
- hooks, b. (1989). *Talking back: Thinking feminist, thinking black*. Boston, M.A.: South End Press.
- Irwin, K., & Chesney-Lind, M. (2008). Girls' violence: Beyond dangerous masculinity. *Sociology Compass*, 2/3, 837-855, 10.1111/j.1751-9020.2008.00120.x
- Justice for Girls. (2006, February 17). *Aboriginal and girls' advocates call on MCFD Minister to stop racist shackling during sacred sweat lodge ceremony at youth prison*. Retrieved, July 15, 2011, from,

- http://www.justiceforgirls.org/press/pr_02172006_shackling%20sweat%20lodge.html
- Kilty, J.M. (2006). Under the barred umbrella: Is there room for a woman-centred self injury policy in Canadian corrections? *Criminology and Public Policy*, 5(1), 161-182.
- Kirby, S., & McKenna, K. (1989). *Experience, research, social change: Methods from the margins*. Toronto: Garamond Press.
- Keinman, S. (2007). *Feminist fieldwork analysis*. Thousand Oaks, CA: Sage Publications.
- Koskela, H. (2002). Video surveillance, gender, and the safety of public urban space: "Peeping tom" goes high tech? *Urban Geography*, 23, 257-78.
- Library of Parliament. (2010). *Bill C-4: An Act to amend the Youth Criminal Justice Act and to make consequential and related amendments to other acts*. Ottawa, Canada.
- Liebling, A., & Stanko, B. (2001). Allegiance and ambivalence: Some dilemmas in researching disorder and violence. *British Journal of Criminology*, 41, 421-430.
- Lincoln, Y., & Guba, E.G. (1985). *Naturalistic inquiry*. Newbury Park, CA: Sage Publications.
- Loflund, J., & Loflund, L.H. (2006). *Analyzing social settings: A guide to qualitative observation and analysis*. Toronto, ON: Nelson.
- MacAlister, D.M. (2011). The law governing racial profiling: Implications of alternative definitions of the situation. *Canadian Journal of Criminology and Criminal Justice*, 53, 95-103. *Doi*: 10.3138/cjccj.53.1.95
- Mackinnon, C. (1989). *Toward a feminist theory of the state*. Cambridge, MA.: Harvard University Press.
- Maynard, M. (1994). Methods, practice and epistemology: The debate about feminism and research. In M. Maynard & J. Purvis (Eds.) *Researching women's lives from a feminist perspective*. (pp. 10-26) Bristol, PA: Taylor & Francis.
- Maynard, M., & Purvis, J. (1994). Introduction: Doing feminist research. In M. Maynard, & J. Purvis (Eds.) *Researching women's lives from a feminist perspective*. (pp.1-9) Bristol, PA: Taylor & Francis.
- McCall, L. (2005). The complexity of intersectionality. *Signs: Journal of Women in Culture and Society*, 30(3), 1771-1802.
- McCotter, S. S. (2001). The journey of a beginning researcher. *The Qualitative Report*, 6(2). Retrieved from <http://www.nova.edu/ssss/QR/QR6-2/mccotter.html>

- McCreary Centre Society. (2006). *Time out II: A profile of youth in custody*. Retrieved, July 24, 2011, from http://www.mcs.bc.ca/download_reports
- McCreary Centre Society. (2007). *Voices from the inside: Next steps with youth in custody*. Retrieved, July 24, 2011, from http://www.mcs.bc.ca/download_reports
- McDaniels-Wilson, C., & Belknap, J. (2008). The extensive sexual violation and sexual abuse histories of incarcerated women. *Violence against women*, 14(10), pp. 1090-1127. DOI: 10.1177/1077801208323160
- Melchers, R. F. (2011). Comment on the rejoinder of Henry and Tator to Satzevich and Shaffir. *Canadian Journal of Criminology and Criminal Justice*, 53, 106-111. doi:10.3138/cjccj.53.1.105
- Mies, M. (1991). Women's research or feminist research? The debate surrounding feminist science and methodology. In M.M. Fonow & J.A. Cook (Eds). *Beyond methodology: Feminist scholarship as lived research* (pp.60-84). Bloomington, IN: Indiana University Press.
- Milligan, S. (2008). Youth custody and community services in Canada 2005/2006. *Juristat*, 28(8). Retrieved June 3, 2011, from, <http://www.statcan.gc.ca/pub/85-002-x/85-002-x2008008-eng.pdf>
- Milligan, S. (2010). Youth custody and community services in Canada 2008/2009. *Juristat*, 30(2). Retrieved August 22, 2011, from, <http://www.statcan.gc.ca/pub/85-002-x/2010002/article/11294-eng.pdf>
- Ministry of Public Safety and Solicitor General. (2011, May 17). *Civilian office to investigate serious police incidents*. Retrieved, July 24, from http://www2.news.gov.bc.ca/news_releases_2009-2013/2011PREM0052-000555.htm
- Monture-Angus, P. (2002). The lived experience of discrimination: Aboriginal women who are federally sentenced. Canadian Association of Elizabeth Fry Societies. Retrieved July, 24, 2011, from <http://www.elizabethfry.ca/submissn/aborigin/1.htm>
- Moyer, S. (2005). *A comparison of case processing under the young offenders act and the first six months of the Youth Criminal Justice Act*. Ottawa: Department of Justice Canada.
- Moyer, S., & Basic, M. (2005). *Crown decision-making under the Youth Criminal Justice Act*. Department of Justice Canada. Retrieved August 22, 2011, from, http://www.justice.gc.ca.proxy.lib.sfu.ca/eng/pi/yj-jj/res-rech/moyer_basic/decision/index.html
- Nicholson, P. (1995). The menstrual cycle, science and femininity: Assumptions underlying menstrual cycle research. *Social Science Medical Journal*, 41(6), 779-784.

- Nunn, M. (2006). *Spiralling out of control: Lessons learned from a boy in trouble. Report of the Nunn Commission of Inquiry*. Retrieved, June 3, 2011, from, http://www.gov.ns.ca/just/nunn_commission/_docs/Report_Nunn_Final.pdf
- Ortlipp, M. (2008). Keeping and using reflective journals in the qualitative research process. *The Qualitative Report*, 13(4), 695-705. Retrieved from <http://www.nova.edu/ssss/QR/QR13-4/ortlipp.pdf>.
- Palys, T., & Atchison, C. (2008). *Research decisions: Quantitative and Qualitative Perspectives*. Toronto: O.N.: Nelson Thomson Publishing.
- Pasko, L., & Chesney-Lind, M. (2010). Under lock and key: Trauma, marginalization, and girls' juvenile justice involvement, *Justice Research and Policy*, 12(2), 25-49.
- Pollak, O. (1950) *The Criminality of Women*. Philadelphia: University of Pennsylvania Press.
- Reid, S., Berman, H., & Forchuk, C. (2005). Living on the streets in Canada: A feminist narrative study of girls and young women. *Issues in Comprehensive Pediatric Nursing*, 28, 237-256. doi:10.1080/01460860500396906
- Reinharz, S. (1994). *Feminist research methods*. New York : Oxford University Press.
- Reitsma-Street, M. (2005a). Policies, girls and violence. In M. Moretti, C. Odgers & M. Jackson (Eds.), *Girls and aggression: Principles for intervention*. (pp. 115-130). New York, NY: Kluwer Academic Plenum Publishers.
- Reitsma-Street, M. (2005b). Radical pragmatism. *Child and Youth Services*, 26(2), 119-137. doi:10.1300/J024v26n02_07
- Representative for Children and Youth. (2011, April 21). *Special report to examine concerns about group homes*. Retrieved, July 19, from, <http://www.rcybc.ca/Images/PDFs/News%20Releases/RCY%20Special%20Rpt%20NR%20April%2021%202011.pdf>
- Ritchie, J., Lewis, J., & Elam, G. (2003). Design and sampling strategies. In J. Ritchie & J. Lewis (Eds.), *Qualitative research practice: A guide for social science students and researchers*. (pp. 77-109) Thousand Oaks: Sage.
- Royal Canadian Mounted Police (2007). *Guarding prisoners/personal effects O.M. 19.3. Operational Manual*.
- Ryder, J.A. (2006). 'I wasn't really bonded with my family': Attachment, loss, and violence among adolescent female offenders. *Critical Criminology*, 15, 19-40. DOI 10.1007/s10612-006-9017-x

- Sangster, J. (1996). Incarcerating "bad girls": The regulation of sexuality through the female refugees act in Ontario, 1920-1945. *Journal of the History of Sexuality*, 7(2), 239-275.
- Sangster, J. (2002). She is hostile to our ways: First Nations girls sentenced to the Ontario training school for girls 1933-1960. *Law and History Review*, 20(1), 59-96.
- Schulenberg, J.L. (2006). Police culture and young offenders: The effect of legislative change on definitions of crime and delinquency. *Police Quarterly*, 9, 423-447. doi:10.1177/1098611105276543
- Schulenberg, J.L. (2010). Patterns in police decision making with youth: An application of Black's theory of law. *Crime, Law and Social Change*, 53, 109-129. doi:10.1007/s10611-009-9210-4
- Schwant, T.A., Lincoln, Y., & Guba, E.G. (2007). But is it rigorous? Trustworthiness and authenticity in naturalistic evaluation. *New Directions for Evaluation*, 114, 11-25. DOI: 10.1002/ev.223
- Smart, C. (1998). The woman of legal discourse. In K. Daly & L. Maher (Eds.). *Criminology at the crossroads: Feminist readings in crime and justice* (pp. 21-46). New York, NY: Oxford University Press.
- Snider, L. (1998). Feminism, punishment, and the potential of empowerment. In K. Daly, & L. Maher (Eds.). *Criminology at the crossroads: Feminist readings in crime and justice* (pp. 246-261). New York, NY: Oxford University Press.
- Sprott, J.B. (2004). *Understanding cases of failure to comply with a disposition*. Ottawa: Department of Justice Canada.
- Sprott, J.B., & Doob, A. (2009). *Justice for girls? Stability and change in the youth justice systems of the United States and Canada*. Chicago: The University of Chicago Press.
- Sprott, J.B., & Doob, A. (2010). Gendered treatment: Girls and treatment orders in bail court. *Canadian Journal of Criminology and Criminal Justice*, 52 (4), pp. 427-441.
- Stanley, L., & Wise, S. (1990). Method, methodology and epistemology in feminist research processes. In L. Stanley (Ed.), *Feminist praxis: Research, theory and epistemology in feminist sociology*. (pp. 20-62) New York, NY: Routledge.
- Stevenson, K., Tufts, J., Hendrick, D., & Kawalski, M. (1998). *A profile of youth in custody*. Ottawa, Canada: Canadian Centre for Justice Statistics.
- Taefi, N. (2009). The synthesis of age and gender: Intersectionality, international human rights law and the marginalization of the girl child. *International Journal of Children's Rights*, 17, 345-376.

- Totten, M. (2000). *The special needs of Canada's youth justice system: An account of some young women's experiences and views*. Department of Justice Canada.
- Turner, J. (2009, November 4). *RCMP defend taser use on girl, 16*. CBC News. Retrieved: <http://www.cbc.ca/news/canada/manitoba/story/2009/11/04/man-tsr-lawsuit-defence.html>
- Vancouver Police Department. (2006). *Regulations and procedures manual*. Retrieved from: <http://vancouver.ca/police/organization/planning-research-audit/regulations-procedures-manual.html>
- Varma, K. (2002). Exploring 'youth' in court: An analysis of decision-making in youth court bail hearings. *Canadian Journal of Criminology*, 44, 143-164.
- Visher, C.A. (1983). Gender, police arrest decisions, and notations of chivalry. *Criminology*, 21(3), 5-28.
- Wainwright, D. (1997). Can sociological research be critical and valid? *The Qualitative Report*, 3(2). Retrieved from www.nova.edu/ssss/QR/QR3-2/wain.html.
- Way, L.B. (2004). Missing faces: Is historical institutionalism the answer for conducting intersectional research? *Women and Criminal Justice*, 15(2). Retrieved August 22, 2011, from <http://haworthpress.com/store/product/asp?sku=J012>.
- Webb, A. (2011, July 14). *Personal Communication*. Vancouver: B.C.
- Webb, A., & Czapska, A. (2010). *The Pink Book*. Unpublished Manuscript.
- Winchell, J., & Bayes, S. (2008). *Girls in custody in the province of BC: Programming, policy, training and development recommendations*. Presented to The Ministry of Family and Development.

Cases cited

R. v. Golden, [2001] 3 S.C.R. 679

R. v. C.D.K., [2005] 3 S.C.R. 668

Weatherall v. Canada, [1993] 2 S.C.R. 872

Statutes cited

BC Child, Family, and Community Service Act, S.B.C. 1980, c. 11

Constitution Act, 1867 (UK), 30 & 31 Vict., c. 3

Convention on the Rights of the Child (1991)

Criminal Code, R.S.C., 1985, c-C.-46

Juvenile Delinquents Act, S.C. 1908, c. 40.

Offence Act, R.S.B.C. 1996, c.338

Youth Criminal Justice Act, S.C. 2002, c. 1.

Young Offenders Act, R.S.C. 1985, c. Y-1.

United Nations Rules for the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990).

United Nations Guidelines for the Prevention of Juvenile Delinquency (1990) (Riyadh Guidelines).

United Nations Minimum Rules for the Administration of Juvenile Justice (1985) (Beijing Rules).

Standard Minimum Rules for the Treatment of Prisoners (1977)