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VIA FAX: 250-356-0837

January 20, 2012

Dear Mary Ellen Turpel-Lafond:

**Re: Provincial decision to centralize incarceration of girls in British Columbia**

We write to you about the recently announced Ministry of Children and Family Development ( “Ministry”) decision to further remove criminalized girls from their communities and centralize incarceration of girls in the Burnaby youth prison. We are deeply concerned that instead of creating community based alternatives to imprisonment, the Ministry will breach girls’ human rights, particularly Aboriginal girls who are disproportionately represented in BC youth prisons, by displacing girls hundreds of kilometers from their home communities and subjecting them to cruel and inhumane conditions of confinement.

Our organizations are alarmed that the government is promoting this breach of girls’ human rights as an “enhancement” of youth custody services. In practice, this change will mean the following, at a minimum, for girls:

- Further dislocation from family and community for extended periods of time hundreds of kilometers away, affecting Aboriginal teenage girls and their families in central/northern B.C. in particular;
- Inhumane treatment through extended transportation, in shackles, with Sheriff escorts, for hundreds of kilometers and a drive of a minimum of 11 hours from Prince George to Burnaby in sheriff vans;
- Extended detention periods in adult police lockups as girls wait longer for transportation to the centralized Burnaby youth prison, increasing girls’ exposure to adult male prisoners and guards.

## **1. Further Dislocation from Communities and Families**

For many incarcerated girls, their situations are defined by displacement, child welfare apprehension, and poverty. Most recent statistics indicate that 73% of incarcerated youth in B.C. have been in government care at some point (aside from being in custody), and that 49% of these youth were in care in the year prior to being incarcerated.<sup>1</sup> Incarceration of teen girls, particularly when it is far from their home communities and families, adds to girls' sense of dislocation and loss. We are also concerned about the potential for girls to be released from custody with no transportation back to their home communities, left to fend for themselves in an unfamiliar city without access to resources or supports.

While the Ministry claims that it will attempt to facilitate girls' access to family contact by providing travel subsidies (and through videoconference and telephone) there is no guarantee that this will ensure access. The practical reality is that demands of life and work on family members will make travel to Burnaby for visits with girls virtually impossible. Moreover, girls and their families report to Justice for Girls that even local visits are made difficult by the policies of the Ministry of Children and Family Development in breach of Article 37 (c) of the *Convention on the Rights of the Child*, which states that children who are deprived of their liberty have the right to have contact with family through visits and correspondence.

As a result of colonization and over policing, Aboriginal teen girls are disproportionately incarcerated in British Columbia prisons. According to most recent Ministry reports, 56% of girls in B.C. youth custody are Aboriginal<sup>2</sup>. Centralization of incarceration of girls in Burnaby will compound the damage that prison does to Aboriginal girls by further separating and isolating them hundreds of kilometers from their communities and families. The Ministry's decision to remove girls from their communities, nations and families is a direct breach of Article 30 of the *Convention on the Rights of the Child*, which states that Indigenous children "shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language."

## **2. Heightened Risk of Suicide**

As the Representative is aware, in 2010 two Aboriginal girls committed suicide at the Manitoba Youth Center in Winnipeg. Both girls were displaced far from their home communities: one girl was a 17 year-old from Little Grand Rapids, Manitoba (a community with no permanent access road, about 270 km from Winnipeg) and the other, a 15 year-old girl from God's Lake Narrows (over 500 km north of Winnipeg with limited road access).

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<sup>1</sup> Time Out 2: A Profile of BC Youth in Custody, 2005

<sup>2</sup> Youth Custody Services Annual Report 2010/2011

Given that the suicide rate for adolescent Aboriginal girls is 8-20 times the national average of non-Aboriginal adolescent girls,<sup>3</sup> and that incarceration increases girls' dislocation, isolation, and separation from home communities, nations, and families, our organizations are deeply concerned that the decision of the Ministry to centralize the imprisonment of girls in Burnaby, will place Aboriginal girls at further risk of suicide.

### **3. Inhumane treatment through extended transportation**

Girls will be exposed to inhumane treatment during extended transportation, including being shackled in sheriffs' vans for potentially hundreds of kilometers.

Girls face a number of serious abuses and breaches to their human rights during transportation. Girls have reported to Justice for Girls the following violations during transport: exposure to sexual harassment by adult and young men; exposure to extreme heat or cold; injuries from rough driving (hitting heads on walls, sliding around, cuts from hand cuffs); and exposure to unsanitary conditions including blood, urine and other bio-hazards.

### **4. Extended detention of girls in adult police lockups**

We share the Representative's concern that girls will be held in adult police cells until they can be transferred to Burnaby.<sup>4</sup> In our experience, adult women prisoners in the north of British Columbia wait as long as a week for transportation to centralized prisons/custody for women in Prince George. This wait is endured in detention facilities at RCMP detachments that are not designed for extended detentions. We have no reason to believe the situation will be any different for girls ordered detained in Northern B.C. or on Vancouver Island following these youth custody closures. It may in fact be significantly worse for girls due to the extended wait time for long distance transport.

In many remote communities, RCMP officers are overwhelmingly male, and RCMP policy permits opposite gender strip searches in RCMP detachments. Girls who are detained in these facilities will most likely be subjected to strip searches by adult male RCMP officers. Male police officers will also be monitoring girls for extended periods, including in vulnerable situations (while girls use toilets etc). Strip searches of girls' by male police officers are an infringement of girls' rights under Sections 7, 8 and 15 of the *Charter of Rights and Freedoms* and are inherently degrading and abusive, particularly given that many criminalized teenage girls have prior experiences of sexual abuse. A recent notorious incident

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<sup>3</sup> National Forum on Health 1997, <http://www.nfh.hc-sc.gc.ca/publicat/finvol2/vol2.htm> and Raven's Children Aboriginal Youth Health in BC, McCreary Centre Society 2000

<sup>4</sup> January 19, 2012. Times Colonist

involving opposite gender monitoring in Kamloops, further highlights the fact that girls and women are at particular risk in police lockups.<sup>5</sup>

The longer girls remain in RCMP custody awaiting transportation to the Burnaby youth prison, the longer girls will be exposed to adult male prisoners, in breach of Article 37 (c) of the *Convention on the Rights of the Child* which states that “every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so”.

## **5. Direct discrimination against girls**

The decision to visit these additional burdens on girl prisoners and treat them differently in this regard than boy prisoners is a violation of the equality rights guaranteed to girls under the Canadian Charter of Rights and Freedoms, and under B.C.'s Human Rights Code.

Currently, B.C. Youth Custody Services operates youth prisons for boys in Prince George, Burnaby and Victoria. The recent decision made by the Ministry discriminates against girls as compared to boys, as boys will continue to be incarcerated closer to their home communities while girls will be displaced further from their home communities and will be subjected to additional breaches of their human rights, as explained in this letter.

## **6. Violations for First Nations Girls' Substantive Equality Rights**

The Supreme Court of Canada has affirmed that true equality is not achieved by treating everyone in an identical manner. In fact, a law or policy that appears neutral on its face may in fact operate to perpetuate discrimination against certain groups. Achieving substantive equality, as guaranteed by section 15 of the *Charter of Rights and Freedoms*, requires recognition of historic disadvantage to ensure that no group is disproportionately adversely affected by a seemingly neutral law or policy.

Due to present and historic colonization, Aboriginal girls are vastly disproportionately criminalized and incarcerated in Canada. Thus, this policy, which will force girls to endure long trips, while shackled, in sheriffs' vans hundreds of kilometers away from their families and support systems, will have a disproportionate adverse impact on Aboriginal girls. This is an unjustifiable violation of the substantive equality rights of Aboriginal girls and contrary to the Charter and both domestic and international human rights law.

## **7. MCFD Must Create Community Based Alternatives throughout B.C**

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<sup>5</sup> “Three Mounties, jail guard charged after women watched having sex in cell,” City TV, accessed online 19 January 2012: <http://www.citytv.com/toronto/citynews/news/national/article/130961--three-b-c-mounties-jail-guard-charged-after-women-watched-having-sex-in-cell>

In accordance with Article 40 (1) of the *Convention on the Rights of the Child*, children accused of a crime have the right:

[T]o 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...

Considering that incarceration of children inherently harms the child's dignity is degrading, dehumanizing, isolating and contrary to human rights law, we call on you to review the decision of the Ministry of Children and Family Development to centralize girls' imprisonment of girls in Burnaby.

We also encourage you to advocate for girls dignity and human rights by ensuring that changes to the youth custody policy result a strategy to de-incarcerate and develop community based services for girls throughout the province. Local, community based programs, particularly culturally specific programs for Aboriginal teen girls, are vital.

We respectfully urge you to protect the human and equality rights of girls by intervening in this matter. Thank you in advance for your consideration of these concerns and we look forward to hearing what steps your office will take to address these critical issues.

Sincerely,



David Eby, Executive Director  
B.C. Civil Liberties Association



Annabel Webb, Director  
Justice for Girls



Laura Track, Legal Director  
West Coast LEAF