Governing Risk Through Forced Confinement: Clawback of Pre-Pandemic Reforms

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Abstract

We examine the use of forced confinement and isolation to limit the spread of COVID-19 in Ontario prisons and jails. Drawing on interview data, we illustrate how a reliance on forced confinement and isolation has exacerbated harms experienced by prisoners in relation to physical, mental, and social health. Through discourse analysis of grey literature, we then discuss the politics and governance of carceral institutions during the pandemic, focusing on how practices of isolation were legitimized during the pandemic, despite recent rulings establishing isolation and segregation as torture. We close by arguing that the case of isolation during the pandemic is one example which highlights the systemic and ongoing nature of rights violations in Canadian prisons and jails. To address these harms, we must shift focus away from reform and towards decarceration.

Keywords: COVID, prisons, Canada, risk governance, carceral clawback, isolation, segregation

Résumé

Cet article examine le recours au confinement forcé et à l'isolement pour limiter la propagation de la COVID-19 dans les prisons et les pénitenciers de l'Ontario. En nous appuyant sur des données d'entrevues, nous illustrons tout d'abord comment le recours au confinement forcé et à l'isolement a exacerbé les préjudices subis par les détenus en matière de santé physique, mentale et sociale. Par le biais d'une analyse du discours de la littérature grise, nous discutons ensuite de la politique et de la gouvernance des institutions carcérales pendant la pandémie, et ce, en nous concentrant sur la façon dont les pratiques d'isolement ont été légitimées malgré les récentes décisions judiciaires qui définissaient l'isolement et la ségrégation comme des formes de torture. Nous concluons en affirmant que l'isolement pendant la pandémie est un exemple qui met en évidence la nature systémique des violations des droits qui existent dans les prisons et les pénitenciers canadiens. Pour remédier à ces préjudices, nous devons délaisser la réforme au profit de la désincarcération.

Mots-clés: COVID, prisons, Canada, gouvernance des risques, récupération carcérale, isolement, ségrégation

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Introduction

There are 37,854 adults confined in Canadian prisons on average per day (Statistics Canada, 2020a), and as of January 2022, nearly 12,000 cases of COVID-19 have been linked to prisons and jails in Canada, including 2,863 in Ontario provincial institutions and 2,621 in federal prisons (Walby and Piché 2022). In this paper, we examine the use of forced confinement and isolation to limit the spread of COVID-19 in Ontario prisons and jails. Drawing on interview data, we illustrate how a reliance on forced confinement and isolation, while enacted to save lives, exacerbated harms experienced by prisoners in relation to physical, mental, and social health. Through discourse analysis of grey (professional, non–peer-reviewed) literature, we then discuss the politics and governance of carceral institutions during the pandemic, focusing on how practices of isolation were legitimized during the pandemic, despite recent rulings establishing isolation and segregation as torture. We close by arguing that the case of isolation during the pandemic is one example which highlights the systemic and ongoing nature of rights violations in Canadian prisons and jails. To address these harms, we must shift focus away from reform and towards decarceration.

During the pandemic, we identify more visible punitive responses to perceived risk[1] through the imposition of extended forced isolation inside Canadian prisons and jails. The pandemic has highlighted state responses to risk, and this response can be viewed as an ongoing feature of the carceral state. These responses are rendered more "visible" through the heavy reliance on intensified lockdowns and isolation to facilitate physical distancing in carceral settings. That said, with political impetus the state has always deployed tactics to relegate people to, and isolate them within, carceral settings, especially disabled, poor, racialized, and Indigenous peoples (Maynard 2017). Because experiences on the inside are far from transparent, and are most visible to those living through confinement, control of information is part of the state's risk governance strategy. This renders community-engaged and participatory research essential to understanding experiences on the inside.

Additionally, discourse analysis of grey literature, government, non-profit, and scholarly documents, such as reports by criminologists Jane Sprott and Anthony Doob (2020, 2021), contributes to telling the story of the state's ongoing management of perceived risk and dangerousness, including repackaging solitary confinement as "Structured Intervention Units" (SIUs) shortly before the pandemic, and introducing segregation-like environments called "Voluntary Limited Association Ranges" (OCI 2022). Broader literature on solitary confinement and prison health also helps to tell this story. During the pandemic, isolation was imposed *en masse* within prisons, and we use discourse analysis to argue that this policy is an extension of carceral logics already present in reformed solitary confinement practices for reasons of managing risk among people who are stigmatized and "othered." We argue that such practices of isolation are a form of "carceral

[1] Throughout this paper we use the term "risk" with the acknowledgement that risk is subjective, perceived and assessed differently by various agents and imprisoned people.

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clawback" (Carlen 2002) and a return to more punitive practices (such as extended isolation) to manage risk, in addition to new forms of isolation (such as droplet precaution), despite ostensible reform. We situate our argument in the literature on carceral politics and risk governance, bridging and extending these literatures to the topic of governance during the pandemic inside carceral settings.

Using discourse analysis, we argue that the tools of isolation and restriction used by the state were already present before the pandemic and evolved, garnering renewed legitimacy as a means to manage perceived risk and dangerousness. Carceral settings made it easier for the government to entrench risk- and danger-management tools that involve imposing more intense forms of isolation on confined people. We suggest that the intensification of punitive practices is, in part, legitimized by confined people's designation as "risky" subjects, for whom the rights and resources associated with citizenship are limited and made conditional upon adherence to norms of "responsible behaviour" (Miller and Stuart 2017). Indeed, during the pandemic, the locus of risk was identified in the bodies of prisoners themselves—who were seen as potential incubators for COVID-19. As a result, managing COVID-19 focused primarily on a blanket immobilization of prisoners, often minimizing or altogether excluding a focus on broader institutional and environmental factors (e.g., poor air filtration, overcrowding, and a lack of access to appropriate hygiene and cleaning supplies).

At the beginning of the pandemic, provincial and territorial systems took steps to release individuals serving intermittent sentences or who had little time left on their sentences (Iftene 2020a). For example, in Canada, Ontario and the Northwest Territories reduced their custodial population by 25% in 2020 (Statistics Canada 2020b). Federally, the Correctional Service of Canada (CSC) resisted calls to consider prison depopulation. COVID-19 policies in prisons, while ostensibly preventing deaths from infection, intensified practices of isolation. This occurred concurrently with an official move away from administrative segregation due to human rights concerns. While the outcome of preventing COVID-19 deaths is one we acknowledge,[2] we question the means of prevention. Although decarceration was taken up in some institutions, there were also suspended visits and programming, as well as frequent lockdowns and medical isolation, serving as restrictions to limit movement within and into sites of confinement (Walby and Piché 2020). Data obtained from the Ministry of the Solicitor General show that in 2021, the number of people who died in Ontario provincial custody almost doubled, from twenty-three deaths reported in 2020, to forty-one reported the following year (Speight and McClelland 2022). Many of these deaths were tied to mental health. We underscore the need for transparency and ethical engagement, allowing people on the inside to express what is occurring in settings which became even more closed off from the

[2] Up until February 2022, a total of eleven imprisoned people and one staff member had died of COVID-19 in prisons, jails, and penitentiaries (Walby and Piché 2022). This is a fatality rate of 0.5% among infected people, and 0.05% among all imprisoned people. For the same time period, the fatality rate in all of Canada was 10.5% among infected people, and 1.8% among the total population (Government of Canada 2023). That said, these numbers do not include the number of deaths in custody due to mental health, which is arguably impacted by isolation.

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outside during the pandemic, and to receive an audience regarding policy changes from their perspective. In calling for these changes, also known as non-reformist reforms (Gorz 1968), to improve human lives, we support ultimately moving away from tools of imprisonment to uphold human life and dignity.

Background—Managing Risk Through Isolation

The use of isolation practices to respond to perceived or real contagion inside and outside prisons is not new in Canada. Writing in 2011, David Claborn and Bernard McCarthy identified that isolation long continued as a component of managing infectious diseases among both non-sentenced and sentenced people. This includes exiled imprisonment and deportation of Chinese peoples in the 1800s (Johnson 1995) and segregated hospitals in the twentieth century confining Indigenous peoples (Lux 2010).

Syrus Marcus Ware and colleagues (2014) argue that because carceral staff are generally untrained and unqualified to identify or understand physical and mental differences, prisoners whose physical bodies, mental states, and health status are labeled as different are often seen as troublemakers and are further punished through institutional charges and segregation. For example, in the late 1990s, Canadian public officials were demanding that prisons segregate HIV-positive individuals and require mandatory HIV testing similar to the procedures used in the United States (Rothstein et al. 2003). Segregation of trans imprisoned people with HIV/AIDS diagnosis was described as a frequent occurrence, and trans imprisoned people are perceived as jeopardizing the "good order of the institution" (Scott and Lines 1999). Further, during the SARS outbreak of spring 2003, quarantine and isolation were used as tools to limit disease transmission on a scale unprecedented in several decades (Rothstein et al. 2003), until COVID-19.

Method

This article draws on primary data generated through a project funded by the Social Sciences and Humanities Research Council of Canada and in collaboration with formerly imprisoned peer researchers, alongside the Prisoner HIV/AIDS Support Action Network (PASAN), a community-based imprisoned people's health and harm-reduction organization. Methodologically, the project focuses on insights developed through the first-hand narrative accounts of imprisonment during COVID-19 to highlight discrepancies between data and narratives about prison conditions during COVID-19 generated by officials and experts. Contrasting these two sources of data highlights how the epistemic injustices faced by imprisoned people frequently reinforce status quo inequities in carceral institutions, rendering them impervious to change (Farrell, Young, and Buck Wilson 2021).

Data were collected through a multi-method approach that included content analysis, peer-led, semi-structured interviews, and focus groups. This article draws on nineteen semi-structured interviews conducted with formerly imprisoned people. Recruitment materials were disseminated to community service providers (e.g., PASAN) who regularly work with imprisoned and formerly imprisoned people who then shared the call for participants among their networks. Participants

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were also recruited through interviewee referrals (i.e., snowball sampling). Participation in the study required having been imprisoned in either a federal or provincial institution located in Ontario, Canada, at some point since the pandemic was declared in March 2020. However, because of the ongoing restriction on in-person visits, as well as the ongoing lockdowns which prevented regular access to telephones, we determined that it would not be possible to conduct interviews with currently imprisoned individuals in a manner that would ensure their privacy and confidentiality. Interviews were therefore conducted with individuals who had been imprisoned during the pandemic but were in the community at the time of the study, in 2021. Interviews were conducted over Zoom, owing to pandemic restrictions. Interviews were then collaboratively analyzed through an inductive, open-coding process, generating a master list of fifteen core codes. This article draws on data falling under the following codes: segregation and lockdowns, access to medical health services, and access to mental health supports.

Based on the institutional location of interviewees and self-identification, eight women, including one self-identified trans woman, and eleven men were interviewed. Of these, ten individuals had spent time in a federal institution and thirteen in a provincial institution during the pandemic. While we elected not to ask for identifying information, such as age, race, and ethnicity, to preserve anonymity, some interviewees identified themselves as Indigenous or racialized.

Several of the individuals interviewed had spent time in both provincial and federal institutions during that period. This was largely accounted for by those who were detained and re-imprisoned on a parole violation. These individuals were required to first move through the provincial system before being transferred to federal prison. Because of COVID, this involved a mandatory minimum stay of fourteen days in the provincial system under quarantine before being transferred to the federal system, which, in turn, mandated another fourteen-day quarantine.

In addition to data generated by imprisoned people themselves, we conducted content analysis on more than 130 scholarly and grey literature articles. We limited our search to works published between 2019 and 2022 in Canada and used various online locations, including academic databases, government press release websites, correctional investigator and human rights commission websites, and CanLII.

We also accessed resources released by the Canadian Civil Liberties Association, the Centre for Access to Justice and Information, and the Criminalization and Punishment Education Project on March 8, 2022, entitled the *Prison Pandemic Papers,* which published government records obtained using freedom of information requests (FOI). These records provide insights into the response to COVID-19 by federal, provincial, and territorial prison authorities, along with the impact the pandemic has had on imprisoned people (CCLA 2022). We specifically accessed documents on the region of Ontario, reviewing sixty files. These files contain internal memos, policy guidelines, handouts, posters, and response letters.

Drawing on data that reflects both lived experience and official or expert-led accounts allows us to compare how pandemic practices have been legitimized with how they have been experienced. Doing so points to significant disparities between official and experiential accounts revealed by our thematic analysis. Specifically, we looked at themes of risk, governance, and isolation to examine messages conveyed

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by people confined in prisons and jails in Ontario, as well as those expressed by state and non-state actors in grey and scholarly literature. We then used discourse analysis to examine the meanings constructed by imprisoned people and authors of the literature, using these discursive data to explore relations between discourse and power.

Literature

Carceral Politics

We situate our argument in the literature on carceral politics and risk governance. Critical prison scholars assert that Canada is a carceral state (Chartrand 2019), a machine that is deployed against groups identified as deviant (Harris, Walker, and Eckhouse 2020), with implications for the racialization of civil participation, freedom, and equity (Weaver and Lerman 2010). People, especially racialized and Indigenous peoples, are marked as carceral citizens for governance through institutions (Miller and Stuart 2017). In the context of the pandemic, scholars and practitioners have identified that renewed carceral mandates reinforce tropes of who or what is risky and dangerous and support stricter forms of discipline (Berkhout, MacGillivray, and Sheehan 2021). Specifically, there are intersections between the restriction of movement and concept of risk.

Over the last several decades, governments and stakeholders have asserted that prisons can serve non-punitive purposes. Pat Carlen (2002) writes about the concept of carceral clawback and the continual promise of reform, with carceral institutions pledging to serve as places of rehabilitation, education, parenting education, psychological treatment, and more. Through these discourses of reform, the state seeks to legitimate the use of carceral practices. Despite the rhetoric of rehabilitation, however, we see continual human rights abuses over successive generations of reform (Carlen 2002).

Risk Governance

The literature on risk governance has much to offer on this topic of carceral governance during the pandemic. Within the field of criminology, risk governance has been articulated by scholars within the "new penology" literature (O'Malley 2006; Simon and Feeley 2003). This scholarship suggests that towards the end of the twentieth century, penal philosophy shifted away from ideas of reform and retribution. Instead, penology began to focus on the use of managerial and statistical techniques to identify and regulate risky subjects through the most cost-effective and efficient solutions. As Kelly Hannah-Moffat (1999) argues, this has generally resulted in downloading risk onto individual imprisoned people—who are seen as the embodiment of risk and thus the object of management and regulation. Consequently, contemporary penology has tended to prioritize strategies to contain and otherwise incapacitate those deemed risky. For example, risk management has long been used to assess risk and placement within institutions (Helmus, Johnson, and Harris 2019). Solitary confinement is identified as a management strategy of imprisoned peoples to reduce threats to institutional order and safety (Labrecque et al. 2021), and the prison environment is seen as one

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embedded with risk, tension, and feelings of insecurity, which was exacerbated during the COVID-19 pandemic (McKendy and Ricciardelli 2021).

Importantly, for our analysis, the risk presented by COVID was read by carceral officials as a being almost exclusively presented in the bodies of incarcerated people. Imprisoned people—viewed as potential incubators for COVID—thus became the focus of strategies to manage the disease, which resulted in a near-constant state of immobilization through a variety of forms of forced confinement. While we acknowledge the real risk posed by COVID, and the need for isolation that was also mobilized in the community, we argue that prison management of COVID-19 focused narrowly on one strategy (prisoner immobilization), while community uses of isolation were mobilized alongside broader institutional and environmental strategies. Furthermore, it is important to note that isolation was not an exceptional measure borne out of the need created by COVID, but rather represents an extension of existing strategies that have been historically used to manage a range of "risks" in carceral spaces. This exclusive focus on immobilization has dire consequences for the human rights, health, and safety of incarcerated persons.

The idea of risk governance relies on a concept of the "governed" and requires a carceral subject—or carceral citizen. Extensive literature has documented how certain people are more likely to be constructed as "at risk," "high risk," "dangerous," or "unsafe," such as Black boys and men (James 2012) and Indigenous peoples (Chartrand 2019). This occurs through not only prisons and policing but other "shadow" carceral institutions, such as schools. Once constructed as "dangerous," those deemed "risky" are "managed" by systems and strategies of governance through alternative bundles of rights and responsibilities. This has been theorized by critical criminologists as "carceral citizenship" and sheds light on the ways in which those targeted by the carceral state are subjected to conditions, risks, and expectations that, in the wider community, would be unthinkable (Miller and Stuart 2017).

At the same time, certain people are constructed as "vulnerable" through policy discourse (Larios and Paterson 2021). In public health and policy literatures, opposition to health programming, in the community and in carceral institutions, is linked to the association of programs with danger, particularly that presented by criminalized populations, and the desire for those populations to be spatially contained to protect those deemed vulnerable (Jackson et al. 2021). Literature on dangerous offenders and protective surveillance has long recognized mobilization against those labelled "risky" (Matravers and Hughes 2003; Shore 2021). What is constant is the expansion of the carceral state through targeted vulnerability and constructions of risk.

We document how reforms made in recent years through the federal reform of solitary confinement (2019), as well as an agreement to limit the use of segregation by provincial authorities in a landmark human rights settlement (2013), have been subjected to carceral clawback throughout the pandemic. Specifically, by approaching the pandemic through a risk governance framework, carceral stakeholders have been able to craft new forms of forced confinement which reproduce both the operational objectives and collateral harms of solitary confinement. Through interview data, we detail how these new forms of confinement impinge upon the

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physical, mental, and social health of prisoners. We contrast these narratives of harm with stakeholder discourse, which presents these new forms of forced confinement as necessary and distinct from solitary confinement and segregation.

Findings

Interviews

The interview data provide important insights otherwise obscured in state discourses and describe imprisoned people's experiences and perspectives in their own words. We know that, formally, there are policies in place to limit or eliminate the use of segregation practices, including solitary confinement as defined by the UN (2015). However, in practice a number of protocols falling under the general rubric of forced isolation continue and comprise an "everyday" facet of institutional life. Many of these protocols existed prior to—and have been exacerbated by—the pandemic, while some are new. Briefly, interviewees referred to four different forms of forced isolation that were used to manage the risk of COVID-19 in carceral settings: quarantine, lockdown, droplet precautions (a form of medical isolation), and placement in SIUs.

As a result of COVID-19, provincial and federal institutions introduced an initial mandatory fourteen-day[3] quarantine upon being admitted into custody. During this fourteen-day quarantine, formerly imprisoned interviewees described being isolated on a dedicated range where they were often held in their cells for twenty-three to twenty-four hours per day. In theory, after fourteen days in quarantine, and upon receiving a negative PCR result, they were then to be transferred into the general population. In practice, however, many interviewees explained that, several days into their initial quarantine, prison staff might admit a new cohort onto the quarantine range. Those already on range would, effectively, have to re-start their fourteen-day clock, with the result that many spent more than fourteen days in quarantine upon arrival. Additionally, those whose destination was the federal system would spend fourteen days quarantined in a provincial institution, at which point they were transferred to a federal institution and quarantined for another fourteen days: "Going for fourteen days of quarantine and then (another) fourteen days for quarantine was pretty rough, you know? I've done a lot of hole time before, but it seems that this was even harder" (Interview C).

Conditions in provincial quarantines were noted as particularly horrific. Interviewees reported double and triple-bunking, infrequent access to showers and phone calls (once or twice during the entire two-week period), and very limited access to medical staff:

> It was awful … I've never seen a more disgusting unit in my life, for something that was supposed to be all clean and sanitary … . your cell is not clean from the person before you … . they're like … clean your own cell … . I think I got clean clothes (during the fourteen days I was there) … maybe three times. (Interview T)

[3] This period was increased to 24 days in federal institutions during the pandemic (OCI 2021).

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Provincial interviewees indicated being held in their cells for days at a time without access to showers or phones. For those ultimately destined for federal corrections, mandatory quarantine protocols meant serving twenty-eight days of back-to-back quarantines. Additionally, any transfers to offsite facilities (for example to access diagnostic and surgical health services) required a fourteen-day quarantine upon return.

The second type of forced isolation interviewees identified was lockdowns. Lockdowns are not new and are a long-standing issue, notably in provincial institutions (Vincent 2015). Lockdown refers to a practice in which imprisoned people are restricted to their cells, often for twenty-three hours per day, because of security concerns. Institutions may declare a "security" issue when the facility is understaffed, built infrastructure requires repair and maintenance, outbreaks of an illness occur, or staff believe that imprisoned people's conduct poses a threat to institutional security (e.g., if contraband is suspected).

The third type of forced isolation described by interviewees was what was commonly referred to as "droplet precaution." According to the Ministry of the Solicitor General, droplet precautions involve several practices to reduce the spread of infectious disease when an active case and/or outbreak has been detected. Such practices are to be initiated when an active case has been identified and there are no healthcare staff members available to assess and monitor the individual(s) exhibiting symptoms. In these cases, staff wear full personal protective equipment while the imprisoned person is provided a surgical mask and isolated from the rest of the population (Solicitor General of Ontario 2020). In practice, staff shortages alongside widespread outbreaks meant that "droplet precautions"—importantly, isolation—were often applied to entire ranges or institutions.

The final form of forced isolation described by interviewees was referred to as "seg" (segregation) or solitary confinement. Formally, segregation was abolished in Canada under Bill C-83, which was passed in 2019, and replaced by SIUs. However, as many scholars and advocates have argued, SIUs are simply "solitary confinement under a different name and with fewer restrictions" (Iftene 2020b). Importantly, most interviewees who experienced isolation through SIUs were enduring severe medical and mental health crises and were told that their placement in these SIUs was for their own safety. Despite this formal rationale, interviewees suggested that their relegation to segregation was a decision informed by the lack of human, financial, and institutional resources necessary to address their crises during the pandemic.

Forced Isolation and Access to Medical Care

The overriding logic of risk governance—and its reliance on forced isolation to "manage" risk—has posed a long-standing obstacle to imprisoned people's access to healthcare, which has been exacerbated by the pandemic. In Canada, imprisoned people serving a sentence greater than two years fall under the responsibility of CSC, losing their coverage under the Canada Health Act (1985). Consequently, it is CSC itself which is responsible for providing healthcare services (OCI 2016). Prisoners held on remand or serving a sentence under two years fall under the

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responsibility of provincial carceral bodies. Each province has discretion over how imprisoned people's healthcare is managed. Ontario relegates imprisoned people's healthcare to the ministry in charge of corrections rather than the ministry responsible for healthcare. The provision of healthcare is managed by an institution with a primary mandate and logic of operation grounded in security and "risk governance." As such, imprisoned people's healthcare occurs at the intersection of institutional security and individual need, such that imprisoned people are often triaged out of—rather than into—healthcare services (Barragan et al. 2022). This institutional arrangement means that the provision of healthcare to most imprisoned people in Canada lacks clinical independence—a central tenet of the Mandela Rules (UN 2015).

This arrangement has meant compromised access to necessary health resources. Throughout the pandemic, these problems have been magnified. For example, the heavy reliance on forced isolation to manage the pandemic has meant that what little freedom of mobility imprisoned people once had, to access healthcare, has been further restricted. Interviewees recounted that lockdowns prevented free access to the medical unit to make a request for assistance. Instead, access to medical staff had to be formally requested through carceral officers, who would often themselves assess the request and decide whether to forward it to medical staff. Staff who manage imprisoned people through a metric of security and risk became intermediaries in the institutional chain of communication to access healthcare. Additionally, ongoing pandemic-related staff shortages led to a reduced capacity to facilitate "secure transfers," such that prisoners reported being unable to access off-site medical treatment (e.g., diagnostic services) in a timely manner.

Interviewee V described being plagued by ongoing and severe headaches which eventually led to a blackout. Despite having requested medical attention for these headaches, they were placed in segregation for seven days following the incident where they experienced a blackout. Eventually, their vision became impaired and when they finally received an MRI—four months after the episodes began—they were diagnosed with brain cancer.

Interviewee W was five months pregnant when she entered the mandatory fourteen-day quarantine in the provincial system. She entered with a pre-existing diagnosis of hyperemesis gravidarum (severe nausea and vomiting) which she alerted guards to. Throughout quarantine she requested medical assistance several times and eventually requested an ultrasound when she ceased to feel foetal movement. She was routinely denied an ultrasound because of insufficient staff to facilitate a "secure" transfer to an offsite facility. After two weeks in provincial quarantine, she was transferred to a federal institution, where she was once again placed in quarantine for fourteen days. After one week, she finally had an ultrasound, at which point she had already lost the pregnancy. In both of the above cases, forced isolation impeded the imprisoned person's autonomy to manage their health.

Forced Isolation and Mental Health

Logics of risk governance also had significant impacts on imprisoned people's mental health. Just as with access to medical doctors, access to mental health

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counsellors under COVID-19 was triaged by guards: "… before, if you were having a crisis, you could just go to them … and be like … hey, I'm having a crisis, can I talk to somebody? … [Under COVID,] the guards would have to call mental health and have someone call you back, and I mean the guards are never efficient there" (Interview E). The interviewee went on to describe how isolation, combined with addictions and substance withdrawal, exacerbated their need for mental health support, which went unaddressed: "I was white knuckling it there for a while, so my anxiety was really bad" (Interview E). For those lucky enough to access a counsellor, many institutions required imprisoned people to remain in their cells and "[counsellors] would only talk through the door … [so] people hear your information" (Interview H).

Many interview respondents also noted the impact that ongoing isolation and lockdowns had on mental health. The anxiety of never knowing when they would get out for a shower or a phone call exacerbated mental health issues: "The most important thing you have when you're in jail is your routine, so … when you wake up and your routine is completely like … thrown out the window for you every day … it's like the most aggravating, upsetting thing for you … imagine that happening to us at least once or twice a week. We don't know what's going to happen …" (Interview T).

A lack of routine, boredom, fear of uncertainty, and restricted access to family and trusted allies to talk to all played on the mental health of imprisoned people: "I don't care who you are or what your situation is. You're not walking out from this unscathed. Even if you are only in there for the two weeks and make bail, you're going to be coming out with some serious issues" (Interview W).

A lack of adequately trained personnel on site, owing to the pandemic, led to additional situations in which staff made decisions on how to manage mental health crises through a lens of risk governance. One trans interviewee disclosed being denied access to a women's institution and, as a result, suffering tremendously. Their deteriorating mental health was met with attempts to "reduce risk" but not to resolve the issue. The interviewee recalled requesting mental health support and access to a women's institution but was instead relegated to forced isolation: "Part of the reason I was kept in solitary too, I was always on suicide watch … I felt like it was majorly because I was trans and I felt like I was losing a lot of my rights just because I identified as a woman" (Interview K). In this situation, risk governance identified and construed the imprisoned individual as vulnerable—perhaps not a risk to others, but a risk to self. Irrespective of whether the risk identified was "danger" or "vulnerability," however, the response was forced isolation.

Forced Isolation and Access to Communications

Interviewees expressed that they had limited access to communications, including those necessary to support mental health and access to justice. Interviewees described being required to attend court in their cells through flip-style phones placed on speaker-setting. They spoke about a lack of access to lawyers, another issue in accessing justice. Interviewees also explained that there was compromised access to timely and accurate information from institutions regarding pandemic adjustments, which created much anxiety and uncertainty.

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Finally, risk management of COVID-19 through practices of forced isolation severely compromised imprisoned people's already scant access to community support and services. During the first wave of the pandemic all visits to institutions were cancelled, including by harm reduction workers, lawyers, social workers, educators, spiritual leaders, and of course family and friends. Interviewees expressed that the cancellation of all visits worsened existing strains, while creating altogether new issues for prisoners' wellbeing. While, in some institutions, video visits were substituted for in-person visits, this was not a universal solution: "(video visitation) only covers a minimum percentage of the inmate population … not everybody is accustomed to computers, you know, their families are not accustomed to … using computers. There's a heavy native population … lifers … it's (for) more of a younger crowd I would say …" (Interview D).

In federal institutions, to be eligible for parole, it is necessary to complete a number of court-mandated courses. Because of the cancellation of visits, however, courses could not operate. This resulted in many individuals otherwise eligible for parole being unable to apply, or late in applying, through no fault of their own. "I barely made my program. I literally finished my core program two days before I got out, and I should have been done … in August … I didn't finish until like the 27th of December" (Interview E)

The cancellation of visits also made it difficult for confined people to access their parole officers and know the status of their parole: "You couldn't get access to your PO (parole officer) … Some guys would go three months not hearing from their PO, and their parole is coming up" (Interview D). This delay in parole served to further construe the imprisoned person as "risky" for failing to meet the conditions and expectations of orderly and responsible behaviour.

The cessation of personal visits and the closure of carceral institutions to spiritual or cultural supports were also a significant issue raised by interviewees. Notably, they discussed how these restrictions impacted the community and social bonds they had painstakingly maintained throughout their confinement. Several interviewees commented that no access to Indigenous elders and spiritual leaders was provided. Because everything from housing to harm reduction support to employment relies on building and maintaining community connections, these restrictions undermined imprisoned people's reintegration into the community upon release, leaving many vulnerable and readily read as "risky."

Discourse Analysis

Analyzing state and scholarly literature provides additional insights into the operation of power by those with a monopoly on imbuing reality with meaning. The disparity between government discourse and lived experience is brought into stark relief by the messaging used to rationalize the treatment of confined peoples.

Solitary Confinement Policy – "Solitary confinement no longer exists"

Solitary confinement was identified as a policy issue by stakeholders preceding the pandemic, with government response prioritizing the management of perceived risk over human dignity, resulting in a particular impact on racialized,

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criminalized, and mentally ill people. The Ontario Ombudsman's 2017 report on solitary confinement outlined numerous issues with the monitoring of imprisoned people placed in solitary. It revealed inaccurate tracking and records for imprisoned people, many of whom have mental health issues and were deprived of required oversight and reviews. Adam Capay from Lac Seul First Nation, for example, spent 1,647 days in solitary while awaiting trial until 2019 (Ombudsman Ontario 2019). The Ministry of Community Safety and Correctional Services responded by implementing nineteen of thirty-two recommendations in the Ombudsman's 2017 report. Yet these advancements did not make a meaningful difference—there was a clawback of progress. As of late 2019, a new regulation requires that Ministry officials conduct "independent" reviews of segregated imprisoned people every five days. Since 2016, the Ombudsman has called for a panel to conduct truly independent hearings and reviews of all segregation placements (Ombudsman Ontario 2020), with no government action. In April 2020, Ontario Superior Court Justice Paul Perell ruled in a segregation-related class action lawsuit filed on behalf of imprisoned people with mental illness who were held in segregation. Perell stated as part of his ruling that the provincial government has failed to create effective change: "Ontario has tried to reform its use of administrative segregation, but it has been dilatory in doing so and its negligence and breaches of the standard of care have been habitual, continual, and continuous. Ontario has fallen short in fulfilling the promises or undertakings it made to do better and to reform its practices, particularly its treatment of mentally ill inmates" (Francis v Ontario 2021).

At the federal level, Bill C-83, *An Act to amend the Corrections and Conditional Release Act,* came into force on November 30, 2019, introducing SIUs as the replacement of administrative segregation. SIUs are intended to provide access to programs and services, four hours outside of cells, and two hours of meaningful human contact (CSC 2021b). Yet this was another case of carceral clawback, in addition to a lack of transparency that had the effect of obscuring the situation. An Independent Advisory Panel was created to examine the operation of the new SIUs; however, its mandate ran out without receiving data from CSC (Doob and Sprott 2020). Former panel members Doob and Sprott received some data after the panel was disbanded (2020; Sprott and Doob, 2020, 2021; Sprott, Doob, and Iftene 2021). Until their initial report was made public, no systematic information about SIUs was available.

Doob and Sprott found that some imprisoned people were spending an extended amount of time in SIUs (more than fourteen days), and most people were not getting four hours outside of their cells nor two hours of meaningful human contact per day. Correctional Service of Canada implied that COVID-19 impacted the operation of SIUs and that the data it provided was flawed (Standing Committee on Public Safety of Canada 2021). Doob and Sprott found that, for institutions that had not had any COVID-19 cases (through October 2020), the trends were the same. Overall, 38% of stays were qualifying, by the Mandela rules, as solitary confinement, or torture—despite CSC asserting that solitary confinement no longer exists in Canada (according to FOI data) and the president of the Ontario Correctional Officers Union (OCOU) asserting that solitary confinement has not existed during his long career (Standing Committee on Public Safety 2021).

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Further, Indigenous imprisoned people experience 39% of stays in SIUs (while comprising 30%+ of the imprisoned population), and Black imprisoned people experienced 13% of stays in SIUs (while comprising 7.3% of the imprisoned population) (Doob and Sprott 2020). When asked whether SIUs are a method of population management, the president of the OCOU responded, "Of course, it is a population management strategy when we're talking about segregation, for the reasons that I have indicated already—for the protection of the inmate and the protection of others" (Standing Committee on Public Safety 2021, 1). Anne Kelly, CSC Commissioner, stated, "Inmates in SIUs present a profile that clearly distinguishes them from the mainstream population. A recent analysis shows that they are more impulsive, have low frustration tolerance, frequently act in an aggressive manner and are 14% more likely to hold attitudes that support goal-oriented violence" (Standing Committee on Public Safety 2021, 9). Racialized peoples, often labelled as most risky or dangerous, experienced this form of "management" the most—despite the official discourse proclaiming an end to solitary confinement.

Pandemic Risk Management Strategies – "Maintaining good order"

From FOI data (CCLA 2022), the Ontario Solicitor General released *Guidance Documents in July 2020 for Provincial Correctional Institutions* providing requirements around managing the risk of COVID-19 in jails, including use of isolation cells or units and restriction of movement. Despite the purported emphasis on safeguarding health and well-being, the Ontario Ombudsman observed overcrowded conditions and imprisoned people subject to frequent, prolonged lockdowns, as well as limited access to programs, phone calls, spiritual services, healthcare, fresh air, and even running water (Ombudsman Ontario 2020). The province initially heeded calls to reduce prison numbers as a public health measure, and the population in Ontario jails decreased by 34% between February and April 2020. However, imprisonment counts began to climb again that summer (Ombudsman Ontario 2021).

At the federal level, from the FOI data (CCLA 2022), CSC released a document entitled *"Shaping the New Normal" in 2020, a National Risk Management Framework (RMF)* created in partnership with CSC labour partners and with the endorsement of the Public Health Agency of Canada. The strategies within the framework were to be followed as a minimum, and failure to follow the strategies could result in increasing restrictions. Through internal memos, CSC stated that it was essential that managers be aware that CSC's "new normal" would not look like pre-COVID-19 times, because federal institutions were at high risk for transmission. The new normal entailed isolation and limiting/ceasing leisure and ethno-cultural activities, outside access, escorted/unescorted temporary absences, program delivery, mental health therapy, and spiritual/cultural advisory. SIUs were also impacted, including modifying the schedule of wellness assessments. Significant use of force was used in response to prisoners protesting staff failure to wear personal protective equipment and COVID-19 related restrictions, which included rubber bullets at Donnacona Institution and percussion grenades at Collins Bay Institution (John Howard Society 2021).

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During these times of enhanced risks, a discourse of imposing "good order" among unruly imprisoned people is underscored. From the FOI request, an internal memo dated March 19, 2020, from the Director General, Security Branch, states that "all staff are expected to continue to address inappropriate inmate conduct per policy to encourage inmates to conduct themselves in a manner that promotes the good order of the institution." Cell searches and searches of individuals were to continue, despite the prioritization of distancing for medical purposes.

Lockdowns were not only for ensuring the health of confined people and staff but were arguably used as a tool to ensure "order" through managing imprisoned people for reasons of maintaining public safety and operational readiness. Marie-Claude Landry, Chief Commissioner, Canadian Human Rights Commission, stated that CSC used administrative segregation as a "crutch" and "Band-Aid solution" to deal with difficult situations, rather than focusing on addressing and rectifying the reasons behind the need to separate certain individuals from their peers (Senate Standing Committee on Human Rights 2021, 148).

The Office of the Correctional Investigator (OCI 2021a) identified significant issues with this "new normal," including compliance issues with SIUs (out-of-cell time, meaningful human contact, and yard access); long wait times to access health services; slow and inconsistent easing of restrictions to resume programs, education, and work; restoring visits; reopening gyms, yards, and prison libraries; lack of information shared with imprisoned people; and excessive time spent in cells. Indefinite lockdowns or extended periods of isolation in cells continued at many facilities, even those that had not experienced an outbreak (OCI 2022). While this new normal was asserted as protecting health, it was another carceral clawback to ensure "good order." Because of restrictions placed on programming, a number of imprisoned people were unable to move within a reasonable time-frame from highly restrictive assessment centres to "parent sites," work through their "correctional plan" to cascade to lower levels of security, and attain eligibility for parole. The OCI called for early and prioritized release, alternatives to imprisonment, and for CSC to make public its plans and priorities, audits, and inspections.

Data Hidden from Public View – "Heroes doing their best to protect public safety"

At the provincial and federal levels, data regarding conditions and governance inside of jails are not well-publicized. Freedom of information requests reveal information that was otherwise hidden from public view. Under risk governance of carceral spaces, governments seek to reduce opportunities for criticism in the name of public safety and security. For example, during the pandemic, the provincial government ended community advisory boards, removing an oversight mechanism that allowed for a measure of transparency and accountability (OHRC 2021a). The Ontario Solicitor General does not track or monitor the use of lockdowns to promote accountability, track trends, or provide accurate reporting to courts (OHRC 2021b). The federal government did not provide the SIU Advisory Panel the data it required and the panel ceased without fulfilling its mandate. The pandemic was blamed as the source of the failure,

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and CSC recast itself as dedicated to collaboration and communication (CSC 2021b). In the midst of little information, carceral institutions portrayed themselves as composed of frontline workers doing the best they could in difficult circumstances to safeguard public safety. Prison staff are described as underappreciated heroes who made sacrifices during the pandemic (Standing Committee on Public Safety 2021, 3), echoing the language used around healthcare workers on the outside.

In Ontario provincial jails, FOI data from the Solicitor General reveals some aggregate insights about the situation on the inside. There were 380 full and partial lockdowns in Ontario jails from January to August 2020. The use of force, segregation, and hunger strikes were high during this period and after. From March to August 2020, there were 1,291 incidents involving the use of force in Ontario jails. Of the 48 imprisoned people who have spent 60+ days in segregation since November 30, 2019, and were in segregation on November 30, 2020, 62.5% (30) had a mental health alert. The reasons for segregation placement were provided as the following: the imprisoned person's request (52.1%), protecting the security of the institution or safety of others (2.1%), institutional/other's protection/security for medical reasons (8.3%), the imprisoned person needing protection (4.2%), the imprisoned person needing protection for medical reasons (18.8%), the imprisoned person alleged to have committed a misconduct of a serious nature (10.4%), and disciplinary segregation (4.2%). From January to August 2020 there were fifty-five hunger strikes in Ontario jails, and nine between October and December 2020. Hunger strikes are one of the only forms of protest available to imprisoned people.

In federal prisons in Ontario, FOI requests to CSC provide even less data. Correctional Service of Canada reports that there were nine lockdowns in Ontario CSC prisons between January 5 and March 1, 2020. The number of reported placements in medical isolation in Ontario federal prisons from March 2020 to February 2021 was 256. In FOI requests, CSC claimed no records exist for the duration of time in medical isolation. Choosing not to collect, collate, or share information is one tactic for managing public information and critique. That said, the OCI (2022) reports that in March 2021, between 165 and 168 imprisoned people had been in medical isolation for fourteen days or more. At some sites (particularly women's prisons), CSC would reset the isolation clock to start the count from zero if a living unit received an individual with COVID-19 and a high transmission risk. Further, an updated version of *Shaping the New Normal* (March 5, 2021) specifies that upon admission/return, the imprisoned person must medically isolate for twenty-four days, being released on day twenty-five. There is no precedent to justify such a lengthy isolation (OCI 2021). The number of reported placements in Ontario SIUs from January 2020 to February 2021 was 243. Median duration varied, with the highest median at the end of the reporting period in January and February 2021 at forty-four and forty-one days, respectively, again exceeding the United Nations (2015) limit for segregation. Of interest, CSC identified approximately 3000 imprisoned people who met one of five criteria for discretionary release during the pandemic. Yet very few were released for discretionary reasons.

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Discussion

Carceral Politics, Risk Governance, and Carceral Clawbacks

Our findings build on the risk governance literature on prisons, situating our argument in the literature of carceral politics and speaking to the situation during the pandemic. Overall, risk assessment during the pandemic in prisons is impacted by the pre-existing institutional culture, including the use of risk tools on imprisoned people, and occupational risks for staff. Prisons are already seen as places embedded with risk, and a crisis allows for the opportunity to (re)deepen repressive measures. Imprisoned people were seen as both presenting a risk and occasionally vulnerable (such as those in SIUs). The management of risk was based on the continual restriction of imprisoned people within institutions rather than embracing community alternatives and discretionary release, despite the impossibility of physical distancing in prisons (Chaimowitz et al., 2021). Risk communication was heavily restricted, with highly controlled messages to the public and stakeholders, seeking to set the narrative during a time of uncertainty when shortcomings may more readily be laid bare. Carceral institutions are arguably already sensitive to such critique, given the need to constantly legitimize practices of control (Carlen 2002).

The earlier reform of segregation was purported to "[transform] corrections to focus on rehabilitation and mental healthcare" (Standing Committee on Public Safety 2021) in the federal space, and similarly at the provincial level. Yet, the passage of SIUs and the subsequent use of other forms of isolation was arguably not a transformation. Drawing on Carlen's (2002) concept of carceral clawbacks, transformation is made in name only, and in fact, the system has a tendency to revert to more restrictive measures in the face of perceived risk. We are concerned by the effects of the cumulative and, in some cases, indefinite nature of "restricted" confinement and extended periods of lockdowns on imprisoned people's physical and mental health, family and community relationships, and ability to be eligible for parole and leave institutions of confinement. While OCI (2021b) identifies that the measures that were adopted to contain or control active prison outbreaks were "exceptional and difficult"—including near total isolation in cells—we see these measures as part of the continuum of carceral practices. There was a silence in the literature on the connection between lockdowns and medical isolation on one hand, and SIUs/solitary confinement on the other. These measures fall under the single umbrella of isolation and repression.

Conclusion

Meeting minimum standards of non-torturous conduct and ensuring public transparency are pressing issues. This paper contributes to broader discussions of risk governance and imprisonment through the case study of pandemic management in places of confinement in Canada. We contribute to the literature specifically through bridging risk governance and carceral politics literatures. We also mobilize interview data centering the experiences and voices of criminalized peoples in Ontario. In addition, we analyze discourses in grey literature, particularly documents obtained through FOI requests. We draw attention to

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discrepancies between experiences of imprisoned persons and the data and narratives about prison conditions during COVID-19 generated by officials and experts. Our work unpacks the implications of risk governance during the pandemic to imprisoned and criminalized peoples, as well as residents who have a stake in rights discourses, citizenship, resource allocation, and inclusion.

The rapid responses by the state during the pandemic show that decisive change is possible, including in prisons (Waight et al. 2021). For example, in Nova Scotia, the judiciary, corrections, crown, and defense counsel, along with community organizations, collaborated to cut the provincial prison population in half in the early days of the pandemic (Paynter, Mussel, and Hunter-Young 2020). We embrace such action, coupled with adequate support on the outside for diverted and released people. The pandemic was a missed opportunity to reimagine carceral systems, as prison numbers have again risen, a lack of state transparency continues, and isolation practices in prisons persist. We argue there is an urgent need to end extended forced isolation (e.g., longer than fourteen days) on the inside, while moving towards decarceration as seen in Nova Scotia. It is not the way isolation is carried out, but the practice itself that we question and seek alternatives to, including discretionary release and diversion. Lockdowns, SIUs, quarantine, and imprisonment are disastrous for health and often go unchecked. To this end, we also argue that it is imperative that external oversight and accountability be prioritized, notably through the reinstatement of Community Advisory Boards.

Further qualitative work is essential in the process of storying this ongoing situation. Narratives have power in influencing change within the carceral state, especially when layered with other forms of research (McAleese and Kilty 2019). Narratives are also essential in understanding how people make meaning and sense of health during and beyond the pandemic (Teti, Schatz, and Liebenberg 2020). Future research must centre participatory research, working with, rather than extracting knowledge from, criminalized and imprisoned peoples. This is especially important given the intersecting oppressions that many criminalized people face, including racism, colonialism, sexism, and ableism. While the interview data used in this paper come from interviews with adults, we suggest more work needs to be done to hear from confined youth, as well as those in psychiatric detention. More data and analysis are needed particularly on the ongoing practices of lockdowns, droplet precaution, quarantine, and solitary confinement, with the orientation of pressing for transformation.

The voices of resistance, those of both criminalized and non-criminalized people who question the practices of the carceral state, need to be amplified. On the outside, these initiatives and activities included solidarity strikes and actions, Twitter and social media campaigns, fundraising initiatives, news releases, conferencing and interviews, videos and online speaker panels, educational awareness and tools, caravans, and rallies. On the inside, imprisoned people participated in hunger and work strikes (Vance 2021), speaking to media, and submitting grievances, despite the potential for institutional retaliation. Risk governance rejects the legitimacy of criminalized voices. Yet criminalized and imprisoned people have ideas to transform society, they are the experts on their lives, and they should be provided space to influence policy—including through future policy consultation.

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The state created these conditions of harm to health (as well as harms to community, spirituality, family, and more), and criminalized people are essential to breaking these legacies.

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