

Empowering Change Within the Criminal Justice System



This report summarizes Indigenous overrepresentation in the criminal justice system of Canada. It shows how the institutionalization of Indigenous peoples is a systemic problem rooted in historical colonial policies and modern-day inequalities. It also explores two related issues of particular importance to CAP's constituency: potential abuse of peace bonds and the relationships between Indigenous women and girls and the justice system.

QUICK FACTS

- Indigenous Peoples make up 30% of provincial/territorial and federal custodial admissions respectively.
- In provinces like Manitoba and Saskatchewan, the overrepresentation percentage rises to 75%
- Indigenous children are likelier to interact with the criminal justice system than graduate high school.
- Systemic racism, and colonization continues to sustain the power imbalances and disparities within the criminal justice system for Indigenous Peoples.
- Indigenous women account for a significant 36.6% of all incarcerated women.

First Nations, Metis, and Inuit populations regardless of status and geographic location face a concerning over-representation within the Canadian Criminal Justice System. Despite constituting only 4% of the population, they make up 30% of the prison demographic. Roots of this sustained disparity are completely systemic, via colonization and historical trauma. These legacies manifest today as systemic issues like poverty, racism, and trauma from racist, heteronormative policies like *the Indian Act*, *Indian Residential School System* and more.

This over-representation is not merely due to crime rates; Indigenous individuals face more severe charges, prolonged detentions, and frequent bail denials. The criminal justice system itself are rooted with barriers, racism, and approaches to justice do not honor Indigenous law, and/or legal traditions, nor healing practices. Indigenous systems of healing and justice are vastly different from western based perspectives, and the inability to assert self-determination in this process, heavily impacts the health, well-being and safety of Indigenous Peoples, and their families. There is a strong relationship between the child welfare system and the criminal justice system.

Restorative justice, that emphasizes relationship and healing over punishment, offers a possible way forward. This approach must be rooted in cultural safety, be trauma informed, and honor Indigenous cultures, traditions and ways of knowing. Programs like sentencing circles and Healing Lodges, while promising, are often led by non-Indigenous peoples, and become diluted in their intent. High-profile cases have underscored the system's differential treatment of Indigenous individuals. This includes lenient sentencing for crimes against Indigenous women and potential misuse of peace bonds against Indigenous ex-offenders.

The CAP's Indigenous Women's summit in 2020 highlighted the urgent need for police reform, focusing on community collaboration, and bolstering Indigenous representation in the justice sector. The over-representation of Indigenous people in the justice system is deeply connected to socio-economic disparities and systemic biases.

The system currently perpetuates trauma and addiction cycles. Policymaking must shift towards preventive and restorative measures that respect Indigenous traditions and values, focusing on community support and reintegration. Transforming the justice system to prioritize restorative justice and Indigenous values and self-determination is critical to improving health outcomes for individuals and their families experiencing and impacted by incarceration and navigating the criminal justice system.

Thematic Findings

Gladue Principles: The *Gladue* decision, made in 1999, instructs courts to factor in Indigenous social context evidence when sentencing. While critics argue this grants leniency based on race, the Supreme Court has maintained that the Gladue factors for Indigenous people ensure a fair sentence given their unique social context. **Access to Report Writing:** Gladue report-writing services are inconsistent across Canada. Often, these reports are poorly executed or inaccessible. Standardization is vital, and CAP might consider funding a program to train more certified Gladue report writers.

30% Increase

In the number of admissions of Indigenous males into federal custody since 2001

Recommendations

- Further research is needed to understand the barriers, within Gladue.
- CAP should establish a Gladue Report Program to ensure every Indigenous person regardless of status/geographic location, is provided their legal right to a Gladue Reports.
- Further research is needed to better understand disparities within healthcare access for those facing incarceration.
- There's an urgent need for systemic reform to address biases in the justice system, especially regarding violence against Indigenous women.
- Research is needed to better understand the use/misuse and inequities associated with peace bonds.

Emphasis on Healing Lodges: More Healing Lodges, rooted in Indigenous traditions, should be established. These lodges should operate under section 81 agreements and not by CSC. They should cater to the wider Indigenous community irrespective of band membership. Investing in mental health programming and addictions treatment is critical. **Police services:** should increase the number of Indigenous police and ensure that there is intentional recruitment of Indigenous professionals throughout the justice system. Professionals within the justice system also need to possess the cultural competency to work with different Indigenous communities.

Bill S-215: The bill, which did not pass, aimed at treating violence against Indigenous women as an aggravating factor during sentencing. While the bill's intention was to counteract the leniency given by the Gladue principle, CAP is yet to adopt an official stance on this.

Indigenous Women and 2SLGBTQ+ in the Justice System: The justice system's treatment of Indigenous women, girls and 2S+ is indicative of deeper, historical biases. Violence against them is often trivialized, and the justice process frequently sides with the perpetrators. Notably, low conviction rates for sexual assault and cases where the justice system fails to protect abused Indigenous women exemplify the system's failure. The case of Bradley Barton, acquitted despite strong evidence of guilt, underscores the system's inherent biases against Indigenous women.

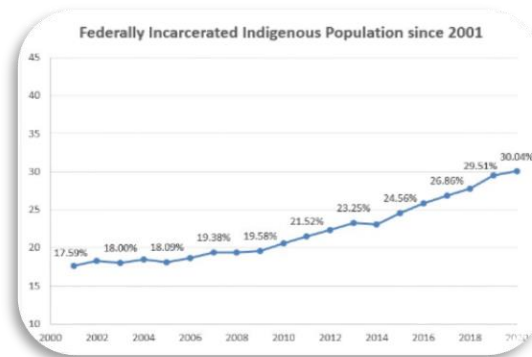


Figure 1. Graph showing the percentage of the federally incarcerated population that identifies as Indigenous, each year since 2001.

Moving Forward in a Good Way

In addressing the overrepresentation of Indigenous peoples in Canada's justice system, it's paramount to acknowledge historical traumas, colonization, and systemic racism as root causes. The facts and figures depict a grim picture: the continuous cycle of incarceration, poverty, and trauma deeply embedded in Canada's criminal justice framework. The advocated solutions, such as Gladue principles and Healing Lodges, offer a start. However, for transformative change, Canada must deeply invest in restorative justice, Indigenous-led community programs, and combat the system's intrinsic biases. Only through genuine partnership with Indigenous communities, acknowledging past wrongs, and crafting a justice system anchored in respect and understanding can true equity be achieved.