



Native Women's
Association of Canada
L'Association des
femmes autochtones
du Canada

OVER-INCARCERATION OF INDIGENOUS WOMEN

Policy Brief

POSITION

The growing over-incarceration of Indigenous women and gender-diverse people in Canada's criminal justice system is alarming—and another form of colonial violence being perpetrated by the Canadian state. The over-incarceration of Indigenous women has been long recognized as a crisis by the Office of the Correctional Investigator (OCI) and more recently by the UN Committee against Tortureⁱ (2019) and the UN Special Rapporteur on violence against womenⁱⁱ (2019). The Native Women's Association of Canada (NWAC) is calling for immediate and transformative change to Canada's criminal justice system, including the prioritization of community-based alternatives for Indigenous women and gender-diverse people to help them heal and rehabilitate.





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EXECUTIVE SUMMARY

In December 2021, the OCI released data that showed the proportion of incarcerated Indigenous women is nearing 50% of all federally sentenced women.ⁱⁱⁱ The OCI's 2020-2021 Annual Report found that, "regardless of risk level, security level, age, sentence length or gender, identifying as an Indigenous or Black incarcerated person was associated with a greater likelihood of involvement in use of force incidents." Further, Indigenous women accounted for 60% of all women involved in use of force, despite accounting for approximately 40% of imprisoned women over the last five years.^{iv}

The gross over-representation of Indigenous women in Canada's federal correctional system must be considered within the context of Canada's colonial history. Experiences of racism, sexism, and colonialism continue to increase Indigenous women's risk of incarceration, and have cumulatively and negatively impacted their health.^v This history has resulted in intergenerational trauma, which is associated with higher rates of violence and substance use that can be linked to incarceration and poorer health.^{vi} Reports indicate that 97% of federally incarcerated Indigenous women were diagnosed with a mental health disorder and 92% were found to have moderate to high substance abuse needs.^{vii}

These women's experiences of incarceration and institutional violence cannot be separated from colonialism and the colonial policies that continue to erase and oppress them. Prisons are not a therapeutic environment; they do not facilitate healing. Recent calls to action have been made to adapt the criminal justice system to focus on new culturally safe approaches that take into account intergenerational trauma.



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NWAC'S ROLE

NWAC continues to work with our Provincial and Territorial Member Associations and Elders to ensure the voices of Indigenous women, girls, and gender-diverse people are front and centre in our advocacy efforts and calls for reform to the criminal justice system. For example, as a member of Indigenous Services Canada's Indigenous Women's Wellness Advisory Committee, NWAC raises awareness of incarcerated Indigenous women and gender-diverse people's health priorities and advocates for their needs.

As a long-time advocate for the rights of victimized, marginalized, and criminalized Indigenous women, including those within the federal prison system, NWAC reiterated the need to reform the criminal justice system in the June 2021 of *Kci-niwesq*, our newly launched magazine.

We also work with federally incarcerated Indigenous women through a five-year Public Health Agency of Canada-funded project called Walking the RED Path. The RED Path project aims to develop sustainable, evidence-based, and culturally safe sexually transmitted and blood-borne infections interventions for Indigenous women and gender-diverse people.

NWAC has advocated for the unique needs of incarcerated Indigenous women and gender-diverse people, including issuing multiple press releases and letters to the Minister of Justice on the need to protect incarcerated Indigenous women and gender-diverse people from COVID-19. We also published an article in the *Canadian Journal of Public Health* on the need to apply an Indigenous and gender-based lens to the exploration of public health and human rights implications of COVID-19 in Canadian correctional facilities.

In 2019, we produced a policy back-grounder on CSC Healing Lodges and Section 81 Healing Lodges, which made recommendations on the importance of healing lodges in the rehabilitation process.

GOVERNMENT OF CANADA'S ROLE

On February 10, the Honourable Marco Mendicino, Minister of Public Safety, released a statement in response to the OCI's 2020-2021 Annual Report. The Minister indicated that addressing systemic racism is a top priority of the Government of Canada



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across all portfolios, including in the federal correctional system. Minister Mendicino referenced his mandate letter, which included clear instructions to “address systemic racism and the overrepresentation of Black and racialized Canadians and Indigenous Peoples in the justice system.” He further outlined that one way the government is already doing this is through reform of the record suspension system to help Canadians get a pardon. He also stated “that the Correctional Service of Canada (CSC) will continue to consult stakeholders, including the National Ethnocultural Advisory Committee, the National Indigenous Advisory Committee, the National Association Active in Criminal Justice, Citizen Advisory Committee Members and the OCI, to analyze data on use-of-force incidents and examine whether strategies to manage incidents were used without bias.”^{viii}

In June 2021, Justice Canada announced a new call for proposals to support projects to address bias and other barriers faced by Indigenous people in the criminal justice system. This funding is informed by the Gladue principles, and the goal is to provide \$10 million over four years.

CORRECTIONS AND CONDITIONAL RELEASE ACT, Sections 79-84

The Corrections and Conditional Release Act (CCRA)^{ix} is the legislative framework for the Correctional Service of Canada (CSC) and includes several additional regulations and directives for the prison “to exercise reasonable, safe, secure, and humane control.”^x As a piece of legislation, the CCRA outlines prison administrative processes and various CSC obligations to prisoners. Sections 79-84 of the CCRA refer to provisions intended to reduce the overrepresentation of Indigenous people in prison generally. Furthermore, Section 81 allows interested federal prisoners to be transferred to an Indigenous community to serve their sentence in community-based facilities such as healing lodges.



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RECOMMENDATIONS

1. The Government of Canada must act to address the over-incarceration of Indigenous women and gender-diverse people in Canada's criminal justice system.
2. The Correctional Service of Canada must ensure that incarcerated Indigenous women and gender-diverse people have access to culturally safe programming and alternatives to traditional incarceration.
3. The Government of Canada must act to implement all 231 Calls for Justice from the Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls, with particular attention paid to Calls 5.21-5.24 and all Calls for Correctional Service Canada (14.1-14.3).
4. The Governments of Canada must act upon all 94 Calls to Action from the Truth and Reconciliation Commission of Canada, with particular attention paid to Calls 30-38.
5. The Governments of Canada must act upon recommendations outlined in the Standing Committee on the Status of Women's 2018 parliamentary report A Call to Action: Reconciliation with Indigenous Women in the Federal Justice and Correctional Systems.
6. The Governments of Canada must act upon recommendations outlined in the Standing Committee on the Status of Women's 2018 parliamentary report A Call to Action: Reconciliation with Indigenous Women in the Federal Justice and Correctional Systems.

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- i UN Committee against Torture. (2019). Concluding Observations on the Seventh Periodic Report of Canada. United Nations. https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/CAN/CAT_C_CAN_CO_7_33163_E.pdf. Accessed May 13, 2020.
- ii UN Special Rapporteur on violence against women. (2019). Visit to Canada. Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences. United Nations. <https://www.ohchr.org/en/issues/women/srwomen/pages/srwomenindex.aspx>. Accessed May 13, 2020.
- iii Office of the Correctional Investigator. (2021). Proportion of Indigenous Women in Federal Custody Nears 50%: Correctional Investigator Issues Statement. <https://www.ocibec.gc.ca/cnt/comm/press/press20211217-eng.aspx>.
- iv (2022). Office of the Correctional Investigator Annual Report 2020-2021. <https://www.oci-bec.gc.ca/cnt/rpt/annrpt/annrpt20202021-eng.aspx#s4>.
- v Bourassa, C., McKay-McNabb, K., and Hampton, M. (2008). "Racism, Sexism and Colonialism: The Impact on the Health of Aboriginal Women in Canada." *Canadian Women Studies* 1(24). 23–29. <https://cws.journals.yorku.ca/index.php/cws/article/viewFile/6172/5360>.
- vi Barlow, J. K. (2009). *Residential Schools, Prisons, and HIV/AIDS Among Aboriginal People in Canada: Exploring the Connections*. Ottawa Aboriginal Healing Foundation.
- vii Office of the Correctional Investigator. (2019). Annual report of the Office of the Correctional Investigator 2018-2019. <https://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20182019-eng.pdf>.
- viii Government of Canada. (2022). "Minister Mendicino Welcomes the Office of the Correctional Investigator's Annual Report." <https://www.canada.ca/en/public-safety-canada/news/2022/02/minister-medicino-welcomes-the-office-of-the-correctional-investigators-annual-report.html>.
- ix Corrections and Conditional Release Act, RS C 1992, c 20.
- x Correctional Service of Canada. (2013). "Acts, Regulations, and Policy." <https://www.csc-scc.gc.ca/acts-and-regulations/index-en.shtml>.