



SOCIAL CONNECTEDNESS
FELLOWSHIP PROGRAM

**Policy Brief:
Indigenous Youth Restorative Justice**

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Social Connectedness Fellow 2019

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www.socialconnectedness.org

August 2019

ISSUE AND EVIDENCE

Indigenous youth accounted for a staggering 46 percent of admissions to correctional services in 2016/17 whilst encompassing a mere 8 percent of the total Canadian youth population.¹ Evidently, while overrepresentation of Indigenous people in the Canadian Criminal Justice System has persisted for decades, the crisis is particularly acute in the youth justice system. Despite a reduction in overall youth incarceration rates by 33 percent since 2012/2013, the proportion of Indigenous youth admitted to correctional services increased from 21 percent in 2006/7 to 37 percent in 2016/2017.² The disproportionate overrepresentation of Indigenous youth in correctional services will perpetuate unless actions are taken.

Key Facts

- Indigenous youth are vastly over-represented at all stages in the criminal justice system of Canada and are more likely to be sentenced to prison and receive longer sentences regardless of criminal history and offence severity.³
- [Legislative diversionary measures](#) have not positively affected Indigenous young offenders as compared to Caucasian counterparts.⁴
- Indigenous over-representation in the criminal justice system is caused by multiple complex push and pull factors such as over-policing, and racist law and order politics.

There are also commonly identified correlates of youth offending such as high levels of

¹ Statistics Canada, *Adult and Youth Correctional Statistics in Canada, 2016/2017*, (Canada, June 19, 2018).

² Ibid.

³ Jackson, Nate. "Aboriginal Youth Overrepresentation in Canadian Correctional Services: Judicial and Non-Judicial Actors and Influence". *Alberta Law Review*. 2015. Accessed July 20, 2019.

⁴ Corrado, Kuehn, and Margaritescu. Sage Publications. "Policy Issues Regarding the Over-representation of Incarcerated Aboriginal Young Offenders in a Canadian Context". 2014. Accessed June 20, 2019.

poverty, family conflict, lower levels of education, substance abuse, and psychological/emotional problems.

- Indigenous young offenders are also disproportionately diagnosed as having Fetal Alcohol Spectrum Disorder, which puts immense responsibility and blame on the family, particularly the mother.⁵

STAKEHOLDERS

Most Affected: Indigenous youth, their families and communities

The circumstances of arrest, tribulations of the sentencing process and imprisonment all have major psychological and physical ramifications on youth that encounter the law. As they finally leave prison, not only do they lose their formative adolescent years, but they must also reintegrate into society and mend broken relations with their own self, their family and their community. The ramifications of incarceration do not end upon sentence completion. Criminal history further exacerbates the impact of structural inequalities and issues that Indigenous youth are born into, such as lower quality of education and substance abuse.⁶

Gatekeepers & Barriers to Change

Progressing chronologically from an Indigenous youth's initial interaction with the Criminal Justice System to the final sentencing stage, there are several key actors who influence the range of sentencing options considered by a judge to reach the final verdict:

⁵ Kim Pate. (Senator), interviewed by Shaista Asmi, Montreal, QC, July 2019.

⁶ Rudin, Jonathan. "Aboriginal Peoples and the Criminal Justice System". *Simon Fraser University*. Accessed July 20, 2019.

Police: determine formal involvement of the court in handling a criminal incident. There are a range of extrajudicial measures that allow police officers to consider an Indigenous youth's special circumstances and exercise discretion in the formal charge application.

Crown prosecutors: influence the sentencing options available to the judge and whether the case reaches the final sentencing stage given they effectively implement extrajudicial sanctions (EJS).

Bail courts: oversee the approval and terms of bail for Indigenous youth. Recent amendments to the Youth Criminal Justice Act (YCJA) that deem that having EJS history is an indicator for reoffending, as EJS participation is equated to formal admission of guilt, has affected the decision bail courts make regarding approval and terms of bail. Inherent biases regarding whether Indigenous youth and their families are responsible enough to deserve bail mean that successful bail applications are also disproportionately lower.

Probation officers: write pre-sentence reports that classify youth as low, medium or high risk for re-offense and make recommendations influencing the verdict stringency determined by the judge. Due to the histories of Indigenous communities, their higher "needs" are translated into higher "risk" profiles for Indigenous youth, and thereby into harsher sentences when prosecutors leverage this in plea bargains.

Sentencing Judges: the final decision maker that ultimately decides the fate of Indigenous youth who encounter the law.

Extrajudicial actors

Senators: can reallocate provincial funds to a newly determined policy priority. Effective extrajudicial programs for diversion lack consistent funding since its potential benefits are

contingent on political disposition. However, given the minimal voting influence of Indigenous people within the political system, Indigenous focused programming is not prioritized.

Members of parliament: decide provincial budgets and finances and receive budget insufficiency issues from senators. Efforts at this level to prioritize Indigenous needs enact significant impact downstream at the community level across the nation.

RECOMMENDATIONS

PROGRAM: Early Intervention and Prevention

Indigenous youth support programs are critical in reducing the propensity to offend in the first place, yet are sparse and have limited resources. These programs should be provincially prioritized specifically by the Ministries of Health, Education and Youth, and should be mandated such that these Ministries and Indigenous-serving organizations have sufficient funding to administer the mental, social and physical support that Indigenous youth need due to the reality of the circumstances they are born into. Currently, such programs are sparse and have limited resources.

POLICY: Effective Implementation of Gladue Guidance

Require by statute that actors in the earlier stages of the criminal justice process such as police, bail courts and probation officers comprehensively examine [Gladue](#) factors to exercise effective discretionary course of conduct.

PUBLIC: Dismantling Discrimination

Racism and sexism are fundamental issues that sustain the overrepresentation of Indigenous people, especially Indigenous women, in prison. Inherent discrimination against

Indigenous people at not only every stage of the justice process, but also in every facet of their life, leads to insufficient provisions for education, mental, social, and physical support.

Provincial and federal governments should work with the non-Indigenous majority of Canada to raise greater awareness and understanding about these injustices and encourage them to acknowledge and address their own biases. Incorporation of historical and cultural sensitivity training in all professions and academic curricula should be mandated to promote awareness and action.

Lessons & Best Practices

The YCJA is generally deemed to be effective given the overall decline in youth incarceration rates. However, statistics pertaining to Indigenous youth overrepresentation are neglected; insufficient efforts are undertaken to address it as the disproportion continues to grow.

Healing centers that work in partnership with Correctional Services Canada and programs focused on Indigenous youth intervention and support are examples of efforts that focus on different aspects of addressing Indigenous incarceration. Reintegration and healing centers utilizing Indigenous methods of amending relationships between the convicted and their community represent culturally sensitive and culturally aware restorative justice whilst reducing recidivism.⁶ Youth support programs work to prevent interaction with the law in the first place by providing Indigenous youth avenues and resources for mental, social and physical wellbeing. Addressing the crisis both at the root (before interaction with the law) and its

⁶ Maison Waskekun. Indigenous Healing Center Homepage. Accessed June 5, 2019.

aftermath (reintegration and reducing recidivism), are necessary to protect the rights and well-being of Indigenous youth in Canada.

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