



Prisoners' Legal Services
A project of the West Coast Prison Justice Society



BC FIRST NATIONS
JUSTICE COUNCIL



BRITISH COLUMBIA
ASSEMBLY OF
FIRST NATIONS



Union of BC Indian Chiefs

THE MASS INCARCERATION OF INDIGENOUS PEOPLE

Indigenous people represent 5% of the population in Canada but 32% of people in federal prisons and 50% of women in federal prisons.¹ Canada has been aware of the over-representation and steadily rising proportion of people in Canadian prisons who are Indigenous for decades.² This mass incarceration contributes to the ongoing genocide of Indigenous Peoples in Canada.³

Indigenous people spend more of their sentences in custody.⁴ They are also disproportionately exposed to the most punishing and damaging aspects of prison, including solitary confinement (in Structured Intervention Units and elsewhere),⁵ violent and restrictive maximum-security environments,⁶ and use of force by officers.⁷ Indigenous people are over-represented in self-harm injuries⁸ and deaths by suicide⁹ in prison. Joey Toutsaint, a member of the Black Lake Denesuline First Nation, was held for more than 2,180 days in solitary confinement in federal custody. He and others report prison officers sometimes encourage Indigenous people to kill themselves when they are feeling suicidal, and have even given them razor blades to harm themselves.

Sections 81 and 84 of the *Corrections and Conditional Release Act* (“CCRA”), which allow Indigenous people to serve their sentences in Indigenous communities, are woefully under-funded and under-used. Indigenous-operated healing lodges are restricted by Correctional Service Canada (“CSC”) policies, and less than 1% of CSC’s budget has historically been devoted to healing lodges¹⁰ despite Indigenous people representing about one third of people in prison.¹¹

Prisoners’ Legal Services is a non-profit legal clinic that serves approximately 1,000 people incarcerated in federal and provincial prisons in British Columbia, Canada each year. Our decades of experience representing incarcerated Indigenous people, along with the expertise of the BC First Nations Justice Council, the BC Assembly of First Nations and the Union of BC Indian Chiefs has made clear that the solution is not to invest more money and authority in CSC prisons and initiatives, but to recognize Indigenous self-determination and redirect funding and authority to Indigenous governments and organizations to address violence and harm.

Recommendations – we call upon Canada to:

1. recognize Indigenous self-determination by shifting authority and one third of CSC’s approximately \$3 billion annual budget – \$1 billion annually – to Indigenous governments and organizations to decarcerate Indigenous people in a manner consistent with the *United Nations Declaration on the Rights of Indigenous Peoples*.
2. accept the United Nations Special Rapporteur on the Rights of Indigenous Peoples’ invitation to “invest in community-based, Indigenous-led policies with the aim of disrupting the poverty-to- prison ‘pipeline’ and embracing a justice strategy that includes recognition of Indigenous legal systems”, and “implement Section 81 of the [CCRA] in consultation with Indigenous Peoples to create alternatives to incarceration based on Indigenous legal orders.”¹²

For more information, see Prisoners’ Legal Services’ report [Decarceration through Self-Determination: Ending the mass incarceration of Indigenous people in Canada](#).

Endnotes

- 1 Office of the Correctional Investigator Canada, *Proportion of Indigenous Women in Federal Custody Nears 50%: Correctional Investigator Issues Statement* (Ottawa: 17 December 2021). Online: <https://www.oci-bec.gc.ca/cnt/comm/press/press20211217-eng.aspx>.
- 2 See for instance the Supreme Court of Canada's decision in *R. v. Gladue*, [1999] 1 S.C.R. 688.
- 3 Prisoners' Legal Services, *Decarceration through Self Determination*, (April 2023). Online: <https://prisonjustice.org/wp-content/uploads/2023/04/Decarceration-through-Self-determination-w.pdf>
- 4 Office of the Correctional Investigator Canada, *Annual Report 2021-2022* (Ottawa: 2022) at 86. Online: <https://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20212022-eng.pdf>. Public Safety Canada, *Corrections and Conditional Release 2018 Statistical Overview* (August 2019) at 80 and 86. Online: <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/ccrso-2018/ccrso-2018-en.pdf>.
- 5 Public Safety Canada, *2019 Annual Report, Corrections and Conditional Release Statistical Overview* (September 2020) at 71. Online: <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/ccrso-2019/ccrso-2019-en.pdf>. Structured Intervention Unit Implementation Advisory Panel, *2021/22 Annual Report* (Ottawa: 2 September 2022) at 83-84. Online: <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/2022-siu-iap-nnlrpt/2022-siu-iap-nnlrpt-en.pdf>. Office of the Correctional Investigator Canada, *Annual Report 2021-2022* (Ottawa: 2022). Online: <https://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20212022-eng.pdf>.
- 6 Auditor General of Canada, *Systemic Barriers – Correctional Service Canada* (2022) at 8. Online: https://www.oag-bvg.gc.ca/internet/docs/parl_oag_202205_04_e.pdf. Public Safety Canada, *Corrections and Conditional Release 2018 Statistical Overview* (August 2019) at 55; Office of the Correctional Investigator Canada, *Indigenous People in Federal Custody Surpasses 30%* (Ottawa: 21 January 2020); Data received from the Office of the Correctional Investigator Canada (14 November 2022).
- 7 Office of the Correctional Investigator Canada, *Indigenous People in Federal Custody Surpasses 30%* (Ottawa: 21 January 2020). Office of the Correctional Investigator Canada, *Annual Report 2017-2018* (Ottawa: 2018) at 11 and 34. Online: <https://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20172018-eng.pdf>. Office of the Correctional Investigator Canada, *Annual Report 2021-2022* (Ottawa: 2022). Online: [annrpt20212022-eng.pdf \(oci-bec.gc.ca\)](https://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20212022-eng.pdf).
- 8 Data provided by the Office of the Correctional Investigator (24 August 2021).
- 9 Office of the Correctional Investigator Canada, *Annual Report 2021-2022* (Ottawa: 2022) at 97. Online: <https://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20212022-eng.pdf>.
- 10 Office of the Auditor General of Canada, *Report 3 – Preparing Indigenous Offenders for Release – Correctional Service Canada* (2016). Online: https://www.oag-bvg.gc.ca/internet/English/parl_oag_201611_03_e_41832.html. Correctional Service Canada, *2015-16 Departmental Performance Report* (2016). Online: <https://www.csc-scc.gc.ca/publications/005007-4500-2015-2016-eng.shtml>.
- 11 Prisoners' Legal Services, *Decarceration Through Self-Determination* (2023). Online: <https://prisonjustice.org/wp-content/uploads/2023/04/Decarceration-through-Self-determination-w.pdf>.
- 12 United Nations Special Rapporteur on the Rights of Indigenous Peoples, Mr. José Francisco Calí-Tzay, "Visit to Canada 1-10 March 2023 - End of Mission Statement". Online: <https://www.ohchr.org/sites/default/files/documents/issues/indigenouspeoples/sr/statements/eom-statement-canada-sr-indigenous-2023-03-10.pdf>.