



RISING INCARCERATION RATES OF RACIALIZED WOMEN

The fastest-growing prison population in Canada is racialized women, particularly Indigenous women. More than one in three women in federal custody are Indigenous. The number of South Asian women and African Canadian women in custody is also increasing.

There are many linkages between the increased marginalization, victimization, criminalization, and institutionalization of women. Studies involving self-reporting by individuals indicate that virtually no one reaches the age of majority without doing something for which they could be criminalized. Who is labelled a criminal (or “criminalized”) and imprisoned is usually determined by the relative privilege or lack thereof of those involved and the circumstances of the act – who does what, to whom, in what context – rather than the actual risk to public safety or likelihood of harm.

Why do rising incarceration rates matter to women?

82 percent of women in prison are jailed as a result of behaviour related to attempts to cope with poverty, histories of abuse, and addiction and mental health issues that commonly arise from these experiences. In every province and territory, social assistance payments are so inadequate that, women end up criminalized for doing what they must to support themselves and their children.

Indigenous women, most notably, are hyper-responsibilized and then deputized: they are made responsible for their own safety from victimization and for the safety of those for whom they care. As investigations like the Missing and Murdered Indigenous Women and Girls Inquiry reveal, the criminal justice system fails to adequately protect Indigenous women and girls. When police are called and fail to respond or don't offer protection, Indigenous women and their families are often left with the impression it is their responsibility to both prevent their victimization as well as respond to and recover from criminal acts when they are victimized without support from justice services.

If a woman uses force to protect herself or others – especially if a weapon is involved – she will commonly face the full, often disproportionate, weight of the law. She is likely to be quickly criminalized and then imprisoned. Due to differences in the average size and strength of men and women, if a woman engages in hand-to-hand combat with a

male attacker she is likely to end up severely injured or dead. Women who respond to physical threats by picking up a frying pan, knife, or even an attacker's gun are likely to be charged and considered more deserving of blame than the attacker. They are also then subject to a mandatory minimum prison penalty for using a 'weapon' in their reactive use of force.

The vast majority of women charged for using reactive – usually defensive – force, don't pursue a legal defense and are likely to plead guilty. Sometimes it is because the only witnesses to the attack or abuse are their children, and they do not want to subject their children to the trauma or shame of publicly testifying. Sometimes it is because they are persuaded to plead guilty in order to avoid a possible trial and mandatory minimum sentence. Many Crown prosecutors offer set sentences in exchange for guilty pleas when they learn of women's histories of abuse. True justice would be withdrawal of charges when prosecutors realize women responded in a reasonable (though unenviable) way to unreasonable, violent threats toward them or those for whom they care.

Link to Trauma & Mental Health

It is no coincidence that 91 percent of Indigenous women and 87 percent of all women in federal prisons in Canada have experienced physical and/or sexual abuse. Most also live with disabling mental health issues.



Policy4Women

Public space, public engagement

What can governments do?

What has been done?

Canada has declared itself an international leader in human rights. The 1992 federal *Corrections and Conditional Release Act* provided avenues for decarcerating Indigenous prisoners and those with mental health issues. Section 29 provides for the transfer of individuals out of prisons for healthcare, including mental health treatment. Sections 81 and 84 allow communities to apply to have Indigenous individuals serve their sentences or be paroled into their communities. Those provisions have not been fully implemented and, as the Truth and Reconciliation Commission and federal Ministerial mandate letters confirm, the incarceration rates of Indigenous women and those with mental health issues has increased astronomically since they were created.

What can be done?

A comprehensive approach is needed to prevent women – especially women who are Indigenous, racialized, and/or living with mental health issues – from being marginalized, victimized, criminalized, and institutionalized at such rapidly increasing rates in Canada.

Canada must breathe life into the actionable equality provisions outlined in the *Canadian Charter of Rights and Freedoms*. Countries with the highest standards of living and gender, racial, and economic equality also have lower crime and incarceration rates. Efforts to improve living standards, such as guaranteed income initiatives, have existed in Europe and are being piloted in Ontario (Hamilton, Lindsay, and Thunder Bay). The first guaranteed income initiative in Canada, the 1970s Mincome project in Dauphin, Manitoba, reduced medical costs, crime, and incarceration rates. These results reinforce the need for national standards that ensure equitable access to social, economic, health, and educational programs and improve outcomes for marginalized groups.

For those already criminalized and imprisoned, we must insist on the use of correctional methods developed specifically to discourage imprisonment

and to decarcerate. Imagine how we might reallocate the \$600,000 per woman per year currently spent to keep a woman in the general population of a federal prison. We might choose, instead, to invest in supporting all women to remain and productively participate in their communities. This money could be put toward community-based and women-directed housing, any necessary supervision, vocational and educational mentorship and training initiatives, and therapeutic treatment and personal supports.

Most women in jails are also mothers who were the sole supporter of their children before being jailed. 90 percent of these children are taken into the ‘care’ of the state, compared to 10 percent of the children of similarly situated men. The human, social, and fiscal costs of such policies are clearly unreasonable and require change. One option might be to follow President Nelson Mandela’s policy of decarceration of all mothers with children under 12 years of age. He recognized how the bond between mother and child is key to shaping children’s outcomes. It is critical to consider the costs of removing people, particularly Indigenous Peoples, from their communities.

While Sections 81 and 84 of the *Corrections and Conditional Release Act* focus on Indigenous Peoples, these provisions can be applied to others and could create a response similar to sponsorship of Syrian refugees. Communities could apply to support and supervise one or more woman and their children, thereby decarcerating women and removing children from the child welfare system.

Resources

Canadian Association of Elizabeth Fry Societies & Native Women’s Association of Canada Discussion Paper

Women and the Canadian Legal System: Examining Situations of Hyper-Responsibility (2018)

Parliamentary Budget Office Reports

The Funding Requirement and Impact of the “Truth in Sentencing Act” on the Correctional System in Canada (2010)

Update on Costs of Incarceration (2018)

Canada. Parliament. House of Commons. Standing Committee on Justice and Legal Affairs. (2017). *Minutes of Proceedings and Evidence*. 42nd Parliament, 1st Session, meeting no. 86.

Government of Ontario. (2018). *Ontario Basic Income Pilot: Studying the Impact of a Basic Income*. Available from: <https://www.ontario.ca/page/ontario-basic-income-pilot>