

I'll Never Forget When...

*I lived... in the belly of the concrete beast...
flowing through [its] veins, we are [its] life line,
barely surviving, consumed by [its] disease of
destitute. Degraded and shamed beyond belief,
lost somewhere in the mind is my own relief.
I cope in unnatural ways... unnatural to this
system. In this city of steel my forest is of fences
and walls. The stalks of trees are made of bars.
The lovely sunset is never seen and wee bits of grass
trying to green. Allowed a few flowers nothing
more. Now follow me through the steel door.
This is my sea of hatred and depression, salt-like
waves flowing down my expression. My seagull's
fellow cons crying out. Some yell, scream, slash
and shout. This is my desert of death and doom.
My only shelter is this 8x7 room. From the heated
anger or rage, from the madness that roams in this
wilderness. I will one day leave the city of steel, I
will bear the scars and hope to heal.*

Amanda Lynn, 1997 (An Indigenous woman incarcerated at Okimaw Ohci Healing Lodge).

Mental health

Mental health conditions often develop or worsen in prisons. Few federal prisons address the mental health needs of Indigenous people, especially Indigenous women. The culture of punitive policies within prisons can make mental illnesses worse. An example is solitary confinement, formally called Structured Intervention Units (SIUs). These are for people in prison who present a risk to themselves or others. However, research shows that Indigenous people, women, and people with mental illness are put in SIUs more often – and for longer periods – than other people in prison.

Mother-child programs

Restrictive eligibility criteria for mother-child programs in federal prisons affect the participation of Indigenous women more than non-Indigenous women. Since the program began in 2002, only 29 per cent of program applicants identified as Indigenous even though Indigenous women make up 50 per cent of all women serving time in a federal prison. Mothers in prison must be classified as a minimum or medium-security risk to apply for the federal mother-child program. They must also engage with Child and Family Services to gain eligibility for the program. However, more Indigenous women are

classified as maximum-security risks. These classifications often miss the context of an offence. For example, violent crimes by Indigenous women often involve responding to or attempting to escape violent situations. In addition, some Indigenous women are hesitant to request support from child welfare agencies because of past and present practices of child apprehension that are disproportionate to Indigenous families.

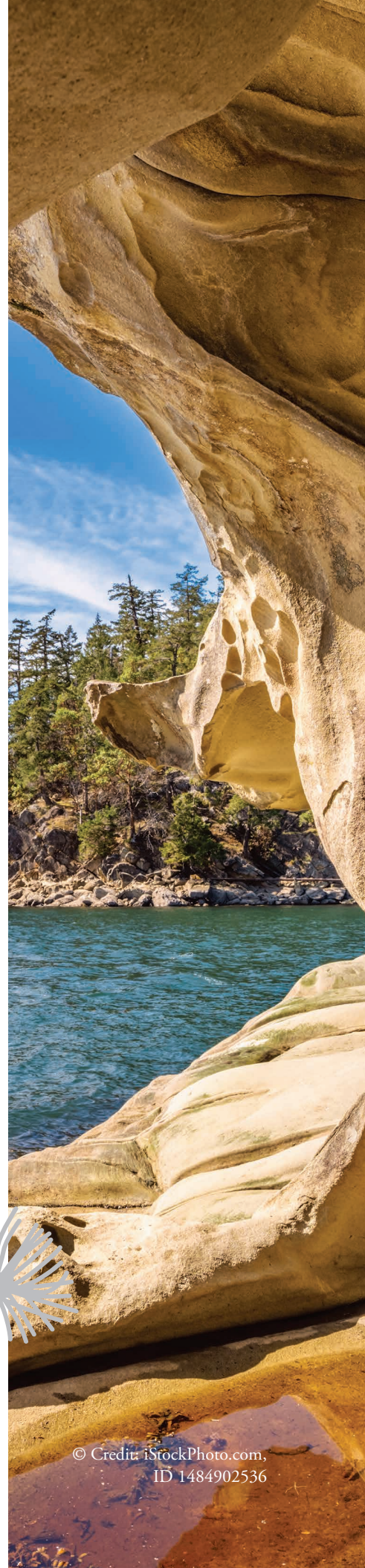
Limitations to harm reduction practices in prisons

The CSC has a zero-tolerance drug-free policy. This limits access to safe and effective harm reduction programs such as opioid substitute therapy and needle exchange programs. The CSC started a prison needle exchange program in 2018 but the drug-free policy still exists. This results in a difficult application process with restrictions on behaviour and a lack of confidentiality. Some people in prison think the program creates a risk of criminalization for the possession of drugs and threatens parole or early release.

Post-prison care

Inadequate access to health services in prison and a lack of care afterwards means health risks transfer to communities when individuals are released from custody. Challenges can include people being released without access to transportation to receive care or receiving no referrals to appropriate health services. Disruptions in care can increase safety risks to the community, transmission of diseases, health care costs, and the burden on families and caregivers. It also increases Indigenous people's risk of suicide or drug overdose within the first few weeks after release.

Research suggests the health impacts of the current prison system can cause Indigenous people to lose two years of life expectancy for every year they spend in prison. The negative effects of prison also affect the children of incarcerated parents. These children are at greater risk of anxiety and depression, difficulties in school, and involvement in the criminal legal system as adults. This results in a generational cycle of over-incarceration.



Ways to reduce the number of Indigenous people in prison

Calls are growing to reduce the number of Indigenous people in prison. This is called “decarceration.” Indigenous-led approaches to decarceration do not prioritize colonial justice principles of denunciation and deterrence. Instead, they often follow Indigenous legal principles. Oftentimes, these focus on rehabilitation and healing for both the offender and the victims of crime. They might also address the root causes of the criminal behaviour, such as offenders’ health and/or social needs. Both the Truth and Reconciliation Commission of Canada and the National Inquiry into Missing and Murdered Indigenous Women and Girls call for decarceration efforts.

Four areas in federal legislation can support decarceration of Indigenous people.

1. Section 717 of the *Criminal Code* enables communities to create alternative measures to handle some criminal matters outside of mainstream systems. Program participants must accept responsibility for their offence and agree to take part.
2. Section 718.2(e) of the *Criminal Code* requires sentencing courts to consider Indigenous social histories and alternatives to imprisonment.
3. Section 742 of the *Criminal Code* presents the option of conditional sentences – sentences served in the community – for crimes that do not carry mandatory minimum penalties, among other restrictions.

4. Section 81 of the *Corrections and Conditional Release Act* allows Indigenous people to be transferred to the care and custody of community establishments for all or part of a custodial sentence.

Three types of approaches build on these options. They operate at different stages of the criminal legal process.

1. Diversion programs
2. Indigenous courts
3. Healing lodges





Diversion programs

Diversion programs are developed under Section 717 of the *Criminal Code*. Participants enter the program either before or after criminal charges. They receive a healing plan to address the root cause of their offence. After the plan is completed, charges are either stayed or dropped. Each province and territory offer diversion programs. Indigenous-led programs exist in all jurisdictions except New Brunswick, Newfoundland, and the Northwest Territories. However, all jurisdictions have a policy or practice to ensure the fair application of their diversion program for Indigenous people. Distinctions-based programs are also available, such as First Nations-specific programs in British Columbia, Inuit-specific in Ontario, and Métis-specific in Manitoba.

Indigenous courts

In Indigenous courts, participants also must plead guilty and complete a healing plan. This occurs at the point of sentencing. Participants are not completely diverted from the criminal legal system. Depending on the sentencing outcome, they may progress to a reduced or conditional sentence. These courts exist in British Columbia, Alberta, Ontario, New Brunswick, Nova Scotia, and Nunavut. Some operate as Gladue courts because of their use of “Gladue reports.” These reports document the accused person’s social history and suggest alternatives to prison, based on Section 718.2(e) of the *Criminal Code*.

Healing lodges

Healing lodges provide a sentencing alternative for people in custody. There are two types of healing lodges in Canada: four run by CSC and six led by Indigenous communities. Indigenous-led healing lodges are developed under Section 81 of the *Corrections and Conditional Release Act*. They are in Alberta, Manitoba, Saskatchewan, and Quebec. Indigenous-led healing lodges have lower recidivism (re-offending) rates compared to CSC-run healing lodges. Most Indigenous-led healing lodges are First Nations-specific or adopt pan-Indigenous approaches. Only one centre offers Inuit-specific programs alongside First Nations programs. No Métis-specific programs are identified in the report.

Conclusion

Research shows positive outcomes for Indigenous people and their communities for each type of incarceration alternative. These include:

- reducing the likelihood of re-offending;
- reducing the stigma associated with criminal records (in the case of diversion);
- preserving First Nations and Inuit laws; and
- creating a restorative environment grounded in Indigenous knowledges and cultural practices.

There are gaps and challenges, however. For instance, very few jurisdictions offer all three approaches (diversion programs, Indigenous courts, and Indigenous-led healing lodges). Indigenous-led diversion programs and Indigenous courts are challenged by the requirement of a guilty plea from participants. This rule undermines the inherent right of Indigenous Peoples to self-determination in law and justice (a right supported by the United Nations Declaration on the Rights of Indigenous Peoples). Indigenous-led healing lodges are hampered by limited funding and restrictive CSC policies and procedures.

It is important to note that decarceration is only a starting point. Systemic change must take place to support Indigenous communities in establishing and controlling their own legal systems, led by distinct First Nations, Inuit, and Métis laws and legal principles.





*You introduce your ignorance and intimidation
only to have us brothers rebound from humiliation.*

*You take the air I breathe from reality
and spare this warrior his mentality.*

*You try to isolate my concept of determination
which does not follow your constitution.*

*You aggravate with your authority
only to bring me closer to spirituality.*

*You view and justify our wrong by the book
in your colloquial vocabulary, I am the crook.*

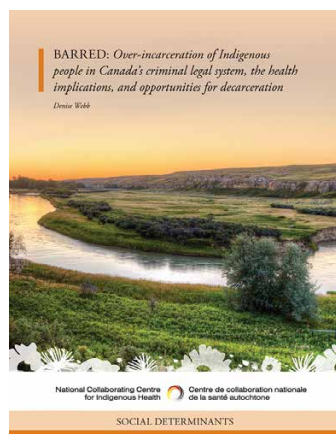
*You take and label us the low-life class
when upon my prayers include the pipe and sweetgrass.*

*You attempt to manipulate the spirit – that is your goal
for I shall remain and be strong in mind, body and soul.*

*You see whiteman I am not a follower
in my sense of direction, I am the leader.*

Wally, 1988 (an Indigenous person in prison).

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