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# **The Justice System and Indigenous People**

# Contents

**1**

**Indigenous Incarceration**

**2**

**Youth in the Justice System**

**3**

**Policies of Today**

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# 1. Indigenous Incarceration

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Overrepresentation, causes, historical rates, and women

# Statistics

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1. 3% of general population
2. 20% of federal prison population
3. 27% of provincial and territorial prison population
4. 7-8 times overrepresented in prison population
5. Percentage of Indigenous admissions are rising over time, but the overall number of admissions is declining

## Reasons for Overrepresentation

**Police Respond  
More Formally**

**Less Able to Pay or  
be Given Bail**

**More Likely to  
Receive Custodial  
Sentences**

**Experience  
Intergenerational  
Trauma**

**Social  
Disorganization**

**Greater Level of  
Offending**

## **While In Prison**

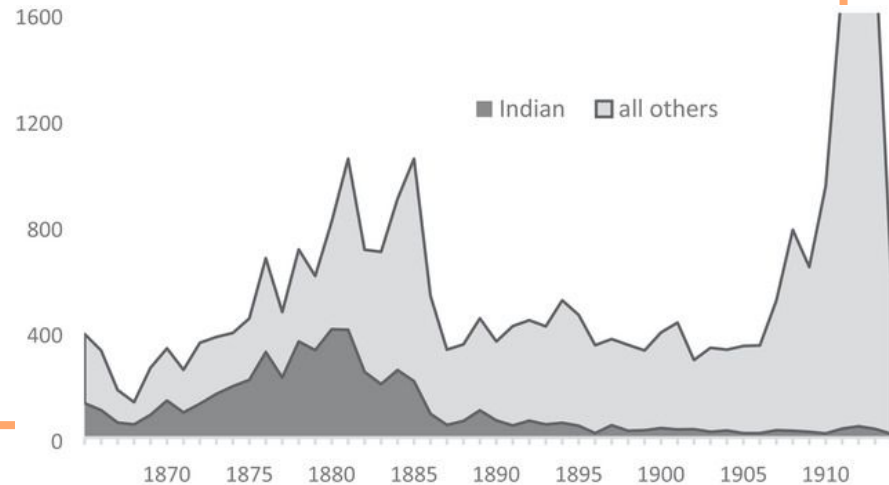
**Overrepresented  
in high security,  
segregation and  
forceful  
interventions**

**Treatment in  
prison delays  
parole and  
reduces chances  
of full parole**

**83% had a parole  
hearing  
postponed**

# Historical Rates

1. Prior to 1900 their rates were lower
  - a. More community-based punishments
2. 1900-1950 saw their rates catch up and exceed white rates



# Alcohol Convictions

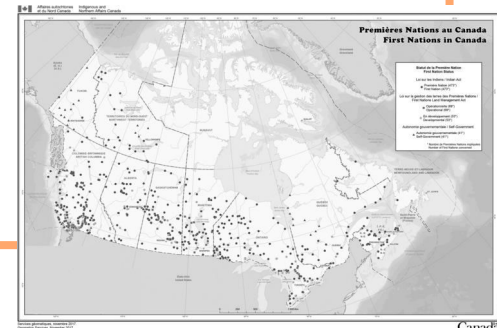
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1. 1967 Canadian Corrections Association report
  - a. Many Indigenous people were convicted under Indian Act
2. Received mainly alcohol-based convictions
  - a. Most were for laws under the Indian act
  - b. White people would not have been convicted of the same acts



# Indigenous Reserves

1. Prairie and Northern areas contribute the most to overrepresentation
  - a. Lower-income
  - b. Further away from band supports, community connections
2. Allow for concentrated policing



# Indigenous Women

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1. Make up 37.6% of federal women's prison population
2. Do not feel understood or listened to
3. Have often experienced long time abuse and discrimination prior to sentencing
4. Rates are higher than men in almost all crimes



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## 2. Indigenous Youth

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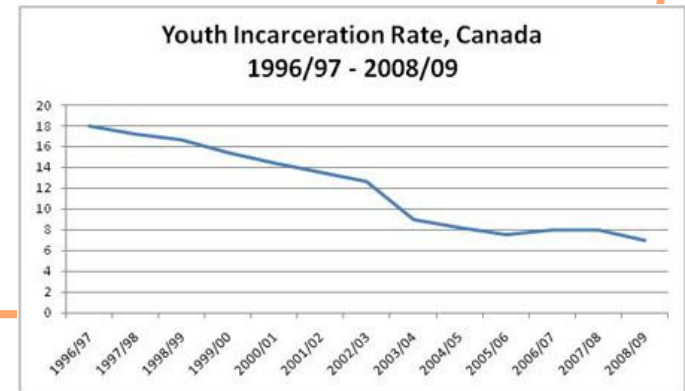
Youth rates, why their rates are high, and the impact of Child Welfare Authorities

# **“A crisis in the Canadian justice system”**

Supreme Court of Canada

# Rates of Incarceration

1. Indigenous females account for 44% of admissions, males count for 29% of admissions
  - a. 7% of youth population
2. 16% of admissions in 2002/03, rose to 46% in 2016/17
3. Greater likelihood to be involved with criminal justice system than graduate high school



# **Causes of Overrepresentation**

**Addictions**

**Fetal Alcohol  
Disorder**

**Mental Health  
Problems**

**Violence in the  
Family**

**Parents  
Incarcerated**

**Involvement with  
Child Welfare  
Authorities**

# Child Welfare Authority Involvement

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1. Indigenous children are more likely to be removed from their family and community
  - a. Foster care
  - b. Secure detention
  - c. Community housing
2. Parents are often struggling with trauma, unable to raise their children
3. No longer connected to community and heritage

# Child Welfare Authority Involvement - Continued

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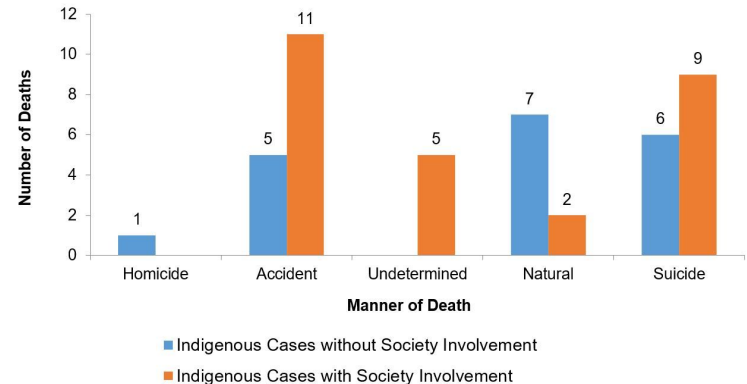
1. Today nearly 27,000 Indigenous children are under government care in Canada
2. Indigenous children account for 1% of all children in British Columbia, but 49% of children in government care.
3. Only 13% of children in care graduate from high school



# Childless Communities

1. High incarceration rate, high suicide rates, impact of Child Welfare Authorities and early deaths cause communities to have low numbers of children
2. Effects northern and rural communities the most

Chart 20A: Manner of Death among Indigenous Children and Youth in 2016, by Society Involvement (n=46)



# Youth Opinion Survey

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1. Feel disconnected from their heritage
2. Feel their parents were unable to parent as they had not had parents themselves
3. Feel that their culture is in crisis



## 3. Policies of Today

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Legislative changes and accommodations for Indigenous people

# Rehabilitation Programs

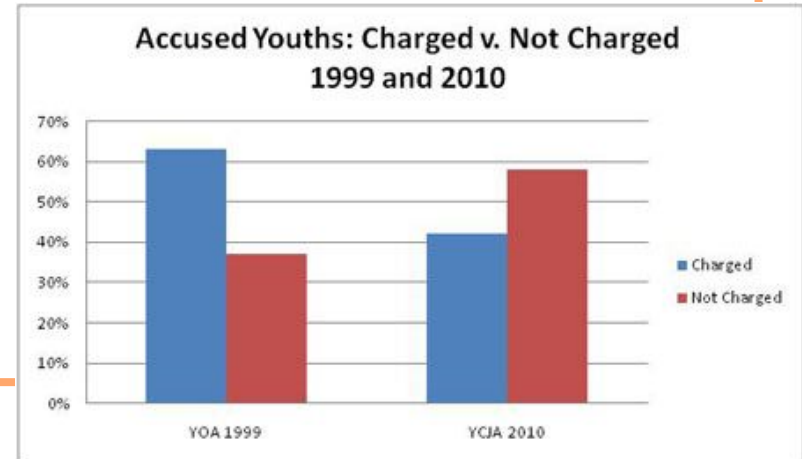
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1. Best option is community-based supports
  - a. Allows for support after release
  - b. Connection with Indigenous identity
  - c. Maintain community connections
2. Programs work to decrease recidivism



# YCJA - Accommodations

1. Emphasize extrajudicial sentences and diversion measures
  - a. Specified by the Youth Criminal Justice Act
2. YCJA reduced custodial sentences



# Sentencing Reform Act (1996)

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1. Encourages judges to consider alternatives to imprisonment
2. Codified sentencing restraint for aboriginal individuals
3. Established conditional sentences
  - a. Imprisonment is served in the community
  - b. Only for sentences two years less a day - only affects provincial numbers

# R v Gladue and R v Wells

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1. Judges should take background factors into account
  - a. Poverty, lack of education and employment, substance abuse, community fragmentation
2. Indigenous people are more adversely affected by incarceration
  - a. Culturally inappropriate and discrimination within them is rampant



# R v Gladue and R v Wells - Continued

1. Emphasis in restorative justice and community-based sanctions
2. Does not necessarily reduce custodial sentences, just offers judges flexibility
3. Applies to Indigenous people generally, not just on-reserve





# R v Ipeelee

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1. Not all background factors are directly related to the crime
2. Link between background factors and crime does not need to be clear for leniency



# Gladue Courts

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1. Established in several provinces
2. Deal with sentencing and criminal trials
3. They have an Indigenous caseworker
4. Connects offenders with Indigenous services
5. Court in Toronto used conditional sentences and lowered Indigenous imprisonment rate



# Circle Sentencing

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1. Community is able to debate and have their voices heard
2. Decision ultimately lies with the judge
3. The decisions are more likely to be respected by the community



# Improvements Still Needed

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1. Develop power-sharing relationships with community elders and leaders
2. The youth should feel important in decision making within the community
3. Further reduce custodial sentences
4. Social reform and improve community supports





## **4. Conclusions and Questions**

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# Conclusions

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1. Indigenous incarceration rates remain high
2. These high rates have a variety of causes, most of them related to background factors
3. Youth are particularly affected by these high rates
4. There have been moves to increase community representation and Indigenous supports in sentencing

## Discussion Question

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1. How do you see high youth incarceration rates affecting the next generation of Indigenous children?

## Discussion Question

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1. Do you think enough is being done to address the high rates of Indigenous incarceration?



# Discussion Question

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1. Are additional accommodations for Indigenous people during sentencing helpful?

# The End

Thank you for listening and participating

# Citations

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