

Standing Senate Committee on Human Rights, October 4th

Study on the issues relating to the human rights of prisoners in the correctional system

I come to this hearing with a primary research focus on Saskatchewan's provincial prisons, and with a methodology that emphasized consultation with currently and formerly incarcerated people and their families. Below I detail some of my findings and offer some larger policy suggestions to deal with the problems of overincarceration and family separation in particular.

Amongst my findings about Saskatchewan's provincial prisons:

- severely overcrowded
 - double bunking is standard practice
 - gymnasiums, classrooms, workshops and visiting rooms used as sleeping spaces
- warehouse conditions: programming delayed to end of sentence
- problems with access to health and dental care (incorrect medical schedules, unable to see outside doctors to monitor chronic illness, dental only for tooth extraction)
- food privatization (inadequate portions, no adjustments for pregnant women and diabetics)
- phone services privatized: hidden connection and processing fees making it too expensive to keep in touch with family and outside supports
- no contact visits are standard (visits with family / children across glass, women can have contact visits with their children, but the only correctional centre for women is too far and expensive for families to get to)
- 80-95% of inmates are Indigenous (vs. 15-17% of Saskatchewan's total population)

When people discuss prisons as the “new residential schools,” it is not only due to demographics, but the continued pattern of separating families, providing inadequate nutrition, and denying spiritual practices as a matter of policy.

All of this is done within a risk management paradigm – if there is no contact between visitors, for example, there is very little chance that something will happen that would warrant the production of an incident report.

We need to shift paradigms in order to think about Public Health - to emphasize rehabilitative needs, to understand that people who are incarcerated are going to return to the community. And we need to understand and accept that prison is not necessarily the best place to deal with the issues it inherits.

For Indigenous offenders, Gladue reports are an option. On the basis of identified needs, Indigenous offenders can be streamed into a treatment facility rather than a prison. In Saskatchewan, however, there is only one Gladue writer, and unless requested by a judge, which is extraordinarily rare, the expense of producing a report must be taken on by the accused.

Policy Suggestions and Change to the Criminal Code

Based on my findings, I have a number of policy suggestions:

Access to Justice

1). Defense must be funded at equivalent levels to the crown.
-A properly funded defense ensures that someone will advocate on behalf of the accused when it comes to bail hearings (with the positive added effect of reducing the number of accused persons being held on remand). It also ensures that the accused will be able to protect themselves against, and understand the implications of, plea deals that often set community restrictions that are impossible for the accused to understand and follow, leading to breach. This also means that Indigenous offenders will be more likely to be provided with access to Gladue reports. It is evident in Saskatchewan that there is neither incentive nor desire on the part of the crown to routinize the production of these reports. The ability of the accused to defend themselves is hampered in Saskatchewan with a legal aid current cut-off of \$11,890 for an individual, and cuts to legal aid further jeopardizing access, making meaningful work with legal aid clients increasingly difficult. In the American context, legal scholars John Pfaff and Michelle Alexander have both linked the problem of overincarceration to overzealous prosecution, and both suggest that Defense be funded in equal levels to the crown. In the Canadian context, funding defense at equivalent levels to the crown is the only way to avoid tiered access to justice, and to endure trial fairness, as per ss. 10(b), 11(d), and 7 of the Charter.

Family Separation

2). Add “and women” to the end of Section 718.2(e) of the Criminal Code

Incarcerated women tend to have histories of physical or sexual abuse, and often suffer from mental health issues. The crimes for which women are accused tend to be minor (theft under \$5,000, assault level 1, administration of justice violations), and violent crimes tend to be committed against abusive spouses or intimate partners. To expand 718.2 (e) is to recognize as well that Indigenous women are the fastest growing demographic in federal penitentiaries. Community support programs are a more effective option to tackle root causes and, as the majority of incarcerated women are mothers, to prevent the collateral damage that is caused by family separation.

3). Where distances separate parents from their children, transportation services must be provided to keep families together during a parent’s incarceration.

4). No contact visits with spouses and children should be abolished in both men’s and women’s facilities.

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5). Family friendly visitation spaces, which include children's toys and furniture, must be provided in all penitentiaries and correctional centres.

6). As contact with family and outside supports is essential to prisoner reentry, the cost of phone systems should be borne by tax payers, not the predominantly poor family members of inmates, or community support groups.