

# Prisoners’ Rights in Alberta: Challenges and Opportunities

## II WHY PROTECTING PRISONERS’ RIGHTS IS IMPORTANT

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“Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly”.<sup>1</sup>

Those who evaluate the criminal justice system say that the current system is not only enormously costly but has worrisome long-term impacts for society at large.

#### A. Operating and Capital Costs of Corrections

Correctional costs are extremely high and have been growing steadily.

Operating costs<sup>2</sup> for adult correctional services in Canada totalled over \$4.6 billion in 2015/2016. This was a decrease of two percent from the previous year resulting from a nine percent decrease in federal costs and a six percent increase in provincial/territorial costs. These operating

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<sup>1</sup> African Studies Centre University of Pennsylvania, “Letter from a Birmingham Jail [King, Jr.]” (1963), online: <[https://www.africa.upenn.edu/Articles\\_Gen/Letter\\_Birmingham.html](https://www.africa.upenn.edu/Articles_Gen/Letter_Birmingham.html)>.

<sup>2</sup> Canada, Statistics Canada, *Adult correctional statistics in Canada, 2015/2016*, by Julie Reitano, Catalogue No 85-002-X (Ottawa: Statistics Canada, 2017) at 6 [Reitano]. All information on operating costs in this section was obtained from *Reitano*.

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costs were divided almost equally between federal and provincial/territorial operations. However, custodial operating costs accounted for 80% of provincial/territorial operating costs, while only 63% of prisoners were in custody. Custodial services costs averaged \$283 per day in the federal system and \$203 per day in the provincial/territorial system.

Alberta's 2015/2016 operating costs for adult correctional services totalled \$2.4 million, of which 80% was spent on custodial costs, 17% on community supervision costs, and three percent on central services. Custodial services cost an average of \$142 per day in Alberta.

Professor Justin Piché, Associate Professor of Criminology at the University of Ottawa, tracks Canadian correctional capital projects in an online blog entitled "Canadian Correctional Expansion Tracker."<sup>3</sup> Although some information on correctional capital costs is available on Professor Piché's blog, estimates or completion costs are not available for most projects.

#### **B. Indirect Costs to Social, Economic and Health Care Systems**

The costs of imprisonment should also include the indirect costs to our social, economic and health care systems, which are very difficult to measure but are immense and long-term. The United Nations Office on Drugs and Crime states that it is important to address the violation of prisoners' rights and the related costs of incarceration for the following reasons.<sup>4</sup>

##### **1. Prisoners are more vulnerable to experiencing rights abuses than other members of society, more difficult to protect from abuse due to the nature of the closed prison environment and less likely to be able to protect themselves due to their marginalized status.**

Prisons are considered the litmus test for a society's broader commitment to human rights because prisoners are more vulnerable to rights abuses than most other groups in society. Correctional institutions are uniquely closed environments where outside access and almost all aspects of a prisoner's life are tightly regulated. In contrast to other powerful government systems that are open to public scrutiny, the administration of the correctional system is invisible to the public, making it very difficult to monitor. Prisoners also belong to one of the most disadvantaged groups in society, and therefore, one of the most marginalized. Certain groups of prisoners are further marginalized, including Aboriginal, female and mentally ill prisoners. Aboriginal prisoners and mentally ill prisoners are also over-represented in the criminal justice system. These sub-groups of prisoners have special needs over and above the needs of the general prison population, which makes them even more vulnerable to abuse. A society that respects the rights of people in prison is more likely to respect the rights of people in other parts

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<sup>3</sup> Justin Piché, "Tracking the Politics of Criminalization and Punishment in Canada" *TPCPC* (blog), online: <<http://tcp-canada.blogspot.ca>>.

<sup>4</sup> United Nations Office on Drugs and Crime, "Why Promote Prison Reform?" (2018), online: <<https://www.unodc.org/unodc/en/justice-and-prison-reform/prison-reform-and-alternatives-to-imprisonment.html>>; Michael Jackson & Graham Stewart, "Fear-Driven Policy", *Literary Review of Canada* 16:4 (2010) at 1-2 [*Fear-Driven Policy*], online: <<http://reviewcanada.ca/magazine/2010/05/fear-driven-policy/>>.

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of society. Prisoners whose rights are respected are also more likely to respect the rights of others.

**2. Imprisonment increases the poverty of prisoners, their families and communities and has a negative economic impact on society at large.**

Imprisonment disproportionately affects individuals, families and communities in poverty. It results in loss of income from employment and increased costs for legal bills, transportation and other costs related to conflict with the law. Most prisoners return to the community, often with no prospects for employment. This means that they are subject to socio-economic exclusion making them and their families more vulnerable to an endless cycle of poverty, marginalization and involvement in crime. A return to criminality reduces public safety and increases the other corresponding economic and social costs of imprisonment.

**3. Imprisonment increases health problems for prisoners and the community.**

Imprisonment has a detrimental effect on prisoner health and public health. The health of prisoners is poor overall. The majority of prisoners have drug and alcohol addictions, mental and physical disorders including psychiatric disorders, HIV infections, and sexually transmitted diseases. Health conditions further deteriorate if the prison is overcrowded and access to health care, sanitation, nutritious food, exercise and fresh air is lacking. Poor health conditions in prisons not only increase health risks for prisoners and the prison staff who are in constant contact with them, but also increase public health risks and costs.

**4. Imprisonment weakens social structures and social cohesion.**

Prisoners are disconnected from their families and communities. Social cohesion is based on long-term relationships. Imprisonment disrupts family structures, which can reshape the family and community across generations.

**5. Evidence-based research shows imprisonment does not support the goals of the criminal justice system.**

An extensive body of research shows that imprisonment does not support the goals of the criminal justice system, of which the following studies and reports are just a small example.

In 1987, the Canadian Sentencing Commission wrote in its report, *Sentencing Reform: A Canadian Approach*:<sup>5</sup>

A number of difficulties arise if imprisonment is perceived to be the preferred sanction for most offences. Perhaps most significant is that although we regularly impose this most onerous and expensive sanction, it accomplishes very little apart from separating offenders from society for a period of time.

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<sup>5</sup> Canada, Report of the Canadian Sentencing Commission, *Sentencing Reform: A Canadian Approach*, Catalogue No J2-67/1986E (Ottawa: Public Safety Canada, 1987) at xxiii-xxiv.

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In 1988, the Standing Committee on Justice and Solicitor General stated in its report, *Taking Responsibility*:<sup>6</sup>

It is now generally recognized that imprisonment has not been effective in rehabilitating or reforming offenders, has not been shown to be a strong deterrent, and has achieved only temporary public protection and uneven retribution, as the lengths of prison sentences handed down vary for the same type of crime.

Since imprisonment generally offers the public protection from criminal behaviour for only a limited time, rehabilitation of the offender is of great importance. However, prisons have not generally been effective in reforming their inmates, as the high incidence of recidivism among prison populations shows.

The use of imprisonment as a main response to a wide variety of offences against the law is not a tenable approach in practical terms. Most offenders are neither violent nor dangerous. Their behaviour is not likely to be improved by the prison experience. In addition, their growing numbers in jails and penitentiaries entail serious problems of expense and administration, and possibly increased future risks to society...Alternatives to imprisonment and intermediate sanctions, therefore, are increasingly viewed as necessary developments...

In the 1980s, Canadians James Bonta and Donald Andrews developed the "Risk, Need, Responsivity" (RNR) model, later formalized and published in *The Psychology of Criminal Conduct*<sup>7</sup>. The model advocates: matching correctional rehabilitation interventions to the prisoner's level of risk; focusing on the prisoner's "criminogenic needs" (dynamic risk factors that are directly linked to criminal behaviour such as, addictions and pro-criminal attitudes); and matching correctional interventions to the prisoner's learning styles and abilities, with particular emphasis on cognitive-behavioural therapy to give prisoners constructive methods and practice in handling challenges in their lives. This approach became very influential in Canada, the United States and Britain. The RNR model is based on evidence-based research that shows that when the RNR model is properly applied, the rate at which people reoffend (recidivism rate) falls.<sup>8</sup>

In 2017, an extensive study of incarceration in the United States by German Lopez of Vox estimates that there is at least as much evidence to suggest recidivism is reduced by efforts to reduce prison sentences and the number of people in prison, as there is evidence to suggest imprisonment reduces recidivism. The study concludes that tougher sentences do not deter

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<sup>6</sup> D. Daubney, *Taking Responsibility: The Report of the Standing Committee on Justice and Solicitor General on its Review of Sentencing, Conditional Release and Related Aspects of Corrections* (Ottawa: Queen's Printer for Canada, 1988) at p 75.

<sup>7</sup> James Bonta & DA Andrews, *The Psychology of Criminal Conduct* 6<sup>th</sup> ed (New York: Routledge, 2017).

<sup>8</sup> Canada, Public Safety Canada, *Risk-Need-Responsivity Model for Offender Assessment and Rehabilitation*, by James Bonta & DA Andrews (Ottawa: Public Safety Canada, 2007), online: <<https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/rsk-nd-rspnsvty/rsk-nd-rspnsvty-eng.pdf>> for a description of the RNR Model.

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crime and that while imprisonment stops people from committing crimes while they are in prison, it also tends to increase their criminality after they are released.<sup>9</sup>

C. Summary

Correctional operating and capital costs are enormously expensive and growing and the majority of these costs are dedicated to the costs of imprisonment. Imprisonment and the failure to protect the human rights of prisoners also has immense indirect costs for prisoners and their families and communities and for our social, economic and health care systems as a whole. These indirect costs are very difficult to measure but are immense and long-term. We must question why we are imposing these heavy costs on individuals and society in the face of evidence-based research that shows that imprisonment does not support the goals of the criminal justice system.

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<sup>9</sup> German Lopez, "A massive review of the evidence shows letting people out of prison doesn't increase crime" (Vox, 2017) online: <<https://www.vox.com/policy-and-politics/2017/9/25/16340782/study-mass-incarceration>>.