

# From ‘tough on crime’ to a new transformative vision for Canada’s justice system

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SPECIAL TO THE GLOBE AND MAIL

PUBLISHED SEPTEMBER 29, 2023



A correctional officer stands outside a cell in the east wing at Her Majesty's Penitentiary, a minimum-security facility in St. John's, in 2011.

PAUL DALY/THE CANADIAN PRESS

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The debate about Canada’s criminal-justice system has rarely been so polarized. At the same time, it is facing an existential crisis. The evidence is splashed across the daily headlines: a violent attack by someone out on bail, police officers accused of excessive force, homeless encampments cleared by police, serious charges stayed for unreasonable delay, missing and murdered Indigenous women and girls, and deaths of people while imprisoned by suicide and overdose.

What can we do to turn things around?

Two options are currently on offer to address this situation: “tough on crime” and tinkering with the status quo – neither are up to the task. The first alternative appears to be an increasingly popular one: more police, prisons and punishment. These are policies that I used to support a decade ago when I was Conservative prime minister Stephen Harper’s lead criminal-justice adviser.

While such an approach is red meat for some voters, these reactionary policies are based on fear, and not any evidence they will actually work. Even worse, these “tough on crime” measures have been shown to be costly, ineffective and deadly.

There’s no correlation between more police and lower crime rates, according to noted criminologist Irvin Waller. For example, when the number of police officers in England and Wales decreased by 22 per cent from attrition and retirement, crime didn’t skyrocket – there was no direct impact on crime rates. Likewise, in the United States, between 1991 and 2017, there was a relatively stable number of police officers – yet crime rates declined.

While certain jurisdictions are expanding their police forces, such as the City of Vancouver with 100 new police officers, there’s no evidence that taxpayers are getting good value for their public-safety money – the “investment” in policing that contributed to record-breaking property tax increases simply isn’t justified if we’re serious about improving public safety.

Many politicians are peddling the solution “jail not bail,” but a more accurate policy slogan would be “with jail we fail.” The research is clear that longer periods of incarceration and harsher punishments don’t deter. What’s more, most people who are incarcerated are eventually released in our neighbourhoods. Because of the often devastating consequences of incarceration, people come out worse than when they entered.

A 1999 report commissioned by the federal government involved a meta-analysis of 50 studies dating back to as early as 1958, involving 336,052 offenders. It found that the outcome of the \$5-billion-a-year adult corrections system (\$318 a day per federal offender, or \$116,070 annually per federal inmate) is a damning indictment: Prison increases recidivism.

“Prisons should not be used with the expectation of reducing criminal behaviour,” the report concluded. “Excessive use of incarceration has enormous cost implications.” Yet we forged ahead.

Rather than addressing underlying causes and risk factors to reoffending, for many, prison is where you get hurt more and receive a PhD in crime. The average literacy level of a federally incarcerated person is Grade 7-8 (not coincidentally around the age we first start locking people up as minors). Sixty-two per cent were unemployed at the time of their arrest. Fourteen years postrelease from prison, the median income of a federally incarcerated person is \$0.

Our system is setting people up to fail and reoffend, exposing all of us to a greater risk of harm. “Tough on crime” is overdue for a rebrand as “stupid on crime” because it makes us less safe, but costs us billions of dollars and perpetuates cycles of trauma and violence.

What else can we do? Moderates tend to prefer tinkering with the status quo. Yet despite countless reform initiatives, we see worsening metrics on everything from crime rates to a grossly disproportionate percentage of Indigenous and Black people being simultaneously victimized and incarcerated – in other

words, overpoliced and underprotected. Half of all federally incarcerated women are now Indigenous. The dragnet ensnares people in the system who are overwhelmingly some combination of those who are poor, unemployed, racialized, and living with mental-health and substance-use disorders.

At the same time, victims of crime have largely given up on the system. Only one-third of incidents are reported to authorities. For sexual offences, only one in 20 are reported. Less than 1 per cent of sexual offences result in any resolution within the system. Studies have found victims are even less satisfied with the adversarial criminal-justice system than people who committed offences.

Countless judicial decisions, legislative reforms, policy changes, funding initiatives, training programs, and changes to the representativeness of police, lawyers and judges haven't made a dent in any of these serious challenges. Why? The system we have is perfectly designed to get the results that it is getting.

We need to have a national conversation – and in each of our communities – about ways to better address harm in our society. These ways need to be compassionate, evidence-based and make us all safer – and include those who are marginalized and usually not given a voice in these conversations.

What would it look like if we reimagined our approach to criminal justice?

A new transformative justice vision emphasizes pro-active harm prevention and utilizes evidence-based and compassionate approaches to better serve victims, people who commit offences, and communities. It involves responding to complex societal challenges not with handcuffs and custody, but with innovative tools that prioritize rehabilitation and healing. It aims to break cycles of harm and trauma. At the same time, it offers practical tools for meeting community safety needs today.

In short, it's preventing the crimes of tomorrow, today, while responding with a trauma-informed, evidence-based approach to harm happening now. The aim is to transform trauma, not continue to transmit it. Here are five examples of some key components of a new transformative justice vision:

### **Indigenous justice**

There are better ways to address harm and Indigenous nations have been practising them for millennia, despite being suppressed and disrupted by colonialism. Yet many Indigenous nations are renewing their laws for their people. For example, the Mohawk Council of Kahnawà:ke created their own Peacekeepers in 1979 to provide policing, but were not officially recognized by the federal and provincial governments until 1995. Indigenous-led policing/peacekeeping has been shown to reduce violent crime rates by 25 per cent and have much higher levels of community satisfaction.

Incarceration is a foreign imposition that warehouses Indigenous people. Indigenous-led healing lodges demonstrate lower levels of recidivism, but are few and far between. Despite better results, Indigenous justice has been thwarted by government through chronic underfunding that the courts have ruled amounts to discrimination. No more.

We need to acknowledge, empower and support Indigenous nations who want to take up their inherent jurisdiction in criminal-justice matters to revitalize their laws and ways. With so many Indigenous people caught up in the criminal-justice system, we cannot ignore the need for a fundamental change.

## **24/7 non-police mobile crisis response teams**

The Crisis Assistance Helping Out on the Streets (CAHOOTS) program in Eugene, Ore., is an example of a long-standing non-police mobile crisis team, integrated into the 911 system, that provides an alternative to an armed police response for calls about people in mental-health distress or who are intoxicated or homeless.

By dispatching specially trained civilian crisis workers and medics to respond to 15 per cent to 20 per cent of 911 and non-emergency police calls for people with these types of needs, CAHOOTS has proven to be an effective and compassionate solution that even generates savings. This approach is being implemented and piloted in hundreds of communities throughout North America and should be scaled up across Canada. This also promises to save lives since more than two-thirds of people who died in Canada in encounters with police were experiencing mental-health or substance-use issues at the time.

## **Victim participation and support through restorative justice**

Victims of crime deserve to be seen, heard and involved. Crime isn't a "wrong against the state" – it is a wrong against the people who were assaulted, robbed, threatened or whose loved ones were murdered. Most people assume victims simply want harsh punishment. But research shows that above all, they want information and to participate and have their voices heard.

The Collaborative Justice Program is a program in downtown Ottawa that has been offering restorative justice services for violent crime for decades. It has higher victim satisfaction and lower recidivism rates of people who harmed them, despite limited funding. Uniquely, it isn't limited to minor offences, but violent crime as well. We need to mainstream restorative justice as the primary means of resolving conflict in our society and to support both people who experienced harm and people who caused them harm to heal.

## **A focus on healing and rehabilitation: abolition of traditional prisons and jails**

Our notion of prisons and jails dates back to Victorian England. As one senior corrections officer told me: "[It's] the same damn thing we've been doing for 100 years – it's just less archaic in the way we're doing it right now. It doesn't make any difference and our results aren't changing. We have to change the whole approach." The way we separate people from society locked in cages is inhumane, cruel, costly and ineffective at achieving rehabilitation – and, as noted earlier, it actually makes it more likely they will reoffend on release.

Some other countries are doing things differently, and with outstanding results. For example, Halden Prison in Norway, a maximum-security institution, is considered one of the most innovative and humane prisons worldwide. Halden prioritizes rehabilitation and healing.

Since the vast majority of incarcerated people will eventually be released, the question Norway asks is: "What kind of a neighbour do you want to have?" That led them to totally different approaches to staff training, architecture, programming, integration with community supports, mentorship, substance-use treatment, mental-health support, education, and employment and vocational training. Since abandoning a punitive approach in favour of one of rehabilitation, Norway achieved a significant drop in recidivism rates from between 60 per cent to 70 per cent, to just 20 per cent.

We need to abolish traditional prisons and jails, and only separate people from society as a last resort. For the limited number of people who need to be separated, we need rehabilitation and healing centres like Halden – instead of archaic jails and prisons.

## **Preventing the harm of tomorrow, today**

Trauma is a silent yet pervasive force that shapes lives and influences behaviour. Someone who was traumatized as a child has an increased risk of perpetrating harm by 50 per cent along with an increased risk of reoffending. At the same time, traumatized children are eight times more likely to be sexually victimized later in life. If we are serious about responding better to harm in our society, we need to prevent childhood trauma today. Canada should join the 70/30 international campaign to reduce childhood trauma by at least 70 per cent by 2030. How can that be achieved?

There are numerous evidence-based programs that have been proven to prevent childhood trauma and later criminal-justice involvement at a fraction of the cost, including the Nurse-Family Partnership, which matches up young families with a nurse in their home to support them from pregnancy into the early years of a child’s life.

Randomized control trials have found that by the time children who were supported as infants in the Nurse-Family Partnership had reached 15 years of age, they had experienced 79 per cent less maltreatment, 56 per cent fewer arrests and 81 per cent fewer convictions. In other words, with this home-based support, they were both less likely to become victims of childhood abuse, and less likely to harm others later in life – a clear win-win.

The Rand Corporation estimated that the program saved US\$2.88 in public expenditures for every US\$1 invested. The Washington State Institute for Public Policy estimated a net return of US\$18,000 per family participating.

A common thread running through these examples of compassionate, evidence-based policies is that they make us safer at a fraction of the cost of ineffective “tough on crime” approaches. We don’t have to let fear win. We don’t have to tolerate an ineffective status quo. There’s a better way and it involves a new transformative justice vision: to transform the trauma in our society, rather than continue to transmit it.

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