

## **Why Aboriginal people with disabilities crowd Australia's prisons**

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*The Conversation November 2015*

<https://theconversation.com/why-aboriginal-people-with-disabilities-crowd-australias-prisons-48166>

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**A**ustralia imprisons thousands of Aboriginal people with mental and cognitive disability each year. A widespread lack of understanding – and action – underpins this shameful breach of human rights.

The number of people in Australian prisons recently reached an all time high of 33,791, with 27% or 9,264 of those prisoners identifying as Aboriginal and Torres Strait Islander.

([www.abs.gov.au/ausstats/abs@.nsf/mf/4517.0](http://www.abs.gov.au/ausstats/abs@.nsf/mf/4517.0))

People with mental and cognitive disability who are poor, disadvantaged, and Aboriginal are overrepresented in this increase.

To clarify, mental disabilities include disorders such as depression, schizophrenia, anxiety, personality disorders and psychosis. People can experience these for a short time or throughout their lives. While cognitive disability covers impairments such as intellectual disability, acquired brain injury, dementia and fetal alcohol spectrum disorder (FASD). These are ongoing impairments in comprehension, reason, judgement, learning or memory.

### **A predictable path**

A study we released today shows how Aboriginal people with mental and cognitive disability are being “managed” by police, courts and prisons due to a dire lack of appropriate community-based services and support.

([www.mhdcd.unsw.edu.au/sites/www.mhdcd.unsw.edu.au/files/u18/pdf/a\\_predictable\\_and\\_preventable\\_path\\_2Nov15.pdf](http://www.mhdcd.unsw.edu.au/sites/www.mhdcd.unsw.edu.au/files/u18/pdf/a_predictable_and_preventable_path_2Nov15.pdf))

The Indigenous Australians with Mental Health Disorders and Cognitive Disability in the Criminal Justice System (IAMHDCD) Project ([www.mhdcd.unsw.edu.au/](http://www.mhdcd.unsw.edu.au/)) draws on a unique data

set of 2,731 people who've been imprisoned in New South Wales, which holds more than a third of Australia's prison population. A quarter of people in the data set are Indigenous.

([www.bocsar.nsw.gov.au/Documents/custody/Q22015Custodyreport.pdf](http://www.bocsar.nsw.gov.au/Documents/custody/Q22015Custodyreport.pdf))

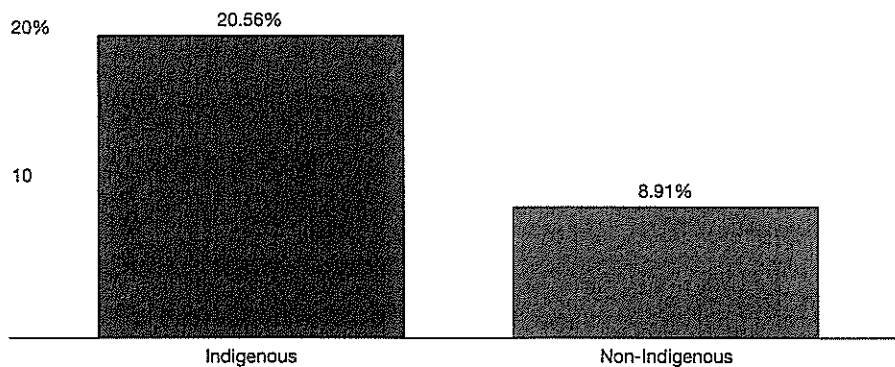
Throughout this article, we use "Indigenous" to match government data collection terms, and "Aboriginal" in our study findings to reflect the preference of the communities we worked with.

Our study includes data from police, courts, legal aid, juvenile justice and corrective services as well as government housing, disability, health and community services. The data shows that Indigenous people experience earlier and greater contact with the criminal justice system and are more disadvantaged generally than non-Indigenous people with mental and cognitive disabilities.

Aboriginal researchers in our team also spoke with Aboriginal people with mental and cognitive disability, their families, communities and service providers in four sites across NSW and the Northern Territory so we could better understand their experiences.

### Persons in out-of-home care

Percentage of Indigenous and non-Indigenous persons placed in out-of-home care.

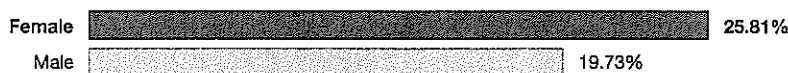


*People in out-of-home care have been removed from their family of origin by the Department of Community Services after being identified as a "child at risk". They may have been placed in foster care, kinship care or a group home and may have had a number of these episodes as children.*

Source: [UNSW School of Social Sciences Get the data](#)

### Indigenous people in out-of-home care

Percentage of male and female Indigenous persons in out-of-home care.



*After adjusting for age and sex, the research found that Indigenous people in the study are 2.6 times more likely to have been in OOHHC compared to their non-Indigenous counterparts.*

Source: [UNSW School of Social Sciences Get the data](#)

We found Aboriginal people with mental and cognitive disability are forced into the criminal justice system early in life. Coming from poor and disadvantaged backgrounds, they receive little support from community and disability services or the education system.

These people are often seen as badly behaved or too hard to control, and left to police to manage.

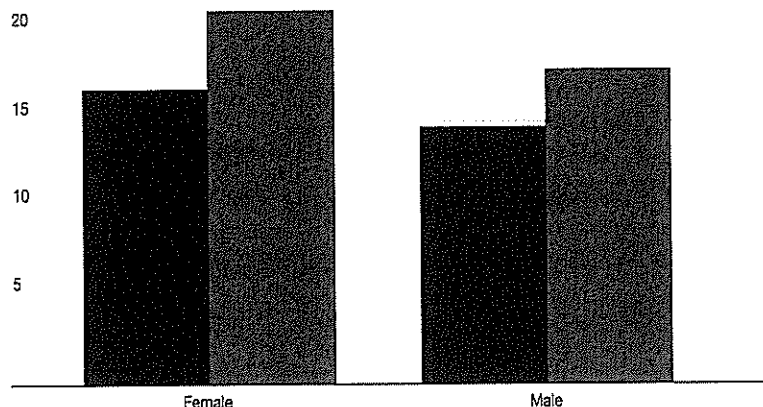
While this also applies to non-Indigenous people with disability from disadvantaged backgrounds, we found it's much more serious for Indigenous people.

Indigenous people in the group we studied were 2.6 times more likely to have been in out-of-home care as children.

### Age at first police contact

Average age at first police contact.

■ Indigenous ■ Non-Indigenous

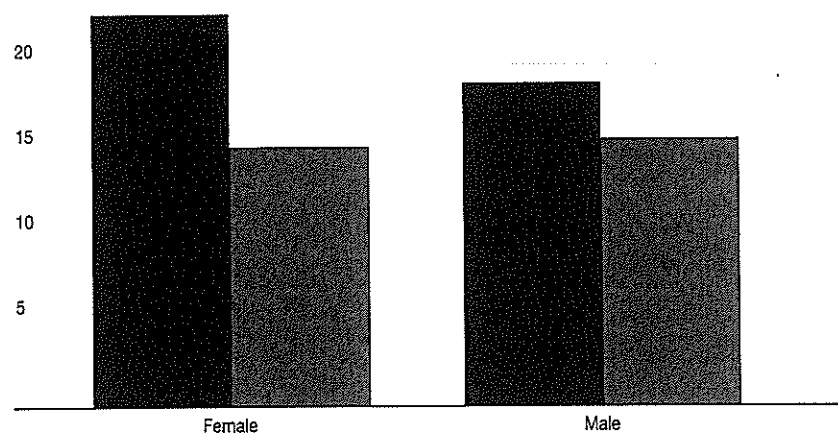


Source: [UNSW School of Social Sciences](#) [Get the data](#)

### Number of convictions

Average number of convictions.

■ Indigenous ■ Non-Indigenous



Source: [UNSW School of Social Sciences](#) [Get the data](#)

Their age of first contact with police was 3.4 years younger than non-Indigenous people, and they had a higher rate of contact with police as both victim and offender.

Female – Indigenous = 16.84 years; Non-Indigenous = 21.26 years

Male – Indigenous = 14.58 years; Non-Indigenous = 19.90 years

Indigenous people were 2.4 times more likely to be in juvenile justice custody than non-Indigenous people.

And they had higher numbers and rates of convictions and more episodes of remand in prison (unsentenced).

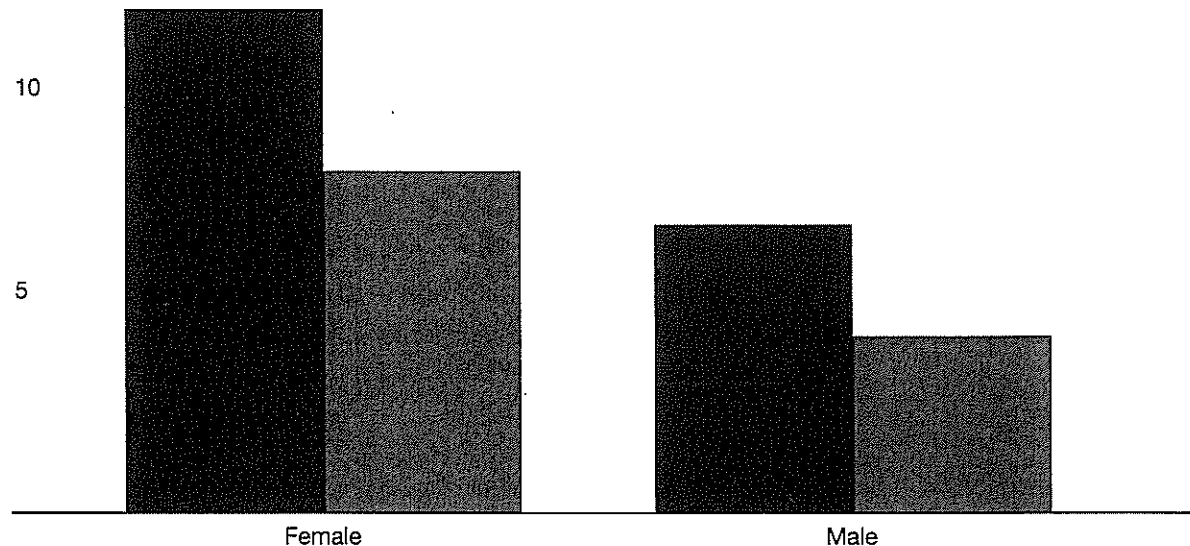
Indigenous people had higher rates of hospital admissions and were 1.2 times more likely to have been homeless – in a group with very high rates of homelessness generally.

Those with complex needs (multiple diagnoses and disability) – particularly women – were the most disadvantaged. And Indigenous people from highly disadvantaged areas, especially regional and remote areas, fared the worst.

## Hospital admissions

Average number of hospital admissions.

■ Indigenous ■ Non-Indigenous



## Four key drivers

Our research shows four major issues underlie these shocking statistics:

### 1. People don't understand what cognitive disability is

Families, service workers, teachers, police, lawyers and magistrates don't understand enough about cognitive impairment. They often think cognitive impairment and mental illness are the same. People with cognitive impairment, for instance, are often dealt with under mental health laws.

But imprisonment has serious consequences for people with cognitive impairment. People with FASD face difficulties due to low levels of understanding and diagnosis, as do those with borderline intellectual disability, because they are not recognised as having a disability by services and may not be supported by the new National Disability Insurance Scheme (NDIS).

### 2. High levels of stress in some Aboriginal communities

Aboriginal communities are under a great deal of stress from socioeconomic disadvantage, loss, grief and trauma. This comes from generations of Aboriginal people experiencing dispossession, racism, forcible removal of children, poor education and health care, overcrowded housing, early deaths of family and community members, over-policing, and high rates of incarceration.

### **3. Many Aboriginal people in the criminal justice system have ‘complex support needs’**

Aboriginal people with more than one type of impairment or disability are more likely to be involved in the criminal justice system. Families and communities are overwhelmed, and services are not set up to provide the kind of specialist support needed by people who experience multiple mental and cognitive disabilities, as well as drug and alcohol dependency.

Different diagnoses and disorders can become meshed together and masked by each other (this is known as “complex support needs”). It’s difficult for Aboriginal people with complex support needs to get appropriate help because services often focus on only one area – mental health, or intellectual disability, or drug and alcohol rehabilitation – and also because of racism and poverty.

### **4. A lack of appropriate support for Aboriginal people with mental and cognitive disability**

From a young age, Aboriginal people with mental and cognitive disability are dealt with by systems of control rather than systems of care or protection. They can face discrimination on the basis of race and disability as well as having a criminal record; feel isolated and disconnected from family and community; and have limited access to appropriate community-based support options.

There are very few alternatives to prison and a lack of appropriate programs in prison or after release, particularly for those from regional or remote areas. And that makes return to prison very likely.

Our research found police and prisons have become governments’ default way of managing this vulnerable group rather than appropriately supporting them to have a life of stability and self-worth in the community. Australia’s imprisonment and re-imprisonment of Aboriginal people with mental and cognitive disability is not only shameful, it’s entirely predictable and preventable.

*This is the first in a series of articles by this research team. The further two articles on the Indigenous Australians with Mental Health Disorders and Cognitive Disability in the Criminal Justice System (IAMHDCCD) Project appear below.*

## How Aboriginal women with disabilities are set on a path into the criminal justice system

By Elizabeth McEntyre – PhD Candidate in Social Work and Criminology, UNSW  
The Conversation 3 November 2015

<https://theconversation.com/how-aboriginal-women-with-disabilities-are-set-on-a-path-into-the-criminal-justice-system-48167>

Aboriginal women only make up between 2% and 3% ([www.abs.gov.au/ausstats/abs@.nsf/mf/3238.0.55.001](http://www.abs.gov.au/ausstats/abs@.nsf/mf/3238.0.55.001)) of the Australian female population. But the rate of Aboriginal and Torres Strait Islander women entering prison has soared (<http://anj.sagepub.com/content/47/2/276>) from 21% of all women prisoners in 1996, to a record high of 35% in 2014. In the past year, the number of Aboriginal and Torres Strait Islander women prisoners has increased again by 6% – a higher growth rate than for other women, and for Aboriginal men.

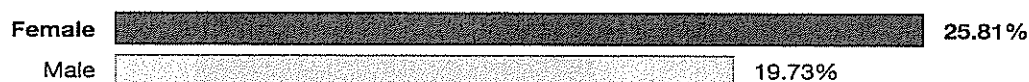
The Indigenous Australians with Mental Health Disorders and Cognitive Disability in the Criminal Justice System (IAMHDCCD) project ([www.mhdcd.unsw.edu.au/](http://www.mhdcd.unsw.edu.au/)), which draws on a vast dataset of 2731 people who have been in prison in NSW, shows ([www.mhdcd.unsw.edu.au/a-predictable-and-preventable-path-iamhdcd-report.html](http://www.mhdcd.unsw.edu.au/a-predictable-and-preventable-path-iamhdcd-report.html)) just how badly the system has failed Aboriginal women.

We tracked this group's contact with police, courts, legal aid, juvenile justice and adult corrections, government housing, disability, hospitals and community services. We found that Aboriginal women with mental and cognitive disabilities were the most disadvantaged of those in our study, and the situation is worsening.

### A grim picture

#### Indigenous people in out-of-home care

Percentage of male and female Indigenous persons in out-of-home care.



After adjusting for age and sex, the research found that Indigenous people in the study are 2.6 times more likely to have been in OOHc compared to their non-Indigenous counterparts.

Source: [UNSW School of Social Sciences](#) [Get the data](#)

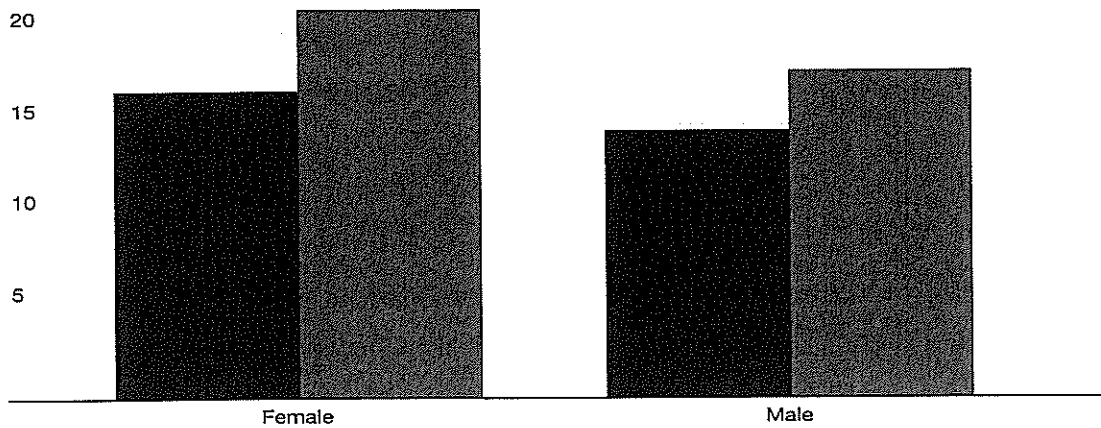
Aboriginal women in the group we studied were 3.7 times more likely than non-Aboriginal women to have been in out-of-home care as children.

Our data showed that Aboriginal women with mental and cognitive disabilities had their first police contact at a younger age and had a significantly higher number of police contacts across their lives than non-Aboriginal women.

### Age at first police contact

Average age at first police contact.

■ Indigenous ■ Non-Indigenous



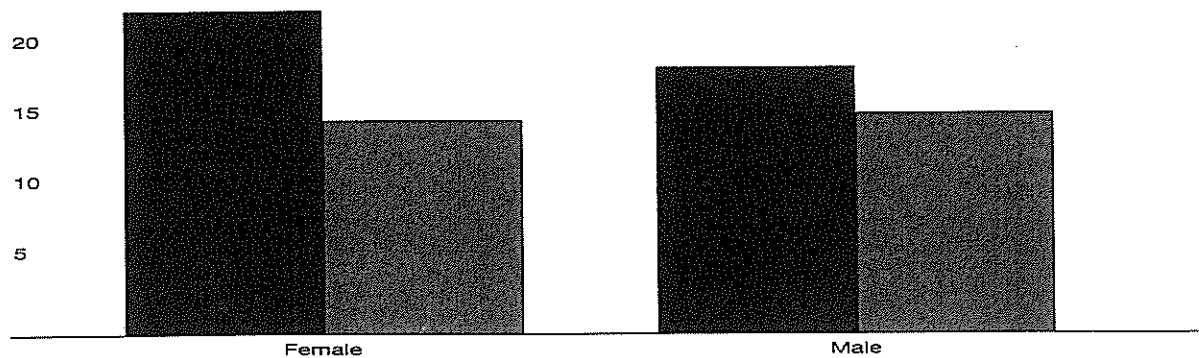
Source: [UNSW School of Social Sciences](#) [Get the data](#)

Over their lifetimes, Aboriginal women have significantly higher numbers of convictions, with Aboriginal women in the group we studied having, on average, 23 convictions over their lifetime compared to 15.2 for non-Aboriginal women.

### Number of convictions

Average number of convictions.

■ Indigenous ■ Non-Indigenous



Source: [UNSW School of Social Sciences](#) [Get the data](#)

We found Aboriginal women were 2.4 times more likely than non-Aboriginal women to have been in custody as juveniles. Aboriginal women also had, on average, 8.5 remand episodes over their lifetime; non-Aboriginal women had, on average, 5.4 remand episodes over their lifetime.

Aboriginal women in the group had been in adult prison an average of ten times over their lifetime, compared with their non-Aboriginal counterparts who averaged six prison terms.

Compared to Aboriginal men and non-Aboriginal women, Aboriginal women have more complex needs. That means poorer mental health and well-being, as well as cognitive impairment, including intellectual disability and acquired brain injury. They are also more likely to have multiple disabilities and health problems.

Our data showed that Aboriginal women are 2.2 times more likely than non-Aboriginal women to be homeless at some point in their life. They were likely to have moved more often than their non-Aboriginal peers but lived in a smaller number of towns and suburbs.

Aboriginal women in our study were recorded by police as victims of crime an average of 23 times in their lives. For non-Aboriginal women, the number of reports as victims of crime was 16.

### **Seeing it first hand**

Data is one thing. But it was only by interviewing Aboriginal women, hearing their stories and seeing the human impacts that we were able to get a better grip on why these patterns were emerging.

The interviewees shared a lot of knowledge with us about their lives and their experiences. Most of the Aboriginal women interviewed had multiple and complex support needs, and had been in prison, were at risk of going to prison, or were already in prison.

One Aboriginal woman who was imprisoned in the Northern Territory, far from her country and family support, had such an extreme intellectual disability that she had no awareness of her earliest release date. She had very little capacity to access disability support services after release into the community.

Another Aboriginal woman who had mental illness and cognitive disability had been remanded in a NSW prison for more than 12 months. While in custody, she was being cared for by an older Aboriginal woman prisoner suffering with post-traumatic stress disorder brought on by violence, and mental and emotional abuse from intimate partners.



A younger Aboriginal woman in her mid-20s who had been diagnosed with brain damage from inhaling petrol as a teenager had been detained as a juvenile and imprisoned as an adult four times.

It is clear these Aboriginal women's needs are not being met by any human service system; they are landing in the criminal justice system because of serious policy and service gaps.

### **Getting worse**

Australia has a poor record when it comes to Aboriginal and Torres Strait Islander women and their contact with criminal justice systems.

We've had a few reviews, like the 1985 NSW Women in Prison Task Force and the NT's Addressing the Needs of Female Offenders in Prison: Policy and Action Plan 2007-2012. Five of the 339 recommendations of the Royal Commission into Aboriginal Deaths in Custody National Report referred to Aboriginal women.

[www.correctiveservices.qld.gov.au/Publications/Corporate\\_Publications/Strategic\\_Documents/women\\_offenders\\_action\\_plan\\_2008\\_2012.pdf](http://www.correctiveservices.qld.gov.au/Publications/Corporate_Publications/Strategic_Documents/women_offenders_action_plan_2008_2012.pdf)

[http://csa.intersearch.com.au/csajspui/bitstream/10627/632/1/Women\\_task\\_force\\_March1985.pdf](http://csa.intersearch.com.au/csajspui/bitstream/10627/632/1/Women_task_force_March1985.pdf)

These reviews have highlighted areas in need of improvement to better respond to the needs of Aboriginal women. These include police relations, access to Aboriginal Legal Services, courts and sentencing, bail applications, services provided in prison, access to probation and parole and post release care, as well as Aboriginal women-driven research.

Early intervention and diversion into holistic, therapeutic, culturally responsive, community-based support, case management support services, housing support and disability support pensions could help break the cycle of imprisonment for many of these women.

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*This is the second in a series of articles by this research team.*