



# Fact Sheet:

## First Nations Youth and the Justice System

This fact sheet is an executive summary of the article 'First Nations peoples and the law' by Milroy & colleagues (2021)<sup>1</sup>.

Preferred Citation

Transforming Indigenous Mental Health and Wellbeing Project (2022). First Nations Youth and the Justice System. University of Western Australia. <https://doi.org/10.5281/zenodo.10042664>

### Historical and Contemporary Context

To understand the overrepresentation of First Nations peoples in the criminal justice system, we must first understand the broad range of contributing factors. These factors include the historical context of colonisation, genocide, past and current exposure to trauma, and unresolved issues related to self-determination in the contemporary context. Understanding these contexts is a crucial first step towards building culturally safe pathways for prevention and healing for First Nations peoples, especially youth.

Despite the impacts of colonisation, First Nations peoples have survived. Today, many First Nations communities are thriving, and reviving their cultural stories and practices. We must acknowledge and learn from both the strengths of First Nations communities, and the difficulties being faced to address the overrepresentation of First nations people in the criminal justice system [1].

Prior to colonisation, First Nations people had their own law and governance systems. However, through the process of colonisation First Nations peoples' ways of knowing, being and doing were taken away from them. Many violent (and often criminal) acts were also carried out towards First Nations peoples, including massacres, genocide, and the forcible removal of children. Together, these historical issues contribute to the current misunderstandings and criminalisation of First Nations peoples and highlight the need for self-determination and truth-telling.

**Figure 1.** Historical and contemporary factors contributing to the overrepresentation of First Nations peoples in the criminal justice system.



The surrounding principles come from the Social and Emotional Wellbeing framework, and are important to help promote healing.

<sup>1</sup> Milroy, H., Watson, M., Kashyap, S., & Dudgeon, P. (2021). First Nations peoples and the law (2021) 50 Aust Bar Rev 510.



**“ We suggest that young people ending up in the criminal justice system represents a failure of other systems to properly identify and provide support and effective interventions across development. - Milroy et al., 2021 ”**

## The Australian Context

First Nations peoples in Australia may be the most incarcerated peoples in the world [2]. Aboriginal and Torres Strait Islander peoples make up 3% of the general population [3], but account for 27% of the prison population [4]. Indigenous people aged 10-17 years old are 17 times more likely to be in detention on any average night, as compared to their non-Indigenous counterparts [5]. Early intervention and long-term programmes are necessary in order to reduce this overrepresentation, and encourage recovery.

### The Distorted Population Pyramid

There are more young than older First Nations people in Australia (Figure 2). This distorted age distribution is the result of historical and contemporary factors, which contribute to chronic disease and lowered life expectancy. For example, we know that early exposure to trauma can lead to premature death [6]. This distribution means that younger people have less access to support and guidance from older people and Elders. Young people may be required to provide extra support for younger children, contributing to greater stress. This context must be understood when designing programmes which aim to support First Nations peoples and their families, to ensure appropriate support is provided to consumers and carers.

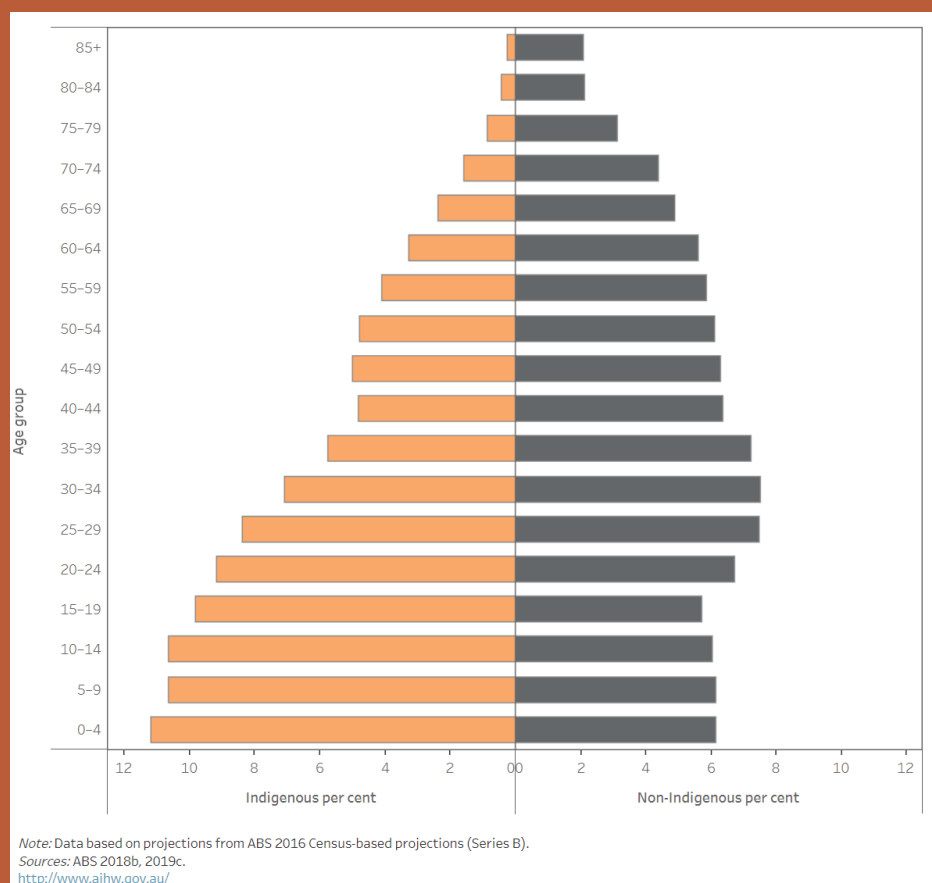


Figure 2. Australian population distribution projection, by Indigenous status and age group, 2020 [7]



***“ We are imprisoning traumatised, developmentally compromised, and disadvantaged young people, where imprisonment itself adds to the re-traumatisation and complexity of supporting rehabilitation and recovery. - Milroy et al., 2021 ”***

### **Factors associated with offending behaviours and youth justice engagement**

Adverse events in childhood (including maltreatment, grief, loss, parental illness, violence, and parental incarceration) are common in the histories of young people who encounter the justice system. We therefore must consider the context of trauma, developmental disability and social disadvantage as factors associated with offending behaviours.

For example:

- Young people under youth justice supervision are 15 times more likely to be engaged with child protection services [8]
- Youth involved with the justice system are more likely to be engaged with homelessness services and are more likely to return to unstable and unsafe accommodation [9]
- Youth involved with both the justice system and homelessness services have higher rates of trauma, drug and alcohol problems, and mental health issues [10]

For Aboriginal and Torres Strait Islander youth, it is important to consider the factors contributing to stress and potential pathways of offending behaviour:

- Aboriginal and Torres Strait Islander children are overrepresented among children receiving child protection services [11]
- Almost two-thirds of Aboriginal and Torres Strait Islander youth aged 10-24 years experienced significant stressors [12]
- One in three Aboriginal and Torres Strait Islander youth aged 10-24 years reported being treated unfairly because of their race [12]
- Aboriginal and Torres Strait Islander youth can have inadequate social support due to the distorted population age structure

***“ Overall, we argue that offending behaviours lie at the end of a continuum of risk. This continuum includes exposure to intergenerational and current trauma within the historical context of genocide, and the ongoing issues of generational poverty, social disadvantage, and discrimination. - Milroy et al., 2021 ”***



To ensure healing, interventions must target the underlying risk and causal factors by accounting for trauma exposure, social determinates of wellbeing, and the social and emotional wellbeing (SEWB) of First Nations peoples. A SEWB framework recognises First Nations peoples' conceptualisation of health as holistic, and acknowledges the impact of cultural, social, historical and political factors on First Nations peoples. The Dance of Life Model [13] was developed to help conceptualise the complex and interacting factors impacting on development, SEWB, health, and mental health for First Nations peoples. The model brings together five key dimensions (physical, psychological, emotional, spiritual, and cultural) and highlights their role in healing.

*“ Ideally, the way forward would include prevention, early intervention and comprehensive clinical and community intervention should a child or young person encounter the youth justice system. ”*  
- Milroy et al., 2021

See our **Dance of Life Factsheet** for more information



Moving away from...	Moving towards...
Current system responses which occur as part of 'independent silos' and that lack meaningful collaboration and reinforce disempowerment	Understanding offending behaviours from a holistic perspective, and providing comprehensive and long-term intervention
Interventions that only focus on the outcomes during contact with the youth justice system	Interventions which address the underlying risk and causal factors, and consider historical and contemporary context
Approaches which are not culturally safe	Addressing the needs of First Nations youth within a Social and Emotional Wellbeing framework, with trauma- and healing-informed culturally safe approaches
Insufficient staffing, and support for staff to meet the needs of youth across the justice system	Recruit, support and retain First Nations staff in the justice system, who can assist with cultural concerns, understand behaviour through a cultural lens, and act as role models

## References

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