



Just Facts

May 2022

Research and Statistics Division

The Impact of Mandatory Minimum Penalties on Indigenous Peoples and Black and Other Racialized Groups

This fact sheet presents information on Canadian federal offenders who were admitted to federal custody¹ between fiscal years 2010/11 and 2019/20 for an offence punishable by a mandatory minimum penalty (MMP) as the most serious offence on sentence. Data were obtained from the Correctional Service of Canada.² The primary aim of this research study was to examine whether Indigenous and racialized³ (i.e., non-White, non-Indigenous) offenders⁴ were differentially affected by MMPs over the ten-year period.⁵

¹ This dataset only includes warrant of committal admissions (i.e., the first admission on sentence) and excludes other types of admissions (e.g., due to parole revocation).

² The views expressed herein are not those of the Correctional Service of Canada.

³ Race is a term used to classify individuals based primarily on their physical attributes (e.g., skin colour); however, racial categories are not based on biological differences but on socially constructed differences. Racialized persons and/or groups can have racial meanings attributed to them in ways that negatively impact their social, political, and economic life.

Government of Ontario. *Data Standards for the Identification and Monitoring of Systemic Racism*. 2021.

<https://www.ontario.ca/document/data-standards-identification-and-monitoring-systemic-racism/glossary>

⁴ Offenders with unknown, missing, or unclear Indigenous or racialized identity data were excluded from analyses. These represented less than 3% of the admissions over the 10-year period.

⁵ Due to differences in how racialized groups and MMPs were defined, the present trends differ slightly from those presented in Department of Justice Canada. *The Impact of Mandatory Minimum Penalties on Indigenous, Black and Other Visible Minorities*. 2017. <https://www.justice.gc.ca/eng/rp-pr/jr/if-pf/2017/oct02.html>





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Black and Indigenous persons are considerably overrepresented in admissions to federal custody

Of the total population in Canada, 3% identify as Black, 5% as Indigenous, and 19% as 'other' racialized individuals.⁶ Combined over the 10-year study period, White (i.e., non-Indigenous, non-racialized) offenders comprised 57% of the federal offender population at admission. Indigenous offenders comprised the next largest proportion (25%), followed by Black offenders (9%), and other racialized offenders (8%) (see Figure 1).

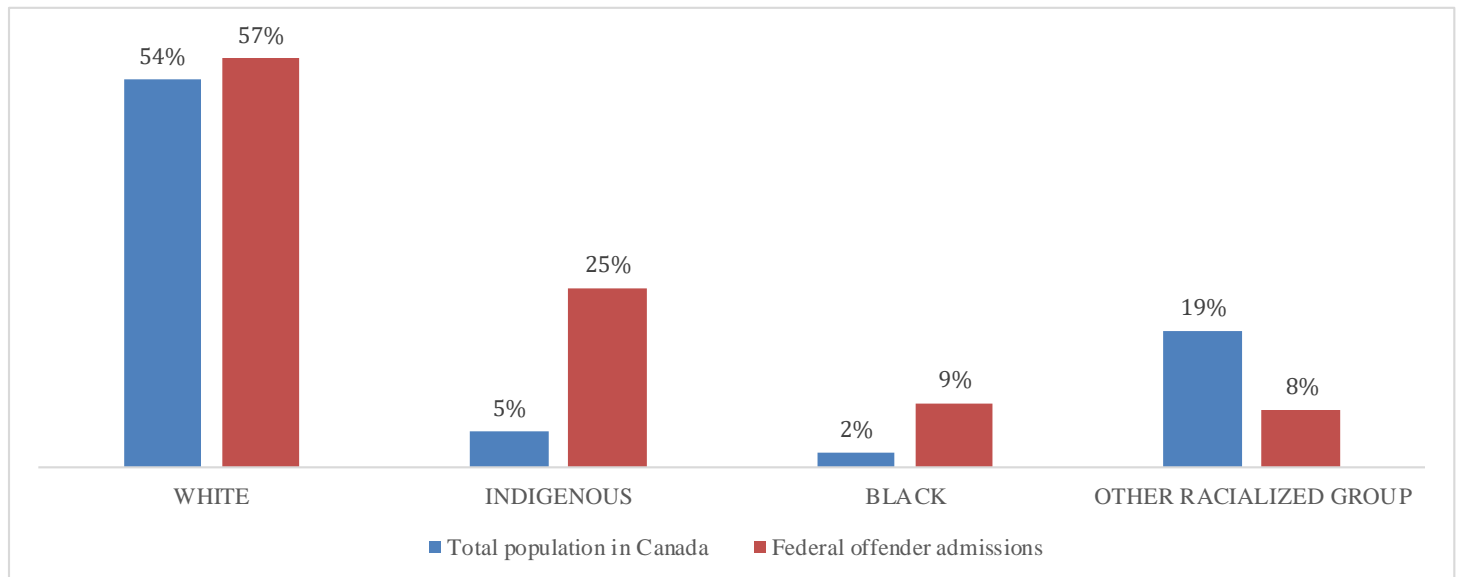


Figure 1. Prevalence of Indigenous and racialized identities in Canada and in federal offender admissions

Of these groups, the proportion of Indigenous offenders increased most noticeably over the 10-year period, from 23% in 2010/11 to 29% in 2019/20 (see Figure 2). Comparatively, the proportion of White offenders has experienced an 8% decrease over the 10-year period and the proportion of Black and other racialized offenders has stayed generally steady.

⁶ From Statistics Canada, 2016 Census Profile (2017). The "other" racialized group was calculated by subtracting the self-identified Black population from the total visible minority population.

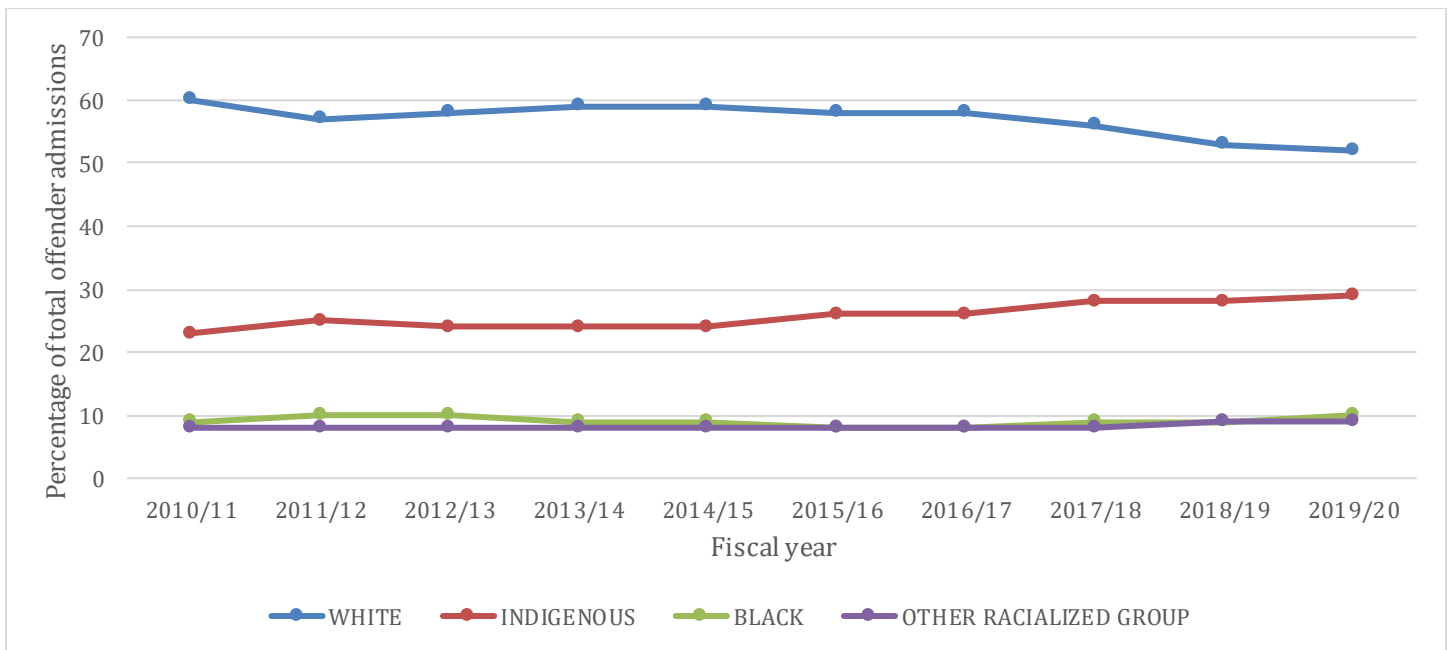


Figure 2. Admissions to federal custody, by Indigenous and racialized identities, 2010/11 to 2019/20: All admissions to federal custody

Racialized offenders are more likely to be admitted to federal custody for an offence punishable by an MMP

Between 2010/11 and 2019/20, there were 21,446 offenders admitted to federal custody for an offence punishable by an MMP. Over this ten-year period, Black and other racialized offenders were much more likely to be admitted for an offence punishable by an MMP. Three-fifths (60%) of other racialized offenders were admitted for an MMP offence as their most serious in the sentence, as were 53% of Black offenders, 46% of White offenders, and 36% of Indigenous offenders.

White offenders comprised the majority of offenders admitted for an MMP offence over the ten-year period (58% of all offenders admitted for an MMP offence were White), followed by Indigenous offenders, comprising 20% of those admitted for an MMP. While a lower proportion of offenders admitted for an MMP were Black (11%) or of another racialized group (11%), these were rates higher than their overall representation in admissions to federal custody (9% and 8%, respectively).



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The proportions of Indigenous, Black, and White offenders admitted for an offence punishable by an MMP has increased

As shown in Figure 3, all groups, with the exception of other racialized offenders, experienced an increase in the proportion of offenders admitted for an offence punishable by an MMP. In 2010/11, 29% of Indigenous offenders admitted to federal custody for an offence punishable by an MMP. By 2019/20, that percentage increased to 37%. The proportion of White offenders admitted for an offence punishable by an MMP increased from 37% in 2010/11 to 50% in 2019/20. While experiencing a smaller proportional increase than Indigenous or White offenders, the proportion of Black offenders admitted for an offence punishable by an MMP increased from 51% in 2010/11 to 59% in 2019/20.

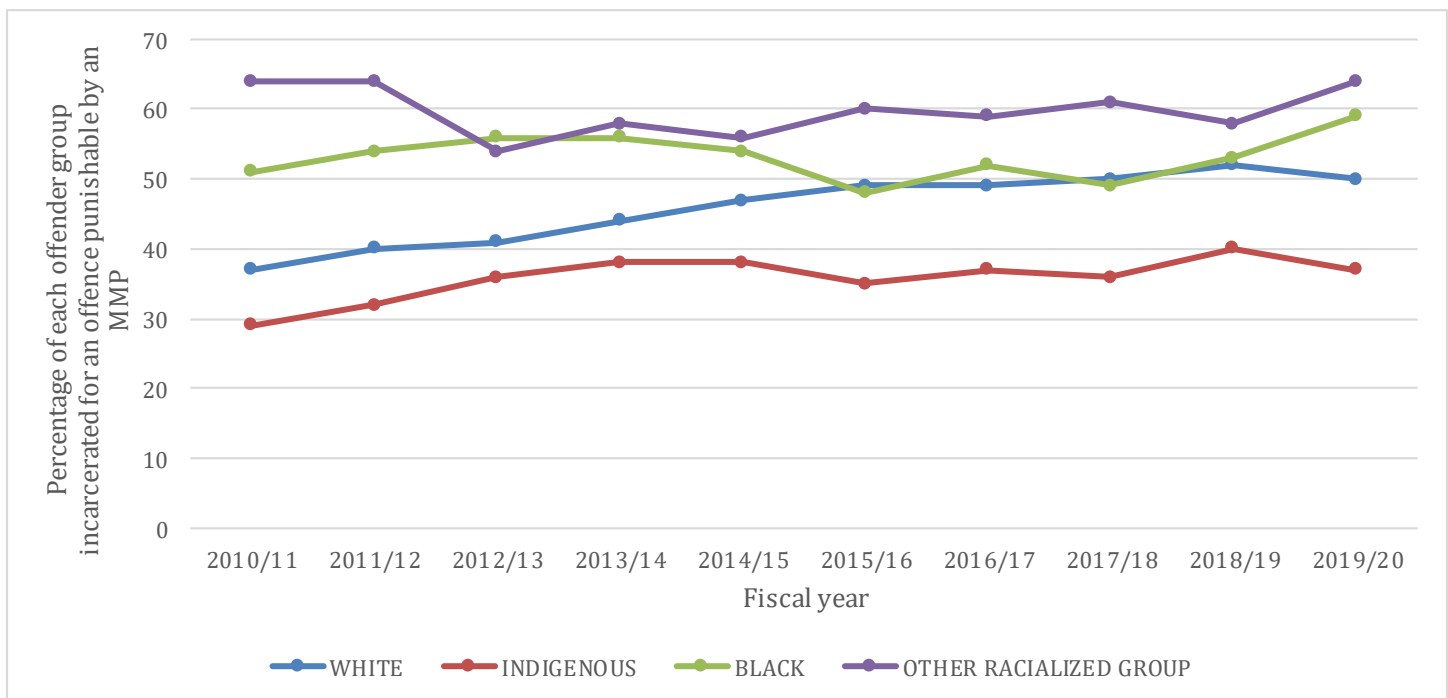


Figure 3. Proportion of offenders, by Indigenous and racialized identities, admitted to federal custody for offences punishable by an MMP, 2010/11 to 2019/20



Drug offences make up the majority of offences with an MMP for which an offender is admitted to federal custody

Between 2010/11 and 2019/20, there were 11,630 offenders admitted to federal custody for a drug offence punishable by an MMP: 10,398 for a section 5 offence (drug trafficking), 680 for a section 6 offence (importing/exporting or possession for the purpose of exporting), and 552 for a section 7 offence (drug production). Over this 10-year period, drug offences comprised 54% of all offences punishable by an MMP for which offenders were admitted to federal custody. Most of those drug convictions (89%) were for the offence of drug trafficking (s.5 of the *Controlled Drug and Substances Act* (CDSA)). The next most common offences for which an offender received federal custody that was punishable by an MMP were sexual assault (s.271 of the *Criminal Code*; 13%), sexual interference of a person under the age of 16 (s.151 of the *Criminal Code*; 9%), and murder (s.235 of the *Criminal Code*; 6%).

Black offenders are more likely to be admitted to federal custody for an offence under section 6 of the CDSA (importing/exporting or possession for the purpose of exporting)

As shown in Figure 4, over the 10-year period, Black offenders comprised the greatest proportion (45%) of offenders admitted for an offence under section 6 of the CDSA. This proportion fluctuated, but has generally decreased over time, from 43% in 2010/2011 to 39% in 2019/2020. White offenders comprise the next largest proportion of offenders admitted for such an offence (30%). In 2010/2011, 35% of offenders admitted to federal custody under section 6 of the CDSA were White. This rate decreased over time, falling to 16% in 2013/2014, and has since seen a general increase, rising to 34% in 2019/2020.

Between 2010/11 and 2019/20, White offenders were the most likely to be admitted to federal custody for drug trafficking (s.5 of the CDSA; 61%) or drug production (s.7 of the CDSA; 73%) offence (see Figure 3). These rates have decreased over the 10-year period, from 60% to 56% for section 5 offences and from 82% to 73% for section 7 offences.

Other racialized offenders are disproportionately more likely to be admitted to federal custody for a CDSA offence punishable by an MMP

As shown in Figure 4, while a lower proportion of offenders admitted for a CDSA offence with an MMP between 2010/11 and 2019/20 were from another racialized group (proportions ranging from 13-20%), these rates were higher than their overall representation in admissions to federal custody (8%).

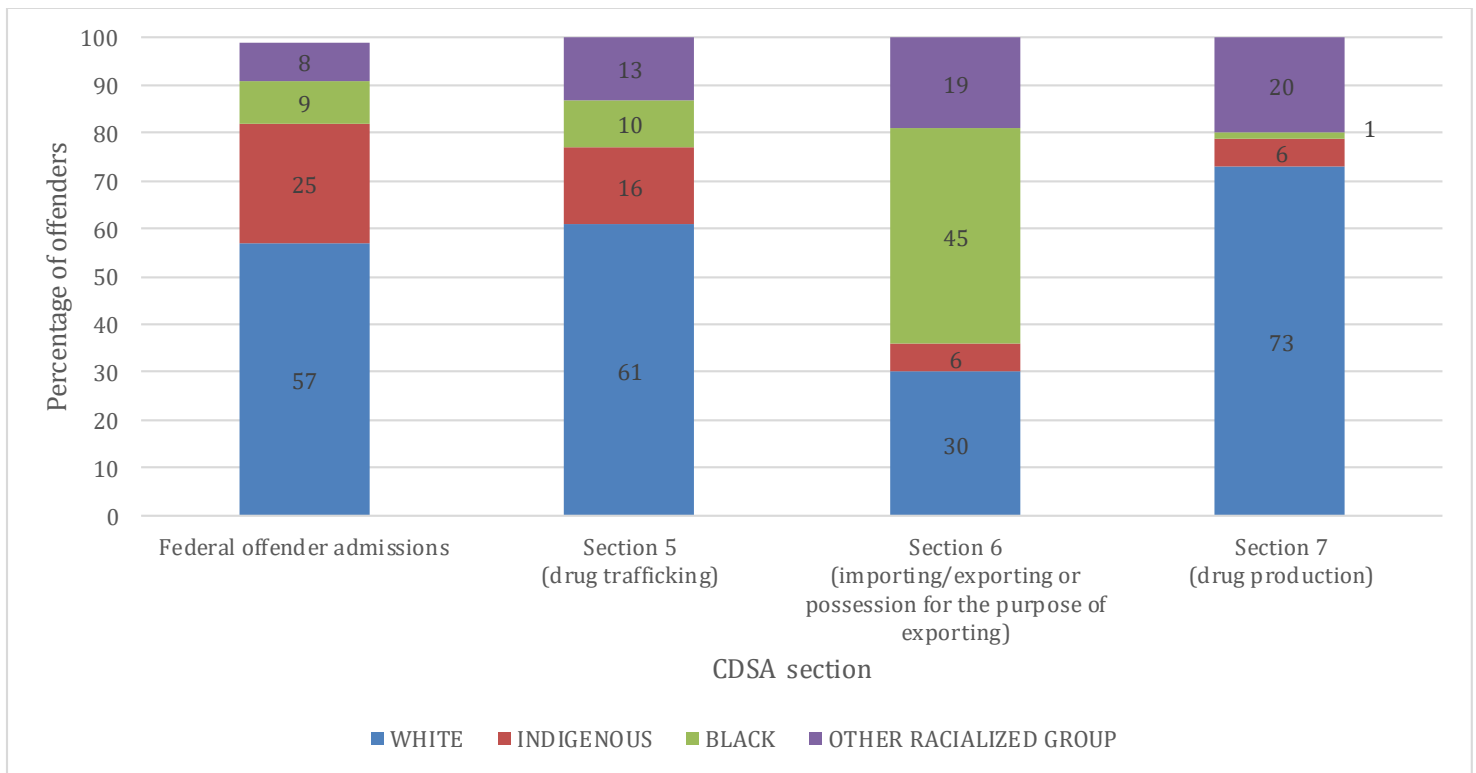


Figure 4. Proportion of offenders, by Indigenous and racialized identities, admitted to federal custody for a CDSA offence punishable by an MMP

Indigenous and racialized offenders comprise an increasingly large proportion of offenders admitted for a firearm-related offence punishable by an MMP

Between 2010/11 and 2019/20, there were 2,110 offenders admitted to federal custody for a firearm offence punishable by an MMP. Over the ten-year period, White offenders comprised the largest proportion of offenders admitted for a firearm-related offence (43%). While a lower proportion of offenders admitted for a firearm-related offence with an MMP were Indigenous (30%), Black (18%), or of another racialized group (9%), these rates were higher than their overall representation in admissions to federal custody (25%, 9%, and 8%, respectively). An examination of yearly trends shows that since 2016/2017, Indigenous and racialized offenders comprise an increasingly larger proportion of offenders admitted for a firearm-related offence punishable by an MMP (see Figure 5).

The types of firearm-related offences also differed by racialized group.⁷ Over the 10-year period, Indigenous offenders comprised a disproportionately high percentage of offenders admitted for discharging a firearm with intent (s.244; 37%), robbery with a firearm (s.344; 32%), manslaughter with a

⁷ These proportions should be interpreted with caution. The small counts of offences under certain *Criminal Code* sections may result in the percentages being susceptible to notable changes based on a few admissions over the 10-year period. Data trends were only included when there were a minimum of 100 admissions over the 10-year period.



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firearm (s.236; 31%) and use of a firearm (or imitation firearm) in the commission of an offence (s.85; 27%).

Black offenders were disproportionately represented for attempted murder with a firearm (s.239; 24%), discharging a firearm with intent (s.244; 20%), manslaughter with a firearm (s.236; 20%), robbery with a firearm (s.344; 15%), and use of a firearm (or imitation firearm) in the commission of an offence (s.85; 15%).

Other racialized offenders were disproportionately represented for attempted murder with a firearm (s.239; 17%), discharging a firearm with intent (s.244; 11%), and manslaughter with a firearm (s.236; 11%).

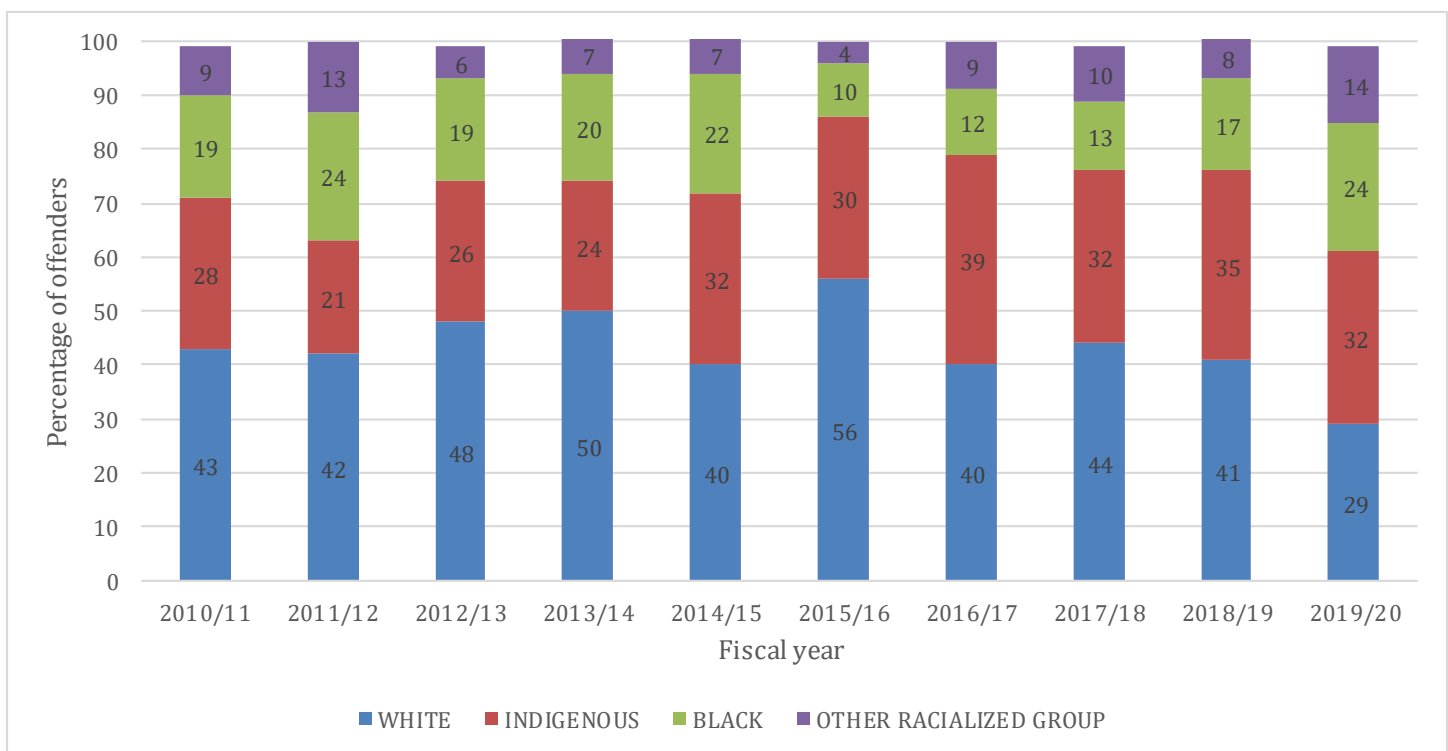


Figure 5. Proportion of offenders admitted to federal custody for a firearm-related offence punishable by an MMP, by Indigenous and racialized identities, 2010/11 to 2019/20

The proportion of Indigenous offenders admitted to federal custody for a child sexual offence punishable by an MMP is increasing

Over the ten-year period, 3,090 offenders were admitted to federal custody for a child-related sexual offence punishable by an MMP. The number of offenders increased considerably from 179 in 2010/11 to



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387 in 2019/20.⁸ While the majority of offenders admitted for this type of offence were disproportionately White (73%, compared to 57% of the federal admission population), this proportion has been decreasing over time. In 2010/11, 79% of those admitted for a child sexual offence punishable by an MMP were White, decreasing to 71% in 2019/20. While Indigenous offender represented a substantially smaller proportion of those admitted for this type of offence overall (18%), this proportion has increased; in 2010/11, 14% of those admitted for a child-related sexual offence punishable by an MMP were Indigenous, rising to 18% in 2019/20. This offence profile was less common with racialized offenders; of those admitted to federal custody with a child-related offence punishable by an MMP, 3% were Black and 6% were from another racialized group.⁹

⁸ This increase coincided with new legislation enacted during this 10-year period (e.g., the 2012 *Safe Streets and Communities Act*, the 2015 *Tougher Penalties for Child Predators Act*) that introduced new MMPs, increased certain MMPs, and increased the maximum penalties for certain sexual offences.

⁹ Due to small numbers, trends over time were not able to be examined with confidence.

