

ADDRESSING SYSTEMIC RACISM IN CANADA'S CRIMINAL JUSTICE SYSTEM WHILE MAINTAINING PUBLIC SAFETY:

Proposed legislative amendments to the *Criminal Code* and the *Controlled Drugs and Substances Act*

On December 7, 2021, the Government of Canada introduced proposed reforms to the *Criminal Code* and the *Controlled Drugs and Substances Act* (CDSA) to promote fairer and more effective responses to criminal conduct. These proposed reforms were initially introduced during the second session of the 43rd Parliament.

1. PROPOSED CHANGES



The Bill would:

- **Repeal MMPs for certain offences to address the disproportionate impacts on Indigenous and Black offenders, as well as those struggling with substance use and addiction.**
This would restore the ability of a judge to impose appropriate sentences that respond to the facts of the case before them, including the individual's experience with systemic racism and the risk they pose to public safety. This moves away from the one-size-fits-all approach, which has not deterred crime but has resulted in unfair outcomes and a less effective criminal justice system, as well as longer and more complex trials.
- **Allow for greater use of CSOs** in cases where an offender faces a term of less than two years imprisonment and does not pose a threat to public safety. Under these circumstances, judges would have the option to order that the term be served in the community under strict conditions, including house arrest, curfew, and mandatory counselling or treatment for substance abuse. This change would allow for more effective rehabilitation and reintegration by enabling individuals to maintain their employment, or continue caring for children or family members in need. This approach has been proven to reduce re-offending.
- **Require police and prosecutors to consider other measures for simple possession of drugs such as diversion to addiction treatment programs,** rather than laying charges or prosecuting individuals for simple possession of an illegal drug. The proposed amendments CDSA reflect the Government's commitment to treat substance use as a health issue, and address the opioid crisis. It also aligns with calls heard from many in the law enforcement community and local leaders across the country.

2. STRIKING A BALANCE



The proposed amendments are designed to restore the ability of judges to determine the right sentence to fit the case before them and keep the public safe. This is essential to a fairer, effective criminal justice system.

3. IMPRISONMENT VS REHABILITATION



These proposed measures would allow for more effective rehabilitation and reintegration by enabling individuals to maintain their employment, continue caring for children or family members in need, or seek counselling or treatment for substance use. Approaches that focus on rehabilitation have been shown to reduce re-offending and keep communities safer.

For more detailed information visit
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DEFINITIONS

Mandatory minimum penalties of imprisonment:

A mandatory minimum penalty of imprisonment is set by Parliament and is the minimum period of incarceration that a judge must impose for a particular offence. Even in cases where a judge finds that the MMP is inappropriate in the circumstances, the judge cannot impose a shorter period of imprisonment below the prescribed minimum.

Conditional sentence order:

A conditional sentence order is a sentence of incarceration of less than two years that may be served in the community under strict conditions. These conditions may include: confinement to the house; seeking treatment; a curfew; or an order to abstain from possessing, owning, or carrying a weapon. A judge may **only** order a conditional sentence if they are satisfied that: 1) the appropriate sentence is less than two years incarceration, and 2) that allowing the offender to serve their sentence in the community would not pose a threat to public safety.

IMPACT ON INDIGENOUS PEOPLES, AS WELL AS BLACK CANADIANS AND MEMBERS OF MARGINALIZED COMMUNITIES

MMPs contribute to higher rates of imprisonment and disproportionately affect Indigenous peoples and Black Canadians, as well as those struggling with substance use and addiction.

For example:

- Between 2007-2008 and 2016-2017, Black and other racialized offenders were more likely to be admitted to federal custody for an offence punishable by an MMP.
- The proportion of Indigenous offenders admitted with an offence punishable by an MMP has almost doubled between 2007-2008 and 2016-2017, from 14% to 26%.

2007-2008

14% of Indigenous offenders

2016-2017

26% of Indigenous offenders

Data shows that:

Indigenous adults in 2018-2019:

accounted for **5%** of the Canadian adult population

BUT

represented **30%** of federally incarcerated inmates

Black adults in 2018-2019:

accounted for **3%** of the total adult population

BUT

represented **7%** of federally incarcerated inmates