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Research and Statistics Division

# Mandatory Minimum Penalties (MMPs)

*Reader's Note: This publication presents results of an online public opinion survey completed by a sample of Canadians who received an invitation through email, Facebook and Twitter (called "open link" sample; see Method for more details). This survey mirrored a survey conducted with a representative sample of Canadians, the results of which are available at:*

<http://www.justice.gc.ca/eng/rp-pr/jr/index.html>

In general, respondents were not supportive of the current MMP regime and preferred a more individualized approach to sentencing. Compared to the representative sample of Canadians, respondents to the open link survey were more knowledgeable of MMPs, more supportive of full discretion for judges in sentencing, and less supportive of MMPs (see <http://www.justice.gc.ca/eng/rp-pr/jr/rg-rco/2018/mar02ig.html> for results from the representative sample).

## What we also found<sup>1</sup>

- Most respondents indicated that they have a moderate to high level of knowledge of MMPs (24% moderate and 52% high).
- To explore respondents' views on this issue, respondents were given three scenarios that depict offences currently subject to MMPs and asked questions based on them.
- When asked about fairness of the sentence for each scenario, at least 60% thought the sentence unfair (opinions ranged from 60% to 80% disagreement across all scenarios).
- More than eight in ten (82%) respondents believed that, in general, applying the same minimum sentence to all offenders who are convicted of the same offence is not fair and appropriate. Only 14% of respondents believed MMPs lead to fair sentences.
- Although in Canada a judge cannot currently give a sentence that is less than the mandatory minimum:
  - 89% of respondents said that Canada should consider giving judges the flexibility to impose a sentence that is less than the mandatory minimum (57% with no restrictions, and 32% only for exceptional circumstances).
  - Many respondents indicated that it is important for judges to be allowed to impose a sentence that is less than the MMP (i.e., a shorter time in custody (80%) or a sentence other than jail or prison (80%) where the facts of the case (e.g., intent of behaviour, degree of responsibility taken by offender, level of harm) suggest a lesser sentence might be fair and appropriate.





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## In more depth

In the survey, mandatory minimum penalties (MMPs) were described as a jail sentence where the minimum length of time for a conviction of a specific crime has been set by Parliament.<sup>2</sup> A judge may not go below the minimum sentence although they are able to sentence an offender to *more* than the minimum sentence when it is appropriate. In Canada, there are 72 offences in the *Criminal Code* and the *Controlled Drugs and Substances Act* that carry MMPs.

### Differences between the open link sample (OL) and the nationally representative sample (NR)

Compared to the nationally representative (NR) sample, the open link (OL) sample reported much higher levels of knowledge of MMPs; 52% of respondents in the NR sample reported having a *low* level of knowledge compared to 23% of the OL sample. The extent to which respondents thought a MMP was fair across three scenarios also differed according to the sample. More respondents in the OL sample found that a MMP would be unfair in scenario 1 (60% vs. 49% for NR), scenario 2 (80% vs. 70%) and scenario 3 (73% vs. 56%). See description of scenarios in the method section. A greater difference in these samples was noted for responses to the question asking whether Canada should give judges more discretion in sentencing. OL respondents more strongly supported complete discretion for judges to go below the MMP (57% vs. 39% for the NR sample), and correspondingly less strongly supported discretion only for exceptional circumstances (32% vs. 51% for NR).

## Method

As part of the larger 2017 National Justice Survey of a representative sample of Canadians,<sup>3</sup> the Department of Justice undertook a parallel online survey with Canadians 18 years and over advertised on the Department of Justice Facebook and Twitter accounts. An email invitation was also sent to people/organizations on a mailing list held by Justice. This mailing list was held by a group in the Department responsible for overseeing consultations. Additional organizations working or interested in justice were included as well. The Twitter, Facebook and emails included a request that the survey be shared widely. The open link was completed by 3,486 respondents. The source of the invitation varied, with 40% hearing about the survey from Facebook (not necessarily Justice Facebook page), 2% from the Justice website, 27% by email invitation, 8% from Twitter and 20% from other sources (no response from 3%).

The purpose of collecting data on this sample was to explore the reach of the Departments' networks and extent of Canadians' interest in providing opinions on the criminal justice system and how the views of a representative sample of Canadians might differ from a self-selected sample.

The questions in the open link survey were identical to those in the first survey completed by a representative sample of Canadians and focussed on discretion, sentencing and mandatory minimum penalties (MMPs). This survey included information (e.g., statistics and definitions of concepts such as sentencing guidelines) and three scenarios depicting offences that carry MMPs in order to provide context for responses.

For this survey, the same three scenarios were presented, each depicting an offence for which a mandatory minimum penalty<sup>4</sup> would apply, and respondents were asked whether the MMP was a fair sentence in that case. Following these questions more general questions were asked about MMPs including fairness of these sentences in general, support for adding judicial discretion to go below or give a non-custodial sentence for MMPs, and the strength of various arguments for and against MMPs.





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- Scenario 1: A 27 year old was convicted of sexual assault involving a minor. The incident occurred after a night of drinking when on a city bus. This behaviour was out of character, the accused has no previous criminal record, lives at home, has completed college, and is employed. He pled guilty and apologized to the victim in court.
- Scenario 2: A 21 year old was convicted of intentionally discharging a firearm while being reckless after shooting at a secluded farmhouse on a dare. He has no criminal record, has experienced physical and emotional abuse from a young age, and has brain damage (Fetal Alcohol Spectrum Disorder) as a result of his mother drinking alcohol during her pregnancy with him.
- Scenario 3: A woman was convicted of drug trafficking. The 36 year old mother of two who is the sole provider for her family was caught selling some of her prescription opioid pills and had a knife in her backpack when she was arrested. She has a legitimate prescription for opioids due to chronic pain, but has been selling some of her pills. She has struggled with prescription drug abuse for some time.

### Sample Characteristics

The sample was not representative of the Canadian population and likely reflects a sample more invested in criminal justice system reform or interested in being consulted on reforms to the CJS. Forty-five percent either worked in the criminal justice system (CJS) or a related field and 15% volunteered in the CJS or another related area (these categories were not mutually exclusive). Only 18% had never been involved with the CJS before (compared to 45% of respondents for the representative sample).

Compared to the Canadian population, this group:

- was more highly educated - Six percent of the open link sample vs. 35% of Canadians had high school diploma or less and 62% of the open link sample vs. 29% of Canadians had a bachelor's degree or higher.
- had higher household incomes (11% of the open link sample vs. 35% of Canadians had annual incomes under \$40,000);
- were younger than the Canadian population overall; and
- were more likely to live in three provinces rather than across the country: Ontario (40%), and Alberta or British Columbia (18% each).

For further information on the findings and/or surveys mentioned in this document please contact the Department of Justice Canada Research and Statistics Division ([rsd.drs@justice.gc.ca](mailto:rsd.drs@justice.gc.ca))

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<sup>1</sup> Unless otherwise noted, all findings are from the 2017 National Justice Survey, survey 1 (N= 2,019) and 2017 focus groups.

<sup>2</sup> MMPs can also include penalties such as fines, but in this survey, only MMPs where there was a jail sentence were discussed.

<sup>3</sup> The 2017 NJS included two surveys (surveys 1 and 2), twelve in-person focus groups and twenty one-on-one telephone interviews. Survey samples were drawn randomly and the surveys were completed online or via paper. The data were weighted for age, gender, geographic region and education to match the Canadian population.

<sup>4</sup> A mandatory minimum penalty is a jail sentence where the minimum length of time for a conviction of a specific crime has been set by Parliament, and a judge may not go below the minimum sentence although they are able to **give more** than the minimum sentence when it is appropriate.

