



## Judicial Discretion and MMPs

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Young people noted that the most important factors judges should consider in fair and equitable sentencing are personal circumstances and history of the accused person, and the nature of the crime, including the context, severity and motive for the crime. Ultimately, young people did not believe that mandatory minimum penalties (MMPs) were beneficial because they limit judicial discretion.

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

- In both 2016 and 2017, youth felt that judges need discretion to ensure fair and equitable sentencing, which includes taking into account offenders' individual circumstances and the context of and motivation for the crime committed.
- When asked about fairness of MMPs, most youth thought that judges should be able to go below the mandatory minimum sentence.
- About half of the youth participants suggested that judges should be provided with guidelines or parameters that also allow for discretion. They felt that guidelines can help minimize bias, and ensure fair and equitable sentencing across the country.
- Youth noted that the main reason to impose incarceration should be for the protection of society from individuals who posed a demonstrable higher level of risk to others/society.
- Most youth thought it was important to explore options for sentencing other than incarceration. For example, a small proportion of youth thought that sentencing guidelines, and maybe even MMPs, could lay out the *amount* of time for the sentence, but not specifically the *nature* of the sentence. For example, an offender could be sentenced to attending a rehabilitation program instead of being incarcerated.

### In more depth

Most youth felt that Canada's Criminal Justice System (CJS) is not always fair and unbiased, and therefore mechanisms are needed to ensure that judges and sentencing decisions are not biased or prejudiced.

Those who believed that judges should be able to give a sentence that is less than the mandatory minimum stated that there were too many personal and contextual circumstances that MMPs could not take into account. Youth noted that MMPs could have negative impacts, such as further criminalizing vulnerable people. They suggested that the CJS look for ways to heal people. Views, however, were mixed, with some youth not being sure what to do about MMPs and some youth believing that judges should not be able to go below the MMP.

Some youth believed MMPs could be useful if flexibility were built into them. Having guidelines or parameters could help ensure some consistency in sentencing across the country. Over half the youth thought ultimately judges need discretion to ensure fair and equitable sentencing, which includes taking into account offenders' individual circumstances and the context of and motivation for the crime committed.



# Research at a Glance

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Research and Statistics Division

Youth had difficulty understanding MMPs. Many youth felt that offenders did not always deserve jail, but participants were unaware of other available options. Many were not prepared to suggest alternatives to incarceration outside of what they already knew, for example, rehabilitation programming or probation.

## Method

Justice Canada, in partnership with the Students Commission of Canada (SCC)<sup>2</sup>, conducted youth engagement projects in both 2016 and 2017. Each project explored youths' views, perceptions and expectations of the criminal justice system. This was done through developing and hosting a Justice Youth Action Committee (YAC)<sup>3</sup>, gathering opinions through youth-led Community Action Projects (CAPs)<sup>4</sup>, and hosting the Canada We Want Conference.<sup>5</sup>

**Youth Engagement on the CJS Project 2016:** Fourteen Justice YAC members representing Indigenous, non-Indigenous, rural, urban, and other diverse populations participated in monthly video calls from September 2016 to February 2017. The calls focused on youth perceptions of crime and the CJS, guiding principles and values of the CJS, and the connection between vulnerability, marginalization, and criminalization. YAC members engaged over 350 youth from across Canada in CAPs to gather opinions and perspectives on the CJS. Committee members utilized surveys (hard copy and digital), interviews, and discussion groups to gather youth voice and reported back to the committee facilitators and during committee calls. Following each call, the youth went back to their communities to solicit feedback from other young people on the issues discussed in the calls. Four CAPs were completed. The engagement continued at the Canada We Want Conference, where the **Justice System We Want theme team**, a group of seventeen youth, from six provinces, one territory, representing Indigenous and non-Indigenous, Northern, and a number of other diverse populations, engaged in five days of discussion on the values and objectives that they hope the CJS would uphold in the future.

**Youth Engagement on the Criminal Justice System (CJS) Project 2017:** Eight Justice Youth Action Committee members representing Indigenous, non-Indigenous, rural, urban, and other diverse populations joined bi-weekly calls from June 2017 to March 2018. This project had an issue-based focus relevant to the work of Justice Canada. Issues covered included: bail and AOJOs, restorative justice, problem-solving justice, overrepresentation of Indigenous persons in the CJS, overrepresentation of persons with mental health and cognitive issues in the CJS, performance measurement of the CJS, and the perspectives of victims of crime. During the 2018 Canada We Want Conference the **CJS theme team**, a group of 11 youth and 2 youth facilitators from 2 territories and 5 provinces, representing Indigenous and non-Indigenous, Northern, and a number of other diverse populations, engaged in discussion around justice issues.

For the issue of discretion and MMPs, Justice Canada and the SCC provided the young people with the definition and purpose of sentencing, the role of the judge, and the definition of MMPs. After discussing how sentences work and obtaining more information about sentencing and MMPs, youth used a questionnaire to gather views from their peers (29 individuals). Young people were able to share the link to the survey through a variety of online tools, including social media. At the 2018 Canada We Want Conference, facilitators reviewed scenarios that detailed an offender, their circumstances, the crime(s) they committed as well as details on the victim. Over the course of six days, youth discussed the various scenarios and suggested an appropriate sentence.

**For further information on the findings and/or surveys mentioned in this document please contact the Department of Justice's 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 Youth Engagement on the Criminal Justice System Project 2017.

<sup>2</sup> The Students Commission of Canada is a national charitable organization with a mission to support young people in putting their ideas for improving themselves and their communities into action. The Centre of Excellence for Youth Engagement is a network of youth, youth organizations and academics focused on providing evidence on the benefits of youth engagement and positive youth development.

<sup>3</sup> The Students Commission selected members to join the Youth Action Committee for Justice Canada. The youth selected were from across the country, aged between 12 and 22 years, lived in urban and rural communities, were from diverse backgrounds and cultures, and had varied life experiences.

<sup>4</sup> Community action projects required YAC (Youth Action Committee) members to go into their communities and gather data from their peers using the survey questions identified on the calls. Youth could deliver a survey, a focus/discussion group, or interviews to collect this data.

<sup>5</sup> At the “Canada We Want” conference, the *CJS theme team* (a diverse group of youth from across Canada) generated recommendations for policy makers and other young Canadians regarding the criminal justice system.