



DIVERSION

Most Canadians believe that diversion of accused from the courts in appropriate cases should be the preferred response to at least some types of offences/situations. They also believe that increased use of diversion could make the criminal justice system (CJS) more efficient and effective and could contribute to reducing the overrepresentation of Indigenous people in custody.

What we also found

- Over three quarters (79%) of Canadians believe that diversion could make the Criminal Justice System (CJS) more efficient and 69% believe that diversion could make the system more effective.
- Over forty percent (42%) of respondents thought diversion should be the preferred response for anyone accused of non-violent crime, unless specific elements of the case warrant more restrictive measures. A further 30% thought diversion should be used only for first time accused of non-violent crime. Just over one in 10 (13%) reported that diversion should be the preferred response for all accused.
- When given scenarios depicting various offences, at least half of Canadians believed that an accused could have been diverted out of the courts to be held accountable. The examples included a sexual offence against a minor (53%), a firearm offence (68%), and a drug offence (64%).
- Canadians were most likely to select the increased use of diversion as the best solution to reducing the number of Indigenous people in the CJS. This solution was chosen by 55% of Canadians. Half (50%) of Canadians considered this to be the second best way to reduce the number of people with mental health and/or cognitive functioning disabilities in the CJS.¹

In more depth

Diversion was described as a way of holding accused accountable through means other than a trial. This approach can be used as long as society is still protected and when the accused accepts responsibility for his or her actions. Options for diversion could include community service, mediation, referrals to specialized programs for counselling, treatment or education (for example life skills, drug or alcohol treatment, anger management), victim-offender reconciliation programs and similar measures aimed at restorative justice, or a letter of apology or essay.

Women were more likely than men to believe that increased use of diversion could make the system more effective (75% vs. 63%) and efficient (83% vs. 75%). Those in urban centres compared to those living in rural areas were also more likely to believe that diversion had the potential to increase effectiveness (70% vs. 65%) and efficiency (80% vs. 74%) in the system. There were some differences across regions regarding the potential for diversion to increase effectiveness and efficiency of the CJS, most notably those in Québec were more likely to believe diversion could make the system



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more effective and efficient (73% and 84% respectively) than those in Manitoba/Saskatchewan² (61% and 69% respectively).

For the scenario depicting the offence of sexual assault against a minor (see methodology), although half (53%) of Canadians believed this case could have been diverted to hold the person accountable, there was more support for diversion among those living in Québec (59%) than those living in Alberta (46%) and more support for diversion among older persons (63% for those aged 65+ years) than younger (30% for those aged 18-24 years). Those with a household income of \$80,000-\$100,000 were more likely to support diversion in this scenario than those with a household income of less than \$40,000 (60% vs. 45%).

For the scenario depicting the offence of intentionally discharging a firearm while being reckless, 68% of Canadians believed diversion would be the most appropriate response. There was more support for diversion among women (76%) than men (61%), among older persons (73% for those 65+ years old) than those aged 25-34 (63%), and among those with a university education³ (74%) than those with high school education or less (65%).

For the scenario depicting the offence of drug trafficking while carrying a concealed weapon, 64% of Canadians believed that this case should have been diverted out of the court system. For this scenario there was more support for diversion among older (70% for 65+ years old) than younger persons (51% for 18-24 years old), and more support among those with a university education (71%) than those with high school education or less (57%).

Methodology

The Department of Justice conducted National Justice Surveys (NJS) in both 2016 and 2017. Each NJS included several public opinion research projects with Canadians 18 and over from across Canada. The 2016 NJS included two surveys (surveys 1 and 2), six in-person focus groups and three online discussions. 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 on age, gender, geographic region and education to match the Canadian population.

NJS 2016: The first survey (N=4,200) explored Canadians' goals, objectives and perceptions of the CJS, their views on what considerations should be important in sentencing, as well as sources of information on the CJS and the best way to share it. The second survey (N=1,863) included a sample of Canadians who had completed survey 1. For this survey, questions were accompanied by information and statistics to provide context. Canadians' views on four key objectives⁴ for the CJS were sought. Additionally, they were asked their views on specific aspects of the CJS including community based responses to crime, how to handle overrepresentation of Indigenous persons and those with mental health or cognitive functioning issues, the role of crime prevention in the CJS, rehabilitation and restorative justice. Focus groups and online discussions focussed on delving deeper into the issues covered by both surveys. Survey questions on diversion related to the use of this approach as a way to reduce over-representation of certain vulnerable populations.

NJS 2017: The first survey (N=2,019) 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. The second survey (N=2,027) focussed on specific criminal justice system topics including restorative justice, problem-solving justice, administration of justice offences, diversion, performance measurement, and confidence in the criminal justice system. Focus groups discussed the issues covered in the two surveys in more depth.





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For the 2017 survey 1, three scenarios were presented, each depicting an offence for which a mandatory minimum penalty⁵ would apply, and respondents were asked whether they would divert the case or prosecute the accused.

- Scenario 1: A 27 year old was convicted of sexual assault involving a minor. The incident occurred on a city bus after a night of drinking. This behaviour was out of character, the accused has no previous criminal record, lived 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.

For 2017 survey 2, respondents were asked which cases they thought would be appropriate for diversion. To give context to the discussion of sentencing (including diversion), respondents were provided with two scenarios and asked whether they would divert the case or prosecute the accused.

- Tyler, 27 years old, has pleaded guilty to intentionally discharging a firearm while being reckless as to the consequences. On a dare from friends, he shot at a secluded farmhouse, despite knowing someone might be in it. It turned out there was no one in the farmhouse at the time the shots were fired. Tyler has no criminal record. He experienced physical and emotional abuse from a young age. He has brain damage (Fetal Alcohol Spectrum Disorder) because his mother drank alcohol while she was pregnant with him. One of the impacts of this type of brain damage is poor decision-making and a tendency to be easily influenced by others. He seems genuinely remorseful and has apologized to the court and offered to pay for the damages to the house.
- Peter, also 27, is convicted of intentionally discharging a firearm into a place while being reckless as to the consequences. Peter is a member of a street gang and he drove by a rival gang member's house in downtown Toronto and shot into the house. He knew someone might be home but fired anyways. It turned out that no one was in the house at the time. Peter has previously been convicted of mischief and assault in his early twenties. Peter was raised by a single mom who worked two jobs. They lived in a low income neighborhood. He was recruited into a gang in his neighborhood in his late teens. Peter shows no remorse for his crime.

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)

¹ The most popular option selected by 76% was greater investment in programs and resources into community mental health.

² These provinces were combined for analysis.

³ University education includes those with a certificate, completed an undergraduate degree or higher.





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⁴ The four objectives were drawn from results of the 2016 survey and from discussions with experts: 1) safety and long term protections; 2) ensuring responsibility and accountability; 3) providing opportunities for reparation and restoration of relationships; and 4) providing support to help offenders deal with the root causes of their criminal behaviour.

⁵ 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.

