



MANDATORY MINIMUM PENALTIES

In general, Canadians are not supportive of the current mandatory minimum penalties (MMPs) regime and prefer a more individualized approach to sentencing.

What we also found¹

- Most Canadians indicated that they have a low to moderate level of knowledge of MMPs (52% low and 28% moderate).
- When asked about fairness of the sentence for three scenarios depicting offences that currently carry MMPs, at least half thought the sentence was unfair (49%-70%).
- Over three-quarters (77%) of Canadians 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 16% of Canadians believed MMPs lead to fair sentences.
- Although in Canada a judge cannot currently give a sentence that is less than the mandatory minimum:
 - 90% of Canadians said that Canada should consider giving judges the flexibility to impose a sentence that is less than the mandatory minimum (51% yes, but only for exceptional circumstances and 39% yes in general).
 - Many Canadians indicated that it is very important for judges to be allowed to impose a sentence that is less than the MMPs (i.e., a shorter time in custody (78%) or a sentence other than jail or prison (79%)) 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.
- Most focus group participants argued against the idea of MMPs. Arguments largely centred on the need for flexibility for judges to make the best decisions based on the individual elements of each case. Participants believed flexibility would ensure the best solutions to address root causes and keep society safe by preventing future crime.

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.² 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. To explore





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Canadians' views on this issue, respondents were given three scenarios that depict offences currently subject to MMPs and asked questions based on these.

Canadians who admitted to a low level of knowledge of MMPs were more likely to have a high school education or less compared to those who have a university education³ (55% vs. 49% respectively). Those with a university education were less positive toward the current MMP regime than those with high school education or less. University educated persons were more likely to believe that applying the same minimum sentence to all offenders who are convicted of the same offence is not fair and appropriate (85% vs. 70% for those with high school or less).

There were few differences between women and men with respect to views of MMPs. More women indicated that in general, applying the same minimum sentence to all offenders who are convicted of the same offence is not fair and appropriate (81% vs. 72% men). While both preferred that Canada give judges flexibility to go below the MMP, women were more supportive of using this discretion for exceptional circumstances (rather than at judge's unrestricted discretion (55% vs. 47%)).

Focus group findings

Many focus group participants believed that when deciding a sentence judges need to consider the unique combination of factors of each case including personal circumstances and background, harm to the victim, intent, responsibility or remorse, even for offences that carry MMPs. They believed that sentencing needs to be an effective solution in terms of reducing future re-offending. Jail was often described as an inappropriate measure that would likely "do more harm than good" and result in "better criminals", rather than successfully integrating members of society.

Method

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 2017: The first survey (N=2,019) focussed on discretion, sentencing and mandatory minimum penalties (MMPs). This survey included information (e.g., defining concepts such as sentencing guidelines, providing statistics) and three scenarios depicting offences that carry MMPs to provide context. 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.

For the 2017 survey 1, three scenarios were presented, each depicting an offence for which a mandatory minimum penalty⁴ 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.

To give context to the discussion of sentencing and MMPs, **focus group** respondents were provided with two scenarios and then discussed what should happen in these cases. Following this discussion, questions similar to what was provide to survey respondents were discussed.

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

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

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

⁴ 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.

