

ENDING MANDATORY MINIMUMS FOR DRUG OFFENCES

**2020 Position Statement
Canadian Association of Social Workers**



Founded in 1926, the Canadian Association of Social Workers (CASW) is the national association voice for the social work profession.

CASW has adopted a pro-active approach to issues pertinent to social policy/social work. It produces and distributes timely information for its members, and special projects are initiated and sponsored.

With its concern for social justice and its continued role in social advocacy, CASW is recognized and called upon both nationally and internationally for its social policy expertise.

The mission of CASW is to promote the profession of social work in Canada and advance social justice. CASW is active in the International Federation of Social Workers (IFSW).





MANDATORY MINIMUMS:

ENDING MANDATORY MINIMUM SENTENCES FOR DRUG OFFENCES

SUMMARY

Social workers across Canada are working tirelessly to address the ongoing and devastating opioid crisis, often impeded by the continued criminalization of substance use throughout Canada. Since their expansion in 2012, mandatory minimum sentences (MMS) have deepened the opioid crisis, while contributing to the near doubling of federally incarcerated Indigenous people in Canada. Moreover, the continued use of mandatory minimum sentences for drug-related charges contradicts commitments to uphold and implement the recommendations of the Truth and Reconciliation Commission (TRC).

CASW condemns mandatory minimum sentences within the Criminal Code and urges the government to eliminate mandatory minimum sentences for drug charges, and in doing so, restoring judicial oversight for offences. CASW calls on the Government of Canada to acknowledge the expertise of social workers: their front-line experience with crime, victimization and inequality gives them the perspective to effectively bring equity and justice for all those who call Canada home.

It is time for Canada to reclaim its internationally recognized status as a progressive leader in human rights by repealing mandatory minimums specific to drug offences. In doing so, judicial discretion will be restored, supporting journeys of recovery rather than incarceration.

BACKGROUND AND CONTEXT

While Canada has a long and inconsistent history of mandatory minimum sentencing, this position focuses on the 2012 amendments in Bill C-10 to the *Controlled Drugs and Substances Act (CDSA)*, which added mandatory minimum penalties (MMP) for drug offences. It is estimated there are now 100 offences within the [Criminal Code and CDSA](#) that hold a mandatory minimum penalty. The implementation of Bill C-10, historically known as the *Safe Streets and Communities Act*, gave way to not just legislative changes with a ‘tough on crime’ attitude, but has created long-term social consequences Canada is struggling to remedy today.

MMPs have produced little evidence of reducing crime or rehabilitating individuals for successful reintegration into society. In fact, the Government of Canada’s own documents cite the ineffectiveness of this policy: “after a decade in which a number of common law countries enacted mandatory sentencing legislation, there is clear evidence that several jurisdictions are now either repealing or amending these punitive laws.”¹

¹ Department of Justice, *Mandatory Sentences of Imprisonment in Common Law Jurisdictions: Some Representative Models 2.0* (April 2019). (p.6.)



Policymakers have had ample feedback, even receiving recommendations from various organizations, including the Canadian Sentencing Commission, to “abolish MMPs for non-violent crimes.”² Aside from evidence and the commonly accepted knowledge that mandatory minimum penalties do not deter crime, they blur the lines between police, prosecutors and the judiciary, interfering with judges’ ability to consider all evidence, study the circumstances of each case, and determine just sentences based on individual and societal needs³. Indeed, the Canadian Sentencing Commission⁴ found in their survey of judges that over half felt that minimum sentences impinged on their ability to impose a just sentence, increasing inappropriate agreements between defence and Crown counsel as a result. Knowing that MMPs give way to unlawful, piecemeal agreements, it is clear these impinge on the rights of the accused to receive a fair sentence.

Still, mandatory minimums have directly contributed to an increased over-representation of minority groups in the federal penitentiary system, particularly young Indigenous and racialized people. Naturally, the implementation of stricter penalties has raised expenditures, funds that could otherwise be redirected to fund healthcare, education and initiatives fostering Reconciliation.

When the most recent report from Correctional Investigator of Canada, Dr. Ivan Zinger, was released, “the number and proportion of Indigenous individuals under federal sentence has reached new historic highs.”⁵ Dr. Zinger refers to this as the “Indigenization” of Canada’s prisons: a violent continuation of colonization. Indigenous peoples experience incarceration rates six to seven times⁶ the national average, and make up a disproportionate and alarming percentage of the prison population. Although Indigenous peoples make up approximately five per cent of the population in Canada, they make up 30 per cent of incarcerated people, 42 per cent for women.⁷

² Canadian Sentencing Commission, *Sentencing Reform: A Canadian Approach* (Ottawa, 1987).

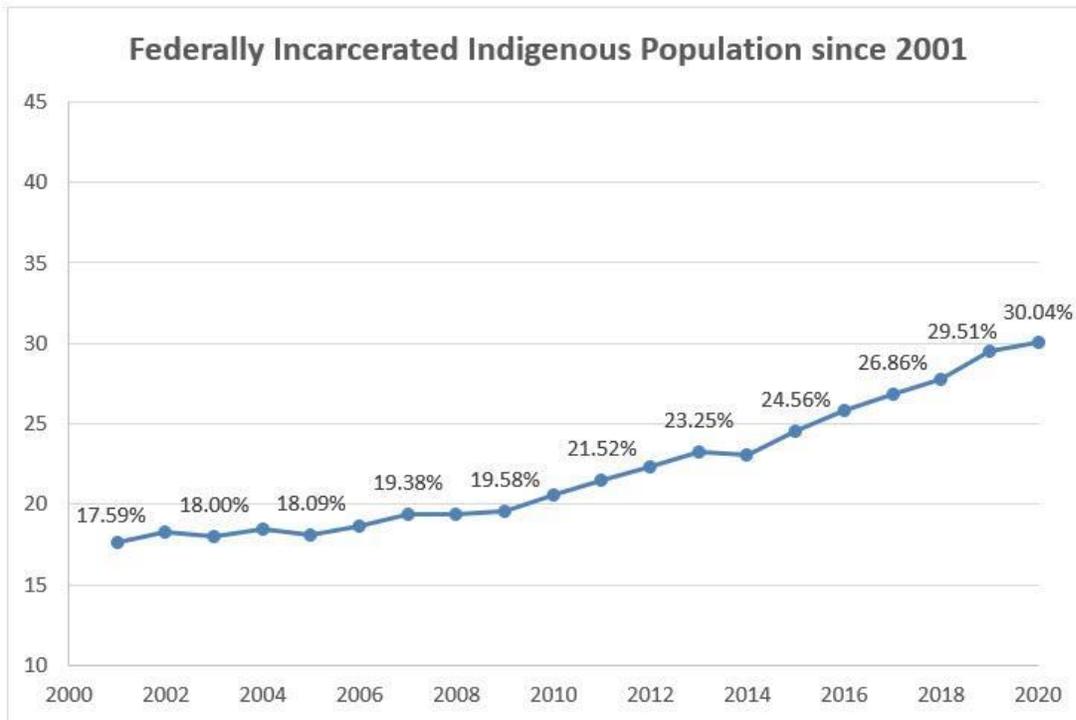
³ The Canadian Criminal Justice Association. *Position Paper - Mandatory Minimum Sentences*.

⁴ Department of Justice, *Mandatory Sentences of Imprisonment in Common Law Jurisdictions: Some Representative Models 2.0* (April 2019).

⁵ Office of the Correctional Investigator. *Indigenous People in Federal Custody Surpasses 30% Correctional Investigator Issues Statement and Challenge* (January 2020). Government of Canada.

⁶ Office of the Correctional Investigator. *Indigenous People in Federal Custody Surpasses 30% Correctional Investigator Issues Statement and Challenge* (January 2020). Government of Canada.

⁷ Office of the Correctional Investigator. *Indigenous People in Federal Custody Surpasses 30% Correctional Investigator Issues Statement and Challenge* (January 2020). Government of Canada.



Federally Incarcerated Indigenous Population since 2001. Office of the Correctional Investigator (2020).

Finally, the TRC⁸ clearly articulates the ways in which the “sixties scoop” and continued overrepresentation of Indigenous peoples in the child welfare and prison systems created overwhelming social and economic problems in communities across the country. The TRC explicitly calls for the end of MMS through Call to Action #32 to make Canada a country that truly abides by equality for all and the rule of law over political persuasion or gain.

The findings and recommendations of both the TRC Commission and the Inquiry of Missing and Murdered Indigenous Women and Girls, made it clear that we must end MMPs to align with meaningful Reconciliation and to uphold the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)⁹.

The addition of increased MMPs throughout the *Criminal Code* and *CDSA* has not gone unchallenged. It has been ruled that mandatory minimums infringe on the Canadian Charter of Rights and Freedoms: courts argue this form of sentencing violate article s.12 of the Charter which aims to protect an individual

⁸ Truth and Reconciliation Commission of Canada. (2015). Final report of the Truth and Reconciliation Commission of Canada: Summary: honouring the truth, reconciling for the future. Winnipeg: Truth and Reconciliation Commission of Canada.

⁹ UN General Assembly, United Nations Declaration on the Rights of Indigenous Peoples: resolution / adopted by the General Assembly, (October 2007).



from cruel and unusual punishment¹⁰. MMPs effectively act as judge, jury and prosecutor, foregoing individual rights and freedoms in the judicial process.

The elimination of MMPs would restore judicial discretion to ensure a just sentence is applied to all, regardless of race, gender, religion or other circumstance. While some worry this may create more lenience for violent offenders or those who harm vulnerable persons, eliminating MMPs would give judges more discretion in addressing these particularly egregious crimes. Eliminating MMPs will support sentencing that is both proportionate and just with regard to the crime committed.

In December 2016, the Government of Canada announced that the responsibility for federal drug policy was being moved from Justice to the purview of the Minister of Health. This overdue shift from prohibitionist policies, which contributed to the opioid crisis, was applauded. Further legislative changes facilitating the opening of new safe injection sites, the renewal of harm reduction as a pillar in the Canadian Drugs and Substances Strategy, and the adoption of the *Good Samaritan Drug Overdose Act*, were all received as positive steps departing from the criminalization of substance use.

CASW encourages the Government to acknowledge the failure of MMPs as a policy to disincentivize crime or rehabilitate individuals. **Ending mandatory minimums penalties for non-violent crimes and drug charges fits with the Government's adoption of harm reduction and public health approaches: it will create change and save lives.**

¹⁰ Canadian Charter of Rights and Freedoms, s 12, Part 1 of the Constitution Act, 1982.



RECOMMENDATIONS

CASW calls on the federal government to amend the *Criminal Code* to end mandatory minimum penalties specific to drug charges. This includes action to:

- Repeal all existing mandatory minimum penalties on drug offences and restore judicial oversight;
- Adopt the TRC Call to Action Recommendation 32 to amend the Criminal Code to allow judges to depart from mandatory minimums;
- Adopt the MMIWG Inquiry finding urging the federal government to invest in the implementation of Indigenous-specific provisions of the Corrections and Conditional Release Act (SC 1992, c.20), sections 79 to 84.1;
- Support Bill S-251, An Act to amend the Criminal Code (independence of the judiciary) and to make related amendments tabled by Senator Kim Pate;
- Develop probationary procedures and provide a range of enforcement alternatives, including a broader range of treatment options, for those in contravention of the revised drug law;
- Continue implementing an evidenced based Public Health Approach to substance use;
- Increase funding for Gladue reporting and Gladue courts as recommended by Aboriginal Legal Services (ALS)¹¹.

CONCLUSION

The time has come to hold the Government to its 2015 election promise to end mandatory minimum penalties for drug charges. CASW strongly urges the government and civil society to adopt the outlined recommendations and begin a journey to address the undue suffering and unfairness this policy has caused.

Ending MMPs will begin to reform our systems to be rooted in equality, reconciliation, and justice — and will make significant strides in addressing racism, poverty, and human rights.

¹¹ National Judicial Institute. The Toronto Gladue (Aboriginal Persons) Court: An Update. (April 2005).