



## Considerations for Best Practice: Police Response

To be a police officer is to live most people's worst day on a daily basis. It is taxing, difficult and dangerous. Most officers try to always put their best foot forward every day on the job. But everyone has a bad day or slips up once in a while at the end of a long shift. Even if there are no bad apples, if you multiply the rare bad day or occasional slip up across every officer, in every department, then there are many public interactions that are conducted below expectations.

One of the worst outcomes would be if those interactions happened to be with youth from the child welfare system. They are young people who have been taken from their family by the state as a matter of protection. Youth survivors of pervasive and/or complex trauma experience a profoundly diverse range of symptoms which are not captured in the current definition of PTSD (Kolk, 2005). The risk for young people who are healing from treatment is that well intentioned interventions by police officers and other service providers can lead to the re-traumatization of young people rather than the rehabilitation. To help alleviate this problem it is important to change the mindset and culture around youth that have experienced trauma. Only when a trauma-informed practice is the default setting can it be assured that the further re-traumatization of youth with complex histories of trauma won't be an unfortunate by-product of a system that over-works police officers.

**Cross-over Youth:** young persons aged between 12-17 who are in care or receiving services through the child welfare system and also have involvement in the criminal justice system. A disproportionate percentage of cross-over youth are from racialized communities.

Intervention by child welfare agencies occurs as a result of traumatizing events, such as neglect and abuse. Moreover, intervention, even in those situations, removes youth from their most long-standing relationships, which perpetuates the already existing trauma and accompanying symptoms in which they are managing. These symptoms include but are not limited to: hyperarousal, numbing and depersonalization, lack of impulse control, lack of a sense of safety and security, misperceptions, specific processing problems or learning disabilities, effects of comorbid diagnosis such as ADHD, anxiety, depression, and bipolar disorder, limited executive functioning and social skills, and other developmental delays in the areas of emotional competence, including, self-awareness, listening, managing negative affect, and relating effectively to others (National Scientific Council on the Developing Child [NSCDC], 2014).

In the absence of trauma informed awareness and understanding, too often cross-over youth are criminalized for behaviours, that on the surface present as delinquent, when in actuality, they are symptoms of historical trauma. The over-criminalization of young people with histories of complex trauma is a systematic barrier to their healing.

Establishing relationships and contributing to a young person's sense of physical and emotional safety are imperative to the rehabilitation of young people involved within the youth criminal justice system. While every service provider has a role in helping youth heal from their histories



of trauma, part of the solution is for police officers to adapt to a trauma-informed lens when responding to calls for service with these youth.

### **How We Know What We Know**

The Cross-over Youth Project (The Project) collected data through a series of methods. Primarily the information contained within this guide was derived from following cross-over youth through the court process in Hastings and Prince Edward county. Furthermore, the Cross-over Youth Project conducted one-on-one interview with 8 police detachments (Belleville City Police Service, Toronto Police Service, Prince Edward County, Quinte West, Brighton, Thunder Bay Police Service and Brantford Police Service) (Repeated meetings with TPS and PEC). Additionally, interviews were conducted with local stakeholders including group home operators and their representatives, court stakeholders and youth. Periodic check-ins were conducted with these individuals as the project progressed.

The Belleville Steering committee provided insights during cross-sectoral meetings and delivered direct feedback on best practice. The Belleville youth advisory group and the peer mentors provided additional feedback on these issues to maintain youth voice throughout the project. All the information gathered through these interviews and meetings was reviewed and analyzed by members of the Cross-over Youth Project and coded to reveal themes in the data. These considerations were devised to address the themes that emerged from the data. The themes were then compared against the experience and data in other pilot sites including Toronto, Thunder Bay and Brantford. Additionally, these themes were compared against both national and international literature on the relevant subjects.

Once the information was collated it was presented to the stakeholders for feedback and that feedback was incorporated into the report.

### **Calls for Service**

Through our casework The Project has observed many instances of disciplinary matters elevated to criminal matters. Our methodology for collecting this information came from the casework, in which our Case Conference Facilitator followed cross-over youth through the life cycle of their case, and from individual stakeholder interviews conducted by the Resource Coordinator. Disproportionately, situations of youth experiencing difficulties in group homes are over-reported, whereas in family homes these situations would be managed by their parents. This outsourcing overburdens the police response system and has shifted resources away from vital areas of policing and justice.

The Project has observed promising examples of detachments charging fees for services to heavy users that abuse the police response system. That is an encouraging first step.

The next step should be an educational effort to inform heavy users. Proactive information sessions on the appropriate scenarios to engage police in pre-conflict settings would be a useful tool for institutions prone to call. It would be helpful if those sessions included examples of



situations that fall below the seriousness required to expend the considerable resources of police engagement.

Areas of abuse The Project has observed include:

- Reporting missing persons for the purpose of discharging liability
- Reporting property damage for the purpose of insurance claims
- To have officers mediate disputes
- Calling first to establish their version for a 'serious occurrence' report
  - Many service providers understand the power of framing their version of events first
  - They use their power imbalance to 'pre-but' the credibility of the youth
- To charge a 'troublesome' youth for the purpose of requiring them to move

The last step, if the burdensome calls for service continue, should be to use officer discretion to approach the response to the calls differently. For example, if there are many calls to a particular residence, and these calls for services are related to missing persons or to charge many different youth with assault, it may be an indication of systemic failures in part caused by the user. Multiple calls for service should be a red flag that there may be provocation and abuses of authority at the hands of caregivers.

Group home operators are paid a substantial sum (\$200-\$1000+/day) to provide full service residential placements for youth. For that fee, CAS placing agencies expect operators to pay for staff, mental health services, culturally appropriate services, programming and often education, along with housing, food and other expenses. The Project has observed, and the *Residential Review* has documented, operators consistently failing to provide advertised services (Ministry of Children and Youth Services, 2016).

Operators are expected to participate and execute plans of care. Rarely are these plans of care sufficiently or fully executed. The consequences for the failure of operators to create an environment for success should not fall on the youth.

Moreover, the costs of these failures should not fall to local communities. Group home operators receive substantial remittances to provide full service. The hope is that if police change the way they respond to calls (ceasing to subsidize operators through outsourced behaviour management) it will encourage group home operators to reallocate resources to more effective pre-escalation and de-escalation strategies. Problematic users will be motivated to expend resources on treatment and therapeutic behaviour programs if they can no longer easily offload disciplinary issues onto other stakeholders. Police should take the first step to motivate and influence users to adopt this more effective and efficient approach to resources.

### **Proactive Model**



The Project observed a pilot initiative in a jurisdiction with a high propensity for charges from group care that if implemented in conjunction with our three lens we recommend as a model for other communities.

**What:** a planning conference (minutes taken) concerning youth in residential placement that have or are at risk of having YCJA charges.

**Who:** a representative from the local police department, the residential care licensing department of the MCCSS, the local CAS agency, the home CAS agency, youth probation, if necessary and the group home.

**When:** monthly

**How:** a supervisor or manager from the residential placement facility is designated as the liaison between the other representatives, they are obligated to organize and coordinate these planning conferences.

**Why:** to reduce calls for service and the costs associated with the traditional path through the youth justice system.

The purpose of these conferences is to promote cross-sectoral communication. Paramountly, the conferences ensure that all stakeholders have a contemporaneous understanding of the issues. Moreover, these check-ins ensure accountability, so the youth receive all the services they are entitled to. Meeting minutes also assist as an accountability mechanism.

As part of this initiative, when there is an incident, the police send their occurrence report to MCCSS and CAS. MCCSS and CAS can then compare the police occurrence report with the serious occurrence report in order to address any discrepancies between the two.

These conferences are meant for creating and checking up on a wraparound plan. Youth in child welfare require a relational approach for success. That means building strong emotional connections with stable role models. These emotional connections will form the underpinning that guides the youth to make healthy, safe decisions. It is a positive approach to behaviour, which is more effective and healing than a negative, punishment focused approach.

Youth voice is paramount at these conferences. It is not possible to monitor youth 24/7 and it is not a desirable approach. If you try to substitute what you believe is in the best interest of the youth rather than listening to them, they will invariably resort to doing what they were originally going to do. The better approach is to erect scaffolding through stakeholder planning to help the youth achieve what they want in a responsible manner.

## Calls for Service

2017 vs. 2018

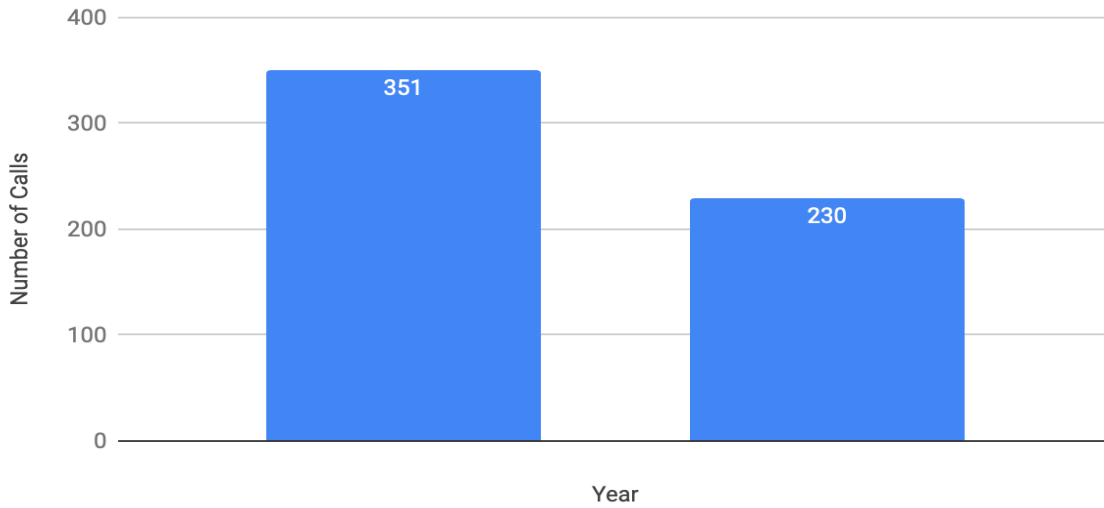


Figure 1

A major concern in this rural jurisdiction was missing persons calls. Overwhelming most missing person calls related to youth simply trying to get into town (cool off, buy cigarettes, access the internet, etc.) Another smaller portion were trying to go back to their home community or a major urban centre. There were a few that went missing where there were genuine concerns, like histories of suicidal behaviour.

### Nature of Calls

2017

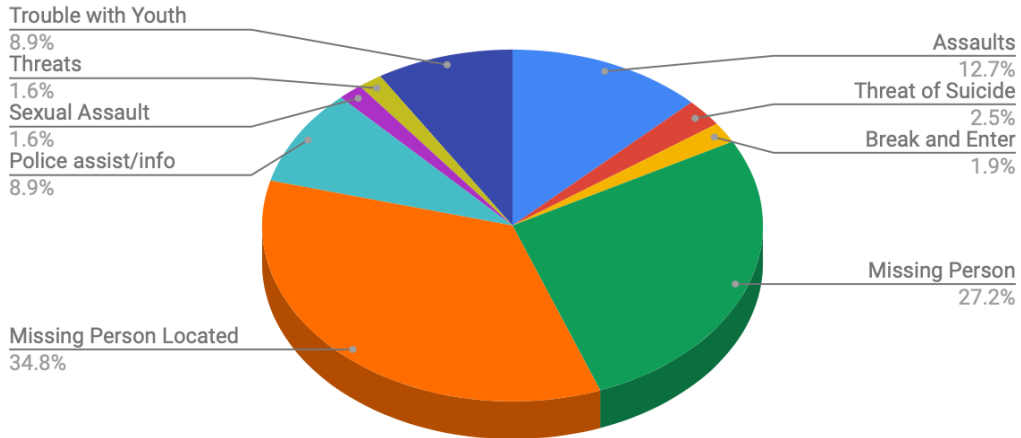


Figure 2

Through cross-sectoral collaboration a more tailored approach was adopted. Less resources were expended and fewer breach charges were laid.

### Nature of Calls

2018

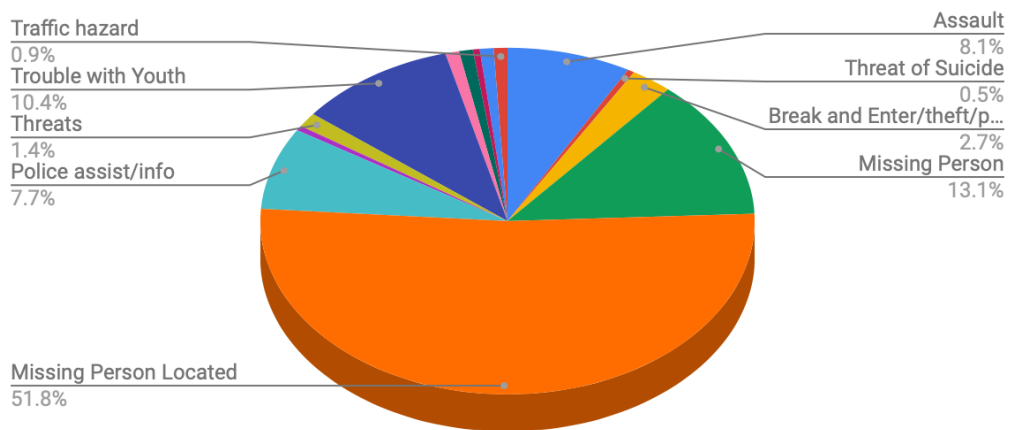


Figure 3

The group care facility restructured and reduced the number of placement spots. That led to a reduction in calls for service during COY’s involvement. However, an even more dramatic drop in calls for service was observed when the local police detachment instituted the proactive monthly meeting model. The proactive meetings began in June 2018.

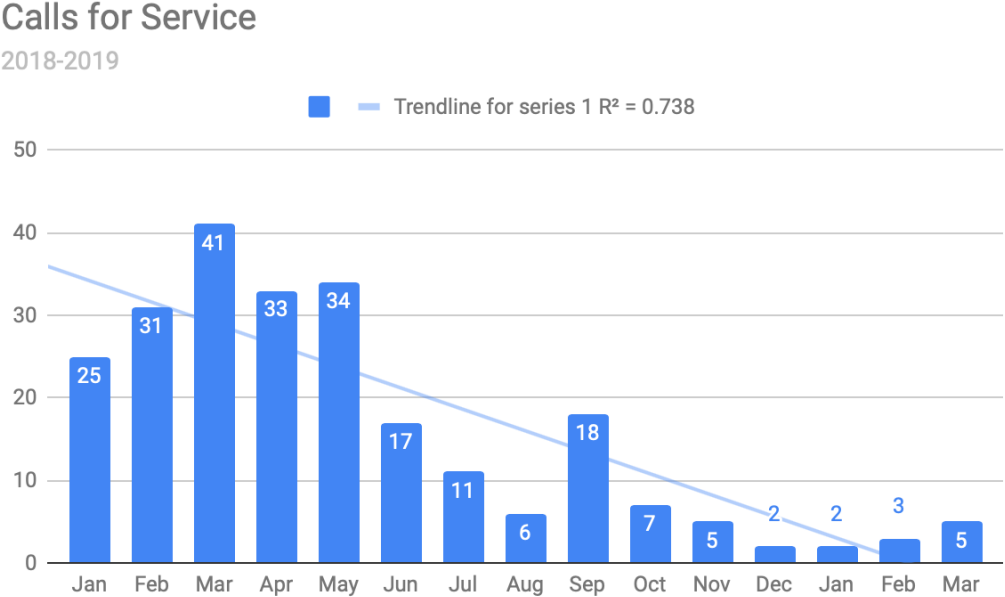


Figure 4

Calls for service dropped 78% when police changed their response.

### Average Calls per Month

2018-2019

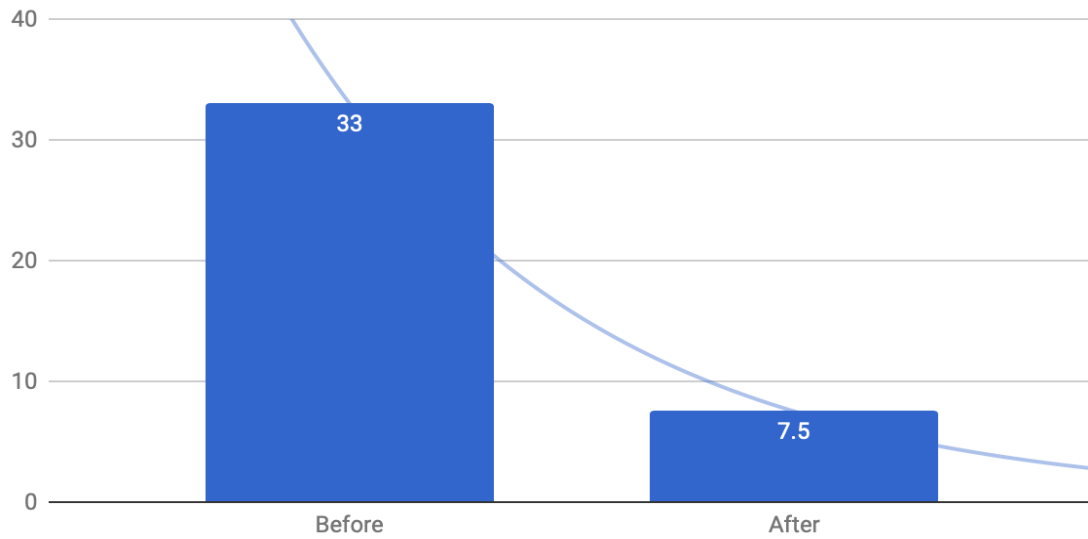


Figure 5

Only 4% of calls for services were responded to by way of a charge. When group homes are no longer able to offload their discipline issues onto the youth criminal justice system they reduce their calls for service.



## Officer Disposition

2018 - Other 195 Calls = Non-criminal

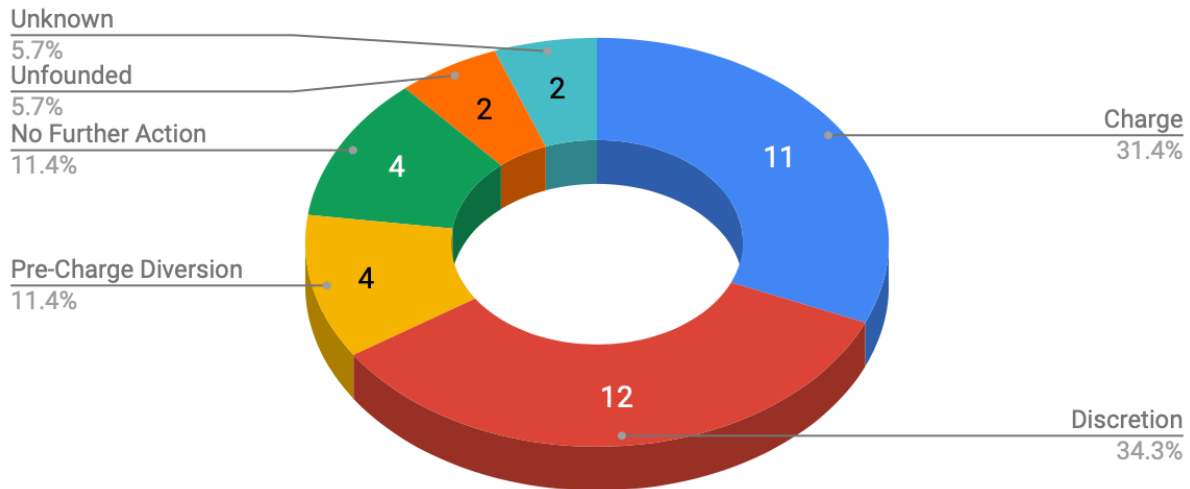


Figure 6

### Feedback

Before this system was implemented Officers stated they felt like they were chasing their tail. In the “siloe” system it was easier for stakeholders to pass blame between them. It was more difficult for the police to fact check these claims. The planning conferences has allowed officers to reduce the amount of time on the phone and chasing threads.

### Limitations/Next Steps/Improvements

This pilot initiative is a step in the right direction. To continue to build on this model The Project notes that it is important to have youth be a part of the conversation. Nothing can have the same impact as the youth’s actual voice. Additionally, this initiative is still highly deficit based and focuses on “problematic youth” and potential issues. Approaching these situations with a strength-based focus can increase the effectiveness of wrap around support.

### Results

Calls for service to addresses associated with group care dropped 35% (122 calls) in the first year of The Project involvement in the community. The catalyst for the drop in calls for services was greater cross-sectoral collaboration and communication between police, group home representatives and judicial and child welfare stakeholders.



## Trauma

Extra sensitivity is needed to ensure that young people with trauma histories are not re-traumatized when entering into the criminal justice system. For example, youth who have been brought into care as a result of surviving sexual abuse may have their trauma deepened by safety procedures in custody such as searches, surveillance cameras and privacy-free facilities. Youth from minority communities may have their generational trauma exacerbated by similarly aimed policies such as those that require black girls to remove hair weaves and braids (See Appendix A).

### *Historical/Generational Trauma*

A problematic reality is that youth in the child welfare and criminal justice system are disproportionately Indigenous and racialized minorities. For example, 8.5% of Toronto's population is black but the Children's Aid Society of Toronto reports that approximately 41% of the children and youth in care are from the black community (OACAS, 2016). There are some communities where that ratio is as high as 65% of youth in care are black, whereas only 8% of the jurisdiction's population are black (OACAS, 2016).

An anti-oppressive framework promotes the understanding that for racialized and Indigenous youth and their families, individualized trauma is often a result of larger systemic issues caused by long standing historical trauma to minority groups. Coupled with the personal trauma of marginalized cross-over youth, most of them have experienced the weight of intergenerational oppression and decades of cultural genocide.

A trauma-informed lens must account for the impact of intergenerational trauma when responding to the behaviours of racialized and Indigenous youth in the youth criminal justice system. The social and economic barriers faced by marginalized groups in Canadian society significantly impact the growth and development of cross-over youth. Training on this historical context is vital for understanding both the systemic and individual issues and barriers these young people face. Applying an anti-oppressive lens to understanding marginalized cross-over youth will support the responding officer's decision-making process. For example, it offers insight into why an aggressive, authoritarian and directive approach is more likely to be triggering and re-traumatizing rather than a calming response.

For many racialized and Indigenous communities, the state represents regression, broken promises, assimilation, abuse and sleight of hand. It is important to remember that these youth are more likely to associate the uniform with the intergenerational hardships experienced in their lives and the lives of their loved ones. If young people associate the uniform as a symbol of violence and force, it becomes even more critical that police respond in a way that offers a more positive association. Responding to racialized and Indigenous young people through an anti-oppressive and trauma informed framework will lessen the risk of re-traumatization during police interactions.



### *Approach*

Young people with histories of trauma must be approached through an intentional and specialized response. Considering the impact of trauma on the developing brain, it becomes useful to associate their cases with other situations where a specialized response protocol is required, such as the recent implementation of concrete protocols when responding to adults with unique mental health challenges and needs. A similar department wide strategy for training officers is necessary to meet the complex needs of cross-over youth.

An effective response protocol will identify the unique characteristics that youth with histories of trauma MAY present. In order to humanize the youth and promote empathy in responding officers, the protocol will explain the causes of these symptoms. It will highlight the variance, noting that youth who have experienced trauma may have none, some or all of these symptoms. An officer's approach must be tailored to each individual youth they encounter.

1. Youth with histories of trauma often have an abnormal and persistent fear response caused by chronic stress or trauma. This physiological response can interfere with other incoming information.

*Intrusions*: chronic activation of the neuronal pathways involved in the fear response can create permanent memories that heighten the mind's response to fear (Child Welfare Information Gateway, 2015). It can result in flashbacks, panic, rage and nightmares (Laub & Auerhahn, 1993). These intrusions can be intertwined with figures of authority that abused them. Police should be mindful not to appear as dominant figures seeking to control a situation through outward exertion of their authority. This may cause the youth's fear response to be triggered. They may have a reduced capacity to think through their actions in the moment; they may rely on this impulsive instinct.

2. Youth with histories of trauma often live in a state of hyperarousal as a defensive coping mechanism.

*Hyperarousal*: youth may be highly sensitive to nonverbal cues, such as eye contact or a touch, and they may be more likely to misinterpret them (NSCDC, 2010). These youth may be consumed with a need to monitor nonverbal cues for threats, their brains are less able to interpret and respond to verbal cues, even when they are in an environment typically considered non-threatening (NSCDC, 2014). Police officers should be highly cognizant of their verbal and nonverbal cues, including their tone of voice, and body language. Youth with histories of trauma may not respond to your cue the way you intended. This is not their fault and it is incumbent on police officers to take this into consideration and modify their interactions with cross-over youth accordingly.

3. As a result of the physiological changes traumatic experiences can cause youth, many have a vastly reduced ability to modulate the physiological response to stress and have a decreased capacity to use bodily signals for action. Without a trauma-informed



understanding, it may be difficult for police officers to read the young person based on initial reactive body language or verbal cues. For example, if a cross-over youth is feeling trapped by an officer's position, they may not display signs of fear before their fight or flight response is triggered. The appropriate response to this issue is to modify the officer's position not to increase containment. When officers respond to cross-over youth with respect, compassion and empathy, cross-over youth will be eager and receptive to the calming authority that officers can offer in the aftermath of overwhelming events (International Association of Chiefs of Police and Yale Child Study Center, 2017).

*Modulate*: youth with histories of trauma may move from stimulus to response without pause and experience intense negative emotions in response to even minor stimuli. To police this may look like an overreaction and/or increased threats to others. The youth may also freeze and shut down. Hyper-arousal and generalization of threats may lead to a youth having a decreased ability to rely on their bodily sensations as an effective warning of impending threats. Youth may have difficulty labeling and recognizing their own emotions or explaining their own emotional reactions to situations and events (Child Welfare Information Gateway, 2015). For example a lack of crying, screaming, visually expressed fear or apprehension does not mean a cross-over youth is unaffected, but rather has been so affected that the baseline for emotional response has been severely altered by overexposure to negative stimuli (Child Welfare Information Gateway, 2015).

Loud and busy activity can be overwhelming and affect the youth's ability to regulate their behaviour (Child Welfare Information Gateway, 2015). Officers should not raise their voice at the youth, use loud sirens or yell back and forth between officers. Speak calmly and clearly. Officers should inform the youth of all planned actions and describe them step by step. For example, if you must touch a youth to perform a search, explain your rationale and give plenty of warning for each area and step of the search.

### *De-escalation*

Police officers are trained to take command of situations for their own safety, the safety of the public and the safety of the individual causing the disturbance. Due to the physiological changes, listed above, cross-over youth will likely be triggered by dominate exertions of authority. Therefore, as soon as an approaching officer is able to determine there are no grave safety risks they should switch to a de-escalation approach.

1. Use the least intrusive force possible when responding to cross-over youth
  - a. Be relational with the young person, try to meet them at their level, and demonstrate concern over their well-being and care and empathy towards their situation.



- b. Draw on any non-violent, crisis intervention training
2. Understand that in triggering or retraumatizing situations, such as being detained
  - a. Cross-over youth may not be as able to quickly draw on the tools they have to manage trigger responses.
  - b. Yelling and swearing may seem like an increase in risk and threat, in actuality they are the young person's learned way of keeping themselves safe.
  - c. In these circumstances, communication is the key to de-escalating young people, not force.
3. Don't allow yourself to be provoked.
  - a. Many cross-over youth do not understand the difference between positive and negative attention.
  - b. Cross-over youth may illicit provocative response through disrespectful or provocative behaviour.
  - c. Recognize those situations for what they are and do not feed the reaction they are seeking.
  - d. Remain calm and measured even if it is a personal affront.
4. When you approach a cross-over youth:
  - a. As difficult as it can sometimes be, be proactive and not reactive when responding to a cross-over youth that are angry or upset.
  - b. Try to understand what they have been through emotionally. It is the responsibility of authoritative adults such as police officers to contribute to the healing of cross-over youth through empathetic interactions.
  - c. Verbally validate how frustrated, overwhelmed, scared and/or angry the youth may be.
  - d. Cross-over youth will not respond well to being yelled at or physically touched.
  - e. Think about how you would respond to dominating, aggressive or authoritarian displays.
5. Officers can help to re-establish a sense of security and stability but only if they engage in a trauma-informed approach (International Association of Chiefs of Police and Yale Child Study Center, 2017).
  - a. Emphasize the current plan to keep them safe (International Association of Chiefs of Police and Yale Child Study Center, 2017).
  - b. Do not make pre-judgements about the culpability of the youth.
  - c. There are widespread reports that proper pre-escalation and de-escalation techniques are not being used. Instigation has been reported as prevalent in some environments.



Due to systemic racism and unconscious biases, The Project has observed that too often racialized and Indigenous young people within the youth criminal justice system are not awarded the same chances or leniency as white youth. It is important to confront not only conscious and overt bias but unconscious bias. Black youth in Ontario are stopped by police 2.5 times more than their white counterparts and taken into custody at a rate that is four times higher (Rankin, 2010).

This type of bias can factor heavily in decisions like whether group home staff choose to call the police. The anti-black stereotypes that black youth are more aggressive will consciously or unconsciously trigger quicker calls for service. Factors such as this should be at the forefront of police discretion when responding to these calls and making charging decisions.

Many of the locations where cross-over youth are placed are unfamiliar to them and the local residents are not accustomed to diversity. In many small communities, youth from child welfare are segregated and viewed with suspicion. This may cause residents to report diverse youth for minor or non-existent violations. It is vital that officers approach these types of calls with caution. In these situations, there is a far greater likelihood of long-term psychological damage and/or physical escalation from police confrontations than danger to community safety from the youth themselves. While there are rare instances where cross-over youth have weapons and plan to do harm to the public, through our casework we have observed it to be the extreme exception, not the rule.

### *Departmental Training*

To be truly successful, a trauma-informed practice must be adopted department-wide. This requires ongoing training. Meaningful trauma training will support your understanding of these four elements:

1. *Realize* the widespread impact of trauma and understand how difficult recovery is
  - a. This means a cultural change that responds to cross-over youth with empathy. Cross-over youth have been adversely impacted by situations out of their control. Their actions are a direct expression of the pain and trauma they have experienced. Responding to cross-over youth in a way that supports their healing and rehabilitation requires empathy, or in other words, being able to envision yourself in the shoes of others and attempting to understand how they might feel in this situation.
2. *Recognize* the signs and symptoms of trauma
  - a. Signs and symptoms of trauma are over-criminalized in the youth criminal justice system.
  - b. In stressful situations, cross-over youth with trauma histories may have difficulty regulating their responses and emotions. Without an understanding of trauma, it may appear that the cross-over youth is feeling too much or too little.

- i. Refer to the chart below for examples of how manifestations of trauma can result in criminally sanctioned behaviours

Overwhelmed	Numb	Mirroring	Combination
<ul style="list-style-type: none"> <li>● Assault</li> <li>● Utter Threats</li> <li>● Mischief</li> </ul>	<ul style="list-style-type: none"> <li>● Possession of a Controlled Substance</li> <li>● Trafficking of a Controlled Substance (often to support addiction)</li> </ul>	<ul style="list-style-type: none"> <li>● Sexual Assault</li> <li>● Human Trafficking</li> <li>● Theft</li> <li>● Robbery</li> <li>● Animal Cruelty</li> </ul>	<ul style="list-style-type: none"> <li>● Breach of Probation</li> <li>● Breach of Recognizance</li> <li>● Fail to Attend</li> </ul>

3. *Respond* by integrating knowledge about trauma into policies, procedures and practices
  - a. Training needs to occur at the front-end and then be supplemented with regular check-ins.
  - b. De-escalation is paramount in cross-over cases. If police have been engaged, then there has been a de-escalation or pre-escalation break-down in another part of the system. As per the many systems involved in the lives of cross-over youth, cross-over youth cases can be complex and difficult. The most complex and challenging cases are the ones that fall on police to deal with. It is imperative to be knowledgeable and ready to respond to situations with cross-over youth as they occur.
  
4. *Resist* re-traumatizing
  - a. Re-traumatization can be an extreme set-back to the healing of cross-over youth with histories of trauma. Cross-over youth have been abused by figures of authority in their life.
  - b. It is incumbent on police officers not to approximate those previous experiences in any way.
  - c. Where possible avoid courses of action that will result in cross-over youth being isolated, berated, denigrated or made to feel ashamed or worthless.
  - d. Do not integrate the cross-over youth to disclose unnecessarily personal details of their lives. Retelling of their stories can be re-traumatizing, especially in the absence of a relationship with the officer or when in crisis or high stress situations.

**Administrative Breaches**



Consistently, police officers have expressed the view that judicial interim releases and probation orders must be interpreted and enforced strictly. Officers have expressed that this is based on their belief that judicial officers want their orders interpreted strictly.

In consulting judicial officers at our pilot sites, they have expressed the opposite sentiment. Courts are overburdened with non-serious, non-substantive breaches. Strictly enforcing conditions takes resources away from substantive matters.

The federal government has also expressed a similar view.

#### *Amendments to the Criminal Code*

In the recent decision *R. v. Jordan, 2016 SCC 27*, the Supreme Court of Canada sets a limit of 18 and 30 months for criminal matters to be pending before the Ontario Court of Justice and the Superior Court of Justice respectively. The Court held that if they were pending for any longer by reason of the state's constrained resources, or any other reason outside the accused's control, it would be a violation of the accused's right to be tried within a reasonable time under section 11(b) of the *Canadian Charter of Rights and Freedoms*. The timeline for youth matters is likely even more condensed, potentially as low as 12 months (*R v. D.A., 2018*).

In response to this decision the federal government has identified administration of justice offences as a serious impediment to judicial efficiency (Department of Justice, n.d.). The federal government has indicated that administration of justice offences ranks relatively low in terms of seriousness. However, they drain a disproportionate amount of resources from the judicial system (Department of Justice, n.d.). Time and resources spent on enforcing curfews, residency and non-association conditions are resources taken away from other investigations and community safety initiatives.

In the one year after the *Jordan* decision there were over 200 cases dismissed by the courts due to violations of 11(b) of the *Charter*, including murder charges (Kane, 2017).

#### Best Practice for Breaches

Cross-over youth have histories of trauma, they are re-traumatized by being taken into custody (even for a short period). Well-intentioned stakeholders often seek to control the behaviour of youth that have entered the criminal justice system in order to "put them back on a better path." The theory is that attaching criminal sanctions to disobeying that direction increases the consequences for the youth and motivates them to choose the "right path" with less direct negative consequences.

This does not work for cross-over youth. They will not respond to arbitrary exercises of authority by learning the intended lesson. More than likely this approach reinforces the opposite messages, like 'everyone is out to get me' or 'nothing I do is ever good enough.'

#### *Missing Person*





Missing persons reports filed by group homes for cross-over youth are a common call for service. There is a myriad of reasons for this including, disconnection from their home community, impulsive decision making due to age and trauma, not feeling comfortable in what is supposed to be their 'home', etc. One of the overriding reasons is that youth are trying to take proactive steps to defuse potentially volatile situations. A very common example is a youth is upset, feels they are going to react violently towards staff or other residences, so they leave the premises rather than blow up. There are also other more concerning reasons youth will go missing from group homes including suicidal thoughts, human trafficking and involvement with drugs.

A common example is group home staff watch a youth leave and immediately call police due to liability concerns. Police will then mobilize the same resources for a missing toddler. When the youth is eventually found or returns they are charged with a breach.

Group home staff should share some of the context of the situation, so police know what the appropriate resource expenditure should be. However, avoid re-traumatizing the youth by providing extraneous or needlessly personal information. Youth should not be subjected to having copious amounts of sensitive personal data sitting in a police database, even if it is not strictly a criminal record.

Group home staff should have attempted to de-escalate the situation and entice the youth back to safety with solutions to the problem they are reacting to. Group home staff should also have attempted to address the situation before it escalated through compromise and addressing the youth's needs through youth centering. Police officers should check in that pre-escalation and de-escalation were used by group home staff during their investigation.

Most importantly, youth should not be charged with breaches for these natural manifestations of their trauma. The more the youth fears a charge the longer the youth will attempt to stay missing. The casework of The Project has uncovered multiple situations of youth living on the streets for months at a time fearing a return to their group home due to an impending charge. Moreover, youth will learn the lesson, rightly or wrongly, that system is out to get them if they are criminalized every time they get frustrated and walk out to cool off.

### **Alternatives to Charging**

Officers have the following four extrajudicial measures options:

1. take no further action against the young person;
2. verbally warn the young person;
3. formally caution the young person; or
4. refer the young person, with their consent, to a community program or agency (Ontario Provincial Police [OPP] Orders, 2013).



The *OPP Practice Manual* requires that OPP Officers:

“shall select the least restrictive extrajudicial measure that will hold the youth accountable, ensuring the minimum intervention warranted to respond to the conduct” (OPP Orders, 2013).

In selecting an extrajudicial measure, a uniform member shall ensure that it is:

- applied fairly; and
- proportionate to the offence (OPP Orders, 2013).

These standards are derived from the provisions of the *YCJA* and thus is similarly applicable to non-OPP officers.

#### *Informal Pre-charge Diversion*

For many minor offences, the most **sensible** course is to take no further action (OPP Orders, 2013). OPP officers are directed to consider whether the youth’s guardians have already taken sufficient steps to hold the youth accountable (OPP Orders, 2013). In the group home context, operators may neglect to implement effective accountability procedures as a means to lower their operating costs. As a matter of fact, formal or informal policy operators may attempt to use this provision as a means to shift costs onto the justice system. Officers must be vigilant for abuse of this provision and insist operators take responsibility for accountability for minor offences.

This is similarly applicable to situations where a verbal warning is appropriate. There are situations where it may be appropriate for operators to engage police to issue a warning that carries the requisite weight. However, even a warning uses police resources. So, operators should be notified not to be overly reliant on this method of accountability.

Given the complexity of the challenges faced by cross-over youth, it is unreasonable to expect a change in behaviour after one interaction. Through stakeholder consultation and casework, The Project has observed a “one strike, you’re out policy” with many officers.

To promote rehabilitation, cross-over youth should be given multiple opportunities to complete informal pre-charge diversion even for the same or similar offences. The content of the pre-charge diversion may be modified on repeat attempts.

Many of the offences that cross-over youth are charged with are unrelated to public safety; this includes most breaches, mischief, theft and possession. These are all instances in which the ideal response for a cross-over youth is understanding, compassion and empathy. Charging youth will not correct their behaviour. Spending the time to build relationships with cross-over youth and learning the factors contouring to their acting-out will save the system a lot of time and resources in the proximate future.



In other situations, where there are allegations of a threat to public safety (simple assaults), they still may be candidates for informal diversion. Where the facts are unclear, or the surrounding context appears to have been potentially antagonized, refrain from rushing to judgement of the cross-over youth as “troubled”, thus should be assigned personal responsibility.

The *OPP Practice Manual* grants officers the discretion to convene a conference in order to obtain advice on an appropriate extrajudicial measure (OPP Orders, 2013). The project encourages maximizing the use of this provision.

#### *Formal Pre-charge Diversion*

Through stakeholder consultation and casework, The Project has observed a trend where increasingly serious charges are being considered for Extrajudicial Sanctions. This is a promising development. The Project would encourage this trend to extend to Extrajudicial Measures.

It is an unnecessary barrier that a youth must be charged before they can access the programming and services available for Extrajudicial Sanctions. Departments should seek partnerships with programming and services providers to offer similar or even enhanced options for officers to choose from without having to charge.

The increase in resources needed for an enhanced EJM will be more than offset by the decrease in the need for EJS and reduce the burden on the courts and officers who are required to complete the requisite paperwork and disclosure requests. Moreover, youth will avoid the trauma and stigma associated with a charge.

The *OPP Practice Manual* grants an officer the discretion to refer a youth to a community program/agency that may assist with rehabilitation. The referral may be to:

- a local Youth Justice Committee
- an agency with whom the detachment has an extrajudicial measure referral program operating protocol; and
- any other local agency or program that is deemed suitable (OPP Orders, 2013).

#### *Release conditions (when necessary)*

Section 493.1 of the new proposed *Criminal Code* requires that release of the accused at the earliest reasonable opportunity and on the least onerous conditions that are appropriate in the circumstances, including conditions that are reasonably practicable for the accused to comply with.

Section 11 (e) of the *Charter* guarantees both the right not to be denied bail without just cause and the right to bail on reasonable terms.



In *R. v. Antic*, 2017 SCC 27, Wagner J, for the court reaffirmed that save for exceptions an unconditional release on an undertaking is the default position when granting release.

It is important that these standards are applied to all stakeholders who are responsible for fashioning releases; this includes police officers who are releasing on a promise to appear.

It is a drain on resources and causes significant delay if the conditions of a promise to appear need to be modified in court. The average time reported for a variation is 3 weeks. It is likely that the youth will breach an unreasonable condition before it can be changed.

See the attached list of ***bail conditions suggestions***, which can be applied to any form of release.

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