

# Cross-Over Youth Project: Navigating Quicksand

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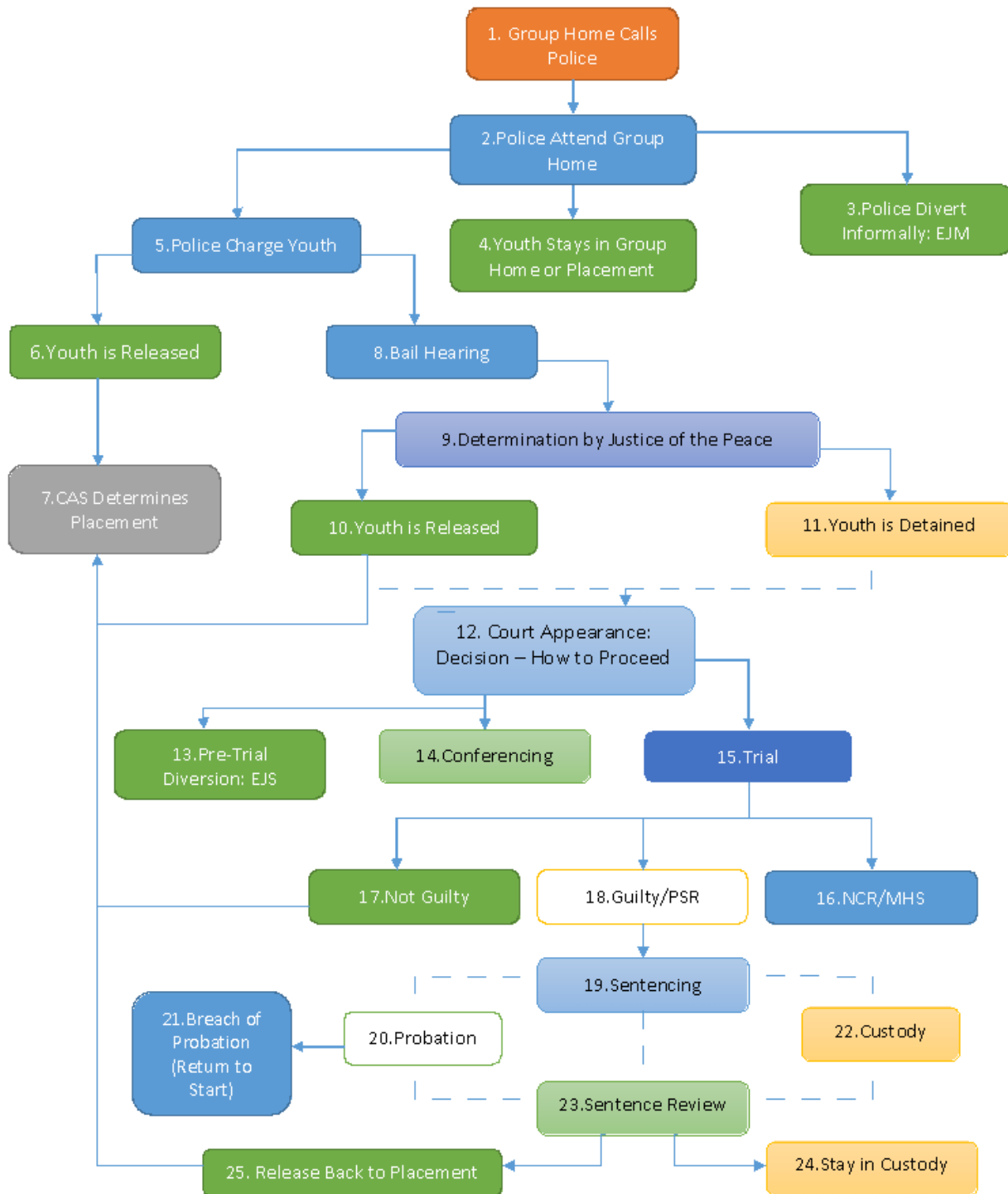
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## Appendix 1: Intersection Points

**Intersection Points in which Innovative Alternatives  
can be offered to Cross-over Youth**



## Intersection Points Fact Sheet

The following information corresponds with the numbered flow chart displayed above:

### 1. Group Home Calls Police

### 2. Police Attend Group Home

- Police will interview staff
- Police will try and contact child welfare worker (parent)
- Police will usually take direction from staff about whether to charge
- Police may take youth to police station

### 3. Police Divert Informally (EJM)

- Will take no steps or:
  - ↳ warn youth; caution youth
  - ↳ refer youth to pre-charge diversion program with youth's consent

### 4. Youth Stays in Group Home or New Placement

- Youth may stay in group home; or
  - ↳ Child Welfare has to find another placement
  - ↳ Youth could go to temporary Child Welfare assessment placement

### 5. Police Charge Youth

- Police will take youth to station for fingerprinting and processing charges
- Police will try and formally interview youth with children's aid worker present

### 6. Youth Released on undertaking

- Youth is released to children's aid as legal parent
- Youth is free to leave police station, with or without conditions
- *Typical conditions include:*
  - ↳ "keep the peace and be of good behavior"
  - ↳ "reside where directed by children's aid worker"
  - ↳ non-association terms

### 7. CAS must determine placement

- Depending on the group home's wishes or on the terms of release, the youth may need a new placement.
- For example:
  - ↳ If a youth can't associate with the victim of an alleged assault who is group home staff or another youth in the group home, the youth must move.
  - ↳ Youth might go to a temporary Child Welfare assessment placement.

### 8. Bail Hearing

- Youth is usually detained overnight
- Youth must appear for bail hearing within 24 hours
- Duty counsel/counsel will meet with youth
- Duty counsel/counsel will try and have the charges diverted through formal diversion.
- Duty counsel / counsel will try and come up with a release plan and will:
  - ↳ Try and talk to the children's aid worker, as responsible parent.
  - ↳ Talk to community bail programs and services.
- Counsel/duty counsel will talk to the Crown to see if they can agree on:
  - ↳ release with no terms; or
  - ↳ release with terms that they agree to present to the Justice of the Peace.

### 9. Determination by Justice of the Peace

- Justice of the Peace will usually go along with any joint submission by Crown and Defense Counsel
- If the bail is contested, the Justice of the Peace will hear evidence about the plan for the youth while waiting for trial.  
This could include testimony from:
  - ↳ children's aid worker

- ↳ group home staff

#### **10. Youth is released**

- Youth is released without bail conditions to responsible adult (child welfare worker) s. 31 YCJA
- Youth is released with or without conditions to children's aid as legal parent
- *Typical conditions include:*
  - ↳ "keep the peace and be of good behavior"
  - ↳ "reside where directed by children's aid worker"
  - ↳ non-association terms

#### **11. Youth is detained**

- All detained youth are offered voluntary probation services
- Child welfare worker will be invited to plans of care with youth as parent

#### **12. Court Appearance: Decision re: Trial or Pre-Trial Diversion (EJS) or Conferencing**

- The Youth may have several Court appearances
- The Crown and Defense may agree on Pre-Trial diversion
- Judge could initiate Pre-Trial Diversion or a Conference (conferences can be initiated at any time)
- The Crown may oppose diversion and the matter will go to trial

#### **13. Pre-trial diversion**

- Children's aid worker might accompany youth to a diversion program

#### **14. Conferencing**

- Children's aid worker would attend Conference with youth.
- Conference could lead to diversion or if not resolved, to trial.

#### **15. Trial**

- Group home staff may testify if the alleged offence occurred at a group home.

#### **16. Not Criminally Responsible**

- If not criminally responsible, the youth goes to the Ontario Review Board /Mental Health System

#### **17. Not Guilty**

- Youth will return to group home (or another placement)
- Youth will have no more bail conditions

#### **18. Finding of Guilt**

- Court can order a pre-sentence report (Probation will speak to youth and to Child Welfare).

#### **19. Sentencing**

- The Court could hear from the youth and the children's aid worker

#### **20. Probation**

- Standard terms include:
  - ↳ order to reside where placed by children's aid
  - ↳ obey rules of group home
  - ↳ non association clause

#### **21. Breach of Probation**

- New charges;
- Go back to beginning of flow chart

#### **22. Custody**

- Worker would come to plans of care with youth

#### **23. Sentence Review**

- Court could hear from youth and from children's aid worker

**24 (a) Stay in Custody after Sentence Review or;**

**24 (b) Released back to placement after Sentence Review**

## **Cross-Over Youth Project:**

### **Navigating Quicksand**

#### **Appendix 2: Site Evaluations**

- **Toronto Site Evaluation**
- **Belleville Site Evaluation (Ongoing)**

### Excerpts from Amy E. Beaudry MA Thesis

*Represents finding from independent evaluation of the Cross-over Youth Project by David Day, Arla Good and Amy E. Beaudry*

#### Overview

In order to examine the impact of the COYP on services for crossover youth, stakeholders were interviewed at two timepoints, one at the end of the program (Time 1, from December 2017 to April 2018) and one nine months later (Time 2, from November 2018 to February 2019). At Time 1, 18 interviews were conducted with 19 different stakeholders. At Time 2, 13 interviews were conducted with 15 different stakeholders. Overall, there were 22 stakeholders interviewed, with 12 represented in both Time 1 and Time 2 interviews. Participants were predominantly from legal or social work backgrounds. Interviews were transcribed with the assistance of undergraduate level transcriptionists, which were then checked for accuracy by the research assistant. The research coordinator and research assistant analyzed the data qualitatively using thematic analysis, which involves the identification of repetitive themes in the data (i.e., codes) that are used to explain the overall findings. NVivo software was used to facilitate this analysis. Supplementary questionnaires assessing the integration of services and stakeholders' perceptions of their own concern and efficacy, as well as the complexity of the tasks at hand, compatibility with their current mandate, and relative advantage over existing practice were also completed by the interviewees.

#### Results

Themes identified in stakeholder interviews were separated into five categories: 1) systemic barriers for youth, which involved any barriers to care or rights-based issues faced by crossover youth; 2) program implementation, including any activities by the *COYP* that stakeholders had observed; 3) barriers to program implementation, as in any barriers to a full and complete implementation; 4) program outcomes, including any benefits the program had imparted; 5) recommendations for the future; and 6) miscellaneous, including any themes that were unexpected and not easy to categorize.

**Table 1.** Themes relevant to systemic barriers for youth.

Theme	Description	Example Quotations
<i>Siloed systems</i>	Those who provided services to crossover youth had little opportunity to connect and coordinate.	"I would just say that it was people kind of still stuck in their silo and not really understanding how to kind of branch out from that."  "The youth's YJ counsel would never be invited. [...] Probation is never invited. [...] You might be seeing around a table of 10 people, and eight of them are from the Children's Aid Society."
<i>Confidentiality</i>	When service providers did connect, confidentiality was a concern. At times there was	"Historically, they were more linked and then there was a divide and that divide came because people thought that they were different proceedings and one shouldn't impact the other. Like the young person's family court proceedings really



	information sharing without the explicit consent of the youth, and information was showing up in files where it should not appear (e.g., youth justice information in child welfare files).	<p>shouldn't have any impact on their youth criminal involvement and vice versa."</p> <p>"There is a laundry list of kind of individuals who may receive YJ information, but those individuals are then prohibited from further disclosing that information, and that's where I think the system breaks down."</p>
<i>Complex and transient</i>	The population of crossover youth was described as having high needs, but sometimes little interest in services. They were occasionally difficult to communicate with or arrange meetings with.	<p>"Then they don't show up, for whatever reason right? Hard to get a hold of, cellphones in and out of service, or they don't have access to cell phones."</p> <p>"I mean these are youth, right? They have difficulty getting to the lawyer's office, they may miss the meeting. They might disappear and not be in touch."</p> <p>"They're a very hard group of people to provide services to because they've had so much experience with people trying to help them and impose help on them and counselling them that by the time we get them they're pretty jaded and reluctant to engage."</p>
<i>Stigma</i>	Some service providers viewed the crossover youth themselves as the problem, rather than the systems they were operating in and their history of trauma.	<p>"Often in child welfare and specifically with the criminal pieces, they're blamed, it's like "you're the problem.""</p> <p>"I've heard CAS workers say well you know maybe he just has to spend some time in custody. Which is just sort of antithetical to the whole sort of project of crossover youth but then although youth criminal justice system as a whole."</p> <p>"Some of the barriers that I often face with young people who are involved in child welfare is just the workers' perspective on the young people, and it really being the young person's fault."</p>
<i>Racialization</i>	Racialized youth (i.e., black and Indigenous) were overrepresented in crossover populations, yet underrepresented in certain programming such as the mental health court.	<p>"We have far too many indigenous and racialized youth in our youth system general. And certainly it's representative in the COY project."</p> <p>"In terms of diversion to like a mental health court, it's less racialized youth actually make it to that component."</p>
<i>Bail conditions</i>	Crossover youth were described as facing discriminatory and restrictive bail conditions compared to non-welfare involved youth that affected	<p>"Non-compliance in terms of their constantly getting fail to complies for behaviour that if they were living in a private home would not occur."</p> <p>"Don't associate with the co-accuser of the victim, don't contact them, obviously threats and things like that, make sure that they are in by a certain hour of the day,</p>
	their ability to successfully reintegrate into the community.	<p>keep them off of drugs or alcohol and whatever, be amenable to the rules of the house. All of those things were immediately the reasons why they come back in a week or something."</p>
<i>Placement issues</i>	Many resources were invested in finding placements for the youth, but they were often placements that the youth did not want to live at, or that the youth were unable to return to as a result of restrictive conditions, such as no contact orders.	<p>"It's always way out of the city, it's always a place where the youth don't want to go, and but the CAS ticks that as a box. They go, we have provided our placement, that's our legal requirement."</p> <p>"The difficulty that arises for a young person is that they're then often either kicked out of that placement, or not welcome to return, or their bail conditions will make it difficult for them to return."</p>
<i>Continuity of care</i>	Because of staff turn-over, service providers around the youth were frequently changing and sometimes the role of each service provider was unclear.	<p>"There have been cases where, as you probably know, a lot of times whether it's the child and youth worker or the children's aid worker, sometimes they change like twice a year, three times a year and that's so horrible for these kids."</p> <p>"When it's piecemeal, is we have a court case in criminal law, then 3 months later, 2 months later they're at 47 Sheppard in front of a whole different judge with a whole different set of lawyers with a whole different agenda, rules, policies, practices, and outcomes and the disconnect is - I think that kids get caught in the disconnect."</p> <p>"Workers changing, so how do you keep up, keep everybody in the know, people kind of coming and going."</p>

**Table 2.** Themes relevant to program implementation.

Theme	Description	Example Quotations
<i>Case coordinator as a resource</i>	The case coordinator employed by the project was considered an information resource for the stakeholders and was critical to their learning about the population and available resources. Mentioned by 12 out of 19 stakeholders at Time 1.	<p>"Just being a resource, someone to call, to say I'm really stuck what do I do? Do you have an idea? And usually [the case coordinator] has ideas, right?"</p> <p>"I mean, even when [they're] not in the building I could call [them]. If I have a question say "what about this? When can you be here [...]?" and just a general reference if I have some questions about CAS in particular and the project."</p> <p>"As well as it was nice to have someone accompanying me and sharing their</p>
		thoughts and opinions around what my work was and what it wasn't, because if you work in isolation for a long time, it can be nice to have other people's perspective."
<i>Case conferencing</i>	The case coordinator was also responsible for facilitating and arranging the stakeholders for case conferences to develop coordinated plans for the youth.	<p>Interviewer: And this didn't exist before the COYP?</p> <p>"Well no, no. There were case conferences for sure but much more rare [...] I mean those things were always in the legislation but nobody did them, none, it was weird."</p> <p>"Child welfare, defense, maybe the crown or like the bench, so like judge or justice of the peace, any mental health or outside resources, education. Just whoever is involved in the young person's life, could even be family or friends. Any culturally specific, so an elder, whoever the young person wants at the table."</p> <p>"Just [the case coordinator] having the resources and being able to identify the different players, like who is the CAS worker for this youth? What's her contact information? I mean [the coordinator] has resources that I don't know about and can't access, so that was very helpful."</p> <p>"I think it was that first case when we were meeting monthly for several months. Maybe 3 or 4 times."</p>
<i>Facilitated communication</i>	The case coordinator made it easier for different service providers to connect and share information appropriately in the context of case conferences.	<p>"Having conversations about what the young person wants, or what they need, or if they're AWOL, like how are we gonna – like things like that. It definitely helped with the communication piece."</p> <p>"All with proper consent, there can be a sharing of information or a giving of information, depending on the kind of consent you have, that enables for me the ability to have a much better understanding of what services are in place and to do some advocacy".</p> <p>"The exchanging of information with both parts – like the crown and duty counsel - as well as keeping the young person's youth justice counsel up to date, as well as the group home staff."</p>
<i>Advocacy by staff</i>	The coordinator played a unique role in advocating for crossover youth in the program, both within and outside case conferences.	<p>"She was very fundamental in a case conference that we did for a judge for one of our clients, so she spoke for the young person at the case conference and related some information about the background and the needs and wants of the client."</p> <p>"I think the case coordinator that was at court kind of knew the right ways to make</p>
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		sure that the right people were listening to what the youth wanted. “
<i>Relationship building</i>	The case coordinator also played a unique role in the youth’s care, taking more time to build relationships than other service providers.	<p>“Somebody that the young person can go to in more of like an informal way. So not like a traditional kind of social work role, that type of professional role, but more of just kind of checking in with them and touching base with them, and getting to know them, building that rapport.”</p> <p>“I think it really had an impact on this guy. He will remember [the case coordinator and the peer mentor] for a long time.”</p> <p>“What was really great about Jessica as a case conference facilitator was being able to have the patience to sit and listen, and <i>really</i> listen to what the youth was saying, especially given their capacity, give them the time to air it out, think about it, and also have it be done in a space where it builds a little trust.”</p>
<i>Education and outreach</i>	The project staff conducted a number of education and outreach events, such as cross-sectoral education days.	<p>“We did round tables with youth who shared scenarios and talked about, “here was my experience” and the group kind of had to problem solve the experience of the youth.”</p> <p>“At the beginning of the project there were seminars, I mean there was like one where it lasted from like about one in the afternoon to almost nine at night at the children’s aid office.”</p>
<i>Training of two-hatter counsel</i>	The project led the training of more than six two-hatter counsel, who were able to provide care in both the child welfare and youth justice systems.	<p>“The plan was to identify some youth criminal lawyers who wanted to become children’s lawyers to do this kind of work, and another lawyer I knew, a children’s lawyer...indicated interest from the children’s lawyer child protection piece to being trained in the criminal piece.”</p> <p>“[They] can actually explain things to the society because [they] have the youth criminal justice background. So the society actually didn’t understand – because they don’t do youth criminal work, so they didn’t actually understand how to navigate through the youth criminal system.”</p>
<i>Trauma-informed</i>	The program also specifically provided education around trauma-informed care and its importance in caring for	“They are responding inappropriately, but responding to their trauma, and so we need to help them figure out how to manage all that trauma, because we can’t take it away.”
	crossover youth.	“He is already the victim of neglect or abuse, he is already facing these traumas, we really need to think about what the impact is going to be on him if he were for example to stay in a longer term in a locked facility, that type of thing, because he is vulnerable, right?”

<i>Peer mentorship</i>	The program was also credited with the creation of a peer mentorship program that stakeholders recognized as valuable; however, stakeholders were generally unable to explain whether it still existed.	<p>"I can't say I've lived the way my clients have been raised, right? I just can't. So I think that's also really important to maintain that youth or peer mentor type thing; I think that's invaluable."</p> <p>"I don't know what happened to [the peer mentor]."</p> <p>"I know we had a couple of youth in particular where they really found that really helpful, and I think probably wouldn't have agreed to the service had it not be for her engaging with them."</p>
<i>Youth advisory (Project C)</i>	Initially the program implemented a youth advisory committee; however, stakeholders were unclear on why this had not been sustained for the duration of the project.	<p>"They were really cool kids too[...]. I don't know what happened to them."</p> <p>"I know that there was the youth engagement project, and I know there were some bumps in the road along that. So I know there was at least an effort to engage youth. But I think that there were some serious challenges around there. I don't know enough about it to speak to it."</p>
<i>Voice of the youth</i>	Overall, stakeholders viewed the project as elevating the voices of the youth, in the context of case conferencing in particular, but also in all of their care. The project's commitment to youth participation as a pillar served as a reminder to stakeholders to do so in their own service provision. 16 out of 22 interviewees brought up voice of the youth.	<p>"I know that there is a push in the project to really hear the voice of the young person."</p> <p>"I would say through the conferences, and that is the one thing that I am a little bit concerned about losing, once we lose the structure, because I believe that that has been one of the key pieces in terms of ensuring that the young person's voice is heard. And not just heard, but you know, that their views are given due weight, and consideration."</p> <p>"I think that there has been a cultural impact here at the court about that, where youth voices are being taken a little bit more seriously now."</p>
<i>Loss of case coordinator</i>	Related to all the positive effects of the case coordinator, stakeholders viewed the withdrawal of the case coordinator with the closure of the Toronto pilot as a major loss. They missed having the case coordinator as a personal resource in their work and felt that case conferencing only occurred minimally after their removal.	<p>"I think there was a lot of day-to-day logistical things um time-consuming work that a, that a case conference facilitator did – relational work that they did, that just doesn't fall within the purview of other stakeholders."</p> <p>"We've lost some of that ability to facilitate this integration by not having a formalized structure actually at the court who can facilitate that."</p> <p>"Without the case coordinator role, there's a risk of losing that really strong case management, or case coordination function, because who does that fall to if there's not a dedicated person there, who's trying to get everybody in a room."</p> <p>"Without a case conference coordinator I haven't seen a lot of case conferencing going on."</p>

**Table 3.** Themes relevant to barriers to implementation.

Theme	Description	Example Quotations
<i>Buy-in</i>	Though the interviewed stakeholders were confident in the program, they recognized that not all stakeholders had been receptive to the COYP's philosophy and advice. Defense counsel were identified as particularly resistant.	<p>"There's some people, and I'm going to say a lot of defense lawyers and frankly I think some duty counsel too that just don't really get it."</p> <p>"There are people at the table that you know were part of the problem. And had those philosophies and that kind of culture embedded in them."</p> <p>"You get somebody who has done it for a long time, their instinct, their gut, tells them to do it one way, it's so difficult to have someone to unlearn that, even if it is the exact opposite of what they should be doing. They look at themselves as having a successful career and doing successful work."</p>
<i>Involvement in multiple jurisdictions</i>	Given that most crossover youth were housed outside of the City of Toronto, many had outstanding charges in other jurisdictions. However, only 311 Jarvis employed a full-time case coordinator, limiting the ability to affect the care of these youth.	<p>"A kid who had YJ matters in three different jurisdictions [...] that was the biggest challenge - making sure that everyone was working together to resolve that and the conferencing really helped in terms of knowing what was going on with that."</p> <p>"Many of the youth who we work with are not actually at that court, they are at a number of other courts."</p> <p>"It was a challenge because workers would have youth that were appearing at other courthouses. So they would say, 'well this doesn't relate to me. I don't have youth that are going to 311 Jarvis.'"</p>

<i>Site/Size of Toronto</i>	Several stakeholders expressed concern that Toronto, with an	“Especially in Toronto, there’s just so many different individual players and stakeholders that, y’know like I see a new person like every time we have – there are
	ever-changing cast of service providers, was too large for the project to make a lasting impact.	some who are very constant but there’s others that are not.” “It would be easier within smaller communities.”
<i>Human resources issues</i>	Stakeholders were keenly aware that the program had issues with leadership. In addition to being a problem that slowed the project’s progress, some articulated that the issues had led them to question the integrity of the program itself.	“I think they went through three or four senior people while I was here [...] I got you know emails with very volatile things being said, so that whole side of things that I wasn’t really involved in seemed to be very chaotic and I didn’t really understand what was really going on.” “The staff turnover I think caused a little bit of concern around the stability of the program and maybe even the integrity of the program.”
<i>Lack of time and resources</i>	Stakeholders identified themselves as overworked and underpaid. Sometimes what might have appeared as a lack of buy-in was actually a lack of resources; often stakeholders did not have the time to provide the care needed by crossover clients.	“CAS workers are--they’re all overworked.” “Funding is an issue. So I can say lawyers aren’t interested, but it could also be that lawyers like “I can’t show up to 5 things and not get paid for them.” “Well, there is only one of me, and sometimes there’s 20 of them.”
<i>What is COYP?</i>	Three stakeholders indicated that they themselves were unclear on the project’s objectives; furthermore, two stakeholders were unclear on what the term crossover meant.	“I can talk it up, and I do talk it up, with peers whatever people want to know about it. But some people have never heard of it still, even though they’re kind of in this world.” “Youth justice lawyers are saying “what about crossover?” and I’m kind of going “it’s not taking place anymore”, and they are going like “yes it is” so it has created a bit of confusion that it is no longer available in this jurisdiction.” “I’m not sure that many people even know what it is.”
<i>Identification of the youth</i>	Stakeholders complained that it was difficult to identify crossover youth. This limited the ability of two-hatter lawyers to be assigned. Often, when it became clear that a youth was crossover, they had already obtained non-	“It seems difficult for the program to identify the youth uh who have criminal justice problems before they’ve already gotten a lawyer.” “The chance of synchronicity of both a child hitting the welfare system and the criminal system at the same time, is really slim.”
	two-hatter counsel.	
<i>Length of the program</i>	Stakeholders thought that the program was too short.	“Another thing is just longevity; the longer the project is here, the greater the reputation it will have, the more referrals it will get and the more trust in the process.” “Now people that have crossover youth in other court houses are saying “oh, I hear about this project, what does this mean for my kid?” I say well actually the project is - you missed the boat!”

**Table 4.** Themes relevant to program outcomes.

Theme	Description	Example Quotations
<i>Bail conditions</i>	Changes to bail conditions and sensitivity to how these impact crossover youth were largely considered a success of the program. Related activities included a bail protocol for Justices of the Peace.	<p>"Now there will be more updated forms for justice of the peace to consider when dealing with issues of bail and crossover issues."</p> <p>"A great template for youth bail conditions because we had a real issue with kids being released on conditions that were so onerous they couldn't fulfill any of the other obligations of the court."</p>
<i>Sensitization/Culture shift</i>	Many stakeholders recognized a change in the overall culture at their courthouse. They described seeing people turn their minds to crossover issues in their day-to-day practice. Brought up by 11 out of 22 interviewees.	<p>"I think the presence of the cross over project has brought just more awareness to the court of these young people who are in both systems and trying to see how involvement in both systems can be really complicated for young people."</p> <p>"It has opened the door for people to think differently."</p> <p>"I think that once we identify somebody who is crossover, it turns everybody's mind to the issues that impact crossover youth specifically. So that has been one of the key components is that awareness of criminal judicial actors and what that means to be child welfare-involved."</p>
<i>Collaboration</i>	Stakeholders viewed the project – particularly the case conferencing – as enhancing their ability to work together and to create coordinated plans for crossover youth's care.	<p>"You got how many brains at a table and to say oh well we can do this, we can do that, we can do this. Or, you know, pointing them to the mental health court worker, pointing them to other different organizations that can help. Maybe some things that weren't always on the radar. So I think, you know, obviously the more people the more brain storming can happen."</p>
		<p>"You would gather whoever was involved together and you have a little scrum as to what you hope will happen, what the plan is, and whether there's a role for the mental health worker to chip in, and what other information might we need and who can help get it. So they would be a part of that as well."</p> <p>"When everyone was coordinated properly, there wasn't duplication, there wasn't having the kid do the same thing in different spheres, and them not knowing about it. And, I think you had more...maybe there was more deliberate plan, like they are going to do this first and then this."</p> <p>"Overall, I do think that there is a lot more collaboration, just people coming together to case conferences and more discussions between the project and lawyers and things like that, so things are moving forward."</p>
<i>Psychological impact on the youth</i>	Involvement in the COYP was viewed as having psychological benefits for the youth. First, they had an additional, neutral support person in the case coordinator, and second, case conferencing was a way to illustrate the number of people willing to support them.	<p>"The young person kind of has--once they sort of see all these people at the table I think they feel more valued."</p> <p>"They suddenly walk into a court room and everybody is there. And so I think it has a psychological impact on the young people that hasn't been measured but I see it in their faces, you can see it, and their behaviours."</p>
<i>Impact on youth's criminal case</i>	Stakeholders viewed the project as benefitting the youth's criminal case in the justice system. This was reflected in both a greater speed of resolution, but also in allowing stakeholders to understand cases from all sides, come up with better plans and to better advocate for the youth.	<p>"[All charge were withdrawn.] I don't know if that goal would have been achieved if he hadn't had an advocate who was looking at the problem and kind of reminding the crown that, y'know, he is already the victim of neglect or abuse."</p> <p>"All with proper consent, there can be a sharing of information or a giving of information, depending on the kind of consent you have, that enables for me the ability to have a much better understanding of what services are in place and to do some advocacy for him."</p> <p>"The cases have moved <i>faster</i> because there is an additional set of hands."</p>

<i>Personal skills, knowledge and attitudes</i>	Largely, stakeholders described their participation as increasing their knowledge, skill-building, and benefitting their attitudes towards crossover youth. Specifically, they reported learning how to view youth from a trauma-informed lens, greater ability to advocate for youth, and a greater understanding of the roles of other players in the child welfare and youth justice systems.	<p>"I think I gained a more--a deeper understanding of how to interact and how to appreciate young people who've gone through serious, serious trauma."</p> <p>"I've learned a lot, you know, and it was again like I attribute that to [...] my work with the youth, seeing what the real issues are and it being very clear to be like as kind of like a reality check for me."</p> <p>"You can see it, you can just see the struggles."</p> <p>"Being an advocate and being an ally can be similar, but they're also different, and I think, I wanna, I hope that I'm developing skills to be both for the young people. I think being part of the crossover project, being involved in it, has helped me to build on that."</p> <p>"I think there's some things that people have learned from that experience that they've been able to now continue using since there isn't a case coordinator in court anymore. So that they're still able to use some of those principles."</p>
<i>Reach beyond 311</i>	Stakeholders reported that they felt the reach of the crossover philosophy had expanded past the 311 Jarvis courthouse, and was affecting service providers at other courthouses. Stakeholders reported that 1) they were sharing crossover materials and information with other service providers at other locations; and 2) they were being asked for more information from service providers outside of 311 Jarvis.	<p>"Having that conversation with a Crown who's at another courthouse that doesn't know of- isn't a project site - to be able to talk to them about, 'well here are the things that are sort of unique about this young person as a result of their experiences,' and maybe has changed outcomes for other clients as a result, even though they're not directly engaged in the project itself."</p> <p>"Anecdotally hearing from my colleagues at 2201 Finch court or in Brampton, where there's been a little bit of uptake there too."</p>

**Table 5.** Stakeholder recommendations.

Theme	Description	Example Quotations
<i>More education</i>	Despite their recognition of educational events occurring, stakeholders expressed that more education was required to reach those who had not bought into the project. They also recommended a stronger marketing of the project at the outset.	<p>"Clarification around like what...what are you...what are you looking to do and what are you hoping to achieve."</p> <p>"Something around the whole stakeholder engagement - how do we get all of those groups understanding better that are having to serve these youth? It seemed like there were really key champions, which is important, but how do we get everybody who is working with these youth to understand it?"</p> <p>"There needs to be a much better marketing of the concept of crossover youth."</p>
<i>Need for full-time case coordinator, everywhere</i>	Stakeholders were adamant that the case coordinator had a unique role in the courthouse, and that services such as case conferencing had decreased in frequency and quality since their removal. Several recommended having a case coordinator in all jurisdictions. Brought up by 13/22 stakeholders.	<p>"Well absolutely we definitely need somebody to be on every site."</p> <p>"In terms of knowledge and sharing knowledge - there are rules against it. So it wouldn't be appropriate for somebody, individually, to start running around and calling people, that's an issue. So there has to be a worker in every courthouse."</p> <p>"Keep [the case coordinator] here. Don't let [them] go!"</p>
<i>Peer mentorship</i>	Stakeholders had heard promising feedback about crossover youth's responses to a peer mentor who had previously had system-involvement. They were disappointed that the mentorship had been short-lived in Toronto, and wanted it returned.	<p>"Maybe a little bit older than the young person who can help follow them around especially if they have to go from court to court, every kid should have a mentor."</p> <p>"I think that's a piece that maybe could've been developed more, or utilized more, maybe not developed but utilized more, in terms of helping meet young people where they're at, as a way to help facilitate service too."</p>

<i>Systematic identification/ assignment procedure</i>	Both the referral process to the program and the referral process to two-hatter lawyers was cited as a component of the COYP that needed better development. It was recommended that the referral process to lawyers for crossover youth be reviewed to examine opportunities for two-hatter counsel to be assigned.	<p>“One of the reasons it’s very important to be able to identify these cases early so we can get the two-hatters involved because of course once the youth has a criminal lawyer, typically the lawyer would not be inclined to give up the case to someone else just because they’re not a two-hatter, right?”</p> <p>“If the court maintained a list – if – if legal aid maintained a list of two-hatters lawyers so that when a kid hits the system from the criminal side, if somebody like [the case coordinator] is there who can identify them and then go to that list...”</p>
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**Table 6.** Miscellaneous themes.

Theme	Description	Example Quotations
<i>System changes (outside of the COYP)</i>	Outside of the COYP, stakeholders cited a number of other system-wide changes that benefitted youth, such as a Supreme Court ruling on bail conditions ( <i>R v. Antic</i> ) and the new rights-focused <i>Children, Youth and Family Services Act</i> . COYP was described as consistent with these changes, but also made it difficult to ascribe learning and culture shift to the project’s activities.	<p>“We have the new child youth, child youth–family services act, which actually is very cool because it puts the voice of the young person really majorly in front of the court. Whereas in past best interest used to be the child’s views and preferences if they could be ascertained.”</p> <p>“I don’t know if it’s a crossover youth, so much as VYSAs. The VYSA – that’s been a huge change in the CYFSA. VYSAs have really changed the landscape.”</p> <p>“I think that the bail stage has changed, right? Now obviously that’s a supreme court decision that said you know, you need to be letting these youth out.”</p>
<i>Program champions</i>	Throughout interviews, a number of stakeholders stood out who had taken on the project as their own, and really made it their personal mission to educate others about its philosophy. These people were likely critical to the program’s successes.	[No quotations due to potential for identification.]
<i>311 Jarvis as special and unique</i>	Stakeholders described 311 Jarvis as the exception to the rule, and likely to be a courthouse that was more receptive to COYP ideas than others.	<p>“311 Jarvis in general has very good services available to young people who are experiencing various types of challenges.”</p> <p>“This court is better than most, because it is a youth court, and they’re all aware that if someone is coming this way, then there could be potentially other things going on for them.”</p>



## **Cross-Over Youth Project:**

### **Navigating Quicksand**

#### **Appendix 3: History of Residential Review Standards and Guidelines**

Theme	Year of Publication	Author	Standards/Guidelines/Recommendations
Staff Hiring/Training	1978	Ministry of Community and Social Services: Children's Services Division	<p>"The competency-based approach to job requirements specifies what a person must be able to do in order to perform a job adequately as opposed to the more common practice of basing qualifications on education, professional certification and work experience." (pp. 170)</p> <p>The core competencies include:</p> <ul style="list-style-type: none"> <li>- "Provide basic daily care</li> <li>- Provide health care and ensure safety</li> <li>- Communicate and form relationships with child</li> <li>- Manage child's behaviour</li> <li>- Work with groups of children</li> <li>- Set individual plan of care for child</li> <li>- Observe, record and present data on child</li> <li>- Work as a member of a team</li> <li>- Work in and with communities</li> <li>- Develop professional competencies</li> <li>- Follow administrative procedures" (pp.175-180)</li> </ul>
	1980	Ministry of Community and Social Services: Children's Services Division	<p>"Repeatedly, questions were raised as to whether the particular competency guidelines proposed in the paper should become standards in the future, whether they should be used as entry-level or hiring qualifications, or whether they should be used primarily for the purpose of in-service training." (pp. 153)</p> <p>"The need for staff training standards was also supported. Comments were made, however, that the proposed standards were too rigid, and included too many documentation requirements." (pp. 153)</p>
	1990	Ministry of Community and Social Services & Ministry of Correctional Services	<p>"Staff enter child and youth work with varying degrees of knowledge of child development, social learning theory, behaviour management theory and practice, sociology, psychology, and program planning." (pp. 48)</p> <p>Recommendations:</p> <p>"All agency boards/operators ensure new staff are involved in a process of comprehensive orientation to residence and ministry policy</p>

			regarding ethics, codes of conduct, disciplinary procedures, complaints procedures, and reporting of abuse.” (pp. 50)
	1990	Canadian Child Welfare Association	<p>“To meet the needs of ‘hard to serve’ youth, training must be developed in conjunction with program implementation. Staff should be trained to assist young people in aggression control, protection from abuse and self-harm, and development of social skills.” (pp. 10)</p> <p>Recommendations:</p> <ul style="list-style-type: none"> <li>- Develop a competency-based package for training reflecting the provincial act and regional and cultural differences</li> <li>- Continue to provide ongoing, consistent training for experienced staff” (pp. 10)</li> </ul>
	2007	Office of Child & Family Service Advocacy	<p>Recommendation:</p> <p>“That the qualifications, training, supervision and payment of staff in outside paid group care be reviewed with the goal of achieving parity with equivalent front line care providers. This will enhance the recruitment and retention of qualified and skilled care providers to manage children with challenging needs.” (pp. 7)</p>
	2016	Ministry of Children and Youth Services	<p>Recommendations:</p> <p>“A requirement for pre-service credentials be introduced whereby all front line staff in residential care must have completed at minimum a college level diploma in a human service discipline. The requirements for these credentials encompass any person engaged in paid employment activity focused on children and youth in residential services at any level, excluding any person employed solely for functions that do not involve interactions with residents...” (pp. 15)</p> <ul style="list-style-type: none"> <li>- “Current staff members in residential settings have up to five years to meet this requirement.</li> <li>- MCYS move towards establishing child and youth care practice as the required credential for residential work over the of the next ten years.</li> </ul>

			<ul style="list-style-type: none"> <li>- Pre-service credential requirements apply to full-time, part-time, and designated one-to-one staff in group care as well as to workers assigned to foster homes or family-based care.</li> <li>- Modified requirements are to be developed for Aboriginal people taking into account local resources and contexts in partnership with First Nations, Inuit and Metis communities.” (pp. 15-16)</li> </ul>
	2016	Ministry of Child and Youth Services	<p>Recommendations:</p> <p>“A two-week new worker training program be developed for all front-line residential service positions based on core competencies including life-space interventions, strength-based relational practice, ethical decision making and the unique context of Aboriginal, LGBTQ2S, Black youth and other groups.” (pp. 16)</p> <ul style="list-style-type: none"> <li>- The New Worker training should be developed through partnership between the child and youth care academic sector and the residential services field.</li> <li>- The New Worker training is to subsume existing mandatory training for residential front-line staff including in particular crisis prevention and intervention training.” (pp. 16)</li> </ul>
	2017	Ministry of Child and Youth Services	<p>“For the first time in the province, we will define quality of care in regulation. We will set minimum expectations related to quality of care, and monitor compliance. Our framework for quality of care, including the development of regulations, will be based directly on the work of the Residential Services Youth Panel and the quality of care domains they developed.” (pp. 12)</p> <p>“Therefore, we will develop an action plan that will explore:</p> <ul style="list-style-type: none"> <li>- Establishing minimum postsecondary education requirements and pre-service qualifications for the sector. Working with the Ministry of Advanced Education and Skills Development, we will review the existing college program standards to reflect the learning outcomes required to work in this field today and in the future.</li> </ul>

			<ul style="list-style-type: none"> <li>- Introducing in-service training and professional development to build and maintain a confident, resilient and highly qualified workforce.</li> <li>- Recruiting and retaining qualified and diverse employees, including in rural and remote areas and in northern Ontario, to strengthen the capacity of the child and youth residential services workforce.” (pp. 17)</li> </ul>
<b>Use of Restraints</b>	1978	Ministry of Community and Social Services: Children’s Services Division	“Reasonable restraint of children causing harm to themselves or others – this would include reasonable use of force by staff to protect themselves from assaults by children.” (pp. 122)
	1980	Ministry of Community and Social Services: Children’s Services Division	“There is a wide spectrum of possible adult responses to the unacceptable behaviour of a child, from a simple expression of disapproval to actual physical restraint. No method of control that does not have the desired result of replacing the child’s unacceptable behaviour with a suitable alternative should continue to be used.” (pp. 120)
	1990	Ministry of Community and Social Services & Ministry of Correctional Services	<p>“All service providers, and virtually all children, seemed to be clear that corporal punishment is not allowed in residential settings. Most residences also had written policies and procedures defining practices that staff were not allowed to use on children. The review team found, however, that:</p> <ul style="list-style-type: none"> <li>- Definitions of unacceptable practice varied from facility to facility.</li> <li>- Residences did not place much emphasis on explaining to staff what acceptable intervention alternatives might be.” (pp. 26)</li> </ul> <p>Recommendations:  “MCSS define the terms ‘intrusive procedures’ and ‘harsh and degrading measures’, and set standards for practice and external monitoring.” (pp. 28)</p>
	1990	Canadian Child Welfare Association	<p>Recommendations:</p> <ul style="list-style-type: none"> <li>- “Generate and research non-intrusive strategies in volatile situations</li> </ul>

			<ul style="list-style-type: none"> <li>- Conferences should have workshops that focus on non-intrusive strategies/non-violent intervention</li> <li>- Teach non-intrusive strategies/non-violent crisis intervention</li> <li>- Provide safe and practical training with regard to physical restraints (when, where, how)" (pp. 11)</li> </ul>
	2007	Ontario Child & Family Service Advocacy	<p>Recommendations:</p> <ul style="list-style-type: none"> <li>- "That child welfare agencies ensure social workers closely monitor the use of all behaviour management strategies in residential settings which includes physical restraints, locked rooms, the removal of possessions, and personal and room searches</li> <li>- That child welfare agencies ensure that social workers intervene actively in circumstances of inappropriate or harsh treatment on behalf of young people to ensure their safety and to alleviate the young person's distress or fears." (pp. 7)</li> </ul>
<b>Youth Voice &amp; Advocacy</b>	1978	Ministry of community and Social Services: Children's Services Division	<p>"Every child has a right to have his or her opinions heard and to be included when any decisions are being made affecting his or her life." (pp. 39)</p> <p>"Each children's residence should also institute a grievance procedure to provide an internal mechanism for a child to voice program concerns." (pp. 39)</p> <p>"It is also proposed that, wherever possible, every child, regardless of age, be included in the negotiation of the placement agreement and the treatment plan." (pp. 40)</p>
	1980	Ministry of Community and Social Services: Children's Services Division	<p>"The original proposal was conceived as a method of implementing a child's right to be heard. Although the requirement for a formal grievance procedure has been deleted from the final standards, the Ministry continues to encourage the provision of some such mechanism for children who wish to express their opinions." (pp. 129)</p>

			<p>“Many children’s residences currently use an approach to in-house conflict resolution that incorporates the proposed features. These features are:</p> <ol style="list-style-type: none"> <li>1. Regular, frequent opportunities for children to voice concerns or complaints about matters within the residence that affect them.</li> <li>2. A more formal internal review mechanism</li> <li>3. Access to a ‘third’ person outside of the program</li> <li>4. Provision to residents of clear information about the complaints procedure</li> </ol> <p>Those complaints concerning matters that the residence director believes qualify as serious occurrences...should be documented and reported as such.” (pp. 47)</p>
	1980	Ministry of Community and Social Services: Children’s Services Division  <b>Consultation Paper</b>	<p>“Extensive reliance has been placed upon measures designed to enable the child to be heard. These reviews are both meaningful and accessible to children and have included such innovations as appointment of a specific primary worker for each child in residential care, internal complaint procedures that ensure that most concerns are resolved within the program itself and the introduction of the case manager. This last concept has been the most important innovation from an advocacy standpoint, ensuring that there is always someone to speak up for the child.” (pp. 64)</p>
	1984	Child and Family Services Act	<p>“The Minister may establish an Office of Child and Family Service Advocacy to,</p> <ol style="list-style-type: none"> <li>(a) Co-ordinate and administer a system of advocacy, except for advocacy before a court, on behalf of children and families who receive or seek approved services or services purchased by approved agencies;</li> <li>(b) Advise the Minister on matters and issues concerning the interests of those children and families; and</li> <li>(c) Perform any similar functions given to it by this act or the regulations or another act or the regulations made under another act.” (pp. 680)</li> </ol>

	1984	Child and Family Services Act	<p>“A child in care has a right to be consulted and to express his or her views, to the extent that is practical given the child’s level of understanding, whenever significant decisions concerning the child are made, including decisions with respect to medical treatment, education and religion and decisions with respect to the child’s discharge from the placement or transfer to another residential placement.” (pp. 683)</p>
	1990	Ministry of Community and Social Services & Ministry of Correctional Services	<p>“The review team found general agreement that some type of child advocacy function is needed in this province. However, young people and staff in residential settings are uninformed and/or confused about the Advocacy Office, even though it has been in place for five years, residents are required to be informed of its existence, and it is advertised on posters sent out to every residence.” (pp. 87)</p> <p>Recommendations:  “MCSS enhance the staffing, visibility and accessibility of the Office of Child Advocacy, and require that it produce an annual report on trends and issues.” (pp. 87)</p>
	2007	Ontario Child & Family Service Advocacy	<p>Recommendations:</p> <ul style="list-style-type: none"> <li>- “That the government of Ontario and children’s aid societies offer young people routine opportunities to voice their opinions as experts of their ‘lived experience’ in care</li> <li>- That the government of Ontario and children’s aid societies translate the voice and experience of young people into meaningful action that resonates across all levels of decision making, policy and practice.” (pp. 9)</li> </ul>
	2017	Ministry of Child and Youth Services	<ul style="list-style-type: none"> <li>- “Develop a Rights Resource for all children and youth to help them understand and exercise their rights.</li> <li>- Develop mechanisms for child and youth feedback and complaints regarding their service experience (for example, youth councils).</li> <li>- Develop a mechanism to enable the ministry to continue to hear the voices of youth with lived experience of residential services at a provincial level.” (pp. 12)</li> </ul>



<b>Accountability</b>	1978	Ministry of Community and Social Services: Children's Services Division	<p>"The implementation of certain children's rights concepts is one way of holding service deliverers accountable for the care of children within the children's services delivery system." (pp. 26)</p> <p>"All providers must be held continually accountable for their performance, planning and expenditures to ensure the effective and efficient allocation of resources." (pp. 47)</p>
	1980	Ministry of Community and Social Services: Children's Services Division	<p>"Further, it is essential that a single person be identified as having clear authority over and responsibility for the day-to-day operations of a residence. Without such a requirement, as is the current situation, there is sometimes confusion as to who holds this responsibility, with the result that no one is accountable." (pp. 59)</p>
	1990	Ministry of Community and Social Services & Ministry of Correctional Services	<p>"It is generally agreed that, in theory, the government and the agencies manage the residential services system through a 'partnership', but in practice, the partnership has some flaws. These include lack of clear statements of expectations of boards from government, inadequate preparation of board members for their duties and ministry-agency working relationships that may contribute to confusion." (pp. 19)</p> <p>Recommendation:</p> <p>"MCSS and MCS articulate and implement a framework for the accountability to the government of agencies with boards of directors and non-board operators, and provide appropriate supports to the boards of directors and operators." (pp. 21)</p>
	1990	Canadian Child Welfare Association	<p>"...services supplied to children should be evaluated against established standards which are in agreement with accepted treatment and care principles. Once standards are established, a model for evaluation must be determined." (pp. 31)</p> <p>Recommendations:</p>

			<ul style="list-style-type: none"> <li>- “Each province needs to establish a standardized evaluation format to result in accreditation</li> <li>- Evaluations should have an informative component and emphasize addressing improvements to service, personnel, program and results</li> <li>- Establish national standards for child care” (pp. 32)</li> </ul>
	2007	Ontario Child & Family Service Advocacy	<p>Recommendations:</p> <ul style="list-style-type: none"> <li>- “That the government, civil society and care providers recognize and fulfill their special responsibility as prudent parents to children in state care and embrace these children as their sons and daughters</li> <li>- That the government of Ontario interrupt the jurisdictional wrangling among child welfare agencies, residential service providers, and government officials with regards to the locus of responsibility for the care and wellbeing of children in residential care.</li> <li>- That the government of Ontario establish a regulatory body to develop and enforce standards of care for all residential settings that serve children and youth, with special attention to quality assurance.” (pp. 6)</li> </ul>
	2016	Ministry of Child and Youth Services	<p>Recommendations:</p> <p>“The Ministry create one unified, integrated governance structure within the Ministry (a Quality of Residential Care Branch/Division) to provide systemic oversight and accountability for all residential services through mechanisms that have at their core, the foundation and elevation of quality of care. The new structure is envisioned to have four core components: Quality Inspectorate; Data Analytics Reporting Unit; Continuity of Care Unit; and, an Advisory Council.” (pp. 13)</p> <ul style="list-style-type: none"> <li>- “A Quality Inspectorate, replacing the current licencing function, which the Panel heard overwhelmingly is inadequate and does not assess quality of care. The new Quality Inspectorate would be comprised of inspectors</li> </ul>

			<p>whose responsibility it would be to licence and inspect all residential service providers in accordance with quality performance indicators recommended by the Panel and as may be developed by the Ministry.” (pp. 13)</p> <ul style="list-style-type: none"> <li>- “A Data Analytics and Reporting Unit that would be the central repository and data analytics unit for all sources of data and information relative to residential services...” (pp. 13)</li> <li>- “A Continuity of Care Unit, staffed by Reviewers whose responsibility it would be to monitor placement changes and trajectories of children and youth in residential services.” (pp. 13)</li> <li>- “An Advisory council to provide access to clinical expertise and lived experience (children and youth, families, caregivers including foster parents and front line workers).” (pp. 14)</li> </ul>
	2017	Ministry of Child and Youth Services	<p>“To immediately support the safety and health of children and youth in residential care we are:</p> <ul style="list-style-type: none"> <li>- Increasing the number of unannounced inspections of licensed residences.</li> <li>- Establishing Intensive Site Review Teams to conduct enhanced inspections of licensed residences, including interviews with staff and youth, and case file and program reviews.</li> </ul> <p>In addition, we are improving oversight by:</p> <ul style="list-style-type: none"> <li>- Implementing the new authority for the Minister of Children and Youth Services to appoint inspectors to conduct announced and unannounced inspections to improve oversight and monitor the safety of children and youth.</li> <li>- Developing approaches to support better monitoring and tracking of the placement and movement of children and youth.” (pp. 11)</li> </ul>
<b>Case Management &amp; Interventions</b>	1978	Ministry of Community and Social Services: Children’s Services Division	<p>“In programs involving three or more full-time direct care workers there is a need to designate one prime worker for each child to avoid an excessive diffusion of responsibility that could lead to inadequate attention being given to a particular child. In large programs the prime worker provides a consistent anchor point for the child and a checkpoint through whom all persons</p>

			and plans affecting the child are co-ordinated.” (pp. 132)
	1980	Ministry of Community and Social Services: Children’s Services Division	“Because of the extremely mixed response, the assignment of a single prime worker will not be mandatory for all residential facilities.” (pp. 126)
	1990	Canadian Child Welfare Association	Recommendations: - “Clients are people, not disturbed objects, and service should reflect this. Clients should receive what they need. Clients should be involved in their plans, help set their own goals, and sit on boards of service providing organizations. - Multidisciplinary team efforts need to be ‘user friendly’ and best meet clients’ needs - Service organizations must continually adapt to meet the needs of those they serve” (pp. 34)
	2017	Ministry of Child and Youth Services	“Working with our sector partners, we will develop a provincial approach to the planning and delivery of services. This approach will be guided by the principle of prevention and focused on making sure that the right services are available to children and youth at the right time and as close to their home community as possible. As part of this work, we will examine current and emerging trends such as bed capacity, patterns of service provision, and program access and availability. Residential services will also be examined to address equitable distribution and to support children and youth to remain in their home communities, particularly for First Nations, Metis, and Inuit children and youth.” (pp. 15)
<b>Prevention/Family Support</b>	1979	National Council of Welfare	“More time, effort and money must be devoted to preventive and supplementary services in order to balance the current preoccupation with substitute care that, more often than not, treats only the effects – but not the causes – of family crisis.” (pp. 25)

	1980	Ministry of Community and Social Services: Children's Services Division  <b>Consultation paper</b>	<p>"In the case of family support, it was recognized that by offering minor assistance to a family in need, when that need was in the process of development rather than having manifested itself as a crisis, more significant subsequent problems might be avoided." (pp. 69)</p> <p>"The basic elements of the current family support approach use special funding and a range of individualized programs, under the guidance and control of local agencies." (pp. 69)</p>
	1984	Child and Family Services Act	"The functions of a children's aid society are to,...Provide guidance, counselling and other services to families for protecting children or for the prevention of circumstances requiring the protection of children." (pp. 604)
	1990	Canadian Child Welfare Association	<p>Recommendations:</p> <ul style="list-style-type: none"> <li>- "Encourage cultural systems to create parallel systems to help families</li> <li>- Assist in the provision of more preventative services which empower parents to provide support and education i.e. groups</li> <li>- Be sensitive to a family's readiness and capacity to change in order to no disempower the child/family resulting in multiple placements</li> <li>- Provide more time, effort and resources for follow-up services to families" (pp. 24-25)</li> <li>- "Redirect the investment of funds from the curative to the preventive programming resulting in preventing residential placements and focusing on support services in the home setting" (pp. 33)</li> </ul>
	2017	Ministry of Child and Youth Services	"Services must also engage and respond to the needs of the families, as appropriate, in recognition that family involvement is an important influence on a child's or youth's outcomes. As services are provided, consideration must be given to the needs of the entire family. This builds the capacity of the family to support the needs of the child and prevent placement into residential services, where possible, or maintain the gains made when the child or youth returns to living with the family following a placement." (pp. 25)

<b>Culturally Sensitive Programming</b>	1978	Ministry of Community and Social Services: Children's Services Division	"Ontario's cultural diversity is to be valued and those groups who want to preserve their cultural or religious identity should be supported. Thus, programs may be established and offered in which essential components are a particular religious faith or culture." (pp. 28)
	1980	Ministry of Community and Social Services: Children's Services Division	<p>"The consultation paper noted the dilemma caused by the desire both to ensure non-discriminatory admission policies for residential facilities and to protect special programming for religious or ethnic groups. Many submissions, while sympathetic to this dilemma, indicated strong support for the preservation of programming for religious or ethnic groups." (pp. 39)</p> <p>Final standard: "No child shall be refused admission to the program solely on the grounds of race, religion or ethnic origin where, on the basis of objective evidence made available to the operator, such refusal would result in deprivation of service." (pp. 91)</p>
	1984	Child and Family Services Act	<p>"The society having care of a child shall choose a residential placement for the child that,...</p> <p>(c) where possible, respects the child's linguistic and cultural heritage;</p> <p>(d) where the child is Indian or a native person, is with a member of the child's extended family, a member of the child's band or native community or another Indian or native family, if possible." (pp. 646)</p>
	1990	Ministry of Community and Social Services & Ministry of Correctional Services	<p>"The need for culturally appropriate services to native children is acknowledged in both ministries. Principles of the CFSA stress the importance of providing services to Indian and native people in a manner that recognizes their culture, heritage, traditions, and concept of the extended family." (pp. 33)</p> <p>"MCSS has encouraged the development of native child and family service agencies. Both have engaged in:</p> <ul style="list-style-type: none"> <li>- Hiring of native persons to work on and off reserves</li> </ul>

			<ul style="list-style-type: none"> <li>- Consultation with native representatives where native young people are involved in programs</li> <li>- Planning for programs to meet the needs of native young people.” (pp. 33)</li> </ul>
	1990	Canadian Child Welfare Association	<p>“...to understand the issues of a native child in the care of the state, there must be an understanding of the history of services to native youth. Residential schools and the ‘Scoop Program’ of the sixties were well meant but exasperated the whole situation. They forced native children to deal with a whole set of ‘new’ issues and imposed the moral and cultural values of the mainstream population on them. This created lost generations without roots and robbed them of their rightful future.” (pp. 37)</p> <p>Recommendations:</p> <ul style="list-style-type: none"> <li>- “Funding is required for native organizations to provide preventative services for natives...</li> <li>- All provincial and territorial governments should be directed to order the sharing of case management in all cases involving natives with the locally appropriate native child welfare organizations</li> <li>- Native organizations must be involved in all levels of policy development and implementation</li> <li>- Recognize that traditional child care interventions are not appropriate for all cultures and that non-traditional methods should be required and implemented” (pp. 37)</li> <li>- “Have culturally appropriate programming activities that mirror native values and traditions</li> <li>- Work towards designing tests that are culturally sensitive</li> <li>- Develop programs to be taught in the first language of choice</li> <li>- Develop group care programs that respect the culture and values of the community” (pp. 39)</li> </ul>
	2016	Ministry of Child and Youth Services	<p>Recommendations:</p> <ul style="list-style-type: none"> <li>- “A separate process with Aboriginal peoples be conducted, consistent with principles of self-determination, to determine the best options for supporting Aboriginal children and youth</li> </ul>

			<p>requiring out-of-home services. The scope and mandate should be developed in partnership with Aboriginal service providers and communities.</p> <ul style="list-style-type: none"> <li>- MCYS establish an advisory committee to enhance cultural competence of all residential services in relation to the diverse identities and developmental contexts of young people. <ul style="list-style-type: none"> <li>a. All cultural competence initiatives must unfold in partnership with young people.</li> <li>b. Mechanisms must be developed to ensure visible progress in this area.</li> </ul> </li> <li>- The Ministry mandate residential service providers to clearly articulate the cultural, gender, racial, and other identity rights of young people.” (pp. 17)</li> </ul>
	2017	Ministry of Child and Youth Services	<ul style="list-style-type: none"> <li>- “Review licensing requirements through a culturally appropriate lens to support the use of customary care.</li> <li>- Explore how to better support Indigenous service providers, including examining service delivery approaches that focus on prevention, consistent with the Ontario Indigenous Child and Youth Strategy.</li> <li>- Engage with stakeholders to develop a renewed approach to inclusion, as well as recognizing the unique needs of various groups including lesbian, gay, bisexual, transgender, queer, or two-spirited children and youth.</li> <li>- Implement A Better Way Forward: Ontario’s 3-Year Anti-Racism Strategic Plan and the Ontario Black Youth Action Plan to improve the experiences of Black, Indigenous and racialized children and youth in residential care and work to reduce their over-representation in the child welfare system.” (pp. 12)</li> </ul>
<b>Youth Justice</b>	1978	Ministry of Community and Social Services: Children’s Services Division	<p>“All efforts should be made by persons working on the child’s behalf to minimize the length of stay in secure care, and move the child to a less controlled environment as soon as the child is reasonably able to cope with that greater degree of freedom. At no time should a child languish in secure care.” (pp. 157)</p>



	1980	Ministry of Community and Social Services: Children's Services Division	<p>"It is agreed that some children will require the security of a closed environment. As the consultation paper stated, however, 'while secure care may provide an opportunity to stabilize and assist the child in developing internal controls, it is a powerful control instrument with considerable potential for abuse in the name of 'the best interests of the child'.'" (pp. 151)</p> <p>Final standard: "Any program that provides a closed environment by locking the external doors of the residence or reserves the option of locking the residence from time to time as required shall be approved as a locked or lockable secure care program by the Ministry." (pp. 152)</p>
	1990	Ministry of Community and Social Services & Ministry of Correctional Services	<p>"When the YOA (Young Offenders Act) made 17 the uniform maximum age across the country for being dealt with as a young offender, the government of Ontario decided to create a split in jurisdiction over young offenders. MCSS retained responsibility for youth aged 12 to 15 (known as 'Phase I') and MCS (Ministry of Correctional Services) for youth aged 16 and 17 ('Phase II')." (pp. 54)</p> <p>Recommendations:</p> <p>"The government review its decision regarding the split jurisdiction over young offenders under the YOA, with a view to consolidating responsibility under one Ministry, and in the interim other YOA-related recommendations be implemented." (pp. 58)</p> <p>"MCSS develop a standard training package to be mandatory for new staff in Phase I YOA secure facilities that balances the dual purposes of the YOA, 'care' and 'custody'." (pp. 59)</p>
	1990	Canadian Child Welfare Association	<p>"...Many children can be labelled as disordered when actually, they are representative of a large portion of the teenage group whose symptoms are a response to dysfunctional situations. The manner in which symptoms are diagnosed is often dependent upon the care-givers' ability to cope with the problematic behaviour." (pp. 41)</p>

			<p>Recommendations:</p> <ul style="list-style-type: none"> <li>- “Enhance support systems to assist care-givers in the care for children and youth</li> <li>- Reduce and phase out institutional care in young offenders’ centres</li> <li>- Increase resources and provide them to community/street workers to enhance their effectiveness</li> <li>- Place a stronger emphasis on care plans rather than on assessments” (pp. 41)</li> </ul>
	2007	Ontario Child & Family Service Advocacy	<p>Recommendations:</p> <ul style="list-style-type: none"> <li>- “That the government of Ontario, child welfare agencies, and residential service providers develop policy and practice guidelines which limit the use of police services for the purposes of behaviour management.” (pp. 8)</li> </ul>
	2016	Ministry of Child and Youth Services	<p>Recommendations:</p> <ul style="list-style-type: none"> <li>- “The two separate systems of secure custody and detention (directly and transfer payment operated) be harmonized and integrated into a single system to ensure that the placement and transfer process considers the entire array of resources to meet the needs of youth, resources are maximized, training is standardized and best practices are shared and scaled up system-wide.</li> <li>- Consideration be given, where demand is demonstrated, to converting youth justice open custody residences with excess capacity to youth residences serving the full spectrum of youth justice-engaged youth requiring stable housing including: open custody youth; youth transitioning from open and secure custody requiring reintegration support; youth on probation; and youth for whom a stable residence is required to qualify for bail.</li> <li>- Standards and best practices from all operators with respect to relationship custody be documented and form the basis of training for all youth justice open and secure custody and detention staff in both transfer payment and directly operated facilities.” (pp. 16)</li> </ul>

	2017	Ministry of Child and Youth Services	<ul style="list-style-type: none"> <li>- "Building smaller youth justice facilities within the Greater Toronto Area to support community-based programming and enhance reintegration planning while keeping youth close to home." (pp. 13)</li> <li>- "In the youth justice sector, we are providing more community-based services that divert youth from incarceration. Since 2003, youth justice custody admissions have declined more than 80 percent." (pp. 18)</li> </ul>
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## **Cross-Over Youth Project:**

### **Navigating Quicksand**

Appendix 4: Racial Disparities in the Experiences and Outcomes of the Cross-over Youth Project Julian Hasford, Arla Good, Amy E. Beaudry, & David Day

# Racial Disparities in the Experiences

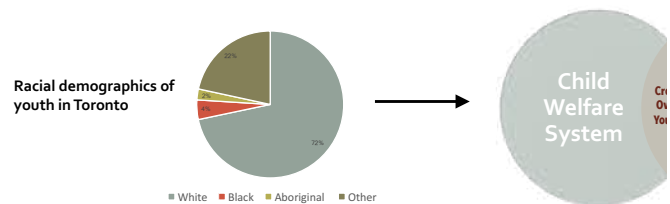
Julian Hasford, Arla Good, Amy E. Beaudry, & David M. Day

Ryerson University (Toronto, Ontario)

## INTRODUCTION

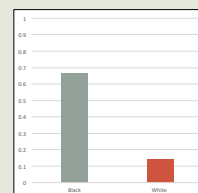
- Youth who are dually involved in the child welfare and youth justice systems (known as **crossover youth**) face a variety of personal, relational, and systemic issues (Bala et al., 2015).
- The **Crossover Youth (COY) Project** was a four-year pilot project aimed at providing specialized community and legal support and services for these young people, in four communities in Ontario, Canada.
- Although evidence indicates a significant overrepresentation of African Canadian youth in child welfare (OHRC, 2018) and youth justice systems (Owusu-Bempah & Wortley, 2014), **little research has examined the processes of systemic racism in the context of crossover youth**, especially in Canada.
- Critical Race Theory** (Delgado & Staftancic, 2017) is an interdisciplinary framework for analyzing the dynamics of systemic racism, which is based on core tenets that recognize the permanence of racism as an embedded and often invisible phenomena within all Western institutions, critiques notions of colourblind and meritocratic ideologies, and views the phenomena of race (including Whiteness) as a social construction.

## (Q1a) Racial Disproportionality



## (Q1b) Racial Disparities

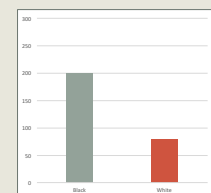
### First Charge in the Group home (% of cases)



"...Black youth in particular, being penalized, targeted, reported more, breached more..."

"It just seems like ones that incurred a lot of charges were black youth. You know, CAS, and having kind of like strict expectations, like they happen to be black..."

### Time in Pre-trial Custody (Average # of days)



"I think it's kind of almost an elephant in the room of the justice system where you go into court where the bail hearings take place, and the racial and ethnic composition of the kids in there is a lot different than if you go into a specialty court"

## RESEARCH QUESTIONS

- Q1. What are the racial disproportionalities and disparities in the experiences and outcomes of crossover youth in Toronto?
- Q2. How do service providers perceive the processes of systemic racism in the child welfare and youth justice systems?



## METHODS

### Design

This analysis is based on a two-year, mixed method, summative evaluation of the COY Project in Toronto, Ontario.

### Analysis

Q1. A comparative analysis was used to assess racial disparities on variables reported in case notes

Q2. A thematic qualitative analysis was used to examine patterns within the service provider interviews

### Sample and Data Collection

Youth	
Data Source	Case Notes
Total N	28
Gender - Males (Females)	18 (10)
Age - Average (Range)	15.3 (13-17)
Service Providers	
Data Source	Interviews
Total N	19
Sectors	
Legal sector	9
Child Welfare sector	3
Group home sector	1
Mental health sector	3
Other	3

## (Q2) Processes



### Punitive Institutional Practices

"But I always found it - and again this may be my own issue that I need to work out -but, I found it challenging to like challenge defence or probation on racism. Like, I found it hard because it wasn't obvious. It was more embedded in the kind of work that they did like so it wasn't like an individual worker specifically what they said."



### Lack of Legal Representation

"...if you had money, if you dressed well, if you had like a proper lawyer--not proper but a non-legal aid lawyer, like I just feel like you were privileged--you were treated differently. So yeah, racism exists."



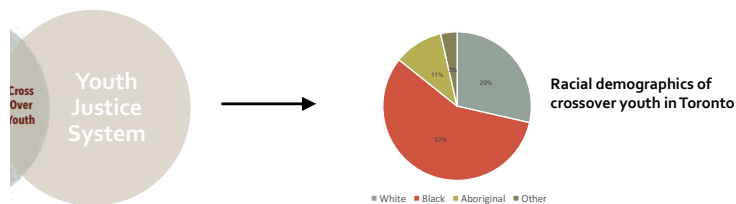
### Legal System I

"I'm not sure if programs de-identify appra when you are ir of your service - your cultural rac you have an i

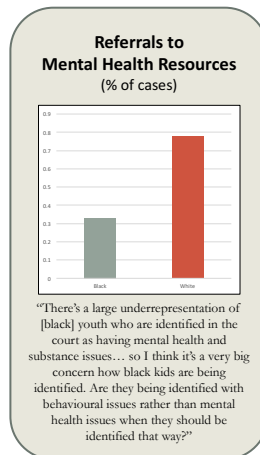
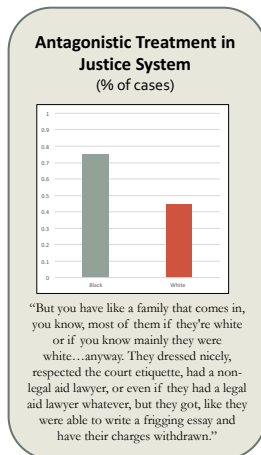
# Findings and Outcomes of the Crossover Youth Project

## FINDINGS

### Quality among Crossover Youth



### Disparities among Crossover Youth



### Impact of Systemic Racism



#### Impact of Diversity

"...that counselling deal with racial appropriately. That in care and none e providers reflect acial, background identity crisis."



#### Implicit Bias

"There is no question in my mind that there is systemic racism within Children's Aid Societies - and I worked for one for [over 10] years. So I mean I think we all have to acknowledge our biases and our racism."



#### Denial and Unawareness

"I haven't seen a problem."  
"...but I don't really feel that I am in a position to comment on that."

## DISCUSSION

- Findings suggest that institutional anti-Black racism within child welfare and youth justice systems intersect to intensify disproportionalities experienced by African Canadian youth
- Findings are consistent with U.S. evidence of racial disparities faced by African Americans in pretrial detention (Schlesinger, 2005), and mental health referrals (Spinney et al., 2016)
- Findings contribute to a growing conversation around racial disparities within the child welfare system (e.g., Tilbury & Thoburn, 2009) by uncovering evidence of racially biased group home charging practices.
- Disparities are influenced by broader structural inequalities, such as racialized poverty, and bias in the perception of mental health challenges experienced by people of African descent (Snowden, 2003)
- Although there is increasing awareness of systemic racism among child welfare and youth justice service providers, colourblindness appears to remain an influential ideology in both system.

## CONCLUSIONS & RECOMMENDATIONS

"We needed more outreach, more education on what we were doing, what are the issues, what are some of our recommendations. And to have that kind of like dialogue, I think dialogue is the piece because you want...to have that conversation right?"

- This study contributes to a significant gap in research evidence regarding the dynamics of systemic anti-Black racism in Canadian youth justice and child welfare systems.
- Future research and action should center the needs and experiences of crossover youth, and involve systematic comparative analysis of youth experiences at various decision points in child welfare and youth justice systems. There is a strong need for improved anti-racism training and advocacy for improved system monitoring.



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#### Acknowledgments



## **Cross-Over Youth Project:**

### **Navigating Quicksand**

#### **Appendix 5: Pillars**

- **Anti-Oppressive Principles and Practices**
- **Importance of Youth Centering**
- **Trauma-Informed Lens: Guideline for Practical Implementation**



## **Anti-Oppression Principles & Practices Summary Crossover Youth Project**

### **Introduction to AOP**

Anti-Oppression Principles (AOP) critiques the role of power and practices of oppression that limit social, educational and economic outcomes for marginalized groups. Anti-oppression theories and practices guide practitioners in understanding how to address issues of power imbalances that negatively affect the experiences of racialized and marginalized populations, while supporting service users in accessing necessary social resources. Further, the impacts of systemic oppression must be considered a factor when evaluating, analyzing and implementing interventions for service users who are impacted by practices of marginalization. An AOP approach requires that front-line staff and management, acknowledge systemic power imbalances, and receive ongoing and current training to support them in the application of AOP.

The main principles of anti-oppression theories and practices requires that we examine the roles of power and privilege in relation to ourselves and the manner in which it impacts on the experience of others. AOP requires that all persons involved in relationships or interactions, engage in some level of self-reflection to ensure that they participate equitably in relationships. The engagement requires that each party be able to contribute to the development of the relationship while at the same time ensuring that service users are provided with ongoing and regular opportunities to give input to determine the outcomes of the services. AOP requires that notions of strength and resiliency are central to understanding the capacities of the clients because they empower the youth and facilitates the application of a broader range of options for supporting youth.

### **AOP & the provision of direct services to youth**

#### **Examine and challenge stereotypes:**

- Critically evaluate and challenge beliefs and racial stereotypes about Black and Indigenous youth and their families
- Explore historical and contemporary factors that impact on the experience of the youth and their families
- Critically examine the impact of oppression, racism and marginalization on the presenting behaviors of youth
- Consider the ways in which cultural norms and expectations can impact on how youth respond to trauma

**Voice and agency:**

- Support youth in having their voice included and given full consideration when making decisions
- Provide opportunities for youth to be involved in their own case planning and take direction from the youth
- Consider the youth's input regarding their circumstances and needs and have them provide direction regarding potential solutions

**Culturally and racially relevant supports:**

- Identify culturally and racially relevant placement options for youth that will support their healthy identity development
- Support youth in maintaining connection to their communities
- Explore the possibility of providing supports (including funding), that may keep youth in the home
- Explore the possibility of kinship placements to keep youth connected to their families
- Challenge constructions of the capacity of Black and Indigenous parents to support their children
- Provide opportunities for parents to develop a range of skill sets to effectively support their youth through the teenage years
- Identify options to reunify children with their families to enhance familial, cultural and racial connections.

**Community collaborations:**

- Explore opportunities to work collaboratively with other service providers who are involved with families to provide seamless supports for the youth
- Develop relationships with service providers at racial and cultural organizations that can provide additional perspectives on the youth that can inform the planning and interventions for the youth
- Employ the use of community-based programming to reduce reliance on the justice system.

**Goal planning and achievement:**

- Develop clear, achievable goals in cooperation with the client
- Setting realistic and achievable expectations for the youth and their families
- Develop comprehensive plans that will take into consideration a range of expectations and limitations related to possible bail conditions

- Develop a comprehensive picture of the multiple agencies involved and implement an integrated case-management plan

### **AOP for service providers and organizations**

#### **Staff training and development:**

- Ensure that the leaders in the organizations are trained in AOP and are able to support staff in applying AOP in their daily practices
- Provide AOP training and development for staff who work with racialized and Indigenous youth and their families
- Expose staff to a range of theoretical and applied models of supports and interventions for racialized and marginalized youth and their families.
- Evaluate the interventions of frontline staff and challenge the placement of Black and Indigenous children in White families
- Challenge mainstream models of practice to develop analytical frames and understandings, explore multi-centred frames of reference and draw upon a range of practice models
- Examine the different systems that remove children from their homes and into the prison pipeline - schools, child welfare services, police and justice services - and the broader social support systems that fail to provide adequate supports for families that are experiencing marginalization
- Develop networks with community-based organizations that can provide culturally and racially appropriate resources, insights and guidance into the management of the cases and the decisions that are made for the families

#### **Institutional and systemic level interventions:**

- Develop and implement accountability measures to determine the impact of interventions and develop evaluative mechanisms to keep track of staff interventions and decisions
- Hiring practice, leadership development, communication chains, reporting and feedback mechanisms must integrate AOP to increase representation amongst staff at all levels of the organization.

## **Importance of Youth Centering Cross-over Youth Project**

### **What does it mean to center youth**

Youth centring is a practice based on the foundation that young people are the experts of their own lives. They should drive the decisions that impact them. Professionals and service providers who are youth centred will help facilitate that decision-making process. A youth centred process incorporates safety, supportive resources and capacity building to maximize the youth ability to exercise agency over their path.

### Serving Youth: Guide for Case Work

#### *Mind-set*

Given their circumstances a youth-centred approach requires an understanding of anti-oppressive and trauma-informed practice.

Experience is valuable but must not overwhelm the voice of the youth. Each youth's journey is unique with individualized ways of responding and coping. Service providers must approach each case ready to listen and respond in-kind.

It is often the professionals with the 'best intentions' that can cause the most damage to the youth. Professionals must challenge the way they have understood 'youth centring' and 'youth engagement.' Attempting to convince youth to do what you feel is in their 'best interest' is the wrong approach.

#### *Building a Relationship*

Relational practice is a means of building a line of trust, to discover the circumstances and context for the actions and responses of the youth. Service providers should use honesty and understanding as tools for that discovery. Empathy is the most critical tool in the relational toolbox. To relate to youth, you have to, at a minimum, allow them to express themselves in the manner they feel most comfortable.

A practical approach to promoting information sharing is reciprocity:

- Giving space and be patient; allow youth time to reflect
- Relationship must feel personal, human
- Come back to a subject without an agenda
- Do not require youth to tell their story over and over again (it's re-traumatizing)
- The relationship should not be one way. It creates a power imbalance.

- Example: describe a situation of overcoming similar adversity that you experienced so that the youth can use it as a model for success (getting your first apartment, trouble at school, budgeting, conflict with friends, etc...).
- However, you are the service provider and must keep the relationship from being 'personalized.' Try not to feel personally 'disrespected' or 'betrayed.'

Be careful of strategies that erode trust:

- Avoid using your personal relationship to manipulate the youth.
- Do not use personal information or emotions to 'guilt trip' or push 'what's best for the youth.'
- The constant criminalization of crossover youth creates an unfair and often biased power imbalance between staff and youth

### *Incorporating Trauma-Informed Practice into Youth Centring*

Understanding trauma is a vital component of building a youth centring practice, it can help explain some of the barriers to building a relationship with the youth. Each youth responds differently to trauma:

- Youth are remarkably adaptable. Some are going to be more submissive, some will respond with aggression depending on many factors including environment, histories, and personality, etc.

One of the cruel benefits of experiencing trauma is that it often forces youth to learn to fend for themselves; they develop survival skills. The system tries to shield youth brought into care. However, their skills should not be discounted or discouraged. Professionals should use systemic resources to foster these skills rather than take away their autonomy.

Navigating the system can also help youth develop the skills of resistance. That is a worthwhile skill. Professionals should not use their authority to break the youth's resistance. They need the proper role model to guide those skills to constructive endeavours and celebrate their resolve.

### *Incorporating Anti-Oppressive into Youth Centring*

Youth centring requires reflection on the impact of oppression and self-reflection over the urge to dominate. Professionals need to understand the ways that they perpetuate 'systemic violence' just by being in the system or by the way they comport themselves, even if it is unconscious.

- Displacement (or taking a youth out of their home), even when justified under the current regime is still an act of force that impacts the youth
- Physical confrontation, even if it is a defensive response to violence, will be felt and experienced as violence by the youth
- Professionals who dig into the details of youth's experiences for the purpose of 'building the file or the case' are approaching the situation with a 'violent' intention.
  - Convincing a youth to open up and reveal their most intimate feelings to build a case against their parents (etc.), or against them is coercion and manipulative.

They are systemic causes to the circumstances many youths find themselves in. Our system creates barriers to resources and marginalizes many communities in a manner that means they may never recover. Youth will intuit this unlying unfairness, even if they can't articulate it. Many of the systemic 'solutions' only exacerbate these issues.

Youth may express themselves in a manner that is influenced by their culture. Regardless of how the youth express themselves, professionals must listen to all youth equally.

- Do not correct them or attempt to promote a more 'socially acceptable' manner of communication.
  - Such attempts may stifle or modify the youth's expression, and they may omit vital information.

### *Case conferencing*

Case conferencing is more than just a meeting between professionals to discuss how the matter is moving forward. Having a youth present is insufficient, they must be fully integrated youth into planning for their future.

- The most important perspective is what the youth wants/is likely to do
- The youth must drive the dialogue
- Jeopardizing the youth's stability jeopardizes the conditions for trust
- Youth will not buy into a plan unless they have a choice; they will be unlikely to follow through
- Do not give youth 'take it or leave it' options; inflexible procedures should not be a barrier
  - take inspiration from the adaptability of the youth
  - Youth will rebel against perceived unfairness
- Punitive measures, especially seemingly arbitrary restrictions like harsh bail conditions damage the prospects of youth centring
  - Follow the rules of the group home, non-association orders, requiring to reside at a specific address
- Be creative in how they offer their resources
  - For example placement options are in the middle of nowhere allow operators to maximize margins while encouraging youth to AWOL. Service providers reap the benefit, but the youth bear the burden.

It is the job of stakeholders to figure out how to achieve the youth's goals, safely and positively. Stakeholders must not substitute their preferred goals. Put yourself in their shoes; if someone were directing significant aspects of your life, you would likely think to yourself "I am my own person, I know what I am doing" and resist efforts to pressure you otherwise.

### Working with Youth: guide for policy development

Any meaningful and effective policy changes require youth input to be at the center of the process.

When developing working relationships with youth, stakeholders should have an engagement strategy that promotes positive growth. It is easy to take from young people and co-opt their stories for our own agenda. Youth will rightly feel tokenized and exploited. Youth must be fully integrated into the policy development process to provide valuable feedback.

### *Working committees*

Youth engagement must be at the forefront. Youth bring experiences and understandings distinct from service providers and professionals. They are equally valuable. There should include specific individual(s) with the sole responsibility of youth engagement. The position should be independent but also supported by the committee/team. The person responsible for youth engagement within the organization should have: strong connections to community organizations previous work with young people strong social justice based framework (intersecting race, gender, sexuality, class, ableism, religion et al.) background of advocacy, one that highlights action not just criticism.

The committee should provide training on youth centring, anti-oppressive and trauma-informed practice, for all stakeholders and participants. Starting on a mutually informed understanding is essential. It is the logistical and administrative responsibility of the institution housing the initiative to provide the training as it would be in any other form of employment.

1. Fully inform youth of the inner workings of the project, including the goals and capacity.  
Youth-centred participation requires informed consent. Set expectations accurately.
2. Youth recruited should not solely be based on their working experience. Youth with strong community connections should also be valued. Building those ties demonstrates strong personal skills. They will understand capacity of the existing resources, ensure underrepresented youth are present and can communicate with them.
  - a. Young people with a capacity to work with professionals are usually chosen for working committees; it creates underrepresentation. It also stifles criticism as the selective group may intuit that they do not have the space to call them out (not wanting to rock the boat).
  - b. Avoid tokenism and co-opting narratives
3. Assist the youth on the committee to grow their capacity through preparation and skills building.
  - a. Help cultivate communication skills in a manner that will help youth translate their voice into the language that professionals understand.
  - b. Professionals and service providers should make more significant efforts to develop their understanding of the language and communication methods employed by the youth they serve. Eg. learn their vernacular and use it without seeming condescending.
4. Committee members/staff should also be receptive to ideas or criticism

- a. Pre-determined policies and mediation strategies to address to address any internal conflict including the use of third parties who understand youth safety.



## Trauma-Informed Lens Guideline for Practical Implementation Crossover Youth Project

**Crossover 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.

Trauma exposed youth are exponentially more likely to face criminal charges. This is a systemic problem that needs a system-wide approach to rectify it. The current system is inadequately addressing their needs.<sup>1</sup>

Part of the change is for professionals who work within the system to adopt a trauma-informed lens to their practice.

The guide draws on the latest, most useful research and COY's experience working with crossover youth.

**Stakeholders:** includes but is not limited to Police, CAS, Lawyers, Judicial Officers, Caregivers, Counselors and Educators.

### Overview

Trauma is the commonality of the lived experiences of Crossover youth. It is a huge perpetuating factor that draws Crossover youth into the cycle of misconduct, which is why it is crucial to incorporate it into stakeholder practice.

As stakeholders, we are well overdue for a change in perspective in both the child welfare and youth justice systems. A trauma-informed lens asks us to shift our narrative from 'what is wrong with you' to 'what has happened to you.'<sup>2</sup>

The bar for a youth to be found not criminally responsible due to their mental health is quite high and comes with the risk of indefinite hospitalization. Furthermore, many of the youth within these systems are also marginalized, and have often experienced some

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<sup>1</sup> Bala, N., Finlay, J., De Filippis, R. & Hunter, K., (2014) "Child Welfare Adolescents & Youth Justice System: Failing to Respond Effectively to Crossover Youth" 19 C.C.L.R. 123.; Finlay, J. (2003) "Crossover Kids: Care to Custody" Ontario Office of Child and Family Service Advocacy; Finlay, J. and Scully, B.(J) (2015) "Cross-over Youth: Care to Custody" *Report on behalf of the Cross-over Youth Committee*

<sup>2</sup> Perry, B.D. (2013). The Human Brain [Video webcast]. In *Seven Slide Series*. Retrieved from <https://www.youtube.com/watch?v=uOsgDkeH52o>

form of trauma or victimization.<sup>3</sup> However, this best practice guide aims to demonstrate the significant impact trauma has on a youth. It is so significant that it should mitigate the youth's individual personal responsibility for their behaviour, especially in relation to the corrective methods employed by the criminal justice system. The best practice guide sets out an alternative way of promoting resilience, rehabilitation, hope, and healing which has been designed for the unique circumstances of trauma. Rehabilitation, restoration and healing are the responsibility of all service providers and stakeholders in the criminal justice and child welfare systems. It is incumbent on individuals working within these systems to familiarize themselves with effective strategies for achieving the goal of reducing the impact of trauma to these vulnerable young people. It is equally important to recognize strategies that are dilatory or counterproductive to the healing and rehabilitation process.

### *COY Model*

The COY model recognizes the following elements of a trauma-informed practice.

1. **Awareness of trauma** - the service provider or stakeholder must recognize the role past trauma can play in current behaviour. They must understand and identify the symptoms of trauma and learn the most beneficial ways for young people to cope. Trauma-informed education and training is key to incorporating these concepts into practice.
2. **Relational Practice** - strong, healthy, trusting, therapeutic relationships are paramount to the healing process of trauma. Service providers must take the time to build their relationships with the youth in order to be influential in the youths healing. As the relationship builds so will the youth's capacity to form new relationships. Over time these healthy relationships can enable a youths to begin to counteract the effects of their trauma. An important foundation of support required with Crossover Youth is relationships with stakeholders. It is these significant relationships that can help build the blueprint so young people can achieve their potential. Relationships need to be about touch, talk, eye contact, listening, understanding and validating.
3. **Provide a place of safety** (physical, emotional, social and spiritual) - none of this work can begin without a safe space for the youth. The safe space is both about

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<sup>3</sup> Oudshoorn, J. (2015). Trauma-Informed Youth Justice in Canada: A New Framework toward a Kinder Future.

their environment and the metaphysical space in their mind. It is not ethical to begin working on their trauma without first providing them physical safety, as well as building up trust through relationships.

4. **Awareness of self/co-regulation** - service providers and stakeholders must have an awareness of their own responses. Self-awareness and self-regulation are vital skills for working with traumatized youth. It is important not to allow the trauma experienced (past and present) by service provider and stakeholders, both in their personal life and during their work experience, to negatively impact their responses to the youth.
5. **Restorative Thinking** – This is about restoring relationships – how can the victims heal, how can the offenders get support to be accountable to what they have done, and how does the community feel safe and supported. It is about moving forward for all those impacted. If we want to be trauma-informed we need to have a restorative view on situations. We can use this process as a form of healing. According to Howard Zehr, restorative justice is “a process to involve, to the extent possible, those who have a stake in a specific offence and to collectively identify and address harms, needs and obligations, in order to heal and put things as right as possible.”<sup>4</sup>

### *Case Study*

L.M. is a composite character that is representative of the youth that COY serves.

L.M. is a self-identified black female. She has three older sisters and an older brother. She was removed by CAS from her home due to extreme abandonment and neglect by her mother at the age of ten-months. At the age of two she was made a Crown Ward with no access for the purpose of adoption. As a toddler, L.M lived with her two older sisters in a foster home.

Trauma has had a significant impact on L.M.’s life.

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<sup>4</sup> Zehr, H. (2002). *The Little Book of Restorative Justice*. Intercourse: Good Books.

## Impact of Trauma on Youth

Trauma is an invisible injury to many and often misunderstood. The impact of trauma is uniquely different for young people but can profoundly affect them emotionally, cognitively, socially, physically, relationally, spiritually, and behaviourally. Trauma can also cause changes to the structure of the brain.<sup>5</sup> It is these changes that in turn, cause Crossover youth to struggle controlling aspects of their behaviour (acting out or withdrawing). Trauma “hinders, rather than helps, human growth.”<sup>6</sup> With all of these changes occurring in the brain and developmentally, it is not unusual to observe Crossover youth presenting themselves as being much younger than their chronological age. Which is why it is so important that we treat young people based on their brain age rather than their chronological age, and meet them where they are at.<sup>7</sup>

Below are examples of how trauma may translate in the behaviours of cross-over youth:

*Intrusions:* chronic activation of the neuronal pathways involved in the fear response can create permanent memories that heighten the mind’s response to fear.<sup>8</sup> It can result in flashbacks, panic, rage, nightmares, interpersonal reenactments, character styles and pervasive life themes.<sup>9</sup>

*Hyperarousal:* youth may be highly sensitive to nonverbal cues, such as eye contact or a touch on the arm, and they may be more likely to misinterpret them.<sup>10</sup> These youth will often 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, like a classroom. The youth may appear inattentive or hyperactive or modulate between the two. It can result in them being erroneously diagnosed with a learning disability.<sup>11</sup>

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<sup>5</sup> Supra note 2.

<sup>6</sup> Supra note 3 at pg. 87

<sup>7</sup> Supra note 2.

<sup>8</sup> Child Welfare Information Gateway. (2015). *Understanding the effects of maltreatment on brain development* (Washington, DC: U.S. Department of Health and Human Services, Children’s Bureau)  
<https://www.childwelfare.gov/pubs/issue-briefs/brain-development>

<sup>9</sup> Laub, D and Auerhahn, N.C., 1993. Knowing and not knowing massive psychic trauma: Forms of traumatic memory. *International Journal of Psycho-Analysis*, 74, pg 287-301

<sup>10</sup> National Scientific Council on the Developing Child. (2010b). *Persistent fear and anxiety can affect young children’s learning and development* (Working Paper 9)

[http://developingchild.harvard.edu/index.php/resources/reports\\_and\\_working\\_papers/working\\_papers/wp9/](http://developingchild.harvard.edu/index.php/resources/reports_and_working_papers/working_papers/wp9/)

<sup>11</sup> Supra note 8

Re-exposure: reenactment of victimization causing harm to others,<sup>12</sup> self-destructive behaviour such as suicide attempts, cutting and self-starvation,<sup>13</sup> seeking situations where re-victimization is more likely.<sup>14</sup> Traumatized youth often display inappropriate social skills, such as “over-involvement” in social situations and can lack boundaries.<sup>15</sup> Youth with trauma histories may establish negative peer relationships, either because of a need to experience control or because of difficulties many students demonstrate in identifying characteristics of high quality, appropriate friends. These youth have not had exposure to proper adult role models that demonstrated appropriate social interactions and taught them how to identify healthy supportive relationships.<sup>16</sup> Traumatized youth demonstrated a weaker response to reward cues in the basal ganglia areas of the brain responsible for reward processing.<sup>17</sup>

Numbing: avoiding reminders, using drugs and alcohol and dissociation, leads to general detachment from all stimulation (not just negative).<sup>18</sup> Traumatized youth may appear withdrawn.

Modulate: trauma can affect connectivity between the amygdala and hippocampus, which can then initiate the development of anxiety and depression in youth.<sup>19</sup> The youth may move from stimulus to response without pause, experience intense negative emotions in response to even minor stimuli; overreact and threaten others or freeze and shut down; hyper-arousal and generalization of threats leads to an inability to rely on bodily sensations as an effective warning of impending threat (inability to care for themselves, impulsive behaviour, excessive dependence and loss of autonomous capacity). Youth may have difficulty labeling and recognizing their own emotions, or explaining their own emotional reactions to situations and events. Trauma may

<sup>12</sup> Burgess, A.W., Hartman, C.R., and McCormick, A. 1987. Abused to abuser: Antecedents of socially deviant behaviour. *American Journal of Psychiatry*, 144, pg. 1431-1436; Seghorn, T. K., Boucher, R. J., and Prentky, R. A., 1987 Childhood sexual abuse in the lives of sexually aggressive offenders. *Journal of the American Academy of Child and Adolescent Psychiatry*, 26, pg 262-267

<sup>13</sup> Van der Kolk, B. A., Perry, C., and Herman, J.L., 1991 Childhood origins of self-destructive behaviour *American Journal of Psychiatry*, 148, 1665-1671;

<sup>14</sup> Van der Kolk, B.A., 1989 The compulsion to repeat trauma: Revictimization, attachment and masochism *Psychiatric Clinics of North America*, 12, pg. 389-411

<sup>15</sup> Cevasco, M., Rossen, E., & Hull, R. (n.d.). *Best practices for supporting and educating students who have experienced domestic violence or sexual victimization*. <http://www.nea.org/home/62845.htm#ssts>.

<sup>16</sup> Ibid

<sup>17</sup> Dillon, D. G., Holmes, A. J., Birk, J. L., Brooks, N., Lyons-Ruth, K., & Pizzagalli, D. A. (2009). *Childhood adversity is associated with left basal ganglia dysfunction during reward anticipation in adulthood*. *Biological Psychiatry*, 66, 206–213

<sup>18</sup> Tichener, J.L., 1986 Post-traumatic decline: A consequence of unresolved destructive drives, in *Trauma and its wake* ed Figley, C., vol 2, pg. 5-19

<sup>19</sup> Herringa, R. J., Birn, R. M., Ruttle, P. L., Burghy, C.A., Stodola, D. E., Davidson, R. J., & Essex, M. J. (2013). *Childhood maltreatment is associated with altered fear circuitry and increased internalizing symptoms by late adolescence*. *Proceedings of the National Academy of Sciences of the United States of America*, 110, 19119–19124.

permanently alter the brain's ability to use serotonin, a neurotransmitter that helps produce feelings of well-being and emotional stability.<sup>20</sup> Loud and busy activity can be overwhelming and affect the youth's ability to regulate their behaviour.<sup>21</sup>

*Thought Process:* there are three categories of executive processing: working memory (being able to keep and use information over a short period of time), inhibitory control (filtering thoughts and impulses), and cognitive or mental flexibility (adjusting to changing demands, priorities, or perspectives).<sup>22</sup> Traumatization constrains the ability to think through actions and responses as the mind is wired to avoid thinking of traumatizing triggers;<sup>23</sup> this contributes greatly to an increase in impulsivity; being quick to overstimulation also leads to isolation as a coping mechanism but isolation leads to a decrease in day to day distraction from trauma. Youth with a history of trauma have a reduced capacity to follow single or multi-step directions. This cognitive impairment can sometimes be interpreted as deliberate defiance. They also struggle to ask for help and may require significant prompting. Executive functioning skills such as initiation of tasks, completing tasks, attention and concentration and working memory are impacted by traumatic experiences.<sup>24</sup> Trauma can also result in lower academic achievement, intellectual impairment and decreased IQ.<sup>25</sup>

*Defense Mechanisms:* trauma is a loss of control, associated with shame, humiliation, fear and helplessness; victims will often blame themselves as a mechanism for regaining control.<sup>26</sup> Traumatized youth perceive threats in safe situations more frequently and react accordingly. It makes interacting with others socially more difficult.<sup>27</sup> Traumatized youth may try to exert control even in minor situations. They may display bullying behaviour or "talk back" in order to maintain control.<sup>28</sup> A youth that has

<sup>20</sup> Healy, J. M. (2004). *Your child's growing mind: Brain development and learning from birth to adolescence*. New York: Broadway Books.

<sup>21</sup> Supra note 4

<sup>22</sup> National Scientific Council on the Developing Child. (2011). *Building the brain's "air traffic control" system: How early experiences shape the development of executive function* (Working Paper 11) [http://developingchild.harvard.edu/index.php/resources/reports\\_and\\_working\\_papers/working\\_papers/wp11/](http://developingchild.harvard.edu/index.php/resources/reports_and_working_papers/working_papers/wp11/)

<sup>23</sup> Van der Kolk, B. A., and Ducey, C., 1989 The psychological processing of Traumatic experience: Rorschach patterns in PTSD *Journal of Traumatic Stress*, 2(3), pg. 259-274

<sup>24</sup> Supra note 4

<sup>25</sup> Wilson, K. R., Hansen, D. J., & Li, M. (2011). *The traumatic stress response in child maltreatment and resultant neuropsychological effects*. *Aggression and Violent Behavior*, 16(2), 87-97

<sup>26</sup> see: Burgess, A. W., and Holstorm, E., 1979 *Adaptive strategies in recovery from rape* *American Journal of Psychiatry*, 136, pg. 1278-1282; Reiker, P. P., and Carmen, E. H., 1986 *The victim-to-patient process: The disconfirmation and transformation of abuse* *American Journal of Orthopsychiatry*, 56, pg. 360-370

<sup>27</sup> Supra note 20

<sup>28</sup> National Scientific Council on the Developing Child. (2014). *Excessive stress disrupts the architecture of the developing brain* (Working Paper 3)

[http://developingchild.harvard.edu/resources/reports\\_and\\_working\\_papers/working\\_papers/wp3/](http://developingchild.harvard.edu/resources/reports_and_working_papers/working_papers/wp3/)

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experienced trauma may misinterpret neutral facial expressions as anger, which can cause aggression or defensiveness.<sup>29</sup>

*\*For further information on the neurological understanding of trauma - see Appendix A*

Trauma is an experience that can transform a young person's world into a terror-filled, confusing experience that dramatically alters the youth's path into and throughout their adult life. Which is why we need to better understand cross-over youth's experience in order to help guide them through the challenges they face.

*L.M.*

For L.M., her early abandonment and neglect had a serious impact on her mental development and wellbeing. Throughout her childhood, L.M had several psychological assessments. At the age of one, a report highlighted L.M to have "self-regulation difficulties, speech and language delays, and challenges with socialization".

In addition to delays in developmental and cognitive functioning. At the age of two and a half, it was documented that although L.M was no longer as afraid of men, she continued to be aggressive towards her foster mom, and primarily when responding to "no".

Issues with attachment were also identified early on and at the age of three, L.M was diagnosed with Reactive Attachment Disorder (RAD). Alongside this diagnosis, the clinician predicted that in L.M would be at high risk for behavioral, emotional, and relationship challenges throughout her entire life.

## **Criminal Justice**

The impacts of trauma described above can all too easily translate to behaviours that can result in cross-over youth finding themselves before the criminal justice system.

Traumatic stress tends to evoke two emotional extremes: feeling either too much (overwhelmed) or too little (numb) emotion.<sup>30</sup> Crossover youth are often charged with offences that result from these two categories:

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<sup>29</sup> Supra note 4

<sup>30</sup> *Trauma-Informed Care in Behavioral Health Services, Treatment Improvement Protocol (TIP) Series, No. 57.* Center for Substance Abuse Treatment (US). Rockville (MD): Substance Abuse and Mental Health Services Administration (US); 2014.  
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Overwhelmed	Both	Numb
Assault Assault w/ weapon Assault Bodily Harm Utter Threats Mischief Robbery Theft	Breach of Recognizance Breach of Probation Fail to Attend	Possession Controlled Substance Trafficking

## Practice

Crossover youth have a right to a future that is not dictated by their past. The system we have designed to shield traumatized youth from further trauma often involves traumatizing events such as removal from the home, multiple placements in out-of-home settings (e.g., foster homes, group homes, residential treatment facilities), transfers to new schools, and separation from existing social support networks.<sup>31</sup>

The only effective way to counteract the effects of trauma on the brain is repeated healthy interactions that reverse the physical changes and associations caused by trauma. Positive relational experiences have the ability to be protective and reparative of a youth's brain.<sup>32</sup> Currently, the system often exacerbates or even replicates the relational impermanence and trauma of the youth's life.<sup>33</sup> What is most promising is that traumatized brains can adapt and improve if given the proper support.<sup>34</sup>

*L.M.*

L.M. resided in the same foster home with her two older sisters for nine years before she was moved after an abuse investigation following a physical altercation with her long-term foster mother. Unfortunately, this first move marked the beginning of many more placements, most of which ended unsuccessfully.

<sup>31</sup> Cook, A., Spinazzola, J., Ford, J., Lanktree, C., Blaustein, M., Cloitre, M., & Van der Kolk, B. (2005). Complex trauma in children and adolescents. *Psychiatric Annals*, 35 at pg. 390–398

<sup>32</sup> Ludy-Dobson, C & Perry, B (2010) "The Role of Healthy Relational Internations in Buffering the Impact of Childhood Trauma" *Working with Children to Heal Interpersonal Trauma: The Power of Play* (Guilford Press) at pg. 37

<sup>33</sup> Supra note 32 at pg. 39

<sup>34</sup> Supra note 4



By the age of 11, L.M was diagnosed with Fetal Alcohol Syndrome (FASD) and Attention Deficit Hyperactivity Disorder (ADHD), and continued to struggle with symptoms related to early childhood neglect and symptoms consistent of Reactive Attachment Disorder. As she entered into adolescents, L.M began self-harming and using street drugs.

We must understand that “hurt people hurt people.”<sup>35</sup> Many of the Crossover young people hurt others because of their own trauma and pain. They believe they are ‘bad’ and are not deserving of understanding, compassion, or acceptance by others. It is important to understand that the hurt that these young people cause towards others is often never greater than the hurt they feel themselves.

### *Principles of Trauma-informed Practice*

A helpful moniker to remember the components of a trauma-lens:<sup>36</sup>

1. *Realizes* the widespread impact of trauma and understands how difficult recovery is
2. *Recognizes* the signs and symptoms of trauma
3. *Responds* by integrating knowledge about trauma into their policies, procedures and practices
4. *Resists* re-traumatizing

Trauma-informed practice is a commitment to provide services in a manner that is welcoming and appropriate to the special needs of those affected by trauma.<sup>37</sup> “Trauma-informed practice helps survivors “develop their capacities for managing distress and for engaging in more effective daily functioning.”<sup>38</sup> Trauma-informed services recognize that the core of any service is genuine, authentic and compassionate relationships.<sup>39</sup>

<sup>35</sup> Bowen, W, 2009, *Complaint Free Relationships: Transforming Your Life One Relationship at a Time* (Doubleday Religion)

<sup>36</sup> Substance Abuse and Mental Health Services Administration. (2014).

SAMSHA’S concept of trauma and guidance for a trauma- informed approach (HHS Publication No. (SMA) 14-4884). Rockville, MD: Author. Retrieved from <http://store.samhsa.gov/shin/content/SMA14-4884/SMA14-4884.pdf>

<sup>37</sup> Harris, M. & Fallot, R.D., (2001), Using trauma theory to design service systems, *New Directions For Mental Health Services*, 89, 1-103

<sup>38</sup> Gold, S. (2001). Conceptualizing child sexual abuse in interpersonal context: Recovery of people, not memories. *Journal of Child Sexual Abuse*, 10 at pg 60

<sup>39</sup> Trauma-informed: The Trauma Toolkit, 2<sup>nd</sup> ed (2013) Clinic Community Health Center at pg 16

## *Key Components of Addressing Trauma with Cross-Over Youth Using the COY Model*

There are five key components to connecting to a youth with a history of trauma that will assist in building the foundation for relational care.<sup>40</sup>

### Awareness

#### 1. Normalizing and validating the youth's feelings and experiences<sup>41</sup>

- Conveying empathy and understanding affirms and validates the survivor's feelings and experiences, reducing isolation and feelings of being alone and different
- Normalizing feelings and reactions help survivors see connection between present difficulties and past trauma
- Don't dig for details of past trauma – it is counterproductive and undermines self-capacity – support the youth to disclose when ready

#### 2. Assisting them in understanding the past and its emotional impact<sup>42</sup>

- Help the youth to draw the connections between their current feelings and reactions and their journey
- Understand those connections when considering your own reactions to their behaviour

#### 3. Empowering youth to better manage their current lives<sup>43</sup>

- Build skills and capacity through behaviour techniques and education
- Demonstrate ideal behaviour as a model to emulate

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<sup>40</sup> Knight, Carolyn (2014), Trauma-Informed Social Work Practice: Practice Considerations and Challenges, Clinical Social Work Journal, 43 at pg. 28

<sup>41</sup> Ibid at pg. 29

<sup>42</sup> Supra note 40 at pg. 29

<sup>43</sup> Ibid

#### 4. Helping them understand current challenges in light of the past victimization<sup>44</sup>

- Be empathetic: crossover youth have diminished capacity due to the effects of trauma and therefore diminished personal responsibility for their actions
- Providing context to the youth may help them to problem solve

When working with a youth that has been traumatized make sure the youth is safe, connected, coping and co-regulated.<sup>45</sup>

### Safety

1. The precursor to a trauma-informed practice is safety. Safety takes many forms: physical, social, emotional and cultural. It is important that youth both is and feels safe.<sup>46</sup>
2. Youth are very attuned to their surroundings. They will carefully study how adults present themselves, their mannerisms, tone of voice, and body language to determine who is a 'safe' person and whether they have provided them a safe environment.<sup>47</sup>
3. Avoid long periods of isolation. Most traumatized youth have an attachment disorder and isolation (physical, emotional or both) is likely to result in negative outcomes.
4. Make sure supports and resources are widely known and available. That means providing realistic access plans that don't involve distant travel or burdensome administrative steps.

### Relational Practice

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<sup>44</sup> Supra note 35

<sup>45</sup> Bath, H (2015), "The Three Pillars of Trauma-wise care: Healing in the other 23 hours" *Reclaiming Child and Youth Journal* vol 3, no 4 at pg. 6

<sup>46</sup> Supra note 42 at pg. 7

<sup>47</sup> Steele, W., & Malchiodi, C. (2012). *Trauma-informed practices with children and adolescents*. (New York, NY: Routledge) at pg. 91

5. Early attachment create the pathways which serve as the map for the youth's later relationships, behaviour, and communication.<sup>48</sup>
6. Meet the youth where they are, try to understand what they have been through. You may need to tailor how you work with them, what they can handle, or how fast or slow you work with them.<sup>49</sup>
7. Positive relationships are the most beneficial therapeutic approach.<sup>50</sup> Provide positive, non-judgmental reassurance of youth's feelings and emotions. A youth will not respond to negativity and shaming.
8. There are four stages to help a youth with a history of trauma build the capacity to have positive relations.<sup>51</sup>
  - a. Attachment - positive, emotional respectful connection
  - b. Reciprocity - mutually caring connection
  - c. Progressive complexity - help to develop strengths and potential
  - d. Balance of power - help to shift the youth towards independence
9. Engage in two party reciprocal interactions such as playing table tennis, throwing a ball, dancing, or playing music together. Rhythmic everyday activities promotes positive connections.<sup>52</sup>

### Restorative Thinking

10. Some youth may not be ready for verbal therapy. Service providers can still help youth develop verbal competencies and the capacity for self-reflection, which will help them build the capacity to cope.<sup>53</sup>

<sup>48</sup> Siegel, D. (2012). *The developing mind: How relationships and the brain interact to shape who we are* (2nd ed.). (New York, NY: The Guilford Press)

<sup>49</sup> Donisch, Katelyn, Bray, Chris and Gewirtz, Abigail, (2016) Child Welfare, Juvenile Justice, Mental Health, and Education Providers' Conceptualizations of Trauma-Informed Practice, *Child Maltreatment* vol. 21(2) at pg. 128

<sup>50</sup> Supra note 42 at pg. 8

<sup>51</sup> Ibid

<sup>52</sup> Supra note 42 at pg. 9

<sup>53</sup> Supra note 42 at pg. 9

11. Identify triggers and avoid triggering behaviour. As a stakeholder you have an obligation to the youth you serve to ensure you don't provoke negative reactions. Active listening will help service providers to assist children in identifying and naming emotions.<sup>54</sup>
12. Many crossover youth get involved in the justice system for compensatory behaviours such as drug use and susceptibility to negative peer influence to provide immediate partial relief from the emotional problems caused by traumatic childhoods.<sup>55</sup>
13. Strive towards creating a plan that ensures structure and predictability. Create individualized workable plans that provide a safe outlet for a youth who is feeling anxious or upset. You have a positive obligation to develop strategies that avoid the youth being charged with an offence.

#### Co-regulation

14. Service providers must teach emotional regulation through everyday soothing activities. Without it youth with histories of trauma will be unable to learn emotional regulation.<sup>56</sup>
15. Youth require service providers to exert self-control and resist mirroring youth's hostility. This will require the service providers to have the capacity to distinguish between problematic behaviours that are goal-directed and instrumental and those that result from emotional flooding and act accordingly.<sup>57</sup>
16. Use your interactions with the youth as teachable moments. Ensure you are engaging in ideal behaviour because they will be watching and soaking it in.

*L.M.*

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<sup>54</sup> Ibid

<sup>55</sup> Felitti, V., & Anda, R. (2010). The relationship of adverse childhood experiences to adult medical disease, psychiatric disorder, and sexual behaviour: Implications for healthcare. In R. Lanius, E. Vermetten, & C. Pain (Eds.), *The impact of early life trauma on health and disease* (New York, NY: Cambridge University Press) at pg. 77-87

<sup>56</sup> Supra note 42 at pg. 10

<sup>57</sup> Supra note 42 at pg. 10

L.M.'s ongoing relationship with the foster mother of her third and most current foster placement, who she resided with beginning at the age of 13 continued to be a strong protective factor in L.M.'s life. Although this foster placement resulted in a positive relationship between L.M. and her caregiver, CAS reactively sought external treatment in response to an escalation in L.M.'s maladaptive coping strategies for her trauma, including increasing her use of street drugs, self-harming behaviours and her first criminal charge of breaking and entering. Once again L.M. was moved.

Over the next several years, L.M. would reside in multiple treatment homes and group care settings, and throughout numerous regions across southern Ontario. By the age of 15, L.M. had been placed in a total of three internal foster homes and approximately eight different group care settings.

L.M.'s behaviour escalated, she was arrested for numerous charges including mischief, theft, assault and uttering threats. During the period she was on bail, she received a multitude of new charges mostly for breaching her release. While she was awaiting sentencing she was the subject of over 60 missing person reports, most of which resulted in police apprehension

### *Organizational Trauma-Informed Action Plan*

It is essential that all residential programs, education institutions and service providers have a trauma-informed action plan if they are going to work with cross-over youth. Other stakeholders should also create a modified plan with actionable items that ensure accountability from members. Crossover youth need positive behavioural supports to succeed:<sup>58</sup> Below are essential elements of an institutional trauma-informed action plan:

1. Examine your institution's values. What are the **responsibilities** of your staff and your management in creating a supportive environment for those you serve? Understanding and resolving opposing viewpoint is critical for your team to work together for better service. Youth voice is paramount.
2. Develop a collaborative list of **bedrock principles** and values that will guide your program towards the trauma-informed outcomes. The list should be developed with feedback from the community you serve. Youth voice is paramount.
3. Provide ongoing **professional training** on the subject of trauma and trauma-informed practice. Youth voice is paramount.

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<sup>58</sup> Supra note 14

4. Create a specific **engagement strategy** for crossover youth. An effective strategy requires youth centering as its core. The process of youth centering encompasses:
  - a. Developing mutual respect
  - b. Cultivating a meaningful relationship
  - c. Listening to their needs and concerns
  - d. Establishing two-way communication
  - e. Being receptive to what the young person is trying to convey
  - f. Communicating in the language they are most comfortable with
  - g. Engaging in decision-making as a team; do not substitute your preferences for the youth's, do not pressure them to adopt your preferences
  - h. Remaining transparent and honest, educate the youth on everything they need to know to make an informed decision, do not withhold information that may not push the youth towards your preference
  - i. Creating a safe space for the youth to articulate their concerns without the threat punishment
  - j. Encouraging the youth to participate in decision making, ensure they understand how valuable their input is
  
5. As stakeholders it is your responsibility to foster the conditions that could lead to the therapeutic recovery of a youth's capacity to maintain trusting relationships. Once a youth is engaged, continuously **build and nurture** that relationship even in the face of resistance and rejection from the youth.
  
6. Provide **consistency**, structure with an openness to flexibility. Make sure daily activities are planned and include cognitive exercises that build emotional regulation, social skills and academic capacity. Youth voice is paramount.

### *Fundamental Considerations*

It is important to remember that a trauma-informed practice lens does not mean a trauma-centered approach: "extensive and **detailed immersion** in [traumatic] material itself is **not encouraged**, because...this tactic is...destabilizing and counter-productive"<sup>59</sup>

Victims of trauma report that service providers who did try to address their trauma, often asked for **too much detail** and encourage expression of feelings when it wasn't

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<sup>59</sup> Supra note 35  
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appropriate, and minimized the significance of the trauma in the client's current life, which **unhelpful** in the recovery process.<sup>60</sup>

It is important to **avoid perpetuating negative bias**. Many crossover youth who experienced primary trauma (the events that caused their removal from the home) have also experienced the by-products of historical, generational and systemic trauma. A disproportionate number of crossover youth in Ontario come from oppressed communities. A recent report by the Ontario Human Rights Commission (OHRC) highlights this problematic reality. Following a lengthy inquiry examining the overrepresentation of Indigenous and Black children in Ontario child welfare, the OHRC found Indigenous children and youth to be over-represented in 25 out of 27 of the CAS agencies they reviewed. According to this report the number of Indigenous children admitted into care was 2.6 times higher than child population at large. Black children were found to over-represent in admissions into care at 30% of agencies (8 of 27). Overall, the proportion of Black children admitted into care was 2.2 times higher than their proportion in the child population. However, as there are significant gaps in CAS data examining racial disparities amongst children in their care, these figures are likely to be grossly underestimated.<sup>61</sup>

It is imperative that service providers and stakeholders confront conscious and unconscious bias. Unconscious bias is still pervasive in our society. Even small unconscious changes in behaviour have a big impact on crossover youth.

### *Behaviour Correction Missteps in the Canadian Youth Justice and Child Welfare Systems*

Multiple U.S. studies have found that 90% of youth in juvenile detention facilities reported a history of exposure to at least one potentially traumatic event.<sup>62</sup> Presently our own justice system is constructed in a manner that is most likely to exacerbate the very same issues. If stakeholders are going to commit to a trauma-informed lens it is imperative that they examine the use of "positive" "**common-sense**" **values** that may be **counterproductive** in cases of complex trauma. These values include:

<sup>60</sup> Supra note 37 at pg. 27

<sup>61</sup> Ontario Human Rights Commission (2018) *Interrupted childhoods: Over-representation of Indigenous and Black children in Ontario child welfare* <http://www.ohrc.on.ca/en/interrupted-childhoods>

<sup>62</sup> Abram, K. M., Teplin, L. A., Charles, D. R., Longworth, S. L., McClelland, G. M., & Dulcan, M. K. (2004). Posttraumatic stress disorder and trauma in youth in juvenile detention. *Archives of General Psychiatry*, 61, at pg. 403-410; Ford, J. D., Chapman, J. F., Pearson, G., Borum, R., & Wolpaw, J. M. (2008). MAYSI-2 factor structure, reliability, and predictive validity in juvenile detention. *Journal of Psychopathology and Behavioral Assessment*, 30 at pg. 87-99



1. *Respect* – demanding or requiring respect because of seniority or position of employment will only reinforce the authority/subordinate dynamic between you and the youth. For a youth that has experienced trauma the re-emphasis of authority will likely have the opposite of the desired effect. It will not instill a sense of order or recognition of command structure. It will provoke rebellion and escalation. A person(s) in a position of authority has likely traumatized the youth. The youth invariably associates authority with an abuse of trust and of hierarchy.<sup>63</sup>
2. *Personal Responsibility* – personal, moral responsibility is a principal value of the Canadian justice system. Underpinning that principle is a sliding scale of blameworthiness based on agency. Admitting personal responsibility is a moral virtue to be rewarded as the first step towards rehabilitation. In the case of traumatized youth this black and white conception of morality is ill fitting. While a traumatized youth has legal agency and thus is not a candidate for NCR, their actions and reactions are an instinctual survival response in a way that distinguishes them from the general population. Assigning personal responsibility for that response will be more confusing than corrective.<sup>64</sup>
3. *Punishment* – the punishment theory of behaviour correction is that an individual will associate the negative consequences with the prohibited behaviour and be restrained in the future. Traumatized youth are not cognitively ready to be able to draw those associations. The negative consequences of punishment will just be amalgamated with all the other negative associates and experiences the youth is carrying with them. It will increase the anger, hurt and pain the youth feels. They will not be able to compartmentalize them into a useful lesson. The most difficult part of trying to treat the primary pain associated with trauma is to do so without inflicting secondary pain through punitive or coercive reactions.<sup>65</sup> Until the underlying trauma is treated or at least the youth's consciousness has been stabilized they will not have the capacity to learn through punishment. Punishment will in all likelihood just lead to more of the prohibited behaviour.<sup>66</sup>
4. *Isolation* – isolation is used as a de-escalation technique. The theory is that time to reflect away others will motivate social beings (humans) to refrain from the negative behaviour in order to regain acceptance from the group (society). Most

<sup>63</sup> Ford, J. D., Chapman, J, Connor, D. F., Cruise, K. R. (2012) "Complex Trauma and Aggression in Secure Juvenile Justice Settings" *Journal of Criminal Justice and Behaviour* vol. 39 no. 6 at pg. 701-702

<sup>64</sup> Ibid at pg. 698-700

<sup>65</sup> Anglin, J. (2002). *Pain, normality, and the struggle for congruence: Reinterpreting residential care for children and youth* (New York, NY: Haworth)

<sup>66</sup> Supra note 60 at pg. 706

traumatized youth have associated attachment disorders. For these youth there is no worse punishment than isolation. Punishment or behaviour corrections that involve isolation will only exacerbate the youth's feelings of abandonment.<sup>67</sup> It is their deepest wound and will have a disproportionately severe impact on them.<sup>68</sup>

5. *Separation* – separating individuals that motivate each other to engage in increasingly negative behaviour is another technique to reduce the unwanted behaviours. However, traumatized youth are extremely hesitant to trust others and are resistant to form human connection and friendships. Permanent separation from a peer or an environment should only be explored with extreme caution. It should be the last resort option. It can often be viewed as the easiest, most obvious solution. The impact, however, can also have a disproportionately severe impact on a traumatized youth.<sup>69</sup>

L.M.

On the first occasion, L.M. was arrested for theft. It was the day she was supposed to meet her mother for the first time in 11 years. As a result of her arrest, that visit was postponed to a later date. The second arrest for theft occurred less than two weeks later, and on the day before the rescheduled visit.

L.M.'s actions were a message to her caregivers. She needed more support. Similarly her many breaches and missing persons reports were a sign her placement wasn't working for her.

The system disrupted her best opportunity address the symptoms of her trauma by moving her out of her 3rd foster placement. The service providers failed to focus on the root cause of L.M.'s actions. They lost the forest for the trees.

The effects of L.M's trauma are exacerbated by the system's response to her.

In the case of L.M., a trauma-informed approach would have would ensure she was provided support regulating her stress-response system and helping her develop more adaptive problem solving approaches in the environment that she felt most safe. Instead the system trapped her in a cycle of displacement, punishment, shame and further displacement.

<sup>67</sup> Gonzalez, T. (2017) "Youth Incarceration, Health and Length of Stay" 45 *Fordham Urban Law Journal* 45 at pg. 64-66 <https://ir.lawnet.fordham.edu/ulj/vol45/iss1/2>

<sup>68</sup> Supra note 60 at pg. 703

<sup>69</sup> Supra note 64 at pg. 66-82

## Summary

Healing is the restorative process of becoming healthy and whole. It is a central element in recovery.<sup>70</sup> The COY model is designed to give youth the time, space and chances to work on restoring and healing themselves. This guide is a tool to inform and educate on the challenges, latest research and literature and suggested approaches for working with youth to undo the impact, symptoms and consequences of trauma. As a service provider or stakeholder in the youth justice or child welfare system, it is your responsibility to play a role in helping a youth to a place of stability that will allow them the opportunity to achieve their potential. COY encourages frontline staff, managers, supervisors and decision-makers to examine their current practice and modify it with a view to fully incorporate a trauma-informed lens.

## Appendix A

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<sup>70</sup> Freeman, J (2015) "Trauma and Relational Care: Integrating an Awareness of Trauma into the Characteristics of Relational Child and Youth Care" *Journal of Child and Youth Care Work* at pg. 120  
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## A Neurological Understanding of Trauma

Early trauma is extremely likely to have a profound effect on the physical structure of the brain because it occurs during those critical periods when the brain is most rapidly developing and organizing. This early stage determines the organization and function of the mature brain. Therefore, going through adverse events in childhood can have a tremendously negative impact on including social and emotional development.<sup>71</sup>

Many neurological capacities are actually dependent on a sequence of experiences combined with heredity.<sup>72</sup> Brain development, is the process of creating, strengthening, and discarding connections (synapses) among the neurons.<sup>73</sup> At its peak, the cerebral cortex of a healthy toddler may create 2 million synapses per second. By the time children are 2 years old, their brains have approximately 100 trillion synapses, many more than they will ever need.<sup>74</sup>

Right before puberty, adolescent brains experience a growth spurt that occurs mainly in the frontal lobe, which is the area that governs planning, impulse control, and reasoning.<sup>75</sup> Until their frontal lobe has fully matured, they are more likely to rely on their “gut reaction” and act impulsively, make poor decisions and increase risk-taking. They will also be more emotional due to the transformation of their limbic system.<sup>76</sup>

**Stress:** there are three types of stress.<sup>77</sup>

- *Positive:* moderate, brief, and generally a normal part of life (e.g., entering a new child care setting). Learning to adjust to this type of stress is an essential component of healthy development.
- *Tolerable:* events that have the potential to alter the developing brain negatively, but which occur infrequently and give the brain time to recover (e.g., the death of a loved one).

<sup>71</sup> Supra note 31 at pg. 28

<sup>72</sup> Shonkoff, J. P., & Phillips, D. A. (2000). *From neurons to neighborhoods: The science of early childhood development*. Washington, D.C.: National Academy Press.

<sup>73</sup> Child Welfare Information Gateway. (2015). *Understanding the effects of maltreatment on brain development*. Washington, DC: U.S. Department of Health and Human Services, Children’s Bureau. <https://www.childwelfare.gov/pubs/issue-briefs/brain-development>.

<sup>74</sup> Supra note 74

<sup>75</sup> Ibid

<sup>76</sup> Supra note 46

<sup>77</sup> Supra note 27

- **Toxic:** strong, frequent, and prolonged activation of the body's stress response system (e.g., chronic neglect).

A healthy stress response involves a variety of hormone and neurochemical systems throughout the body, including the sympathetic-adrenomedullary (SAM) system, which produces adrenaline, and the hypothalamic-pituitary-adrenocortical (HPA) system, which produces cortisol.<sup>78</sup>

Maltreatment and toxic stress, such as domestic violence or sexual abuse, can negatively affect brain development. It causes changes to the structure and chemical activity of the brain (e.g., decreased size or connectivity in some parts of the brain) and in the emotional and behavioral functioning of the child (e.g., over-sensitivity to stressful situations).<sup>79</sup>

**Trauma:** experiences that cause intense physical and psychological stress reactions. It can refer to a single event, multiple events, or a set of circumstances that is experienced by an individual as physically and emotionally harmful or threatening and that has lasting adverse effects on the individual's physical, social, emotional, or spiritual well-being.<sup>80</sup>

The youth that enter our program by definition have been traumatized. The trauma has various negative effects on the brain. It impedes the volume development of many diverse areas of the brain.

### Physical Effects of Trauma on the Development of the Brain

**Hippocampus:** a lower volume in this area of the brain leads to difficulty in learning and memory.<sup>81</sup> It can also reduce the capacity to bring cortisol levels back to normal after a stressful period.<sup>82</sup>

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<sup>78</sup> Supra note 50

<sup>79</sup> Ibid

<sup>80</sup> SAMHSA, National Center for Trauma-Informed Care. (May 20, 2014)

<sup>81</sup> McCrory, E., De Brito, S. A., & Viding, E. (2010). *Research review: The neurobiology and genetics of maltreatment and adversity*. *Journal of Psychology and Psychiatry*, 51, 1079–1095.

<sup>82</sup> Shonkoff, J. P. (2012). *The lifelong effects of early childhood adversity and toxic stress*. *Pediatrics*, 129, e232–e246

*Corpus callosum*: the largest white matter area in the brain. Reduced volume in this area affects inter-hemispheric communication, responsible for arousal, emotion, and higher cognitive abilities.<sup>83</sup>

*Cerebellum*: lower volume in this area affects coordinate motor behavior and executive functioning.<sup>84</sup>

*Prefrontal cortex*: physically abused youth may have reduced volume in the orbitofrontal cortex, a part of the prefrontal cortex that is central to emotion and social regulation.<sup>85</sup>

*Amygdala*: trauma can cause over-activity in this area of the brain, which helps determine whether a stimulus is threatening and trigger emotional responses.<sup>86</sup>

*Cortisol levels*: child and youth in the child welfare system have been shown to have higher than normal cortisol levels. Higher cortisol levels are harmful to cognitive processes, subdue immune and inflammatory reactions, or heighten the risk for affective disorders.<sup>87</sup>

Children and youth in institutional settings have decreased electrical activity in their brains, decreased brain metabolism, and poorer connections between the areas of the brain that are key to understanding complex information.<sup>88</sup> They will continue to have abnormal adrenaline patterns years after leaving the institutional setting.

Malnutrition can also have a profound impact on brain development (e.g., slowing the growth of neurons, axons, and synapses) and function (e.g., neurotransmitter syntheses, the maintenance of brain tissue).<sup>89</sup>

## The Behavioral, Social, and Emotional Outcomes of the Physical Changes to the Brain

<sup>83</sup> Supra note 55

<sup>84</sup> Ibid

<sup>85</sup> Hanson, J. L., Chung, M. K., Avants, B. B., Shirtcliff, E. A., Gee, J. C., Davidson, R. J., & Pollak, S. D. (2010). *Early stress is associated with alterations in the orbitofrontal cortex: A tensor-based morphometry investigation of brain structure and behavioral risk*. *Journal of Neuroscience*, 30, 7466–7472

<sup>86</sup> National Scientific Council on the Developing Child. (2010b). *Persistent fear and anxiety can affect young children's learning and development* (Working Paper 9)

[http://developingchild.harvard.edu/index.php/resources/reports\\_and\\_working\\_papers/working\\_papers/wp9/](http://developingchild.harvard.edu/index.php/resources/reports_and_working_papers/working_papers/wp9/)

<sup>87</sup> Bruce, J., Fisher, P. A., Pears, K. C., & Levine, S. (2009). *Morning cortisol levels in preschool-aged foster children: Differential effects of maltreatment type*. *Developmental Psychobiology*, 51, 14–23.

<sup>88</sup> National Scientific Council on the Developing Child. (2012). *The science of neglect: The persistent absence of responsive care disrupts the developing brain* (Working Paper 12) [http://developingchild.harvard.edu/index.php/resources/reports\\_and\\_working\\_papers/working\\_papers/wp12/](http://developingchild.harvard.edu/index.php/resources/reports_and_working_papers/working_papers/wp12/)

<sup>89</sup> Prado, E., & Dewey, K. (2012). *Nutrition and brain development in early life*. <http://aliveandthrive.org/wp-content/uploads/2014/11/Technical-Brief-4-Nutrition-and-brain-development-in-early-life-English.pdf>

Trauma survivors have difficulty regulating emotions such as anger, anxiety, sadness, and shame; the younger they are the more difficult it is.<sup>90</sup> Emotional dysregulation, the most prevalent symptom of traumatized youth is the root cause of the vast majority of the incidents that cause youth in the child welfare system to crossover into the justice system.

A youth that has been traumatized has six critical differences in how they process information.<sup>91</sup>

1. **Persistent fear response** caused by chronic stress or trauma-related memories, interferes with other incoming information
2. **Compulsive attraction** to trauma related situations, weaken response to positive feedback/situations
3. **Hyperarousal to triggering** trauma-related phenomenon, seeking of generalized numbing
4. No ability to **modulate physiological response to stress**, decreased capacity to use bodily signals for action
5. Generalized problems with **executive functioning**
6. Alterations in **psychological defense mechanisms** and difficulty with social interactions

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<sup>90</sup> Van der Kolk B, Roth S, Pelcovitz D, Mandel F. Complex PTSD: Results of the PTSD field trials for DSM-IV. Washington, DC: American Psychiatric Association; 1993.

<sup>91</sup> Van der Kolk, B and McFarlane, A, "The Black Hole of Trauma" in *Traumatic Stress: the Effects of Overwhelming Experience on Mind, Body and Society* ed Van der Kolk, B, McFarlane, A and Weisaeth, L  
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## **Cross-Over Youth Project:**

### **Navigating Quicksand**

#### **Appendix 6: Protocols**

- Use of s.34 assessments
- Use of Records in Child Protection Proceedings
- Bail Condition Recommendations
- Probation
- Case Conferencing Terms and Guidelines
- Conferencing Model



## Use of s.34 Assessments

### Crossover Youth Project

Youth involved in the criminal justice system have a heightened expectation of privacy:

“...privacy is worthy of constitutional protection because it is “grounded in man’s physical and moral autonomy”, is “essential for the well-being of the individual,” and is “at the heart of liberty in a modern state.” These considerations apply equally if not more strongly in the case of young persons.”

*A. B. v. Bragg Communications*, 2012 SCC 46 at para 18 [quoting from *Toronto Star Newspapers v. Ontario*, 2012 ONCJ 27]

“[young persons are entitled to] a higher expectation of privacy”

*R v K.M.* 2011 ONCA 252 at para 97

### Section 34 of the YCJA

A section 34 assessment is a medical, psychological or psychiatric report ordered by the court. It is to be conducted by a qualified expert. In order for the assessment to be useful the process requires an extraordinary invasion of a youth’s privacy. The youth is questioned about intimate details and observations are made about deeply ingrained behaviours.

A youth also opens themselves up to legal jeopardy by participating. While section 147(1) limits the use of these reports, section 147(2) allows the report to be admissible in court in certain circumstances.

The information contained in a section 34 is sensitive. A section 34 report has an even higher privacy standard attached to it than the rest of the YCJA records.

“...particularly sensitive records such as medical reports are available only in limited circumstances to specifically identified persons or groups.”

*L.(S) v B. (N.)*, (2005), 195 C.C.C. (3d) 481 (C.A.) at para 24

These reports are marked confidential. However, many times the page marked confidential is ripped off or simply ignored. This is reckless and impermissible.

#### People who can Access

Section 34(7)(a) allows the following people to access the report:

- (i) the young person;
- (ii) any parent of the young person who is in attendance at the proceedings against the young person;
- (iii) any counsel representing the young person; and
- (iv) the prosecutor.

This provision allows CAS access to the report if they are the legal guardians of the youth.

#### Statutory Access Period

The access period for the s.34 report is found in s.119(2):

Extrajudicial sanction – 2 years

Acquitted – 3 months

Withdrawn – 2 months

Dismissed – 2 months

Reprimand – 2 months

Stay – 1 year

Absolute Discharge – 1 year

Conditional Discharge – 3 years

Summary Conviction – 3 years\*

Indictable Conviction – 5 years \*

\*Calculated from the end of the sentence imposed

### Use

A young person has access to their own report during the prescribed period, as would their legal guardian. However, it is illegal for them to distribute the report to anyone else without a court order.

Section 129 of the YCJA:

“No person who is given access to a record or to whom information is disclosed under this Act shall disclose that information to any other person unless the disclosure is authorized under this Act.”

Only a youth justice court judge can order a s. 34 report to be released. Any distribution of a section 34 without an order from a youth court judge is illegal.

Example:

Some s.34 assessments include a psycho-educational assessment. That portion can be used outside of a courtroom for special accommodation, in a school for example. It is important that if that portion of the assessment is used by the youth in that setting that it is separated from the rest of the report.

Out of the abundance of caution an order should be sought from a youth criminal court judge to distribute any section of the report.

### Things to Remember

1. This material is confidential
2. Only shared with an order from youth court judge
3. Authorized distribution should be done in most minimally invasive manner
4. Youth must be educated on the sensitivity of the content

## Use of Youth Records in Child Protection Proceedings

### Guideline for Children's Aid Society Employees

#### Crossover Youth Project

There may be situations where a youth who is a candidate for child protection intervention has a pre-existing youth criminal justice record.

Young persons are not to be held to the same expectations of responsibility and moral blameworthiness as adults. Their records are not meant to follow them in the same way as for adults. The YCJA has provisions to protect records made in the course of YCJA proceedings. These records are meant, with a few exceptions, to stay private once the youth has reached the age of maturity.

"...privacy is worthy of constitutional protection because it is "grounded in man's physical and moral autonomy", is "essential for the well-being of the individual," and is "at the heart of liberty in a modern state." These considerations apply equally if not more strongly in the case of young persons."

*A. B. v. Bragg Communications*, 2012 SCC 46 at para 18 [quoting from *Toronto Star Newspapers v. Ontario*, 2012 ONCJ 27]

"[young persons are entitled to] a higher expectation of privacy"

*R v K.M.* 2011 ONCA 252 at para 97

A trail to their record can be constructed unwittingly. When these records leave controlled YCJA proceedings and enter child protection proceedings there are less automatic procedural safe guards that ensure compliance with the privacy principles in the YCJA.

Protecting a youth does not just mean winning a protection hearing. Maintaining a youth's privacy in YCJA matters can protect a youth's future potential. It offers the best chance to foster the youth's rehabilitative process.

#### YCJA

118 (1) Except as authorized or required by this Act, no person shall be given access to a record kept under sections 114 to 116, and no information contained in it may be given to any person, where to do so would identify the young person to whom it relates as a young person dealt with under this Act.

#### Jurisdiction

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A superior court judge **does not** have the jurisdiction to order a youth record released. This is important for child protection proceedings occurring in unified family court. Only a youth justice court judge acting under the authority of the YCJA has the jurisdiction to grant access to records made under the Act.

“...Parliament in “clear and unambiguous terms” has placed the responsibility for determining access to records on the shoulders of the youth justice court judges.”

S.L. v. N.B., 2005 CanLII 11391 (ON CA), para 54

### Statutory Access Period

S.119(2):

Extrajudicial sanction – 2 years

Acquitted – 3 months

Withdrawn – 2 months

Dismissed – 2 months

Reprimand – 2 months

Stay – 1 year

Absolute Discharge – 1 year

Conditional Discharge – 3 years

Summary Conviction – 3 years\*

Indictable Conviction – 5 years \*

\*Calculated from the end of the sentence imposed

### Record Keeping

It is illegal to breach a youth’s privacy and keep a record detailing their criminal justice involvement past the permissible statutory access period without a s.123(1) order from a youth criminal justice judge. You are not allowed to keep any record with this information. This prohibition includes historical records; all reference to their criminal justice involvement must be redacted.

## Use

Section 129 of the YCJA:

“No person who is given access to a record or to whom information is disclosed under this Act shall disclose that information to any other person unless the disclosure is authorized under this Act.”

An example of a prohibited use:

A youth is convicted of a summary offence at 13 years old. They are sentenced to 6 months of custody. The youth has not been subsequently charged with any other offences. They are now 19 years old turning 20. They have a child and CAS is investigating with the possibility of apprehension of the newborn.

In that case, it would be impermissible for there to be any record of the youth's conviction in the CAS system. The investigator cannot rely on that information to advance their investigations or even allow the fact of the conviction to raise their suspicions.

Maintaining that record without a s.123(1) order is illegal and counter to the principles of privacy enshrined in the YCJA.

CAS employees should be mindful of what records they seek to have added to the court record before submitting documents. The use of an expired record is also impermissible in court and cannot be used as evidence. No inferences can be drawn and it should never be tendered. The privacy interests contained in the YCJA are based on the principle that individuals under 18 years of age should not be burdened with a public record of their criminal behaviour.

In family court proceedings when submissions are struck from the record a line is drawn through the middle of the information. This process is not as impenetrable as a redaction. It is often possible to discern what was originally written.

Caution should be exercised before the court proceedings to ensure the access period has not expired.

## Probation

**Crossover Youth:** young persons who are subject to child protection intervention with unresolved Youth Criminal Justice Act charges.

**Issue:** Our aim is reduce the number of youth from the child welfare system that end up in the adult criminal justice system. Onerous probation conditions can be a major obstacle to crossover youth trying graduating out of the criminal justice system.

**Conditional Discharge vs. Probation order:** for crossover youth an extra careful analysis should be undertaken as to whether a conditional discharge can satisfy sentencing principles.

The main differences between a conditional discharge and a probation order that increase the risk a crossover youth falls into the adult system are:

- The length of the retention period
  - Conditional discharge – 3 years from finding of guilt YCJA s 119(2)(f)
  - Probation order – 3 years after the sentence is complete, or 5 years if by indictment YCJA s 119(2)(g), (h)
- A further finding of guilt under the YCJA can extended the access period for a probation order YCJA s 119(2)(i)
- A discharge will not be converted into a conviction if there is an adult conviction during the access period YCJA s 119(9)

**Inquiry:** It is important for both Crown and Defence Counsel to understand what they are requiring of the youth. Probation conditions should be informed by the full context of the youth's individual situation. For example, if the youth has already been on probation seek to comprehend the youth's relationship with their probation officer. If they are strict don't impose rigid requirements.

**Conditions:** should be tailored to the youth and the sentencing goals and not simply

attached *pro forma*. Each condition should be individually considered and crafted as narrowly and least restrictive as possible.

### *Reporting*

Crossover youth have significant challenges related to transportation and capacity to maintain appointments. Our casework has demonstrated that one of the most important factors in reaching crossover youth is whether professionals involved in the youth's life are willing to meet the youth where they are. Reporting conditions should be flexible to accommodate for the high potential for chaotic factors to prevent the youth from reporting on time.

Moreover, inquiries should be made about what kind of accommodations the youth's probation officer is willing to make to reach the youth in the community. If there is no flexibility possible and creative uses of modern technology are not contemplated than a stringent reporting requirement will only lead to more unnecessary charges.

### *Curfew*

A curfew may be one of the most difficult conditions for a youth to follow. Attaching criminal sanctions to not following a curfew should not be done unless absolutely necessary. If a curfew is necessary it should be left up to the guardian or institution. There should be an understanding of the relationship between the youth and the person in charge of setting the curfew. If the relationship is strained or the individual is likely to want or have to contact the police or the probation officer if the curfew is missed slightly than they should not be given the power to set a curfew. A specific time should not be enumerated as a formal probation condition.

There is often pressure from enforcement officials to clearly specify the exact hour. However, that is merely for the purpose of making charging easier and their job easier. Crossover cases are highly complex and require a nuanced response. Flattening the response to these youth should be avoided.

### *Reside*

Due to the tendency for Children's Aid Societies to have difficulty placing youth with YCJA charges, it is our strong position that, at a minimum, the reside condition should not indicate a specific address but instead read "as directed by CAS". It is also important to note how disruptive CAS placements can be in the life of a crossover youth. As a result of limited placement options, youth are often sent a considerable distance away from their home communities, separating them from their friends and support



systems. Naturally, youth travel back to their home communities and do not return on time or at all and are subsequently considered AWOL by their placement – which results in another criminal charge. The safety and missing persons concerns of the CAS should not be criminalized. We recommend an approach to residency that is driven by the input of the youth. Where possible there should be no specific direction to the youth of where to reside or who has the power to direct them on the probation order.

### *Controlled Substances and Alcohol*

Youth who have experienced trauma will often self-medicate with controlled substances. If there is a question of substance abuse issues it is our recommendation that a qualified professional make that determination. Any related treatment should also be prescribed a qualified professional. Probation conditions related to substance abuse and counseling should be drafted to given maximum flexibility to the trained professionals. Treatment and counseling is most effective when there is genuine buy-in from the youth. A harsh reaction self-medication will only exacerbate the feelings and emotions evoke by the youth's trauma.

### *House arrest*

A probation condition to require a crossover youth to remain in their residence at all times should be avoided unless in the rarest of circumstances. Crossover youth often have less than ideal housing circumstances. Group homes are rarely nice places to live. Other crossover youth have unstable housing situations. Requiring crossover youth to remain in a specific residence at all times is far more restrictive and burdensome to other comparable youth. If house arrest is required the condition should be worded to give allowances for professional assistance. The assessment that assistance is required can change at any time and the probation condition should allow for flexibility.

Remain in your residence at all times

EXCEPT

For the purpose of travelling directly to, from and while at counseling, programming or services, which have been arranged and directed in advance of departure by your court worker or surety.

### *Non-Association/Non-contact*

Many crossover youth commit offences with one or more co-accused. Non-association/non-communication with the co-accused and/or the complainant should be avoided in probation orders where the conditions do not warrant it. This condition causes several problems that are particularly discriminatory to crossover youth. It may mean that they cannot return to residential placement or their school causing further disruption to their stability. Crossover youth are often co-accused with classmates, group home peers and trusted friends. This type of restriction can have an undue burden on crossover youth, as trusting relationships are often more difficult for them to form.

It is understandable that there are public safety concerns with regards to association with co-accused. However, it is our recommendation that exceptions can be crafted in appropriate circumstances to decrease the burden if this clause is necessary under the circumstances.

1. Exception for the purpose of the *Education Act*
2. Exception for the purpose of residential placement
3. Exception for the purpose of counseling and supervised extracurricular activities and programming
4. Exception under the supervision of a specified adult
5. Exception for a family court order (if appropriate)

### *Rules of the Home/Institution*

Probation orders should not be used to criminalize discipline issues. Crossover youth may not have a straightforward trajectory towards rehabilitation. This task should not be made more difficult by amplifying the consequences of non-criminal anti-social behaviour. Working from a trauma-informed perspective with an emphasis on the youth establishing a feeling of safety and trustworthiness, punishing youth who have experienced trauma for 'breaking rules' is not a helpful nor therapeutic approach to building capacity with a crossover youth. It is much better for guardians to rely on the natural or homegrown consequences of breaking "house" rules than to use custody or the threat of custody.

**Intensive Support and Supervision Program (ISSP):** for crossover youth, some of whom struggle with serious mental health issues and specialized needs, an ISSP should be explored if custody is seriously being contemplated. An ISSP can be an alternative to an open custody sentence, which is less disruptive and destabilizing in most cases. The program is intended to provide an individualized and clinical program to address the underlying issues that contributed to the offence.

The youth's eligibility for the program is assessed by probation. A good precursory to determining whether it might be useful is through a s 34 assessment.

The program may not be available in some jurisdictions.

### **Terms and Guidelines For Case Conferences (Non-Judicial) Held by the Cross-Over Youth Project**

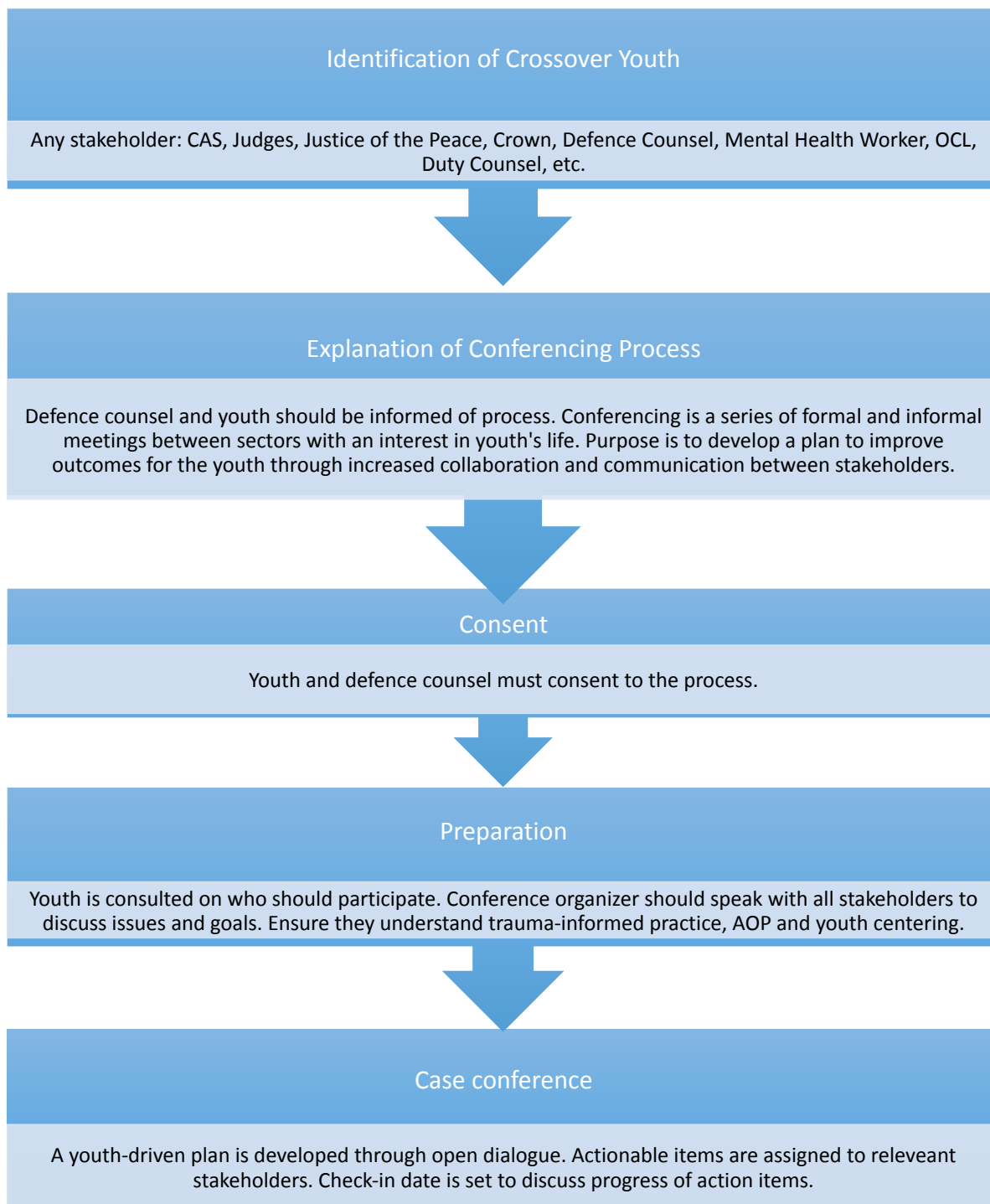
1. The youth must consent to the conference and have a choice as to whether to be present. Counsel for the youth will explain these terms and guidelines to the youth.
2. If a youth who planned to attend cannot attend for unforeseen reasons, counsel for the youth will determine to what extent the conference continues.
3. The goal of the conference is to plan to support the youth, in a collaborative fashion, with the starting point being the youth's views and wishes.
4. For the conference to be successful, parties must be open to communication but respectful of limits on what can be discussed. For example, there is to be no discussion of the facts and law relevant to a potential finding of guilt. However, the client's circumstances surrounding the incident might be open for discussion. The COY Facilitator will help the participants set the guidelines and limits for each conference.
5. Subject to the duty to report under the *Child and Family Services Act (CFSA)* the information shared at the conference can only be used and shared as agreed at the conference. The information cannot be shared with the Court unless the participants agree. Generally the participants will agree to sharing information for the purposes of putting a plan in motion and accessing services. However, the participants are reminded of the strict confidentiality provisions in the *CFSA* and the *Youth Criminal Justice Act (YCJA)*. Generally, the participants will agree that the outcome of the conference may be shared with the Court. This outcome will be a written summary prepared by COY and vetted with the participants (at or after the conference) for sharing with the Court.

Name of Youth:

Date of conference:

Initialed by attendees:

I agree to these terms:



## **Cross-Over Youth Project:**

### **Navigating Quicksand**

**Appendix 7: Best Practice Model for Child Welfare in Working with Cross-Over Youth**



## **Best Practice Model for Child Welfare in Working with Cross-Over Youth**

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*Navigating the system and planning  
for good outcomes*



This document will provide an understanding of issues specific to youth involved in both the Child Welfare and the Youth Criminal Justice Systems in Ontario and practices that will promote the best possible outcomes.



## Acknowledgements

The Cross Over Youth (COY) project co-chaired by Professor Judy Finlay at Ryerson University and Justice Brian Scully, Ontario Court Justice, received funding in the initial phase of development in 2015 from the Department of Justice Canada's Youth Justice Fund to address the concerns of youth in care entering the criminal youth justice system. A Steering Committee of the COY project was developed and comprised of many community partners related to youth involved in child welfare and youth criminal justice. A subcommittee of the steering committee was formed to develop a protocol for child welfare staff working with COY as well as to create a best practice document to guide practice. This document is intended to provide child welfare staff with knowledge about the youth justice system in Ontario and how to navigate to promote good outcomes for youth. We would like to acknowledge the subcommittee members for their commitment and work to develop this best practice guide.

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The committee members would like to thank the youth from the Cross Over Youth Project in Thunder Bay and Belleville and the JustUs League of Jewish Family and Child for their input and suggestions for this document.

## **Disclaimer**

*The content of this Best Practice Model is provided for general information purposes only and does not constitute legal advice.*

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## Introduction

The Cross-Over Youth (COY) project received funding in the initial phase of development in 2015 from the Department of Justice Canada's Youth Justice Fund. The project has a four-year funding grant with additional funding from the Ministry of Children and Youth Services (MCYS). The COY project was designed to develop local competencies and sustainability of a coordinated approach to serving cross-over youth. The goal is to help keep youth in care out of the youth justice system and improve outcomes by coordinating system wide response with child welfare, youth justice and community partners.

The purpose of developing a best practice model for cross-over youth is to provide a resource for all Children's Aid Society (CAS) staff who work with youth in care who are also involved in the youth justice system. The primary purpose was to develop a model for use specifically in regions where the Cross-Over Youth Project was operating, but the materials are also applicable to all CASs where youth are involved with youth justice systems. The intent is to provide an understanding of issues specific to cross-over youth and practices that will support the best possible outcomes for this cohort. There is a recognition that there is a gap in knowledge for workers, resource parents and group care staff in understanding the complexities of the youth justice system. There is also an over-representation of youth in care who are also involved with youth justice, specifically indigenous and Afro-Caribbean Canadian youth. CAS workers are required to understand multiple systems related to youth in care and in providing some information to help navigate those systems, it is anticipated that better outcomes can be achieved for youth. The information provided is based on research as well as the experiences and learning from the Cross-Over Youth Project.

Suggestions for using the document:

- Provide staff with access to the document and encourage knowledge building
- Staff working with youth should review the document and consider how the ideas apply to youth with whom you work
- Discuss in team meetings and review scenarios of youth involved with youth justice in your organization
- Share information with caregivers and external placements
- Regularly review your agency practice and outcomes for youth who are involved with the Youth Criminal Justice System (YCJS)

## Understanding the Issues

Cross-over youth have life experiences that have resulted in their entry into the child welfare system. When these youth incur charges that propel them into the youth justice system, their lives become more complex. Many of these youth have also experienced complex trauma from their family and systems and lack a consistent caregiver to assist in navigating the child welfare and youth justice systems. Youth who have experienced trauma, abuse, neglect and abandonment from their family and/or systems, require a core ingredient of strong caregiver-young person relationships.<sup>1</sup>

In addition, many of these youth also require mental health support and have educational needs which may be compromised when they become involved in multiple systems. Youth voices from the Cross-Over Youth Summary Report (2015)<sup>2</sup> clearly outlines the concerns when there is involvement in the youth criminal justice system. Some insight into the experience of youth from this report include:

*“Police are not trained to handle these kids. They’re not social workers or youth workers.”*

*“As soon as a police officer hears you’re in foster care, their opinion of you changes immediately.”*

*“Once a youth has a criminal record.... they can’t live life like a teenager because if the police catch me the punishment is going to be 10 times worse.”*

What workers, care providers, police and other partners in the lives of youth in the care of child welfare agencies need to understand for these youth is:<sup>3</sup>

- Youth in care often face multiple moves, which contribute to issues related to attachment and ability to maintain relationships of trust. This can lead to acting out behaviors which may lead to entry into the justice system
- The antecedent to criminal behaviors is more likely related to maltreatment, attachment disruptions in the family and society, such as systems trauma
- History of trauma combined with likelihood of further disruptions adds to the vulnerability of youth in care, leading them to threshold of the youth justice system
- Unmet educational needs can exacerbate frustration and further inhibit a youth’s ability to relate pro-socially and to succeed in general
- Youth in care are less likely than youth out of care to have their mental health needs addressed well
- Rules and rigidity of group care combined with the “push back” response of adolescents can lead to criminal charges
- Use of restraints can lead to the criminalization of youth

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<sup>1</sup> Ministry of Children and Youth Services, (February 2016). Because Young People Matter: Report of the Residential Services Review Panel. (p. 37)

<sup>2</sup> Summary Report: Justice of the Peace Service Sector (2015). Prepared for the Cross Over Youth Committee. Finlay, J. and Justice Scully, B. Ryerson University, Toronto, Ontario.

<sup>3</sup> Cross-Over Youth: Care to Custody. (2015). Finlay J. and Justice Scully, B. Ryerson University, Toronto, Ontario.

- Frustration with restrictive rules and desire to see family and friends contributes to running behavior, illegal activities and thus exposing youth to criminal charges
- A youth's experience of ongoing racial oppression creates invisible wounds that they carry and sustain which can lead them to become hyper-vigilant in their reactions. This trauma creates a state of dysregulation which can be interpreted as "acting out".

It is well documented that there is an over-representation of Indigenous and Afro-Caribbean Canadian youth in the child welfare and youth justice systems.<sup>4</sup> In the report on "Because Young People Matter" this over-representation is noted, and it is recognized that this must be addressed within the context of cross-over youth. The experience of African Canadian youth involved in the criminal justice system was noted in the OACAS One Vision One Voice report of 2016. African Canadian youth shared their experiences of group care and stereotyping in focus groups for the project.<sup>5</sup> Some of their comments included:

*"A lot of group homes hire ex-cops and not CYWs so they don't have the training to deal with us. They treat us like gangsters and then they wonder why we have so much anger."*

*"The consequences are harsher for me even though another kid would have done the same thing."*

Cross-over youth need extra attention and consistent support. To successfully support cross-over youth, frontline CAS workers should consider including supports outside of the agency. Workers can develop creative ways to find relationships for youth for supports who can be there for them when needed. Of significant importance is to consider cultural and identity connections for youth. To be consistent with overarching practice approaches, youth should be offered *choice* in accepting supports that are suitable to them.

Some ideas for supports include:

- a) Logistical Supports - Youth in Transition Worker, Housing Worker
- b) Identity-Specific supports - African Canadian community resources, Indigenous legal and cultural Services, LGBTQS+ services, OVOV Aunties and Uncles Program
- c) Therapeutic Supports - Youth Court mental health workers, counsellors, Canadian Association for Mental Health, Healing Circles
- d) Mentoring / Outreach Workers

Refer to Intersection Points in **Appendix A** for information on how innovative alternatives can be offered to Cross-Over Youth.

<sup>4</sup> Ministry of Children and Youth Services, (February 2016). Because Youth People Matter: Report of the Residential Services Review Panel. (p. 72, 77)

<sup>5</sup> One Visions One Voice: Changing the Ontario Child Welfare System to Better Serve African Canadians. Practice Framework Part 1: Research Report. September 2016

## Overarching Practice Principles

CAS staff and all stakeholders should consider some core principles when working with cross-over youth. To uphold these practice principles in working with cross-over youth, consider the value in cross-sectoral communication, collaboration and education between Children's Aid Societies, Courts, School Boards, and other service providers involved in cross-over youth's lives. Based on the United Nations Convention of the Rights of the Child, these include:

- Youth Centering and Youth Voice<sup>6</sup>
  - Relational approach, being present with youth
  - Engage in open and honest communication with youth throughout process
  - Engage youth in decision making
  - Respect for the youth's views and wishes, youth is the expert
  - Provide and involve services that respects youth's rights
  - Include in the development of programs and services for young people in and out of home care
  - Include the youth in the design of programs (rules, procedures, physical design, treatment and relationships)
  - Active involvement and joint decision-making between young people, families and professionals in context of major transitions

The *Child, Youth and Family Services Act (CYFSA)* requires anyone providing services to youth to:

“To express their own views freely and safely about matters that affect them”

AND

“To be engaged through an honest and respectful dialogue about how and why decisions affecting them are made and to have their views given due weight...”

- Anti-Oppression Lens
  - Marginalized youth, especially Afro-Caribbean Canadian and Indigenous youth are disproportionately over-represented in both the child welfare and justice systems, and thus, in the population of cross-over youth
  - Recognize and respond to the unique needs of Indigenous and Afro-Caribbean Canadian youth, LGBTQ2S+ youth, youth living in poverty and youth living with disabilities by utilizing an anti-oppressive, anti-racism and anti-Black racism lens
  - Utilizing an anti-oppression, anti-racism and anti-Black racism lens is by first acknowledging that oppression is embedded in social structures and policies and that inequality exists amongst

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<sup>6</sup> Because Youth People Matter: Report of the Residential Services Review Panel. Ministry of Child and Youth Services, February 2016.

marginalized groups. Recognize when a youth is faced with oppressive barriers, raise the issues and challenge them.

- Trauma-Informed Lens

- Cross-over youth have often been traumatized in relation to being in care and involved with the youth justice system. When youth experienced multiple incidents of trauma or complex trauma, helping professions struggle to see the correlation between their past and the presenting behaviours.<sup>7</sup> Youth with histories of complex trauma often respond with negative behaviours and tend to be diagnosed with disruptive behaviour disorders such as ADHD, oppositional defiant disorder or conduct disorder. Some youth respond with depression and anxiety. These are the youth who may at times fight, argue, refuse to comply, run away, lie and steal
- Consequences should be focused on teaching appropriate behavior rather than punishing the behavior
- Professionals who respond to youth's defiant behaviours with frustration and anger only reinforce the same feelings in traumatized youth
- It is harder to respond effectively to youth who refuse to comply and are disrespectful, but these are the youth who need the most attention and support
- Four key factors to trauma-informed practice:<sup>8</sup>
  1. Normalizing and validating youth's feelings and experiences
  2. Assisting youth in understanding their past and its emotional impact
  3. Empowering youth to better manage their current lives by building skills and capacity by modeling ideal behavior and providing education
  4. Helping youth understand current challenges by diminishing personal responsibility for their actions and by helping them problem solve
- Five factors for trauma informed practice related to racism and oppressions by Ken Hardy:<sup>9</sup>
  1. Creating space where youth can discuss everyday experiences of oppression including experiences of pain
  2. Supporting youth to build survival strategies to cope with everyday oppression
  3. Supporting youth to understand and strengthen their individual and group identity for resilience
  4. Encourage youth to discuss your impact on them individually and in terms of group identity
  5. Recognize cultural/ Intergenerational trauma and collective resilience

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<sup>7</sup> Beverly Tobiason. "We Need to Understand How to Provide Trauma-informed Care". *Youth Today*, [youthtoday.org/2016/07/we-need-to-understand-how-to-provide-trauma-informed-care/](http://youthtoday.org/2016/07/we-need-to-understand-how-to-provide-trauma-informed-care/)

<sup>8</sup> Knight, Carolyn (2014), Trauma-Informed Social Work Practice: Practice Considerations and Challenges, *Clinical Social Work Journal*, 43 at pg. 2

<sup>9</sup> Hardy, Ken (2013), "Healing the Hidden Wounds of Racial Trauma" *Reclaiming Children and Youth*, v22 n1 at pg. 24

### Five Key Responses to Avoid:

1. Do not demand respect because of seniority or position of power, as this will reinforce the authority/subordinate dynamic between you and the youth. It will not create a sense of order, but rather provoke rebellion and escalation
2. Do not expect a traumatized youth to take personal responsibility for their actions. Most likely their actions and reactions are an instinctual survival response in a way that differs from the general population. Assigning personal responsibility will be more confusing than corrective
3. Traumatized youth may not have the cognitive capacity to understand and learn from consequences. The negative consequences of punishment will just be amalgamated with all the other negative associations and experiences the youth is carrying with them. It may increase anger, hurt and pain the youth feels and they will not be able to compartmentalize them into a useful lesson. Until the underlying trauma is treated or stabilized the youth will not have the capacity to learn through punishment
4. Do not use isolation as a de-escalation technique. Most traumatized youth have associated attachment disorders and for these youth there is no worse punishment than isolation. It will only exacerbate the youth's feelings of abandonment
5. Avoid separating individuals that motivate each other to engage in negative behaviour. Traumatized youth are extremely hesitant to trust others and are resistant to form friendships. Permanent separation from a peer or an environment should only be explored with caution and a last option

To uphold these practice principles in working with cross-over youth it is important to consider cross-sectoral communication, collaboration and education between Children's Aid Societies, Courts, School Boards, and other service providers involved in cross-over youths' lives.

Refer to Trauma-Informed Lens Guideline for Practical Implementation in **Appendix B**. This document provides information on understanding trauma and its origins, physical effects, changes to the brain and trauma informed practice.

### What Youth Want their Workers to Know

The Cross-Over Youth Project conducted a focus group with cross-over youth. They provided the following feedback about what they felt were the most important issues that cross-over youth had with the child welfare system:

- Youth should not need to tell their story multiple times. Youth felt this process is traumatizing, and felt they should have it recorded by one individual, and the subsequent workers could be informed of the youth's situation through this file
- Youth reported multiple workers (sometimes in excess of 15). They felt the lack of established relationship with these workers made it difficult to tell their stories. They felt a deeper relationship with the workers would have made it easier to disclose their personal, traumatic histories.



- Youth felt the need to “prove” how sick they were (for those with mental health issues). They reported that telling their guardians they needed help often wasn’t enough, they had to “play up” their illnesses, or act provocatively to get medical, or mental health attention.
- Youth were not adequately informed of what was happening to them once they became involved in the CAS system. One wasn’t aware what a “crown ward” was, but she was threatened she would become one if she didn’t cooperate.

All of the youth we spoke with expressed frustration at these issues. It is the type of frustration that can quickly escalate. Addressing these issues in your practice and in child welfare systemically will contribute towards the pre-escalation process. Pre-escalation (making sure youth are heard and their issues are addressed respectfully) is a key step in ensuring youth are not put in a position where there is conflict that could escalate to the engagement of police.

## Navigating Youth Court

### Philosophy of the Youth Criminal Justice Act

To understand what is going on in Youth Court and what is motivating the decisions being made it is important to understand what principles Parliament intended to be incorporated into the process. The embedded principles include:

- Address the developmental challenges and needs of youth.
- Work in partnership to prevent youth crime by addressing the underlying causes, responding to their needs and providing guidance and support.
- Young people have special rights including those guaranteed to them under the United Nations Convention on the Rights of the Child.
- Accountability is achieved through meaningful consequences, rehabilitation and reintegration.
- The most serious interventions should be reserved for the most serious crimes. The over-reliance on incarcerations should be reduced.

**Note:** When applying these principles, a youth’s identity (i.e. developmental challenges), and how these may be different if youth is part of an oppressed group, should be taken into consideration.

### Youth Criminal Justice System

Cross-over youth and their CAS workers are not always familiar with the workings of youth court or the options available to youth. The following information provides some specific materials to assist in understanding the YCJ system.

*What to expect when you attend youth criminal court?*

First and foremost, anticipate having to wait. Everything in criminal court takes longer than you expect, and processes must be followed correctly. Secondly, every courthouse operates at least a little bit different logistically.

It is important to make yourself known to the Crown or Duty Counsel or your client's lawyer. This will help the process move forward. However, do not interrupt the court proceeding. This should be done on break or in the hall.

The Court docket (list of matters that the court will address for the day) will have multiple matters on it. Typically, the docket is posted outside of youth court or on a bulletin board near the entrance of the courthouse. The docket is posted with only the initials of the youth. Matters will be dealt with in the order of those ready to proceed with most senior defence counsel first, to most junior counsel, then articling students, then duty counsel and lastly self-represented individuals.

Don't be intimidated or embarrassed! It is very important that the youth have their guardian in court. They need support. If they have been in custody they may not have had the ability to contact anyone and they may see you as their only lifeline.

### **Advocating for Youth**

The CAS worker should be the youth's strongest advocate in court, despite the alleged actions of the youth. Agencies need to be structurally designed to allow the worker to be the young person's advocate. The worker's role is to advocate to the courts for the youth's rights and well-being. Ask questions and raise concerns about the process. Ways to advocate:

- Youth should never be held in custody awaiting bail because of no placement availability. It is the worker's responsibility to advocate to their Resource Department/Agency to find a suitable placement for the youth to ensure that bail is received in a timely manner
- If the primary worker is unable to attend court to support a youth's bail, arrange for an alternate worker, preferably one who knows the youth.
- Youth also don't want to have to tell their story over and over again, as it is retraumatizing. When the primary worker is recording the youth's past they should create a version with the youth that highlights the important points for the replacement workers to know. It should only have as much information as the youth wants shared.
- Avoid postponing bail hearings. Youth with histories of trauma have an increasingly significant chance of continued retraumatization for every extra day they spend in custody. Workers must prioritize youth in custody.
- Workers should use caution in sharing information with the Crown attorney and to be mindful not describe the youth in a negative manner; the Crown as they may use this information to form an inaccurate judgement of the youth. This is also true for a coverage worker or other stakeholders.
- If a youth is in closed-custody when attending court, the worker may ask defence counsel or duty counsel for assistance in meeting with the youth in cells prior to their appearance in court

- Discuss placement options with the youth in advance when release is anticipated
- Provide advocate from the young person's community (i.e. African Canadian, Indigenous Community member)
- Custody should **not** be a consideration as an option for placement for youth. It is not a "safe" bed. It is not only contrary to s.29 of the *YCJA*, it is detrimental to the youth's wellbeing no matter the alternative
- Recognize and explore anxiety of youth and how it may differ based on identity; use clinical analysis (i.e. what might be the experience of an African Canadian male in custody)
- Given that child welfares have a practice of not acting as a surety for youth in care, the procedure for advocating for bail for any CAS involved youth under a Voluntary Youth Services Agreement (VYSA) is the same even though CAS is not the youth' official guardian.

## Court Roles

### Crown Attorney (Prosecutor)

- In charge of proving to the court that all elements of the allegations are true.
- Suppose to serve justice at large not just win the case
- it is important not to discuss substantive information with the Crown unless the youth's Defence Counsel has approved.
- They are usually very busy and have many different cases to speak about per day.
- They will often have only looked at the file on the day of court, sometimes moments before speaking to it. They are relying on the notes of other Crown Prosecutors from previous occasions.

### Duty Counsel

- There is a Duty Counsel in all bail and set date courts.
- They are there to provide legal advice to any youth that is not yet represented by a Defence Counsel.
- They can run a bail hearing, but they are not allowed to run a trial.
- Their duty unlike the Crown's is strictly to the youth. They are a safer person to propose questions to.
- They are also very busy, as they will be speaking to all matters. But it is their job to make sure all unrepresented youth are fully informed of their rights.

### Defence Counsel

- Youth should preferably have their own lawyer
- It is not sufficient that a youth have any lawyer, the lawyer should specialize in, or at least have a specific understanding of, youth matters
- Ask other professionals who have court experience (other CAS workers, court stakeholders) for suggestions

- Get multiple opinions, do not just select the first lawyer suggested to you or blindly pick from a list
- Interview the lawyer, ask informed question based on this guide
- Judge the lawyer based on their engagement on the issues, their interest in your youth and their knowledge of cross-over youth issues
- If another one of your youth has had a lawyer in the past do not just use the same lawyer unless they were a strong advocate and achieved a client centred result in a timely manner
- Legal Aid is close to finalizing a special empanelment for lawyers that handle youth matters - once that is finalized only empaneled lawyers should represent your youth
- The defence council's only obligation is to the youth.
- Information discussed between them is protected by solicitor/client privilege. They cannot relay any information unless explicitly directed to by their client.
- They will take the lead in navigating the matter through the court.
- However, they may rely on the youth's worker for some information gathering and planning outside their capacity
- African Canadian youth should get assistance from lawyers in their community when possible (i.e. Black Legal Aid Clinic)

#### Justice of the Peace

- They sit in bail court and set date court in most jurisdictions (though not universally, especially in youth court).
- They are not necessarily former lawyers.
- They control the court process but may defer to the Crown or Defence counsel in some instances.
- JP's are recognized by the green sash they wear in court
- They must be referred to as "Your Worship"
- You must stand when they enter and exit the court
- You must bow and look at them when you are exiting the court

#### Judges

- They hear all other court matters
- They are formerly lawyers from a variety of backgrounds.
- They control the court process but may defer to the Crown or Defence counsel in some instances.
- A Judge will wear a red sash
- They must be referred to as "Your Honour"
- You must stand when they enter and exit the court

- You must bow and look at them when you are exiting the court

#### Legal Aid Worker

- Not all courthouses have a legal aid worker
- Their role may differ between courthouses, however, they provide youth with legal aid certificates or information on how to obtain a certificate and the process to choosing a lawyer
- They sometime assist duty counsel with administrative work

#### Mental Health Court Worker

- Not all courthouses have mental health court workers
- They connect youth to mental health services
- If there is a mental health court - they will assist in running it
- They will assist with s.34 reports

#### Indigenous Court Worker

- Not all courthouses have mental health court workers
- They connect youth to cultural services if they self-identify as indigenous
- They will assist with *Gladue* court, *Gladue* reports and restorative justice

#### Probation

- If the youth is sentenced to an out of custody sentence that includes probation the youth must check in with the court probation worker before they leave court
- The Probation court worker will connect them with the Probation officer that will supervise them

### **How charges move through the court system**

#### 1. Police Diversion (Extrajudicial Measures)

- a. If a youth is detained, the first option for an officer through formal or informal means is to choose to exercise their discretion and NOT charge the youth. If you have the opportunity to speak with the officer during this process (either the officer or the youth calls you) ADVOCATE for this option.
  - i. In some circumstances this option may not be available (the charges are too serious, or the youth's record is too long), however, there is absolutely no penalty for trying.
- b. Formal diversion (where available) is when a program is offered by the Officer as a way to resolve the youth's charges without a charge. Usually, the youth must take responsibility for their actions and complete some programming. When the Officer has confirmation, they will formally close the file on the matter.
- c. Officers are obligated to notify the parent/guardian if they are choosing to forgo diversion and charge instead
  - i. Ask what the youth's charges are. Depending on the charge, officers have discretion whether to release the youth on a promise to appear or hold them in custody for a show cause hearing. The more minor the charge the more likely they will be released on a promise to appear.

- ii. The one exception to that rule is for breaches. Most officers will detain a youth in custody no matter how minor the infraction if it is a breach of a release condition.
- iii. If the youth is being held in custody, ask where and when their bail hearing will be and which courthouse and courtroom.

## 2. Show Cause/Bail Hearing

- a. If the police choose to charge, the youth may be detained in custody. If they are in custody, they must be brought before a Judge or Justice of the Peace within 24 hours. Ask the police for information on which court the youth will appear.
- b. At that hearing the Crown Prosecutor will either make an agreement to release them or have a contested bail hearing.
- c. If a bail hearing is required, it can either be run right away or the matter can be adjourned to another day to give more time to develop a plan for release.
- d. Plans for release need to convince the court that the youth will show up to all their subsequent court dates, that they are unlikely to commit new offences and reasonable members of public wouldn't be offended by the release.
- e. If there is a hearing and bail is denied. In the youth system it is possible to appeal the decision of a Justice of the Peace to an Ontario Court of Justice Judge within a couple of days.
- f. WASH Court – Weekend and Statutory Holiday court will be used if the youth will have a bail hearing on a weekend; confirm which court will be used for this hearing, it can often be a different courthouse than typical youth criminal court.

## 3. Set Date

- a. Cases take a long time to work their way through the system. Rarely is a Crown ready on the first return date after a bail hearing to run the trial.
- b. A case will usually be adjourned at about 4-week intervals at a time. This allows the Court to get updates on what is going on.
- c. Usually the first couple of adjournments are related to whether the court has provided disclosure (the Crown is obligated to provide all the material they have related to the case to the defence before the trial).
- d. During that time, the Crown and Defence Counsel will have a Crown Pre-trial, which is a negotiation to determine whether it can be resolved without a trial.
- e. If nothing can be resolved, then a Judicial Pre-trial is next. This is both a negotiation for resolution guided by a Judge, as well as a planning conference for the eventual trial if there is no resolution. This usually takes a couple months to schedule depending on if the youth was released on bail.
- f. If no deal is reached, then a trial date is set. In adult court, a recent Supreme Court decision held that the longest a case could be before the court without a trial starting was 18 months (without Defence delay). Youth matters should resolve more quickly. The Ontario Court of Appeal decision before the most recent Supreme Court decision held that the upper ceiling for youth is 12 to 15 months. This is an approximate guide of how long a matter could take to resolve.

## 4. Diversion (Extrajudicial Sanctions)

- a. Is when is a program offered by the Crown as a way to resolve the youth's charges without a finding of guilt or time in custody. Usually, the youth must take responsibility for their actions and complete some

programming. When the Crown has confirmation, they will formally withdraw the youth's charge.

- b. In some instances the Crown will require the youth enter into a Peace Bond to withdraw the charge(s). A Peace Bond is a binding court order not to engage in certain activity as specified in the order. If the youth has entered into a Peace Bond, the record is sealed and may not be accessed if in a child welfare proceeding
- c. Informal diversion, sometimes referred to a Crown Diversion is similar to formal diversion except the youth doesn't need to fill out any paperwork and enter an actual program. The Crown will just set a requirement, like complete some volunteer hours. Once the Crown has proof of completion the charge will be withdrawn.
- d. Mental Health Court diversion is offered to youth that are either have a mental health diagnosis or are struggling with mental health issues. Not all courthouses offer mental health diversion, so you may want to ask defence counsel or duty counsel.
- e. Indigenous Court diversion is offered to all youth that identity as Indigenous. Not all courthouses offer Indigenous court so best to ask.

#### 5. Guilty Plea

- a. If and only if the youth admits to every part of the offence the youth may plead guilty before setting a trial.
- b. The Crown will often offer somewhat favourable terms to avoid using up court resources.
- c. It is important to ensure that Duty Counsel or Defence Counsel has explained in an understandable manner the consequences of a guilty plea.
- d. Any uninformed guilty plea is invalid.

#### 6. Sentencing

- a. Sentencing may happen on the same day as the guilty plea but often it occurs on a separate day. This allows the youth time to prepare for a possible custodial sentence and for supporting material to be prepared.
- b. It is important to assist in preparing sympathetic material to use in sentencing. CAS is often the gatekeeper of much of the background context of the youth's experiences.
- c. Abuse, disabilities and conditions, attachment issues, displacement and adversity are all potentially mitigating factors.
- d. It is important to get the necessary consents and share that information with the youth's Defence Counsel.
- e. Letters of support, outlining any productive contributions to society are also helpful.
- f. This is the stage for counsel to make submissions about historical trauma to Afro-Caribbean Canadian, indigenous and other colonized peoples if the youth's background fits that description. The Courts have struggled to fully appreciate these factors, so if you have materials that can assist please provide them to defence counsel.

#### 7. Motion

- a. If the matter is going to trial, there may be interim motion dates.
- b. They can be on a range of topics that need to be settled before the trial starts.

- c. In some instances, the result of the motion will determine whether the matter goes to trial or not.
- d. Consult with Defence Counsel if there is any material that is needed to assist with preparation.

## 8. Trial

- a. A trial requires preparation. Trials are usually set for at least a few months in the future unless the youth is in custody.
- b. It is important that the youth have transportation arranged to meet their lawyer. A trial cannot take place unless there has been adequate time to prepare.
- c. It is important that the youth take the prospect of a trial very seriously. All trials focus on detail. It is important that they focus on the details of their case

### **Legal Aid Certificates**

Most youth in the child welfare system will qualify for legal aid based on their financial circumstances. However, Legal Aid Ontario may deny the youth a certificate if the charges are unlikely to result in time in custody. It is important to challenge this determination and seek legal aid for youth in care.

A Judge can make a section 25 order which requires Legal Aid Ontario to issue a certificate. Many Youth Court Judges will be sympathetic to the consequences of not having legal representation and make the order. Once the youth has the order, request that the duty counsel complete the application.

### **Choosing Legal Counsel**

It is important to guide youth to choosing counsel that has familiarity with youth justice and the YCJA. Youth justice is very different from the adult system. Even if a lawyer has a lot of seniority and experience with adult criminal defence does not mean they understand the youth system.

If possible, it is ideal for the youth to choose counsel that has familiarity with the experience and issues for cross-over youth. The complexity of being in care and having charges requires understanding, time, patience and an understanding of the youth's identity. Legal counsel may not be compensated for all their time with the youth. If the youth is not a priority they will likely be underserved.

Choosing the first lawyer on the list provided by duty counsel or a lawyer that happens to be available in court is not the best strategy for retaining a properly qualified lawyer. Access lawyers that may have same language of youth and cultural understanding. Consider option of lawyer with an identity that may be important to the youth (i.e. LGBTQ2S+ identity).

### **Two-Hatter OCL/Defence**

It is helpful if a cross-over youth has a criminal defence and child welfare counsel that understands both systems. Ideally, the same lawyer would represent them in both proceedings. If that is not possible, ensure that both counsel have a chance to coordinate. While they are separate proceedings, there will be overlapping information, a youth is only adequately represented if their counsels are fully informed.



## **Custody Facilities**

### ***Open Detention***

- They are typically homes in the community that resemble group homes.
- You are allowed to call a youth and visit with them, but call ahead to notify them of your attendance.
- Typically, youth under the age of 15 are placed in open detention, unless the youth has a record of fleeing custody/detention or is charged with a serious offence.
- Youth are only allowed out with open custody/detention staff. The Facility Provincial Director will determine if a youth is placed in open or closed detention.
- You can call to advocate for a youth to be placed in open detention, but you may not always be successful.

### ***Closed/Secure Detention***

- Youth are held in closed/secure detention if there are concerns for their behavior, have serious charges against them or have a criminal record. You are allowed to call a youth in secure detention, but your information will need to be verified and once you are approved, you are put on the youth's approved contact list
- You are allowed to visit the youth, but you need to schedule your visit with 24-hour notice and will need to provide picture ID
- When a youth is first placed in closed detention, there is an intake/assessment interview to determine which unit the youth should be placed in.
- The youth will be assigned a social worker if it is available, it is best to speak to them about the youth's needs and scheduling appointments

## **Bail conditions**

Bail conditions are the terms on which a youth will be released from custody. Generally, it is important to advocate for the least restrictive bail possible. Cross-over youth do not respond well to highly restrictive structures and it will be a trigger for acting out. This will likely result in additional charges, time in court and potentially custody.

Bail conditions to AVOID or to ensure are worded in a manner that allows for the maximum discretion include:

- Non-association or non-contact (with co-accused or alleged victim)
- Curfew
- Reside
- Controlled Substances or Alcohol
- Rules of the Home/Institution

Refer to the attached bail conditions recommendations **Appendix C** for a detailed list of bail conditions to advocate against. Suggested alternative wording is also provided.

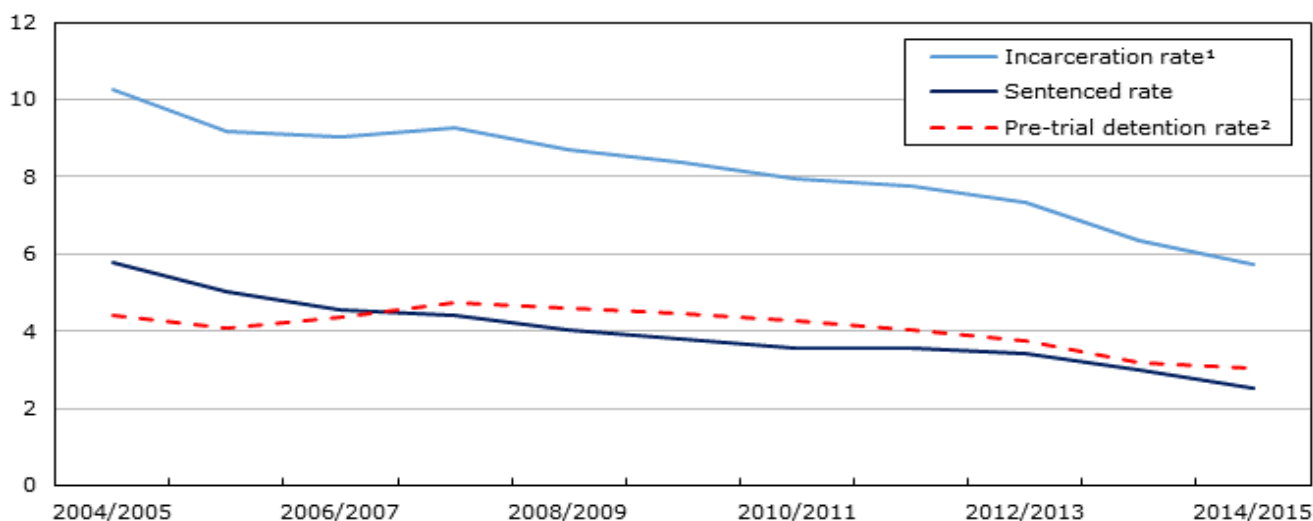
## Pre-trial detention

Pre-trial detention is when a youth is held in custody for over 24 hours awaiting their bail hearing. Pre-trial detention is one of the most serious issues facing cross-over youth as the rates of a custodial sentence upon a finding of guilt have declined propitiously.

**Chart 1**

**Youth in custody, eleven jurisdictions, 2004/2005 to 2014/2015**

rate per 10,000 youth population



1. Incarceration rate includes sentenced custody, pre-trial detention and Provincial Director remand.

2. Pre-trial detention is to hold a young person temporarily in custody, while awaiting trial or sentencing. It is equivalent to remand for adults.

**Note:** The average rate of youth in custody at the provincial and territorial level exclude Quebec and Alberta due to the unavailability of data for part of the period covered. Rates are calculated per 10,000 youth population (12 to 17 years old) using revised July 1st population estimates from Statistics Canada, Demography Division. Rates may not match those previously published in other reports.

**Source:** Statistics Canada, Canadian Centre for Justice Statistics, Youth Corrections Key Indicator Report, 2014/2015.

In youth bail court, it is important to come to court on the first appearance. It is important not to allow youth to have their matters adjourned while in custody without a good reason. Generally, in the youth system the youth will likely be granted bail. The Crown will often consent to release. Even if the Crown does not consent generally, in the youth system the youth will likely be granted bail. This is different from the adult system. There are many combinations of charges that would cause a contested hearing in adult bail court that will be a consent release in youth court. Some lawyers will have much more experience with the adult system and may forget that different standards apply to their youth clients. One study found the consent release rate in Toronto youth court was 70 percent.<sup>10</sup> This study was conducted before the recent changes that loosened the requirements for bail. So, the percentage is likely even higher now.

Consider politely challenging any adjournments while the youth remains in custody, even for a day or two. Pre-trial custody is traumatizing, and youth should be held there no longer than is required.

<sup>10</sup> Varma, K.N. (2002). Exploring 'youth' in court: An analysis of decision-making in youth court bail hearings. Canadian Journal of Criminology, 44, 143-164 [http://www.justice.gc.ca/eng/rp-pr/cj-jp/yj-jj/moyer\\_basic/decision/p5.html](http://www.justice.gc.ca/eng/rp-pr/cj-jp/yj-jj/moyer_basic/decision/p5.html)

## **Testifying in Criminal Court re: Bail Plan**

Generally, youth who are in care are released on their own recognizance. Considering *R. v. Antic*, 2017 SCC 27, [2017] 1 S.C.R. 509 having a surety is less important for a successful bail. A worker can still contribute to a successful release by testifying to the bail plan. It helps for the Justice of the Peace to hear directly from those involved in constructing the plan.

Testifying should only be done at the request of counsel for the accused and should only be undertaken if you plan to support the youth's release. Testifying in court can be an unnerving and difficult experience. Strategically, Crown Attorney's will try to manipulate your words and make you say more than you intended. However, once you understand it is just a strategy you can protect against it.

Do not volunteer more information than the question requires. Do not offer opinions. Take your time. Ask for any question you do not understand to be repeated or rephrase. There is no shame in replying, "I don't know" if you genuinely do not have any idea.

Attend court prepared with information about the youth and placement options. The more information on the placement location, rules and policies the better. Child welfare agencies can support positive outcomes for African Canadian children and youth in care by placing them with kin as the first option and African Canadian families as the second option, as well as by ensuring caregivers are well trained, supported, and able to support the development of a strong and positive racial identity and the maintenance of cultural connections.<sup>11</sup>

## **Two-Hatter Judges**

A two-hatter judge is not always possible. In some jurisdictions, child protection matters are heard in the Superior Court and youth justice matters are heard in the Ontario Court of Justice. In other jurisdictions, they are both heard in the Ontario Court of Justice. That information can be easily determined at the courthouse. Even if the jurisdiction hears both matters in the same court, the same Judge may not be scheduled to hear both matters.

The purpose of two-hatter judges is for the judge to understand the context of the matter they are hearing. Ask the youth's counsel to encourage a dialogue between the judges if there are separate judges hearing the matters.

## **Cross-Sectoral Conferencing (Section 19, Informal Conferences)**

Conferencing is at the core of COY's philosophy. One of the best hurdles for long term success for cross-over youth is a lack of cross-sectoral communication. Each agency is "siloed" and often the different stakeholders are not sufficiently read into what others are doing. These cases require everyone to be working in the same direction. Conferencing offers the venue to check in with each other to ensure that is happening. It is, however, important that stakeholders bring productive attitudes and outlooks to these conferences to be effective. Without a foundation of youth centering, anti-oppressive practices and a trauma-informed lens conferences can easily be misused. Cross-sectoral conferencing takes many forms. Scheduling these conferences can sometimes be a challenging and time-consuming aspect of the process.

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<sup>11</sup> One Vision One Voice. Changing the Ontario Child Welfare System to Better Serve African Canadians. Practice Framework Part 2: Race Equity Practices. OACAS: September 2016.

### *Informal Conference*

The facilitator of the conference may call an informal conference with a few stakeholders at any time. This is usually done to gather information or prepare the stakeholder for the conference. Be open to allowing the facilitator to guide the conference. This can happen anywhere at any time, although usually these conferences occur when stakeholders are already required to attend a location like the courthouse. A CAS worker can also initiate a conference for a service plan or a release plan.

### *Formal Conference (out of court)*

A case conference is primarily a planning conference for the youth. The aim of this is to reduce the judicial interactions for the youth. The only way to have a successful conference is if the youth's voice is centered. That means listening to what they have to say. It should not be a process to convince the youth that you as the worker know best and would be better off if they listen to you. The space should be given to the youth to feel comfortable. Stakeholders should assist by brainstorming ways to logistically achieve what the youth is expressing in a reasonable manner.

It can be challenging to schedule all the different professional stakeholders. It will require time to be scheduled for the conference and to be as flexible as possible. It is also unreasonable to expect the youth to travel long distances to make the conferences. Professionals should use their resources to meet the youth where they are. If not, it is unlikely the youth will attend, and this will be frustrating for all involved.

### *Formal Conference (in court)*

A Section 19 conference can be ordered by the Judge and is a judicially-led conference. Individuals can be called to court to attend. It is important to give some deference to the judge and counsel. They will determine who is invited to the formal conference. At a s.19 conference, the judge and the lawyers may speak first in private. Then they may open to a larger conference. If that occurs it will be important to be an advocate for the youth. Remind all the stakeholders that the conference will be most successful if the youth's voice is centered.

It is also important that each stakeholder or service provider follow through with anything they undertake to do in the conference. The consequences of a failure to uphold commitments should not be borne by the youth.

Refer to Model Flow of Case Conference – **Appendix D** – and One Vision, One Voice: Conference Guidelines

## **CAS Role in Court Process**

### **Working with Defence**

Defence counsels, like CAS workers, have many competing demands on their time. Defence counsel may not make a youth client their top priority, as they are less likely than other clients to face significant time in custody. Like many other stakeholders, criminal lawyers are also often careening from crisis to crisis experienced by their clients. It is essential that counsel be aware that early intervention with youth is paramount and this should be firmly reinforced. Matters should not be allowed to drag on without good reason. Check with the counsel if they will be attending each court hearing with the youth. If they do not attend court and cannot provide a sufficient

reason and the steps they took to ensure everything was covered and communicated you should meet with the legal aid representative about getting a certificate waiver to switch counsel.

Counsel should explain their defence strategy to you and the youth as their guardian. They should explain what they are planning in simplistic and comprehensive terms. They are required by the Law Society to communicate clearly with their client. As an advocate for your youth, ask questions as counsel is required to answer them.

### **Court Attendance**

In youth matters, a guardian must always be present in court. A CAS representative is required to attend all court appearances for their youth. Identify yourself to either defence counsel or duty counsel so the court knows the youth's guardian is in attendance.

Defence counsel are required to be in court for an appearance unless they have indicated ahead of time that they have sent instructions to duty counsel. It is important that the youth have time to speak with counsel in person about their charges and to review disclosure. Schedule that time with defence counsel. Be persistent. Counsel must make time to review disclosure with their client. The youth must know what evidence the Crown has against them to make an informed decision. This is very serious. If the youth's counsel does not take their responsibilities seriously, it is ineffective assistance of counsel and a violation of their duty to their client.

Assist the youth to get to any appointments with their counsel. It is unlikely that a defence lawyer will meet the youth where they are (though they should). So, suggest that your youth and their counsel use the time productively at court when they see each other to review material and get a fulsome update of what is going on in their case.

There may be some appearances that will be quick adjournments that don't require either the youth or their guardian to be there. Remember to check with defence counsel if you are required to be there on each occasion. It is unproductive to sit through a court list if nothing meaningful is happening in the matter. If the youth is in a school or other program and do not necessarily need to attend court, explore with defence counsel if the youth could sign a designation so they are not required to attend court. Section 650 of the Criminal Code allows the youth to formally designate their lawyer as counsel for a particular matter. In practical terms, it means the youth doesn't have to show up to set date appearances. As a matter of preference some defence counsel don't use these often and prefer to save them for cash clients. You should push the youth's counsel to make it easier on the youth and provide this service to their client.

### **Existing Probation Order**

If there is an existing probation order it is worthwhile to coordinate with the youth's probation officer. The probation officer will often have more information than defence counsel as to how compliance with the probation order has been.

The probation order paperwork will likely be in court. There is no need to coordinate with Crown counsel as they will likely have read it. On the rare occasion the court is unaware of a probation order, inform the court if there are any conflicting conditions.

## Section 34 Assessments

A section 34 report is a medical, psychological and/or psychiatric report ordered by the court. It is to be conducted by a qualified expert. In order for the assessment to be useful, the process requires an extraordinary invasion of a youth's privacy. The youth is questioned about intimate details and observations are made about deeply ingrained behaviours. The information contained in a section 34 is sensitive. A section 34 report has an even higher privacy standard attached to it than the rest of the *YCJA* records. These reports are marked confidential. They can only be distributed with an order from the court.

Please follow agency practices when handling these very sensitive materials.

Refer to Confidentiality and Section 34 reports – **Appendix E** - for information on privacy for youth records.

## Gladue

Aboriginal youth are 7 percent of the youth population but 47 (male) and 60 (female) percent of admissions into the correctional services in Canada. They are thus vastly overrepresented in the youth criminal justice system, a legacy which courts recognize is intimately connected to colonialism.

In 1996, in an attempt to address the crisis of the over-representation of Indigenous people in the criminal justice system, Parliament enacted s. 718.2(e) within the *Criminal Code*, and section 38(2)(d) of the *YCJA*, a new sentencing principle which required courts to consider all available sanctions available, with particular attention given to the circumstances of Aboriginal people/youth. In *R v. Gladue* (1999) and *R v. Ipeelee* (2012), the Supreme Court of Canada provided that s. 718.2(e) requires courts to consider

- 1) The systemic and unique background factors that may have played a part in bringing the particular Indigenous offender before the court which, if present, can diminish the moral blameworthiness of the offender in relation to the offence committed; and
- 2) The types of sentencing procedures and sanctions which may be appropriate in the circumstances for the offender because of their particular Indigenous heritage or connection, which addresses the efficacy of the sentence itself.

Since at least 2004, courts have recognized that *Gladue* extends beyond the sentencing process and also applies at the bail stage. Lawyers, however, are finding that the *Gladue*'s application at bail is resulting in stricter conditions of release (i.e. requirement of a surety; restrictive and numerous conditions).

*Gladue* applies to all Indigenous youth – First Nations, Inuit, and Métis, with or without status. In *Gladue*, *Ipeelee* and subsequent case law, the SCC has recognized that overrepresentation of Indigenous people in the criminal justice system is one of many legacies intimately tied to colonialism. More bluntly, this legacy is tied to the role that governments in Canada played in imposing laws and policies on Indigenous people to eradicate them and their cultures within what is now known as Canada.

The application of *Gladue* principles is mandatory when the person before the court self-identifies as Aboriginal/Indigenous. Significantly, the SCC has provided that Counsel (including Crowns) have a duty to bring information relevant to *Gladue* before the courts.

Self-identification as Indigenous, however, does not automatically mean a sentence reduction – though the offender does not need to draw a causal link between the particular offence they are charged with and background factors associated with the legacy of colonialism, the factors are only relevant to the adjustment of an appropriate sentence insofar as they diminish the moral blameworthiness of the offender.

*Gladue* court or Indigenous Peoples Court is a courtroom process separate from other court processes, which are staffed by specialized counsel and judges who are well-positioned to understand and apply *Gladue* accurately. Gladue Reports – one tool to assist the court in understanding the Indigenous youth’s personal background and how it relates to their presence in court and which may diminish their moral blameworthiness with respect to the particular offence – can be prepared by Gladue Writers. Though courts are required to consider *Gladue* factors when an Indigenous accused or offender is before the court, the Indigenous person (or the court) does not have a right to Gladue Report.

Gladue Reports can be requested by the Crown, defence counsel or the court, but ultimately the decision to prepare a report is at the discretion of the service provider – these decisions are based on need, proposed sentence and available resources.

The *Gladue* court sentencing process may be structured as a ‘sentencing circle’ and can include the participation and input of Indigenous Elders. The sentencing circle is meant to symbolize the ‘circle of care’, foster the self-worth of the Indigenous youth and establish non-hierarchical relationships between Indigenous youth and the justice system participants (which can include Indigenous Elders in many cases). During this process, the opportunity for input by relevant justice system actors (including Indigenous Elders) is welcomed by the court. In aiming to create a sentencing process that connects the Indigenous youth with resources that can assist them and facilitate accountability, the process is different from – and can be more meaningful than – “regular” court, contributing to the overall justice system goal of reducing recidivism.

### Best Practice for Placement Considerations

Youth in care can find themselves with additional charges or sometimes their first charge because of interactions in their placement. Of concern is the number of additional administrative breach charges that cross-over youth in group home settings incur. When finding a placement for a youth, it is critical that group home staff and/or foster parents understand the issues cross-over youth face and that youth are matched with caregivers who can respond to any behavior constructively and work to understand the needs behind the behavior. Wherever and whenever possible, include youth in the decisions around where and who they will live with and provide them with the opportunity for pre-placement visits.

Youth should be matched to the best possible placement racially, culturally, socially and developmentally. Placements must respect and support each youth’s culture, race, identity and circumstance. Review the One Vision One Voice Framework on Race and Equity Practices that suggest placement with kin, training and resources for kin and adoptive families and workers, training related to understanding LGBTQ youth.<sup>12</sup> Review your agencies guidelines on placing youth. Explore internalized oppression for youth who may not want same identity placements. Make efforts to find placements that will match the youth’s needs.

At the time of placement, the worker plays an important role in helping to amplify the youth’s voice. Workers and resource parents should have opportunities to develop skills to assist youth in amplifying the voice of youth. When a youth moves to a new placement or is moving to a group home or foster home for the first time, the worker should facilitate an open discussion between the youth and the caregiver where the youth is given the opportunity to talk about what they need from the adults caring for them, what is helpful when and if there is a crisis or they become upset and what they know is *not* helpful.

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<sup>12</sup> One Vision One Voice. Changing the Ontario Child Welfare System to Better Serve African Canadians. Practice Framework Part 2: Race Equity Practices. OCAS: September 2016. Pg. 19.

The caregiver should be asked to share with the youth and worker information about how they will parent them, what their expectations are, how they resolve issues and, what if any role police play in this. The worker should be involved wherever possible in any decisions to involve police, to advocate on the youth's behalf. Workers should highlight for caregivers any potential barriers that youth may face in accessing equitable treatment should they encounter police or the justice system while in the placement (for example, ensuring that a racialized youth be given equitable access to a diversion) and discuss how the adults can advocate for the youth.

Also, at the time of placement, any existing bail conditions should be discussed to ensure that everyone has the same understanding of what is needed to meet the conditions and under what circumstances the police or probation would be notified if conditions are not being met. If a youth is incurring multiple breach charges while in a placement, this should be seen by the adults as an indication that we are in some way not meeting this youth's needs or that the conditions set out are not in keeping with the youth's best interest - please refer to best practice document for bail conditions, Appendix C.

The worker and youth should review with caregivers at the time of placement their specific practices regarding when a youth has left their home without permission or if staff or foster parents do not know where the youth is. Options for how to respond should be discussed that do not involve contacting the police to prevent any unnecessary contact with the youth criminal justice system. These discussions should promote knowledge and opportunities for de-escalation of issues.

Throughout the youth's time in care, there should be an ongoing process of collaborative planning between the youth, worker and the placement.

### Best Practices Educational Considerations

The impact for youth in care involved with the criminal justice system is significant for outcomes in education. An essential role for workers is to advocate on behalf of youth on these issues. These considerations include:

- Change in school for orders due to no contact order or new placement requirements; translates into loss of attending sports and other events including graduation
- Time spent having to appear in court may put their work requirements behind
- Negative responses from peers who hear about the charges (name calling, not wanting to associate, etc.)
- Depending on the charges, if they are related to activities in or around school, this may involve suspensions, so despite whatever happens in the criminal matter, the record of suspension remains in the Ontario School Record
- Youth face discrimination based on racial identities; high rate of drop-out for Afro-Caribbean Canadian and Latino youth has been noted in some agencies;
- Most of our youth with criminal charges usually live on their own without family support; they often require adult support outside of CAS to help advocate and support them
- Some youth experience labelling by school boards due to information in their psychological reports; schools may not understand the trauma of the youth's history
- High percentage of youth are not given the opportunity or feel they will not be able to pursue high school or post-secondary education



- Youth are often placed in section classes in community school or group home classrooms and find themselves further segregated from other school community experiences
- When youth have multiple court appearances and some charges are in various jurisdictions, a full day may be lost to attending court. Staff are trying to encourage youth to stay in school and not breach, but it is a set up when they miss many days due to court appearances from school. Example: a youth may have charges in 4-5 jurisdictions and if they have moved placements a few hours away, they can often miss up to five days of school. If a youth started late or into mid-term they are already behind academically

#### **Recommendations to support education:**

- Review Bail conditions
- Provide accommodation for missed work
- Address education planning in any conferences scheduled for the youth, including court conferencing
- Connecting with school and guidance staff to address youth's needs
- Consider alternative school programs
- Advocate for school program that best suits the youth's educational need – regularly review appropriateness of program and aim high
- Check your agency educational protocols if your agency has one
- Youth living on their own also require CAS support – attend court on behalf of all youth involved in the YCJS
- Support to minimize number of court appearances by working through their lawyer to speak on their behalf i.e.: merging charges, appearing on their behalf while they are attending school
- Ensure educational needs are included in conferencing

#### **Conclusion**

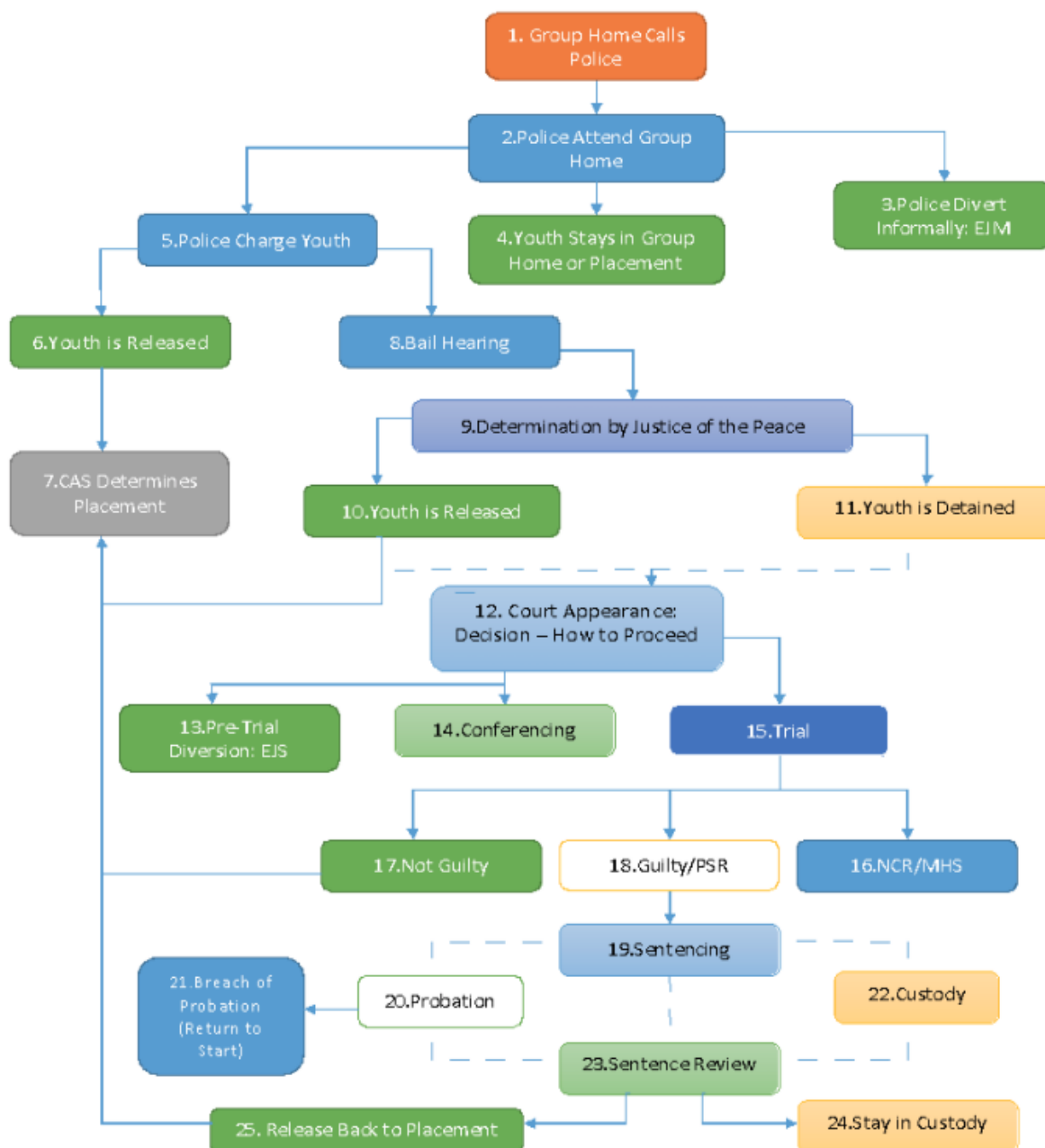
A youth's CAS worker is a very important figure in their life. They should be a continuous presence that help youth with histories of trauma navigate their new reality. Adjusting to a new environment, a new routine, a new chapter is a tremendously difficult thing. It is to be expected that some youth will act out as a result. Cross-over youth need understanding, they need patience, they need someone to listen.

A worker can be a powerful ally that helps guide a young person through the rough waters. To be an effective guide, a worker needs to be informed about the system and practiced in how to navigate it. Help your youth by staying current with the changes to the system and in your youth's life.



## Appendix A – Intersection Chart

### Intersection Points Highlighted by Project for Innovative Intervention:



## Appendix B – Trauma Informed Lens: Guideline for Practical Implementation

Trauma exposed youth are exponentially more likely to face criminal charges. This is a systemic problem that needs a system-wide approach to rectify it. The current system is inadequately addressing their needs.

### *COY Model*

1. **Awareness of trauma** - the service provider or stakeholder must recognize the role past trauma can play in current behaviour. They must understand and identify the symptoms of trauma and learn the most beneficial ways for young people to cope. Trauma-informed education and training is key to incorporating these concepts into practice.
2. **Relational Practice** - strong, healthy, trusting, therapeutic relationships are paramount to the healing process of trauma. Service providers must take the time to build their relationships with the youth in order to be influential in the youths healing. As the relationship builds so will the youth's capacity to form new relationships. Over time these healthy relationships can enable a youths to begin to counteract the effects of their trauma. An important foundation of support required with Crossover Youth is relationships with stakeholders. It is these significant relationships that can help build the blueprint so young people can achieve their potential. Relationships need to be about touch, talk, eye contact, listening, understanding and validating.
3. **Provide a place of safety** (physical, emotional, social and spiritual) - none of this work can begin without a safe space for the youth. The safe space is both about their environment and the metaphysical space in their mind. It is not ethical to begin working on their trauma without first providing them physical safety, as well as building up trust through relationships.
4. **Awareness of self/co-regulation** - service providers and stakeholders must have an awareness of their own responses. Self-awareness and self-regulation are vital skills for working with traumatized youth. It is important not to allow the trauma experienced (past and present) by service provider and stakeholders, both in their personal life and during their work experience, to negatively impact their responses to the youth.
5. **Restorative Thinking** – This is about restoring relationships – how can the victims heal, how can the offenders get support to be accountable to what they have done, and how does the community feel safe and supported. It is about moving forward for all those impacted. If we want to be trauma-informed we need to have a restorative view on situations. We can use this process as a form of healing. According to Howard Zehr, restorative justice is “a process to involve, to the extent possible, those who have a stake

in a specific offence and to collectively identify and address harms, needs and obligations, in order to heal and put things as right as possible.”<sup>13</sup>

### *Things to avoid*

It is important to remember that a trauma-informed practice lens does not mean a trauma-centered approach: “extensive and **detailed immersion** in [traumatic] material itself is **not encouraged**, because...this tactic is...destabilizing and counter-productive”

Victims of trauma report that service providers who did try to address their trauma, often asked for **too much detail** and encouraged expression of feelings when it wasn’t appropriate, and minimized the significance of the trauma in the client’s current life, which **unhelpful** in the recovery process.

It is important to **avoid perpetuating negative bias**. Many crossover youth who experienced primary trauma (the events that caused their removal from the home) have also experienced the by-products of historical trauma.

Services Providers should examine the use of “positive” “**common-sense**” **values** they may be **counterproductive** in cases of complex trauma. Examples of these values include demanding **respect**, assigned **personal responsibility**, **punishment**, **isolation** or **separation**.

### *Conclusion*

Healing is the restorative process of becoming healthy and whole. It is a central element in recovery. The COY model is designed to give youth the time, space and chances to work on restoring and healing themselves. As a service provider or stakeholder in the youth justice or child welfare system, it is your responsibility to play a role in helping a youth to a place of stability that will allow them the opportunity to achieve their potential.

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<sup>13</sup> Zehr, H. (2002). *The Little Book of Restorative Justice*. Intercourse: Good Books.

## Appendix C - Bail Conditions Recommendations

Through our casework the Crossover Youth Project has identified onerous bail conditions as a major obstacle to progress for crossover youth.

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.

Considerations of release must be organized by the ladder principle. Each rung of the ladder must be considered individually and must be rejected before moving to a more restrictive form of release. The guiding mantra of the ladder approach is that:

Release is *favoured* at the *earliest reasonable opportunity* and on the *least onerous grounds*.

A recognizance with sureties is one of the most onerous forms of release. A surety should not be imposed unless all the less onerous forms of release have been considered and rejected as inappropriate.

Joint proposals must be premised on the statutory criteria for detention and the legal framework for release.

### Recommended Bail Conditions

#### *Non-Association/Non-contact*

Many crossover youth have charges with one or more co-accused. It is standard practice to include a non-association/non-communication with the co-accused and/or the complainant clause in their release order. This condition causes several problems that are particularly discriminatory to these vulnerable youth. It can result in the youth being moved out of their residential placement or their school causing further disruption to their stability. Crossover youth are often co-accused with classmates, group home peers and trusted friends. This type of restriction can have an undue burden on crossover youth, as trusting relationships are often more difficult for them to form.

It is understandable that there are public safety concerns with regards to association with co-accused. However, it is our recommendation that exceptions can be crafted in appropriate circumstances to decrease the burden of this clause.\*

1. Exception for the purpose of the *Education Act*
2. Exception for the purpose of residential placement
3. Exception for the purpose of counseling and supervised extracurricular activities and programming
4. Exception under the supervision of a specified adult
5. Exception for a family court order (if appropriate)

*\*These expectations are now included in the forms Judicial Officers to consider when imposing release or probation conditions*

### *Reside*

Due to the tendency for Children's Aid Societies to have difficulty placing youth with YCJA charges, it is our strong position that, at a minimum, the reside condition should not indicate a specific address but instead read "as directed by CAS". It is also important to note how disruptive CAS placements can be in the life of a crossover youth. As a result of limited placement options, youth are often sent a considerable distance away from their home communities, separating them from their friends and support systems. Naturally, youth travel back to their home communities and do not return on time or at all and are subsequently considered AWOL by their placement – which results in another criminal charge. The safety and missing persons concerns of the CAS should not be criminalized. We recommend an approach to residency that is driven by the input of the youth so that, where possible, the youth should be released on their own recognizance with no court ordered directive as to where to reside.

### *Curfew*

It is our position that curfew can be set by the guardian or institution and thus it is not necessary to make curfew a formal condition of release. Those who want clarity in enforcement often desire curfews; however, by their nature, crossover youth often have complex cases with a high degree of nuance.

Like any teenager, crossover youth may find it difficult to meet a stringent curfew. However, while a parent or guardian is likely to provide some leniency to a youth missing curfew, crossover youth are more likely to be breached for missing a curfew. The homes that crossover youth are placed in, such as group homes, may have strict rules. Therefore, this condition may set up a crossover youth for a breach. Curfew should be left up to the judgment of the individuals who know the youth best, and in communication with the youth, and should not have criminal sanctions attached.

### *Controlled Substances and Alcohol*

Controlled substances and alcohol are illegal for minors to possess and so it is redundant to prohibit their possession or consumption as a condition of release. If there is a question of substance abuse issues it is our recommendation that a qualified professional determine the appropriate remedy. It is our recommendation that, at a minimum, conditions of release with regards to substance misuse counseling be drafted broadly to allow for maximum flexibility. Counseling is most effective when there is genuine buy-in from the youth, and so it would be our preference that there be no formal condition attach to a release order. In the alternative, it should be worded broadly, such as:

1. Take counseling as directed by the Children's Aid Society/Guardian

### *Rules of the Home/Institution*

It is understandable for a parent or guardian to feel that they have lost control of a youth if they are before the court. However, it is our position that, at a minimum, the court should refrain from using its power to

criminalize non-adherence to household rules. In *R. v. K.(R.)*, 2014 ONCJ 566, Justice of the Peace Cuthbertson found:

“...the condition ‘be amenable to the routine and discipline of the residence’ is vague and unnecessary. It is therefore, unreasonable and arbitrary.”

Para 28, *R. v. K.(R.)*, 2014 ONCJ 566 (CanLII)

Working from a trauma-informed perspective with an emphasis on the youth establishing a feeling of safety and trustworthiness, punishing youth who have experienced trauma for ‘breaking rules’ is not a helpful nor therapeutic approach to building capacity with a crossover youth. Providing guardians with criminal sanctions for not following household rules is unlikely to result in an increase in cooperation from the youth. Instead of this type of condition leading to more order, in practice it only leads to more criminal charges. Our shared goal should be to reduce criminal proceedings against crossover youth.

### *House arrest*

After the SCC ruling in *R. v. Antic* it seems unlikely that house arrest for a youth would be justifiable in many cases. However, in the rare case in which it could be justified on the secondary or tertiary ground the restriction should not interfere with pre-trial developmental endeavors. The condition should be worded to give allowances for professional assistance. The exception should be included every time house arrest is ordered even if it is not anticipated that the youth is in need of professional assistance at the time of release. The assessment that assistance is required can change at any time and should not be delayed until a variation can be organized and executed.

Remain in your residence at all times

EXCEPT

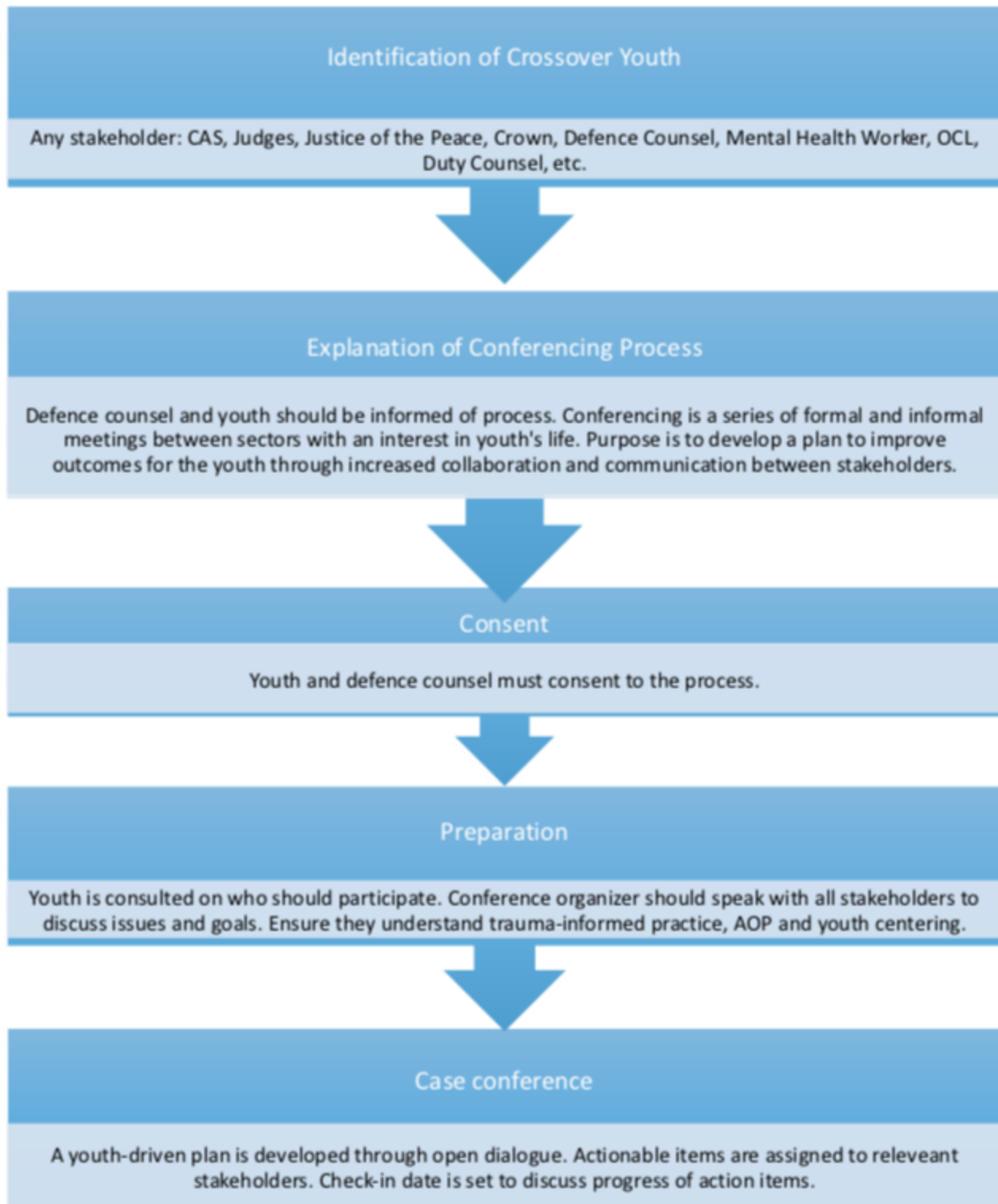
For the purpose of travelling directly to, from and while at counseling, programming or services, which have been arranged and directed in advance of departure by your court worker or surety.

### *Breaches*

It is our position that a counter-intuitive approach should be taken with youth who repeatedly breach their bail conditions. In our experience, cases with multiple breach charges are often a result of how the original conditions were drafted as well as the young person not being consulted. An administrative breach is a sign of the system failing to provide the youth the proper supports and the youth should not be punished for this failure. Enforcing multiple breach charges is not likely to impact the behaviour of the youth and will likely send them further along the path into the adult system.



## Appendix D – Model of a Case Conference Flow Chart



### Use of YCJA Records

There may be situations where a youth who is a candidate for child protection intervention has a pre-existing youth criminal justice record.

Young persons are not to be held to the same expectations of responsibility and moral blameworthiness as adults. Their records are not meant to follow them in the same way as for adults. The YCJA has provisions to protect records made in the course of YCJA proceedings. These records are meant, with a few exceptions, to stay private once the youth has reached the age of maturity.

“...privacy is worthy of constitutional protection because it is “grounded in man’s physical and moral autonomy”, is “essential for the well-being of the individual,” and is “at the heart of liberty in a modern state.” These considerations apply equally if not more strongly in the case of young persons.”

*A. B. v. Bragg Communications*, 2012 SCC 46 at para 18 [quoting from *Toronto Star Newspapers v. Ontario*, 2012 ONCJ 27]

“[young persons are entitled to] a higher expectation of privacy”

*R v K.M.* 2011 ONCA 252 at para 97

A trail to their record can be constructed unwittingly. When these records leave controlled YCJA proceedings and enter child protection proceedings there are less automatic procedural safeguards that ensure compliance with the privacy principles in the YCJA.

Protecting a youth does not just mean winning a protection hearing. Maintaining a youth’s privacy in YCJA matters can protect a youth’s future potential. It offers the best chance to foster the youth’s rehabilitative process.

### YCJA

118 (1) Except as authorized or required by this Act, no person shall be given access to a record kept under sections 114 to 116, and no information contained in it may be given to any person, where to do so would identify the young person to whom it relates as a young person dealt with under this Act.

### Jurisdiction

A superior court judge **does not** have the jurisdiction to order a youth record released. This is important for child protection proceedings occurring in unified family court. Only a youth justice court judge acting under the authority of the YCJA has the jurisdiction to grant access to records made under the Act.

“...Parliament in “clear and unambiguous terms” has placed the responsibility for determining access to records on the shoulders of the youth justice court judges.”

*S.L. v. N.B.*, 2005 CanLII 11391 (ON CA), para 54

### Statutory Access Period

S.119(2):

Extrajudicial sanction – 2 years

Acquitted – 3 months

Withdrawn – 2 months

Dismissed – 2 months

Reprimand – 2 months

Stay – 1 year

Absolute Discharge – 1 year

Conditional Discharge – 3 years

Summary Conviction – 3 years\*

Indictable Conviction – 5 years \*

\*Calculated from the end of the sentence imposed

### Record Keeping

It is illegal to breach a youth's privacy and keep a record detailing their criminal justice involvement past the permissible statutory access period without a s.123(1) order from a youth criminal justice judge. You are not allowed to keep any record with this information. This prohibition includes historical records; all reference to their criminal justice involvement must be redacted.

### Use

Section 129 of the YCJA:

“No person who is given access to a record or to whom information is disclosed under this Act shall disclose that information to any other person unless the disclosure is authorized under this Act.”

An example of a prohibited use:

A youth is convicted of a summary offence at 13 years old. They are sentenced to 6 months of custody. The youth has not been subsequently charged with any other offences. They are now 19 years old turning 20. They have a child and CAS is investigating with the possibility of apprehension of the newborn.

In that case, it would be impermissible for there to be any record of the youth's conviction in the CAS system. The investigator cannot rely on that information to advance their investigations or even allow the fact of the conviction to raise their suspicions.

Maintaining that record without a s.123(1) order is illegal and counter to the principles of privacy enshrined in the YCJA.

CAS employees should be mindful of what records they seek to have added to the court record before submitting documents. The use of an expired record is also impermissible in court and cannot be used as evidence. No inferences can be drawn and it should never be tendered. The privacy interests contained in the YCJA are based on the principle that individuals under 18 years of age should not be burdened with a public record of their criminal behaviour.

In family court proceedings when submissions are struck from the record a line is drawn through the middle of the information. This process is not as impenetrable as a redaction. It is often possible to discern what was originally written.

Caution should be exercised before the court proceedings to ensure the access period has not expired.

### Use of s.34 Assessments

Youth involved in the criminal justice system have a heightened expectation of privacy:

“...privacy is worthy of constitutional protection because it is “grounded in man’s physical and moral autonomy”, is “essential for the well-being of the individual,” and is “at the heart of liberty in a modern state.” These considerations apply equally if not more strongly in the case of young persons.”

*A. B. v. Bragg Communications*, 2012 SCC 46 at para 18 [quoting from *Toronto Star Newspapers v. Ontario*, 2012 ONCJ 27]

“[young persons are entitled to] a higher expectation of privacy”

*R v K.M.* 2011 ONCA 252 at para 97

### Section 34 of the YCJA

A section 34 assessment is a medical, psychological or psychiatric report ordered by the court. It is to be conducted by a qualified expert. In order for the assessment to be useful the process requires an extraordinary invasion of a youth’s privacy. The youth is questioned about intimate details and observations are made about deeply ingrained behaviours.

A youth also opens themselves up to legal jeopardy by participating. While section 147(1) limits the use of these reports, section 147(2) allows the report to be admissible in court in certain circumstances.

The information contained in a section 34 is sensitive. A section 34 report has an even higher privacy standard attached to it than the rest of the YCJA records.

“...particularly sensitive records such as medical reports are available only in limited circumstances to specifically identified persons or groups.”

*L.(S) v B. (N.)*, (2005), 195 C.C.C. (3d) 481 (C.A.) at para 24

These reports are marked confidential. However, many times the page marked confidential is ripped off or simply ignored. This is reckless and impermissible.

### People who can Access

Section 34(7)(a) allows the following people to access the report:

- (i) the young person;
- (ii) any parent of the young person who is in attendance at the proceedings against the young person;
- (iii) any counsel representing the young person; and
- (iv) the prosecutor.

This provision allows CAS access to the report if they are the legal guardians of the youth.

### Statutory Access Period

The access period for the s.34 report is found in s.119(2):

Extrajudicial sanction – 2 years

Acquitted – 3 months

Withdrawn – 2 months

Dismissed – 2 months

Reprimand – 2 months

Stay – 1 year

Absolute Discharge – 1 year

Conditional Discharge – 3 years

Summary Conviction – 3 years\*

Indictable Conviction – 5 years \*

\*Calculated from the end of the sentence imposed

### Use

A young person has access to their own report during the prescribed period, as would their legal guardian. However, it is illegal for them to distribute the report to anyone else without a court order.

Section 129 of the YCJA:

“No person who is given access to a record or to whom information is disclosed under this Act shall disclose that information to any other person unless the disclosure is authorized under this Act.”

Only a youth justice court judge can order a s. 34 report to be released. Any distribution of a section 34 without an order from a youth court judge is illegal.

Example:

Some s.34 assessments include a psycho-educational assessment. That portion can be used outside of a courtroom for special accommodation, in a school for example. It is important that if that portion of the assessment is used by the youth in that setting that it is separated from the rest of the report.

Out of the abundance of caution an order should be sought from a youth criminal court judge to distribute any section of the report.

### Things to Remember

1. This material is confidential
2. Only shared with an order from youth court judge
3. Authorized distribution should be done in most minimally invasive manner
4. Youth must be educated on the sensitivity of the content

## **Cross-Over Youth Project:**

### **Navigating Quicksand**

Appendix 8: Access Denied! The Case of Crossover Youth in Ontario David M. Day, Mathew Eaton-Kent, Amy Beaudry, & Arla Good Department of Psychology, Ryerson University, Toronto, Ontario

## CROSSOVER YOUTH

- "Crossover youth" (CY) are young people involved in the child welfare and juvenile justice systems.
- The estimates of youth in the child welfare system who "cross over" to the justice system in Ontario vary from 51.1%<sup>3</sup> to 84.3%<sup>4</sup>, but the prevalence is difficult to track at present.
- By virtue of their dual involvement, CY experience adverse consequences and discrimination and are more likely than youth involved in one system to experience severe legal penalties and repeated and prolonged contact with the justice system<sup>1</sup>
- In Ontario, a specialized program/approach has been developed to meet the needs of CY<sup>2</sup>. However, the approach is only as effective as the system's ability to identify and reach CY.
- **Problem statement:** Currently, there is no mechanism to identify CY within the justice system, creating a significant structural barrier to accessing impartial and effective justice.

## EXISTING ADMIN. DATABASES



### ICON

- All court information for both youth and adults
- Utilized by the Ontario Court of Justice



### SCOPE

- All youth criminal justice files
- Utilized by the Crown Attorney's Office



### CPIN

- All child welfare records
- Utilized by 49 Ontario child welfare agencies



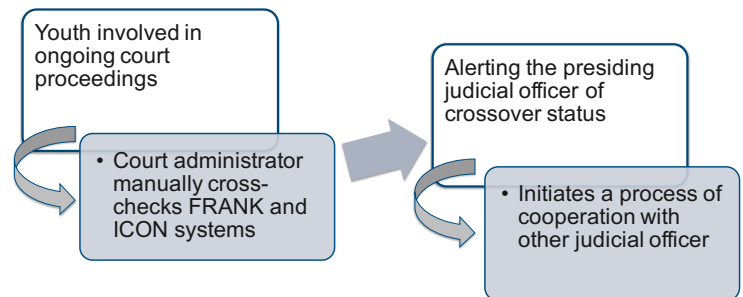
### FRANK

- All child welfare proceedings
- Utilized by Ontario Court of Justice

## THE PROPOSED POLICY: A "DUAL ALERT" MECHANISM

### (1) Identify youth in the system

1



## PROPOSED POLICY AND IMPLICATIONS

- Until the databases are modernized to be able to "speak" to each other, the proposed "dual alert" mechanism will be more analogue and comparable to the current Integrated Domestic Violence Court (IDVC).
- **Like the IDVC system, the proposed system would require a court administrator to manually cross-check between the FRANK and ICON systems. The court administrator would then be responsible for alerting the presiding judicial officer so they can begin a process of cooperation with the youth's other judicial officer, if there is one (see Panel 1 above).**
- In order to minimize any youth falling through the cracks, our proposal would also be for the SCOPE and CPIN databases to add a category of outstanding child welfare proceedings and outstanding youth criminal justice proceedings, respectively (see Panel 2 above).
- The youth and their counsel would be given final say over whether they wanted their matters to be resolved through the cooperative, crossover approach.
- This policy would allow for the timely identification of CY in the system and would facilitate their access to impartial and effective justice and referrals to appropriate services. The policy could also advance a research agenda on the issue.
- The dual alert mechanism would be minimally invasive to respect a youth's privacy.
- The system should increase inter-stakeholder information-sharing about the crossover status of the youth, while also promoting greater sensitivity towards sharing case details.

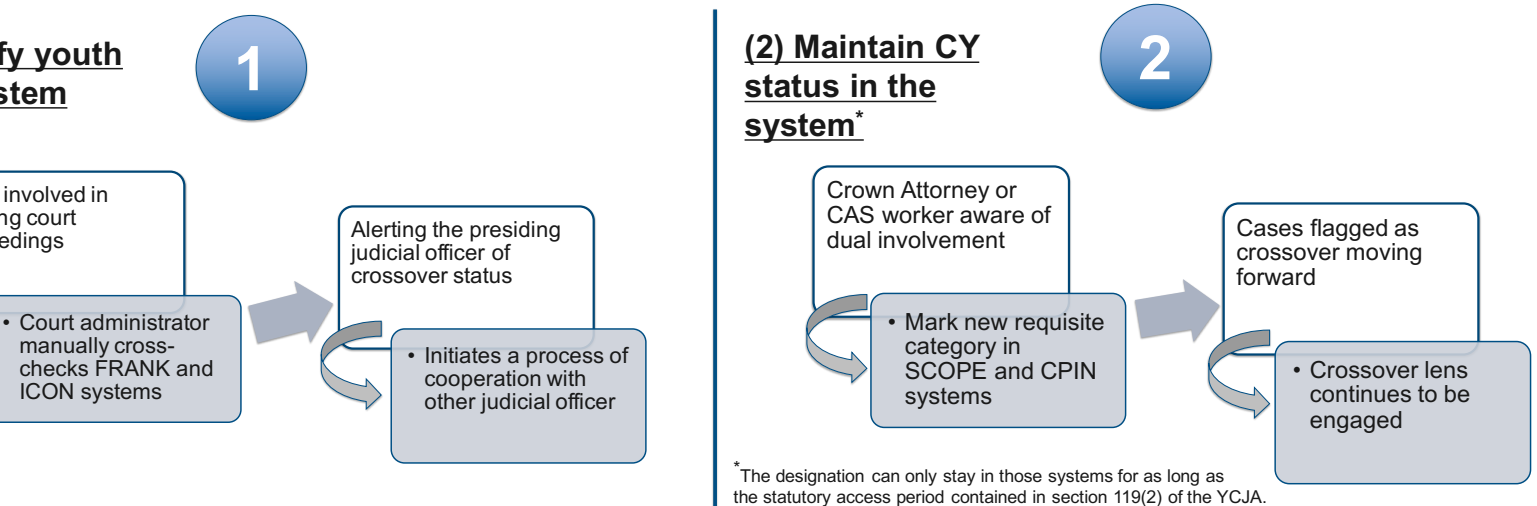


# Access to Justice Denied! of Crossover Youth in Ontario

by, Mathew Eaton-Kent, Amy Beaudry, & Arla Good  
of Psychology, Ryerson University, Toronto, Ontario

Ryerson  
University

## PROPOSED POLICY: A "DUAL ALERT" MECHANISM



## PROPOSED POLICY AND IMPLICATIONS

databases are modernized to be able to "speak" to each other, the proposed "dual alert" mechanism will be more analogue and comparable to the current Integrated Child Welfare Information System (ICWIS) and the Integrated Child Welfare Information System (ICWIS).

**Under the current IDVC system, the proposed system would require a court administrator to manually cross-check between the FRANK and ICON systems. The court administrator would then be responsible for alerting the presiding judicial officer, who would then initiate a process of cooperation with the youth's other judicial officer, as outlined in Panel 1 above.**

To minimize any youth falling through the cracks, our proposal would also be for the SCOPE and CPIN databases to add a category of outstanding child welfare proceedings and outstanding youth criminal justice proceedings, respectively (see Panel 1 above).

Youth and their counsel would be given final say over whether they wanted their case to be resolved through the cooperative, crossover approach.

The policy would allow for the timely identification of CY in the system and would ensure that youth have access to impartial and effective justice and referrals to appropriate services.

The policy could also advance a research agenda on the issue.

The dual alert mechanism would be minimally invasive to respect a youth's privacy. The policy should increase inter-stakeholder information-sharing about the crossover youth, while also promoting greater sensitivity towards sharing case details.

## REFERENCES

- <sup>1</sup>Bala, N., Finlay, J., De Filippis, R., & Hunter, K. (2015). Child welfare adolescents & the youth justice system: Failing to respond effectively to crossover youth. *Canadian Criminal Law Review*, 19, 129-151.
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