

THE SOMALI YOUTH JUSTICE TOOLKIT

A toolkit designed to help Somali- Canadian
youth navigate the Canadian criminal
justice system



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CHANGE** 

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POSITIVE CHANGE TORONTO INITIATIVE

Positive Change Toronto Initiative (PCTOI) is a community-led advocacy and research organization that provides education and services to young Somalis and their parents/guardians in the Greater Toronto Area (GTA). PCTOI campaigns for systemic changes to the criminal justice system, particularly the policing and correctional system to ensure vulnerable young Somalis are empowered and supported.

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2

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INTRODUCTION

This is a youth-led and youth-designed advocacy toolkit developed to help Somali youth navigate the Canadian criminal justice system. In the formulation of this toolkit PCTOI, organized a youth circle with Somali youth aged 18 – 29 years old to discuss the Canadian criminal justice system. PCTOI also hired a criminal justice lawyer and legal educators to develop this resource guide, which focused on three themes: interaction with the police, navigating the criminal justice system, and custody.

In the youth circle participants were asked to identify the justice issues that impact them and their peers. During the discussions youth were asked questions such as; what they know about the criminal justice system, who they would turn to if they were facing legal issues, and what changes they would like to see. In a survey conducted by PCTOI, youth have also identified five common issues: *discrimination and interactions with police, legal counsel, types of charges, the court system, and rehabilitation and integration back into the community post-incarceration*. These five issues will be discussed throughout this toolkit in addition to other topics.

Purpose:

PCTOI's youth advocacy toolkit aims to document the rights and responsibilities of Somali youth relating to topics about the Canadian criminal justice system and areas of concern and interest.

1. To provide legal education about the criminal justice system to Somali youth, parents and guardians.
2. To illustrate the changes that Somali youth would like to see in the Canadian criminal justice system.
3. To provide recommendations about reform in the Canadian criminal justice system.

The information in this toolkit reflects the interpretations and recommendations regarded as valid at the time that it was published. The toolkit is not intended nor should it be construed as legal or professional advice or opinion. Individuals or community members concerned about the applicability of a given legislation or law under the criminal justice system are advised to seek legal or professional advice. PCTOI will not be held responsible or liable for any harm, damage, or other losses resulting from reliance on the use or misuse of the general legal information contained in this toolkit.

This toolkit is published for the Somali community and any other racialized community that will find it beneficial. This toolkit is not created for commercial purposes. PCTOI does not permit any person to copy, distribute, display and perform the content of this toolkit for commercial purposes. A person who uses this toolkit must give appropriate credit to PCTOI, provide a link to the toolkit, and indicate if changes were made. You may do so in any reasonable manner, but not in any way that suggests PCTOI endorses you or your use.

TABLE OF CONTENTS

Part I: Contact with the Police	7
Street Checks/Carding - Ontario Regulation (O. Reg. 58/16)	7
Police Apprehension Power under the Mental Health Act Section 17.....	8
School Resource Officers (SRO).....	9
TCHC Community Safety Unit (CSU) - Agent of the Landlord	10
Special Investigations Unit (SIU)	10
The Office of the Independent Police Review Directorate (OIPRD).....	12
What to Know and Ask When Stopped by the Police?	14
 Part II: Navigating The Criminal Justice System.....	 18
Remand	18
Bail Hearing	19
Diversion Program.....	20
Youth Criminal Justice Act (YCJA)	21
The Trial	22
Types Of Dispositions.....	23
Fine	24
Crown Election: Summary, Indictable or Hybrid	24
Parole And Statutory Release.....	25
SOLITARY CONFINEMENT	27

Part III: Custody	28
Federal Prison System.....	28
Provincial Prison System.....	29
Medium, Maximum, and Minimum Security	29
Forensic Psychiatric Patients and the Criminal Code	30
Discharge Planning	33
Muslim Chaplains.....	34
 Part IV: Mending Relationships with the Somali Community	 35
Federal Prison System.....	36
Criminalization of Somali Canadian Youth	36
Mending Relationships with the Somali Community.....	39
 Part V: Somali Youth Voices	 41
 Part VI: RESOURCES AND REFERRALS.....	 43
Youth Biographies	45

PART I:

CONTACT WITH THE POLICE

STREET CHECKS/CARDING - ONTARIO REGULATION (O. REG. 58/16)

Carding is when a police officer stops a person and attempts to collect a person's information because of their race/identity, their presence in a high crime neighbourhood, their unwillingness to answer questions being posed by the police when there is no legal requirement to answer the question(s) and/or when a person attempts to leave as there is no legal reason for them to speak to the police officer. Specific Regulation are as follows:

- The Ontario Regulation 58/16 was enacted due to the disproportionate number of Indigenous, Black and members of other racialized groups who were being stopped by the police amongst other things to gather information of a general nature.
- The objective of O. Reg. 58/16 is to put a stop to the practice of 'carding' whereby police officers stop individuals (many of whom are Indigenous people, Black people, and members of racialized groups) and take down their information in the absence of a legally permissible reason.
- O. Reg. 58/16 makes it clear that when a police officer stops someone to ask about general criminal activity and not a specific criminal offence, that interaction needs to be voluntary. This means it should be made clear to the person being stopped that they are not required to speak to the officer and are free to go.
- The same applies when a police officer attempts to engage with someone in relation to behaviour that the officer may think is suspicious but not criminal in an effort to uncover a criminal offence.
- The same also applies to situations in which a police officer stops someone to simply record their information.

What Are the Police Required To Do as a Result of O. Reg. 58/16?

First and foremost, street checks or regulated interactions are voluntary.

If a police officer stops someone to ask for information, O. Reg. 58/16 states the officer has to advise:

- That the interaction is voluntary and that the person stopped does not have to provide any information that may identify them;
- The person stopped has a right to know why the identifying information is being collected.
- Provide a receipt before leaving that sets out the name of the officer, the officer's badge number, the police division the officer works at, the location, date and time of the stop, and the reason for gathering the information.
- The other thing that O. Reg. 58/16 does make clear is that carding is illegal.

POLICE APPREHENSION POWER UNDER THE MENTAL HEALTH ACT SECTION 17

- Section 17 of the Mental Health Act gives police officers in the province the authority to apprehend a person and take them into custody for an examination by a physician.
- Once apprehended, the person is usually taken to a hospital for an examination by a physician. The examining physician will determine if the person should be released or held for an assessment. If the physician determines that a person should be held at the hospital, then the physician will complete a form 1. This allows the hospital to hold the person for up to 72 hours for an assessment.
- An officer exercising their authority under section 17 of the Mental Health Act may only do so if they feel that waiting for a Justice of the Peace to sign off on a detention by filling out a form 2 under section 16 of the Mental Health Act may be dangerous.

- In determining if a person should be apprehended under section 17 of the Mental Health Act, the apprehending officer needs to have reasonable and probable grounds that the person in question has acted or is acting in a 'disorderly manner' and has or may cause bodily harm to her/himself or shown a lack of competence to care for her/himself.

SCHOOL RESOURCE OFFICERS (SRO)

- The Toronto District School Board (TDSB) had police officers in 45 of its 113 high schools until it discontinued the program in 2017. The program had been in place since 2008.
- The program came to an end after school trustees voted unanimously to end the program. The decision to end the program came after a report in which staff, students, parents and community members were interviewed about their thoughts on the School Resource Officer Program (SRO).
- While many participants had positive things to say about the program, there were many who also felt surveilled, intimidated, targeted and uncomfortable by the presence of the SROs.
- The Toronto Catholic District School Board (TCDSB) continues to have SROs in a number of their schools in spite of the fact that the TDSB and the Peel District School Board (PDSB) ended the program in their schools because of concerns raised by many students.
- The TCDSB as of 2020 had indicated that it would be reviewing the status of the SRO program.
- TCDSB expanded the presence of police officers in their schools by introducing the School Engagement Team (SET).

TCHC COMMUNITY SAFETY UNIT (CSU) - AGENT OF THE LANDLORD

- The agent of the Landlord is an arrangement the Toronto Community Housing (TCHC) has and continues to have with the Toronto Police Service (TPS). This arrangement allows police officers to attend various TCHC properties throughout the city and stop and question any individuals to ask if they are residents of the property on behalf of the landlord- Toronto Community Housing Corporation.
- Critics of this arrangement between the TCHC and TPS have argued that this opens the door for police officers to use the Trespass to Property Act as a means of increased and unwarranted surveillance of individuals, with a particular focus on Black people.
- Critics add that the use of the Trespass to Property Act in this manner is a way for the police to conduct criminal detentions/investigations without reasonable and probable grounds to do so.
- TCHC and TPS have been unwilling to share which TCHC properties are covered by this arrangement or how long they have been going on for.
- TCHC has recently acknowledged the concerns that this agreement can have particularly as it relates to police interactions with Black members of the community.
- TCHC is reviewing this arrangement and it is expected that they will be recommending how to move forward to the TCHC board of directors in light of these concerns.

SPECIAL INVESTIGATIONS UNIT (SIU)

- The Specific Investigation Unit (SIU) is a civilian law enforcement agency that is responsible for conducting investigations when allegations of sexual assault, death or serious injury involving a police officer is made.

- If the director of the SIU decides that charges should be laid against a police officer, based on evidence gathered, the charge will be referred to the Crown Attorney's office for prosecution.
- The mandate of the SIU prior to the adoption of the Special Investigation Unit Act 2019 was investigating incidents involving officers where a death or serious injury had occurred or where there was an allegation of sexual assault. The enactment of the Special Investigation Unit Act 2019 expanded what the SIU investigates to include situations in which an officer has discharged a firearm at a person whether death or serious injury has occurred.
- The Special Investigation Unit Act 2019 now limits the ability of the SIU to investigate off-duty officers.
- Prior to the enactment of the Special Investigation Unit Act 2019, the SIU could investigate both on duty and off duty officers.
- The Act now mandates that the SIU can investigate off-duty officers only if they are engaged in the investigation, pursuit, detention or arrest of a person; whether the officer identified themselves as an officer or not; and /or if the incident involved the use of equipment or property issued to the officer and used while off-duty.
- The Special Investigation Unit Act 2019 now requires that the SIU provide an update every 30 days for matters that they are investigating when the length of the investigation goes beyond 120 days.

Criticisms of the SIU

1. The SIU employs former police officers to work as investigators which can lead to a lack of public confidence. Of the 30 part-time investigators who do much of the day to day work, 24 are former police officers.
2. SIU employees are former Police officers investigating current police officers.
3. The charge rate is quite low relative to the number of complaints made even in cases where there were witnesses and video surveillance. The charge rate has been around 3.6% going back to 2019.

4. The difficulty in laying charges is that the officers are not required to speak to one of their investigators. This results in situations where the SIU is unable to lay a charge because there is not a foundation or basis to do so with the information that they have been able to gather through the course of their investigation.

THE OFFICE OF THE INDEPENDENT POLICE REVIEW DIRECTORATE (OIPRD)

Complaint is submitted, either:

- Directly to the OIPRD.
- At a police station or detachment and forwarded to OIPRD.

Screening

- Complaint is screened in, or
- Complaint is screened out and closed.
- Optional:
 - [Early Resolution](#) – Provides an opportunity for complaints and respondent officers to voluntarily resolve a complaint before it is formally screened under the PSA.
 - If successful, the complaint is closed.
 - If unsuccessful, the complaint is screened in.

[Investigation](#) by police service

[Informal Resolution](#) or [Informal Resolution via mediation](#) may be requested during investigation.

Allegations

- unsubstantiated, or
- Allegations substantiated less serious, or
- Allegations substantiated seriously.

OR

[Investigation](#) by OIPRD

[Informal Resolution](#) or [Informal Resolution via mediation](#) may be requested during investigation.

- Allegations unsubstantiated. Complaint closed,
OR
- Allegations substantiated are sent to the chief to decide whether it's serious or less serious.
- Allegations substantiated were serious and sent to the chief for disciplinary hearing and decision.
- Allegations substantiated less serious are sent to the chief for Informal Resolution or penalty.
- Complainants may not request a review (appeal) of an investigation conducted by OIPRD.

13

OIPRD reviews investigative reports

Complainant may [request a review](#)

(appeal).

OIPRD confirms decision, or

OIPRD substitutes decisions for that of chief's.

Decision

- Allegations unsubstantiated. Complaint closed,
OR
- Allegations substantiated less serious, sent to chief for informal resolution or penalty, or
- Allegations substantiated serious, sent to chief for [disciplinary hearing](#) and [decision](#).

Inspector General of Policing

- The provincial government appointed its first Inspector General of Policing in 2020. Devon Clunis, is a former chief of police for the city of Winnipeg.
- The Inspector General of Policing will be tasked with setting up an Inspectorate of Policing and to develop regulations under the Community Safety and Policing Act (CSPA), 2019.

The Inspector General of Policing is responsible for

- Monitoring and conducting inspections of police services to ensure compliance with the CSPA and its regulations once this act is in force.
- Monitoring and conducting inspections of police service boards to prevent police misconduct and impose measures where necessary.
- Investigate policing complaints related to the provision of adequate and effective policing services.
- Develop, maintain and manage records, conduct analyses regarding compliance with the CSPA and publish inspection results and annual reports.

WHAT TO KNOW AND ASK WHEN STOPPED BY THE POLICE?

As a Pedestrian

- You have a right to know why you are being stopped.
- Ask if you are being detained or are under arrest.
- If you are not detained or under arrest then advise the officer that you are going to leave. If the officer permits you to leave then do so.
- If the officer does not allow you to leave but says that you are under investigative detention ask in relation to what.

- The police are able to do a pat down search for safety if you are under investigative detention. This search is meant to ensure that you do not have any weapons.
- A pat down search does not permit an officer to go into your pockets or other belongings unless the officer feels an object that may be a weapon.
- If you are under arrest then an officer may search your pockets by placing their hands inside and removing whatever items may be present.
- If the officer does not advise you if you are under investigative detention or under arrest, do not resist as that can escalate things unnecessarily and result in your arrest.
- State in a loud clear voice that you do not consent to the search. Keep your hands visible at all times and do not try to block the officer from searching for your own safety.
- If you are with another person then have that person record the interaction with the officer(s) from a reasonable distance if they feel comfortable doing so. Attempting to record too closely may result in the person filming being charged with obstructing the investigation.
- Make it clear to the officer that you want to speak to a lawyer and continue to assert this. Do not say anything else.
- Do not yell, scream or get into any sort of physical confrontation with the officer(s).

When Operating a Motor Vehicle

- If you are operating a motor vehicle, the police are permitted to stop you and ask you to present your license, registration and insurance. They can also check to make sure you are sober and to ensure that your vehicle is physically fit to be operating on the road. The police can do this without giving you a reason.
- The police are not permitted to search your vehicle unless they see something that is in plain view that is illegal. For example, open alcohol or drugs.
- If the police want you to exit the vehicle and/or want to search it then ask them why?

- Do not resist this demand even if the officer(s) are not explaining why they want to do this. Document as much as you can. Ask the officer(s) if they have their body camera and/or dash camera on.
- Try and note the officer's badge number. It is usually found on their shoulders. Their name tag is usually on the left side of their chest.

Passenger in a Motor Vehicle

- The police do not have a right to speak to a passenger in a vehicle unless that passenger is committing a Highway Traffic Act offence i.e. not wearing a seatbelt, there is open alcohol in the vehicle which is a violation of the Liquor License Act or if there is marihuana visible in the car in contravention of the Cannabis Control Act.

Final thoughts: whether you are a pedestrian, operating a motor vehicle or a passenger in a motor vehicle, remember that how you choose to exercise your rights and to what degree when interacting with the police is case specific and should be tailored to the officers you are interacting with. The goal at the end of the day is to have individuals leave a situation as quickly and safely as possible.

- If you feel that you have been treated in a manner that is unfair and want to file a complaint, you can do so by contacting the Office of the Independent Police Review Directorate (**OIPRD**).
- The OIPRD accepts complaints involving municipal and regional police services including the Toronto Police Service and Ontario Provincial Police (OPP). The OIPRD is not able to look into complaints involving Court Officers, Special Constables (i.e. TTC Special Constables), Auxiliary Police Officers or the RCMP to name just a few.
- A complaint can be filed with the OIPRD online or by downloading a PDF complaint form and submitting it.
- Complaints cannot be made anonymously.

- Anyone can make a complaint as long as they are not employed by a municipal or regional police force, the OPP, the RCMP, or are employed as a Court officer or Auxiliary Officer, or an employee of the OIPRD.
- The person making the complaint does not have to be the person who was directly impacted.
- Complaints need to be made within 6 months after the incident, otherwise the OIPRD may not be able to look into it.

Law Enforcement Complaint Agency

The Community Safety and Policing Act received royal assent on March 26, 2019. This new act directly impacts the OIPRD and what it's mandate will be. The most obvious change is that the Office of the Independent Review Directorate (OIPRD) will now be called the Law Enforcement Complaint Agency (LECA). The LECA will now investigate complaints about police officers, including chiefs of police, deputy chiefs, the OPP Commissioner, OPP Deputy Commissioner, and any other complaints deemed to be in the public interest. It also has the mandate to investigate public complaints against Special Constables employed by the Niagara Park Commission and Peace Officers of the Legislative Assembly of Ontario. LECA will continue the work previously done by the OIPRD of conducting systemic reviews.

PART II:

NAVIGATING THE CRIMINAL JUSTICE SYSTEM

REMAND

- Individuals who are not released on bail are housed in a remand facility. This is known as pre-trial custody. The vast majority of people in provincial jails in Ontario are awaiting trial which means they have not been found guilty of anything.
- A judge in some cases takes into consideration the time that an individual was in custody before their sentencing.
- A study recently [showed](#) that “black people in Canada’s most populous province spent longer behind bars awaiting trial than white people charged with many of the same categories of crimes” (CBC 2017). This is at times because the individual is unable to secure a surety which forces them to await trial in custody. .

Solutions if a surety is Not an Option

- Acknowledge that there is an overreliance on sureties for bail in Ontario
- Release an accused person on scene with a promise to appear
- Release an accused person on their own bail
- Release accused person on scene with a promise to appear
- Have an accused person check-in on a weekly basis with a bail supervisor through an organization like the John Howard Society.
- Send individuals to a halfway house
- Impose curfews and certain limitation on the individual in the outside world

BAIL HEARING

A bail hearing is when a judge decides whether an individual should be kept in jail or allowed to go back to the community while their case is in court.

After the Hearing

You may get a bail, which is a court order that lets you stay in the community while your case is in the court system. Usually, there are conditions and rules that must be followed.

What Happens at the Bail Hearing

Step1: Under the criminal code, you have the right to a bail hearing within 24 hours of being arrested if a judge is available, or as soon as possible if one is not. You might be taken to the courthouse where you will be held in a cell or you may be linked to the court by a video screen. You will have a chance to speak with either your lawyer or a free lawyer for that day, who is called duty counsel.

Step2: The Crown reads out allegations against you. In Some cases, the Crown will call a witness - usually the investigating officer. It is the Crown's job to show why you shouldn't be allowed out on bail.

Step3: Your lawyer can either call you or a potential surety (or both) to the stand to convince the court that, if you're released on bail, you will obey your bail conditions and come to your court dates.

Step4: A judge will then decide to either release you on bail or keep you in jail to wait for your trial.

Concern Over Ontario Bail Process

The crown makes the decision to impose harsh conditions on individuals to prevent them from reoffending. These conditions are at times difficult for the individual to follow which causes them to reoffend.

Recommended Solutions

1. Release those charged with an offence on their own bail.
2. More of an effort needs to be made to have Justices of the Peace appointed who have law degrees as Justices of the Peace are the ones tasked with hearing the majority of bail hearings. Being detained at a bail hearing can impact how an accused person chooses to proceed with their matter including the decision to plead guilty or not.
3. The Justice of the Peace or Judge conducting a bail hearing should take into account that the person before them is either Indigenous or a member of another historically disadvantaged group that is overrepresented in the criminal justice system as reflected in section [493.2](#) of the Criminal Code of Canada.
4. All judicial participants (Justices of the Peace, Crown attorneys and defence counsel) in a bail hearing should be prepared to push for a release of an accused on the least restrictive conditions possible and avoid conditions that can set up an accused person for failure (for example no alcohol condition for someone with an addiction to alcohol).

DIVERSION PROGRAM

Individuals who have been charged with minor offences in Ontario may be eligible for participation in the Diversion program. Once the person successfully completes the program, their participation will allow for their criminal charges to be withdrawn. This program is a way to have criminal charges against the accused diverted and resolved.

The diversion Program can be seen as an example of restorative justice because it allows for a person accused to gain back trust in their community. Some examples of diversion programs are mental health programs, education and mentorship programs, and community service hours programs.

Issues with Diversion Program

1. Despite the perceived benefits, diversion programs have not escaped criticism. Some researchers contend that pre-charge diversion programs are based on police selection bias.
2. Critics have also argued that diversion programs are being used as a coercive tool to expand the number of youth into the justice system who otherwise could have been given a warning.
3. Another potential problem with pre-charge diversion programs involves the actual decision-making process. This brings questions about the nature of police discretion. Are police officers exempt from bias? Are all youth equally likely to get diversion regardless of their race?
4. A [New study](#) from Durham Regional Police Service reveals that young Black people are less likely than white and other youth of color to be cautioned by police for minor criminal offences or sent to diversion programs.

YOUTH CRIMINAL JUSTICE ACT (YCJA)

- The Youth Criminal Justice Act (YCJA) governs the prosecution of young persons aged 12 to 17 who are alleged to have committed criminal offences. The *Youth Criminal Justice Act* was implemented in 2003 and was specifically designed to reduce the use of custody for youth.
- The YCJA contains clear guidelines for police, lawyers, and judges at every stage of the criminal justice process for how youth cases should be handled. Since its implementation, there has been an increase in the number of youth being diverted out of the court system; remaining in the community while on bail; and serving community-based sentences; which is what the YCJA was designed to do.

Types of Offences & Youth Characteristics

The majority of youth crime is minor and non-violent, with theft under and over \$5,000 being the most common crimes committed by youth. The most common violence offence committed by youth is a minor assault. Other typical youth offences include breaking and entering; failing to comply with a court order (e.g. breaching probation); minor mischief; possession of drugs; and uttering threats (John Howard Society, 2018).

THE TRIAL

22 | The defence lawyer and the crown attorney will present their case before a judge by calling witnesses and presenting evidence. The crown attorney will present their case first and the defence lawyer will go second, if they decide to call evidence. There is no requirement that the defence call any evidence as the burden with securing a conviction lies with the crown alone. The crown will begin with calling their witnesses and asking them questions. The questions they ask must be open-ended. This is called direct examination. The defence lawyer will ask questions of the crown witnesses once the crown is finished. These questions can and are usually leading questions meaning that the defence lawyer will suggest the answers that they want to the witness; this is called cross-examination. If an accused person decides to call witnesses or testify then the crown will have an opportunity to cross-examine those witnesses. An accused person who chooses to testify and any witnesses called by the accused must answer any questions asked by the crown unless the judge says otherwise.

Once witnesses have been called to testify in court, the defence lawyer and the crown will make their arguments on the facts of the case and on the law to assist the judge in deciding what the verdict should be. A judge must conclude beyond a reasonable doubt that a person is guilty before convicting an accused.

It is important to note that while proceeding to trial is a right every accused person has when charged with an offence, less than 8% of matters in Ontario actually proceed to [trial](#).

TYPES OF DISPOSITIONS

A judge uses the *Criminal Code of Canada* to impose different types of outcomes/sentences which will be explained further below:

Peace Bond

A peace bond is a court order that a person enters into. The expectation is that the person entering into the peace bond will keep the peace and be of good behaviour. There is usually also a condition that the person entering into the peace bond not have contact with one or more people. In determining if a peace bond is appropriate, a judge or justice of the peace will need to decide if the circumstances show that the person who is entering into the peace bond may cause harm to another person or damage their property. A person entering into a peace bond is not admitting any responsibility (criminally or civilly) for whatever incident may have led them to enter into the peace bond. A peace bond usually lasts for one year from the date that a person enters into it. The person pledges a certain amount of money on a no deposit when entering into the peace bond. The person entering into the peace bond is not required to pay any money as long as they do not breach the terms of the peace bond. A breach of the terms of the peace bond may result in the charge of breach of a recognizance being laid.

23

Absolute Discharge

This is a type of sentencing where there is a finding of guilt but **no** conviction. The fact that someone has received an absolute discharge is reflected for 1 year on their record.

Conditional Discharge

Like an absolute discharge, a conditional discharge results in a finding of guilt but **no** conviction. An offender is placed on probation and must follow specific conditions which may include but are not limited to:

- Being under the supervision of a probation officer up to a maximum of 3 years. The length of the probation order is to be determined by the judge during sentencing.

How often someone will need to report to probation is to be determined by the probation order unless the sentencing judge imposes a non-reporting condition as part of the probation order.

- Completing community service hours.
- Attending specific programs, treatment or counselling.

Conditional Sentence

A sentence to be served in the community under strict conditions. This may include a period of house arrest and/or curfew for all or part of the sentence. A person serving a conditional sentence is required to report to a conditional sentence supervisor while serving the sentence in the community. If an offender does not abide by the judge's order and is in breach of the conditional sentence they can be re-arrested and made to serve the rest of the sentence in custody.

FINE

A person may be ordered to pay a fine with a specific deadline. The deadline can be extended, however if the fine is not paid by the deadline they can be jailed. An application can also be made to the sentencing judge to request an extension of time to complete the payment. A judge may agree to extend the time to pay the fine if it can be shown that genuine efforts to make the payment are being made.

CROWN ELECTION: SUMMARY, INDICTABLE OR HYBRID

All offences under the *Criminal Code of Canada* are classified as summary, indictable or hybrid. Most offences in the *Criminal Code* are hybrid offences meaning the Crown Attorney elects or decides to proceed by summary conviction or by indictment.

Summary conviction offences are considered to be less serious than indictable offences. An accused person is entitled to a trial in the Ontario Court of Justice if the crown attorney

decides to proceed by summary conviction and the matter is not resolved or is withdrawn.

If the Crown decides to proceed by indictment then an accused person is required to make their election. The options available to an accused when making an election include a trial in the Ontario Court of Justice, a judge alone trial in the Superior Court of Justice or a jury trial in the Superior Court of Justice. If an accused person is charged with an offence where the maximum sentence that can be imposed is a custodial sentence of 14 years or more then, that person is entitled to have a preliminary hearing in the Ontario Court of Justice.

Preliminary Hearing

A preliminary hearing is a court proceeding in which a judge examines the evidence and decides whether there is enough evidence to have the matter proceed to trial.

The Crown Attorney will typically call witnesses and make those witnesses available so that the defence lawyer(s) can ask them questions. A judge after reviewing all of the evidence at a preliminary hearing will decide if the charges the accused should proceed to trial. The test to determine if there is enough evidence to have a matter go to trial is a low one. In deciding this, a judge will need to determine, *“whether or not there is any evidence upon which a reasonable jury properly instructed could return a verdict of guilty”*. This is a lower test than what would be required to convict someone at trial. At trial the trier (i.e. judge alone or a jury) would need to be satisfied beyond a reasonable doubt for each offence charged before finding someone guilty. An accused person at the conclusion of a preliminary hearing is entitled to have a trial in the Superior Court of Justice with a judge alone or with a judge and jury if the preliminary hearing judge decides that there is enough evidence to have the matter proceed to trial.

25

PAROLE AND STATUTORY RELEASE

Day parole

This gives an offender the opportunity to participate in “community based activities in preparation for full parole or statutory release” (Government of Canada, 2018). Individuals

must also return to a residential facility which is also known as a halfway house. The Parole Board may also impose additional conditions that an individual must abide by during their release.

Eligibility: To be eligible for day parole the offender must apply 6 months prior to their parole eligibility date OR 6 months into sentence whichever comes first. For offenders serving a life sentence they must apply three years before their parole eligibility date (Government of Canada, 2018).

Full Parole

This allows an offender to serve part of their sentence within the community and reside in a private residence. However, this individual must follow specific conditions while they are living within the community. This is usually granted once an individual completes their day parole.

Eligibility: To be eligible for full parole an offender must complete a $\frac{1}{3}$ of their sentence or 7 years whichever comes first. Those who are in prison serving a life sentence would have their parole eligibility set by the courts at the time of their sentencing. For first degree murder parole eligibility is "set at 25 years, and for second degree murder, eligibility is set between 10 to 25 years" (Government of Canada, 2018).

Statutory Release

The Correctional Service of Canada has the authority to release offenders with supervision. It is not a release made by parole or a decision made by the Parole Board of Canada (Government of Canada, 2018). Offenders are required to "report to a parole officer, remaining within geographic boundaries, and obeying the law and keeping the peace" (Government of Canada, 2018). In some cases an offender may be assigned specific conditions to follow for example residing in a halfway house. The aim of this release is to help offenders reintegrate back into society successfully. If an offender disobeys their conditions they risk being sent back to prison until the end of their sentence.

SOLITARY CONFINEMENT

Solitary Confinement, which is also referred to as segregation or isolation is the practice of confining an individual in custody to a cell by themselves for 22 hours or more a day. An incarcerated person is removed from the general population and placed in a 'prison within the prison,' where they have little to no contact with other prisoners and correctional staff. In Ontario this practice is widespread and the law places few limits on its use. It is often imposed on the most vulnerable members.

Ontario regulations specify two forms of solitary confinement:

Administrative Segregation

This can only be used for the following groups: Incarcerated individuals who need protection, those who present as a risk to the safety of others, an individual who has been accused but not yet found guilty of serious misconduct within the facility. Administrative segregation has no time limits in terms of the number of days that an individual can be confined in this way.

Closed Segregation

This confinement cannot exceed 15 days, and it's used as a disciplinary measure for incarcerated individuals who have been found guilty of institutional misconduct of a "serious nature."

The criticism associated with solitary confinement is that it is something that is disproportionately used against individuals with mental health issues as well as Indigenous and Black individuals.

PART III:

CUSTODY

The youth custody and supervision system are intended to contribute to the protection of society by:

- a. Carrying-out sentences imposed by courts through fair and humane custody.
- b. Assisting young persons to be rehabilitated and reintegrated into the community as law-abiding-citizens.

Individuals who are sentenced to less than two years of custody are housed in the Ontario provincial prison system. Inmates who are awaiting trial are also housed in the provincial prison system; those awaiting trial are referred to as remand prisoners. You might expect that inmates receive education, counselling, and rehabilitation however, that might not always be the case.

28

FEDERAL PRISON SYSTEM

- Any custody which is over 2 years falls under the authority of Corrections Canada.
- Offenders who are serving sentences of 2 years or more generally become eligible for day parole after they serve the longer of
 - (a) all but 6 months before they become eligible for full parole, or
 - (b) 6 months.
- Inmates are supervised by Corrections Canada if granted parole.

PROVINCIAL PRISON SYSTEM

- Any custodial sentence of 2 years less a day (plus probation) falls under the authority of the Ministry of the Solicitor General Community Safety.
- Inmates are supervised by the SOLGEN supervisor if granted parole.

MEDIUM, MAXIMUM, AND MINIMUM SECURITY

- When an inmate enters into the federal prison system they are classified. This classification will determine if they should be housed in a maximum, medium or minimum security institution.
- Inmate risk assessments are crucial because it determines the location the inmate will be housed and the programs that are available to them. Racial disparities with respect to classification is a reality for individuals who are Black and Indigenous inmates receiving worse scores than their white counterparts. Critics of the classification system have argued that Black inmates are viewed through a gang lens when assessing their classification regardless of whether there is anything to support this or not.

29

Issues with Maximum, Medium and Minimum security

1. Racialized people are judged during the risk assessment examination without accounting for differing cultural or life experiences.
2. This approach mostly denies racialized inmates rehabilitation and treatment options that can be helpful while they are in prison and are crucial when coming before the parole board.
3. An inmates' classification is usually based on the crime they have committed and not on their behaviour in prison.
4. While the argument that a negative risk assessment score increases the likelihood that an inmate may reoffend, it is difficult to determine if the application of the assessment is inherently biased.

Concerns and Recommendations

1. Consider the inmate's cultural background and life experiences when a risk assessment is taken.
2. Provide sentencing options that are alternatives to a jail sentence in particular for historically disadvantaged groups and specifically for Indigenous and Black people who have been found to commit an offence by the court and who are overrepresented within the custodial system.
3. Policy makers should focus on restorative justice rather than retributive justice.
4. Social context evidence needs to be something that a sentencing judge considers when determining what an appropriate sentence is. For example, how racist policing practices increase or decrease the severity of a crime.
5. A person coming before a sentencing judge has lived experiences that need to be taken into account. Those lived experiences are impacted by slavery, colonialism, racism, sexism, poverty, enslavement and need to be considered everytime a black person is being assessed.
6. When considering alternatives to incarceration for Black people, anti-black racism in sentencing proceedings should be highlighted.
7. When sentencing an individual considering the over-incarceration of Black people and deciding other alternatives to prison sentencing.

FORENSIC PSYCHIATRIC PATIENTS AND THE CRIMINAL CODE

This section is intended to provide a general understanding of the mental health law and the legislation that governs the provision of mental health care in Ontario.

Mental health care Act is regulated under both the provincial and federal legislation. However, according to the Canadian Constitution, health is under the provincial domain,

while criminal justice law is under the federal domain. This existing overlap of the two levels of governmental power creates tension as the standard for involuntary admission under the provincial civil law differs from the federal law governing the detention and subsequent release of individuals found to be mentally incapacitated under the criminal code. At the same time, both the civil and forensic bodies look to the province's mental health care system to support the needs of those suffering from mental illness.

Part XX.I of the Criminal Code of Canada

Prior to 1992, individuals who were criminally accused had available to them the common law defence of insanity, recognized in [Section 16 of the Criminal Code](#). Moreover, other provisions of the Criminal Code allowed those found unfit to stand trial or found not guilty by reason of insanity to be automatically detained in custody at the discretion of the Lieutenant-Governor of the province.

Following the establishment of the Canadian Charter of Rights and Freedoms, those provisions of the Criminal Code were challenged by the Supreme Court of Canada in the [Swain case](#). The Supreme Court decision considered the provisions of the Criminal Code dealing with those found unfit to stand trial or found not guilty by reason of insanity to be unconstitutional, as they violated the accused's Charter guaranteed rights to procedural fairness and to be free from arbitrary detention, as guaranteed by the Charter of Rights and Freedoms. In response to the Swain decision by the Supreme Court, Parliament enacted Part XX.I (Mental Disorder) of the Criminal Code, which addresses the '[mentally disordered](#)' accused person.

Following the enactment of Part XX.I of the Criminal Code, Review Boards were established in each province and territory. In this case, all accused persons will come before a Review Board pursuant to the authority set out in the mental disorder provisions contained in Part XX.I of the Criminal Code, in sections 672.1 through 672.95, with these provisions:

- Orders for an accused's mental condition to be assessed, in certain circumstances;
- Orders for the treatment of an accused who has been found unfit to stand trial, if certain criteria are met;

- Dispositions and orders in relation to an accused person,⁷ who has been found not criminally responsible on account of mental disorder (“NCRMD”) or unfit to stand trial (Unfit);
- The establishment of provincial ORBs to make or review dispositions concerning any NCRMD or Unfit accused; and
- The membership, jurisdiction and procedure of a Review Board in making or reviewing dispositions or assessment orders.

Ontario Forensic Facilities

The detention, treatment and supervision of the criminally accused, who end up as forensic psychiatric patients designated in psychiatric facilities are covered under both the Criminal Code of Canada and the Mental Health Act.

[The Mental Health Act \(MHA\)](#) provides the legal framework for the admission into specially designated psychiatric facilities for persons experiencing a mental disorder. Sub-section 21 to 25 of the MHA directly addresses those either unfit to stand trial or found not guilty by reason of insanity in sections 21 to 25 of the MHA.

Ontario Review Board (ORB) – an independent tribunal established pursuant to the Criminal Code. The [ORB](#) has jurisdiction over individuals who have been found by a court of law to either be unfit to stand trial or not criminally responsible on account of mental disorder, which is under the forensic psychiatric system and mentally disordered offender.

Concerns about the ORB

Once a person is under the care of the ORB, the ORB is supposed to impose the least restrictive outcome that maintains public safety. The options available to the ORB are an absolute discharge, a conditional discharge or a detention. An absolute discharge practically will result in the person who has received such a disposition being free to leave without any further conditions being imposed. A conditional discharge will result in the person who receives such a disposition being able to leave the hospital except they will be required to

follow certain conditions. These conditions may include not using drugs or alcohol, taking medication that a doctor has prescribed and/or maintaining appointments with hospital staff. Not following conditions as part of a conditional discharge may result in an apprehension by the police and being placed back in the hospital/psychiatric facility. The final option available to the ORB is imposing a detention order. A detention order will typically result in the person who has been detained being required to live at the hospital/psychiatric facility unless suitable arrangements can be made to have them live in the community and continue to receive the sort of care that the ORB deems appropriate under the circumstances. A person detained by the ORB will receive an annual review to determine if their continued detention is required or if this disposition should be replaced with an absolute or conditional discharge. It can be very difficult and may take several years for a person to have their disposition changed from detained to an absolute or conditional discharge. The ORB in deciding whether a disposition should be changed from detained will look at a number of factors including if you are taking your medication as you are supposed to, your current mental health, if you are progressing well and your ability to abide by what the hospital staff asks you to do.

DISCHARGE PLANNING

The plan for a prisoner's release back into the community is only available to sentenced prisoners, even though over two-thirds of Ontario's prisoners are not sentenced. Exceptions to this practice may be made for prisoners identified as having mental health issues. As such, many prisoners are released into society homeless, unemployed, and financially unstable which can oftentimes cause them to re-offend.

Recommendations

1. All prisoners who are being released from prison should have a reintegration plan
2. Prisoners should be directed to appropriate resources.
3. Discharge planning should include a plan that ensures inmates have access to basic living needs.
4. Discharge planning should be realistic and ensure that the individual will improve their living conditions in the future.

MUSLIM CHAPLAINS

A Muslim chaplain provides spiritual and religious support to inmates in prison. An Imam usually takes the role of a Muslim Chaplain in prisons. Muslim Chaplains have shown to provide inmates religious support, counselling and mentorship opportunity. Muslim Chaplains also help the smooth transition of inmates back into society, create a bridge between the inmate, families and the correctional system, which can help an inmate navigate the court system. The lack of Muslim chaplains has led to Muslim prisoners being underserved.

Issues with the Muslim Chaplaincy Program

1. [Bridges of Canada](#) is currently responsible for hiring chaplains, and most of the chaplains hired are Christians. This makes it difficult for Muslim inmates to access religious and spiritual needs.
2. Negative stereotypes about Muslim people have influenced inmates' access to Muslim Chaplains.
3. Muslim Chaplains are not viewed as an important part of the rehabilitation process for inmates.
4. Certain qualifications that a chaplain must have are not reasonable.
5. There is difficulty securing additional volunteer positions for Muslim chaplains to work in prisons because of frequent and unpredictable lockdowns.
6. When there is a lockdown, Muslim chaplains are unable to engage with inmates, which affects the long-term efficacy.

PART IV:

MENDING RELATIONSHIPS WITH THE SOMALI COMMUNITY



35

The youth custody and supervision system are intended to contribute to the protection of society by:

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CRIMINALIZATION OF SOMALI CANADIAN YOUTH

This youth advocacy toolkit concludes with a look at the relationship between the Somali Canadian community and the law enforcement.

The Somali-Canadian community has a history of being marginalized and mistreated by the police which has led to the lack of trust and resentment. This history is reflected in many people's feelings about the police. For example, there are many community members who still have unsolved issues from the Dixon raid incident. During the partnership circle, youth reflected and discussed two major incidents that shaped the relationship between the police and the community.

Project Traveller Raid in Dixon Terrorizes Somali people in the GTA

Project Traveller was launched in 2012 by police resulting in numerous arrests of individuals who were accused of being members of a criminal organization in Toronto, Windsor and Edmonton. Toronto police targeted a group of Somali youth who were allegedly involved in

criminal activities in the Dixon area . The Somali community has accused the Toronto police for being aggressive, abusing family members and destroying people's homes. The raids by the police not only terrorized community members, it increased division and tension between the police and many members of the Somali community. Many within the Somali community feel that the Toronto Police Service has not done enough to work to mend this broken relationship.

Toronto Anti-Violence Intervention Strategy (TAVIS)

The Toronto Police Service implemented [Toronto Anti-Violence Intervention Strategy \(TAVIS\)](#) in 2006 after noting the high gun violence rates in Toronto. TAVIS is an "intensive community mobilization strategy intended to reduce crime and increase safety in Toronto neighbourhoods". The objective of TAVIS "is to reduce violence and victimization from violent crime, increase community safety and improve quality of life in high-risk communities". Somali youth have shared that TAVIS has increased mistrust and tension between the public and the Somali community.

Although TAVIS has been removed the program has left a lingering mistrust of the police amongst many members of the Somali community and other communities who were targeted by their tactics.

37

How Youth Felt about these Incidents

- A feeling of anger because the police targeted youth based on media reporting that was not backed up by evidence.
- Police have reinforced negative stereotypes about Somali youth in Canada.
- The two incidents took place without police taking accountability for their actions.
- Although the Somali Community have met with the police to talk about their wrongful doings, Somali youth did not get a chance to express how they felt about these incidents.
- The police believe their actions were necessary to keep the larger community safe without acknowledging how it negatively affected the Somali community that were specifically targeted.

Somali youth have a difficult time trusting the police. This mistrust is rooted in issues such as racial profiling, police brutality, and street checks. Both the community and the police have to play a role in healing the relationship between law enforcement and the community they serve. Below are some steps police have to follow to work with the community and build those relationships:



MENDING RELATIONSHIPS WITH THE SOMALI COMMUNITY

Engage the Somali Community

- First step: Police need to listen and acknowledge the Somali communities' mistrust.
- Second Step: Police need to remain accountable to those they are tasked with serving.
- Third Step: Implement programs directed at community-oriented policing to foster better relations between the police and the community. Community leaders should work with police in formulating these strategies and tactical decisions and review their effects.

Provide Cultural Competency Training

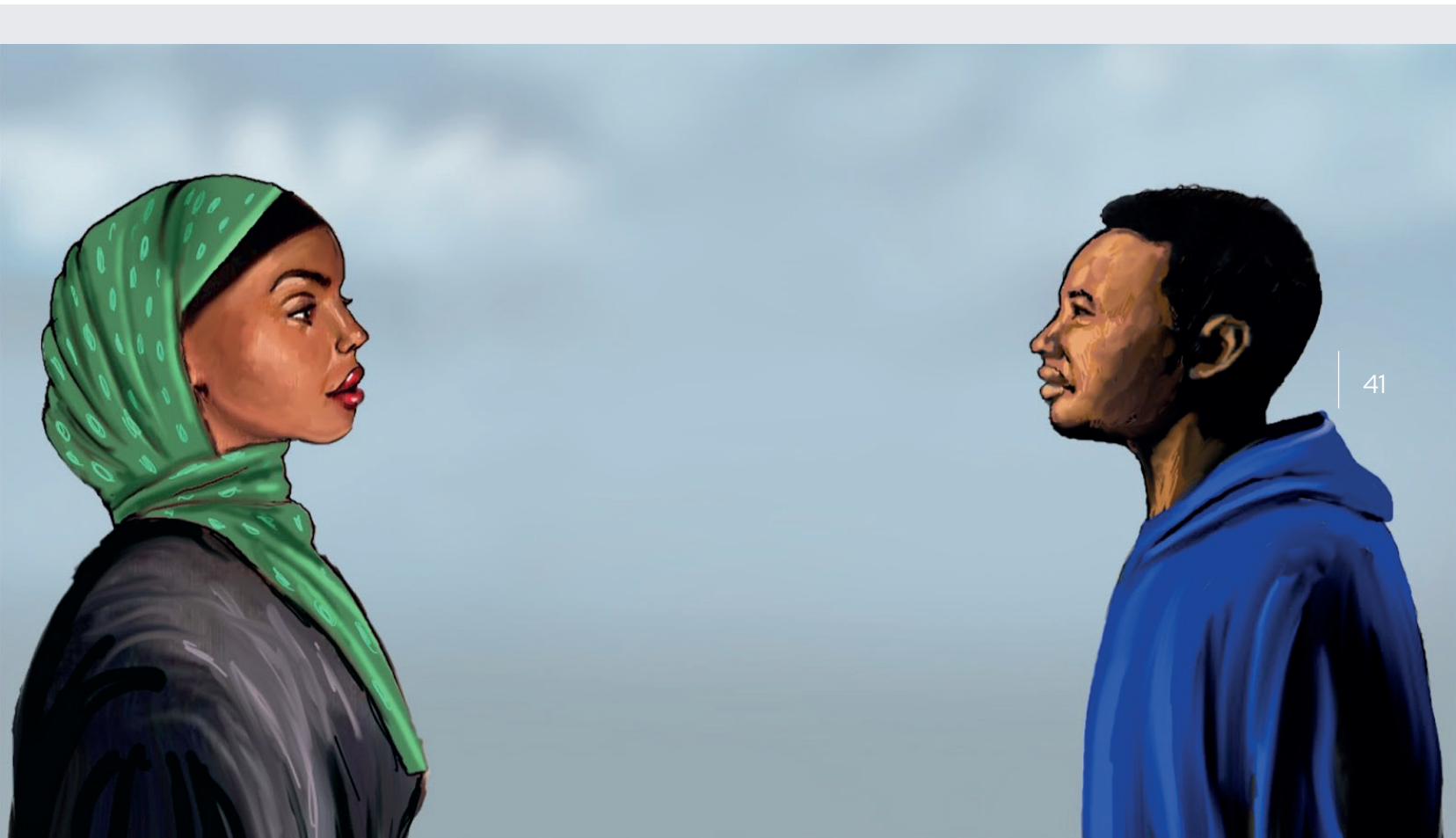
- Police-community relations are often complicated because police lack a meaningful understanding of the communities they serve. This is further exacerbated if things like language barriers exist. Police officers often work in areas that are culturally different from their own. This can cause issues when they need to communicate or build relationships with community members.
- Representation matters: increase efforts to hire police officers who are more reflective of the communities that they work within.
- Police training programs offer minimal or no training on cultural competency. Continuous cultural competency training for police officers can help police officers familiarize themselves with a community's culture and overcome some of these existing barriers.

Eliminate Racial Profiling

- It is evident that Black people are overrepresented among those who are stopped, cited, searched, and arrested by police. The Toronto Police Service needs to assess how police actions might contribute to the trust deficiency between the community and police, and what steps might be taken to eliminate racial profiling directed towards the Somali community and other communities that are affected by racial profiling. While these conversations are occurring within public forums and within the Toronto Police Service, efforts need to be undertaken to implement this at the community policing level and implement measures to hold officers more accountable when lines are crossed.

PART V:

SOMALI YOUTH VOICES



41

In this section, the toolkit will explore a youth-driven solution for the issues raised by the Somali Canadian youth through a hour-long audio recording discussion. The youth talked about their experiences with various topics ranging from School Resource Officer, mental health resources, mentorship programs, to community centres, the Project Traveller raid in Dixon and the Toronto Anti-Violence Intervention Strategy.

Youth shared a particular interest in discussing the School Resource Officer program (SRO). The program was aimed to improve school safety, which was criticized by youth and community members. The SRO program was seen as disproportionately targeting Black youth. As a result many Black students were disengaging from school for fear of being criminalized because of their racial background.

The participating youth have shared some alternatives to SRO's such as:

- Utilizing more hall monitors in schools and providing them with adequate training.
- School Counsellors who are trained in the field of mental health.
- More psychiatrists available to students.
- Behavior interventionists for students.

Final Thoughts From Somali Youth

1. The Somali community needs culturally appropriate mental health resources.
2. Somali mental health professionals should closely work with Somali elders to provide mental health support for the youth. The more resources that are accessible to the Somali youth the less hesitant the community will be to access these supports.
3. Somali youth need to be matched with mentors when they get out of prison to help them reintegrate back into society successfully. These mentors could be used to help them explore career opportunities, navigate the educational system and build their networks.
4. Provide responsive and inclusive services for the youth who come out of prison.
5. Create appropriate reintegration support programs such as affordable housing, and employment opportunities.
6. The Canadian government needs to fund community centres that focus on helping youth, fund after school programs in low income areas and create more jobs in marginalized communities.

PART VI:

RESOURCES AND REFERRALS

Somali Elders: Somali elders play the vital role of maintaining peace in the Somali community. They contribute to reconciliation, stability, and bridging intergenerational cultural gaps.

Khalid Bin Al-Walid Mosque

Tel: 416 745-2888

Website: <https://www.khalidmosque.com>

16 Bethridge Rd, Etobicoke, ON M9W 1N1

Somali Women's and Children's Support Network

1 York Road Toronto, ON M9R 3C8, (416) 241-6594

<http://somalIWOMENandCHILDRENSupportNetwork.com/contact-us/>

Asma Ali

Registered Psychotherapist (Qualifying), MPS, RP(Q)

Scarborough, ON M1K

(647) 492-9411

Egal Family Services (Child and Adult Psychotherapy Services)

1430 Birchmount Road Scarborough, ON M1P 2E8

Telephone: (416) 617-9801

Email: egalfamilyservices@gmail.com

CAMH: The Centre for Addiction and Mental Health.

Tel: 416 535-8501 or 1 800 463-2338

416 535-8501 ext. 33202

Email: familyengagement@camh.ca

Website: www.camh.ca/

John Howard society: Provides programs and services to individuals who need help navigating the criminal justice system, are at risk of being involved with the criminal justice system and those who need support in re-integrating back into the community.

<https://johnhoward.on.ca/>

North York Services

1669 Eglinton Avenue West

Toronto, Ontario M6E 2H4

Ph: 416-925-4386

Fax: 416-925-9112

Across Boundaries: Provides a dynamic range of dignified, inclusive and compassionate mental health and addiction services and programs for racialized communities in the GTA.

Tel: (416) 787- 3007

Fax: (416) 787 - 4421

Email: info@acrossboundaries.ca

Website: www.acrossboundaries.ca/

Legal Aid Ontario: Provides legal assistance for low-income people.

clientaccounts@lao.on.ca

Toronto: 416-979-2352 ext. 3337

Toll free: 1-800-668-8258 ext. 3337

Fax: 416-979-8869

Website: www.legalaid.on.ca

Rexdale Community Legal Clinic: A community legal clinic which provides free legal services to people with low incomes in north Etobicoke.

T: 416-741-5201

F: 416-741-6540

Website: www.rexdalecommunitylegalclinic.ca

Justice for Children and Youth: A non-profit legal aid clinic that specializes in protecting the rights of those facing conflicts with the legal system, education, social service or mental health systems. JFCY provides summary legal advice, information and assistance to young people, parents (in education matters), professionals and community groups across Ontario.

Tel: 416-920-1633 Toll Free: 1-866-999-JFCY (5329)

Website: www.jfcy.org

Human Rights Legal Support Centre: An agency that provides supports to individuals who have faced discrimination.

Tel: 416-597-4900 Toll Free: 1-866-625-5179 TTY: 416-597-4903 TTY Toll Free: 1-866-612-8627

Website: www.hrlsc.on.ca

Child Advocacy Project –A Program of Pro Bono Law Ontario: The Child Advocacy Project (CAP) is dedicated to protecting and enhancing the legal rights of children and youth across Ontario. CAP lawyers provide free legal services to: Students who are involved in the Special Education process. Children and youth who are at risk of being suspended or expelled. Young people who are living independently.

Tel: 416-977-4448 ext.226

Website: www.childadvocacy.ca

Black Action Legal Centre: A not-for-profit corporation set up under the laws of Ontario in 2017. BLAC provides free legal services to low and no income Black Ontarians who are facing a legal issue directly related to anti-Black racism.

Tel: 416-597-5831

Email:

Website: <https://www.blacklegalactioncentre.ca/>

YOUTH BIOGRAPHIES

Positive Change Toronto Initiative acknowledges the invaluable contribution of the Somali Canadian youth for their innovative ideas and recommendations. Some youth chose to not identify themselves.

Liban Abdi

Liban Warsame is a Cyber Security Threat Management graduate with over two years of IT experience in both work and volunteer settings. Liban possesses a B.A in Information and Technology Studies Degree from York University. He also possesses knowledge of computer hardware, ethical hacking, problem solving, and software systems, database management, and related procedures, regulations as well as methods. Born and Raised in Toronto Canada, he began his path to a bright future in 2011 when he transitioned from highschool to York University as an IT major. While in University, he was able to get a better understanding of IT and the ways in which it can enhance our society for the better and this knowledge had translated to a better future for him.

45

Hassan Abdulkadir

Hassan Abdulkadir has been working for Lithos Group Inc. as a project coordinator and designer intern for the past 2 years. Most of his duties involve design and analysis of civil engineering systems. Hassan currently is a fourth year civil engineering student at Ryerson University. While still in college Hassan won multiple scholarships and was named in the Dean's list of Faculty of Engineering and Architectural Science (FEAS) for three consecutive years. Hassan is a first-generation Canadian immigrant and the first of his family of eight siblings to go to college. In his spare time, Hassan enjoys tutoring high school students on STEM courses and helping new Somali immigrants with English-Somali interpretation services. He lives in Toronto, Ontario.

Najma Saeed

Najma is currently studying at Ryerson University and she aspires to work in the Healthcare field. Her passion lies in doing community-based projects and programs that are aimed at educating and bettering marginalized communities. Her work and extracurricular activities are focused on health care settings to help the most vulnerable group of the society, and she volunteers at local community centres.

Najma is interested in learning more about the Canadian Charter of Rights and Freedom, and personal rights when dealing with law enforcement. She is always open to new opportunities and to meet like-minded individuals who share similar experiences.

Najma's inspirations are her parents who gave her the support she needed to keep going and always strive for excellence. She would love to see better opportunities for the Somali youth and more mental health support for the Somali community.

