

Cross-over Youth: Care to Custody

Report completed on behalf of the
Cross-over Youth Committee,
Toronto, Ontario

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Preface

The Cross-over Youth project evolved through many conversations among service professionals in courthouses, at meetings, at conferences, in boardrooms, during informal gatherings or across tables over a period of a decade. Everyone clearly understood the devastating outcomes for youth in care who became involved in the criminal justice system. The systems within which we worked however seemed too complex and intransigent which made solutions difficult to discover. When we called together colleagues familiar to us from both youth justice and the children's service sector, the response was inspiring. Everyone came to the table at Ryerson University ready to focus on solutions. There were ten service sectors represented at the table and at no time did there appear to be divisions, tensions or disagreement. There was steady and uniform commitment to think "outside of the box" and create new fundamental change through innovation on behalf of these youth. As the Committee became more established, complex issues created by complicated systems were explored with a goal of achieving change. There was dedication and courage to take risks within and across sectors.

The strength of this unique group was the relationships launched among peers and the fluidity in forming enduring partnerships. Meetings were always in the evening to accommodate schedules and were well attended. Small inroads have already been made with new collaborative ways of doing business across sectors. Preliminary funding from Youth Justice Canada allowed for the broadening of the conversation across Ontario and the creation of a vision for a series of pilot projects in a number of sites in Ontario.

Everyone on the Committee has volunteered to take on various time intensive roles (run focus groups, do key informant interviews, write summaries, educate and create public awareness, seek funding, review documents, serve on task groups, seek out data and so on). As Co-chairs, we would like to take this opportunity to thank each member of the committee and the staff, Michael Raimondo, Project Coordinator and Betty Lou Scholey, Administrator who have each contributed in meaningful and thoughtful ways. This report is the product of the many deliberations and discussions that were had among us and also those discussions we had with others across the province. We are hopeful that we can continue to move forward with the same dedication and collaborative vigour on behalf of Cross-over Youth.

Sincerely,

Brian Scully and Judy Finlay

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Cross-over Youth: Care to Custody

“If I got more help.....not just things put on you...I might not have done crime.”

(a youth from care)

Youth who have been removed from their homes as a protective measure and placed in care and especially in group care have a good chance of ending up in the youth justice system. Who are these youth and why do they so often transition from a foster home to a group home to a court room? Who will the youth come in contact with as they navigate life in care and possibly, in custody?

Overview

The term cross-over youth is a fluid one. The cross-over youth is a youth whose life experiences with trauma put them in a protective child welfare system; later behaviours propel them into another system: the youth justice system.¹ These youth are also referred to as “dually involved” youth.² Many of these youth are also involved in the mental health system or require special education services. This adds further layers to the analysis and obviously involves more than two sectors.³ Each youth must be treated and respected as an individual and it is the systems that must work together to meet the needs of the youth.⁴ Despite any limitations, the term cross-over kids or youth reflects the significance of the trajectory from child welfare to youth justice systems.

Exposure to Maltreatment and Responses to Trauma

Youth who have been taken into care have experienced some form of maltreatment, neglect or abuse or have been exposed to violence. It is this trauma that has resulted in their removal from the family home.⁵ The act of removal from home is in itself a life altering trauma as reported directly by youth in custody.⁶ Early and decisive intervention by children’s mental health services and supportive education can help offset the impact of trauma.⁷ The corollary is also true: lack of early intervention puts children at risk of having poor coping responses and of ending up in the youth justice system.⁸

Multiple Moves and Impact on Forming Attachments

Youth in care often face multiple moves. In one qualitative report, youth in custody identified an average of 12 moves.⁹ Youth who have experienced the loss and trauma of removal from home and multiple moves, face issues with attachment. Instability and lack of permanent sense of place reinforce youth’s negative self- images and impedes their ability to build and maintain relationships of trust.¹⁰ This can lead to acting- out behaviours, which in turn, can lead to more

¹ Bala, N., Finlay, J., De Filippis, R. & Hunter, K., “Child Welfare Adolescents & Youth Justice System: Failing to Respond Effectively to Crossover Youth” (2014) 19 C.C.L.R. 123

² Altschuler, D., Stangler, G., Berkley, K. & Burton, L., “Supporting Youth in Transition to Adulthood: Lessons Learned from Child Welfare and Juvenile Justice” (2009) Centre for Juvenile Justice Reform.

³ Ibid.

⁴ Bala, *supra* note 1.

⁵ Haapasalo, J., “Young Offenders’ Experiences of Child Protection Services” (2000) 29 Journal of Youth and Adolescence 355.

⁶ Finlay, J. “Crossover Kids: Care to Custody” (2003) Ontario Office of Child and Family Service Advocacy.

⁷ Hukkanen, R., Sourander, A., Bergoth, L. & Piha, J., “Psychosocial Factors and Adequacy of Services for Children in Children’s Homes (1999) 8 European Child & Adolescent Psychiatry 268.

⁸ Jonson-Reid, M. “Exploring the Relationships Between Child Welfare Intervention and Juvenile Corrections Involvement (2002) 72 American Journal of Orthopsychiatry 559. ; Crooks, C., Scott, K., Wolfe, D., Chiodo, D., & Killip, S. “Understanding the Link Between Childhood Maltreatment and Violent Delinquency: What Do Schools Have to Add? (2007) 12:3 Child Maltreatment 269.

⁹ Finlay, Crossover, *supra* note 6.

¹⁰ Corrado, R., Freedman, L., & Blatier, C. “The Over-Representation of Children in Care in the Youth Criminal Justice System in British Columbia: Theory and Policy Issues” (2011) 1 & 2 International Journal of Child, Youth and Family Studies 99.

foster home moves, moves into group care and moves into the justice system.¹¹ On the other hand, when youth dislike their placement and request a move but are ignored, this too increases their feelings of frustration and invisibility, prompting an “I don’t matter so I don’t care” attitude, placement disruptions and potentially criminal behaviours.¹²

Link to Criminal Behaviours

The stories of youth in custody often include family disruption and time spent in foster homes and group homes.¹³ The antecedent to criminal behavior is more likely to be related to maltreatment and attachment disruptions in the family and not placement into care.¹⁴ The older a youth is when placed into care, the more likely a youth is to commit an offence, pointing to the significant impact of the family environment.¹⁵ However, the history of trauma combined with the likelihood of further disruptions adds to the vulnerability of youth in care, placing them firmly on the threshold of the youth justice system.¹⁶

Educational Needs and Disruptions

Many cross-over youth have experienced disruption in education because of multiple moves in both systems. Many have educational needs that have not been met while at home or in care. In British Columbia, one-quarter of children in care had special needs in contrast to one-tenth of children who are not in care.¹⁷ These disabilities tended to impact learning and social adaptability. Some of these needs were linked to child maltreatment. Having unmet educational needs can exacerbate frustration and further inhibit the youth’s ability to relate pro-socially and succeed in general.¹⁸

Mental Health Needs

Almost two-thirds of youth in care have mental health needs that have been diagnosed. It is likely that many have undiagnosed needs. Youth in care are also more likely to use drugs and alcohol than youth who are not in care.¹⁹ The higher incidences of substance use and abuse by youth in care is most likely correlated to histories of trauma and to mental health needs, including the attachment issues referenced above.²⁰ Without positive relationships and strong adult supports, youth in care are less likely than youth out of care to have their mental health needs adequately addressed.²¹

¹¹ Jonson-Reid *supra* note 8; Ryan, J. & Testa, M. “Child Maltreatment and Juvenile Delinquency: Investigating the Role of Placement and Placement Instability (2005) 27 Children and Youth Services Review 227.

¹² Finlay, Crossover, *Ibid*; Finlay, J. “Keeping Kids Safe” (2009) Wilfrid Laurier University: Canadian Council of Provincial Child Advocates.

¹³ Finlay, Crossover, *supra* note 6

¹⁴ Hukkanen, *supra* note 7; Haapsalo, *supra* note 5.

¹⁵ Ryan, *supra* note 11.

¹⁶ Bala, *supra* note 1; Corrado, *supra* note 10.

¹⁷ Corrado, *Ibid*.

¹⁸ Altschuler, *supra* note 2.

¹⁹ Corrado, *supra* note 10.

²⁰ Bala, *supra* note 1.

²¹ Ontario Provincial Advocate for Children and Youth, “Putting Youth in the Picture: A Mental Health Community Snapshot” (2013).

Adolescent Development and Restrictive Placements

During adolescence, teenagers' brains are developing and they may make poor behavioural choices in their desire to have a sense of identity, independence, and control.²² This is not a good match for restrictive environments such as group care. The rules and rigidity of group care, combined with the "push back" response of adolescents and in particular those who don't feel secure in their relationships can lead to criminal charges.²³ Group homes have been described by youth as the gateway to custody.²⁴ A youth living in a group home is more likely to be charged than a youth with a similar background living in a foster home. A group home is more likely to call the police as a behavior management strategy than is a parent or foster parent.²⁵ An action that is technically criminal, like pushing someone out of the way, would usually be ignored or punished by consequences in the family home. In a group home, this same action is much more likely to result in the police being called and charges being laid.

The use of restraints that lead to charges of assault against the youth also contributes to the criminalization of youth in group care. In acquitting a girl of assault charges following a restraint, one judge criticized the use of excessive force in the restraint and the practice of charging youth who act out in group homes with breaching the peace. He described the environment in the group home as toxic.²⁶

While there is no consistency among group home charging practices, a study of 34 group homes in the Toronto area showed that those group homes with the highest rate of calls to the police most often involved the police when youth were absent from the group home for a short time.²⁷ This could result in a missing persons report. However, for a youth on bail or probation, being absent without leave could lead to a charge for breach of a condition.

An American study found that one-third of the youth in their sample who chronically ran from foster homes or group homes placed themselves in high risk situations such as heavy drug use, selling drugs or assaulting someone: all of which are illegal. The youth ran because of real or perceived problems with their placements.²⁸ Frustration with restrictive rules and desire to see family and friends all contributed to running behavior that in turn, contributed to illegal activities, exposing the youth to charges.²⁹

²² Stone, D., "Counter Transference Issues In Adolescent Residential Settings" (2002) 11 Journal of Child and Adolescent Group Therapy 147.

²³ Finlay, Keeping, *supra* note 12.

²⁴ Finlay, Crossover, *supra* note 6.

²⁵ Bala, *supra* note 1.

²⁶ *R.v.M. (S)* 2006 ONCJ 220, 2006 Carswell Ont 3742 paras. 31-35

²⁷ Ontario Office of Child and Family Service Advocacy, "We are Your Sons and Daughters: The Child Advocate's Report on the Quality of Care of Three Children's Aid Societies" (2007).

²⁸ Finkelstein, M., Wamsley, M., Currie, D. & Miranda, D., "Youth Who Chronically AWOL from Foster Care: Why They Run, Where They Go and What Can Be Done" (2004) Vera Institute of Justice: NYC Administration for Children's Services.

²⁹ *Ibid.*

Once the youth cross over: Youth Justice Demographics

A disproportionate number of youth in the youth justice system come from care.³⁰ A British Columbia study examined the experiences of over 50,000 youth in the province in terms of their involvement in the child welfare, youth justice and education systems. It was more likely (36%) for a B.C. youth in care to end up in the youth justice system than to graduate from high school (25%). Youth in the general population were far less likely to be recommended for charges by police (6%) than youth in care (41%). Youth in care were far more likely to appear in youth court (36%) than youth in the general youth population (5%). Further, youth in care in B.C. had a one in six chance of being detained or sentenced to custody while youth who were not in care had less than a one in 50 chance of ending up in custody.³¹

While there is no comparable quantitative Ontario data, the experiences of youth in secure custody facilities in Ontario, suggest that most youth in custody have had child welfare involvement and many have had group home placements. Most of the same youth also reported that the child welfare system discharged them from care when they were in custody. Only 25% of those who had been involved with child welfare were still involved in the child welfare system once they had moved to a custody facility.³²

The United Nations Committee on the Rights of the Child expressed concern over the “significant over representation of Aboriginal and African-Canadian children in the criminal justice system and out-of-home care”.³³ It follows that crossover youth are most likely to be First Nations, Inuit Metis or African Canadian youth.

Currently there is no gender based data in Ontario specific to cross-over youth. In Los Angeles, 67% of cross-over youth were male. However, females in care were more likely (33%) to enter the youth justice system than the general female population (26%).³⁴ Further, in the United States, the rates of arrest and detention for girls, including cross-over youth, have grown faster than for boys.³⁵ Many girls are detained for breaching conditions requiring them to go to school or not run away.³⁶

There has been a marked decrease in youth crime since 2007, with a significant drop in overall youth crime between 2012 and 2013 of 18%.³⁷ Common assault charges which would include assault charges in group homes, represent 43% of charges for violent crimes. Violent crimes represent 35% of all charges. In 2013, 46% of accused youth were charged formally by police

³⁰ Finlay, Crossover *supra* note 6 ; Bala, *supra* note 1.

³¹ British Columbia Representative for Children and Youth & Office of the Provincial Health Officer, “Kids, Crime and Care: Health and Well-being of Children in Care: Youth Justice Experiences and Outcomes” (2009); Bala *supra* note 1.

³² Finlay, Keeping , *supra* note 12 ; Bala, *supra* note 1.

³³ United Nation’s Committee on the Rights of the Child, “ Concluding Observations on the Combined Third and Fourth Periodic Report of Canada, adopted by the Committee at its sixty-first session (17 September -5 October 2012)” (2012) United Nations CRC/C/Can/CO/3-4 para. 32(a).

³⁴ Herz, D., Ryan, P. & Bilchik, S., “Challenges Facing Crossover Youth: An Examination of Juvenile Justice Decision Making and Recidivism” (2010) 48:2 Family Court Review 305.

³⁵ Altschuler, *supra* note 2.

³⁶ Altschuler, *Ibid*.

³⁷ Youth Justice Services Division, “YJSD Overview of Canadian Centre for Justice Statistics (CCJS) Canada and Ontario Data for Police Reported Crime Statistics 2013” (2013).

while 54% were diverted without being charged.³⁸ In 2011- 2012, the most common type of charges heard in Ontario youth courts were theft at 17%. This was followed by common assault charges as the second most frequent (at 12% of all charges) and by failure to comply with an order, at 9%.³⁹ The sentencing provisions in the Youth Criminal Justice Act have contributed to a significant reduction of youth being sentenced to custody since 2003. However, the rate of youth detained pending trial has remained fairly constant.⁴⁰

From the perspective of cross-over youth, the data suggests that while overall crime rates are down and more youth are being diverted pre-charge, the types of offences that cross-over youth are likely to be charged with: common assault and breach of conditions, still represent a significant proportion of charges going before the court. Further, the rates of pretrial detention suggest that bail is a very live issue in youth court and youth, including cross-over youth have more of a chance of being detained pending trial than sentenced to custody.

Status Offences and Similar Bail/Probation Conditions

The use of the criminal law to deal with status offences is something that Canada tried to move away from when it repealed the Juvenile Delinquents Act in 1984. Under that legislation many young women were held in “training schools” for things like “incorrigibility” and “sexual immorality or similar forms of vice”.⁴¹ Under the Young Offenders Act and its replacement, the Youth Criminal Justice Act (YCJA), the offence of failing to comply with a condition can result in the new breed of status offence.⁴² Strict bail conditions and probation conditions have an impact on the lives of cross-over youth who for example, don’t go to school or run from care. Once youth are in the system, they are put in the position of incurring further charges for a full array of bail and probation conditions.⁴³ Further restrictions put on an already restrictive environment exacerbate the frustration and lack of connection and some youth disengage or act out by defying the latest set of rules. This can land them back in youth court as part of a “vicious cycle” or “revolving door”.⁴⁴ After enough such experiences, a youth is likely to be detained pending trial.

Impact of Detention and Custody

Cross-over youth who stay involved in the youth justice system and end up in detention or custody will struggle in the institutional environment which represents yet another placement change and the potential for further trauma. Youth from care have a history of trauma which “sensitizes young people to traumatic expectations which may include expectations of re-

³⁸ Ibid.

³⁹ Strategic Policy and Planning Unit, Youth Justice Services Division, “ YJSD Overview of Canadian Centre for Justice Statistics (CCJS) Ontario Data for Police Reported Crime Statistics 2012 and Youth Court Statistics 2011/2012” (2013).

⁴⁰ Porter, L. & Claverly, D., “ Trends in the use of Remand in Canada” (2011) 85-002X Statistics Canada.

⁴¹ Sprott, J., “The Persistence of Status Offences in the Youth Justice System” (2012) CJCCJ 310.

⁴² Ibid.

⁴³ Bala, *supra*, note 1.

⁴⁴ Ibid. ; Sprott, J. & Myers, N., “Set Up to Fail: The Unintended Consequences of Multiple Bail Conditions” 2011 53:4 C.J.C.C.J. 404.

occurrence of threat, of failure of protective interventions or of helplessness.”⁴⁵ Youth from care tended to have “*heightened vigilance to peer dynamics and staff interventions*” compared to youth who were not from care.⁴⁶ Cross-over youth in custody are particularly attuned to inaction by staff when they or another youth are victimized.

Expectations for the Care of Cross-over Youth

United Nations

Under the *United Nation’s Convention on the Rights of the Child* (“CRC”),⁴⁷ the role of the state is to keep children and youth free of harm and to ensure that they have their needs well met. When the state is the parent of the child they are responsible for meeting the child’s needs and ensuring access to services and respect for the child’s views and wishes.⁴⁸ All sectors, including the child welfare and youth justice sectors who undertake actions concerning children, must make the best interests of the child an important or primary consideration depending on whether the CRC has been adopted by statute or not.⁴⁹

Child and Family Services Act

In Ontario, the legislation that provides for the rights of children in care - whether child welfare care or youth justice care, is the Child and Family Services Act (CFSA).⁵⁰ The overarching principle in the CFSA is to promote the best interests, protection and well-being of the child.⁵¹ Under section 1(2) of the CFSA additional purposes include the least disruptive course of action, continuity of care, early assessment, child and family participation and respect for culture.⁵² The Ontario child welfare system recognizes that where possible First Nations should provide their own child welfare services.

Children in care have the right to review their placements through either the Child and Family Services Review Board or the Custody Review Board, consistent with the CRC.⁵³ Youth in care also have rights to privacy, regular family visits, and the right to be heard and to be free from corporal punishment: again consistent with the CRC.⁵⁴ As noted in Article 40 of the CRC, other international instruments protect youth in custody by providing for standards of care and minimum benchmarks.⁵⁵

Youth Criminal Justice Act

The Youth Criminal Justice Act (YCJA) incorporates the CRC by reference in its Preamble.⁵⁶ The YCJA provides the framework and principles regarding how youth must be treated in the youth justice process. The YCJA is progressive legislation that tries to balance reintegration with

⁴⁵ Finlay, Keeping , *supra*, note 12, p. 160.

⁴⁶ *Ibid.* p. 162.

⁴⁷ United Nations Convention on the Rights of the Child, [1992] C.T.S. 3

⁴⁸ *Ibid.* Articles 3;19

⁴⁹ *Baker v. MCI* [1999] 2 S.C.R. 817, paras. 71,73,75.

⁵⁰ *Child and Family Services Act*, R.S.O. 1990, c. C. 11.

⁵¹ *Ibid.* s. 1

⁵² *Ibid.* s. 1 (2)

⁵³ *Ibid.* s. 36; 97

⁵⁴ *Ibid.* s. 101, 103, 107.

⁵⁵ *UN CRC*, *supra*, note 47, Article 40.

⁵⁶ *Youth Criminal Justice Act*, S.C. 2002, c. 1, Preamble.

community safety. It includes a range of diversionary and sentencing options as well as principles that mandate the consideration of least intrusive options. By referencing the CRC in the YCJA, the government has adopted principles including the best interests of the child and consideration of the child's views and wishes as part of the application of the YCJA.⁵⁷

The YCJA reflects a bifurcated approach to youth justice. The goal of the YCJA is to divert and exclude youth with less serious offences from prosecution and custody while at the same time, providing for custodial and adult sentences for youth with more serious, violent offences.⁵⁸ The Supreme Court of Canada has recognized the importance of a separate system of youth justice in light of the "heightened vulnerability and reduced maturity of young persons" and in order to "interfere with their personal freedom and privacy as little as possible".⁵⁹

Multiple Sectors in the Lives of Cross-over Youth

Multiple Ministries

In Ontario, youth justice facilities, probation services and oversight of child welfare now fall under one Ministry: the Ministry of Children and Youth Services (MCYS). However, there are still residual clashes of culture between the old correctional philosophy and the more youth-focused philosophy. The Education Act sector still operates under a separate Ministry of Education. Mental health services for children and youth rest with the Ministry of Health and MCYS.

Child Advocate

The Ontario Provincial Advocate for Children and Youth (OPACY) is now an independent body, appointed by the legislature. Its role is to advocate for children and youth in both the child welfare and youth justice systems. It engages in individual and systemic advocacy for children and youth. The OPACY has done extensive work for and on behalf of cross-over youth and has helped give them a voice.

Police

The Police are the first contact a youth will have with the justice system. Police come under the auspices of the Ministry of Community Safety and Correctional Services. In addition to situations involving stops, arrests, cautions and charges, police may interact with cross-over youth through school programs, diversion programs and community policing.

Legal

Youth in trouble with the law are prosecuted by crown attorneys from the Ministry of the Attorney General. Courts administration and the appointment of judges and justices of the peace, fall under the Ministry of the Attorney General (MAG). In addition to being responsible for youth courts and family courts, MAG is responsible for the Office of the Children's Lawyer (OCL). The OCL can assign lawyers to youth involved in child custody and child protection

⁵⁷ *R v. R.C.* [2005] 3 S.C.R. 99, para. 41.

⁵⁸ Finlay, Keeping, *supra*, note 12.

⁵⁹ *R.v. R. C.*, *supra*, note 56; *R .v. D.B.* [2008] 2 S.C.R. 3, paras. 59-61.

proceedings, as well as in reviews of child welfare placements and other proceedings under the CFSA.

Legal Aid Ontario (LAO/Legal Aid) is an independent organization funded in large part by MAG. Counsel for youth is usually appointed by LAO. The courts have the power to order counsel where the youth does not meet LAO income criteria. Child welfare agencies do not typically pay for counsel for youth in care. Legal Aid also has a system of staff duty counsel who are assigned to courts, including youth courts and specialty courts. Legal Aid also funds the legal clinic system. Autonomous legal clinics provide services to low income individuals based on geography or specific interests. There is one specialty clinic dedicated to serving children and youth. There are also clinics that serve racialized individuals and individuals with HIV and Aids that offer advocacy and deliver programming to youth, including cross-over youth.

Child Welfare

In Ontario, there are 46 autonomous children's aid societies, each with their own independent oversight, including seven Aboriginal agencies. MCYS has some oversight and issues province-wide standards and reporting requirements. Most children's aid societies have their own foster homes which they oversee. A more recent trend is to rely more on outside paid resources that are independently licensed to provide foster care or group care. There is no special or dedicated license for treatment or therapeutic foster homes. Many group homes in Ontario are run by independent corporations, for profit.

Community

In addition to government and legal agencies there are countless community agencies offering support to cross-over youth in any number of contexts. There are reintegration support agencies, housing, job and counselling agencies, family counselling agencies, child advocacy groups and services, mental health agencies, health networks and a youth shelter system. These are the agencies and individuals who step in to fill in the gaps when the child welfare and youth justice systems cannot or have not met a youth's needs.

Impact of Multiple Sectors on Cross-over Youth

The legislative, service delivery and governance landscape in Ontario highlights the number of players that will touch the lives of cross-over youth. In any given day, a cross-over youth could have contact with the police, her "CAS" worker, a child advocate, an OCL, a defence counsel, a duty counsel, a legal clinic, a prosecutor, a judge, a probation officer, a teacher, independent group home staff and a clinician.

Youth from care have faced trauma in their homes, disruption of relationships and often, multiple moves. They are youth with special and complex needs who, in reacting to their circumstances may make poor choices and end up crossing over into the youth justice system. In navigating two (or more) systems, cross-over youth will encounter numerous individuals with a myriad of roles. These individuals will further impact the lives of cross-over youth: they could help steer them off the youth justice path or be instrumental in steering them further down the youth justice path.

The next part of this report looks at how these various sectors were engaged by the Cross-over Kids: From Care to Custody Project in identifying the challenges faced by cross-over youth in the justice system and in brainstorming solutions for change. The report examines the roles of the multiple sectors and sets out key themes and proposed solutions for change.

Background

Over the past decade, a small number of researchers and service providers in Ontario have attempted to understand the trajectory of young people from the child welfare system to the youth justice system. The estimates, as discussed above, are astounding. Child and youth advocates, those who work within court services, those who serve youth through the child welfare, youth justice, police, education, probation or mental health service sectors, for many years, have witnessed the consequences of state care on the identity and wellbeing of children and youth. It is however only recently that we have begun to study and discuss the poor outcomes for these young people due to their predisposition and vulnerability. One outcome has been the trajectory into the justice system. We know from recent Canadian studies that responding more effectively to cross-over youth would decrease the costs of youth crime and the youth justice system and ameliorate the impacts on the youth.⁶⁰

Responding to community interest and dialogue, in October, 2103, the Honourable Justice Brian Scully, Ontario Court of Justice and Professor Judy Finlay, (formerly Ontario's Child Advocate) began to co-chair a series of meetings. The Cross-over Youth Committee was formed and members were determined to understand what triggered the trajectory of youth from the child welfare to the youth justice system and how the resultant consequences could be ameliorated. As apparent in the list of committee members, the discussions have included professionals from across all the relevant service sectors. The interest to remedy this set of circumstances has been promising with continued commitment to collaboration and adaptive problem-solving. The participants have recommended a pilot project that would map this trajectory and identify the points of intersection in which collectively, intervention strategies could be developed.

Preparatory to a pilot project however, and building on the groundwork of the 2014 preliminary study, a series of forums were proposed and took place over the past 6 months in each of the nine relevant service sectors. The goals set out from the onset for each of the forums were: 1) to gather information about the roles of the various stakeholders and participants in the lives of cross-over kids; 2) to develop a forward-looking set of recommendations to intervene in the patterns related to the cross-over trajectory; and 3) inform/educate the relevant service sectors about the unique issues related to cross-over youth.

A Project Coordinator was hired through a grant from Youth Justice Canada with support from the Faculty of Community Services at Ryerson University and the Cross-over Youth Project commenced.

⁶⁰ Bala, *supra*, note 1.

Information Gathering

A series of forums including focus groups, round-table discussions, dialogues with key informants, panel discussions, surveys and training sessions took place between October 2014 and March 2105. The format for each forum was dependent on the requirements identified by the particular service sector, agency or participant. The original plan was to focus on the service providers in the GTA. It became evident however, early in the project that the local Toronto child welfare agencies indeed place their youth in care in residential placements outside the city. Therefore some interviews/forums in other sites such as Hamilton, London, Belleville, Durham, Brampton, Chatham, Sudbury, Thunder Bay and Ottawa took place.

It was determined by the Cross-Over Youth Committee that information related to the three goals identified (above) would be collected with each service sector/stakeholder group independently. The nine service sector groups were: judges, justices of the peace, the legal service sector such as defence counsel and the Office of the Children’s Lawyer, crown attorneys, child welfare, probation services, youth, group care and police Services. A target number of participants to be interviewed were predetermined in the proposal with targets being met by the project.

A “snow ball” approach was taken in identifying participants in the project. The committee members initially identified key informants from their service sector and also determined the nature of the forum to be used for information gathering. Focus groups, training sessions, round tables, surveys and panel discussions were usually organized by the representative committee member with the assistance of the Project Coordinator. Key informants were identified by the respective committee member however; those interviews were arranged by the Project Coordinator. Most key informant interviews, Focus Groups, and round tables were conducted by the Principal Investigator and the Project Coordinator for consistency. However, when possible and if not a conflict of interest, other committee members led focus groups relevant to their profession. Panel discussions for the purposes of training were led by a cross-sector of committee members. When more participants were required in a service sector, the snow ball approach was utilized. Without fail, key informants or focus group participants identified other individuals that should be interviewed. For this reason, finding interested participants was not problematic. All participants in key informant interviews, focus groups and surveys were advised of the ethical considerations that were in place and their right to confidentiality. Committee members also determined the questions to be asked and the format to be used in the various forums. They had the most relevant information pertaining to their professional group. They acknowledged that this project was essentially in preparation for a pilot project that would be shaped by the information gathered in the project described herein. Determining questions for each service sector generated open discussion by the Committee. Questions were designed to gather information about the roles of different stakeholders and to develop a forward-looking set of recommendations for intervening in the patterns related to the trajectory from care to custody. The questions used for each forum are attached to each of the Service Sector Summaries. At the conclusion of the information gathering, committee members independently and collaboratively reviewed the nine Service Sector Summary Reports for clarity and factual accuracy. Lively discussion ensued among committee members throughout that discussion.

Activities

Justice Service Sector

Prior to the actual implementation of the Cross-over Youth Project, a survey had been distributed to 360 provincial court judges in Ontario regarding cross-over youth by the Judicial Education and Training Office of the Chief Justice. Drs. Judy Finlay and Nick Bala from Ryerson and Queens Universities respectively collated, analyzed and reported on the information gathered through this survey. The Chief Justice of Ontario has given permission to use that information in this report. There were 39 respondents to that survey. A panel presentation regarding Cross-over Kids also took place at the joint annual general meeting of the Ontario Court of Justice, the Ontario Conference of Judges on May 21, 2014 to inform and educate judges about the unique issues related to youth in child welfare who are before them in court under the YCJA. Discussion about judicial best practice took place.

In addition, 14 key informant interviews took place with judges from across the Province. The results from both the survey and the interviews are available in the attached Provincial Judges Service Sector Summary Report.

Justices of the Peace

A focus group took place with five justices of the peace from the GTA about the unique issues facing cross-over youth before their courts. Furthermore four key informant interviews were held with justices of the peace both within and outside of the GTA. The results from these conversations with nine justices of the peace are summarized in the report attached: Justice of the Peace Service Sector Summary Report.

Crown Attorneys

Ten key informant interviews took place by telephone with crown attorneys from across the province. There were variable perspectives and understandings of the unique needs of youth in the child welfare system who face charges. The results of these interviews can be found in the Crown Attorney Service Sector Summary Report which is attached.

Defence Attorneys and Counsel from the Office of the Children's Lawyer

Five independent focus groups and four key informant interviews were conducted with defence lawyers, LAO duty counsel and representatives from the Office of the Children's Lawyer. The focus groups were facilitated by a committee member and the Committee Co-chair due to their interest and skill. The key informant interviews however, were conducted by the Principal Investigator of the project. The results of these focus groups and interviews can be found in the Legal Services Sector Summary Report attached herein.

Child Welfare

A training session regarding cross-over youth for children's service workers, supervisors, counsel and managers from the four child welfare agencies in the GTA took place in Toronto in October, 2014. A panel comprised of a judge, two crown attorneys, a defence counsel, a probation Officer, a representative from Justice for Children and Youth, a youth and the Committee Co-Chair presented at this session. The goal was to inform child welfare workers about the YCJA, the youth court process and the role that they play in ensuring that the youth in their care are adequately supported through this process. There were 89 in attendance. An evaluation of the panel discussion by the audience took place. Generally, the panel was well received followed by lively discussion. Interest in continued cross-sectoral panel discussions was expressed by the participants.

Two focus groups with children's service workers and supervisors took place in Toronto and Hamilton. There were a total of 12 participants. There were also four key informant interviews by telephone with two supervisors and two children's service staff from across the province. Finally, 17 surveys were completed by children's service workers, social workers, and supervisors who were largely from the GTA. All the results of these various forums are found in the Child Welfare Service Sector Summary Report that is attached.

Probation Services

A round-table discussion and a focus group took place with probation officers and managers from across the province. There were a total of 15 different participants' in the two forums. Also two key informant interviews took place by telephone with probation officers from two different geographic sites. The Summary Report regarding these conversations is attached as Probation Service Sector Summary Report.

Group Care

Focus groups took place in four separate group home settings. Two focus groups were held in group care programs operated by children's mental health centres and two were operated by private agencies. A total of 32 front-line staff, supervisors and middle managers participated across the four focus groups. In addition, a survey was distributed to group home staff in locations in southern Ontario. Fifteen front-line practitioners completed the group home survey. There were a total of 47 participants from the group home service sector. The Group Home Service Sector Summary Report is available as an attachment to this report.

Youth

There were three focus groups and one key informant interview with youth. Many youth participants had lived the experience of being in child welfare care and crossing into other systems. They were very candid and informative. One focus group took place at the Office of the Provincial Child and Youth Advocate. The youth in that focus group were from across the province. Youth facilitators were available for that group. The second focus group took place at Ryerson University and included youth from across the GTA and the

third focus group took place in a residence in London. There were a total of 18 youth who participated. A number of these youth have called themselves, “the C Group” and have become a resource for consultation and advice to the Cross-over Youth Committee.

Police Services

Two focus groups took place with Police Services. There were representatives from the GTA, Durham and Peel Regions. The participants were frontline officers, detectives and unit supervisors. There were a total of 15 participants. The focus groups took place on site at a local Police Headquarters. The collaboration with Police Services as a member of the Cross-over Youth committee has reinforced the importance of nurturing non-traditional partnerships across service sectors. The Police Service Sector Summary Report can be found as an attachment.

Cross-Sectoral Roundtable

A round-table discussion between 12 representatives from nine service sectors involved in London’s Youth Mental Health Court took place with members of the Cross-over Youth project team. The effectiveness in the lives of vulnerable youth of meaningful interagency collaboration and cross-sectoral engagement was discussed. This discussion served to inform the proposed pilot project in its design to understand, implement and evaluate a range of best practice options for youth crossing systems.

Total Activity

The following represents the kinds and numbers of forums utilized for the gathering of information across 9 service sectors for the purposes of this project:

- 18 Focus groups
- 42 Key Informant Interviews
- 2 Roundtable Discussions
- 3 Surveys
- 1 Panel Discussion

Themes Arising

The collation of the information gathered across nine service sectors on behalf of the Cross-over Kids Committee resulted in ten key themes. These were ranked according to frequency of citing within and across sectors. As anticipated, the predominant theme was related to more meaningful collaboration across service sectors which included cross and inter-sectoral training. Other themes were directed at the court such as: more reasonable bail conditions; the availability of judges, crown attorneys and counsel that understood both the youth criminal justice and the child welfare systems and could deliberate or represent youth across both sectors; and the availability of specialized court workers who could provide meaningful information to the court about the circumstances and needs of cross-over youth. Other themes emphasized the need for child welfare workers to be consistently available to advocate for youth in their care. Two major themes challenged group care providers to consider the need for guidelines for charging practices and alternatives to traditional group care such as treatment foster homes or programmes geared to independent living. Mentors for youth was a key theme and addressed the importance of assisting youth as they navigate through very complicated and complex systems to have their needs met. Finally, the value of engaging the education system in the overall plan of care for the youth was a critical theme identified by many stakeholders in the Cross-over Youth Project. In discussing these themes, recommendations for change predictably arose. Each theme is discussed below, highlighting recommended changes.

Meaningful Partnerships and Collaboration across Service Sectors

With several Ministries and multiple sectors and individuals involved in the lives of cross-over youth, it is not surprising that the most pressing and consistently identified solution for change is building partnerships by finding mechanisms to ensure better collaboration and communication across sectors.

“Everything goes back to communication. When you have new workers coming in, they don’t know who to connect with. A barrier is built between the new workers and the players in court.” (i.e. more supports are needed for new workers to ensure they can communicate effectively with the justice system)

“One of our recent observations, is that the PO is the only consistent person who goes into that system. Every child in that system comes from a different CAS. And that’s put us in a difficult situation in certain situations. One of the things we have really tried to focus on is encouraging the CAS workers and the group home to make sure that we’re invited to all case management plans” (that is not consistent practice).

“A concern is that first or second court appearance. CAS may not be in the court room and probation has yet to get involved. Ideally information at that point could be used to decide whether the youth is held in detention. However, we’re not there at that point.” “We need to establish better relationships with local CAS’s.”

The participants in Cross-over Kids wanted the connections to be made between the two systems and wanted to be part of making those connections. That being said, child welfare and youth justice systems have their own mandates, philosophies and approaches. While this can be a barrier to coordinated services⁶¹ both systems operate within a legal system that recognizes the best interests of the child as an overarching consideration. Building relationships, trust and respect is as important for the adults in these sectors as it is for cross-over youth.⁶²

Coordinating the services from so many sectors may seem like a herculean task but there are models in Canada for specialized court services and models in the United States, specifically for cross-over youth that have met similar challenges⁶³

The goal of multi-sectoral collaboration is to help identify and meet the needs of youth in care in a proactive way that will keep them in care and out of custody. While youth in care may have crossed over into the youth justice system already, collaboration aims to make their stay in the youth justice system a short one. By coordinating systems, information and services and by providing a single point of access to that coordination, the child welfare and youth justice systems will both better serve cross-over youth.

Participants in Cross-over Kids made suggestions for change similar to what the American models are utilizing to help effect change. Suggested methods of collaboration include: single point of entry and of case management, shared data bases, immediate information sharing, conferencing, ongoing joint planning and dedicated, specialized teams with a mandate of serving cross-over youth. Effective methods of collaboration are designed to help build the capacity of service providers. With better, more cohesive services, it is hoped that youth will be equipped to make better choices and avoid the journey from child welfare to youth justice sectors.

Joint Opportunities for Cross-sectoral Training

There is a real consensus that all sectors need more training to enable them to specialize and more effectively deal with issues facing cross-over youth. Communication is an integral part of the child welfare and youth justice sectors better understanding each other.

“Communication is key. More education for Crowns is also important.”

“I have little knowledge of it. It would be a benefit to me to know the YCJA better.”

The most efficient way of meeting the need for ongoing knowledge is cross- training that allows each sector to understand the other’s perspective.

“I would be interested in courses on the YCJA. My knowledge is very poor. I could certainly do with courses.”

⁶¹ Altschuler, *supra*, note 2.

⁶² *Ibid.*; Chuang, E. & Wells, R. “The Role of Inter-agency Collaboration in Facilitating Receipt of Behavioral Health Services for Youth Involved with Child Welfare and Juvenile Justice” (2010) 32 Children and Youth Services Review 1814.

⁶³ Altschuler, *supra*, note 2.; Larson, K., Shanahan, R. & Zimmerman, B. “Introduction to the Crossover Youth Practice Model” (2014) Brooklyn Family Court; Vera Institute of Justice, Power Point Presentation.

“There needs to be more cross training.”

“It’s a real detriment that the ministry doesn’t provide formal education for crowns regarding the child welfare system. I don’t think you can properly make decisions at any stage of the criminal process if you don’t understand the perspective of those involved in the child welfare system. I think it must be part of the formal education process.”

“I’ve taken the YCJA course. It’s only on the YCJA. It’s not a CAS course. It’s almost like I have to ask someone. A lot of times when it comes to releasing young persons from custody; that becomes a little tricky because there are certain things you can and cannot do. Formal training so that we can mesh it with the YCJA is important and necessary. It’s tough. If you don’t get the training you’re at a loss sometimes. I don’t think it would take much to add that to our course.”

Training that brings people and information about child welfare and youth justice sectors together to help break down the existing silos was identified as a proactive solution. Without knowledge it is difficult to establish connections and *vice versa*.

“I’d like people to be better educated. By educated, I mean educated and informed. My pitch is more of a cross disciplinary approach. I have criminal lawyers who know nothing about the YCJA. I have family lawyers who know nothing about the YCJA as well. You cannot work in silos. Often, lawyers don’t understand the language or the timeliness of decisions. It is important that lawyers are educated about both issues.”

“I think we as judges have a responsibility here to meet with and educate the OCL on the YCJA, the Defence counsel and Crown on the CFSA. One thing we have initiated here that might be a model is the Bench and Bar seminar series. We’ve been doing it for years for domestic and child welfare.”

Helping the various sectors educate and understand each other is an important goal that will enhance specialized services for cross-over youth.

Reasonable Bail Conditions

There is a strong need for a critical look at the bail process. The various sectors all raised concerns but seemed to lay some blame at each other’s feet. Each sector involved did however acknowledge that it has a role to play in changing the *status quo* of overly restrictive bail conditions.

“Fewer conditions. I don’t like multiple conditions on kids. It sets them up for failure.”

Crowns and duty/defence counsel both recognized the need to step back from the hurried discussions in the hallway or courtroom in which they agree to standard conditions that will further frustrate youth in already restrictive environments.⁶⁴

Some saw doing more contested bail hearings as the way to really understand the youth and her plan and to bring the players together. Hearing from the child welfare worker about the youth's supports might help put the need (or not) of conditions in context for the justice of the peace. Conferencing at the bail stage prior to a bail hearing could contribute to better understanding the needs of the youth.

While justices of the peace cannot easily go behind joint submissions of crown and defence attorneys, they can start leading by example in terms of the types of conditions they impose.

There is genuine desire amongst all sectors that bail conditions be meaningful and relevant to the alleged offence. Questions such as: *Is the condition necessary to ensure attendance or avoid serious re-offending?*; *Is the condition realistic or a set up for failure?* ; *Is the condition too vague?*; *Is the condition behavioural in nature?* Could all help justices of the peace take a case by case look at what are now routine conditions?

There was frustration amongst the Cross-over Kids participants about the revolving-door nature of strict bail conditions. One study concluded that the a youth who gets restrictive bail conditions for charges that include bail violations, is very likely to be back in court for more such violations.⁶⁵

“First of all I say don’t put as many conditions on the kids. The conditions shouldn’t only be on to deal with the charges. We’ll have kids that are often [ordered] to reside and be amenable to the routine of a specific residence. If the kid comes home an hour late, the kids are arrested. It leads to all kind of charges.”

While the decision of justice of the peace in *R. v. R.K.* was overturned on consent because it overrode a joint submission, the analysis is a constructive starting point to re-examining strict bail conditions.⁶⁶

The Role of the Child Welfare Worker

Youth in child welfare care ascribe tremendous authority, responsibility and centrality to the role of their child welfare worker. Youth were dependent on their workers to make decisions about when and where they would live. A common concern was that workers were unavailable, changed frequently and they did not listen to the concerns and wishes of the youth. Youth often

⁶⁴ Sprott, *supra*, note 44.

⁶⁵ *Ibid.*

⁶⁶ See the reasons of Justice of the Peace Cuthbertson, Oct. 22 2014, in *R. v. R.K.* declining a bail condition on an agreement by Crown and Defence that the youth who was not in care “be amenable to the rules of his residence”, as too vague and had no relationship to the offence and was thus unreasonable and arbitrary. **This decision was overturned by the Superior Court of Justice on November 1, 2014, (BR-8368) because the condition was based on an agreement (joint submission) from counsel, was a condition the surety wanted and was “warranted”.**

felt like an “unknown” to the worker. Although, youth understood that their workers were busy attending to the needs of the many youth on their caseload, they remained ambivalent towards their worker and developed a generalized mistrust for adults. It is clear that child welfare workers are very influential in the lives of youth in care in moulding their relationships with significant others.⁶⁷

“It’s a weird relationship with a worker, they have all this knowledge, and they have all this knowledge about us. And I don’t know their last name”

“The CAS seems to be the big complaint for me. There is a lack of resources. They have heavy caseloads. But they need to have someone that is available at any time.”

Many child welfare workers who participated in this project acknowledged the significance of their role with the youth. They understood the importance of advocating on behalf of the youth as a parent would. They knew that rapport and building trust was critical as was taking the time to listen to the youth and understand them from their perspective.

“Rapport and building trust are essential. Keep open lines of communication; allow them to feel safe and not alone when they come to realize that the system does not operate the way they thought.”

“Being honest and straight forward. Lots of checking in with them. Discussing what they feel are appropriate consequences for their actions.”

“Give up on lecturing; they hear it all the time; instead explain that they have support to help them.”

Workers knew as well, that their presence at the time that youth entered group care, when charges were laid, when they were removed from the group home by police, when they went to police cells or detention, when they were in court for a bail hearing, or when they were given conditions for release were times that the worker needed to be available for youth.

“The workers relationship with the child when they enter group care; that relationship is foundational; if you have a foundational relationship with your workers that will somehow be a baseline for everything else.”

“First of all with my kids, you need to show up to court. You have to be present.”

“It also helps when the CAS worker comes to that initial appointment with the PO. Sometimes they defer this to the foster home but they don’t know the history of the child. We need appropriate background information on the young person.”

Child welfare workers also spoke about not understanding the court process and what was required of them. They often felt intimidated and didn’t understand that they could negotiate with both the defence counsel and the crown attorney on behalf of their client. Their lack of

⁶⁷ Finlay, Crossover, *supra*, note 6.

knowledge inhibited them from effectively advocating for the youth. The child welfare worker as the parent has the most relevant information about the youth and could sensitively and respectfully share that information in a way that would influence the court in its decisions about the youth. They could also advocate with police and probation officers about the circumstances facing the youth.

“CAS needs training around court proceedings.”

“The workers are ill equipped. They don’t know the court system and they have a lack of resources to help these kids.”

“Better communication and information sharing between the Police and CAS.”

In summary, society has a special responsibility to cross-over youth because the state is their parent. Society has undertaken to abide by a legally binding covenant with regard to the “parental rights and responsibilities” for youth in child welfare care. Cross-over youth draw attention to the inability of society to fulfill the role as prudent parents. The consensus of the participants of this project was that child welfare workers need the resources to undertake that role such that they have the time to develop the necessary rapport with these youth, to offer opportunities and a sense of hope. This relationship needs to offer mentorship, role modelling, advocacy, consistency and endurance. This may require reduced caseloads and the provision for travel for workers to meet with youth placed in residential programmes in other geographic areas. With effective intervention, negotiation and advocacy on the part of child welfare workers, charges by group home staff or police may decrease reducing the need for court appearances and placement changes. Furthermore, child welfare workers acknowledged the need for training to understand the court process so that they are more effective advocates for the youth in their care.

Two-Hatters

-The availability of (two-hatter) Judges, Counsel, Children’s Lawyers and Crown Attorneys who are knowledgeable of both youth justice and child welfare.

There are obvious advantages to the lawyers who work with and make decisions about cross-over youth in youth court having knowledge of both the child welfare and youth justice systems. Similarly, “two-hatter” judges have a wealth of knowledge that facilitates better outcomes. Professionals who specialize in dealing with children and youth and who are familiar with what a youth in care has been through will provide better service and make better decisions.

“Both from the child protection perspective, it’s important for you to know what’s happening and also from the criminal perspective, what’s been done to him. If you it’s the same judge, you don’t need an OCL in there to tell you what a child has been through.”

“The need for dedicated youth court Crowns. Dedicated youth court judges, whether it’s on a 6 or 12 month rotational basis. Legislation that makes it’s obligatory to consider who we are dealing with and their background.”

There were several “two-hatter” lawyers and judges amongst the Cross-over Kids participants. Knowing both systems helped them to identify needs and solutions across systems. There was a concern that some defence counsel without expertise in children’s issues, will churn out youth court cases, without any consideration of child welfare’s role. This type of approach misses opportunities to connect youth to resources that might keep them out of detention or might help divert a matter.

Two-hatter judges and lawyers were able to engage in effective conferencing and help facilitate plans that would address things like the need for a placement change, mental health or educational supports.

When discussions turned to the issue of a single judge or court dealing with youth court and child welfare matters for the same cross-over youth, the participants raised barriers and concerns. One of the principle barriers to this type of system in Ontario is the way our courts are structured. Several jurisdictions have unified family courts that are mandated to deal exclusively with family law. Further, criminal/youth justice court houses are not always co-located with family courts. Another significant concern was that if a judge had information from child protection proceedings, this information might not be relevant and might be prejudicial to the youth, particularly at the bail and trial stage. There was support for information sharing at the sentencing stage. The use of two-hatter judges as opposed to the same judge eliminates this concern as an experienced two-hatter judge will know what information is needed and when and will use care in managing the flow of appropriate, helpful information.

There was a great deal of support for dedicated, specialized crowns attorneys, specialized, two-hatter defence counsel and dedicated, specialized two-hatter judges. Ontario has had some success with specialized resolution courts. The participants described that having dedicated, knowledgeable, consistent teams with set times for dealing with the specialized issue was beneficial and that the same could apply for cross-over youth.

“I think that most jurisdictions now would say resolution courts are a really good idea because it covers a variety of issues facing the child. I think those types of solution courts would be helpful; where all of the proceedings are put together; not necessarily concurrently dealt with; still very helpful. Information about a young person can fall between the cracks; should be the same judge managing the child. Why not have it the same day? That shouldn’t be a big problem. You trigger all of this at the first appearance. It’s not that difficult.”

Building two-hatter capacity for lawyers and judges is a question of training, mentoring and desire to learn. With exposure to skilled role models in specialized settings, competencies are built. Ontario’s system of appointing lawyers poses some challenges. Youth court lawyers are usually appointed and paid by Legal Aid Ontario whereas child welfare lawyers for youth are appointed and paid by the Office of the Children’s Lawyer (OCL). There are members of the OCL panel who already wear “two hats” as well as some lawyers who work in speciality clinics with children and youth. These appear to be the exceptions. Thus, there will be work to be done between the funding systems and with the lawyers from each sector who want to work with cross-over youth and themselves, cross into a new sector.

Guidelines for Charging Practices in Group Homes

One of the more prevalent recommendations across all of the relevant service sectors was the implementation of guidelines for charging practices in group homes. Concerns pertaining to the current state of group homes and their respective charging practices were raised by all of the service sectors that were consulted. However, more importantly, many of the same concerns were echoed by the majority of the youth who participated in the project who had experience in both the child welfare and criminal justice systems. The principle concern across all of the service sectors with regards to group care facilities was the perceived way in which these facilities use criminal charges and custody to deal with the behaviour of youth who are in care.

Due to a lack of residential standards regulating the quality of care in group homes, staff are often left to rely “upon multiple policies that are fragmented across provincial governments, municipalities, and... themselves.”⁶⁸ Unfortunately, this fragmentation of policy significantly impacts the experiences of youth while living in a group care facility, especially with regards to the likelihood of youths ‘crossing over’ from child welfare to the youth justice system. With no residential standards in place, individual group homes are left to regulate their own conduct and the conduct of those residing in the group home.

There are hazards in allowing group homes to self-regulate. Further, it is essential that the players in the child welfare and youth justice systems are cognisant of the realities of youth living in care.

“We may show discretion but sometimes our hands are tied. For instance, they have to be in at 11 and its 11:05. The facility refuses to take the child in because they have breached conditions of their probation. It’s almost as if discretion at the front end is out the window. Often when we show up at these calls, the kids are at the doors of the group home and they won’t let them in.” [police]

It is important to underscore the distinction between the various group care facilities. While it is true that many group homes have a tendency to overcharge the youth residing in their facility, there are group homes and group home staff who refrain from calling the police when they are presented with disruptive behaviours. One group home staff member commented on the importance of engagement over consequence:

“We are pretty creative; it’s not about consequences, it’s about engagement. We will take them (youth) on day trips; the [disruptive] behaviour is in the context of the system they come from... We do well when we bring conflict into the context of the family. The [justice] system is not great with our (welfare) system because it’s punitive. The children we work with are a sensitive group. We try to avoid using the police as much as possible.”

⁶⁸OPACY, *supra*, note 27 p. 32

The inconsistency in charging practices between group homes was identified by the participants in Cross-over Kids as contributing to confusion for all involved and to disparate outcomes for youth.

Clearly, the introduction and implementation of guidelines for charging practices in group homes are necessary to stem the tide of charges coming out of group homes. The introduction of guidelines for charging practices would prevent group home staff from contacting the police for minor household infractions. This will result in fewer charges against youth, which will lead to a lower youth turnover rate across group homes. If a youth is able to reside in one group home for an extended period of time, the group home staff have an increased chance of developing a relationship with that youth. This is vital because, according to all of the youth who were consulted, *relationships* are essential to the viability of their chances at achieving success, both educationally and economically, while in care and after transitioning out of care.

“There should be more effort around connecting the youth with the people they need to connect with. A lot of youth who I currently work with come up to me and ask ‘why can’t you be the one who primarily deals with what’s going on in my life instead of the group home staff because I don’t connect with the group home staff.’”

Moreover, the participants agreed that the criminal justice system should not be used to manage the behaviour of youth in care. It cannot replace the services that many of the youth in care require. There was an apparent consensus among participants that police should only be contacted if there are safety concerns.

Group homes should be guided through consistent standards in order to avoid the criminalization of adolescent behaviour from high needs youth. The introduction and implementation of guidelines for charging practices in group homes will foster positive change for group homes and the youth who reside in them. The implementation of consistent guidelines across the province or at the very least, across police and court catchment areas will assist in ensuring that youth are not treated differently in one group home *versus* another. Broad-based mandatory guidelines and standards will also serve as an opportunity to train and mentor group home staff to help them build positive relationships with the crossover youth in their day to day care.

Specialized Court Workers

-The provision of specialized court workers who can provide meaningful information to the court about the needs of cross over youth.

“If you have a designated worker who was educated and trained to work in the youth justice system and the child welfare system, that would be helpful.”

Many participants in Cross-over Kids spoke highly of dedicated child welfare workers who have worked or do work in their local courtrooms. These workers have in-depth knowledge of the child welfare system and are trained in youth justice matters. The workers also learned from their day to day experience as liaisons in youth court.

Dedicated child welfare workers are a solution to the information gaps that inhibit proper processing of youth court charges for cross-over youth. They can help identify that the youth is

in care and can help ensure that information about placement and needs gets before the court. They can also help ensure that the youth's own primary child welfare worker attends court or that they have the relevant information from the primary worker.

The absence of a dedicated child welfare worker can lead to delays and have consequences such as youth being detained pending the attendance of his legal parent, the child welfare agency. Having an accessible and consistent child welfare worker was seen as contributing to effective planning and problem-solving for cross-over youth through formal and informal conferencing and meetings. Because child welfare is the youth's legal parent and has access to services and resources that might enable a youth to be released or diverted, a dedicated worker can play a critical case management role and help better serve their own youth.

"It is more meaningful and helpful for the child welfare worker to be present. This person is most familiar with the youth and is able to share information with duty counsel. Often probation services will be present in court and the child welfare worker is able to consult with probation (and restorative justice workers as well)."

This type of role does not need to be filled by a child welfare worker if the dedicated court worker has a clear mandate and access to child welfare workers who are mandated to be responsive and preferably, access to data bases. The main function of a dedicated court worker was identified as liaising with all of the necessary participants and helping to manage immediate and longer term solutions and steps in the process. Their role can make the system more efficient and can help provide practical supports for cross-over youth.

Mentors for Youth

A common theme among the participants of this project was the need for a mentor for these youth. Someone who would be a consistent support person, who would stand by the youth, develop a respectful and trusting relationship with the youth, navigate through the system with the youth and negotiate with all stakeholders, the unique and complex needs of the youth.

"I think it's the person they trust. Not all the time but if kids have the capacity to form an attachment, that's the answer."

"We used a program that is sort of a holistic program that looks at kids who are in a lot of trouble with the law. It was a coaching and mentoring programme that deals ostensibly with everything that is going on in their lives. It was focused mostly on kids that are in great risk of going into custody. "

This appeared to be the role of the children's service worker, however if the worker is unable to provide this kind of mentorship to the youth due to caseload or conflicting mandate, then another person could take on that role.

"We don't have enough time to give them what they need. They need someone else. They need a mentor type person to follow them. It could be a social worker; someone through probation; someone who is qualified. Probation officers don't have enough time either. Getting the youth to buy in is also difficult."

Youth participants spoke about the value of youth/peer mentors. Youth “who had been through the system” could mentor and guide youth particularly as it related to the culture and dynamics of group home living and street life. Youth are more likely to trust their peers than adults particularly those in authority.

“Youth are doing well in the system. Youth need to get volunteer hours. If you had youth in grade 10, 11, 12 doing well why not give them the training, they are feeling empowered and they are working with youth in care. I’m currently in care, just out of care. The older ones feeling involved, purposeful, and the younger ones feeling cared for. Everyone gets something out of it.”

Also, police officers spoke about providing a similar presence in the group homes as they provide in some schools. This may allow for a mentoring role in some circumstances

“Our officers locally have been trying to change the ways they deal with kids in group homes.....focusing more on planning and relationships for young people. “

“Small towns have good relationships with the police – less of an adversarial set up – police will come in and talk to the youth without charging them.”

Given the emphasis placed on the significant role a mentor may play in the lives of cross-over youth and the range of people who may play that role, there needs to be more thoughtful attention given to the provision of youth mentors across all relevant service sectors.

Alternative Forms of Residential Care

Children coming into care present with an increasingly greater complexity of needs. They often have neuro-developmental disorders, medical complexity, and cognitive impairments. It has been acknowledged that deprivation and chaotic family lifestyles contribute to a host of neuropsychiatric problems that culminate in more extreme behaviours on the part of the youth. Participants in the project spoke of the following: autism spectrum disorders, behavioural and conduct difficulties, psycho-social considerations, addictions, and attachment disorders. If early decisive intervention that addresses the roots of behavioural difficulties does not occur, this complexity of needs will generate a series of multiple placements and perpetuate the stigmatization and alienation of the youth.⁶⁹

“We’re seeing a lot more youth with mental health issues or behavioural issues. Some are definitely diagnosable and some are the result of troubled childhoods. These youth are confused and lost and more often than not they end up in the justice system. The ones that need the help the most seem to be the ones who are not engaged by the youth mental health system. And they are not necessarily criminals. They have done stuff that has put them into conflict with the law but they are not criminals.”

⁶⁹ OPACY, *supra*, note 27.

“I think there is a problem of trauma. I don’t think our mental health system is ready to deal with this level of trauma. We have kids who are dealing with immense trauma and FASD before they get into the system.”

Finding services for these cross-over youth with complex needs was described as very difficult which led to frustration on the part of workers who were trying to implement a meaningful plan of care for the youth. Child welfare workers felt that other stakeholders should have a better understanding of the youth’s background, predisposition and mental health needs when making decisions on their behalf. Collaborative case planning would be effective particularly if resources could be pooled to ensure an optimal placement.

“Working with youth and their strengths. Need to maintain longer term placements for youth; difficulty in following through if placement continues to charge. Mental health and addictions need to be a focus; recognize trauma with respect to CAS youth; many youth have been diagnosed with FASD. Court and officers need to have a better understanding of FASD.”

Adolescents represent the largest proportion of children and youth in care and adolescents are more likely to be placed in outside paid resources and group care. Due the complexity of serving these youth, group care was not always considered to be effective. Typically the staff in group care are young, poorly paid with limited training and insufficient supervision. They often lack the professional qualifications, experience and the judgement required to assume the task of managing the range of behaviours and circumstances in group care. They frequently do not have the skills to know and understand the young people in their charge. They will resort to intrusive strategies to exert control over the environment if they lack confidence in their ability to manage behaviours. Furthermore, there may not be sufficient clinical resources available to the staff or the youth to support their therapeutic needs⁷⁰. Many participants described the challenges faced by group care settings in managing cross-over youth. This related to regulations, policy requirements, resources, staffing and structural limitations.

“In fairness again to the group homes, you’re dealing generally with underpaid, undertrained and frightened young people. And dealing with them and their reactions takes a lot of wisdom and a lot of experience. That whole group home institutional thing, I think it’s heavily underfunded. If you don’t supply the resources, these are the types of things that happen.”

There was mention by a number of participants that child welfare workers wanted their youth kept in detention to ensure their safety. They weren’t convinced that a return to a group home would not lead to further challenges and difficulties faced by the youth. Due to the frequency of placement changes, youth were unstable and took significant risks. The participants understood the dilemma they faced when discussing their interest in keeping youth in custody to prevent further risk taking behaviour on the part of the youth. For the purposes of a bail hearing, youth are often held in detention after charges have been laid. Many times these youth cannot return to the placement from which the charge arose and indeed they have been in many placements previously to which they cannot return. Justices of the peace release these youth because the

⁷⁰ Ibid.

charges do not justify a detention order and they do not wish to violate the legal youth's rights. The dilemma from the workers perspective is the legal right of the youth for release *versus* what's in the best interest of that youth given his/her history of risky behaviours.

"You've got to stop the turnover in the group homes. You can't establish relationships in the community. When you establish relationships with the group home, you hope the child stays in that group home. But the turnover is huge. Establishing a relationship with these kids is time consuming. If they are constantly being moved, you can't build a relationship."

"And I know some of our workers would, on an emotional level, sometimes we would like to see the kids in custody for their own protection. I know that's not an appropriate use of the system but we are at our wits end with a lot of these kids. Once a young person turns 16, from our end of things, they have to consent to a placement. So we might have the perfect place for them and they might say "no, I'm not going there."

"Every two days they are taking off and doing something super bad. A month will go by and they've been arrested 8 – 11 times in one month. They are completely out of control. It's ridiculous. There's an escalation in the severity of the crime. Every time they're there for a custody hearing, they let them out. They need to stay in detention to get back on track. Whether it is a group home or a foster home it is not a secure facility."

For the reasons articulated clearly and consistently by many participants, alternatives to group care were suggested. Instead of keeping youth in secure detention while a placement is being sought, a number of participants recommended a "semi-secure" residential resource that offered the youth and the community greater security while offering important life skills and therapeutic programming. Ideally, this resource would be in a country like setting. It was often stated that there needs to be more emphasis on preparation for independence starting at an earlier age. Incremental, graduated programming over a longer period of time with one to one resources was the described model.

"Generally speaking, we see a lot more about behaviour management. Their behaviour might be a reaction to the fact that they want to live independently. It's almost like a revolving door. But I think part of the issue as well is the lack of housing that is available as well. I know I've been working with a CAS youth right now who is on continued care and we've been looking for months for affordable housing and we can't find anything. I think more investment in affordable housing would be great. I just had a youth who waited a year to get into a semi-independent program."

"We've created independent living areas; their own apartment. We've have some very difficult people that have demonstrated that it works. It's all about the relationship; establishing rapport; flexible services. The individual case manager with probation is key to our success. They work out a lot of the issues with the kids."

Enhanced treatment foster care programmes were also discussed. Research has demonstrated the effectiveness of this model. However, a fuller range of therapeutic and training resources need to be “wrapped around” the foster home for successful outcomes. Many youth (but not all) aspire to “family like” environments in which they felt consistently cared for and they had a variety of family like activities that did not set them apart from their peers. This was in contrast to youth who appreciated group care that allowed semi-independent living.

“Kids can’t grow up in treatment; they need a nurturing home; foster care could provide this; no one is going to thrive while be controlled and watched; they need to be able to connect to family system.”

The Role of the Education Service Sector

When the Cross-over Committee was formed, the focus was directed at the youth justice and the social service sectors. Committee members represented those sectors from the varied perspectives of government, non government, the voluntary sector and civil society. Throughout the project however, it became evident that the education service sector was critical to the overall landscape when considering the lives of cross-over youth. Many youth found success in school and it gave them a sense of identity that was not affiliated with “in care” circumstances.

“We worked through the CJS and I’m not sure what the turning point was. School officials went above and beyond. If these kids have an education, they have a chance.”

“Schools and the school board is huge as well. Some way to engage the schools to make education available to these kids is important.”

Due to the frequent movement of these youth however, school was more often challenging and the development of meaningful relationships at the school with both peers and staff was often discouraging or demoralizing. Confidentiality and privacy were necessary to give each youth the opportunity to move forward without reproach or embarrassment.

“There needs to be better programming out there for kids who get into trouble and as part of their sentence they need to occupy these kids with something productive to do. I think that’s where we fall short. I think out there in terms of kids that are high school age or between 12 and 17; in many schools and many peer groups there’s still a huge stigma on mental health and illness. I think that’s a huge barrier.”

The value of education to the success of cross-over youth in particular was acknowledged in the court by some judges. Youth were encouraged to pursue their education goals even if they felt that they were beyond their capacity. Judges encouraged youth to pursue their dreams regardless of their life circumstances and dreams. These judges put mechanisms in place to ensure that the youth had the tools they needed to pursue their school goals.

“A young lady came before me about 4 months ago and there was something about her. This girl was very articulate. I asked her what she wanted to do here. She said that she wanted to finish school. I asked her if she had any idea of what she would want to do in the future. She said she wanted to be a doctor. She said she looked into a medical program at McMaster. What kid who is

creating mischief knows about the medical program at McMaster? I ordered a section 34 for the young lady. I had to be careful about how I served this up to her. I told her that if she wants to be a doctor, the section 34 would be a good thing for her. I wanted her to gain some insight into herself going forward so she could internalize what's good and what's bad. I loved this kid. How many kids do you get who want to be a doctor? I would never ever had known that if I hadn't created this forum (case conference)."

"I have found great success in persuading young people to the psycho-educational assessment because I point out that it's for them. It will not be delving into their personal issues other than the way they learn. As we're aware, if you put your name in the public school system, you may be waiting a year or two for an assessment. Whereas in the criminal justice system, I can get that assessment within 60 days and have it available. Once those assessments are given to the guidance department, they must immediately draw up a plan for the young person. They are mandated to put programming into place right away."

The accessibility to education plans that are integrated into the youth's overall plan of care, builds on successes and is respectful of the unique needs of cross-over youth is a critical requirement. The youth justice and the children's service sectors need to more actively interface and partner with schools for the wellbeing and positive outcomes for these youth.

Summary

The Cross-over Youth Committee was formed in October, 2013 with members seeking to understand what triggered the trajectory of youth from the child welfare to the youth justice system and how the resultant consequences could be ameliorated. The discussions included professionals from across all relevant service sectors. The interest to remedy this set of circumstances has been promising with continued commitment to collaboration and adaptive problem-solving. To this end, a series of forums took place across nine service sector groups: Judges, justices of the peace, the legal service sector such as defence counsel and the Office of the Children's Lawyer, crown attorneys, child welfare, probation services, youth, group care and police Services. The goals set out from the onset for each of the forums were twofold: 1) to gather information about the roles of the various stakeholders and participants in the lives of Cross-over kids and, 2) to develop a forward-looking set of recommendations to intervene in the patterns related to the cross-over trajectory. The forums included focus groups, round-table discussions, dialogues with key informants, panel discussions, surveys and training sessions which all took place between October, 2014 and March, 2105. The format for each forum was dependent on the requirements identified by the particular service sector, agency or participant. The original plan was to focus on the service providers in the GTA. It became evident however, early in the project that the local Toronto child welfare agencies indeed place their youth in care in residential placements outside the city. Therefore some interviews/forums took place in other sites such as Hamilton, London, Belleville, Durham, Brampton, Chatham, Sudbury, Thunder Bay and Ottawa.

The collation of the information gathered resulted in 10 key themes which were ranked according to frequency of citing within and across sectors and are discussed in detail herein. They are as follows:

1. Mechanisms to ensure better communication and collaboration across service sectors.
2. Joint opportunities for cross-sectoral training for stakeholders who impact the lives of Cross-over youth.
3. The expectation of reasonable bail conditions to which youth are able to abide.
4. The shift in policy and practice that allows for consistency in child welfare workers so that they can advocate effectively for cross-over youth in their care.
5. The availability of (two-hatter) judges, counsel, children's lawyers and crown attorneys who are knowledgeable of both youth justice and child welfare.
6. Guidelines for charging practices in group homes.
7. The provision of specialized court workers who can provide meaningful information to the court about the needs of cross-over youth.
8. The provision of "Mentors" for youth who will stand by them, navigate through the system with them and negotiate resources and services on their behalf.

9. The development of alternatives to group care such as treatment foster care or programmes geared to independent living.
10. The accessibility to education plans that are integrated into the youth's overall plan of care, build's on successes and is respectful of the unique needs of cross over youth.

Conclusions were drawn and recommendations were made with regard to each of these ten themes. The Committee has recommended pilot projects in four geographic sites in Ontario that would map this trajectory and identify the points of intersection in which collectively intervention strategies could be developed to address the ten key themes. The pilot projects will take into account the role of local culture and practice at each site.

Society has a special responsibility to cross-over youth because the state is their parent. As a society, we have undertaken to abide by a legally binding covenant with regard to the "parental rights and responsibilities" for youth in child welfare care. Cross-over youth draw attention to our inability of to fulfill our role as prudent parents. The intent of the Cross-over Youth Committee is to offer remedies through collaboration and innovation.