To Protect or To Punish:
Illuminating Pathways from Care to Criminalization

By

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Abstract

This dissertation undertakes an in-depth analysis of the compounding effects of the child welfare and criminal justice systems on young adults (ages 18 to 24) in Ontario. The research is informed by qualitative, critical race methodologies, including semi-structured interviews with 25 young adults who have been involved in both systems; 10 practicing lawyers in Ontario; and 10 Youth-in-Transition Workers. The analysis and findings are presented in two academic papers and one public policy report.

The first manuscript uses an intersectional framework to uncover reasons why racialized children and youth are overrepresented in the child welfare and criminal justice systems; findings reveal race-based differences exist in the treatment of accused individuals who have been in care and experience mental illness in the early stages of the legal process, from arrest to bail. The second manuscript explores understandings of risk in bail courts and uncovers ways this concept functions as an organizing principal. This analysis illustrates how care status comes to be identified as a risk factor. Together these manuscripts demonstrate ways that risk-thinking fails to account for the particular conditions, circumstances, and contexts of youth leaving care, to youths’ disadvantage. The third manuscript is a public policy report that addresses gaps in public knowledge by synthesizing existing information about the adverse outcomes experienced by youth leaving care in five areas: education; employment, poverty, and income support; housing and homelessness; criminalization; and mental and physical health and wellbeing. Using this information, recommendations focus on ways to disrupt pathways from care to criminalization.

As a complete work, this dissertation analyzes ways that race impacts the experiences of youth leaving care in the criminal justice system, examines understandings of risk in bail courts, and highlights pathways from care to criminalization.
Co-Authorship

The third manuscript in this dissertation is a public policy report that was co-authored with a colleague, Dr. Linda Mussell, who completed her PhD in the Department of Political Studies (April 2021; Queen’s University). As first author, I took the principal role in data collection and analysis, interpretation of results, writing, and the framing of the report. Linda has generously permitted this material to be included in this dissertation. The report, “The Cost of Prevention: Analyzing the Cost of Adverse Outcomes for Youth Leaving State Guardianship in Ontario” will be distributed to first-voice advocates, community organizations who provide support services to youth and young adults who are/were previously under the state’s guardianship; law professionals; policy makers within the Ministry of Children, Community and Social Services; and other stakeholders.
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Finishing my dissertation was far from a solo journey. A tremendous and heartfelt thank you to the following people, without whom this finished work would not have been possible.

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Selma, you care so deeply about education, about the children you teach, about family, about justice. It is only natural your little sister would try to find some way to follow in your footsteps.

My father and grandmother are no longer with me, but the lessons they taught me will remain with me forever. My father impressed upon me the importance of education. He also taught me that in an imbalanced and unequal world, I would have to work harder, do more, and be better to be taken seriously, and to succeed. He is credited for my love of learning, and for my drive. Though my grandmother had very little, she was the most generous person I’ve ever known. She taught me what it means to be a humanitarian, about community, and about caring for others. It is because of her influence that I am a community-centered researcher.

Thank you to my wonderful mother whose unwavering and unconditional confidence, love, and support throughout my life have allowed me to dream big. This win belongs to you too.

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# List of Abbreviations

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<thead>
<tr>
<th>Acronym</th>
<th>Full Term</th>
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<tbody>
<tr>
<td>AOJ</td>
<td>Administration of Justice charge</td>
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<tr>
<td>AI</td>
<td>Appreciative Inquiry</td>
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<tr>
<td>AWOL</td>
<td>Absent Without Official Leave</td>
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<tr>
<td>BIPOC</td>
<td>Black, Indigenous, Persons of Colour</td>
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<tr>
<td>BVSP</td>
<td>Bail Verification Supervision Program</td>
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<td>CAFCA</td>
<td>Children’s Aid Foundation of Canada</td>
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<td>CAS</td>
<td>Children’s Aid Society</td>
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<td>CCSY</td>
<td>Continued Care and Support for Youth</td>
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<td>CCO</td>
<td>Continuing Custody Order</td>
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<td>CRM</td>
<td>Critical Race Methodology</td>
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<td>CRT</td>
<td>Critical Race Theory</td>
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<tr>
<td>FTC</td>
<td>Fail to Comply</td>
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<tr>
<td>GCO</td>
<td>General Counsel Office</td>
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<tr>
<td>GED</td>
<td>General Education Development Certificate</td>
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<tr>
<td>GREB</td>
<td>General Research Ethics Board</td>
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<tr>
<td>GTA</td>
<td>Greater Toronto Area</td>
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<td>HF4Y</td>
<td>Housing First for Youth</td>
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<td>JDA</td>
<td>Juvenile Delinquents Act</td>
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<td>JHSSO</td>
<td>John Howard Society of Ontario</td>
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<td>JP</td>
<td>Justice of the Peace</td>
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<td>LAO</td>
<td>Legal Aid Ontario</td>
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<tr>
<td>MAG</td>
<td>Ministry of the Attorney General</td>
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<tr>
<td>MCCSS</td>
<td>Ministry of Children, Community and Social Services</td>
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<tr>
<td>OACAS</td>
<td>Ontario Association of Children’s Aid Societies</td>
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<tr>
<td>OCAC</td>
<td>Ontario Children’s Advancement Coalition</td>
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<td>OCFSA</td>
<td>Office of Child and Family Service Advocacy</td>
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<td>ODSP</td>
<td>Ontario Disability Support Program</td>
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<td>OHRC</td>
<td>Ontario Human Rights Commission</td>
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<tr>
<td>OPACY</td>
<td>Office of the Provincial Advocate for Children and Youth</td>
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<td>OSAP</td>
<td>Ontario Student Assistance Program</td>
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<td>OSSD</td>
<td>Ontario Secondary School Diploma</td>
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<td>OW</td>
<td>Ontario Works</td>
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<tr>
<td>PHO</td>
<td>Provincial Health Officer (British Columbia)</td>
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<tr>
<td>PTSD</td>
<td>Post-Traumatic Stress Disorder</td>
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<tr>
<td>RCY</td>
<td>Representative for Children and Youth (British Columbia)</td>
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<tr>
<td>YCJA</td>
<td>Youth Criminal Justice Act</td>
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<tr>
<td>YOA</td>
<td>Young Offenders Act</td>
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<td>YIT Worker</td>
<td>Youth-in-Transition Worker</td>
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Chapter 1: Introduction

Intersections of Child Welfare and Criminal Justice

When children and youth are subjected to neglect or abuse in their homes of origin, the state’s child protection services may intervene. Most of the time, social workers try to keep families together by connecting them with treatments and supports in their communities. In this case, the family will have an open file with the Children’s Aid Society (CAS) which involves regular visits with a CAS worker to ensure a standard of care is met and maintained, until children turn 18 and the file is closed. In Canada, family separation occurs in 8% of cases and is typically used as a last resort (Shewchuk, 2020); existing child welfare policies instruct social workers that separation is reserved for severe cases where children are subjected to sufficient harm to warrant immediate apprehension (Child, Youth and Family Services Act, 2017, Section 74(2); MAG, 2019). In Ontario, there are approximately 11,700 children and youth under the state’s guardianship (MCCSS, 2021b). These young people are among the most vulnerable children and youth in our society.

When children are taken into protective custody by the state, they are placed in out-of-home care and the state in effect becomes their parent (Doyle, 2007; Kovarikova, 2017). When possible, children are placed in kinship care, which is a home headed by one of their relatives or another person they know. If this placement is not possible, CAS workers will typically try to find children and youth a home with a foster family. Foster parents are trained to act in this capacity and receive a daily stipend from the provincial government for each child they foster (in Ontario = $77.25/day) (Key Assets, 2021). Older youth, as well as youth who may have challenges adjusting in foster homes, are sometimes moved into group homes, which are care facilities where multiple youth live, and staff work there in shifts to provide 24-hour supervision.
In some cases, children and youth may be required to live in a residential treatment centre which is a highly structured and supervised environment where they receive educational and therapeutic supports to address psychological, behavioural, or substance use issues (Shewchuk, 2020).

Each year in Ontario, approximately 1000 youth ‘age out’ of state guardianship upon turning 18 (Contenta, Monsebraaten, & Rankin, 2014). The terms ‘age out’ ‘aging out’ and ‘aged out’ refer to youth who have reached the age of majority (18 in Ontario) while under state guardianship; after this time, they are no longer eligible to receive government supports due to legislated age cut-offs (Doucet, 2020). This dissertation is concerned with what happens if these young people come into conflict with the law after ‘aging out.’ Much of the existing research focuses on the experiences of “crossover youth”—youth who are involved in the child welfare and youth justice systems (Bala, De Filippis, & Hunter, 2013; Bala et al., 2015; Finlay et al., 2019; Scully & Finlay, 2013). Less attention has been given to the experiences of young people who are criminalized after leaving care, or the lasting impact of involvement in the criminal justice system after one becomes a legal adult. Yet, meaningful differences exist between the

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1 Legal adulthood begins at age 18. Yet, the emerging adulthood literature (Arnette, 2000) recognizes that young people continue to cognitively, emotionally, and socially develop and mature well into their twenties. Consistent with this literature, I use the terms “youth” and “young people” interchangeably to recognize an upper boundary for this development stage in the late twenties. When referring to those aged 18+, the terms “legal adult” and “young adult” are specified.

2 I use single quotations around ‘aging out’ as informed by Melanie Doucet (2020, p.5), a scholar who has lived experience in the child welfare system: “Although ‘aging out’ is a label that is not applied to youth in the general population, it is a term that most people who are/have been in care understand, and is widely used in child welfare reports, peer-reviewed articles and in the media to illustrate this youth-in-care specific phenomenon. We mindfully chose to put ‘aging out’ in single quotation marks … to de-normalize the term, as we advocate for equitable transitions to adulthood for youth in care.”

3 While some youth are reunited with their families before turning 18 and others sign themselves out of care at age 16, this dissertation focuses on the group of youth who ‘age out’ of care when they become legal adults at age 18.

4 I use the terms “care” and “child welfare system” interchangeably. The term care, shortened from out-of-home care, is commonly used among practitioners to recognize all young people under the state’s guardianship (foster and kinship care; group homes; residential treatment centres), as well as families involved with the state’s child protection services.
youth and adult criminal justice systems, as well as in the type of support youth receive from the child welfare system after turning 18, that require attention.

If a youth is arrested prior to their 18th birthday, justice system actors will be made aware of their care status. Police officers may contact their foster parent(s), group home staff, or CAS worker upon arrest. If they are arrested and detained, they may be released to an address, which sometimes requires locating a nearby and appropriate placement in foster care or a group home (Youth Criminal Justice Act, 2002, Section 31(1)). And if the young person must attend future court appearances, their CAS workers should attend with them in the capacity of their “parent” (Bala et al., 2015). Importantly, because they are under age 18 (between the ages of 12 and 17), they are subject to the Youth Criminal Justice Act (YCJA) (2002). The existence of youth justice legislation in Canada acknowledges that youth and adults are distinct: because youth are still emotionally and cognitively maturing, they are not as blameworthy for their actions in comparison to adults who are presumed to have reached full emotional and cognitive maturity.

As legal adults however, young people are afforded autonomy and privacy about their history in care as they move through the legal system. During intake with defence counsel for example, young adults may choose whether to disclose or discuss their histories in care. If defence counsel does not know this information, it is unlikely that the Crown Attorney or Justice of the Peace (JP) will either. The supports youth receive from the Children’s Aid Society before turning 18 help to offset the impact of the absence of familial supports, but these CAS supports cease when youth become legal adults, even though the need for familial support to navigate the complex legal system does not disappear. Significantly, the reasons why crossover youth are deemed at-risk and in need of support and protection during the criminal legal process persist

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5 Youth are not explicitly asked about their histories in care because of current privacy laws which protect this information once young people become legal adults.
after their 18th birthdays, but justice system actors are no longer made aware of their histories in care, and they often are unable to rely on support from their CAS workers or families to navigate the process. In most cases, youth are left to navigate the legal process on their own. What’s more, when youth are charged after they turn 18, they are subject to the Criminal Code. While diversion programs exist for adults, they are not given the same prioritization as is seen in the youth system. And as legal adults they are deemed more responsible, and thus more blameworthy, for their actions, and are subsequently met with more punitive (rather than protective) responses.

The Ministry of Children, Community and Social Services (MCCSS) administers the child welfare and youth justice systems in Ontario. The Ministry’s existing child welfare policies encourage youth to strive for independence after leaving care. Yet, most youth ‘age out’ of care abruptly and on precarious footing at age 18 when they are required to leave their foster care and group home placements. The adverse outcomes for this population of youth are well documented, including low educational attainment, under- and unemployment, poverty, homelessness, and criminalization. To mitigate these outcomes and better support youth leaving care to achieve independence, a series of initiatives have been implemented by the Ministry. Youth are now supported by their CAS workers to find independent housing in advance, and CAS covers the cost of first and last month’s rent. Eligible youth receive the Continued Care and Support for Youth (CCSY) stipend of approximately $850 a month until they turn 21 years old. MCCSS has designed a series of life skills training workshops for youth, ages 16 to 24, to build

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6 Each of these outcomes is discussed in detail in Chapter 5.
7 The amount of the stipend varies based on the regional location of the young person.
8 Youth in care are eligible to receive the CCSY financial support if they (1) sign an agreement with CAS outlining the roles and responsibilities of each party in the provision and receipt of the support and (2) develop a plan that includes their goals, and actions to meet these goals, that will be updated regularly by their CAS worker (see MCCSS, 2018).
knowledge and capacity around the skills needed to be independent, such as financial literacy and budgeting (MCCSS, 2021a). And, in response to advocacy efforts by youth with lived experience and allied stakeholders, in 2014 the Ministry hired 50 Youth-in-Transition (YIT) Workers to work at select community organizations across the province (MCCSS, 2014). Youth-in-Transition Workers provide additional support to youth leaving care until they turn 24.\footnote{CAS works to protect infants, children, and youth who have experienced abuse or are at risk of experiencing abuse. CAS provides support to children and their families until the young person’s file is closed, they sign out of care, or they ‘age out’ of care. In contrast, YIT workers work exclusively with young adults, ages 18 to 24, who were formerly in care.}

Notably, financial support ends at age 21 but YIT Workers support youth up to age 24, though a rationale for the two different age cut-offs is not provided.

While MCCSS continues to provide some support—financial, healthcare coverage, and life skills—to youth after they have left care, significantly, youth typically experience an abrupt loss of social supports when they turn 18. While in care, youth move between placements as often as once per year, though sometimes more, which hinders their ability to form meaningful and lasting relationships (OPACY, 2012b). After leaving care, few youth remain in contact with their foster families or group home staff; many have moved so frequently that they do not have sustained relationships with their foster parents or staff (OPACY, 2012a; Rampersaud & Mussell, 2021b). Most youth do not reconnect with their families of origin; for those who do, these relationships remain tenuous as the reasons that contributed to their apprehension by child protection services, for example mental health crises or substance use dependencies, often still exist, which reduces the possibility of a more involved relationship developing (OPACY, 2012b). Contact with their CAS workers is also scaled back substantially.\footnote{The amount of contact varies, but in most (if not all) cases, youth are in contact with their workers more than once per month prior to their 18th birthdays. Check-ins are also more involved as the CAS worker is supposed to ensure that the youths’ current placement is meeting a minimum standard of care.} For most youth, their contact with their workers is reduced to a monthly meeting when they pick up their CCSY
Some might consider this process to be staged or gradual independence: from care, to CCSY, to independence. But youth who ‘age out’ find these circumstances to be totally isolating (Elman cited in King, 2021). It is a disheartening truth that most youth leaving care enter adulthood alone (OPACY, 2012b).

**Illuminating Pathways from Care to Criminalization**

Through socio-legal inquiry, this dissertation explores the compounding effects of the child welfare and criminal justice systems, revealing the two systems’ interconnectedness and uncovering ways young people leaving care are made to be vulnerable and marginalized. Focus is on the early stages of the legal process, from arrest to bail, to uncover youths’ unique experiences of contact with various criminal justice actors, in remand, and in bail court during a tumultuous period of transition to independent adulthood. Close attention is paid to the experiences of racialized youth leaving care: Race and poverty are strong predictors of both child welfare and criminal justice system contact (Yi & Wildeman, 2018). Because many youth in care are racialized and poor, their demographics combined with other risk factors make them especially vulnerable to contact with the criminal justice system. To better understand areas in the legal process where youth leaving care are disadvantaged and could benefit from trauma-informed and age-appropriate interventions and supports, the following research questions are asked:

(1) Does the acknowledgement of care status in the early stages of the legal process impact the young person’s perceptions of subsequent experiences in the system, and in what way?

(2) Do any practices in the early stages of the criminal process have unique impacts on youth leaving care?

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11 Bail, or judicial interim release, allows individuals who have been criminally charged to await the resolution of their case in the community. When a person is denied bail, they are held in pre-trial custody. A fulsome discussion of bail appears in Chapter 2.
(3) Does the court’s risk aversion and desire for efficiency have consequences for crossover adults?¹²

(4) Do young adults’ experiences suggest there are race-based differences in the ways they are treated by various justice system actors in the early stages of the legal process?

To answer these questions, qualitative interviews were conducted in the Greater Toronto Area (GTA) between March 2019 and December 2020. Twenty-five young adults between the ages of 18 and 24 were interviewed, all of whom had previous involvement in both the child welfare and criminal justice systems. Most of these youth (n=20) lived in out-of-home care placements before their 18th birthdays and the state was their legal parent. Many of these young adults are racialized (n=18) and ‘aged out’ to poverty, meaning, based on the social position they occupy, many exist on the margins of society. In line with the critical race tradition, youth were treated as experts on both systems. Critical race theories and methodologies centre race and racism in all aspects of the research process in order to illuminate the experiences of racialized individuals and to challenge dominant understandings of the social world (Solórzano & Yosso, 2002).¹³ From this perspective, youths’ experiences, as deduced from their interview data, offer an important counter-narrative to dominant understandings of the child welfare system as “caring” and “protective” and of the criminal justice system as a bearer of “justice.” Despite the state’s intentions, much of what youth described experiencing while in the state’s care, and long after leaving care, can be more aptly described as punitive. By giving a voice to this traditionally silenced group and sharing their competing perspective of social life, the stories of these young adults represent a meaningful site of resistance in which a more complex reality of being in “care” is revealed (Aguirre, 2005; Espino, 2012; Hill Collins, 2000).

¹² The term “crossover adults” refers to young adults who have come into conflict with the law after ‘aging out’ of state guardianship.
¹³ The critical race methodological and theoretical approaches are discussed in more detail in Chapter 2.
Twenty interviews were conducted with two professional groups, including 10 lawyers (Duty Counsel n=8; Crown Attorneys n=2) and 10 YIT Workers. The three participant groups’ perspectives are woven together in the analysis to map the socio-legal context of bail courts. Youth and YIT Workers’ testimonies provide thick descriptions of the challenges that young people experience when leaving care and preparing for independence and how these circumstances increase their likelihood of coming into conflict with the law. Lawyers’ testimonies reveal how the circumstances youth leaving care face create unique vulnerabilities for them in bail courts. This empirical inquiry of former youth in care in bail courts puts punishment and risk theories in conversation to extend prevailing socio-legal conceptions of risk as culturally relative (Douglas, 2003) and predictable (Feeley & Simon, 1992, 1994).

Chapter 2 elaborates on the literature, theories, and methods that supported this sociolegal inquiry. Specifically, research about child welfare and criminal justice in Canada are reviewed. An integrated theoretical framework is developed, which incorporates tenets of critical race, risk, and punishment theories. The study is then situated within critical race phenomenology before discussing the methods used to carry out this research.

Chapter 3 (the first manuscript), “Punitive Justice: When Race and Mental Illness Collide in the Early Stages of the Criminal Justice System,” uses an intersectional theoretical framework to explore reasons why racialized children and youth are overrepresented in the child welfare and criminal justice systems. This article assesses how youths’ experiences are shaped by their intersectional social locations of care status, mental illness, and race. Specifically, this manuscript asks: Do youth who experience mental illness perceive race-based differences in the ways they are treated in the early stages of the legal process, from arrest to bail? Intersectional analysis of youths’ justice system experiences reveals when young people leaving care are
arrested while experiencing mental distress, there are perceptions and experiences of race-based
differences in the treatment they receive from police officers. In bail court, lawyers share insights
into the ways the court responds in more punitive ways when youth are both racialized and
experiencing mental illness. This manuscript elucidates the intricate connection between race,
mental health, and risk at the intersection of child welfare and criminal justice.

Chapter 4 (the second manuscript), “Risk and Releasability: Rethinking ‘Suitable’
Support Networks for Former Foster Youth in Ontario Bail Courts,” explores understandings of
risk in bail courts and how this concept functions as an organizing principal, through which care
status comes to be identified as a risk factor. Specifically, this manuscript asks: How does risk-
thinking in bail court fail to account for the particular conditions, circumstances, and contexts of
youth leaving care, to youths’ disadvantage? This article focuses exclusively on the bail process
as the decision to grant or deny bail is a pivotal one in the criminal justice process, with
significant consequences for accused individuals. In bail court, the decision to release an accused
into the community prior to their trial is based on an assessment of “future risk” rather than past
behaviour (Myers, 2009). According to Power (2004), the evaluation of “future risk” in current
bail court practices indicates a preoccupation with maintaining public safety (primary risk) and
safeguarding against threats to the reputation of the justice system should an accused re/offend
while released (secondary risk). In this context, all kinds of behaviours could be framed as
“risky.” Youths’ experiences reveal that the circumstances they ‘age out’ to, namely precarious
support networks and tenuous community connections, are framed as “risky” in bail court which
then rationalizes more punitive responses.
Chapter 5 (the third manuscript) is a public policy report, co-authored with Dr. Linda Mussell,\(^\text{14}\) that discusses the costs to society when young people leaving care experience adverse outcomes, focusing on five key areas: education; employment, poverty, and income support; housing and homelessness; criminalization; and mental and physical health and wellbeing. This report, “The Cost of Prevention: Analyzing the Costs of Adverse Outcomes for Youth Leaving State Guardianship in Ontario,” responds to gaps in public knowledge by synthesizing existing information about the adverse outcomes experienced by youth leaving care. In May, the MCCSS (2021b) announced a plan to make widescale changes to the child welfare system to better support youth leaving care. In consultation with youth with lived experience and other allied advocates, the MCCSS intends to draft new policies that shift away from arbitrary age-cut offs and instead adopt readiness indicators that will guide young people toward achieving traditional markers of adulthood, such as financial independence (Monsebraaten, 2020; Rampersaud & Mussell, 2021b). It is hoped this report will contribute to policy discussions unfolding in the province to ensure newly formed policy will have meaningful and transformative impact. This public sociology knowledge mobilization project bridges academic and public work. It further embodies the core purpose of this dissertation, which is to illuminate (and disrupt) pathways from care to criminalization.

Chapter 6 brings everything together by reflecting more broadly on welfare and justice: How are these concepts understood and how are they practiced? What does the gap between theory and practice suggest about broader societal values? This chapter also elaborates on key findings from this dissertation, addresses limitations, and points to directions for future research. As a complete work, this dissertation offers an in-depth analysis of how race impacts the

\(^{14}\) Dr. Mussell finished her PhD in the Political Studies Department at Queen’s University in April 2021. I am primary author of this report (see Co-Authorship statement on page iii).
experiences of youth leaving care in the criminal justice system, examines understandings of risk in bail courts, and highlights pathways from care to criminalization in order to identify and recommend ways to better support youth leaving care. This dissertation problematizes ways the child welfare system and criminal law work together to define who is dangerous and who must be protected and kept safe.
References


https://cwrp.ca/sites/default/files/publications/YLC_REPORT_ENG.pdf


**Legislation Cited:**

*Child, Youth and Family Services Act*, 2017, SO 2017, c 14, Sch 1


*Youth Criminal Justice Act*, SC 2002, c 1
Chapter 2: Research Design

Literature, Theory, & Methods

This chapter elaborates on the literature, theoretical frameworks, methodology, and methods that informed this inquiry of criminal justice system experiences for youth leaving the child welfare system. The research is situated within the larger contexts of child welfare and criminal justice scholarship, focusing on conditions in the child welfare system, circumstances youth face when leaving care, and intersections of child welfare and criminal justice for crossover adults. This work uses an integrated theoretical framework, drawing on risk theories, critical race studies, and punishment theories. Specifically, Douglas’ (2003) and Feeley and Simons’ (1994) theoretical conceptualizations of risk are discussed, as well as intersectionality, and punishment, normalization, and exclusion. Following the theoretical framework is a discussion of the methodology that influenced the design of this study and the methods used to collect and analyze data.

Literature Review

To ground the three manuscripts within the larger contexts of child welfare and criminal justice, the literature review focuses on conditions in the child welfare system, circumstances youth face when leaving care, and intersections of child welfare and criminal justice for crossover adults.

15 Crossover adults are legal adults (age 18+) who have had prior involvement in the child welfare system and have come into conflict with the law after ‘aging out.’
Conditions in the Child Welfare System

Youth in care experience numerous challenges. Placement instability for example, significantly impacts youths’ development (Doyle, 2007). It is common for youth to move frequently (between placements, and sometimes between cities), typically at least once for each year they are in care (OPACY, 2012b; Rampersaud & Mussell, 2021b). Frequent moves mean youth are constantly being uprooted from school and experience tremendous instability (Kovarikova, 2017). Kirk and Day (2011) contend, every time a youth moves, they lose between four and six months of academic progress because of the disruption to their studies. These gaps in their education are difficult to make up over time. It is unsurprising that only 44% of young people in care in Ontario finish high school compared to 81% in the general youth population (Kovarikova, 2017). Low educational attainment significantly impacts youths’ future career prospects and many ‘age out’ to poverty. In a Canadian study of 210 former wards of the state, 77% reported earning less than $20,000 annually after leaving care (Tweddle, 2005).

The abuse children endure prior to their apprehension is traumatizing. Being removed from their homes is re-traumatizing. The conditions in foster care, including the instability described above, can be further traumatizing (Doyle, 2007). These compounding traumas have significant mental, emotional, and physical effects that last long after young people ‘age out’ of the child welfare system (Yehuda, Halligan, & Grossman, 2001). Scully and Finlay (2015) indicate as many as two thirds of youth in care contend with mental health issues, though it is possible that many have needs that are undiagnosed. Further, this population uses substances, like drugs and alcohol, at rates higher than their peers who were not in care, often as a means to cope with their histories of trauma, as well as their complex mental health needs (Scully & Finlay, 2015; see also: Bala et al., 2015).
When young people are exposed to significant, compounding traumas they develop survival skills in response to their environments which often become visible as disruptive behaviours (Finlay et al., 2019). Sometimes young people are triggered by memories of previous trauma or in response to overwhelming feelings and their behaviours in response to their circumstances may be interpreted by others as “acting out.” Many foster parents and frontline staff in group homes fail to recognize these behaviours as expressions of pain and respond with behaviour-management approaches rather than trauma-informed ones (Finlay et al., 2019). In many cases, the police are called which begins the cycle of justice system involvement for many young people in the child welfare system (Bala et al., 2015; Finlay et al., 2019; Scully & Finlay, 2015). Young people who are in the child welfare system and experience forms of criminalization are commonly referred to as “crossover youth,” or youth with “crossover issues” to recognize the move from one system to the other. The cycle of criminalization persists into adulthood for many youth when the consequences of a criminal conviction can be even more harmful and life altering.

At age 18 and living independently for the first time, many youth face significant barriers that impact their quality of life and future prospects. Many have not completed high school, experience homelessness, and face poverty (Kovarikova, 2017; Shewchuk, 2020). These circumstances render many youth at risk of coming into conflict with the law. One in six youth leaving care in British Columbia experience imprisonment (Shaffer, Andersen, & Nelson, 2016). In fact, youth leaving care in British Columbia are more likely to experience criminalization than to finish high school (Shaffer, Andersen, & Nelson, 2016). Though similar systematic data is unavailable in Ontario, one study in Toronto indicates 46% of youth leaving care in the city experience criminalization (StepStones for Youth, 2020). Longitudinal studies that follow youth
leaving care find that they are more likely than their peers who were never in care to experience incarceration as adults (Yi & Wildeman, 2018). In addition to having precarious support networks, minimal resources, and low social capital,\(^\text{16}\) youth leaving care also contend with experiences of trauma and abuse, factors that likely influence their experience in the criminal justice system.

**Circumstances Youth Face When Leaving Care**

An important difference between youth in care and their peers who are not in care is the cut-off date for support. Contemporary societal trends in Canada and the United States indicate many young adults are relying on their families for financial and other tangible support for longer than in the past, often well into their 20s (Shah et al., 2017; Yi & Wildeman, 2018). Amid higher rates of unemployment; rising housing costs; and a later average marrying age than in previous decades (Shah et al., 2017), family plays a crucial role in easing the challenges of transitioning to adulthood by giving youth more time to enter adulthood on a solid footing (Lee, Courtney, & Tajima, 2014). Though legal adulthood begins at age 18, for most youth in the general population the transition to adulthood extends well beyond this age (Yi & Wildeman, 2018). In contrast, when youth leave care at 18, they are expected to be independent.

Upon turning 18, youth in care are legally required to leave out-of-home placements in foster care or group homes.\(^\text{17}\) As a result, these youth face an abrupt loss of supportive role models and caregivers (Doucet, 2020). Youth rarely keep in touch with their foster families or

\(^{16}\) See Clear; Hirschi; and Sampson & Wilson in Cullen, Agnew, & Wilcox (2018).

\(^{17}\) Earlier this year, the Ministry of Children, Community and Social Services (MCCSS) announced widescale changes will be made to the child welfare system, including an end to arbitrary age cut offs for support. The Ministry placed a temporary moratorium on the practice requiring young people to leave their placements at age 18, effective until September 2022. However, because the new iteration of child welfare policies is not yet drafted, I refer to the existing policy framework.
group home staff after leaving care. Most have severed or tenuous ties to their families of origin. Their contact with their social workers is also substantially scaled back. While each case is different, contact between Children’s Aid Society (CAS) workers and the children and youth they supervise occurs more than once per month. The quality of contact is also more involved as CAS workers ensure a standard of care is being met, whether in their homes of origin or out-of-home care placements. Once young people turn 18, their contact with their workers is typically reduced to a monthly meeting (Doucet, 2020).

At the same time as youth lose their social supports, they may be trying to finish high school and planning for postsecondary education. But because they are leaving their care placements, they need to prepare to live independently, which requires finding employment and securing housing. Many youth find this period of transition extremely difficult. The adverse outcomes among this population are well documented: Only 44% of youth leaving care finish high school (Kovarikova, 2017); 58% of youth experience homelessness after leaving care (Shewchuk, 2020); and approximately 77% experience poverty (Tweddle, 2005), making this population more likely than their peers to rely on government income supports (Shah et al., 2017). Furthermore, approximately two thirds of youth leaving care contend with mental illness (Scully & Finlay, 2015) and many have substance use dependencies (Bala et al., 2015). These factors increase youths’ likelihood of coming into contact with the criminal justice system.

**Race, Mental Health, and Contact with State Institutions**

Notably, Indigenous and Black children and youth are overrepresented in the child welfare system (OHRC, 2018) and the criminal justice systems (Yi & Wildeman, 2018). In 2016 for example, over half of children (52.2%) under age 15 in foster care in Canada were
Indigenous. Yet, Indigenous children account for only 7.7% of the child population (Statistics Canada, 2016). In Toronto, 34% of children and youth supervised by the Children’s Aid Society of Toronto are Black, yet only 9% of Toronto’s population under the age of 18 is Black (CAS Toronto, 2017). Abundant literature also documents the high representation of racialized populations in the criminal justice system (Alexander, 2010; Cesaroni, Grol, & Fredericks, 2019; Mussell, 2020; Wilson Gilmore, 2007). Yi and Wildeman (2018) contend race and poverty are strong and reliable predictors of child welfare and criminal justice system involvement for children, youth, and their families. These trends suggest an intricate connection exists between race and risk at the intersection of child welfare and criminal justice.

Extant literature further indicates the conditions youth face in and after leaving care greatly impact their health status, contributing to high rates of mental illness within this population (Deutsch et al., 2015; Finlay et al., 2019; Greeson et al., 2011; Zlotnick, Tam, & Soman, 2012). Mental health services are tremendously underfunded, which has led to an overreliance on the criminal justice system to respond to those in mental distress (Chaimowitz, 2012; Perez, Leifman, & Estrada, 2003; Peternelj-Taylor, 2008; Primm, Osher, & Gomez, 2005). As a result, many young people in care with mental illnesses are being criminalized. According to Sugie and Turney (2017), criminal justice contact is socially patterned and concentrated among those who occupy “disadvantaged” socioeconomic positions, particularly those who are racialized and poor. Because race and poverty are strong predictors of child welfare system contact (Contenta, Monsebraaten, & Rankin, 2014; Yi & Wildeman, 2018), demographic factors, coupled with other risk factors, including their histories of trauma and abuse, make Black, Indigenous, and other racialized youth leaving care especially vulnerable to justice system contact (Yi & Wildeman, 2018). It is unsurprising that racialized youth are overrepresented in
both the child welfare and criminal justice systems (Chan & Chunn, 2014; OHRC, 2018; Yi & Wildeman, 2018), and a significant proportion of the adult offender population came from care or have had some involvement with the child welfare system in the past (Corrado, Freeman, & Blatier, 2011; Yi & Wildeman, 2018).

Intersections of Child Welfare and Criminal Justice: Crossover Adults

Youth in care are disproportionately represented in the youth justice system. Scholars and practitioners alike refer to youth who are dually involved in both the child welfare and criminal justice systems as “crossover youth” (Bala et al., 2015; Scully & Finlay, 2015). These youth represent an especially vulnerable group among the youth in care population. In a study by the Office of Child and Family Service Advocacy (OCFSA), 48% of youth in open custody facilities\(^{18}\) said that they had a history of child welfare system involvement (cited in Public Safety Canada, 2012). A study in British Columbia reports police are more likely to recommend charges for youth in care (41%) than for youth in the general population (6%), and; one in six youth in care have spent time in custody (lock-up, remand, or sentenced) compared to less than one in 50 among youth in the general population (RCY & PHO, 2009). Longitudinal studies which have tracked the progress of foster youth over time show that this population is more likely than their peers who have not been in care to experience incarceration as adults (Yi & Wildeman, 2018).

Crossover youth who age out of care are especially vulnerable. Because these youth rarely receive the coordinated services they require to disrupt their criminal behaviours before

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\(^{18}\) Open custody facilities are smaller residences typically located in youths’ communities where youth live under 24-hour supervision. Unless youth are approved for a leave, they must be supervised by staff at all times (MCCSS, 2019).
they reach adulthood, their criminality often persists into adulthood (Bala et al., 2015). Their prior criminal history increases perceptions of their riskiness. The universal age-crime curve purports that the risk of criminal activity peaks in mid- to late-adolescence for all youth (Yi & Wildeman, 2018). For crossover youth, this coincides with the period of time when they are preparing for emancipation and independence, making this already turbulent life stage more difficult (Yi & Wildeman, 2018). At 18, these youth “begin to be tried as adults by default, putting them at risk of incarceration and probation conditions that emphasize surveillance rather than rehabilitation” (Yi & Wildeman, 2018, p.50). The consequences of criminal involvement during this transition period can have devastating, long-term consequences for crossover adults.

**Crossover Adults in Bail Court**

The decision to grant or deny bail is a pivotal one in the criminal justice process, with serious consequences for accused individuals. There are three grounds for detention outlined in Section 515(10) of the *Criminal Code*: to ensure the accused’s attendance in court (primary grounds); to protect the public and ensure the accused will not re/offend if released (secondary grounds); and to maintain the public’s confidence in the administration of justice (tertiary grounds). Risk-thinking is centred in bail court decision-making and has given rise to a culture of risk aversion (Myers 2009, 2015). For example, most accused individuals who spend time in remand after they are arrested are eventually released. In a ten-year period (2006 to 2017), the number of bail cases that took five or more days to resolve steadily increased; the average length to resolution in this time period was three weeks (JHSO, 2021). According to a recent report by the John Howard Society of Ontario (JHSO) (2021), delayed resolution of bail is disproportionately connected to having to address the accused’s “social issues.” In some cases,
for example, a youth’s bail hearing may be adjourned several times while restrictive conditions are formulated, including treatment conditions to address any mental health challenges (JHSO, 2021). This trend suggests that vulnerable youth are being punished for their disadvantage by having to spend longer amounts of time in remand custody (JHSO, 2021).

In 2015, Scully and Finlay wrote a ground-breaking report exploring the unique issues that crossover youth face. This report focuses exclusively on the interconnection between child welfare and criminal justice in Ontario, and incorporates perspectives of several key stakeholder groups including youth, judges and justices of the peace, social workers, Crown Attorneys, defence counsel, and police. The report highlights five principal issues with the youth bail process: (1) youth frequently receive overly restrictive bail conditions; (2) conditions imposed should be meaningfully connected to the charge(s) before the court; (3) though it may be difficult to challenge joint submissions made by counsel, Justices of the Peace (JPs) should be thoughtful about the conditions they impose on crossover youth; (4) there is a need for more contested bail hearings to add context to the bail process; and (5) more conferencing between stakeholders is needed, i.e., youth, counsel, social workers, and JP. Scully and Finlay (2015) argue that a critical look at the bail process is needed when it comes to crossover youth.19

When a youth in care comes into conflict with the law prior to their 18th birthday, justice system actors are made aware of their care status. In the absence of familial supports, a representative from the Children’s Aid Society will typically accompany youth to their court appearances, including bail hearings, and provide support navigating the legal system. The CAS representative stands in for the state and acts in the capacity of the youth’s “parent.” In this capacity, the CAS worker provides relevant information about the youth to key actors in the

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early stages of the legal process (Scully & Finlay, 2015). Having a support person does influence bail court outcomes for crossover youth. For example, if a CAS worker does not attend the bail hearing, the youth is more likely to be remanded to custody (Bala et al., 2015).

Furthermore, crossover youth are subjected to the *Youth Criminal Justice Act (YCJA)* (2002). In Canada, youth justice legislation was created to recognize the differences in maturity, development, and blameworthiness between youth (ages 12 to 17) and adults (ages 18+). Previous youth justice legislation in Canada, the *Young Offenders Act (YOA)* (1985), had problematically relied on custody to respond to all forms of crimes. The *YCJA* (2002) was enacted in part to address growing concerns about the overreliance on custody and growing imprisonment rates for young people. The *YCJA* (2002) instead prioritizes diversion out of the courts and out of custody (Part 1, Section 4). Since coming into effect in 2004, there has been an 81% decrease in youth custody admissions in Ontario (Loriggio, 2021; Rampersaud & Mussell, 2021a). In Toronto, there was a 65% increase in the use of diversion and subsequent withdrawal of charges between 2006 and 2017 (JHSO, 2021). The *YCJA* (2002) emphasizes pairing youth with supports in their communities to address their unique risk factors and facilitate rehabilitation. Yet, remand rates among the youth and adult populations remain high (JHSO, 2021; Rampersaud & Mussell, 2021a).

Furthermore, as legal adults, these young people are afforded autonomy and privacy about their histories in care in the legal system. It is not known whether police, prosecutors, or JPs are aware of youths’ prior involvement in the child welfare system (Bala et al., 2015). If they are aware, it is unclear what impact this information has on subsequent court decisions. Significantly, familial support is helpful when navigating the criminal justice system, whether

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20 Prior to the YCJA, youth justice legislation has had two previous iterations: the *Juvenile Delinquents Act (JDA)* (1908) and the *Young Offenders Act* (1985).
under or over the age of 18. Yet, once youth ‘age out,’ in most cases they are left to navigate the criminal justice system on their own.

The conditions youth face while in care render them an “at risk” population. Coming into conflict with the law compounds their risk and increases their likelihood of engaging in further criminal activity in adulthood (Bala et al., 2015). All crossover adults who were involved in the child welfare system contend with trauma. This population disproportionately experiences mental illness (Deutsch et al., 2015; Greeson et al., 2011; Zlotnick, Tam, & Soman, 2012). Many turn to negative coping mechanisms, such as substance use and other “risky” behaviours, which increases the likelihood of contact with the criminal justice system and continues the cycle of criminalization that began as youth (Bala et al., 2015; Kolpin, 2018). When youth come into conflict with the law after leaving care, these factors are decontextualized in the early stages of the legal system and function in practice to increase youths’ perceived riskiness. These risk factors may then be used to rationalize more restrictive and punitive risk management responses from justice system actors.

This dissertation provides an in-depth, empirical investigation of crossover adults’ experiences in the early stages of the legal system. Attention is paid to the particular experiences of Black, Indigenous, and other racialized young people. Focusing on crossover adults’ experiences at the bail stage addresses two critical gaps in the literature: Much of the existing literature focuses on crossover youth (Bala et al., 2015; Scully & Finlay, 2015). And studies that do focus on justice system outcomes for youth leaving care tend to focus on outcomes that occur later in the legal process, such as sentencing and incarceration (Sugie & Turney, 2017; Yi & Wildeman, 2018). By focusing on the experiences of young adults in the early stages, moments
where youth are uniquely disadvantaged in the system are illuminated. These moments represent important opportunities to intervene and disrupt the trajectory from care to criminalization.

**Theoretical Framework**


**Risk Theories**

Risk is an endemic and enduring feature of society that permeates all aspects of daily life (Beck, 1992; Ericson & Haggerty, 1997; Sørensen, 2018). Prevention through the anticipation, identification, classification, and management of risks has become our primary response to address risks in a dangerous world. Risk logics have taken root in disparate fields in recent decades, including the criminal justice system. Risk theories offer a framework to understand how risk logics work and provide researchers with useful analytical tools to critique these practices.

**Risk Society**

Decades of rapid advances in technology, science, and medicine mean the current generation is generally living longer and better than those previous. Yet, paradoxically, we have
simultaneously come to live under a veil of uncertainty and insecurity (Sørensen, 2018). Beck (1992) suggests this paradox is unique to contemporary societies, especially in North America. We are distinct from our predecessors due to the central significance of risk in our daily lives. In modern societies, everyone—from international government to private individuals—has become more risk conscious (Beck, 1992; O’Malley, 2010); “we are said to think in terms of risk because the world has become a more risky place” (O’Malley, 2010, p.11). O’Malley (2010) suggests that the more we use risk as a framework to deal with problems, the more new risks are revealed which in turn increases our collective risk consciousness.

Risk and danger are often conflated, though the two are different. Danger is typically urgent and immediate, but risk is always future oriented, directed at the anticipation of future danger. As an example, if an accused commits a crime and is charged while on bail, when they return to court, the court has evidence that the accused presents a danger of engaging in criminogenic behaviour if released which may justify detaining them to prevent future offences. If the accused has never been charged with a crime in the past, it is not possible to know whether the accused is likely or unlikely to engage in criminogenic behaviour if they are released on bail. In the event of the latter, the court relies on their ability to assess a range of factors to calculate and predict risk that are connected to the three grounds for release, such as the nature of the offence and the safety of any alleged victims or witnesses (Douglas, 2003).\textsuperscript{21} Beck (2009) argues societies have become preoccupied with the anticipation of future danger and as a result, expansive risk logics have pervaded all aspects of life, evidenced in efforts to calculate, predict, measure, and prevent risk in every aspect of daily life (cited in Walklate & Mythen, 2011). The

\textsuperscript{21} Myers (2009, 2015) argues that there are a range of factors that contribute to the decision to deny bail that span beyond the scope of the three grounds for release, many of which are not directly tied to risk. These factors are discussed in more detail below in the section “The Racialization of Risk,” as well as in Chapters 3 and 4.
infusion of risk frameworks, risk thinking, and risk logics into daily life have transformed our society into what Beck (1992) calls a risk society.

We commonly think of risk as the probability of an event occurring and contemplate the possible consequences that would result if that event occurred (Douglas, 2003). In doing so we seek to transform “life into what Max Weber believed it to be: ‘deliberate, systematic, calculable, impersonal, instrumental, exact, quantitative, rule-governed, predictable, methodical, purposeful, sober, scrupulous, efficacious, intelligible and consistent’” (Brubaker, 1984, p.2 cited in Ericson & Hagerty, 1997, p.87). This risk rationality suggests that the process of analyzing and evaluating risk is a hyperrational and deeply pragmatic process (Ericson & Haggerty, 1997). Risk is further posited to be neutral and its assessment is deemed a technical and objective process. Such thinking presumes risk exists and that it can be predicted and prevented.

**Theory of Actuarial Justice**

In 1974 Robert Martinson released a study, “What Works?” with regard to prisoner rehabilitation. His meta-analysis of existing rehabilitative programming led him to the assertion that, in actuality, nothing works.  

22 In the pre-Martinson era, efforts in the system were directed toward rehabilitation and reintegration. But in the post-Martinson era, the declaration that nothing works when it comes to rehabilitation emboldened critics to advocate for a law-and-order agenda which transformed the criminal justice system from a social model into an administrative and pragmatic one (Hardy, 2014). Throughout the 1970s and 1980s, several notable reforms were made to the American criminal justice system, including the adoption of truth in sentencing which eliminated the previous bail credit system and limited judicial

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22 Martinson’s meta-analysis methodology was later revealed to be flawed (Cullen, 1982) but it was too late. His influence had reached every aspect of the criminal justice system and the damage was done.
discretion by codifying one-for-one credit; the cancellation of credit toward early release for
imprisoned individuals who exhibit good behaviour, known as “good conduct time,” and; the
abolition of parole which means individuals who receive a life imprisonment sentence will never
be released (Tonry, 2013).

Martinson’s influence paved the way for the current era of criminal justice that first
emerged in the 1980s. As the system shifted in orientation toward administration and
pragmatism, the ideal circumstance was created for risk logics to pervade. Feeley and Simon
(1992) initially coined this new risk-based system the new penology, to describe the criminal
justice system’s new preoccupation with risk management and control of aggregate groups, but
later refined their theory to actuarial justice (1994):

… actuarial justice presents a theoretical model of criminal justice processing in
which the pursuit of efficiency and techniques that streamline case processing
and offender supervision replace traditional goals of rehabilitation, punishment,
deterrence, and incapacitation, and the focus on due process or crime control

While the new penology effectively conceptualizes the emerging significance of controlling and
managing risk in the criminal justice system, the conceptualization of actuarial justice sheds light
on the series of processes which arose to carry out these functions.

Many policies in the American criminal justice system are geared toward achieving
efficiency and control in the administration of criminal justice (Feeley & Simon, 1994; Kempf-
Leonard & Peterson, 2000). Actuarial justice policies de-emphasize the unique circumstances of
individual accused and instead focus on objectively assessing their risk using group
classifications and categorizations (Kempf-Leonard & Peterson, 2000). The primary concerns are
the nature of the offence, how to control the offender, and identifying ways to minimize future
harm (O’Malley, 2010). If accused are grouped based on the level of risk they present, their
behaviour can be more easily predicted, and they can be more efficiently managed which implies prevention is better [and perhaps more easily achieved] than a cure (O’Malley, 2010). This rationale extends from Martinson’s (1974) “nothing works” research: if nothing works—if lawbreakers cannot be rehabilitated—then our best option is to ensure they are efficiently managed.

Though Canada did not adopt similar punitive reforms within its criminal justice system, pragmatism and administration-oriented logics of actuarial justice are also evident at every stage in the legal process. In bail court for example, court processes are largely rooted in case management and efficiency. In most cases, the details of the bail plan that is presented in court is negotiated in advance and most accused that apply for bail are released with the consent of the Crown. Show cause hearings in which the Crown must show that detention is necessary are quite rare (Myers, 2009). The Crown plays a crucial role in this process. The Crown receives an arrest brief about the accused from the arresting police officer which details the circumstances of the arrest, the charge(s) laid, the accused’s prior offences, and any information about the accused’s background and character that the officer believes is pertinent to the bail decision (Kellough & Wortley, 2002). The Crown uses this information to evaluate the “riskiness” of the accused and relies on these assessments when discussing the accused’s plan of release with defence counsel. The outcome of these negotiations appears in the bail plan presented to the JP in bail court, in the form of a joint submission.

Most often, based on the presumption that the terms of the bail plan have been negotiated and agreed to, the Justice of the Peace defers to the authority of the Crown and releases the accused on the plan presented. By negotiating a plan of release in advance, the bail process is

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23 In reverse onus cases, defence counsel must demonstrate (show cause) why the accused should not be detained.
streamlined. Show-cause hearings, where the bail plan is contested and discussed in open court, are in fact quite rare. The goal is to keep the court moving (Myers, 2015). In the courtroom, the focus is not on the individual accused per se, but on the bail plan presented, confirming agreement among the lawyers and the accused, and, in most cases, releasing the accused pending the resolution of their charges—then moving on to the next case. Efficiency is key. As a consequence, the unique characteristics of the offender are given limited consideration in bail court, in favour of the importance of the bail plan itself.

**Cultural Theory of Risk**

Many risk analysts contend the practice of risk assessment is objective, which implies risks apply uniformly and are totalizing (Douglas, 2003). This view neglects, “the underlying significance of power and resource allocation … in determining who or what is defined as risky—or indeed who is ‘at risk,’ under what circumstances, and from whom” (Walklate & Mythen, 2011, p.101). Presuming that risk is uniformly understood denies differential understandings and experiences of risk (Walklate & Mythen, 2011). Rather, the identification and naming of risk are never neutral or objective endeavours. Mary Douglas’ (2003) cultural theory of risk sheds light on the merging of risk and politics in practice.

For Douglas (2003), the evaluation of risk is always a political and moral matter. Risk is recursively structured (see Giddens, 1984) and co-constituted—risks are shaped by and in turn shape society (Draper, 1993). Risks themselves are socially constructed, have social consequences, and have varying significance for different social groups (Draper, 1993). The imagined probable outcomes that emerge through probabilistic thinking similarly reflect political

Douglas’ (2003, p.xi) approach offers “a way of thinking about culture that draws the social environment systematically into the picture of individual choices.” Risks are not free from social influence or pressure. Rather, risks come to life in a public, political, and moral arena. Diverse risks, representing various political/moral interests, compete for salience in this arena. Douglas (2003) recognizes that risk is diverse and subject to change over time. Rather than claiming scientific objectivity, risks should be assessed as political questions (Draper, 1993).


**Critical Race Studies**

Critical race theories offer a way of thinking about and analyzing social systems. Studies framed in this orientation typically incorporate the following principles: (a) “race is a central component of social organizations and systems,” (b) “racism is institutionalized,” (c) “everyone within racialized social systems may contribute to the reproduction of these systems through social practices,” and (d) racial identities are not fixed, but are socially constructed and constantly in a state of revision based on groups’ self-interests (Burton et al., 2010, p.442;
Delgado & Stefancic, 2000, p.xvii). Critical race theorists draw on these principles to reveal the ways that race, racism, and power influence all aspects of societal interactions, and attempt to shift the nature of these relations to be more equitable (Delgado & Stefancic, 2000). Burton et. al. (2010) recommends incorporating critical race theories into research as a way of interrogating and problematizing the role of power centres in shaping social institutions and producing culturally sensitive work.

By recognizing the existence of race and racial groups, one concedes to the organization of individuals into groups based on perceived differences in phenotype or genotype (Bonilla-Silva, 2009 cited in Burton et al., 2010). These perceived differences are not natural, nor are they substantiated by science. According to Ian López,

> [w]ith race, unlike for example with gender, there is nothing on the nature side: there are no essential differences measurable through the problematized techniques of science. Rather there is only social belief. Race is purely a social construction, and the science of race is purely the science of social myth (author’s original emphasis, 2006, p.96).

López (2006) suggests that racialization—the process of assigning meaning to race then sorting individuals into familiar, knowable groups—is a social process. Racialization—and race itself—occurs in interaction with others and can be situated within the social contexts in which they arise (Burton et al., 2010; Nagel, 1994). Critical race theorists provide countless empirical examples demonstrating the symbolic and material consequences associated with racialization that devastate, disadvantage, and disrupt the lives of people of colour.

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24 López (2006) has potentially mischaracterized gender here, as it is difficult to see what “essential differences” in gender are measurable. Within this context, López may have meant that gender is essentialized to genitalia by some problematic “techniques” of science.

25 According to Sewell (1992), symbolic aspects of race are the implicit “rules” that govern interactions within and between racial groups, and the folk understandings that inform societal understandings of race, the differences between racial groups, and the meanings that are ascribed to those differences (cited in Lewis, 2004).

26 Sewell (1992) describes material aspects of race as those attached to resources such as capital, wealth, property, etc. (cited in Lewis, 2004).
The effects of racial grouping are felt and given significance through the lens of racism (Lewis, 2004). Racism has been used to “define and identify the unwanted, the pathological, the unsettled” (Goldberg, 2015, p.68). Through this lens, imagined threats transform into real ones, giving materiality to definitions of race. Racial grouping further produces social boundaries, establishes hierarchies, and ultimately brings difference and differentiation into the fold of everyday life. For many Canadians, racial and cultural diversity are the norm and are a strength of our nation (Fleras, 2014). But often less recognized are the challenges that are unique to our racially diverse communities. The darker side of multiculturalism is that race and racism factor into everyday interactions, as well as societal structures and institutions. It is through this lens that individuals make sense of and navigate the social world they live in. Far from being exceptional, racism is the norm.

In recent decades, some have been led to believe we are living in a raceless, colourblind, or even post-racial world. The “post” here is significant: it implies that while race used to be important, we are now living in the afterlife of raciality (Goldberg, 2015). Some believe race has lost its social significance and that racism has come to an end. The implicit assumption of post-racial thinking is that everyone is now effectively on an equal footing and, if disparities arise, they correspond to individuals’ shortcomings rather than any overarching structural disadvantage. Goldberg (2015) says post-raciality simply marks the expression of raciality of our times.

Post-racial thinkers assume that the absence of more overt forms of racism means racism has come to an end. When overt incidents of racism do occur, these events are individualized and condemned: these events are heinous acts committed by heinous individuals. Many remain in willful denial about the more covert racism that is embedded in our social order and institutions,
including our criminal justice system (Goldberg, 2015). Critical race theorists, however, do not treat racist incidents as individual events, nor do they think racism has come to an end. These thinkers contend a racially ordered social landscape persists, and within this landscape, post-raciality is not possible.

Within the criminal justice system, legal processes are posited as objective, and therefore colourblind (Alexander, 2010). As a result, race is rarely explicitly discussed in the courtroom. Yet, research consistently demonstrates that marginalized populations—namely those who are racialized and poor—are disproportionally arrested and charged (Kellough & Wortley, 2002; Mehler Paperny, 2017). Goldberg (2015) describes what is currently happening, post-raciality, as not so much a commitment to ending racial injustices, but rather an erasure of race from our vernacular so that racial injustice becomes more difficult, or even impossible, to discern. This erasure process sustains racial injustice by leaving it unidentifiable and untouched, and consequently untouchable (Goldberg, 2015). Evidence of post-racial “raceless” logics can be seen in the efficient processes occurring in the early stages of the justice system, which continue to produce disparate, negative outcomes for marginalized populations, including racialized youth leaving care.

The Racialization of Risk

Risk itself is racialized in bail court processes. In this context, racialization, “refers to ways in which criminal justice processes and situations use the idea of race to define and give

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27 There are some noteworthy exceptions in case law: (1) following R. v. Gladue (1999), as per section 718(2)(e) of the Criminal Code, judges are required to exercise restraint in the use of imprisonment for all offenders, and to give specific attention to the circumstances of Indigenous people; and (2) R. v. X. (2014) expanded Gladue (1999) to include consideration of racial and cultural factors of an African Canadian offender at the time of sentencing. R. v. Morris (2018) and R. v. Anderson (2020) extend R. v. X. (2014) with respect to considering anti-Black racism in sentencing.
meaning to particular populations, as well as their characteristics and actions” (Chan & Chunn, 2014, pp.10-11). Risk is racialized when it is used to interpret the behaviours of a particular group, rather than the behaviours themselves, such that all members of that group become suspect simply by virtue of belonging to that group (Covington, 1995 cited in Chan & Chunn, 2014). It is important to consider the place of race in a colourblind system that excludes race from its vernacular. Myers (2009) argues that a host of extra-legal factors, such as employment, housing, income, neighbourhood, immigration status, age, and availability of a fit surety, are considered in the bail decision. While race is not explicitly considered, it is possible that discriminatory views of these factors shape the ways they are perceived in bail courts, including the degree of riskiness. When the circumstances of the individual and their offense are de-emphasized, and focus shifts onto pre-existing understandings about these factors, there is opportunity for racist attitudes to enter the risk equation (Feeley & Simon, 1992). These attitudes permit racialized groups to be deemed riskier than others, but because they are articulated in raceless terms, racism remains unidentifiable (Goldberg, 2015).

**Intersectionality**

Intersectionality recognizes that oppression does not occur in singularity. Rather, complex identities give rise to multiple and overlapping oppressions. Intersectional frameworks recognize that social phenomena, such as race, ethnicity, class, gender, nationality, ability, and religion, work to construct our notions of self and of others (Burton et al., 2010; DeReus, Few, & Blume, 2005). These various aspects of our identity compound to fix our social location. Focusing on the *politics* of one’s social location allows researchers to see how social institutions

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28 A surety is a person in the community who agrees to supervise an accused person who is released on bail (MAG, 2016). The importance of sureties in the bail process is discussed in Chapter 4.
and social interactions give rise to systems of inequality, based on which social location one occupies (Burton et al., 2010). This framework is particularly useful when analyzing the unique social location of racialized youth who were previously in care.

This dissertation uses an intersectional framework to show how risk factors, like race, class, and mental health status, create disadvantage for youth leaving care in the early stages of the legal process. This analysis contextualizes youths’ justice system experiences within the broader structural disadvantage they face. Several questions guide this intersectional analysis, including: What is considered risky? What are the consequences of framing risk in a given way? How and why did these framings of risk come to exist? Who is disadvantaged by these framings? And, lastly, who benefits from these framings? I also ask who gets to define risk, as the production of knowledge is imbued with power imbalances (Ericson & Haggerty, 1997). In the context of bail court, the courtroom working group—which includes the Crown, defence counsel, and the Justice of the Peace (Yule & Schumann, 2019)—holds the power to define risk with significant impact for accused individuals.

**Punishment Theories**

Punishment is a complex social institution (Garland, 1990). Though punishment is a singular noun, it is not a singular entity. Rather, it encompasses a multitude of interconnected processes, including legal processes (such as lawmaking, adjudication, conviction, and sentencing); criminal law; enforcement of sanctions; authority and condemnation; and administration of sentences (Garland, 1990). In practice, punishment can be understood as an interactive process, laden with cultural values and meanings, and “always circulating and converging in a nexus of experiences and places” (Brown, 2009, p.30). Because punishment
represents one of the state’s most stringent powers—synonymous with the power to exclude, isolate, blame, and inflict pain—it is important that every aspect of punishment be questioned (Foucault, 2000 as cited in Brown, 2009).

The sociology of punishment explores the complex relationship between punishment and society by assessing punishment as a social phenomenon (Garland, 1990). Research in this area questions punishment’s normative foundations, communicative functions, and forms, and investigates penal power, as well as the intricate relationship between penal control and social control (Garland, 2018). These studies provide a glimpse into punishment’s centrality to social life, independent of its formal practice. Many punishment theorists recognize punishment as an extensive structural force in society that “organizes, regulates, and lends a particular set of possibilities to the dimensions of social life and human existence” (Brown, 2009, p.29). However, like risk, punishment is not viewed as a totalizing structure. Rather, risk, race, and punishment are interconnected structural forces within the criminal justice system. Punishment theories are useful, specifically the language of norms that are embedded in definitions of risk that are used in criminal justice processes. These analytical tools make it possible to identify and analyze definitions of risk that are used, how these definitions in turn shape and produce understandings of what is dangerous, and how these further signal acceptable and unacceptable standards and norms of behaviour.

**Normalization**

A society’s shared values about right and wrong are codified in law, making particular actions legal or illegal (Garland, 1990). Shared values define acceptable behaviour and their deviation warrants attention through punishment. Yet, values change over time, which means
what is illegal is not fixed, but relative: As a society’s values change, so too does the law. Because laws are typically slow to change, the changing nature of law is often overlooked. According to Garland (1990, p.3), “the structures of modern punishment have created a sense of their own inevitability.” The way that punishment is currently performed is taken for granted as both the right and only way of doing things, making it difficult for most to imagine otherwise. Many accept without question mainstream\textsuperscript{29} conceptions of criminality and sanctions, as well as who deserves to be punished and who reserves the authority to punish (Garland, 1990). But by exploring what, how, and who we punish, one can identify embedded cultural, political, and moral values that are characteristic of a society—what can be called societal norms. Thinking critically about how bail is administered reveals conditions and circumstances that are deemed risky and punishable, which begs the question, whose interests are reflected in and protected by these conceptions?

Socialization is the process through which we learn societal norms; this process begins at birth and occurs through several social institutions, including the family, school, and media. Norms tell people how to behave by translating the concept of social order into a language of human choices (Bauman, 2000). The established order, “limits the range of tolerable behavioural patterns and privileges certain kinds of conduct as normal, while casting all other sorts as abnormal” (Bauman, 2000, p.206). Deviance represents abnormality in its most extreme form and warrants either therapeutic or penal intervention (Bauman, 2000). Norms—as reflected in criminal laws—do not reflect a natural or inevitable order. Rather, laws have been selected by dominant and powerful groups to protect their interests; as such, laws reflect the dominant group’s cultural, political, and moral values (Brown, 2009; Douglas, 2003; O’Malley, 2010; 

\textsuperscript{29}For the purposes of this paper, mainstream does not mean majority. Rather, mainstream refers to that which holds influence or power at a given point in time.
Within the framework of norms and normalization, punishment is a mechanism to enforce these standards and to protect society from behaviour that threatens the established social order (Douglas, 2003).

**Punishment and Exclusion**

Crime is a social fact to be managed and contained. For Durkheim (1984), behaviours that deviate from established norms pose a risk because they threaten the social order. When norms are institutionalized in law, deviations constitute violations of criminal law and become punishable. Durkheim suggests that punishing threats—or risks—affirms shared values and re-establishes social solidarity (1984; Kerr, 2017). He purports that punishment is a way to build consensus and solidarity among law-abiding society, however, this view is a limited one when it is situated in a contemporary, racially stratified society. The notion of uniformly shared values is not applicable in reality, within increasingly diverse societies (Garland, 1990). Durkheim’s (1984) work suggests that actuarial justice processes build consensus among a powerful few who create the norms around which laws are structured. However, these same processes work to punish and exclude several strata of society who fail to meet these standards.

Ericson and Haggerty suggest that “no human being or population is ever actually normal... Deviation from the mean is in fact the norm” (1997, p.92). There are a select few in a given society that can achieve conformity with every norm. Adherence to law does not necessarily occur because people are committed to the existing social order, or exemplify normative behaviour, but because of constructions of “order” and “norms” that are regulated through tight social control (Brown, 2009). There are some who benefit from these constructions and have a vested interest in them being upheld. Social order then is not indicative of a uniform collective, but rather an intentional attempt to “impose uniformity, regularity and predictability
on a human world, …which is endemically diversified, erratic and unpredictable” (Bauman, 2000, p.206).

It appears that the threat of punishment establishes a more coercive solidarity, rather than a voluntary and interdependent social solidarity that Durkheim envisions. According to Bauman (2000), the way that contemporary societies achieve this coercive social order is by punishing and excluding those who have breached societal norms. Norms, as a representation of the interests of the dominant or powerful group in society, can be difficult for non-dominant groups to conform to. If the simple act of nonconformity is punishable, then the act of punishment “represents a collective decision to build inequalities” (Brown, 2009, pp.33-4). Consequently, the threat of exclusion looms for many. This reasoning can be extended to risk-averse thinking, which is arguably laden with evaluative rules (Ericson & Haggerty, 1997). As one deduces what is risky, they are simultaneously able to deduce covert messages about what a society has deemed to be acceptable behaviour. Enforcement of particular definitions maintains the social order by classifying those who violate societal norms as risky and providing the means and authority to have them removed.

This view departs from Foucault’s views on punishment and normalization. In the context of incarceration, Foucault (1977) argues punishment worked on the body and soul of the inmate to forcibly normalize them, or at minimum to bring about their docility. Modern punishment is not concerned with correcting offenders. These efforts are believed to have failed (seemingly confirmed by Martinson’s (1974) “nothing works” research). Bauman (2000) contends, contemporary punishment defines that which does not belong by singling out, circumscribing, and stigmatizing realities that are denied the right to exist (Bauman, 2000). It is more effective to banish/exclude, manage, and contain offending individuals than to retain a
false sense of hope about their ability to re/integrate into society (Brown, 2009). For those who are singled out to be punished, exclusion is permanent, lasting long after their punishment has ended. This view is consistent with contemporary punishment practices that see the civic and social deaths that accompany a criminal record (see Guenther, 2013; Pager, 2003).

Bringing together tenets of risk theories, critical race theories, and punishment theories provided the framework needed for the following analyses. Despite claims that the criminal justice system is colourblind, evidence shows that people of colour are disproportionately represented at every stage. Punishment is a means to target segments of the population by framing them as threats—or risks—to the social order. Taken together, one can argue that punishment functions less for those being punished than for those who are doing the punishing (Brown, 2009).

**Methodology and Research Design**

This dissertation addresses a critical gap in the literature by investigating the experiences of crossover adults in the early stages of the legal process, from arrest to bail. Focus is on youths’ experiences of criminalization that occur during the period of transition after ‘aging out’ of care (from age 18 to 24). Conditions that begin as “at-risk” factors when young people are in care that seemingly transform into “riskiness” factors after they have ‘aged out’ are brought under scrutiny. Legal processes like bail that emphasize efficiency are shown to have significant, negative impacts on youth leaving care. Assessing how racialized youth are uniquely impacted in the early stages of the legal system calls into question how the system and the actors therein work to define and react to those they deem risky.
Risk theories are used to investigate the role of risk logics as an organizing principle in the criminal justice system, specifically in bail courts. Risk, however, is not conceptualized in the same structurally totalizing way that Beck (1992) sees it. Rather, like Douglas (2003), risk is posited as a value laden and socially constructed phenomenon. Further, risk is understood to be a central influence in the criminal justice system and is recognized as functioning in tandem with several other factors, including race, class, and gender, among others (O’Malley, 2010). Integrating risk theories and critical race theories shows how risk itself can be racialized, with devastating impacts for Black, Indigenous, and other racialized youth. Further situating this risk/critical race theory framework within punishment theories demonstrates the broader significance of bail practices and ways this process is *experienced* as punishment. This socio-legal inquiry seeks to understand, uncover, and problematize the relationship between protection and punishment for youth who were previously under the state’s guardianship. In this pursuit, this dissertation addresses the following research questions:

1. Are young adults (ages 18 to 24) asked about their care status in the early stages of the criminal process (e.g., by arresting officers or defence counsel)? How does the question come up? Does the acknowledgement of care status impact the young person’s perceptions of subsequent experiences in the system, and in what way? If young adults are not asked about their care status, should they be asked to disclose their pasts?

2. Do any practices in the early stages of the criminal process have unique impacts on youth leaving care? Is it necessary and feasible to modify these practices to address the unique risk factors of these youth? What form would modification take in practice?

3. Does the court’s risk aversion and desire for efficiency have consequences for crossover adults? Does a culture of risk aversion shift focus away from individuals and toward “categories” of risk (Hannah-Moffat & O’Malley, 2007; Kellough & Wortley, 2002; Yanow, 2015)?

4. Black, Indigenous, and other racialized individuals are overrepresented in all stages of the legal process—arrest, bail, conviction, and imprisonment. Yet, information about race is not systematically collected in the Canadian criminal justice system. Do young adults’ experiences suggest there are race-based differences in the ways they are treated by
various justice system actors in the early stages of the legal process that could help explain the trend of overrepresentation?

Methodology

To address these research questions, this dissertation begins from the ontological assumption that multiple lived realities exist, and that individuals’ realities are rooted in power and identity struggles which serve to privilege or oppress them based on their race, class, and gender (Creswell, 2013). Individuals form understandings of the world around them in interactions with others and within particular historical and cultural settings. People then attribute subjective meanings to their experiences (Creswell, 2013). To know individuals’ realities requires engaging with them on a personal level as well as with the social structures that shape their daily lives. This dissertation explores the complex and varied understandings of the world that exist among differently situated individuals and groups to help make sense of these understandings within their larger social, legal, and historical contexts (Creswell, 2013).

A qualitative methodology is best suited for this type of inquiry. When designing quantitative research instruments, the researcher presumes to already know something about their participants, which they hope to confirm or refute through their investigation. Van Kaam (1966) and Moustakas (1994) suggest that approaching research with preconceptions and restricted theoretical constructs may distort rather than disclose the phenomena one wishes to understand. It is also difficult to capture the nuances of experience using statistics which reduce the particularities of individuals into variables in order to make inferences about the broader population. Qualitative methods, in contrast, emphasize the individual meanings and complexity of social phenomena which add needed context about experiences (Creswell, 2013, 2015).
According to Solórzano and Yosso (2002), research methodologies must centre race and racism when exploring intersections of oppression, or risk distorting the experiences of those whose lives are impacted by daily racism. Among the broad spectrum of qualitative methodologies, critical race methodology and phenomenology are most appropriate. This research integrates these two approaches, adopting a critical race phenomenology. Specifically, a qualitative critical race phenomenology is used that incorporates the epistemological and ontological assumptions of critical race methodology (CRM).

Critical race methodology is a form of data collection and analysis that incorporates the central tenets of critical race theory (CRT) into the procedures of investigation (Woodson, 2015). Critical race methodology (a) centers race, racism, and overlapping oppressions in all aspects of the research process, (b) challenges traditional, majoritarian research paradigms and theories that have been used to explain the experiences of Black, Indigenous, and other people of colour (BIPOC), (c) is oriented toward finding liberatory and transformative solutions to oppression, (d) focuses on the experiences of oppressed individuals, specifically BIPOC individuals, (e) understands these experiences to be evidence of strength and resilience, and (f) uses interdisciplinary knowledge bases, including sociology and law, to generate holistic conclusions (Solórzano & Yosso, 2002). The CRM approach requires researchers to collect and analyze data in ways that build from the knowledge of BIPOC communities whose experiences and realities are influenced by racism and other forms of oppression, including for example, gender, class, dis/ability, age, and colonialism (Malagon, Huber, & Velez, 2009).

Phenomenology can be employed within this critical race framework (Woodson, 2015). Phenomenologists focus on uncovering and making sense of experiences. According to Dilthey

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30 For a detailed explanation of these tenets, see: Solórzano & Yosso (2002).
(1967), researchers access the undistorted lived realities of their participants when they tap into the facts of their inner experiences. For phenomenologists, consciousness is always directed toward objects and the reality of objects are intricately connected to one’s consciousness of them. To move beyond the subject-object dichotomy, phenomenologists contend that the nature of reality exists in the subjects’ experience of objects, as they appear in their consciousness (Creswell, 2013). Consequently, reality can only be understood within the meaning of one’s experience (Creswell, 2013). This approach requires researchers to abandon judgement and preconceived notions about what they believe to be “real” and to instead embark on a journey of discovering what is real for their participants, in their own words.

Phenomenological inquiries are best used when trying to understand several individuals’ common or shared experiences of a phenomenon. The researcher first identifies those who have experienced the phenomenon. Next, they collect data in the form of stories of direct personal experience. Finally, they describe the common meanings among participants’ experiences. This systematic process leads the researcher to understand core components of the phenomenon (Creswell, 2013; Woodson, 2015). When research is policy or action oriented, a deeper understanding of what is common among participants’ experiences influences policy recommendations that are more responsive to participants’ identified needs (Creswell, 2013; van Manen, 1990).

The phenomenological tradition offers a valuable method of inquiry into the human condition with considerable narrative potential. It is limited however, because it lacks external reference to racism and other systems of oppression. Because it is not oriented toward race, the meaning of race is not a given but is instead something to be discovered, and only if it is raised by participants (McClendon, 2005). I reject this ontological assumption that “reduce[s] the
transformative potential of the phenomenological story to a series of postmodern musings about how [we are] all essentially the same” (Woodson, 2015, p.40). The nature of reality, the nature of consciousness, and what it means to “be” in the world are all influenced by the social positions that we occupy and must be accounted for. Thus, I utilize the phenomenological method within the epistemological and ontological framework of critical race methodology. Critical race methodology attends to questions of racism as they emerge in phenomenological narratives of lived experience, whether explicitly mentioned or operating “invisibly,” to elucidate the experiences being described (Woodson, 2015). While phenomenology alone investigates the nature of experience itself, phenomenology and CRM together investigate the nature of racial experience. This integrated approach benefits from phenomenological insight within the social structures that are articulated by CRM, and critical race theory more broadly (Woodson, 2015).

To access participants’ direct personal experiences, phenomenologists commonly conduct interviews with individuals who have lived experience (Creswell, 2013). Polkinghorne (1989) recommends conducting 5 to 25 interviews using broad questions that allow participants to elaborate on their experiences and the context(s) within which their experiences unfold (Creswell, 2013). While quantitative research methods tend to rely on having large sample sizes to produce robust, statistically significant, and generalizable results, qualitative research methods are able to glean rich, explanatory data from relatively small sample sizes. Frequencies are less important in qualitative research where the emphasis is on understanding and explaining a social phenomenon, rather than illustrating a trend (Mason, 2010). Smaller sample sizes are often appropriate since one datum, or a single code is all that is necessary to ensure an idea is integrated into one’s analysis (Mason, 2010). The focus in qualitative inquiry is not on quantity of data collected, but on the quality of data collected (Fusch & Ness, 2015). The rich data
characteristic of qualitative research is “many-layered, intricate, detailed, [and] nuanced” (Fusch & Ness, 2015, p.1409). Sample size is less important than is reaching data saturation: the point of diminishing return in a qualitative study where the collection of more data no longer produces new or necessary information about the issue of interest (Mason, 2010). The point of data saturation varies for each study, but typically a researcher can be satisfied that data saturation has been reached when their interviews no longer yield new data, new themes, or new coding, and the study is replicable (Fusch & Ness, 2015; Guest, Bunce, & Johnson, 2006).

In line with the phenomenological approach, in-depth, semi-structured interviews were used. This method of interviewing offered a thorough understanding of participants’ experiences, behaviours, feelings, and attitudes because it permitted participants to communicate more freely and offer detailed descriptions (Crinson & Leontowitsch, 2006; Morgan, 2016). Using semi-structured and open-ended questions allowed interviews to unfold more like conversations (Miller & Crabtree, 2004). I was able to be flexible and adapt to interviewees’ responses; interviewees also took an active role in shaping our conversations. They alerted me to what was important about their experiences, prompting follow-up questions. This approach enhanced and enriched my understanding of their experiences from their perspective (Miller & Crabtree, 2004). Through coding, attention was paid to what was common and meaningful about participants’ experiences and their voices were used to tell their stories in their words.

A primary approach in critical race methodology is counter-narrative, a means of sharing important accounts that challenges dominant discourses of the law as “neutral” (Miller, Liu, & Ball, 2020; Solórzano & Yasso, 2002). Foundational critical legal theorists31 like Derrick Bell, Richard Delgado, Mari Matsuda, and Patricia Williams argue it is necessary to understand how

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31 What is now known as critical race studies evolved from the earlier tradition of critical legal theory. For more detail, see Delgado & Stefancic (2000).
Black, Indigenous, and other people of colour experience the law in order to challenge discriminatory laws and practices (Miller, Liu, & Ball, 2020). The impetus to uncover these lived experiences led to the practice of counter-narratives to illuminate the law’s differential impacts and to create change (Miller, Liu, & Ball, 2020).

**Research Design**

Interviews were conducted between March 2019 and December 2020 with two participant groups: youth and professionals who work with these youth in various capacities (including Youth-in-Transition (YIT) Workers, Crown Attorneys, and Duty Counsel). Qualitative interview guides for each participant group are included in Appendix D. All three manuscripts are informed by this qualitative interview data. This method is used to assess and analyze the experiences of young adults who were previously in the child welfare system and have experienced forms of criminalization, including arrest, charge, and/or bail. The goal was to gain perspective on how young adults navigate the early stages of the justice system, their interactions with justice system actors, the challenges they face, and any supports they receive. Gathering the responses of several actors permitted the identification of points of conflict and overlap about the process and where intervention may be necessary and possible.

**Sampling and Recruitment**

*Youth Participants*

Twenty-five interviews were conducted with eligible youth participants. Table 1 provides a profile of youths’ demographic characteristics: More than half of participants (n=14, 56%) identified as male. While there was a relatively even distribution across age groups, the largest
represented age group was 24-year-olds (n=7, 28%). Youth were asked to self-identify their race: two thirds of the sample (n=17, 68%) self-identified as persons of colour. The two largest racial groups represented are youth who identify as white (n=8, 32%) and Black (n=8, 32%). Most youth indicated they are Canadian citizens, though two are permanent residents.

Table 1: Demographic Variables

<table>
<thead>
<tr>
<th></th>
<th>N = 25</th>
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<tbody>
<tr>
<td><strong>Gender</strong></td>
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</tr>
<tr>
<td>Female</td>
<td>10</td>
<td>40%</td>
</tr>
<tr>
<td>Male</td>
<td>14</td>
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</tr>
<tr>
<td>Non-Conforming</td>
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<td>4%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
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<tr>
<td><strong>Age (mean = 21)</strong></td>
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</tr>
<tr>
<td>18</td>
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</tr>
<tr>
<td>19</td>
<td>3</td>
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<tr>
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</tr>
<tr>
<td>24</td>
<td>7</td>
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<tr>
<td><strong>Total</strong></td>
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<td>100%</td>
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<tr>
<td><strong>Race</strong></td>
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<td></td>
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<tr>
<td>Biracial</td>
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<tr>
<td>Black</td>
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<td>32%</td>
</tr>
<tr>
<td>Indigenous</td>
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</tr>
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<td>Latinx</td>
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<tr>
<td>Middle Eastern</td>
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<tr>
<td>White</td>
<td>8</td>
<td>32%</td>
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<tr>
<td><strong>Total</strong></td>
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<td>100%</td>
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<tr>
<td><strong>Citizenship Status</strong></td>
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<tr>
<td>Canadian Citizen</td>
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<tr>
<td>Permanent Resident</td>
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<tr>
<td>Other</td>
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</tr>
<tr>
<td><strong>Total</strong></td>
<td>25</td>
<td>100%</td>
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</table>

Table 2 includes information about youths’ outcomes after leaving care: Six youth (24%) interviewed had not completed high school, while only one youth (4%) had completed post-secondary school. Eight youth (32%) shared they had enrolled in a post-secondary program, but only one of these youth was still enrolled at the time of the interview; all others had dropped out of their programs. While two thirds of youth (n=16, 66%) were housed at the time of the
interview (whether independently (n=11) or with their families of origin (n=5)), nine youth (34%) were unhoused, whether in temporary transitional housing (n=2), an emergency shelter (n=6), or living on the street (n=1). More than half of youth (n=14, 56%) were unemployed at the time of the interview.

Table 2: Outcome Variables

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<tr>
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</thead>
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<tr>
<td><strong>Education</strong></td>
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</tr>
<tr>
<td>Enrolled in High School</td>
<td>5</td>
<td>20%</td>
</tr>
<tr>
<td>Completed High School</td>
<td>4</td>
<td>16%</td>
</tr>
<tr>
<td>Did Not Complete High School</td>
<td>6</td>
<td>24%</td>
</tr>
<tr>
<td>Some Post-Secondary</td>
<td>8</td>
<td>32%</td>
</tr>
<tr>
<td>Completed Post-Secondary</td>
<td>1</td>
<td>4%</td>
</tr>
<tr>
<td>Unclear</td>
<td>1</td>
<td>4%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>25</td>
<td>100%</td>
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</table>

<table>
<thead>
<tr>
<th>N = 25</th>
<th>N</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Current Housing Status</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>With Biological Family</td>
<td>5</td>
<td>20%</td>
</tr>
<tr>
<td>Living Independently</td>
<td>11</td>
<td>44%</td>
</tr>
<tr>
<td>Emergency Shelter</td>
<td>6</td>
<td>24%</td>
</tr>
<tr>
<td>Transitional Housing</td>
<td>2</td>
<td>8%</td>
</tr>
<tr>
<td>Homeless</td>
<td>1</td>
<td>4%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>25</td>
<td>100%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>N = 25</th>
<th>N</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Current Employment Status</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Employed</td>
<td>11</td>
<td>44%</td>
</tr>
<tr>
<td>Unemployed</td>
<td>14</td>
<td>56%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>25</td>
<td>100%</td>
</tr>
</tbody>
</table>

To participate in an interview, youth had to be between the ages of 18 and 24 and have had contact with both the child welfare system and criminal justice system. Youth met the criteria of “contact with the child welfare system” if they had had an open CAS file in their childhood homes, or had been taken into protective custody and moved into an out-of-home care placement, whether kinship care, foster care, or a group home.32 Among youth participants, 16 were previously in foster care; one was previously in kinship care; three were previously in a group home; and five remained in their homes of origin but had an open CAS file until they

32 These designations are explained in the literature review.
turned 18 (Table 3). After leaving care, most youth mentioned they were still in contact with their families of origin (n=18, 72%) (Table 3).

<table>
<thead>
<tr>
<th>Table 3: Care Status Variables</th>
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</thead>
<tbody>
<tr>
<td>N = 25</td>
</tr>
<tr>
<td>Care Status</td>
</tr>
<tr>
<td>Foster Care 16 64%</td>
</tr>
<tr>
<td>Kinship Care 1 4%</td>
</tr>
<tr>
<td>Group Home 3 12%</td>
</tr>
<tr>
<td>Open CAS File 5 20%</td>
</tr>
<tr>
<td>Total 25 100%</td>
</tr>
<tr>
<td>In Contact with Bio-Family</td>
</tr>
<tr>
<td>Yes 18 72%</td>
</tr>
<tr>
<td>No 6 24%</td>
</tr>
<tr>
<td>Unclear 1 4%</td>
</tr>
<tr>
<td>Total 25 100%</td>
</tr>
</tbody>
</table>

To meet the “contact with the criminal justice system” criteria, youth had to have experienced some form of criminalization, including arrest, charge, and/or bail, in either the youth or adult criminal justice system. Legal variables are summarized in Table 4. When I asked youth to discuss their experiences in the criminal justice system, I encouraged them to speak about their most recent charge. In some cases, their recent charge was ongoing, so they spoke about a past charge instead; in some cases, the charges they chose to discuss were ones that occurred while they were youth offenders. Some youth indicated they would rather speak about a charge that stood out in their memory, which may have been a youth or adult charge. The ‘Age at Charge’ variable reflects the nature of the charge(s) participants chose to discuss with me, but does not offer a complete picture of their criminal history. Nearly half of youth (n=12, 48%) chose to discuss a charge they received when under the age of 18. The two most frequent types of charges youth received were theft (n=6, 24%) and assault (n=8, 32%). Most of the youth expressed they had been detained after they were arrested (n=19, 76%) though only seven youth (28%) were remanded in pre-trial detention. Finally, most youth were represented by Duty Counsel in bail court (n=18, 72%).
I employed a combination of targeted and snowball sampling strategies to recruit eligible youth to participate. I began with targeted sampling and contacted community organizations who directly support youth ‘aging out’ of the child-welfare system. Given that nearly two thirds of youth who ‘age out’ of care experience homelessness (Shewchuk, 2020), I also contacted organizations that provide services to youth experiencing homelessness. The organizations I contacted were concentrated in the Greater Toronto Area (GTA). Because of the narrow recruitment criteria, it was difficult to find eligible youth participants so I expanded my
catchment to include organizations in cities east of Toronto to Kingston, west of Toronto to Hamilton, and north of Toronto to Newmarket.

In Ontario, the Ministry of Children, Community and Social Services funds Youth-in-Transition Workers who work specifically with former CAS-involved youth after they have turned 18 to support their transition to adulthood. The Ministry provided me with a list of every organization in Ontario where YIT Workers are employed. I connected with some workers employed in my geographic catchment area to ask them to refer youth on their caseloads who might be eligible and interested in participating. In total I contacted 55 organizations, either in person or by email.

Among the organizations and workers that I contacted, 16 agreed to participate in various capacities. These organizations provide a combination of the following services to youth, ages 18 to 29: education, employment, food security, housing, health, social, and mentorship support. Two organizations invited me to meet with their staff of YIT workers to field their questions before they referred eligible youth to participate. These two organizations and one other invited me to attend programs or drop-in sessions to connect with youth directly and invite them to participate. I also kept in regular contact with 17 YIT Workers at eight organizations for participant referrals. All 16 organizations allowed me to display recruitment posters and contact cards33 for clients on site.

I employed snowball sampling during interviews with youth. At the beginning of each interview, while reviewing the Letter of Information and Informed Consent Form, I provided each youth with a contact card that they could share with youth in their networks who might be interested and eligible to participate.

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33 Contact cards contained information about my study and ways youth could contact me to participate.
Recruiting youth participants was challenging. I made an effort to recruit youth directly by putting up posters in community organizations, however, this method was not effective as my poster and contact cards were often one among several on an organization’s bulletin board. It quickly became clear that buy-in and support from workers was needed to reach youth. While it was a challenge at times to have a gatekeeper—in most cases the workers—between myself and youth, I found that youth were more inclined and comfortable to participate at the recommendation of their workers. Eight youth who participated were referred by their workers.

Accessing workers’ support required first receiving approval from leadership in the community organizations in which they worked. Some organizations relayed that they were inundated with research requests and as a result had established partnerships with a select few researchers that they worked with on an ongoing basis. Some organizations indicated they did not have capacity to accommodate a researcher on site. Others did not respond to my requests. Among the organizations that agreed to participate, many had an internal review process for research requests (i.e., reviewing research documents) which meant having to wait considerable time for approval. In some cases, after months of waiting, my request was denied. I had the most success recruiting participants from three organizations in which leadership and workers were supportive of my research.

Professional Participants

I conducted interviews with two professional groups: lawyers (Crown Attorneys and Duty Counsel) and YIT Workers. I employed targeted recruitment for these participant groups.

Duty Counsel

Duty Counsel are lawyers provided by Legal Aid Ontario (LAO) to assist individuals in court who do not have counsel. Specifically, Duty Counsel can help individuals when asking for
an adjournment, conducting a bail hearing, entering a guilty plea, or making a submission at a sentencing hearing. To conduct interviews with Duty Counsel, I needed approval from the LAO’s General Counsel Office (GCO). The GCO required minor edits to my letter of information and informed consent form. I made these changes and submitted an amendment for approval by Queen’s General Research Ethics Board (GREB). The entire process took approximately 3 months. Once approval was received from the GCO and GREB, I was permitted to contact individual LAO offices across the province and invite them to participate, subject to the approval of each local office Director. I targeted five offices for recruitment that were located in my geographic catchment area. Four out of the five offices I contacted agreed to participate.

The four offices that participated circulated three, staged-recruitment emails among staff lawyers. The three emails were sent two to three weeks apart. While I proposed attending staff meetings at each office to meet staff in person and answer their questions, each Director indicated, given their busy schedules, this would not be possible. This targeted recruitment strategy resulted in eight Duty Counsel interviews.34

Crown Attorneys

Each provincial Ministry engages with researcher requests differently. I used two targeted recruitment strategies: (1) contacting the Ministry of the Attorney General (MAG) to see if there was an internal, ministry-level review process for research requests and (2) connecting with individual Crown offices in my geographic catchment area to seek approval.

To determine whether a ministry review process exists, I emailed three administrative coordinators identified using MAG’s online directory. One of the coordinators directed me to the MAG General Inquiries account. I sent two emails (approximately three weeks apart) to the MAG General Inquiries account. I cannot comment on the response rate as I am not aware of how many lawyers worked at each of the four offices.

34 I cannot comment on the response rate as I am not aware of how many lawyers worked at each of the four offices.
General Inquiries account but received no response. Over the next few months, I emailed 13 employees holding various leadership positions at MAG to determine whether there was an internal review process. I was eventually informed that an internal review process does not exist. I also contacted five individual Crown offices (two in person, three by email). All five offices initiated a review process with me (i.e., requesting research instruments for review), but eventually declined to participate.

I learned about the Smart Justice Network of Canada in July 2020. This organization conducts and supports criminal justice research through their network of scholars, practitioners, and justice system actors. This organization connected me with two Crown Attorneys who were interested and willing to participate in my research.

Youth-in-Transition Workers

To interview Youth-in-Transition Workers, I needed approval from the Ministry of Children, Community and Social Services. I prepared an application for their internal ethics review process, but I was informed that this project fell outside the scope of the Youth Justice Services Division. I was redirected to the Director and Child Welfare Secretariat who approved my research in September 2019 and provided me a list of all agencies in Ontario that employ YIT Workers. I emailed nine of the 31 organizations on the list that were located in my geographic catchment area. Four organizations granted permission to put up recruitment posters. Three organizations circulated recruitment emails to staff. Two organizations invited me to meet staff in person. I had the most success recruiting workers at the organizations I attended in person. In total 10 YIT Workers participated in interviews.35

35 In 2014, the MCCSS hired 50 YIT Workers to work at community organizations across Ontario. This number has likely increased: I noticed in the field that most organizations employ one or two YIT Workers and two have staff of up to 10 YIT Workers. These observations are based on a limited sample. I cannot be certain what my response rate was.
**Coding and Data Analysis**

I transcribed my research interviews word for word then anonymized the transcripts by removing participants’ names, identifying details (such as neighbourhoods they lived in), and references to any specific organizations or persons. I then imported the anonymized transcripts into NVivo qualitative research software to be coded. Detailed notes from the interviews as well as notes taken during the transcription process were also imported into NVivo to be coded.

I immersed myself in the data through repeated readings. In the first cycle of reading, I attuned myself to participant language, perspectives, and worldviews (Giorgi, 1979; Moustakas, 1994; Saldaña, 2013). In subsequent readings, I conducted emergent, data-driven, inductive coding where I highlighted words and phrases that represented key thoughts and concepts to act as codes and subcodes (Hsieh & Shannon, 2005; Saldaña, 2013). Moustakas (1994) calls this process horizontalization. Emergent coding is consistent with the core tenets of phenomenology.

This inductive process treats each transcript as a stream of consciousness from which the researcher is able to make sense of and identify meaningful moments of participants’ experiences. My goal in coding was to understand and identify what was meaningful for the individuals I interviewed (Moustakas, 1994). The benefit of this approach is that information from participants guides the resulting knowledge production, without the imposition of preconceived categories (Hsieh & Shannon, 2005). For example, I often used participants’ words to name codes and sub-codes.

When I finished coding the transcripts, I reviewed the codes I created to eliminate redundancies and overlap, and to ensure that the codes were related to each other and to the phenomenon being studied—justice system experiences for former foster youth (Giorgi, 1979; Moustakas, 1994). To identify common elements of participants’ experiences, I assessed which
codes were highly relevant across numerous interviews. I then considered how these codes were related to one another and began to group large numbers of codes into refined categories (Hsieh & Shannon, 2005). Next, I created themes by aggregating related categories to form a common idea. The themes inform the three manuscripts included in this dissertation.

A Note on Interpretation: Hermeneutics

According to van Manen (1990), research ought to be oriented toward lived experience (phenomenology) and toward interpreting the “texts” of life (hermeneutics; in this case texts refers to interview transcripts). Interpretation is a necessary step to make sense of phenomena (Moustakas, 1994). As a researcher, I recognize that I mediated the meaning of my participants’ lived experiences (van Manen, 1990; Creswell, 2013). I engaged in a dynamic process of reflective interpretation to make sense of my data. I described what my participants’ experiences were, but also analyzed and interpreted what the underlying structural conditions were that allowed those experiences to take place (Moustakas, 1994). Consequently, though effort is made to prioritize the voices of youth in the manuscripts, I acknowledge the power imbalance that rests with me, as researcher, to interpret and explain their experiences. I hope my thoughtful attendance to participants’ voices helps retain the integrity of their experiences.
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https://www.healthknowledge.org.uk/public-health-textbook/research-methods/1d-qualitative-methods/section2-theoretical-methodological-issues-research


**Cases and Legislation Cited:**


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*R. v. “X”,* 2014 NSPC 95

*Young Offenders Act* RSC 1985, c. Y-1

*Youth Criminal Justice Act* (S.C. 2002, c. 1)
Chapter 3: Punitive Justice

When Race and Mental Illness Collide in the Early Stages of the Criminal Justice System

Submitted to the Canadian Journal of Law and Society.

Abstract

When children and youth are subjected to neglect or abuse in their homes of origin, the state’s child protection services may intervene. In severe cases, children are removed from their homes and placed in out-of-home care. In Ontario, there are approximately 11,700 children and youth under the state’s guardianship. These young people are among the most vulnerable children and youth in our society. Sometimes young people in out-of-home care respond to their trauma and circumstances in ways perceived to be disruptive or dangerous. When this happens, many foster parents and group home staff involve the police, beginning a cycle of justice system involvement that often persists into adulthood. Given the documented overrepresentation of racialized children and youth in both the child welfare and criminal justice systems, it is necessary to investigate why this might be the case. Using an intersectional theoretical framework, this paper shows how stigmatized views of mental health and discriminatory attitudes toward racialized groups influence justice system actors’ decision-making in the early stages of the legal process, from arrest to bail. Drawing on data from in-depth semi-structured interviews with twenty-five young adults (ages 18 to 24) who have had involvement in both the child welfare and criminal justice systems and ten practicing lawyers in Ontario, the analysis reveals perceptions of race-based differences in the ways various justice system actors respond to individuals experiencing mental illness. Justice system actors’ discriminatory views function as a lens through which racialized and mentally ill youth who were previously in care are perceived as threats and met with more punitive responses.

Key Words: youth leaving care, intersectionality, race, mental health, bail
Introduction

When children and youth are subjected to neglect or abuse in their homes of origin, the state’s child protection services may intervene. On average, there are approximately 80,000 families with an open file with a Children’s Aid Society (CAS) in Ontario (OACAS, 2014). Most of the time, social workers work with families to connect them with available treatments and supports in their communities in order to keep them together. Family separation is typically used as a last resort and is reserved for the most severe cases where children are subjected to sufficient harm to make immediate apprehension necessary. When children are removed from their homes they are placed in kinship or foster care, a group home, or a residential treatment centre, and the state in effect becomes their parent. In Ontario, there are approximately 11,700 children and youth under the state’s legal guardianship (MCCSS, 2021b). Young people under state guardianship are among the most vulnerable children and youth in our society.

The abuse children endure prior to their apprehension is traumatizing. Being removed from their homes is re-traumatizing. When in foster care, many young people experience considerable instability which is further traumatizing (Doyle, 2007). These compounding traumas have significant mental, emotional, and physical effects that last long after young people ‘age out’ of the child welfare system (Yehuda et al., 2001). When young people are exposed to significant, compounding traumas, they develop survival skills in response to their environments which often become visible as disruptive behaviours (Finlay et al., 2019). Sometimes young people are triggered by memories of previous trauma or in response to overwhelming feelings and may behave in ways that are perceived by those around them as “acting out.” When this happens, many foster parents and frontline staff in group homes do not recognize these behaviours as expressions of pain and respond with behaviour-management approaches rather
than trauma-informed ones (Finlay et al., 2019). This is especially true for racialized youth; abundant literature documents how the behaviour of racialized youth is regularly perceived as “hostile” or “aggressive” (Konold et al., 2017; Sagar & Schofield, 1980; Watson & de Gelder, 2017). In many cases, the police are called which begins the cycle of justice system involvement for many young people in the child welfare system (Bala et al., 2013; Bala et al., 2015; Finlay et al., 2019; Scully & Finlay, 2015). This cycle of criminalization often persists into adulthood, when the consequences of a criminal conviction can be even more harmful and life altering.

Between 30% (RCY & PHO, 2009) and 46% (StepStones for Youth, 2020) of young people leaving care come into conflict with the law. Black, Indigenous, and other children and youth of colour are over policed and over criminalized (Jiwani, 2019), and thus overrepresented in this group (Yi & Wildeman, 2018). Jiwani (2019) contends the race-based system of social stratification that underpins Canadian society is reflected in the criminal justice system. This system emphasizes (1) policing racialized individuals more than white individuals (the criminalization of race) and (2) policing certain types of crime that are concentrated among those who are poor and racialized, for example theft, rather than white collar crimes (the racialization of crime) (Jiwani, 2019). It is necessary to investigate why this is the case to disrupt systemic processes contributing to these young peoples’ marginalization and vulnerability. Using an intersectional theoretical framework, this article illuminates how stigmatized views of mental health and discriminatory attitudes toward racialized groups influence justice system actors’ decision-making in the early stages of the legal process. The data from in-depth semi-structured interviews with 25 young adults (ages 18 to 24) who have had involvement in both the child

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36 I recognize that everyone is racialized, thus I intentionally avoid the dichotomy racialized/non-racialized which indicates there is an absence of race for some (Wise, 2011). Instead, I use the term “racialized” in reference to those who are considered persons of colour and the term “white” in reference to those who are racialized as white.
welfare and criminal justice systems and 10 practicing lawyers in Ontario reveals ways that discriminatory views function as a lens through which racialized youth leaving care who are experiencing mental illness are perceived as threats and met with more punitive responses.

**Youth Leaving Care and the Criminal Justice System**

Childhood trauma can have lasting impacts, including the onset of mental health challenges. Youth leaving care have all experienced trauma and as a result experience a disproportionately high rate of mental health diagnoses (Deutsch et al., 2015; Greeson et al., 2011; Zlotnick et al., 2012). The development of Post-Traumatic Stress Disorder (PTSD) is particularly prevalent within this group. PTSD is a mental health condition that results from experiencing or witnessing distressing or life-threatening event(s), such as war combat, violence, abuse, a car accident, or a natural disaster (CAMH, 2021). In a study of Canadians experiencing chronic lifetime PTSD, 61% had prior experiences of childhood sexual or physical abuse (Van Ameringen et al., 2008).

When a young person has experienced traumatic abuse in their past, certain events and feelings, such as feeling threatened, may act as “triggers” which induce responses such as excessive re-experiencing, depersonalization, emotional numbing, and anxiety (Kleim et al., 2012; Lanius et al., 2014; Kolpin, 2018). When triggered, some youth respond in ways that appear out-of-the-norm, disruptive, or even dangerous, which may make them vulnerable to contact with the criminal justice system (Scully & Finlay, 2015). According to Finlay et al. (2019), nearly two thirds of youth leaving care experience mental health challenges. Many turn to negative coping mechanisms, like substance use or “risky” behaviours, which increase their likelihood of coming into conflict with the law. Although systematic data on justice system
contact among youth leaving care is not collected in Ontario, one study in British Columbia
determined that one in six youth leaving care experience imprisonment (Shaffer et al., 2016). A
study conducted in Toronto found 46% of youth leaving care in the city experience
criminalization (StepStones for Youth, 2020). And, in a study of 299 youth (ages 12 to 23)
involved in Ontario’s youth justice system, Kolpin (2018) found that 84% had current/previous
involvement with the child welfare system.

According to Sugie and Turney (2017), criminal justice contact is socially patterned and
concentrated among those who occupy “disadvantaged” socioeconomic positions, particularly
those who are racialized and poor. Because race and poverty are strong predictors of child
welfare system contact (Contenta et al., 2015; Yi & Wildeman, 2018), demographic factors,
coupled with other risk factors, including histories of trauma and abuse, make racialized youth in
care especially vulnerable to justice system contact (Yi & Wildeman, 2018). Abundant research
investigates the relationship between mental illness and justice system contact (Chaimowitz,
2012; Charette et al., 2014; Peternelj-Tayor, 2008; Sugie & Turney, 2017) and race and justice
system contact (Alexander, 2010; Cesaroni et al., 2019; Mussell, 2020; Wilson Gilmore, 2007).
Yet, few studies explore the relationship between all three (Chan & Chunn, 2014) or consider
how these three factors connect to child welfare system involvement. This study contributes to
debates in these areas by addressing how and why social factors like race, mental illness, and
care status increase the likelihood of justice system contact.

**Focusing on the Early Stages of the Justice System—Arrest to Bail**

While much of the extant literature focuses on incarceration, Sugie and Turney (2017)
point out that it is not the most frequent nor the most consequential interaction with the justice
system. In fact, non-carceral components of the criminal justice system, such as everyday policing, probation, parole, diversion programs, and other community-based programs, account for the majority of criminal justice system operations (Kohler-Hausman, 2018). As an example, in 2018 there were more than 2 million incidents of crime reported to the police in Canada (Moreau, 2019), yet only 17% of these incidents resulted in a criminal proceeding, 11% resulted in a finding of guilt, and 4% of convicted individuals were sentenced to custody (Public Safety Canada, 2020). The vast majority of incidents (96%) do not result in imprisonment. Kohler-Hausman (2018) suggests that low level encounters with the justice system may seem trivial when compared to imprisonment, but it is these low level “trivial” infractions that keep many individuals entangled in the criminal justice system. Thus, focusing on imprisonment misrepresents the wide reach of the criminal justice system (Kohler-Hausman, 2018). Given that rates of contact with the police and the courts are greater than the rate of incarceration (Glaze & Herberman, 2013; Lerman & Weaver, 2014; Sugie & Turney, 2017), this study focuses on youths’ experiences in the early stages of the justice system—from arrest to bail.

To understand the experiences of youth leaving care in the early stages of the legal system, it is useful to draw on Natapoff’s (2017) conceptualization of the administration of criminal justice as a penal pyramid. The top of the pyramid encompasses the smallest subset of cases and includes federal offences and serious cases, but also accused individuals who are well-resourced and often white; in these cases, the legal process is “sensitive to evidence, transparent, accountable, and hyper visible” (Natapoff, 2017, p.71). In contrast, the bottom of the pyramid encompasses the majority of cases and includes low level offences; these cases tend to be driven by efficient and expedient institutional practices in which individual accused are treated in the
aggregate (Natapoff, 2017). When individuals come into conflict with the law, their position within the pyramid is heavily influenced by social facts, such as race, gender, and class, that are unrelated to their guilt. Natapoff (2017) contends social facts have greater influence over justice system practices and outcomes for some individuals, namely those who are racialized and poor, than legal rules. Many youth leaving care who come into conflict with the law are racialized and poor, making them the most entrenched in the bottom of the pyramid.

Cases concentrated at the top of the pyramid tend to be adjudicative, meaning they are focused on determining guilt and punishment (Kohler-Hausman, 2018). In contrast, cases concentrated at the bottom are more managerial. The high volume of cases at the bottom of the pyramid means criminal justice administration is more focused on managing people in the system by sorting, testing, and monitoring them over time (Kohler-Hausman, 2018). The focus in the early stages of the legal process is on management and efficiency (Myers, 2009), but these decisions have significant impact later in the process. Evidence shows that bail decisions for example, are connected to particular outcomes at sentencing: Individuals who are denied bail are more likely to be convicted (Cohen & Reaves, 2007; Dobbie, Goldin, & Yang, 2017; Phillips, 2008), and more likely to serve a custodial sentence than those released on bail (Dobbie, Goldin, & Yang, 2017; Kellough & Wortley, 2002; Williams, 2003). Further, individuals who have been incarcerated experience lasting negative consequences upon release. These include unemployment (Lam & Harcourt, 2003; Pager, 2003), social exclusion (Murray, 2007), poverty (Wacquant, 2008; Wheelock & Uggen, 2006), and homelessness (Greenberg & Rosenheck, 2008; Metraux & Culhane, 2004). In light of this trajectory, the decision to grant or deny bail is a pivotal one in the legal process, with significant consequences for accused. Unlike the

37 Feeley & Simon (1994) conceptualize these processes as “actuarial justice.” This concept is explained in more detail in Chapter 2.
hypervisibility of the top of the pyramid, the vast majority of cases that make up the bottom are invisible to the public. This study illuminates some of these cases, focusing on the experiences of youth leaving care.

**Bail Court Decision-Making**

Amendments to the *Bail Reform Act* (1972) enshrined in law a presumption of release on bail. If conditions are needed, individuals are to be released on the least onerous conditions necessary to address the three grounds for detention. These grounds, outlined in section 515(10) of the *Criminal Code*, indicate bail can only be denied when necessary to ensure the accused will attend court (primary grounds), for the safety of the public (secondary grounds), or to maintain the public’s confidence in the administration of justice (tertiary grounds). The ladder principle (*Criminal Code, s.515(2)*) indicates the court must consider the least onerous form of release before moving to more restrictive forms of release. The amendments reflected a meaningful recognition of the accused’s presumption of innocence, which was later augmented by the *Charter* protected right not to be denied reasonable bail without just cause (section 11e).

Starting in the 1990s however, Ontario has steadily increased the number of individuals being imprisoned in remand. By 2015, accused in remand comprised 60.7% of the provincial imprisonment population (Statistics Canada, 2015 cited in Myers, 2016). This means that nearly two thirds of those held in provincial custody were in pre-trial detention and only one third had been convicted and received a custodial sentence. This trend signals a contravention of the written law and suggests a presumption of detention, rather than release. The landmark Supreme Court of Canada decision in *R. v. Antic* (2017) affirmed the presumption of release and the

38 Except when there is a reverse onus; in this case the onus rests with defence counsel to show why detention is not necessary.
restrained imposition of conditions. But in 2018/2019, the remand population comprised 70.9% of the provincial imprisonment population, representing an increase from the pre-\textit{Antic} era (Statistics Canada, 2020a). The Supreme Court responded by re-emphasizing the presumption of release to the lower courts in \textit{R. v. Zora} (2020).

High remand numbers are somewhat misleading, however, as most people who apply for bail are released. This is true for both the pre- and post-\textit{Antic} eras. In 2020 for example, only 2% of those held in remand had been formally denied bail (OCJ, 2020). Given that most accused are released, it is crucial to investigate why some are not. Most accused who are held in remand are there because their case has been adjourned to another day (Myers, 2015). These accused are, in effect, being held on short-term, preventive detention orders to give defence counsel time to formulate a release plan the Crown will consent to. Yule and Schumann (2019) indicate most people who are held in remand are eventually released on bail, but only after spending time in pre-trial detention, and usually with numerous restrictive conditions.

**Intersectional Theoretical Framework**

Intersectional theory recognizes that oppression does not occur in singularity. Rather, complex identities give rise to multiple and overlapping oppressions (Crenshaw, 1991; Hill Collins, 2019). Using an intersectional theoretical framework helps researchers uncover ways that social phenomena, such as race, ethnicity, class, gender, nationality, ability, and religion, intersect within systems of power to produce social inequalities (DeReus et al., 2005; Burton et al., 2010; Hill Collins, 2019). Each component of identity compounds to fix one’s social location; one’s social location impacts how one interacts with social institutions, like the criminal justice system, as well as the effects of these interactions (Burton et al., 2010). Though the
Canadian criminal justice system is founded on principles of objectivity and colour-blindness, the overcriminalization of particular groups, including the racialized and mentally ill, reveals a different story (Barrington, 2010). This overcriminalization suggests that the law on the books differs markedly from the law in practice (López, 2006).

Close attention was paid to the ways race shaped youths’ experiences of being arrested while experiencing mental distress. Since race and racism are intricately connected to care status, mental illness, and justice system contact, race is an integral analytical component of this intersectional inquiry. Though mental illness and care status are social factors that are not traditionally considered using this analytic framework, they are important components of one’s identity. Focus on these two components provides a glimpse of what happens when youth who were formerly in care come into conflict with the law. Given the disproportionate representation of racialized and mentally ill individuals in the criminal justice system, focus turned to whether care status affected youths’ experiences, and how. Coding revealed the intersection of care status and mental illness with race makes racialized youth leaving care one of the most vulnerable groups among those who are criminalized.

**Methods**

This study draws on data collected in Ontario between March 2019 and December 2020. Interviews were conducted with 25 young adults between the ages of 18 and 24, all of whom had previous involvement in both the child welfare and criminal justice systems. Two professional groups were also interviewed, including 10 lawyers (eight Duty Counsel lawyers and two Crown

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39 Being race conscious requires acknowledging one’s own race and the race of others. In contrast, claiming colour-blindness indicates an intentional refusal to acknowledge the race of others. The criminal justice system often purports colour-blindness and excludes race in discussions of law (Macdonald, 2002).
Attorneys), and 10 Youth-in-Transition (YIT) Workers. This article focuses on youths’ and lawyers’ responses. Centring youths’ voices affirms their experiential knowledge as, “legitimate, appropriate, and critical to understanding, analyzing, and teaching about racial subordination” (Solórzano & Yosso, 2002, p.26). Lawyers’ perspectives are used to contextualize youths’ experiences and to provide insight into the early stages of the justice system process.

Youth met the criteria of “contact with the child welfare system” if they had had an open CAS file in their childhood homes,^40^ had been placed in kinship care,^41^ or had been apprehended and moved into an out-of-home placement and under the state’s guardianship.^42^ To meet the “contact with the criminal justice system” criteria, youth had to have experience being arrested or charged, and attended a bail hearing, in either the youth or adult criminal justice systems. Nearly half of youth interviewed (44%, n=11) committed low level and non-violent drug (n=3) or theft (n=8) offences. When simple assault is added—which includes incidents of fights between foster siblings or peers in group home settings—76% (n=19) of youths’ offences are accounted for.^43^ Furthermore, more than half of youth are unemployed (56%, n=14) and one third are precariously housed (36%, n=9).^44^ And two thirds of youth self-identify as racialized (68%, n=17).^45^ Natapoff’s (2017) conceptualization would indicate these youth would primarily be concentrated at the bottom of the penal pyramid.

A combination of targeted and snowball sampling strategies were employed to recruit youth to participate, which involved connecting with community organizations who directly

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^40^ Having an open CAS file means that a CAS worker makes regular visits and works with parents/guardians to ensure a standard of care is maintained.
^41^ In some cases, children and youth are apprehended from their homes of origin and placed in the care of a relative or someone they know. This is known as kinship care.
^42^ Out-of-home placements include kinship care, foster care, group homes, or residential treatment centres.
^43^ See Table 4 (Chapter 2) for a breakdown of youths’ charges.
^44^ See Table 2 (Chapter 2) for a breakdown of youths’ outcomes.
^45^ See Table 1 (Chapter 2) for a breakdown of youths’ demographics.
support youth aging out of the child-welfare system. The organizations were concentrated in the Greater Toronto Area (GTA). Due to the narrow recruitment criteria, it was difficult to find eligible youth to participate so the recruitment catchment was expanded to include organizations in cities outside of the GTA. Legal Aid Ontario (LAO) granted permission to conduct interviews with Duty Counsel lawyers. Five LAO offices were invited to participate, subject to approval from each local office’s Director; eight Duty Counsel from four offices participated. Crown Attorneys were recruited through a criminal justice research network. Two Crown Attorneys participated.

In-depth, semi-structured interviews were, on average, sixty to ninety minutes in length and were recorded, transcribed, and coded using NVivo software. To protect confidentiality, each youth participant has been assigned a pseudonym and professional groups have been assigned a code (YIT, DC, CROWN) and number (1, 2, 3). Emergent, data-driven, inductive coding was conducted where words and phrases that represented key thoughts and concepts were highlighted to act as codes and subcodes (Hsieh & Shannon, 2005; Saldaña, 2013). Emergent coding is consistent with the core tenets of phenomenology. This inductive process treats each transcript as a stream of consciousness from which the researcher is able to make sense of and identify meaningful moments of participants’ experiences. The interconnectedness of trauma, mental illness, race, and criminalization permeated the data.

Findings

Two major themes emerged from the interviews. First, while the focus in bail courts is on factors related to the three grounds for detention as outlined in Section 515.10 of the Criminal

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46 One interviewee asked not to be recorded so I wrote down their responses during the interview.
Code, lawyers revealed that extra-legal factors, specifically mental health and race, are frequently introduced in court. The protective and punitive stances adopted by the courts when these two factors enter the discussion are presented. What is clear is neither stance works in the accused’s favour. Second, the youths’ experiences show how young people in care are disparately impacted when extra-legal factors are brought up. Specifically, their past traumas are excluded from discussions of mental health, and in the case of racialized youth, their mental health symptoms are often mis/interpreted as hostile, aggressive, and dangerous. As a result, racialized and mentally ill youth leaving care are particularly vulnerable in the early stages of the legal process.

Recurring Extra-Legal Factors Discussed in Bail Courts: Mental Health and Race

At the bail stage, lawyers agreed that only factors that address the primary, secondary, and tertiary grounds for detention as outlined in section 515(10) of the Criminal Code are relevant. One Duty Counsel articulated a sentiment shared by the group: “If we’re planning for a bail hearing, then the most important information really is, where are you going to be living, do you have a criminal record, and what the charge is,” and, depending on the nature of the offence, “you may need a surety or not need a surety” (DC 4). These factors represent the “key ingredients that the Crown is looking for” to consent to release (DC 4). For some lawyers, factors like care status only become important [and relevant] later in the criminal process, typically following conviction: “And especially at the disposition stage where they’re being sentenced or being given probation or whatever, you'd want to be talking about how the person got there” (DC 8). Duty Counsel indicated they rarely explicitly bring up an accused’s care status at the bail stage, unless:
the responses that [they get] at first intake would give [them] reason to [show] concern [for] their social structure, their safety net, [and] who they might be relying on for support. [This] might probe a follow up question about whether or not they did come from care. But it's not something that … comes top of mind when … dealing with a person who's over 18 (DC 2).

Beyond details provided by the arresting officer, Crowns are only privy to information about the accused that is offered by defence counsel (CROWN 1).

These accounts suggest there is a narrow focus on factors that are clearly seen as relevant at the bail stage. Because the Justice of the Peace (JP) is focused on the appropriateness of release—not guilt—there is a limited range of information about the accused deemed relevant at this stage; permissible factors include legal factors, such as the accused’s prior criminal history and the nature of the alleged offence(s). One Crown Attorney explained, “there’s not time to gather all kinds of background information” at this stage (CROWN 1). A Duty Counsel elaborated that the courts are “overburdened,” “under-resourced,” and “understaffed” which limits the amount of information that can be introduced at this stage (DC 3). There is a high volume of cases on the docket each day, and to get through these cases, the emphasis is on efficiency. The goal for the members of the courtroom working group47 is to keep the court moving. These accounts from lawyers are consistent with the literature, in which bail courts are described as places of bureaucracy and efficiency, rather than justice (Feeley & Simon, 1994; Myers, 2015; Natapoff, 2017).

In addition to legal factors however, such as the nature of the offence and the accused’s criminal history, extra-legal factors frequently factor into bail decisions. The narrow focus on the law then, does not mean that extra-legal factors are excluded from bail court discussions. Care status for example, is not directly tied to one’s legal history or the three grounds for release, thus

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47 Including defence counsel, Crown Attorneys, and Justices of the Peace.
it is not immediately relevant at the bail stage. However, it might come up indirectly when developing a bail plan when youth are asked about their “living situation and family connections” (DC 4). Sometimes a surety may be required for release. A surety is a person who promises a sum of money to the court and agrees to supervise an accused in the community, ensuring they return to court and comply with the conditions of their release.\(^{48}\) Because the majority of youth leaving care do not stay in touch with their foster families or group home staff and have only tenuous connections to their families of origin, it is often difficult for them to identify a suitable surety and they may disclose their history in care. Care status, then, is an extra-legal factor that might be regarded as “peripherally connected” to the grounds for release (CROWN 1). The introduction of care status suggests that extra-legal factors that are connected—however loosely—to the grounds for release are also relevant to the bail decision.

“Caring” Responses to Mental Health

Duty Counsel suggested that in instances where the accused contends with mental health challenges, police officers and Crown Attorneys often “rely on myths about mental health” when determining the appropriate bail release plan (DC 1). Indeed, sometimes Crowns will read a synopsis from the arresting officer where:

…the people that report the crime might say ‘the mental health has gotten out of control,’ ‘it's untreated at this point,’ ‘I'm just not sure what the person's going to do,’ ‘I am nervous about the way he acts around me’—and that can sometimes be a barrier to the person being released at the bail stage (DC 2).

The arresting officers appear to be describing unpredictable behaviour, which is not in itself a criminal offence. These descriptions become problematic when unpredictability is interpreted as riskiness. According to Duty Counsel, some Crown Attorneys argue, “a person’s mental health is linked to unpredictability” and that their “level of unpredictability is enough for [them] to say

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\(^{48}\) Based on the ladder principle (Criminal Code, s.515(2)), requiring a surety is an onerous form of release.
[they] can’t necessarily release this person back into the community” (DC 2). It is implied that it would be too risky to release the accused. In making this argument, Duty Counsel explained that the Crown is conflating mental illness with unpredictability and riskiness, making mental illness something that needs to be managed before release can be considered.

Some Crowns treat mental illness as a danger factor. One Duty Counsel said, “[Crowns and police officers] will treat people [with mental illness] as though they have no agency and that they’re completely up to no good” (DC 1). Building on this idea, another Duty Counsel said, when issues of mental health are raised in bail courts, “[mental health] does try to get tied to risk of reoffending or being a danger in the community” (DC 3). The logic appears to be, if we cannot know what a person might do, then they are likely up to no good. And, if a person is up to no good then they must be dangerous—and must be treated accordingly. When the court views mental illness as risky and dangerous, mental illness becomes a barrier to release.

When faced with a mentally ill accused, the court sometimes exhibits a reluctance to release the accused for fear of what they might do. In these instances,

…defence lawyers are often tasked with trying to say, a mental health diagnosis does not prevent someone from being released. It's a factor that can be addressed through care and through support (DC 2).

Elaborating on what is meant by “care” and “support,” the lawyer explained they try to connect their clients with treatment or counseling as conditions of release. Several Duty Counsel indicated they use this tactic, suggesting it is a common practice. One Duty Counsel expressed it is “very helpful” to create a “treatment plan for the mental health issues where they are planning to get them to a psychiatrist and meds, that addresses the secondary grounds” (DC 5). Another said,

…conditions that they meet with a mental health worker or conditions that they have contact with their CAS worker, or that they engage with certain types of
counseling, or that kind of thing. ...that can give the court comfort that, even though they haven't been found guilty of an offence, their needs are being managed in the community, so it reduces or mitigates that public safety concern that the court has about releasing someone on bail (DC 6).

Another Duty Counsel indicated that having a treatment plan in place increases the likelihood of release:

We get them linked with counseling, we have their potential sureties reach out to doctors, set up appointments ahead of time. People are much more likely to get released if we can articulate to the court that we’ve already set up some sort of plan (DC 1).

These kind of treatment conditions are proposed to pre-empt the Crowns’ concerns about releasing the accused. Connecting the accused to treatment and similar supports is intended to show the Crown that the accused is taking necessary steps to manage their mental health symptoms in the community, thereby mitigating their riskiness and making it is safer to release them. The consensus among lawyers is that having a treatment plan in place increases the likelihood of release.

The appropriateness of treatment conditions at this early stage is questionable. Many accused have not received a formal needs assessment at the bail stage. Nor have other barriers to accessing treatment been sufficiently considered, including the cost of treatment or access to transportation. Further, at the bail stage the accused is to be presumed innocent; imposing onerous conditions such as requiring the accused to attend treatment is not consistent with the law and creates undue harm for released individuals (JHSO, 2013). Yule and Schumann (2019) argue that defence counsel should be objecting to these restrictive conditions, as per the ladder principle. Though one lawyer described treatment conditions as “paternalistic” and “inappropriate” at the bail stage (DC 1), they also recognized that these conditions were sometimes needed to ensure their client would be released from custody. This lawyer’s sentiment
is consistent with Yule and Schumann’s (2019) finding that defence counsel tend to focus on getting their client out of custody, even if it means the accused will be given several conditions.

Rather than “helping” the accused, Sprott and Myers (2011) contend that multiple, restrictive, and onerous bail conditions set the accused up to fail. In some cases, an accused may have the initial substantive charge(s) withdrawn, only to accrue a series of administration of justice (AOJ) charges for breaching the conditions of their release. Consistent with these findings, one Duty Counsel pointed out that treatment conditions will only work if there is buy in from the accused:

There’s a tremendous distrust of accused people. The court doesn’t trust the accused person to go set up their own counseling, which is ironic because unless the person is actually buying into the idea of counseling it’s not going to work, right? … Like, there’s no point in getting you released and have a condition saying do counseling if you’re not ready to stop doing cocaine, right? You need to get to the point where the joy that you get from doing a line of coke is far outweighed by the pain that it’s causing your life, and unless you’re ready to do that, you might as well let me just try to get you out. You continue doing your drugs, try to stay out of trouble, and we’ll try to get you into programming when you’re ready, right? (DC 1).

Crowns may view mentally ill individuals as unpredictable and may not trust them to seek the necessary support to treat their mental illness on their own. In these instances, Duty Counsel feel that treatment conditions mitigate this risk, by compelling treatment with an attached risk of a criminal charge for failing to comply. But at the bail stage, accused individuals are likely to agree to any conditions in order to be released from detention, even conditions they may not be able to comply with (Myers, 2016). If the accused does not want to be treated, these conditions will fail to meet their intended purpose. Rather, the mentally ill individual will likely breach and find themselves back before the courts, in a position where their release may be revoked. Such circumstances contribute to a revolving door of criminalization for mentally ill individuals (Chan & Chunn, 2014).
Punitive Responses to Race

While the accused’s mental health status is often considered in the bail release plan, if a Crown explicitly introduced race as a risk factor, it would constitute a violation of the *Ontario Human Rights Code* (1990) and the *Charter of Rights and Freedoms* (1982; s.15(1)). To frame race as risk constitutes discrimination.⁴⁹ Yet, race is of paramount concern in the bail decision. One Duty Counsel captured this sentiment: “There isn’t an area of law, and especially in criminal law, that [anti-Black] racism doesn’t exacerbate the issue. It exacerbates everything” (DC 7). They indicated that when race is introduced, it tends to be brought up in more subtle but insidious ways, for example, by associating a racialized person’s neighbourhood and physical appearance with risk, danger, and criminality.

These references begin to appear early in the process, in the synopses prepared by the arresting officer(s). Synopses include information that will assist the Crown in making a decision about pre-trial release or detention. In cases where the accused is Black or belongs to a racialized group, one lawyer indicated that arresting officers often make comments in their synopses that are imbued with racist assumptions:

I constantly read synopses from the police saying ‘this particular neighbourhood is known to be replete with examples of gang members and drugs,’ or ‘this person was found in this location that has all kinds of drugs and all kinds of bad people living in that neighbourhood.’ And they use inappropriate, quite frankly racist rhetoric, to try to argue that people are dangerous (DC 1).

Remarks made about an accused’s neighbourhood are harmful when they are associated with “gangs,” “drugs,” and “all kinds of bad people” that are typical in particular areas. Furthermore, the neighbourhoods most often referred to as “dangerous” and “bad” are largely poor and racialized. Kellough and Wortley’s (2002) examination of police synopses affirms that initial

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⁴⁹ Delgado and Stefancic (2001, p.145) define discrimination as the “practice of treating similarly situated individuals differently because of race, gender, sexual orientation, appearance, or national origin.”
assessments by the police matter; if an accused receives a negative assessment from the police, they are more likely to be denied bail than are those who receive neutral assessments (p.196). When controlling for legal factors, officers tend to more negatively assess Black individuals compared to other racial groups (Kellough & Wortley, 2002). These findings suggest that risk can be manufactured and then made real when accused are treated as risky.

Assumptions about an individual’s neighbourhood impacts how they are viewed by the court. One Duty Counsel indicated, based on the accused’s neighbourhood,

…there’s a sense that criminality has been so normalized in this person’s life that they’re just going to innately be criminals, or they’re innately going to breach, or they’re innately going to do some manipulative thing to escape the responsibility for their behaviour (DC 7).

Some people are seen as inherently more blameworthy and riskier than others. Living in a particular neighbourhood, for example, is perceived by some justice system actors as an explanation for why a person is before the courts, the assumption being that neighbourhoods deemed “high crime” must be populated by “criminals.”

Like the associations made between the accused and their neighbourhood, a lawyer called attention to the ways that Crowns associate an accused’s physical appearance with racist tropes about “what a criminal looks like” (DC 7).

I think race plays a factor. I think size plays a factor. When you have these tall, big youth, Black men—Black kids, they’re not men, sorry—kids, there is a perception, ‘Oh, he’s a big guy. You know, he could do some real damage to her.’ So, again, these are racist tropes of the big black scary man, right? (DC 7).

Similar to the ways that neighbourhoods invoke particular assumptions about riskiness, comments about the accused’s appearance are also influential at the bail stage. Young Black men are often met with a presumption of guilt, simply based on their size and the colour of their skin. According to Maynard (2017), this reaction in the courts is not new. In Canada, dominant
narratives have linked crime and Blackness, beginning in the period of enslavement through to the contemporary era. Blackness, and consequently Black people, have consistently been perceived and treated as though they are threatening, by virtue of being Black (Maynard, 2017). This narrative relies on the inherent blameworthiness of Black people, and is manifested through and sustained by the legal system.

Comments about an accused’s size represent another way that race is introduced in the courtroom, without ever explicitly mentioning race. While comments about the accused’s neighbourhood frequently appear in synopses, comments about the accused’s physical stature are rarely said on the record:

Those are the innocuous things that you overhear Crown Attorneys say under their breath, ‘Oh, he’s a big guy. He’s a big fella. He could bring some havoc.’ And I’m just like, ‘but we have to talk about what happened. We can’t talk about what he might do because he’s big, black, and Jamaican. That’s racist. You’re a racist’ (DC 7).

These kinds of observations about the size and stature of racialized accused are tied up with racist tropes about what a criminal looks like, are linked to the perceived riskiness of the accused, and are used to speculate what the accused might be capable of doing, rather than focusing on what they have been accused of doing. This kind of thinking is in line with what one might expect at the bail stage, when the release decision is rooted in predictions of future risk. Hinging risk assessments on factors such as race, however, amounts to discriminatory reasoning. If bail court decisions are even partly rooted in assumptions about a racial group’s past behaviour, rather than any particular factors about the individual accused, then racialized accused are uniquely disadvantaged at this early stage in the legal process.
**Mis/Interpreting Mental Health Symptoms**

Young people in the child welfare system disproportionately experience mental illness, often stemming from early trauma and compounding through their time in foster care and group homes (Yehuda et al., 2001). Experiencing trauma can have physical, emotional, and psychological impacts that persist after youth leave care. While youth had a CAS worker and foster parents or group home staff support them in navigating their traumas while in care, once they leave care, their social supports are abruptly severed. They are often left to face their past traumas on their own. For some, their symptoms are exacerbated when they turn 18 because it is the first time that they are alone with their trauma (Doyle, 2007).

Most youth shared how their traumas are connected to mental health diagnoses including one, or a combination of, depression, anxiety, PTSD, or psychosis. Some youth spoke openly about ways their traumatic experiences transformed them. For example, Ben, a 21-year-old Black male, shared that when his familial relationships were replaced with professional ones, he found the professional distance difficult to contend with. He said:

> It was hard to have a sincere conversation with [workers]. I had one worker, but they keep changing workers, keep changing workers. …[Workers] just do whatever they want. She’s sick for six months or she left the country for a year … they take their four month vacation or whatever … so we’re going to change your worker (Ben).

High turnover coupled with little notification about when a new CAS worker would be assigned made it challenging for Ben to build relationships with those supervising his care. Because of the limits to the support offered from the professionals in his life, he continues to experience difficulty cultivating relationships with others. Ben said he feels that “no one ever gives a shit” so he “can’t just talk to someone or get to know someone outside of their work” (Ben). The scope of these difficulties has impacts beyond Ben’s personal relationships, affecting how he
interacts with those in his personal life, as well as strangers, including those in positions of authority, such as law enforcement.

Riyad, a 22-year-old Middle Eastern male, echoed similar feelings. Throughout his childhood, he had inconsistent relationships with his biological and foster parents. From age seven to 17, Riyad moved back and forth between his home of origin and different foster care placements until he was able to live independently at 18. He said,

Everybody knew what was going on, but it didn't rock their boat. They always slept in their bed peacefully at night, and nobody ever thought about, not a lot of people thought about me (Riyad).

When Riyad mentioned that “everyone” knew what was happening to him, he was referring to the CAS workers who were assigned to his file over the years. In his mind, despite the difficulties he was facing, the social workers supporting him always slept peacefully in their beds. Like Ben, Riyad made a meaningful distinction between support and care. Though both felt that their social workers offered support, there was a limit to their involvement rooted in professional boundaries. In contrast to a natural parent-child relationship, there are limitations on the types of support that social workers can offer youth, given their professional role.

Some youth, like Scarlett, an 18-year-old white female, and Tomas, a 23-year-old white male, developed feelings of anger toward their CAS workers and their caregivers. Both described becoming known as “runners” because they frequently responded to their circumstances by running away from their care placements. Scarlett shared that her time in care was, “a point in [her] life where [she] was running away all the time.” Tomas elaborated:

I was in and out [of placements] from 14, just dipping and going OT and just disappearing. … I would always run away … and as I got older it progressed—now I’m just running from the police, I’m running from trouble, I’m running from my issues. And that’s how it progressed with me with the CAS—I was always trying to run and [trying to] get away from it, I didn’t [want to] have anything to do with it (Tomas).
One YIT Worker explained that Scarlett and Tomas’ running away behaviour is a common coping mechanism among youth in foster care and group homes. Sometimes police are involved to help find youth and bring them back to their care placements. In this worker’s words, when police are involved, they tend to treat the situation as though the youth have, “AWOLed from a group home or maybe they AWOLed [from] a foster home” (YIT 4), meaning they are “absent without official leave.” Significantly, this term is military slang and connotes a different meaning than does “running away”: while teenagers and other young people sometimes run away from home, AWOLing is a specific term to describe soldiers who have left their posts. In the case where police are involved, the terminology that is used may invite different interpretations and lead to different responses from the officers tasked with locating the youth.

Sharing a story about a youth who frequently ran away from her foster care placement because of mental health challenges, one YIT Worker explained:

I was working with a young woman in [the GTA], she’s 18, severe mental health, ran away from the foster home, [went] far [east of the GTA]. Literally every day the police are called because her mental health is so poor … she tries to hurt herself, she tries to hurt other people, and the police come and they are awful to her—throw her on the ground, don’t care, arrest her, take her in, bring her back [to her foster home]. It’s a reoccurring traumatic experience and they know because they’ll say to her, ‘we know you’ve been involved 500 times, why don’t you just go back to your foster home?’ (YIT 4).

This story highlights a significant phenomenon of young people being criminalized at moments when they are experiencing distress. It further highlights how involving the police to address behaviour or distress is sometimes a punitive measure for youth leaving care, rather than a source of help.

All youth interviewed have been arrested, including some who were arrested while experiencing mental distress. Some youth indicated they believed they were arrested because the symptoms of their mental illness were mis/interpreted: Though youth were acting in response to
the circumstances they found themselves in, and in ways that were consistent with their illness, their behaviours were often interpreted as threatening or dangerous. Those around them did not make the connection between their behaviour and their mental illness. Carmela’s experience provides a useful example. When Carmela, a 24-year-old Black female, was ten years old, her family emigrated to Canada. Two years after arriving, she was apprehended by CAS, placed under guardianship of the state, and moved into foster care. Carmela experienced trauma leading to her apprehension by CAS and was re-traumatized by having to leave her family. Carmela developed PTSD in response to these critical life experiences, however neither Carmela nor the adults in her life recognized her symptoms as being associated with mental illness, so her symptoms were consistently interpreted as hostile, aggressive, and violent, and met with criminal, rather than caring, responses. Only now, as an adult, does Carmela recognize that when she is triggered, she has trauma-induced responses. One YIT Worker (YIT 7) described Carmela’s triggered responses as similar to those exhibited by individuals who have survived war. Carmela has been arrested several times while experiencing PTSD symptoms. In her words, “Usually, 80% of the time when I find my own self institutionalized, that is because of my mental health to say the least” (Carmela).

When her PTSD is triggered, Carmela said she feels disassociated from her body: “Physically I was there, but mentally I wasn't there” (Carmela). In these moments, her fight or flight response assumed control and she ceased to have control over her actions. Carmela shared that she is afraid in moments that she is triggered. It can also be frightening for those around her. She described an incident where she disassociated from her body and her foster mother panicked: “She didn’t know [I] was lost because [I] was…[triggered]” (Carmela). Though Carmela had not been formally diagnosed at that time, her foster mother was aware of some of the traumas that
had resulted in her being apprehended and placed in foster care. Despite this knowledge of Carmela’s history, her foster mother interpreted Carmela’s behaviour as dangerous. Rather than responding to Carmela’s behaviour with a caring response, Carmela said her foster mother involved the police, which led to her first criminal charge when she was 12 years old.

This pattern of being triggered then criminalized repeated for much of Carmela’s adolescence and young adulthood. She said,

> I found with my situation, usually when I get in [trouble]—and this goes way back to me getting arrested from the jump—it's usually based on me experiencing a mental health issue and not really knowing how to deal with it personally, and then having the people around me not really understand it. And then it just kind of escalates to something bigger, right? (Carmela).

Before receiving a formal diagnosis, neither she nor the adults in her life understood her symptoms as being related to her PTSD. Rather, than helping Carmela to understand that her behaviours are related to PTSD and supporting her to recognize when she is triggered so that she can self-regulate and cope with her symptoms, she has consistently been criminalized. While it might be difficult for an individual who has no prior knowledge of Carmela’s history or any experience around individuals with PTSD to recognize Carmela’s symptoms, one might reasonably expect that her foster parents and group home staff—who receive training about the challenges youth face, have experience working with this population, and have access to the details of each youth’s history—would have the knowledge and skills necessary to recognize Carmela’s symptoms and to provide her with the support she needs. The adults responsible for Carmela’s care, her foster parents, instead contributed to her criminalization when they frequently involved the police in response to her PTSD symptoms.

Carmela’s circumstances are unfortunately common among youth in and leaving care. For example, Dina, a 21-year-old Black female, said that the actions which led to her receiving a
criminal charge were a result of her being “unwell.” At the time of her arrest Dina, “was high, sick, [and] struggling with [her] mental health” (Dina). Many youth indicated they were intoxicated when arrested, but when prompted to elaborate indicated that they had turned to substances to cope with trauma which led to contact with the police. Scarlett, for example, shared she was arrested for substance use but explained substances helped her cope with recent trauma: “I’d just been sexually assaulted and stuff, and I was suffering a lot of PTSD, so everything was made so much worse” (Scarlett). Similar to Scarlett, Arlo, a 24-year-old Latinx male, said, “All that stuff [in my past] led to my alcoholism, that led to some really poor choices, which brought me to the bail courts” (Arlo). Individuals who are around youth do not always understand how to respond to youths’ trauma-induced behaviours and so they involve the police. Kalee, an 18-year-old white female, said she was arrested while experiencing distress after a family member called the police requesting a wellness check. In her words, “[The police] literally just handcuffed me right away” (Kalee). All of these youth described being criminalized for reasons stemming from their traumas.

Sometimes foster parents and group home staff fail to recognize trauma-induced behaviours when they are happening in front of them. Other times, they are under-resourced and lack capacity to respond directly to the behaviour. Out of fear, frustration, or anger, many will turn to law enforcement for support to help them manage youths’ behaviour (Scully & Finlay, 2015; Finlay et al., 2019):

Now that I go back and look into it…from that day [it] was history. Ever since then, for little things I would go [to jail]—because I didn't listen to a staff or because I disagree with them…I think most of the stuff that happened with me was just because … my PTSD would kick in and they didn't know how to handle it (Carmela).

50 Wellness checks (also known as welfare checks) are requests for police intervention, typically made by family members, friends, or neighbours of an elderly person, or person experiencing mental health crisis. Police are called to check on that person’s wellbeing.
In both her foster home and group home, whenever her PTSD was triggered, Carmela was arrested. Even when her PTSD was not triggered, and she simply “disagreed with staff” or “didn’t listen to staff” the police would be called. Consistent with the literature, the police are being used as behaviour management supports for youth in care, whereas these issues would likely be resolved by a parent or guardian for youth in their familial homes (Bala et al., 2015).\footnote{51}

As a consequence, Carmela incurred several criminal charges as a youth and into young adulthood. Over the years, Carmela has been formally diagnosed with PTSD and has learned more about her condition. With this information, she has found ways to recognize her triggers and self-regulate her behaviour to avoid incurring more charges and imprisonment.

For youth who have experienced trauma and who have significant difficulty trusting others, contact with the police can be devastating and re-traumatizing. This was the case for Dina who experiences significant mental health challenges, including psychosis. Dina’s past experiences of assault by men invoked a triggered response when she was approached by two male officers in plain clothes:

Because of the shit that I went through when I was in care I have no trust for a lot of people, especially men. And the two officers that picked me up were both men and just not cool. And I’m happy that I didn’t pick up another charge because I kind of tried to fight them. It was triggering. And it wasn’t because I was just being defiant. It was more so trauma (Dina).

Because she was triggered, Dina believed that the officers meant her harm. In response she fought back and was met with force, then criminalized. The officers were unaware of her history of trauma and responded with force, as is protocol.

\footnote{51 Young people are often criminalized for non-criminal behaviours in the group home setting. This idea is developed in more detail in Chapter 5.}
At the time of her arrest, Dina was at the hospital seeking treatment for injuries sustained in a recent assault:

I was in the hospital too when it happened. Because I had—after it happened, or before it happened, some guy had beat the shit out of me, so then I did what I did, and someone that I knew was like, ‘you should go to the hospital’ because I had to get six stitches and stuff like that. And [the police officers] came up to me in the hospital. And I was like… For one, how the fuck did you find me? Two, don’t put your hands on me and not say, ‘hey, are you such and such, you are being arrested for this,’ like what you see normally. But it wasn’t like that. They just put their hands on me. And I was like ‘fuck you, what’s going on? Get out of my face.’ And then they’re like, ‘you’re being arrested.’ And everybody in the hospital was looking. And I understand you have to arrest me but don’t do it that way. It was unnecessary (Dina).

Dina had just suffered an assault by a man. She was at the hospital seeking treatment for an injury she sustained from the assault. Yet, like Carmela, the way Dina was approached by the officers indicates they perceived her to be a threat and responded punitively. Rather than protecting Dina in a moment of extreme vulnerability, she was attacked again, by the police. Dina’s experience of victimization at the hands of police is shared among the majority of youth interviewed (64%, n=16).

Without the context of youths’ histories, these kinds of encounters can create distrust between youth and the police. For Dina,

Now every time I have police—because I do still struggle with my mental health and have wellness checks called and police in plain clothing—I’m always very wary of them. Because you’re in plain clothing, you could be pretending you’re a [police officer] … And with psychosis, that’s not shit that you can play with. … But I guess in certain situations they send police officers in plain clothing so it’s not as intimidating, but it doesn’t always help (Dina).

At the time of her interview, Dina was living in community-based supportive housing for individuals experiencing mental health challenges and told me that staff sometimes requested wellness checks for her that are conducted by the police. Given Dina’s history of criminalization

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52 However, the story shared by YIT 4 above indicates that having this context will not always impact officers’ responses.
while experiencing distress, more police contact in her life only increases her risk of further
criminalization. Furthermore, though Dina was apprehended by the child welfare system, it is the
criminal justice system that administers these wellness checks now that she is a legal adult.
Because she is a legal adult, her CAS worker no longer supervises her care. Young people who
have experienced significant trauma need ongoing support, yet the child welfare system’s
parental responsibilities end when the youth in their “care” reach the age of majority. In this way,
the child welfare system can act as a pathway into the criminal justice system for youth leaving
care.

*Race-Based Differences in Justice System Actors’ Responses to Distress*

Importantly, not all young people were met with punitive responses by the police when they
exhibited similar behaviours. When comparing young peoples’ experiences, some young
people experienced a different response to their mental health symptoms from the police, which
seemed to be based on the racial group they belong to. Evidence of this race-based treatment can
be seen in the experiences of Carmela and Dina in comparison to David’s, a 22-year-old white
male, and Jesse’s, a 24-year-old white male, all of whom were arrested while experiencing
mental distress.

David has experienced homelessness for two years, has been formally diagnosed with
schizophrenia, and he uses substances. These circumstances make him vulnerable to contact with
the police. He described an instance of being arrested while trying to shoplift alcohol. He was
mentally unwell at the time and was “making a scene” in the store when the police were called
(David). As David recounted his experience, he described resisting arrest and exhibiting
behaviour the arresting officer would likely consider disrespectful:

> I started yelling at them actually. Yah, I was yelling at them and everything. I
> was swearing and cussing and everything at them (David).
David was arrested and brought to a holding cell at the police station. He shared that the arresting officers identified his behaviour as related to his mental health and advocated for him to begin a mental health diversion program: According to David, the officers knew “putting [him] in jail would’ve made things worse because [he has] a mental health condition” (David). As a result, David did not have to attend court. He was instead diverted out of the justice system and connected to supports in his community. Though Carmela, Dina, and David had all been accused of committing non-violent crimes, had similar histories of prior offences, and all three exhibited similar distress at the time of their arrests, only Carmela and Dina received custodial sentences.

Jesse was similarly arrested while experiencing distress and was placed in a holding cell. Jesse had left the province to connect with a romantic partner in another city. Shortly after he arrived, the connection between them deteriorated, becoming toxic and abusive, so Jesse left. Extremely distressed, Jesse used substances to cope and stole a car. He was arrested during the commission of a crime (theft) while under the influence of illegal substances. But he was also experiencing distress which impacted the way that officers reacted to him. In contrast to Dina, Jesse said he was not met with force while arrested and so there was no need for him to resist. His re-telling of this experience suggests that the arresting officers recognized his symptoms or did not consider him to be a threat—possibly both.

While Dina was arrested in the hospital while seeking treatment for an injury sustained in an assault, Jesse was arrested in the community, while under the influence of intoxicating substances, and after stealing a car. Dina indicated that the arresting officers had little regard for why she might be seeking treatment; when they approached her they put their hands on her. In contrast, Jesse shared that the arresting officers showed a lot of care for his wellbeing. He said, “they were constantly watching over me, making sure I was okay” (Jesse). It appears that the
officers recognized that Jesse was unwell, but in Dina’s case, even though her environment and injuries indicated she was not well, she said that the officers acted as though they perceived her to be a threat.

Police officers’ perceptions of race are significant and have material consequences for those they encounter. As Kellough and Wortley (2002) indicated, police assessments matter and impact an accused’s trajectory within the legal system. These youths’ experiences suggest that an officer’s split-second interpretations of a young person’s behaviour are filtered through a lens of pre-existing racial bias. Even though all youth were criminalized for their behaviour, white youth were met with more protective responses from justice system actors, while racialized youth were often met with more punitive responses, when they exhibited similar behaviours. These biases have material consequences in practice. When youth receive negative assessments by police early on, these assessments impact the course of action taken by the Crown as well as the range of possible outcomes available to them at the bail stage (Kellough & Wortley, 2002). Youth leaving care who experience mental illness are at an increased risk of coming into contact with the justice system and are particularly vulnerable to being criminalized when they do. Their experiences in the criminal justice system may differ markedly based on the colour of their skin when filtered through justice system actors’ predispositions about the racial group to which they belong. Importantly, the overrepresentation of racialized groups at every stage of the criminal justice system (Faith, 1993; McGillivray & Comaskey, 1998) are a direct result—and evidence—of the over policing and differential treatment of racialized groups (Jiwani, 2019).
Discussion and Conclusion

According to the ladder principle (*Criminal Code* s.515(2)), the presumptive starting place for release is an undertaking. If conditions are imposed, the accused should be released with the least onerous conditions necessary in the circumstances. Yet, this study’s findings indicate that stereotypes about mental illness frequently factor into discussions early in the legal process and influence decision making. Lawyers indicate, in police synopses and bail courts, mental illness is frequently associated with a risk of [re]offending, regardless of the nature of the offence or whether the individual’s symptoms are meaningfully connected to the charge(s) before the court. When mental illness is treated as a risk or danger factor, it becomes something the courts need to manage.

Several Duty Counsel indicated that treatment conditions are commonplace in instances when the accused is mentally ill. Such conditions are proposed in order to pre-emptively address the Crown’s concerns about mental illness in general, rather than any specific factors about the individual accused. Because there is no time at the bail stage—where efficiency is paramount (Feeley & Simon, 1994; Myers, 2015)—to fully consider the particular characteristics and symptoms of the individual, it appears that treatment conditions are being imposed habitually to ensure the Crown is “comfortable” with releasing mentally ill individuals (DC 6). But these measures are often inappropriate at this stage, leading to more surveillance, inviting more breaches, and resulting in further criminalization, all of which keep mentally ill individuals ensnared in the justice system. It is significant that mental health is a factor that simply must be addressed at the bail stage. This practice conflicts with both the presumption of innocence and the presumption of release.
In addition to mental health, the accused’s race also impacts decision-making early in the legal process. Racist assumptions are evident in youths’ stories of contact with the police. Among the youth, race-based differences emerged when they shared stories of being arrested while experiencing mental distress. The police officers’ responses to Carmela and Dina are consistent with prior research documenting instances of police mis/interpreting the behaviours of racialized youth as “aggressive,” “hostile,” “threatening,” and “dangerous” (Konold et al., 2017; Sagar & Schofield, 1980; Watson & de Gelder, 2017). Carmela and Dina’s trauma-induced behaviour was similarly mis/interpreted by police officers with harmful effects.

In bail court, explicit mention of race as a risk or danger factor is prohibited. Instead, race enters the discussion in subtle but insidious ways, including in comments about racialized youths’ neighbourhood or appearance. It appears that the accused’s race, and racist assumptions about the racial group they belong to, influence decision-making in the early stages of the legal process to the disadvantage of racialized accused. And because the accused is presumed innocent at the bail stage, there is no effort or time spent trying to understand the particular reasons which may have led an accused to come into conflict with the law. Instead, typifications about an accused’s neighbourhood and appearance function as shared frameworks for making sense of future risk and danger that inform decision-makers’ thinking (Moscovici, 1976). This practice of relying on typifications instead of the unique characteristics of the accused amounts to habitual racism embedded in bail court practices when rooted in discriminatory perceptions, but they are justified under the guise of efficiency. These findings support the argument that when Black youth are perceived to be threats, they are met with punitive responses.

53 Schutz (1972) coined the term typification; he contends that we come to understand the meaning of other’s actions using our stocks of knowledge. Social psychologist Moscovici (1976) extends Schutz’s work, suggesting that typifications [what he calls attributions] are shared frameworks for making sense of the world at a given time by a given group (or groups) of individuals.
The court’s assumptions about mental health and race are particularly harmful for young people who have left the care system. Racialized children and youth are overrepresented in both the child welfare and criminal justice systems (Yi & Wildeman, 2018). Furthermore, youth leaving care disproportionately experience mental illness (Deutsch et al., 2015; Greeson et al., 2011; Zlotnick et al., 2012). Consequently, youth who are racialized and mentally ill are especially vulnerable when they come into conflict with the law. These young people have been deemed in need of protection, they have been apprehended and placed in the state’s care for these very reasons. While in care and after leaving care however, many exhibit behaviours that stem from their difficult histories and upbringings that increase their likelihood of experiencing criminalization. Yet, the nexus between their traumatic past and criminal present are rarely explicitly acknowledged in the early stages or, when they are acknowledged, they are treated as secondary to the criminogenic behaviour itself: Punishment is prioritized over protection. Accountability and consequences are undoubtedly important and necessary for those who engage in illegal activities. But focusing exclusively on the criminogenic act paints an incomplete picture and limits the shape that accountability can take, privileging punishment as the only response, regardless of whether it is appropriate in the circumstances (Garland, 1990).

The habitual use of typifications to address mental health and race in bail courts supports Natapoff’s (2017) argument that in the bottom of the penal pyramid, justice system actors treat individual accused in the aggregate. In doing so, social facts about the accused, including their race and mental health status, have greater influence over justice system practices than do the legal rules. In bail court, the use of discriminatory typifications contributes to efficiency and helps keep the court moving, but this practice conflicts with the ladder principle and presumption of release (Yule & Schumann, 2019). Furthermore, treating young people in the aggregate does
not account for the complex reasons why they find themselves before the courts in the first place. Arguably, despite their “criminal” behaviours, these young people are still very much in need of protection. Youths’ stories indicate they are subjected to the kinds of punitive responses outlined by lawyers above. The consequence is those who are seen as being most in need of protection by one state institution are being met with punishment in another.

It is noteworthy that in Ontario, youth justice and child welfare are both administered by the Ministry of Children, Community and Social Services. Being paired within the same Ministry seems to acknowledge the interconnection between welfare and justice. Yet, when asked whether the two systems are related, Tamara Stone, a representative from the Ministry’s Youth Justice Division indicated that they are not (personal communication, April 23, 2021). The testimonies of youth who have been involved in both systems suggests otherwise. While a subtle distinction exists where justice is synonymous with “punishment” and welfare is synonymous with “protection,” youths’ stories show how the systems are interconnected and reveal a pathway that exists from one system to the other.

Once child protection services apprehend a young person from their home of origin, the state is, in effect, their parent. But there are limits to state support. When young people behave in ways that are perceived as disruptive in response to the unstable environments they are placed in, the protection system relies on the punishment system to intervene. Time and again, young people leaving care come into conflict with the law for the very reasons why they needed protection in the first place, but now they are being met with punitive responses. Ultimately, both the child welfare and criminal justice systems are failing to respond to the unique needs of young people in and leaving care. The state must expand its thinking when it comes to justice, moving beyond punishment and thinking more broadly about what accountability means. In order to live
up to its promise to protect, the state’s responsibilities cannot simply be handed over to the
criminal justice system once youth turn 18. As young adults, youth leaving care continue to need
support, guidance, and care.
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Chapter 4: Risk and Releasability

Rethinking “Suitable” Support Networks for Former Foster Youth in Ontario Bail Courts

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Abstract

Contemporary social trends indicate many young adults are relying on their families for financial and other tangible support for longer than in the past, often well into their 20s. Amid higher rates of unemployment, rising housing costs, and a later average marrying age than in previous decades, family plays a crucial role in easing the challenges of transitioning to adulthood. Youth leaving the child welfare system, however, do not have similar supports to rely on when they reach the age of majority. In bail court, the experiences of those who have familial support differ markedly from those who do not. Using qualitative data from 45 in-depth, semi-structured interviews with youth, lawyers, and social workers, this article discusses the experiences of young adults (ages 18 to 24) who have exited the child welfare system and come into conflict with the law. Drawing on Douglas’ cultural theory of risk and Feeley and Simon’s theory of actuarial justice helps make sense of the ways youths’ experiences of instability in the child welfare system are framed as risk factors in bail courts and used to rationalize more restrictive conditions of release for this group, compared to their peers who have not been in care. This article focuses less on the release decision itself, and more on what factors render an accused “releasable.” Specifically, the ways in which community ties and social supports signal to the court whether an accused is releasable reveals underlying normative assumptions about kinship networks wherein those lacking these connections, like youth leaving care, are uniquely disadvantaged.

Key Words: youth leaving care, risk, releasability, actuarial justice, bail, surety
Introduction

Youth in the child welfare system experience significant instability. Frequent moves disrupt their young lives, which impacts their ability to build relationships or form community ties. As young people prepare to leave the child welfare system when they turn 18, many ‘age out’ of the system into isolation. Existing child welfare policies require youth to leave their foster care and group home placements when they turn 18, so for many youth, as they transition to independence they experience a simultaneous abrupt loss of their social support system. Many youth find this transition period challenging and the adverse outcomes are well-documented, including poverty, homelessness, and criminalization. For youth who come into conflict with the law after leaving care, their experience of instability, isolation, and severed social supports significantly impacts their experiences in the criminal justice system. This article sheds light on youths’ experiences in Ontario bail courts.

Contemporary societal trends indicate many young adults are relying on family for support for longer than in the past, often well into their 20s (Shah et al., 2017; Yi & Wildeman, 2018). Amid higher rates of unemployment, rising housing costs, and a later average marrying age than in previous decades (Shah et al., 2017), family plays a crucial role in easing the challenges of transitioning to adulthood by giving youth more time to enter adulthood on a solid footing (Lee et al., 2014). Youth leaving the child welfare system, however, do not have similar supports to rely on. In bail court, those who have familial supports and those who do not have very different experiences. Using qualitative data from 45 in-depth, semi-structured interviews with youth, lawyers, and social workers, this article discusses the experiences of young adults (ages 18 to 24) who have ‘aged out’ of the child welfare system and come into conflict with the law. Drawing on Douglas’ (2003) cultural theory of risk and Feeley and Simon’s (1992, 1994)
theory of actuarial justice reveals ways youths’ experiences of instability in the child welfare system are framed as risk factors in bail courts and are frequently used to rationalize more restrictive conditions of release for this group, compared to their peers who have not been in care. This process illuminates normative assumptions about kinship networks at work in bail court wherein particular views of community ties and social supports are upheld, rendering some accused “releasable” and uniquely disadvantaging those lacking these characteristics, such as youth leaving care.

**Bail in Ontario**

Judicial interim release, or bail, permits the release of accused to await the resolution of their charge(s) in the community. Those who are denied bail are held in pre-trial detention. All accused are presumed innocent (Charter, section 11(d)) and there is a presumption of release at the bail stage (Criminal Code, section 515(1)), meaning accused should remain in the community prior to their trial. Section 11 of the Charter further guarantees the right to be presumed innocent, the right to reasonable bail, the right to be free from arbitrary detention, and the right not to be deprived of liberty except in accordance with the principles of fundamental justice (Canadian Charter, 1982 s.11). According to s.515(10) of the Criminal Code, accused should only be denied bail to ensure they will attend future court appearances (primary ground); if the court is concerned they present a danger to the public or may interfere in the administration of justice (secondary ground); or if release would diminish the public’s confidence in the administration of justice (tertiary ground). These provisions in the Criminal Code and Charter limit judicial discretion to detain accused individuals.
Several practices have been instituted at the front end of the criminal justice system, from arrest to bail, that are consistent with the presumption of release: police powers have been expanded to give police officers authority to release accused (Myers, 2009; Trotter, 2010); the onus rests with the Crown to show cause for why an accused should be detained in most cases\(^{54}\) (Webster et al., 2009); and use of cash deposits has been restricted (Myers, 2009; Trotter, 2010). In practice, however, these reforms have been interpreted and enforced in ways that conflict with their intended purpose, which has led to increasing numbers of accused being imprisoned in remand. Since the 1990s crime rates in Canada have steadily declined (Public Safety Canada, 2020), yet the number of accused detained prior to trial and sentencing have steadily risen (JHSO, 2013; Webster et al., 2009). Every year since 2004/2005, the average number of accused in remand in Canada has outnumbered the sentenced provincial custody population (Correctional Services Program, 2017 cited in Malakieh, 2019). Remand numbers are highest in Ontario and in 2018/2019, the remand population comprised 70.9% of the provincial imprisonment population (Statistics Canada, 2020a). This means the majority of people in provincial custody have not (yet) been convicted and are to be presumed innocent.

Amid high remand numbers, only approximately 2% of remanded individuals in Ontario have formally been denied bail (OCJ, 2020). Most individuals are held in remand for short periods, typically between one and 14 days before eventually being released on bail (Wyant, 2016).\(^{55}\) Myers (2015) indicates a culture of adjournment, combined with the court’s aversion to risk (Myers, 2009, 2019) helps explain why individuals are often held in remand before being released. Adjournments are common and accepted in bail courts, which in some cases maintains the court’s expedient and efficient pace, and in other cases provides additional time for defence

\(^{54}\) Except in the case of reverse onus.
\(^{55}\) Wyant (2016) also notes 50% of remand admissions are for 8 days or less.
counsel to prepare more involved bail release plans (Myers, 2015). In assessing the accused’s risk, a range of factors, including their criminal history, the nature of their charge(s), among other factors, are considered that go beyond the scope of the three grounds outlined in the Criminal Code (Myers, 2015). Many factors are not directly tied to the three grounds, but are deemed “risky” by the courts and therefore must be addressed by defence counsel before the Crown will consider consenting to release (JHSO, 2013; Myers, 2015).

This study adds to the literature by exploring instances where a more involved bail release plan is required to address the risk factors presented by former foster youth. In the process of identifying risk, less concern is attributed to “actual harm” (which would require empirical proof) in favour of anything that can reasonably fall within the category of “risk” (Myers, 2009). Youths’ experiences and lawyers’ insights indicate that the ways courts define risk reveals embedded assumptions about who is risky and by extension, who is releasable, to the disadvantage of the youth leaving care population.

Bail Law Versus Bail Practice: The Use of Sureties

The ladder principle (Criminal Code s.515(2)) means the court is to consider the least restrictive form of release, an undertaking (the lowest rung of the ladder), before considering more restrictive forms of release. In most cases the onus rests with the Crown to demonstrate why this form of release is inappropriate before moving up the ladder and proposing more restrictive conditions. But in practice, restrictive conditions, such as sureties, are regularly required for release and the ladder principle is not being used to demonstrate why these more

56 However, a reverse onus occurs when the accused is charged with certain offences or when an accused has breached a bail condition and is brought back before the court; in these instances, the onus no longer rests with the Crown, but with the accused, to demonstrate why they ought to be released.
onerous release plans are appropriate or necessary (*Criminal Code* s.515(2)(c); Yule & Schumann, 2019). A surety is a person who agrees to supervise an accused while they are released on bail and who promises to pay a certain amount of money if the accused fails to comply with their conditions of release. Failure to comply with any conditions of release while supervised in the community may result in a financial penalty for the surety and a criminal charge\(^{57}\) for the accused.

The Supreme Court of Canada responded to growing concerns about inconsistencies between bail outcomes and criminal law in their landmark decision in *R v. Antic* (2017). In a unanimous ruling, the Court indicated several principles and guidelines must be adhered to when applying the bail provisions in a contested hearing, including: accused should be presumed innocent and should not be denied bail without just cause; accused have the right to reasonable terms of bail; an undertaking should be the default position for release; if more restrictive forms of release are proposed, the ladder principle must be followed, meaning each rung of the ladder must be considered before moving to a more restrictive form of release; requiring a surety is one of the most onerous forms of release and should only be imposed if all less onerous forms of release are rejected as inappropriate (*R. v. Antic*, 2017, para 67).\(^{58}\) *Antic* essentially instructed the lower courts to return to meaningful application of the law as it is written.

In the Ontario Superior Court, Justice De Luca upheld the Supreme Court’s instruction in *R v Tunney* (2018): “the clear message from the Supreme Court is that participants in the justice system must return to the first principles of bail, as both a matter of law and as a matter of practice” (para 36). Yet, the use of restrictive conditions, like sureties, persists in the post-*Antic*, post-*Tunney* era (Yule & Schumann, 2019). The Supreme Court responded again in *R v. Zora*

\(^{57}\) An administration of justice (AOJ) charge for failing to comply with the conditions of release.  
\(^{58}\) See *R. v. Antic*, 2017 para 67(a) to (k) for more detail.
(2020) by re-emphasizing the presumption of release and the ladder principle. Zora also reminds the lower courts to demonstrate restraint when conditions of release are required; all non-enumerated bail conditions should be specifically tailored to the individual circumstances of the accused so as not to create undue harm and invite unnecessary breaches (para 25).

*Antic* recognized requiring a surety for release is an onerous condition. This form of release is onerous because it requires the accused to have someone who is willing to supervise them for an extended and uncertain period of time while they wait for the resolution of their charge(s). In many cases the accused is required to reside with their surety (Myers, 2016); in some cases, the accused may only leave the surety’s home when accompanied by them. Recognizing how onerous this condition is, the use of sureties has been minimized in various jurisdictions across the country (Deshman & Myers, 2014). Yet, surety conditions are a standard practice in Ontario (JHSO, 2013; Myers, 2009, 2019; Yule & Schumann, 2019). Myers (2019) spent 171 days in 12 Ontario bail courts and found that a surety release was required in 76.1% (n=178) of releases. Similarly, Yule and Schumann (2019) observed 294 adult bail cases in three courts in Ontario and found a surety condition was required in 57% (n=108) of releases.59 Yule and Schumann (2019) conclude that in Ontario, the presumption of release that is enshrined in law has been modified to a presumption of release *with a surety* in practice.

When a surety is required for release, the accused has to find a *suitable* surety, otherwise the Crown may seek detention. If defence counsel moves to have a contested bail hearing, the Justice of the Peace (JP) will have to determine (1) if the accused should be released, and (2) if release with a surety is required. In cases where a prospective surety is identified and deemed inappropriate, the accused may be required to identify another prospective surety, or they may be

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59 Yule and Schumann (2019) further reported that the majority of cases involved minor to medium severity charges.
detained. If the accused is not able to identify a suitable surety, they will likely be detained in pre-trial custody (Myers, 2019). This article highlights how challenging it can be for some to identify a suitable surety, as not everyone can act in this capacity. The Criminal Code does not specify criteria for surety selection but some factors are commonly considered in practice, including “close relationship with the accused, willingness to supervise the accused, assets they are willing to forfeit to the Crown if the accused fails to comply, and no criminal record depending on the alleged offence” (Myers, 2019, p.69). Notably, in most cases a suitable surety is someone from the accused’s family. Myers (2019) found in 42.8% (n=59) of releases with a surety, the surety was the accused’s parent, in 14.5% (n=20) of releases the surety was the accused’s sibling, and in 15.5% (n=20) of releases the surety was another family member of the accused. This means that the surety was a family member in 72.8% of releases. The practice of requiring a surety disadvantages particular groups, including those who have prior criminal histories, and those who are poor, racialized, or experience mental illness or substance use dependency (Myers, 2019). But the court’s reliance on family members to act in this capacity uniquely disadvantages youth leaving care, many of whom do not have family members or stable, non-professional adults in their lives to act in this capacity.

Risk and Norms

Risk is an endemic and enduring feature of society permeating all aspects of daily life (Beck, 1992). Beck (2009) contends North Americans are preoccupied with the anticipation of future danger which has allowed risk logics to pervade and transform our society into a risk

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60 Myers (2019, p.69) notes the following are excluded from acting as a surety: “accomplices, the accused’s counsel, persons in custody or awaiting trial on a criminal offence, infants, individuals already acting as sureties for someone else, and non-residents of the province” (see also: Armour, 1926; Trotter, 2013).
society (cited in Walklate & Mythen, 2011). Through pervasive and perverse actuarial logics, risk is often problematically conflated with danger, but the two are different. While danger is typically urgent and immediate, risk is always future oriented and directed at the anticipation of future danger. Though risk assessment and risk-averse thinking are posited as technical, scientific, and rational in nature, Douglas (2003) contends risks are socially constructed, have social consequences, and have varying significance for different social groups (Draper, 1993).

Risk-averse thinking, though packaged in scientific and seemingly objective language is laden with evaluative rules (Ericson & Haggerty, 1997) and reflects dominant political and moral values (Douglas, 2003; Hannah-Moffat, 1999). By looking beyond risks themselves, one reveals embedded and underlying assumptions about order, hierarchy, and justice (Draper, 1993).

The evolution of risk society is also reflected in the criminal justice system where actuarial processes are employed to manage crime (Hannah-Moffat, 1999; Simon & Feeley, 1995). In bail court, risk thinking is evidenced in logics of actuarial justice, in which, “the pursuit of efficiency and techniques that streamline case processing and offender supervision replace traditional goals of rehabilitation, punishment, deterrence, and incapacitation” (Kempf-Leonard & Peterson, 2000, p.67). Bail court operates as though risk can be typified and predicted, and further that these typifications are reliable. Such processes are visible in the normalization of deviance, creation of profiles, promotion of managerialism, and fixation on future crime. Accused individuals are frequently treated in their aggregate, rather than as unique individuals, which allows decisions to be made quickly and efficiently before moving on to the next case (Natapoff, 2017). The uniform application of actuarial processes across whole populations, however, has varied impacts for differently situated individuals, based on race and gender, among other variables (Hannah-Moffat, 1999). Further, what constitutes risk is contingent upon
the cultural, political, and moral evaluations of those interpreting the facts of each bail case (Hannah-Moffat, 1999). Consequently, the typifications of riskiness that arise in practice are not value-free and do not represent an objective “risk.” The particular definitions that are adopted and upheld in bail court are rooted in dominant norms and, as a result, have material consequences for differently situated individuals, including youth leaving care.

Methods

This article explores ways that “riskiness” and “releasability” are constructed in bail courts by focusing on the experiences of young adults who were formerly in care. To examine the socio-legal construction of these categories, I draw on qualitative interview data with young adults, lawyers, and social workers collected in the Greater Toronto Area (GTA), between March 2019 and December 2020. Specifically, in-depth, semi-structured interviews were conducted with 25 young adults, ages 18 to 24, who have had previous involvement in the child welfare and criminal justice systems. The majority of youth experienced out-of-home care in either foster (n=16) or kinship (n=1) care, or group homes (n=3).61 Five youth remained in their homes of origin, but their families had open and active files with the Children’s Aid Society (CAS) that were closed when they turned 18 years old. All youth experienced forms of criminalization, including contact with the police, arrest, charge, or bail. With permission from Legal Aid Ontario (LAO) and the Ministry of Children, Community and Social Services (MCCSS) respectively, in-depth, semi-structured interviews were also conducted with 10 practicing lawyers in Ontario (Crown Attorneys (n=2); Duty Counsel (n=8)) and 10 Youth-in-Transition (YIT) Workers. Each

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61 All young adults have been assigned pseudonyms. Duty Counsel (DC), Crown Attorneys (CROWN), and Youth-in-Transition Workers (YIT) have been assigned codes based on their professional group and given unique numbers, e.g., DC 1; CROWN 2; YIT 3.
participant groups’ perspectives are woven together in the analysis to map the socio-legal context of bail courts. Youth and YIT Workers’ testimonies provide descriptions of the challenges that young people experience when leaving care and preparing for independence; how these challenges often result in adverse outcomes for this population; and how these circumstances increase youths’ likelihood of coming in contact with the criminal justice system. Lawyers’ testimonies reveal how the circumstances former foster youth face create unique vulnerabilities for them in bail court.

Social Support Networks and Community Ties

Given the high volume of cases that move through the court daily, and the need for efficiency to keep cases flowing, Duty Counsel\(^\text{62}\) often craft bail release plans that pre-emptively respond to Crowns’ primary and secondary ground concerns (Yule & Schumann, 2019). In practice, the tertiary grounds are rarely invoked; this ground is typically only raised for serious offences or high-profile cases. It is more common for Crowns to challenge the releasability of an accused on primary or secondary ground concerns. Because Crowns and Duty Counsel work together daily, Duty Counsel come to understand what factors are deemed risky by the Crown and attempt to develop a plan that effectively mitigates this risk (Yule & Schumann, 2019).

The questions Duty Counsel ask the accused during intake assist them in developing an appropriate release plan, with common concerns of the Crown in mind. Many lawyers expressed that establishing ways the accused is connected to their communities is important to securing their release. One Duty Counsel said,

> What we can do is tailor a bail plan to highlight the strengths and the confidence the court can [have] that [the accused is] actually involved in some

\(^{62}\) Duty Counsel are lawyers who offer legal support to low-income individuals; their services are provided by Legal Aid Ontario.
programming—whether it's education, whether it's employment. It would actually play to that client's favour if the court knew about them being involved in certain supports (DC 2).

Early on, Duty Counsel want to establish connections, whether through education, employment, or other means, as a way to show that the accused is involved in their community and is not a flight risk. By showing they are connected in their communities, and have responsibilities and commitments, Crowns may be persuaded that the accused will attend their court appearances. This lawyer elaborated, “the client could be released from custody faster if the court and the Justice and the Crown [know] that they [are] part of a team, that they [aren’t] alone, that they [aren’t] spiraling in the community” (DC 2). There is an embedded assumption that if an accused is alone, they may spiral out of control, but if they have established connections, they are more firmly rooted because they have someone or something that they are accountable to.

Some Duty Counsel indicated that established connections are rooted in more practical, geographical concerns. For example, one Duty Counsel said, “I have to ask [the accused], what’s your proximity to your community, what’s your level of engagement with things that are going on in your community?” (DC 2). For this lawyer, connectedness is rooted in “proximity” and is evidenced by having ties within the local boundaries of the community. Another Duty Counsel explained, if “[an accused’s] whole life is three hours away from here, I can understand why the Crown would be a little bit concerned that [they] might not come back to [their] court date” (DC 3). These proximity-related concerns have to do with the practical requirement of attending court dates. If an accused was arrested in Toronto but their home address and place of employment are in Windsor, the Crown may be skeptical that the accused will return to court and may contest release on the primary grounds.
In other cases, a lack of ties to the community is interpreted by some Crowns as an increased risk of re/offending (secondary ground). In this interpretation, the accused’s social support network comes under scrutiny. One Duty Counsel shared, in their experience, “It’s people that no longer have a community that keep coming back time and time again, right?” (DC 1). And another lawyer added, “I would be lying if I said that my clients don't come back or don't reoffend—it happens. But part of it ties back into the lack of support” (DC 3). Duty Counsel elucidate a perceived recursivity between social support and criminality: There appears to be an assumption at work in the courts that those who are “repeat offenders” and frequently before the courts are individuals who are more isolated from their communities; and also, those who are more isolated and who lack supports tend to offend more and find themselves in court more often—perpetuating a vicious cycle. One way for Duty Counsel to mitigate the perceived risk of criminal propensity is to show that their client has an established support system that they will connect with upon release. Duty Counsel revealed Crowns’ willingness to consent to release when an accused has connections in place, thus, identifying these connections is an integral part of developing a release plan.

Yet, there are many groups that are unduly harmed by this consideration in practice. One example is those who experience homelessness. There is a perceived transience associated with homelessness that may give someone who is unhoused the appearance of riskiness in bail court. Lacking an address, for example, may create concern about the accused’s proximity to the community and their likelihood of returning to court in the future. This thinking is premised on the normative assumption that the unhoused population are disconnected from the communities they live in. These limited, risk-averse understandings of community ties highlight broader
structural conditions, such as poverty, inaccessible\textsuperscript{63} and precarious employment markets, and lack of affordable housing that can lead someone to experience homelessness that are not being dealt with by social services, but instead through processes of criminalization. Thus, community connectedness offers a limited assessment of the \textit{actual} risk an accused may present. This factor also presents a unique challenge for young adults who were previously involved in the child welfare system who often have limited ties to their communities.

\textit{Instability While in Care}

Many children and youth experience considerable instability while they are under state guardianship. This instability makes it extremely difficult for them to build relationships that endure into adulthood or to create and maintain connections in the community. One contributing factor is the frequency of moves while in care. It is common for youth to move as often as once per year while they are in care, but sometimes more (OPACY, 2012b; Rampersaud & Mussell, 2021b). Riyad, 22-year-old male, for example, described his experience of having to move to 20 different foster homes in the 10 years he was in care and said he has no memories of his childhood. He shared,

\begin{quote}
It's not like I've been in a house for my whole life. I've been in fucking 20 different places and you know, it's just so much shit. And that's the thing. All this stuff people don't realize. The foster system, it's not good. For somebody like me, I've been so thrown around, fucking tossed around, here there everywhere. I don't even remember anything. I just remember these little moments and I try to remember the year of it (Riyad).
\end{quote}

Riyad notes the difference between his experience and the stability of having a home base. Unlike someone who has a stable home, Riyad has moved so much that he feels as though he has

\textsuperscript{63} For example, Ontario’s job market is highly credentialed. Those who have not completed high school or who do not attend a post-secondary program may experience difficulty obtaining employment.
been “tossed around.” A painful consequence of having no permanency or roots is that his childhood memories are fragmented and disjointed.

Moves between placements can sometimes span across different cities, which creates further disruption. These moves make it even more challenging for youth to complete school, build and maintain connections with others, and establish ties within their communities. One YIT Worker explained that youths’ supports are extremely limited after they leave care, in part because of the instability they experience while in care:

[Youth have] been moved around physically from community to community, and then they've also been pulled from familial communities as well. So, they had one foster home in Brampton, and they had another foster home in Toronto, and they had another foster home in Ajax. …I would say that the only really consistent relationship that we see [from our position] is with [their CAS worker] (YIT 2).

Another YIT Worker elaborated, it is not only difficult to maintain relationships, but in their experience, they sometimes see youth question whether the investment in building new relationships is worth it since they think they will have to start the process of building connections all over again in another few weeks or months. She said,

Often young people will move around from foster home to foster home, so they don’t necessarily open up to that foster parent because they don’t know when they’re going to have to be relocated again (YIT 1).

After moving several times, some stop trying to make connections in anticipation of having to move again.

For some youth, the impact of this constant disruption over time can be traumatizing and may develop into a difficulty trusting others. Dina, 21-year-old female, shared, “because of the shit that I went through when I was in care, I have no trust for a lot of people.” Mason, 20-year-old non-binary, was also impacted by this instability. Mason shared how their experiences in care

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64 A detailed discussion of educational disruptions created by frequent moves appears in Chapter 5.
impacted their ability to form attachments and relationships with others: “As a victim of abuse, not only at the hands of my biological father, but in care as well, [I began] to question who [I] can trust and [I didn’t] feel like [I could] trust anybody in [my] life.” One YIT Worker told me that Dina and Mason’s experiences are common amongst youth leaving care:

A person who's lived through care doesn't trust anybody, doesn't have anybody, you know? Has probably been, not just in Toronto, has probably been moved and [dis-regulated] so many times, you know? Gone to, what, 50 different schools? (YIT 10).

While school may function as an agent of socialization and place to build friendships, especially for younger age groups, moving between placements requires children in care to change school communities so often that they have trouble forming lasting friendships. These experiences deeply impact youths’ ability to form connections with others. Riyad shared, “half the time I [feel] like nobody loved me, you know?” (Riyad). Arlo, 24-year-old male, echoed a similar sentiment: “I developed a sense of abandonment because yo, nobody really wants me” (Arlo). Instability marks the childhood of many youth in care, with lasting feelings of abandonment and incapability to trust (Kovarikova, 2017). By the time they become legal adults, youth have often lived at a number of placements, but have few, if any, meaningful, non-professional connections.

Tenuous Ties After Turning 18

Young people in care in Ontario ‘age out’ of the child welfare system on their 18th birthday. The tremendous instability that young people experience while in care continues to affect them as they prepare for independence, and often long after they have ‘aged out’ (Kovarikova, 2017). One YIT Worker explained, because youth have been uprooted so many times, many have never really engaged in their communities. As a result, when they ‘age out,’ many experience extreme isolation. She said,
They're very, very isolated. A lot of the kids [in our community organization] will answer that they don't have any friends, that they don't have any community, that they don't have any religious groups, that they're not involved in any sports, that they don't have any art groups. They don't have any community around them at all (YIT 2).

This YIT Worker’s organization supports young people who have left care. The youth she works with are often referred by their CAS workers; it is less common for youth to seek services on their own. In her experience, most of the youth connected to this organization have zero ties to their communities and few have any non-professional supports. After leaving care, youth are “quite literally on [their] own” (YIT 1).

Part of this isolation can be explained by CAS’ approach to preparing youth for adulthood. The Children’s Aid Society gradually shifts responsibility for “care” onto youth to help prepare them for independence. Youth have access to life skills training beginning at age 16 which helps them identify and hone the skills needed to live independently, and most youth are eligible to receive financial support through the Continued Care and Support for Youth (CCSY) benefit and various health care benefits throughout young adulthood. This support is limited though, and many young people indicated they did not feel ready to leave care. When asked how she prepared for independence, Dafnie, 18-year-old female, said, “I didn’t.” At the time of her interview, Dafnie was 18 and had returned to her family of origin’s home. She told me, “I don’t think I’m very independent right now” (Dafnie). Like Dafnie, Dina and Adriana, 23-year-old female, also indicated they “didn’t prepare” for independence. Adriana said her

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65 Youth between the ages of 16 and 24 have access to various transition and life skills training programs, including housing, education, employment and life skills support.
66 The CCSY benefit provides an average of $850/month to eligible youth leaving care who are between the ages of 18 and 21 in Ontario; the amount varies slightly based on the youth’s location. Under current child welfare policy, this financial support expires on youths’ 21st birthdays.
67 The Aftercare Benefits Initiative provides healthcare benefits coverage to youth after leaving care; each benefit (prescription, vision, dental, etc.) expires at different ages, and all benefits expire before the young person turns 30.
68 Note: Adriana’s interview was not recorded. Her responses were written in notes taken during the interview. Effort is made to honour Adriana’s perspective using her words, though these quotes are not perfectly verbatim.
“transition worker helped with housing,” but that was it (Adriana). There appears to be a gap in the services available to youth to help prepare them for independence and their actual readiness to live independently. Noah, 21-year-old male, captured the sentiment of many youth leaving care: “[My CAS worker] helped me to a degree, but she doesn’t really do shit to be honest. …She can help me get money, that’s about it.” Noah touches on a noteworthy distinction: While CAS policies account for basic needs support, they do not factor in social support.

**Relationships with Foster Families**

Existing child welfare policies in Ontario require youth to leave their foster care and group home placements when they turn 18 which, for many youth, results in an abrupt loss of their social support system. Many YIT Workers spoke about the impact the loss of support has for youth. Workers indicated few youth maintain contact with their foster families or group home staff after they leave. Most youth have moved so many times while in care that their connections to these supports are tenuous and moving out is a natural end to the “relationship.” In cases where foster parents do stay involved in youths’ lives, foster parents tend to provide basic needs support rather than emotional or social support. As an example, Noah said he is still close with his foster father, but the type of support Noah described receiving from him all speak to addressing his basic needs of survival:

> When I got out of jail, he helped me move cribs. … He helped me move all my stuff there. He took me out to eat bare times. Every time he saw me this summer, he gave me at least $300 … that I never asked for (Noah).

Similarly, Kalee, 18-year-old female, said her foster family provides support by “cooking dinner” and “letting her have food” with them from time to time. Importantly, neither youth described receiving emotional support from their foster families.

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69 “Bare times” is colloquial, meaning “lots of times.”
One youth, Yalina, 19-year-old female, recognized that she received different kinds of support from her foster family and CAS worker after leaving care than she did from other relationships in her life. At the time of the interview, Yalina lived independently. She said her foster family had helped her “[look] for somewhere else to live … and other life skills as well, like cooking and things like that.” In contrast, Yalina said she receives “emotional support” from her friends and partner (Yalina). According to one YIT Worker, the circumstances described by Noah, Kalee, and Yalina are quite common among youth leaving care. Like CAS support,

> Occasionally foster parents will provide the basic needs. I would say less of that emotional support and more practical support, as in, you know, giving them a place to stay and food, but not… They don't really have a connection, they don't have a relationship necessarily (YIT 1).

A meaningful distinction can be drawn between supporting a youths’ basic needs for food and housing versus providing emotional and social support. Even when youth’s basic needs are met, they still need ongoing social support for their overall wellbeing, both during and after their transition to adulthood.

*Relationships with Families of Origin*

After leaving care, it is only in rare instances—perhaps “5% of the time” (YIT 4)—that youth remain in contact with their families of origin:

> Some people might have a relationship with their bio parents where it’s very minimal, they might see or talk to them once in a while, but they don’t live there. They’ve been in care for X amount of time, and then maybe they only just see them once in a while. But I wouldn’t say [that’s the] majority, I would say [that’s] just sometimes (YIT 3).

In some cases, time in care is experienced as an absence in the relationship, which creates distance between youth and their families of origin and makes it difficult to create a relationship when the young person turns 18. In other cases, “the bio-parent often doesn’t have the capacity to support the young person because they have their own stuff going on, they have their own
issues, their own mental health issues, … and that’s why they were in care in the first place, because they didn’t have someone else” (YIT 2).

For youth who do reconnect with their families of origin after leaving care, the conditions that led to their apprehension by child protection services, such as mental health crises or substance use dependencies, often still exist, which may make it difficult for youth to establish a strong connection. Roland, 24-year-old male, explained he tried to return to his home of origin after leaving care, but conditions quickly became volatile. In his words,

I was living at home, but I guess the conditions I was living under weren’t technically the best. I was mistreated by my father so that kind of culminated in why I am no longer at the house (Roland).

Mason also shared that he tried to return to his home of origin after leaving care, but his father became abusive once again: “Shortly after getting back to his care, I found out, it became clear that he was still very much abusive to me and I knew I needed to leave.” After circumstances became unbearable in their home of origin, Roland said he, “currently [lives] with a few friends in … an abandoned house” and Mason currently lives in an emergency shelter.

Among youth who did maintain ongoing contact with their bio-families, many shared that the minimal contact they had with their families did not qualify as meaningful support. For example, Dafnie, speaking about the kind of support she receives from her family of origin, said, “Support? Shelter over my head, that’s it.” Callie, 21-year-old female, echoed a similar sentiment:

My mom is still in my life. I ended up having a kid, so I ended up kind of needing her. But she’s not someone I would say, she’s not my idol. She’s not someone… She’s just there. You know? She’s just there. I don’t know how to explain it in words for you to understand, but I wouldn’t say I have her support completely, but if something serious happens then probably. But yeah, other than that I’m basically on my own (Callie).
Like Dafnie and Callie, more than two thirds (n=18, 72%) of youth interviewed indicated they had some contact with their families of origin but made clear that they did not receive support from them, nor did they feel as though they could rely on them.

**Nature of Ongoing Relationship with the Children’s Aid Society**

For most youth, the one constant, supportive relationship they maintain after leaving care is with their CAS worker. When youth are apprehended and placed under the guardianship of the state, they are supervised by a local Children’s Aid Society and assigned a CAS worker who in effect becomes their “parent.” But once youth turn 18, the social support they receive from their worker significantly decreases. One YIT Worker indicated, once a young person turns 18, their contact with their worker is often reduced to monthly meetings when they pick up their CCSY cheque:

> Everybody has a Children's Aid worker until they're 21. ...That worker sometimes is more involved than other times, but usually it's more of a relationship where they pick up a cheque once a month from their worker and their worker checks in with them (YIT 2).

This YIT Worker elaborated that, though CAS workers are technically supposed to continue to support youth until they turn 21, they often lack professional capacity to continue more involved support:

> The Children’s Aid worker is supposed to be considered a support [until 21], but we don’t find that a lot of kids use that support, and we also don’t find that a lot of Children’s Aid Society workers have the capacity to provide that support. …I wouldn’t say that it’s bad intentioned. …I would say the system is kind of working against the ability of a worker to really stay involved. And also, it’s a professional relationship. It’s not a relationship that’s natural and normal (YIT 2).

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70 The amount of contact varies, but in most (if not all) cases, youth are in contact with their workers more than once per month prior to their 18th birthdays. Check-ins are also more involved as the CAS worker is supposed to ensure that the youths’ current placement is meeting a minimum standard of care.
At 18, youth leaving care are expected to transition to independence, which requires their CAS workers to scale back their contact and support. Yet, young people continue to need support after they leave care. This YIT Worker however points out an important boundary between youth and their workers. There are limits to the kind of support a CAS worker can provide to a young person given their professional context and responsibilities. Consequently, the relationship between CAS workers and the youth they “supervise” differs markedly from what one might expect to see in a relationship between a parent and their child.

Youth recognize the boundaries that exist in their relationships with their CAS workers. Carmela, 24-year-old female, for example, said, “I never really had any [support] when I was in care because [my CAS workers] were just—I just considered they were doing their job, right?” (Carmela). Farrah, 24-year-old female, recognized she was one of many youth on her worker’s caseload: “I had [an] OK CAS worker. I know she had a lot of other people she was seeing at the time and she did try to help me” (Farrah). And Ben, 21-year-old male, described the challenge of maintaining a relationship with his worker when they changed so frequently:

I had a bit of support. It’s not like they do nothing. But it was hard to have a sincere conversation with some people. I had one worker, but then they keep changing workers, keep changing workers. So that’s another thing that they should be asking kids—if they like certain workers so they can keep the same workers. Because otherwise they just do whatever they want: she’s sick for six months, or she left the country for a year, so we’re going to change your worker (Ben).

Carmela, Farrah, and Ben make an important distinction between social support and professional social support. Even though the connections youth have with their CAS workers are sometimes their only lasting relationships, they understand the limits to the support their workers can provide. After ‘aging out,’ these limits are even more pronounced.
Some youth described wanting to disentangle themselves from their relationships with their CAS workers after leaving care because they hold their workers responsible for their apprehension. Carmela, describing her current relationship with her worker, said:

And once I left, I never really had any supports. And being that the relationship with [the CAS worker] was so toxic, I didn’t really want to have anything to do with them or anybody that was associated with them (Carmela).

Carmela felt she never really had support—while in and after leaving care—because her worker was simply doing their job. When prompted to explain why she described her relationship with her worker as “toxic,” Carmela said part of the reason their relationship was so tense was because it began with her apprehension, a moment of significant trauma in her life. Her explanation suggests she holds her CAS worker responsible for her apprehension and that her feelings of resentment have lingered into adulthood. Tomas, 23-year-old male, described similar feelings:

I would never talk to [my workers] even when I saw them. They would try to talk to me and I would tell them to fuck off because I didn’t want nothing to do with them. And I mean, I’ve always been like that with authority which is not good, but it didn’t matter. You can’t walk into my house and ask me what the fuck I’m doing—it’s my house. I never appreciated that and I never [will] (Tomas).

Tomas resented having CAS interfere in his life. After their mandated relationship ended at 18, both youth ceased ties with their workers aside from collecting their CCSY cheques. For youth like Carmela and Tomas, their choices upon leaving care are sometimes limited to having zero social supports or maintaining a “toxic” “professional” one.

When youth ‘age out’ of care, many do not leave feeling independent. After experiencing considerable instability while in care, and ‘aging out’ to isolation, many youth enter adulthood on precarious footing and find their transition to independence challenging. Rather than the positive autonomy promoted by policy, youths’ circumstances and lived reality are more
accurately described as forced isolation. This incremental-independence strategy has not worked to support youth transitioning to adulthood. Rather, many youth indicated they left care feeling as though they were on their own. Some youth wish they had had some warning or awareness of the conditions they would face. Carmela shared she wished she had known what to expect:

I wish I would’ve learned and … would’ve gained [knowledge] before I kind of went on my own. … Because when you’re going independent, you don’t really know. It’s your first time. So, it would be nice if we had staff that kind of educate us on that instead of just wanting to get rid of us and get us out of their hands (Carmela).

Jesse, 24-year-old male, elaborated on this sentiment and said youth need better preparation:

This is the start of being independent. … [Youth are] going to have to turn to [themselves] in the mirror and say, what are you gonna do about this problem? What are you gonna do about not having enough money? What are you gonna do because [you] didn’t budget enough this month? (Jesse).

Both youth wish that they were better prepared for independence, a sentiment commonly shared among all youth interviewed. Doucet (2020), commenting on her own transition out of the child welfare system, argues that what youth leaving care need to not only feel prepared, but to thrive after leaving care, are stable, ongoing, and non-professional supports during their transition to adulthood, and beyond. Rather than preparing youth for independence, youth require interdependence to cultivate stability and wellbeing in adulthood. Youth with familial support do not enter adulthood alone; youth leaving care often do.

**Surety Conditions for Youth Leaving Care**

Sureties are commonly required for release on bail. One Duty Counsel said, “[In Ontario] we have an overreliance on sureties. JPs and Crowns tend to think, we’ll start with who's going to be a surety, whereas that should be the fourth or fifth possibility” (DC 8). Another Duty Counsel noticed a decrease in the amount of surety releases required since *R. v. Antic* (2017), but
indicated, “Crown Attorneys continually ask for conditions on bail that are inappropriate—not say I, but according to the law—and look for surety releases for cases that don’t require surety releases” (DC 1). Yule and Schumann (2019) suggest that the culture in bail court emphasizes reputational risk, meaning Crowns and JPs tend to impose more, rather than fewer conditions to minimize their own culpability if an accused re/offends while released. According to another Duty Counsel, “from the Crown’s perspective they are more concerned about supervision and so the question is who is going to supervise?” (DC 7).

Anticipating that the Crown will require a surety to consent to release, some Duty Counsel indicated that they incorporate the identification of prospective sureties into the intake process. Specifically, Duty Counsel needs to know from the accused:

Does [the accused] have ongoing support? …Do they have the ongoing support of this person so that if they are released from court today, that person [will] be there to support them? [Or] are they just going out onto the street? (DC 3).

Sureties must supervise the accused in the community to ensure they abide by their conditions of release and attend future court appearances, and must pledge a certain amount of money to the court that they will pay if the accused fails to comply with their bail order (MAG, 2016). Surety support needs to be ongoing, until the accused’s charge(s) is resolved.71

The extent of supervision required varies. One Duty Counsel indicated the type of supervision required is relative to the nature of the offence:

If the person doesn't have a bad violent record, [the] Crown generally will consent to limited supervision—John Howard Bail Program type [of] thing.72

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71 The surety may also recuse themselves, relieving them of their responsibilities and financial obligation, through a written request to the court. An arrest warrant will then be issued for the accused.

72 Bail Verification and Supervision Programs (BVSP) are available in some jurisdictions for individuals who do not have a surety, but who are required by the Crown or Justice to have one for release. BVSP program coordinators assist the court in assessing whether an individual is suitable for release on bail, and then supervise the individual while they are released (JHSO, 2013). While these programs may be helpful for those lacking a suitable surety, they are critiqued for putting community organizations in the position of selecting who they supervise and by extension who is released. They also must surveil individuals’ actions and report breaches of release conditions, which contribute to the accused’s criminalization.
[But] if it's a situation, like domestic [violence], [or] where the person [has] breached in the past…then it's going to be, who is going to supervise you? (DC 7).

For less serious charges, or when an accused has been released on bail previously and complied with their release order, the Crown may be satisfied that asking the accused to check in with a community organization on a regular basis, such as with the John Howard Society’s Bail Verification Supervision Program (BVSP), is sufficient supervision. But in the case of more serious charges, or if an accused has a history of failing to comply with release orders, then more intensive surety supervision would typically be required than BVSP, which is seen as being able to address the court’s primary but not secondary ground concerns. In the latter instance, the accused may be required to live with their surety, placing the accused under the surety’s continuous supervision.

The unique challenges faced by youth leaving care in bail court are perhaps most pronounced when they require intensive surety supervision in order to be released. Duty Counsel is focused on identifying supports—both individual and community level—that will demonstrate to the Crown the young person’s embeddedness within their community. Producing a surety demonstrates that the young person has ties to the community and someone who will keep them accountable to their release conditions, thereby mitigating their risk. Yet, most youth leaving care simply do not have people readily available to act in this capacity. Producing a list of prospective sureties would be difficult, if not impossible, for most.

To understand the disadvantage that a surety condition can create for youth leaving care, it is useful to compare the experiences of those who have familial support to those who do not. One lawyer explained that those with family supports appear to be more stable, which increases their likelihood of being released:
I find those who haven’t gone through the [child welfare system] have a much more stable background. So, it’s easier for them… to get a surety because they have family, they have friends, they have employers, they have contacts that they can rely on. So, at the front end I think it’s easier for them probably to get bail (CROWN 2).

This Crown Attorney recognized the importance of support to an accused’s overall stability. Even if a young person is engaged in behaviour deemed criminal, if that person has family members who are willing to supervise them when released, the Crown is more confident that there is someone who is holding them accountable to their conditions. Even if the accused themselves are not “stable,” having stable family supports offsets their overall appearance of instability. When the accused appears stable in this sense, it increases the likelihood of them being released on bail.

Having supports in place also impacts the form of release that is required. In instances where an accused would be denied bail without support, having family members to act as a surety could mean the difference between being denied bail or being released. As an example, one Duty Counsel spoke about an accused who was released on bail many times because they had numerous family members who were willing to act as sureties:

We had one young man, I think he was 19 or 20 … and he had a whole bunch of sisters and a mother, and he had burned through all of them as a surety. And finally, another sister came forward. It's like, he gets chance after chance after chance because there's always another family member to come and put their necks on the line who has a home, who's willing to take them in (DC 5).

Because they tend to have more supports, accused who were not previously in care will likely have more people that can act as sureties. More importantly, they may also be able to rely on that person to assist them beyond their role as surety in navigating the legal process, keeping track of court appearances, finding legal representation, and more. The presence of supportive, non-
professional adults in a young person’s life can make a significant difference at the bail stage, and throughout the legal process.

In contrast, most youth leaving care have minimal to no supports, a circumstance that is often interpreted as a risk factor in bail court and used to rationalize detention or the use of more onerous bail conditions. Yet, instability and isolation should not automatically equate to risk. Neither of these circumstances are inherently dangerous. Young people who have family supports are not necessarily less dangerous than those who do not, but in bail court, “support networks” and “community ties” interpreted without the necessary context can become risk factors that must be managed, to the disadvantage of young people leaving care. Instability and isolation in young adulthood are perhaps more indicative of the structural failings of the child welfare system to prevent these outcomes for youth leaving care. Thus, placing more onerous conditions on accused because they lack a stable support network is not risk-averse—it is punitive.

Challenges of Finding a Suitable Surety

A further challenge for youth leaving care is finding a surety whom the court deems “suitable.” The Criminal Code does not specify criteria upon which to evaluate a surety. Rather, the Ministry of the Attorney General (2016) in Ontario offers guidelines to prospective sureties outlining how their suitability will be assessed. The necessary qualifications will vary depending on the alleged charges of the accused, but typically prospective sureties’ finances, personal character, and background will be evaluated, and they may be required to provide evidence and be questioned about their qualifications in court (MAG, 2016). Prospective sureties must have sufficient assets, commit to an intensive level of supervision, and be of strong moral character to
be deemed suitable before an accused will be released (Myers, 2009). The JP must also believe that the surety is capable of making the accused comply with their conditions of release. Consideration of their “moral character” implies that individuals who have “criminogenic” familial networks and peers might be denied bail because their surety is not deemed suitable. Consequently, not just anybody can be a surety: Some sureties may be deemed unsuitable which can result in the release of some accused and the detention of others.

Though a parent is not the automatic or default surety, parents are the most commonly used sureties in practice. Yet, many youth who were in care are unable to rely on their biological parents to act as sureties. As they become legal adults, many of the reasons they were apprehended persist: “the families themselves are in crisis, right, and that’s why their child is in care” (DC 5). Defence counsel would not introduce a prospective surety who is experiencing crisis as the court would likely deem them unqualified to act in this capacity. Sometimes a youth will reach out to a parent and make the request, “but their relationship with that person is a bit tenuous and often they don’t live with that person, so their suitability as a surety is a little bit questionable” (DC 6). In other cases, a youth may make the request, but their parent may tell the youth to “figure it out by themselves” (YIT 4). While many youth who do not have experience of state guardianship will have parents to help them navigate the complex legal process, many youth leaving care do not.

For some youth, though their parent may be willing to come forward as a surety, asking them to act in this capacity is not appropriate. When Dina was arrested for example, she was remanded while awaiting a bail resolution. Duty Counsel encouraged her to ask her biological mother to be her surety, but she initially refused. Dina was apprehended by child protection services quite young because of abuse in her familial home and she was placed in kinship care
with her grandmother. She attempted to return to live with her biological mother when she turned 16 but their relationship quickly deteriorated which led Dina to run away from home. For the next two years Dina did not speak to her mother. During this time, Dina experienced homelessness, substance use dependency, and was trafficked. She was arrested shortly after turning 18 and received a formal criminal charge.

When asked, Dina provided a list of three potential sureties to Duty Counsel, but each surety was deemed unfit. One person was deemed “too close to her age” and the court was not convinced that Dina would respect their authority. The other two were ruled out because “they had prior criminal records”—even though the records were dated and for youthful and minor charges. In the absence of a fourth person to come forward, and not wanting to stay in custody any longer, Dina agreed to ask her mother to act as her surety. The court agreed to release Dina under her mother’s supervision. It took approximately one year for her case to be resolved. This bail plan legally compelled Dina to return to the home of her abuser, but this information was not introduced in court because Dina is a legal adult. After turning 18, Dina does not have to disclose her history in care to her lawyer, so she did not, and it is not clear whether her lawyer would have mentioned this information even if she had—or if it would have had any impact. Young people are afforded a legal right to privacy about their histories in care once they turn 18, which is important in recognizing their agency and autonomy. Yet, the absence of this information in the release discussion created a unique disadvantage for Dina by requiring her to return to a harmful environment. Because all young people who are in care have experienced trauma, and many have experienced abuse at the hands of their caregiver(s), placing them under the

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73 Dina did not provide details about her relationship with her grandmother after she left kinship care and returned to her biological mother’s home at age 16. She did not mention asking her grandmother to act as a surety.
74 According to Myers (2019, p.81) “having a criminal record is considered indicative of moral character and will often preclude an individual from acting as a surety, [but] it alone does not automatically disqualify a surety.”
supervision of their parent might mean returning them to the homes of their abusers. The circumstances Dina described makes clear the undue harm a surety requirement can create for youth leaving care.

In the absence of a biological parent or relative who can act as a surety, one might expect the state, as represented by the youth’s CAS worker, to act in this capacity because they are, in effect, the young person’s legal “parent.” But CAS workers are not able to act as a surety because of professional limitations:

If they have a CAS worker, they may have a very good relationship with that person, but that person may not be able to come forward as a surety because they're kind of limited by their own professional constraints and their own organizations which prevent them from doing that. So that can present a real challenge if somebody doesn't have those types of relationships (DC 6).

One might argue that requiring social workers to act as sureties would put them in the undesirable position of having to supervise and police youth while they are released on bail, and to report them if they breach their bail conditions, therefore contributing to their criminalization.

One YIT Worker explained:

We're not a mandated service and we can't necessarily say that we're going to make a young person do certain things or abide by certain rules, and even if we could I'm not sure if we [would] want to be in that position because we want to support a young person no matter what (YIT 2).

Taking on this role seemingly conflicts with the Children’s Aid Society’s overall mandate to support youth. Consequently, while the court typically looks to a parent or guardian as a suitable surety, and parents and guardians frequently assume this responsibility, young people whose parent is the state are disadvantaged because their “parent” is professionally prohibited from acting in this capacity.
Adjournments

When an accused is deemed risky because they are unable to produce a suitable surety, their release is often delayed to give defence counsel time to formulate a release plan that will manage their “riskiness” in the community. As a result, a young person may have their case adjourned repeatedly until a plan has been developed. One lawyer explained:

Oftentimes that person will end up being stuck in custody for a while, while that process is being sorted out. Or if they don't have someone who supports them in the community coming forward in the first instance to identify themselves, what it often means is that person will remain in custody while someone like myself—or the Duty Counsel—is trying to put together the picture of this person's support, if any (DC 3).

Each time a young person’s case is adjourned, they are required to stay in jail for another night. This lawyer elaborated,

They are unlikely to be denied bail, I’d say. I mean, very rarely does someone not get bail, unless there's an extensive record or the nature of the charge itself is such that they shouldn't get bail. But what does happen for people who are in care, [or who] have been in care [is], they may end up staying in custody for longer before they get released on bail while that picture is being figured out as opposed to somebody who hasn't been in care who may have more supports (DC 3).

An adjournment is effectively a short-term detention order as the youth waits in remand until their next court appearance. While those who have more supports are likely to be released sooner, for groups who lack social supports, “imposing some sort of requirement where they have someone in the community is tantamount to detaining them because it just doesn’t exist for them” (DC 3). Pelvin (2017) argues that normative assumptions about kinship networks are privileged in bail court when justice system actors presume that accused will have family members readily available to support them. Those who do not are viewed unfavourably and are disadvantaged in this process.

Young people leaving care appear “risky” in bail court when they are unable to produce a surety. The absence of supports is often interpreted by courtroom actors—many of whom have
not been through the care system themselves—as a risk factor to be managed. According to one lawyer, “even sometimes well-meaning people impose these less than fair outcomes on [youth] because they can’t really fathom what it is their life looks like” (DC 3). Without an understanding of what it means to be in care, youths’ circumstances might appear risky. This interpretation then rationalizes the use of preventive detention until this risk can be effectively managed through restrictive bail conditions. In the absence of an available surety, defence counsel try to formulate a bail plan that approximates the level of supervision provided by a surety, though no condition is as onerous as the requirement of a surety. In some cases, youth may be required to “check-in with a bail supervisor” on a regular basis (DC 5). While the least restrictive form of bail release is supposed to be ruled out as inappropriate before moving on to more restrictive forms of release (*Criminal Code* s.515(2); *R v Antic* 2017 para 34), in many cases Duty Counsel prepare bail plans that start with the presumption of release with a surety (Yule & Schumann, 2019). And because consent releases are much more common than contested bail hearings, and JPs regularly defer to prosecutorial authority, Crowns are frequently not being required to demonstrate the appropriateness of these conditions (Yule & Schumann, 2019).

This practice which is intended to anticipate and pre-emptively respond to the Crown’s concerns about the accused’s riskiness effectively circumvents the ladder principle. The ladder principle indicates that the least onerous form of release should be used in most cases unless the Crown demonstrates why a more onerous form of release is required. Yet, in practice the necessity of a suitable surety has become the standard and most onerous condition for release in Ontario (JHSO, 2013). Youth are being asked at intake to produce a surety before knowing whether one is required or appropriate in their given circumstance. Young people leaving care, many of whom do not have a suitable surety are then committed to a more onerous release
requirement as a result. While sureties are an onerous condition for all individuals, it is evident that youth leaving care are unduly harmed when one is required for release. A return to the ladder principle is crucial to produce fairer outcomes for this group. Before determining whether prospective sureties are appropriate, the Crown must demonstrate why a surety is needed. In cases where a surety is deemed appropriate, the court should expand their thinking about who is suitable to act in this capacity by moving beyond normative assumptions of kinship.  

Discussion and Conclusion

Many youth experience significant instability while in care that makes it difficult for them to build lasting relationships and community ties (OPACY, 2012b). Upon turning 18, youth ‘age out’ of care and many abruptly disconnect from existing social supports, such as foster parents or group home staff. Existing child welfare policies shift responsibility for “care” onto youth as they prepare for adulthood, providing resources, such as financial support, health care benefits, and life skills training for them to develop their independence (Doucet, 2020; MCCSS, 2021a). But, in the absence of ongoing social support from stable, non-professional adults, this strategy has not worked to prepare youth for independent adulthood. In fact, the adverse outcomes for youth leaving care are well-documented, including poverty (Kovarikova, 2017; OPACY, 2012a; Shaffer et al., 2016), homelessness (Gaetz et al., 2016; Shewchuk, 2020), and criminalization (Scully & Finlay, 2015; Bala et al., 2015). In practice, this so-called incremental

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75 One useful alternative is presented in section 31(1) of the Youth Criminal Justice Act (2002) which permits placement of a young person who has been arrested in the care of a “responsible person” instead of being detained in custody. The responsible person must be “willing and able to take care of and exercise control over the young person” (YCJA, 2002 s.31(1)(b)). Notably, the responsible person is distinct from a surety because more expansive criteria is permitted in the process of identifying a prospective person. Furthermore, a financial pledge is not required. A similar consideration might benefit youth leaving care in the adult bail system.
independence strategy sets many youth up to fail, putting them on a path to isolation, rather than self-sufficiency.

Youth leaving care are further disadvantaged when they come into conflict with the law and are held for a bail hearing. The disadvantage they face is most pronounced when a surety is required for release. While surety releases are quite onerous for an accused, the intensive supervision and quasi-police surveillance (Myers, 2019) they offer gives the court confidence that the accused’s risk is being managed while they are released. Consequently, in the context of bail release, the absence of a support network is often considered “risky” rather than “independent.”

Child welfare policies encourage youth to be independent at 18, but the instability and isolation they face while in and after leaving care create the circumstances in which many youth are vulnerable to justice system contact and criminalization. When they come into conflict with the law, their “independence” is viewed narrowly as a lack of social support and perceived as a risk factor to be managed. Pelvin (2017, p.139) contends, youths’ experiences in state care disrupt their community ties, and “in the logics of risk assessment [become] justification for [their] detention.” Producing a surety might mitigate this risk, but most youth leaving care do not have someone to act in this capacity. This disconnect between neoliberal autonomy—which privileges individuals’ freedom of choice—and the demonstrated need for community highlights spaces in the criminal justice system where the most vulnerable are uniquely disadvantaged.

In some cases, accused individuals are advised that they are unlikely to be released without an appropriate surety (Myers, 2015) and that failure to produce a surety might result in bail being denied. This circumstance occurs even in cases when the accused is deemed low-risk and their charge is for a relatively minor offence (JHSO, 2013). The court presumes that accused
individuals have a network of individuals that are available to support them in this capacity. Pelvin (2017) is critical of this presumption and argues it is rooted in normative assumptions about kinship networks who are both available and willing to assist in the event of a criminal charge. Most youth leaving care simply do not have these kinds of supports available.

Pelvin (2017) further suggests that the focus in bail court on community ties over other seemingly more relevant factors, such as the nature of the offence, reveals an inherent bias toward those who are well-resourced. Financial means are a primary consideration in determining an individual’s fitness to be a surety; sureties are required to demonstrate proof of assets and must be willing to forfeit an amount if the accused fails to comply with their conditions of release (Myers, 2009). Prospective sureties’ will be evaluated and may be required to provide evidence and be questioned about their qualifications in court (MAG, 2016). On average, prospective sureties must be able to demonstrate assets in the amount of $2000 (Myers, 2009) that they would be willing to forfeit if the accused fails to comply with the terms of their bail release. It might be difficult for youth leaving care to identify a person who has sufficient assets to pledge. Furthermore, hinging release on the financial ability of their surety echoes the former “cash bail system” that pre-dates the Bail Reform Act (1972), and conflicts with existing bail law (Myers, 2009). This practice disadvantages and discriminates against people who do not have wealthy family members or networks, a circumstance common among those who are poor or racialized, or both, thereby reinforcing structural discrimination (Doob & Webster, 2013; Myers, 2009). Youth leaving care are highly represented within these groups and consequently face the highest risk of prolonged imprisonment in pre-trial detention.

Sureties are an onerous condition for all individuals, but Myers (2019) notes that the overreliance on sureties creates undue harm for marginalized groups (see also: Friedland, 1965;
Deshman & Myers, 2014). For youth leaving care, a surety condition is nearly impossible to meet. After leaving care, most youth have few to no non-professional supports in their lives. Many are no longer connected to their families of origin; among those who are, few would describe the “support” they receive from their families as meaningful or reliable. Though the state has intervened in these young peoples’ lives and affirmed themselves as their legal “parent,” the state places professional limits on their representatives, CAS workers, that prohibit them from acting in this capacity. As a result, most youth leaving care have virtually no one in their lives to act as a surety if one is required. While there are instances where sureties may be appropriate, the court should minimize its use to only when deemed necessary. Per Antic, Tunney, and Zora, the lower courts must put the ladder principle into practice and apply the law as it is written.
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R. v. Tunney 2018 ONSC 961

R. v. Zora, 2020 SCC 14

Youth Criminal Justice Act (S.C. 2002, c. 1)
Chapter 5: The Cost of Prevention

Analyzing the Costs of Adverse Outcomes for Youth Leaving State Guardianship in Ontario

Co-authored with Dr. Linda Mussell

Abstract

There are approximately 11,700 children and youth under state guardianship in Ontario. Almost half of these young people are in extended society care, meaning they have been permanently removed from their homes and families. For these youth, the province has assumed formal responsibility as their “parent.” This public policy report responds to gaps in public knowledge about the outcomes young people face after they reach the age of majority and ‘age out’ of state guardianship. It analyzes the costs to society when youth leaving state guardianship experience adverse outcomes. The purpose of this report is to (1) summarize what is known about youth ‘aging out’ of care in Ontario, (2) estimate the tangible and intangible cost of current outcomes, and (3) recommend policy options to improve outcomes for youth and society. Five key issues are identified as significant areas for intervention: (1) Education; (2) Employment, Poverty, and Income Support; (3) Housing and Homelessness; (4) Criminalization; and (5) Mental and Physical Health and Wellbeing.

Key Words: youth leaving care, ‘aging out,’ child welfare policy, readiness
The Cost of Prevention: Analyzing the Costs of Adverse Outcomes for Youth Leaving State Guardianship in Ontario

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This report was co-authored by Linda Mussell, PhD, an incoming SSHRC Postdoctoral Fellow at the University of Ottawa in the Department of Political Studies and Institute of Feminist and Gender Studies.

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1. Executive Summary

In 2020, there were 2,762,885 children and youth, ages 0 to 17, in Ontario (Varrella, 2021). Approximately 11,700 (0.4%) children and youth are under state guardianship (MCCSS, 2021b). Almost half of these young people are in extended society care (formerly known as Crown Wards in Ontario), meaning they have been permanently removed from their homes and families. For these youth, the province has assumed formal responsibility as their ‘parent’ (Kovarikova, 2017). This report draws on interview data with 25 young people who have ‘aged out’ of state guardianship and 10 Youth-in-Transition Workers. The interviews are synthesized with available data and research to identify the challenges young people face after leaving care and analyze the costs to society when youth experience adverse outcomes after ‘aging out.’ Specifically, this report 1) summarizes what is known about youth ‘aging out’ of state guardianship in Ontario, 2) estimates the tangible and intangible costs of current outcomes, and 3) recommends policy options to improve outcomes for youth and society.

Findings

Our research illuminated five issues that have significant impact on youths’ future prospects and quality of life in adulthood, which form the focus of our analysis: education; employment, poverty, and income support; housing and homelessness; criminalization; and mental and physical health and wellbeing. These issues are interrelated and structural, and present opportunities for intervention.
ISSUE # 1 EDUCATION

- Frequent moves between foster homes and group homes resulting in lengthy absences from school are a significant barrier to high school completion.
- Past traumas contribute to higher rates of substance use, mental health issues, learning disabilities, and behaviour labelled as “criminogenic.” These factors can further erode young peoples’ potential to achieve educational success.
- 56% of youth under state guardianship in Ontario dropout of high school.

ISSUE # 2 EMPLOYMENT, POVERTY, AND INCOME SUPPORT

- Without a high school diploma, finding work that provides more than basic needs is challenging.
- The growing complexity of work in the global knowledge economy and the rising rates of post-secondary education completion in Canada have reduced the relative value of a high school diploma.
- These circumstances can have devastating impacts for the 560 youth who ‘age out’ of state guardianship in Ontario annually without having completed high school (Kovarikova, 2017).
- Employment opportunities available to young people who have not graduated high school are limited, less secure, and lower paying than other careers that young people qualify for with post-secondary training.
- The majority of youth who age out of state guardianship live in poverty (Tweddle, 2005).
ISSUE # 3 HOUSING AND HOMELESSNESS

- Youth aging out of state guardianship are 200 times more likely to experience homelessness than their peers who were never under state guardianship (Doucet, 2020).
- In a given year there are an estimated 35,000 homeless youth in Canada. Nearly two-thirds (57.8%) of these youth have been under state guardianship (Shewchuk, 2020).

ISSUE # 4 CRIMINALIZATION

- When young people are exposed to significant, compounding traumas they may develop survival skills in response to their environments that may be perceived by others as dangerous or disruptive behaviours.
- Many foster parents and frontline staff in group homes fail to recognize these behaviours as expressions of pain, so they often respond with behaviour-management approaches rather than trauma-informed ones.
- The conditions many youth leaving state guardianship face render them especially vulnerable to contact with the criminal justice system.
- It is difficult to disrupt the cycle of criminalization when it begins.

ISSUE # 5 MENTAL AND PHYSICAL HEALTH AND WELLBEING

- Youth who ‘age out’ of state guardianship experience worse health outcomes than their peers who have not been under state guardianship.
- Experiences of social and economic inequality lead to health inequity in people’s lives.
- Historical roots of discrimination manifest in unjust health outcomes for Black, Indigenous, and other racialized peoples.
• Because youth who are apprehended by child protection services have experienced significant trauma, abuse, or neglect in childhood, compounded by considerable instability while under state guardianship, it is unsurprising that two thirds of these youth experience mental health challenges (Scully & Finlay, 2015).

• Premature loss of life is alarmingly high among those who experience childhood trauma, abuse, and neglect (Sabotta & Davis, 1992).

Recommendations

We recognize that youth under state guardianship need continuous and ongoing support that spans beyond their 18th birthdays to address these issues. This includes needing more time to transition to and achieve independence. Policies that dictate support be cut off when youth reach particular ages need to be reconsidered. The state needs to take their parental responsibilities seriously; and those responsibilities cannot simply end once a young person turns 18. This report highlights the systemic failures that underscore the adverse outcomes common among youth leaving state guardianship.

RECOMMENDATION # 1

Provide holistic support; create conditions that make educational success possible.

Provide holistic support to youth including living costs, advocacy, mentoring, counselling, community connections, and social support. Holistic support means a one-stop-shop where youth can access all of the supports to meet their basic needs first, and then be able to meet their aspirations and other life goals.
RECOMMENDATION # 2

Remove barriers to seeking and staying in educational programs.

This includes waiving tuition and fees for programs (adult high school equivalency and post-secondary). Child-care subsidies should be given to parents seeking education. Removing barriers means understanding the unique challenges confronting individual youth and providing solutions to help remove barriers to allow them to meet their educational and other life goals.

RECOMMENDATION # 3

Provide close mentorship to guide youth through education programs.

Youth under state guardianship may be the first generation in their family to complete high school or seek post-secondary education, and they may lack the guidance that other youth receive from families with these intergenerational benefits. This mentorship includes close support to help youth apply for programs, understand how to succeed, and work through challenges in order to stay in programs.

RECOMMENDATION # 4

Value alternative ways of knowing.

Indigenous epistemologies are distinct from dominant western worldviews. Acknowledge, resource, and celebrate Indigenous worldviews in child welfare policy and practice. This means providing culturally specific support and mentorship for Indigenous youth under state guardianship, in support of educational plans and other life goals. It also means moving away from language and values which centre western worldviews at the exclusion of Indigenous ones.
**RECOMMENDATION # 5**

**Prioritize permanent and long-term caregiver placements.**

Relationship-based housing options provide a baseline of stability and support to youth that mitigate the likelihood of longer-term adverse outcomes. Youth in permanent or long-term and stable homes experience improved academic achievement, job retention, and mental health. Housing stability is critical to improving mental health for youth who have suffered trauma, abuse, neglect, and inconsistent guardian care.

**RECOMMENDATION # 6**

**Implement the Housing First for Youth (HF4Y) philosophy.**

This philosophy underscores housing as a basic right. When youth are supported with the basic necessities of life, including housing, they are better positioned to thrive. The HF4Y approach prioritizes finding youth safe and suitable housing when they are ready for independent living and providing the necessary supports to keep them housed.

**RECOMMENDATION # 7**

**Extend Continued Care and Support for Youth (CCSY) benefit.**

Increase the CCSY benefit to match the cost of living expenses for young people ‘aging out’ of state guardianship. Extend the CCSY benefit up to age 25, at minimum, for all youth leaving state guardianship. Youth who are supported in finding safe, affordable, and sustainable housing and who have their basic needs met can focus on achieving their life goals. Increased support further improves youths’ overall quality of life.
RECOMMENDATION # 8

Address the criminalization of youth.

Continue supports, like case conferencing and requiring CAS representatives to attend court appearances, for youth who ‘age out’ and are criminalized. Prioritize and increase access to community-based diversion programs and connect youth with treatment and support. Incarceration, both pre-trial and post-sentencing, should be avoided. Bail and probation conditions that set young people up to fail must be addressed. Focus should shift away from retribution toward restoration and transformation.

RECOMMENDATION # 9

Expand and continue mental health support.

Support the emotional and mental health of youth leaving state guardianship. Increase access to trauma-informed mental health supports and ensure support is ongoing. Provide all youth leaving state guardianship with the Aftercare Benefits Initiative; continue counseling and life skills support services without an age cut-off for youth 25+.

RECOMMENDATION # 10

Monitor and evaluate youths’ progress and needs over time.

Youths’ progress should be monitored and evaluated on an ongoing basis to understand what programs, advocacy, and systemic changes best support youth, and where improvements are necessary. Create surveys to monitor the health and wellbeing of children, youth, and adults; use this data to inform policy and practice. This process ensures timely and responsive interventions as youths’ needs change.
### 2. List of Abbreviations

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<tr>
<th>Acronym</th>
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<tr>
<td>AOJ</td>
<td>Administration of Justice Charge</td>
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<td>AI</td>
<td>Appreciative inquiry</td>
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<td>CAFC</td>
<td>Children’s Aid Foundation of Canada</td>
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<td>CAS</td>
<td>Children’s Aid Society</td>
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<td>CCO</td>
<td>Continuing Custody Order</td>
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<td>CCSY</td>
<td>Continued Care and Support for Youth</td>
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<td>FTC</td>
<td>Fail to Comply</td>
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<td>GED</td>
<td>General Education Development</td>
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<td>GTA</td>
<td>Greater Toronto Area</td>
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<td>HF4Y</td>
<td>Housing First for Youth</td>
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<td>MCCSS</td>
<td>Ministry of Children, Community and Social Services</td>
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<td>OACAS</td>
<td>Ontario Association of Children’s Aid Societies</td>
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<td>OCAC</td>
<td>Ontario Children’s Advancement Coalition</td>
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<td>ODSP</td>
<td>Ontario Disability Support Program</td>
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<td>OHRC</td>
<td>Ontario Human Rights Commission</td>
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<td>OPACY</td>
<td>Office of the Provincial Advocate for Children and Youth</td>
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<td>OSAP</td>
<td>Ontario Student Assistance Program</td>
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<td>OSSD</td>
<td>Ontario Secondary School Diploma</td>
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<td>OW</td>
<td>Ontario Works</td>
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<tr>
<td>PHO</td>
<td>Provincial Health Officer (British Columbia)</td>
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<tr>
<td>PTSD</td>
<td>Post-Traumatic Stress Disorder</td>
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<tr>
<td>RCY</td>
<td>Representative for Children and Youth (British Columbia)</td>
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<tr>
<td>YIT Worker</td>
<td>Youth-in-Transition Worker</td>
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3. Introduction

3.1 Land Acknowledgement

The land now known as Ontario has been inhabited and stewarded by Indigenous peoples—Anishinaabe (Algonquin, Chippewa, Delaware, Mississauga, Nipissing, Ojibway, Odawa, Potowatomi, Saulteaux), Haudenosaunee (Cayuga, Mohawk, Oneida, Onondaga, Seneca, Tuscarora), Oji-Cree, Cree—since time immemorial. The land is also home to Métis, and was home to Huron-Wendat and Neutral-Attawandaron. The first peoples of this land did not have institutions of systemic child removal from families and communities as there are today. In writing this report we acknowledge the harms that colonialism, including through systems of child removal, have on Indigenous peoples and racialized peoples in Ontario. We orient this report to educating ourselves and others of these harmful impacts and amplifying solutions forwarded by Indigenous organizations and communities.

3.2 Youth Leaving State Guardianship in Ontario

In 2020, there were 2,762,885 children and youth, ages 0 to 17, in Ontario (Varrella, 2021). Approximately 11,700 (0.4%) of these children and youth are under state guardianship (MCCSS, 2021b). Almost half of these young people in extended society care (formerly known as Crown Wards in Ontario) have been permanently removed from their homes and families. For these youth, the province has assumed formal responsibility as a ‘parent’ (Kovarikova, 2017).

Each year, 1000 youth ‘age out’ of state guardianship in Ontario (and 6000 across the country) (Bowie cited in Doucet, 2020). While the state serves youth under the age of 21, we focus on the importance of supporting youth until they feel ready to leave care, and at least up to
their mid to late 20s. In this report we focus on Ontario, although these challenges and systemic failures are found across Canada.

Throughout this report we use the term state guardianship to refer to children who have been made the legal responsibility of the government. Other terms used to label this status include child welfare, extended society care, and out-of-home care. Terms commonly used to describe youth include ward of the state, crown ward, permanent ward, and foster children. We avoid using these labels and refer to youth simply as youth. Different types of placements include foster care, group homes, residential treatment, kinship care, and informal kinship care. While all of these terms have some descriptive utility in different contexts, it is important to recognize the limitations of each, as they may imply that these adolescents are a monolithic group (Bala, Finlay, De Filipis, & Hunter, 2013). These terms also further assumptions about “care” when many youth describe their experiences as lacking care.

Research shows that Indigenous and Black children and youth are overrepresented in both the state guardianship and criminal justice systems (Chan & Chunn, 2014; OHRC, 2018; Yi & Wildeman, 2018). Over half of children (52.2%) under age 15 in foster care in Canada are Indigenous, despite Indigenous children accounting for only 7.7% of the child population (Statistics Canada, 2016). There is a lack of statistics on Black children under state guardianship, but we know that 34% of children and youth under supervision of the Children’s Aid Society of Toronto are Black, yet only 9% of Toronto’s population under the age of 18 is Black (CAS Toronto, 2017). Approximately 25% of federally sentenced adults in Canada currently come from backgrounds of state guardianship or have had some involvement with state guardianship in the past (Zinger & Elman, 2017; see also: Corrado, Freeman, & Blatier, 2011; Public Safety Canada, 2012; Yi & Wildeman, 2018). Throughout this report we use the term crossover youth
to describe the funneling of youth from one system (state guardianship) to another (confinement in prisons and jails) (Bala et al., 2015; Scully & Finlay, 2015).

“If the child protection system was a parent, it may well have its children taken away” (Kovarikova, 2017, p.6).

Acknowledging that the state’s outcomes are poor, creating significant challenges for this subset of youth compared to their same-age peers, is key to making effective change, which ought to be reflected in improving youth outcomes (Kovarikova, 2017). Using Appreciative Inquiry (AI) (Whitney & Trosten-Bloom, 2010), we frame failures as belonging to the state, instead of to youth. AI permits focus on youths’ strengths rather than weaknesses.

The child welfare system was created to protect children and youth who are subjected to maltreatment and harm at the hands of their caregiver(s)—be that a parent, relative, or other guardian. In severe cases, children are apprehended from their homes. Once a child has been removed from what is deemed to be a harmful setting, one might reasonably expect that child protection services would create the conditions needed for children to live safely, whether with a relative (kinship care) or in the care of the state (foster care or group home), under the supervision of the Children’s Aid Society (CAS). The unfortunate reality for many children is that far from feeling safe and settled, their trauma compounds when they are removed from their homes (Kovarikova, 2017; OPACY, 2012b; Rampersaud & Mussell, 2021a).

“If our children do not thrive, our societies will not thrive” (Canadian Council on Social Development, 2007 in PHO, 2008, p.1).

Under the United Nations Convention on the Rights of the Child (1989), every child has the right to grow, learn, play, develop, and flourish with dignity—to thrive. The age-of majority

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76 This theoretical approach is explained further in section 4.3.
cut-off is counter to well-documented adolescent brain development research (Doucet, 2020). While nearly half (42%) of young Canadians between the ages of 20 and 29 are living with their parents, youth ‘aging out’ of state guardianship abruptly lose basic supports and services due to age-based cut-offs, regardless of their level of readiness to live on their own (Doucet, 2020). There are limited supports for youth ‘aging out’ of state guardianship and significant barriers prevent youth from accessing the few that are available. Youth must know how to navigate the application process for supports, meet the restrictive eligibility criteria, and obtain approval prior to deadlines (Doucet, 2020). Even when youth meet these criteria, there are often long waiting lists before they can begin to access services. The message given to youth under state guardianship by the current legislative context is that “you are not worthy of love, belonging and support once you turn 18 or 19.” This is inhumane and can no longer be accepted as the status quo (Doucet, 2020, p.21).

Since 1987 there have been 75 reports centered on youth ‘aging out’ of state guardianship published in Canada, which have together amassed over 435 recommendations for change to child protection policy (Doucet, 2020). Evidence from Ontario and beyond shows that youth ‘aging out’ of state guardianship lack the support and services to transition smoothly to adulthood. According to Cheyenne Ratnam, president of the Ontario Children’s Advancement Coalition (OCAC) and a former youth under state guardianship, “Child welfare is the largest pipeline into other violent systems, such as homelessness, prison, and poverty” (Doucet, 2020, p.24). The system inflicts significant harm on youth and must be changed.

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77 We use single quotations around ‘aging out’ as informed by Melanie Doucet (2021), a scholar who has lived experience in the child welfare system. This usage demonstrates its specificity to youth under state guardianship and attempts to de-normalize the term.
The former Office of the Provincial Advocate for Children and Youth’s (OPACY) 2012 report\textsuperscript{78} estimates the costs of current outcomes and the potential benefits of better preparing and supporting youth aging out from state guardianship in the early years of their adulthood. In this report we extend earlier findings and follow the example of Marvin Shaffer, Lynell Anderson, and Allison Nelson for Fostering Change (2016), as they estimated the economic costs of ‘aging out’ in British Columbia. This report 1) summarizes what is known about youth aging out of care in Ontario, 2) estimates the tangible and intangible costs of current outcomes, and 3) recommends policy options to improve outcomes for youth and society. We focus our attention on five key issues: 1) Education, 2) Employment, Poverty, and Income Support, 3) Housing and Homelessness, 4) Criminalization, and 5) Mental and Physical Health and Wellbeing. These structural and interrelated issues greatly impact the lives of youth leaving state guardianship. This research shows that the challenges youth ‘aging out’ face are great, the outcomes poor, and the costs are substantial. The potential cost savings and social benefits that improved supports can generate for youth and society are immense.

The cost of adverse outcomes in these five areas for youth ‘aging out’ of care are high—between $222 and $268 million for the cohort of 1,000 youth ‘aging out’ each year—plus other intangible costs (Shaffer et al., 2016). Intangible costs are significant and include the trauma and suffering experienced by youth. Increased support for youth ‘aging out’ of state guardianship from age 18 up to their mid to late 20s is required to help meet living costs, pursue further education, and connect with their communities for personal, cultural and social support (Shaffer et al., 2016). Providing more time would reduce the costs of adverse outcomes and generate intangible benefits as well. Furthering policies that shifts away from age cut-offs and instead

\textsuperscript{78} See: OPACY, 2012a in References.
focuses on supporting young people to leave care when they feel *ready* is needed. Meaningful systemic change in Ontario will transform the lives of children and youth in and leaving care.
4. Methods

4.1 Stakeholder Interviews

This report draws on in-depth, semi-structured interviews with young adults and Youth-in-Transition (YIT) Workers in the Greater Toronto Area (GTA) between March 2019 and December 2020. Youths’ voices are centred in our analysis. To maintain participants’ confidentiality: all youth participants have been assigned pseudonyms; YIT Workers have been assigned a code and a unique identification number, (e.g., YIT 1, YIT 2, etc.).

Interviews were conducted with 25 young adults, ages 18 to 24, who have previous involvement in the state guardianship and criminal justice systems. A combination of targeted and snowball sampling were used to recruit eligible youth. The study was advertised at 16 community organizations who directly support youth aging out of the child welfare system. Staff, YIT Workers, and interviewees were also asked to refer eligible youth to participate. Most youth experienced out-of-home care in either foster (n=16) or kinship (n=1) care, or group homes (n=3). Five youth remained in their homes of origin, but their families had open and active files with the Children’s Aid Society (CAS) that were closed when they turned 18. All youth experienced forms of criminalization, including contact with the police, arrest, charge, or bail. With permission from the Ministry of Children, Community and Social Services (MCCSS), interviews were also conducted with 10 Youth-in-Transition Workers.

The data was analyzed using NVivo software to perform emergent, data-driven, inductive coding. Words and phrases that represented key thoughts and concepts were highlighted as codes and subcodes (Hsieh & Shannon, 2005; Saldaña, 2013). Each participant groups’ perspectives were then woven together to map the experiences of young people leaving care. Youth and YIT Workers’ testimonies provide descriptions of the challenges young people experience when
leaving care and preparing for independence and how these challenges often result in adverse outcomes.

4.2 Analysis of Available Literature

Following Jane Kovarikova’s (2017) method of comprehensive literature analysis, we also conducted a review of research reports, media, and peer-reviewed academic journals related to leaving state guardianship. We considered research from across Canada and the United States with a particular focus on research from Ontario.

In addition to a comprehensive literature analysis, we searched for relevant statistics about youth leaving state guardianship, as reported in 2011 and 2016 Statistics Canada census data, and by provincial and national level research bodies. Five interrelated issues were frequently discussed in the literature: (1) Education; (2) Employment, Poverty, and Income Support; (3) Housing and Homelessness; (4) Criminalization; and (5) Mental and Physical Health and Wellbeing.

While interviews were conducted with young people between the ages of 20 and 24, there were multiple age definitions of youth adopted in the literature. In general, researchers defined “youth” as being between the ages of 16 and 29. We use the term youth consistently with this broader age category; we use the terms “under state guardianship” (under age 18) and “leaving state guardianship” (age 18 to 29) to distinguish between age groups.

4.3 Theoretical Orientation

This report centres situated knowledge and appreciative inquiry. Situated knowledge entails recognition that all forms of knowledge are shaped by conditions in which they are
produced (Haraway, 1988). Embracing situated knowledge means a move away from a sense of objectivity in research and acknowledgement of the role of power in knowledge production. People with lived experience provide important insights about their own lived conditions, experiences as marginalized people, and power relations. Appreciative inquiry is a strengths-based, positive approach oriented to changing the social world from one that is oppressive to one that promotes and nurtures human potential (Zandee & Cooperrider, 2008). Importantly, people are not identified as ‘problems.’ Instead, the focus is on strengths and successes and visions of the best future (Zandee & Cooperrider, 2008).

4.4 Statement of Positionality

We provide statements of positionality (Harding 1983; Hartsock 1983) in recognition of the role we play as researchers in the production of this report. Our identities influence our understandings and interpretation of these topics. Marsha Rampersaud is a settler, cis woman of colour, and community-oriented researcher. Her scholarship combines insights from critical race, punishment, and abolition theories to examine issues of racial and social justice and the purpose of punishment. Her research explores the compounding impacts of the state guardianship and criminal justice systems on youth and young adults. This research was inspired by her community work with the Elizabeth Fry Society of Kingston and StepStones for Youth in Toronto where she observed firsthand how existing criminal justice policies and practices have disparate impacts, especially for those who have had prior experiences of state guardianship.

Linda Mussell is a settler, white, cis woman originally from a low-income background in southern British Columbia. She is the first person in her family to receive a post-secondary education, and one of her parents did not have a high school education. She received a PhD with
the guidance and support of many peers and mentors. She approaches these topics as someone who has not lived these experiences, and centres listening to and amplifying voices of lived experience. Her broader research uses critical policy analysis to interrogate the carceral state, namely policies of removal, isolation, coercion, assimilation, and confinement. Through her work she supports transformative justice and disrupting the harmful direct and intergenerational impacts of carceral policy.
5. Findings: Key Issues and Areas for Intervention

5.1 Education

Background

**High School Completion Rates**

It is common for youth to move frequently while under state guardianship—between placements, and sometimes between cities. Youth typically move at least once for each year they are under state guardianship (Kovarikova, 2017; Rampersaud & Mussell, 2021b). Frequent moves can be a significant barrier to high school completion. In a survey by the Children’s Aid Foundation of Canada (CAFC) (2018),79 half of the 153 respondents (n=77) noted having four or more school moves during primary school grades and over one-quarter (n=46 of 153, 29%) had four or more school moves during secondary school. Of those that completed high school, one-in-seven (n=25, 16%) took six years or more to finish. School moves impact how long it takes someone to complete high school, and in many cases impacts whether a young person finishes at all.

One social worker explained how disruptive frequent moves can be for youths’ educational and overall development:

Imagine being quite literally on your own, being bounced around from home to home, what that does to you, the trauma, the emotional impact that that would have on a young person and their development. I think it's important for [people] to understand how having so much change and not having a very nurturing or stable home environment and upbringing can impact someone’s brain development, how they process things (YIT 1).

Frequent moves mean youth are constantly being uprooted from school to school which contributes to tremendous instability in their lives (Kovarikova, 2017). Maani, a 22-year-old

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79 91% of survey respondents were from Ontario.
male, described having to move several times between his familial home and various foster care placements. Each move involved changing schools. After being told about yet another move, Maani described feeling frustrated and asked his father if he could stay enrolled at his current school:

Especially when I had to move to another area with my dad. He was already working somewhere and I just went to another school. The thing was that, at first I didn’t want to move schools. ...My dad was like ‘no, you’re just gonna have to change schools, I’m not fucking driving you [out of town] every day.’ And at the time I didn’t really understand. The change was pretty shit but I got used to it pretty quick (Maani, 22-year-old Middle Eastern male).

Because of the frequent disruptions moves created in his life, Maani felt he had to get “used to it” but getting used to it did not make it less disruptive.

Education and social work researchers Rosalind Kirk and Angelique Day (2011) report, every time a young person moves, they lose between four and six months of academic progress because of the disruption to their studies. These gaps in their education can be difficult to make up over time. Frequent moves between foster homes and group homes also often result in lengthy absences from school. Youth may need to enrol in and then adjust to new schools (Liljedahl, Rae, Aubry, & Klodawsky, 2013; Murphy, 2011). When enrolled in school, youth frequently miss classes due to Children’s Aid Society (CAS)-related work, such as meetings with their social workers (Contenta, Mosebraaten, & Rankin, 2014).

The challenges young people under state guardianship face may be compounded by their race and gender, further impacting their ability to be successful in school, and hampering their future prospects. In British Columbia in 2014, the six-year completion rate for all Indigenous children in care with a Continuing Custody Order (CCO) was 40%. For Indigenous boys under state guardianship, the rate was even lower (37%) (Rutman & Hubberstey, 2016). Racial and gender inequities observed in broader society are also evident in the education system.
Racialized students are disciplined at higher rates than white students; Black students in general, but especially Black boys, are more likely to be pushed out of school and directed away from post-secondary programs than other racial groups (Sharp, 2020). Race and gender are important factors intersecting with experiences of state guardianship.

Youth also face significant personal challenges related to past and ongoing traumas and tied to familial breakdown and/or removal by the state for other reasons. Anthropologist Daphne Winland (2013) indicates past traumas contribute to higher rates of substance use, mental health issues, learning disabilities, and behaviour labelled as “criminogenic” (see also: Gaetz et al., 2013; Osgood, Foster, & Courtney, 2010; Scully & Finlay, 2015). These factors can further erode young peoples’ potential to achieve educational success as they define it.

At 23 years old, Tomas described that he continues to experience considerable mental and emotional instability in his life. He aspires to eventually become a social worker so he can “help kids like [himself],” but the mental instability he experiences is a barrier to enrollment:

I’m not involved in [school] right now. I’m trying to get back involved in some schooling eventually because I know I want to help kids like me, but right now I’m not at that mental stability, you know what I mean? (Tomas, 23-year-old white male).

All of these conditions can culminate in youth under state guardianship falling significantly behind in their studies. Some youth find it impossible to catch up. In these tough circumstances, some youth are held back for a year in school and most are hindered in meeting their academic potential (Liljedahl et al., 2013). Importantly, 56% of youth under state guardianship in Ontario drop out of high school.

Pedro, 19 years old, described falling behind in his last two years of high school and not being able to graduate on time. To graduate, he will have to retake his entire final year of studies. He wants to finish high school, but is worried about having to balance the competing demands of
work and school: “I have no clue how I’m gonna do it right now, but once school starts I’ll try and completely do grade 12 over again and try and finish high school” (Pedro, 19-year-old Latinx male). Like Pedro, Theo, 24 years old, was unable to finish high school. Theo shared that he received a criminal charge when he was 16 years old. The instability he experienced while under state guardianship was compounded by having to spend a few months in secure custody. The disruption to his studies was too difficult to overcome and he ended up dropping out. When he wanted to go back, he was too old to attend classes at his former high school:

I got in trouble [in high school] a little bit too, but I wanted to finish there. But I kind of just left early and then I couldn’t go back after a certain time because you’re allowed to stay in high school until you’re 21, but I left a little bit early. ...But I’ve only got 15 credits. I can’t even go to college without 30 credits. Because I got a frigging charge when I was 16 and shit (Theo, 24-year-old Black male).

Aiden, 24-years-old, was unable to finish school after he was denied bail and held in remand detention for eighteen months:

I’m actually going to do my GED test. That’s something I was doing while I was locked up but I never got to finish because I got released early. I just have to find a time to schedule the classes but with everything going on it’s kind of hard right now (Aiden, 24-year-old Black male).

Both Theo and Aiden shared that they aspire to move on to post-secondary studies. After aging out of state guardianship, Theo indicated he had no support—from his foster family or from his CAS worker—finding alternative ways to obtain his General Education Development (GED) certificate. Aiden explained he is working full time and bound by probation conditions which make it hard to think about coordinating the GED test. At 24 years old, neither Theo nor Aiden have completed high school; Theo works in retail and Aiden works in a factory.

According to Statistics Canada (2017a), 34.7% of young adults in Canada, ages 20 to 34, live with their parents. The highest proportion of young adults living in the parental home in
2016 was in Ontario (42.1%). Yet, existing child welfare policies in Ontario require youth to leave their foster care and group home placements when they turn 18. When they ‘age out,’ youth face the added pressure of needing to become financially stable so that they can secure and maintain independent housing, while simultaneously completing their high school diploma. Noah described the immense challenges of finishing high school while figuring out his living situation when he ‘aged out’:

It was the hardest time of my life. I remember writing my last exams for grade 12 just zoning out. My teacher's [had] never seen me like that before. They're like, ‘what's going on?’ I'm like, ‘honestly, I'm not too worried about this right now, I'm worried about where the hell I'm gonna live’ (Noah, 21-year-old biracial male).

Education researcher Naomi Nichols (2013) reports that the most vulnerable youth find themselves homeless during this transition. Only 25% of youth who experience homelessness after leaving state guardianship will complete their high school education (Nichols, 2013; Public Health Agency of Canada, 2006).

Youth also described difficulties when trying to balance their financial insecurity with their desire to attend school:

[Finishing school] is an option but I haven’t fully committed to it or decided if I should yet. In the meantime, I’m kind of working trying to save up some money and see where that goes (Maani, 22-year-old Middle Eastern male).

Because I’m working right now, I can’t even go to school. After work I’m so tired (Theo, 24-year-old Black male).

While many youth living with their families of origin are able to rely on family for financial and emotional support, most youth aging out do not have these supports. Like Maani and Theo, many have to prioritize working in order to afford to live. Many youth focus on employment and place their educational goals on the backburner. Finding the time and energy for school comes second
to financial security. It is unsurprising that only 44% of youth under state guardianship complete high school and obtain an Ontario Secondary School Diploma (OSSD).\(^{80}\)

Some youths’ experiences show it is possible to disrupt this trajectory. Like Theo, Ayesha (18-year-old Black female) experienced disruption to her high school studies after receiving a series of criminal charges as a youth. With mentorship and support from one of her teachers, she was able to overcome the challenges of frequent disruptions. At the time of her interview, Ayesha shared that she was on track to graduate at the end of the current school year:

> I never went to school. I got five credits in grade nine and I got two in grade 10. I never went to school after grade 10 so if it weren’t for my teacher, I would probably be in adult school and I would probably still be doing grade 10 work and grade nine work. I’m trying to graduate this year and I don’t think that would be possible without my teacher because I got a lot of charges (Ayesha, 18-year-old Black female).

Ayesha’s story shows the important role that social support and mentorship can play in youths’ educational attainment and overall success.

*Post-Secondary Enrolment and Completion Rates*

Few youth leaving state guardianship continue with post-secondary education. Finances are a significant barrier for many youth. In recent years the Children’s Aid Foundation of Canada (CAFC) (2018) started offering funds and the Ontario Student Assistance Program (OSAP) started providing tuition waivers through their Living and Learning Grant to youth leaving state guardianship. These supports are designed to offset the financial component of attending post-secondary school. Approximately 60% (n=264) of eligible youth reported accessing these

\(^{80}\) The CAFC (2018) reported most youth (n=133, 84%) completed high school within a four- to five-year period, but one in seven (n=25, 16%) took six years or more to finish; 91% of respondents were from Ontario.
resources to attend post-secondary school straight from high school. Among youth who do apply for post-secondary studies in Ontario, the majority (84%, n=222) enrol in apprenticeship programs or college, rather than university (16%, n=42) (OPACY, 2012a).

**Youth who have no experiences of state guardianship are 20 times more likely to enrol in post-secondary studies (OPACY, 2012a).**

Some youth do not apply to post-secondary programs because they do not have assistance navigating the application process. While many youth have family members who can help them research post-secondary institutions, visit school campuses, and apply for programs, most youth leaving state guardianship do not. After ‘aging out,’ few youth remain in contact with their foster families or group home staff. Most have severed or tenuous connections to their families of origin. Contact with their CAS workers is also substantially scaled back, often reduced to once-per-month meetings. The process of identifying and enrolling in post-secondary programs can be too difficult for many youth to complete by themselves. Without support, many qualified youth ‘aging out’ of state guardianship do not apply to or attend post-secondary studies.

Past traumas contribute to higher rates of substance use, mental health issues, learning disabilities, and behaviour labelled “criminogenic” among youth leaving state guardianship (Winland, 2013). These factors do not disappear when youth turn 18. For many, these factors persist in adulthood and can further prevent youth from reaching their educational goals:

I would like to study… I wouldn’t mind doing architecture. Honestly, I thought about interior design and maybe mechanics, but architecture is really something that stimulated my head so far. I’ve just struggled with a lot of addictions recently and I’m trying to really get a grasp on it but it’s incredibly hard (Jesse, 24-year-old white male)

Approximately 28% reported seeking employment for one year after leaving high school before going on to post-secondary school (CAFC, 2018).
I took child and youth work for a semester. I did like it until certain things opened up from my past that I’m still working on overcoming (Roland, 24-year-old white male).

Both Jesse and Roland described ways their past traumas resurfaced, making it difficult to enroll in or complete post-secondary studies. At the time of their interviews, neither youth had pursued post-secondary studies again.

Youth who enroll in post-secondary studies have a much different experience than those who were never under state guardianship. For example, it is common for some youth who were never under state guardianship to change their programs of study or to take an extra year to finish their undergraduate degrees. According to researcher Doug Lederman (2017), nearly one third of first time post-secondary students will change their major at least once during the first three years of school. In contrast, youth who were under state guardianship that receive the Living and Learning Grant are only eligible to receive this support for up to four years, maximum. Most youth recognize that their circumstances are different from their peers who were never under state guardianship and know they cannot afford to make any mistakes (Batsche et al., 2014).

Information about the post-secondary graduation rates of Ontario youth who were previously under state guardianship is not publicly available. However, in their research with youth leaving state guardianship in British Columbia, economist Marvin Shaffer and his colleagues (2016) reported youth graduated from university at a rate that is one-sixth that of their peers who were never under state guardianship.

**High School Diploma and Future Prospects**

Higher rates of high school completion in Ontario are commonly attributed to changing labour force entry-level requirements, social expectations (parents not wanting their children
“left behind”), and overall prosperity (which reduces the need for early labour force entry) (The Conference Board of Canada, 2021). In 2016, 87.9% of people aged 25 to 64 in Ontario had a high school diploma or equivalency certificate (Statistics Canada, 2017b). In 2016, 8.5% of men and 5.4% of women aged 25 to 34 had less than a high school diploma, representing about 340,000 young Canadians (Uppal, 2017). People with experience of state guardianship are reflected in these numbers, yet their unique experiences receive little acknowledgement as a barrier to completing high school and further studies. Young people under state guardianship encounter a number of barriers that can make it difficult for them to be successful in school. For those that experience challenges and do not attain their educational goals, this can have a direct impact on future life opportunities and employment prospects.

**Structural Factors**

Structural risk factors, such as poverty, foster care, and lack of support for young mothers, present significant barriers to academic performance. In a Manitoba study, psychologist Marni Brownell and colleagues (2010) concluded it is not only specific factors that undermine positive outcomes, but the cumulative effect of factors that is especially debilitating. Youth under state guardianship come from poverty 80% of the time (Brownell et al., 2010 cited in Kovarikova, 2017). Poverty, challenging conditions under state guardianship, and the lack of support provided to families, including young parents, are systemic failures.

When looking at high school attainment specifically, both school and non-school factors contribute to dropping out of high school. Non-school factors include low social class, racialization, school-home linkages, and community support; school factors include ineffective punishment, lack of counseling, support, and outreach, and disregard for learning styles (BCG,
2011). It is important to note these factors because youth should not be blamed for systemic failures. Rather, these areas are points of intervention where youth can be better supported to achieve success.

Costs

Based on census data indicating differences in earnings by level of educational attainment, those without a high school diploma will earn an average of $15,000 less annually than those with a post-secondary degree; this number incrementally increases over one’s lifetime (Statistics Canada, 2019). By the time a young person reaches retirement age (approximately 65), this difference is more pronounced, amounting to more than $40,000 per year on average between a person with no high school diploma and a person with a post-secondary degree (Statistics Canada, 2019). Given that 56% of youth leaving state guardianship each year do not finish high school, each youth stands to lose between $705,000 to $1,880,000 in earnings over their lifetime (between ages 18 to 65). The cohort of 560 youth leaving care who do not finish high school each year in Ontario stand to lose a combined total of lost earnings between $394,800,000 to $1,052,800,000 over their lifetime. Shaffer and colleagues (2016) estimate that at least 30% of this cost is borne by governments in foregone tax revenues alone. According to the Conference Board of Canada (2019), each additional high school graduate saves the Ontario government (on average) $2,767 each year on social assistance, health care, and criminal justice, while each person who does not complete high school costs the province $3,128 each year.

Lower educational attainment and income insecurity impacts public healthcare costs. Nutritional scientist Valerie Tarasuk and colleagues (2015) found that health care costs rose
systematically with the increasing severity of Ontario household food insecurity—related to
income-related problems of food access. Annual public health costs were 23% higher in
households with marginal food insecurity, 49% higher in those with moderate food insecurity,
and 121% higher in those with severe food insecurity.

There are also intangible costs to youth who face barriers in reaching their educational
and career goals. School provides the opportunity to learn how to learn. Students gain critical
thinking, verbal, quantitative, moral reasoning, and other skills. It can provide a forum to learn
how to participate in a democracy through voting and civic participation (Brennan, Durazzi, &
Tanguy, 2013). It provides an opportunity to form important relationships and social skills.
School can help open minds, expose people to different perspectives and experiences, and
broaden horizons and a sense of what is possible. These costs are also felt by the community
when there are members who are not given the same opportunities to engage and grow.
### 5.2 Employment, Poverty, and Income Support

#### Background

**Education and Employment**

Without a high school diploma, the possibility of finding meaningful work that provides more than basic needs is significantly reduced. High-school completion is also the prerequisite stepping stone to post-secondary education (The Conference Board of Canada, 2021). In previous generations, a high school diploma was adequate for most jobs, including many well-paid jobs. More recently however, “The growing complexity of work in the global knowledge economy and the rising rates of post-secondary completion in Canada...have reduced the relative value of a high school diploma” (The Conference Board of Canada, 2021). In an increasingly credentialed society, it is now commonplace for employers to specify post-secondary education as a minimum qualification for employment. A post-secondary credential is often required even when it exceeds the actual skills required of entry-level jobs. These circumstances can have devastating impacts on the majority of youth who ‘age out’ of state guardianship in Ontario without completing high school.

Chris, 24 years old, has been searching for permanent employment since he ‘aged out’ of state guardianship 6 years ago. He has not finished high school, but he was taking continuing education courses to obtain a GED certificate. Chris is ineligible to apply for most permanent jobs without a post-secondary degree. The jobs he is eligible to apply for tend to be “temporary” and “seasonal,” which he thinks are designed for people who are still in school:

> The market of jobs is designed for students instead of full-grown men (Chris, 24-year-old Indigenous male). His Youth-in-Transition Worker added: There’s a lot of temporary stuff, and seasonal work, so you can get laid off in that. But Chris has been really active in that and trying to find a job. He’s motivated (YIT 9).
Chris wants to find meaningful, permanent employment but the credentials required for many jobs exclude those who do not have a diploma or a degree from applying. Similar to the 56% of young people who have not completed high school, Chris’ choices are extremely limited.

**Career Prospects**

Employment opportunities available to young people who have not graduated high school are limited, less secure, and lower paying than other careers that young people qualify for with post-secondary training. According to Statistics Canada (2020b), the average hourly salary of an employee in the accommodation and food services sector is $14.66/hour, and $15.49/hour in the wholesale and retail trade. Service sector jobs average an hourly wage of $17.51/hour, and other jobs including in construction, transportation, and warehousing pay close to the same. Many who do not have a high school diploma are limited to employment in one of these areas. Youth ‘aging out’ of state guardianship face the added pressure of needing to secure employment quickly, to ensure they can survive on their own after turning 18 (OPACY, 2012b). But according to one social worker, many youth have never even held a job before:

I remember we had this question on one of our intake forms, ‘can you maintain employment for more than six months?’ And one of my youth was like, ‘I don’t know? I’ve never worked. But I hope so’ (YIT 5).

Many young people who have never held a job before, meaning they have never had to learn the soft skills related to employment such as punctuality and attendance among other skills, are suddenly expected to find full time employment at age 18, upon which their survival depends. When Scarlett was about to turn 18, her foster parents told her she would have to find a place to live independently. She was able to stay with her partner and his family temporarily, but his parents made it clear that they should start looking for a place of their own. Scarlett has not
completed high school and has not given thought to what kind of job she wants. Scarlett said: “I really don’t care. I’m just looking for any kind of job” (Scarlett, 18-year-old white female).

Scarlett shared she had applied to several jobs in hospitality and retail and was willing to take the first job she was offered. Her primary goal was to save up enough money for her and her partner to live independently.

Other youth interviewed, including Farrah, 24 years old, Diego, 19 years old, and Ben, 21 years old, indicated they worked in lower paying fields.

I’m looking for a job right now, but I was working as a customer care agent over the phone (Farrah, 24-year-old Indigenous female).

I’m trying to go into the culinary background, so right now I’m working at a restaurant (Diego, 19-year-old Latinx male).

I do sales and shit. [My mom said] nothing is easy in this life, right? But then this one dude got me into sales and stuff, and I’m not saying sales is easy, but it is something that’s very rewarding and you don’t even need an education for it (Ben, 21-year-old Black male).

For Ben, he appreciated how “easy” and “rewarding” sales was. He shared that he felt pressured by his mother to follow the path of high school to post-secondary in order to be successful. But at age 21, he still has not completed high school and does not plan to go back in the near future. He was happy to find a job without having completed high school where he can still support himself. Yet, some youth, like Roland, 24 years old, and Maani, 22 years old, find themselves working in more precarious or “under the table” employment scenarios to make ends meet: “At the moment I’m an on-call snow shoveler. I would kind of appreciate it if the weather would snow more. But that’s about it” (Roland, 24-year-old white male). Roland expressed how challenging it was to have to depend on the weather for income and security. Maani also engaged in cash-for-work electrical and snow removal jobs:
Right now I’m in between jobs and helping out with an electrical cash job and I’m also doing snow removal. It’s pretty demanding physically though so I’m looking for something more chill, like what I was doing with the afterschool program. It’s more consistent, better hours, better pay (Maani, 22-year-old Middle Eastern male).

Maani hoped for a better employment circumstance but described feeling stuck in precarious employment situations. Employment opportunities are limited without a high school diploma, which means more than half of youth leaving state guardianship each year are concentrated in low-paying jobs or rely on government income supports.

**Earning Potential**

People who do not graduate from high school earn substantially less than those who graduate. A person with a high school diploma in Canada earns 80% of what a person with a diploma earns (The Conference Board of Canada, 2021). The average annual salary of a young person aged 15-19 in Ontario with no high school diploma in 2016 was $2,774 less than those with a high school diploma (Statistics Canada, 2019). These disparities grow as time goes on. For young people aged 25-29 with no high school diploma in 2016, the average annual salary was $4,512 less than those with a high school diploma and $16,513 less than those with a bachelor's degree. By the time these youth reach retirement age (60-64), their average annual salary without a high school diploma is $5,977 less than those with a high school diploma, and $42,616 less than those with a bachelor’s degree. These disparities have large impacts on people aging out of state guardianship. The Conference Board of Canada (2014) indicates a youth aging out of state guardianship will earn about $326,000 less in income over their lifespan compared to the average Canadian.
According to researchers Stephanie Cosner Berzin, Erin Singer, and Kimberly Hokanson (2014), without intervention or supports in place, youth leaving state guardianship experience lower employment rates, lower earnings, and fewer opportunities than their peers who were never under state guardianship. These conditions can set many youth on a path of accumulated disadvantage into adulthood, including an increased likelihood of experiencing poverty and relying on government income supports (Kovarikova, 2017).

**Poverty and Reliance on Income Supports**

To mitigate potential financial hardship for youth leaving state guardianship, nearly all youth receive the Continued Care and Support for Youth (CCSY) benefit, administered by the Ministry of Children, Community and Social Services. This benefit provides youth with a monthly stipend of approximately $850. This support expires when youth turn 21. While CCSY is certainly helpful, the current amount provides little financial security for youth in the face of rising housing, food, and other living expenses. Researcher Eric Melillo for the Northwestern Ontario Health Unit (2018) reports the cost of food alone in Northern Ontario is higher than in Toronto. For a family of four in the Rainy River and Kenora Districts, healthy food baskets would cost $1018.20 per month, approximately $160 more per month than a family spends in Toronto (Melillo, 2018).

*The majority of youth who age out of care live in poverty (Kovarikova, 2017, p.15).*

Arlo, 24 years old, has worked two part-time jobs since leaving state guardianship. These earnings, combined with the CCSY supplement, left him with $50.00 each month after paying

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82 This amount is an average stipend amount in the province. The amount varies slightly based on the youths’ location within the province.
his rent. Arlo described how he was able to overcome food insecurity by shopping for food at the dollar store for two years, before finding available supports in the community:

I had to take people’s health cards and go to a foodbank and say all these people live with me so when I went to the food bank they would give me enough food for 8 people. But I didn’t come up with that idea until two years [later]. So for two years I was eating nothing but popcorn and nothing but soup. I was so skinny, you should’ve seen me man, because I was malnourished. If I bought chicken, it was a luxury (Arlo, 24-year-old Latinx male).

Low educational attainment significantly impacts youths’ future career prospects and many ‘age out’ to poverty. Despite working two part-time jobs in the fast-food industry, Arlo still experienced significant challenges in making ends meet after he left state guardianship.

When youth turn 21, the abrupt stop to CCSY creates challenges. Theo works full-time in retail but explained that he finds it difficult to maintain his financial independence. He dreams of living a “comfortable life,” but finds it impossible to save for his future on his current income:

I just need to have enough money, first of all. Not spend it too much. Spend, save some, do whatever you gotta do. Rent first. Mostly just gotta have enough to do whatever I wanna do in life, right? Just enough, right? I don’t need to be like a billionaire, I just need a couple mill, haha (Theo, 24-year-old Black male).

Arlo’s and Theo’s stories are common among many youth leaving state guardianship. In a Canadian study of 210 former wards of the state, 77% reported earning less than $20,000 annually in the initial years after ‘aging out’ (Tweddle, 2005). In a more recent survey, the Children’s Aid Foundation of Canada (CAFC) (2018) reported that the median income of youth who responded (60% of participants) is only between $10,000 - $19,999. The barriers to receiving secondary education greatly impact the lifetime financial prosperity of youth with experiences of state guardianship. It is unsurprising that 57% of young adults who were formerly under state guardianship rely on some form of government income support, including Ontario Works (OW) or the Ontario Disability Support Program (ODSP) (OPACY, 2012a).
While income for the 20-24 population is typically low in general, many youth are able to offset financial hardship with the support of their families (Shaffer et al., 2016). Societal trends indicate many youth are staying in school and staying at home longer than previous generations, often well into their 20s (Milan, 2016). Young people now find it necessary to obtain a post-secondary degree to access a number of employment opportunities. These trends, combined with higher housing costs and later average marrying and childrearing ages, mean many youth are staying at home longer (Shah et al., 2017). The traditional markers of adulthood are now delayed, often until young peoples’ late twenties and early thirties (Arnette, 2000). Most youth leaving state guardianship, however, do not have access to family support and are an exception to these broader social trends.

Costs

Low educational attainment limits employment prospects and earning potential. Individuals who work in the low-pay sector contribute less in taxes than do those who have access to and who are employed in higher-paying sectors. These circumstances may increase the need for some youth leaving state guardianship to rely on government income support.

For 57% (n=570) of youth ‘aging out’ each year who come to rely on income supports, the costs to society are high. Individuals who qualify to receive the Ontario Works income support benefit are given a monthly Basic Needs allowance of $343/month and a Maximum Shelter Allowance of $390/month,\(^3\) which amounts to a maximum of $733/month, per individual. If 570 of the 1000 youth leaving state guardianship each year rely on OW for income support, the cost is more than $5 million dollars annually; over a lifetime (18 to 65) this would

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\(^3\) These numbers are current as of 2018.
amount to $235,000,000. In contrast, the cost to extend the Continued Care and Support for Youth benefit for these 570 youth would amount to $5,814,000 annually, however, in line with the readiness model, the CCSY benefit would only extend until youth have reached financial independence and no longer need this financial support. The time to reach independence for each youth will differ, but even if all youth are supported until they turn 30, this would amount to $69,768,000, which provides a cost-savings of more than $165 million over youths’ lifetimes.

There are enormous economic benefits associated with interventions that prevent adverse educational and employment outcomes for youth leaving state guardianship. When permanency and long-term caregiver placements are prioritized over cut-offs for support, youth are able to stay home longer. Without the fear of having to find employment and housing at 18, youth can focus instead on finishing high school and enrolling in post-secondary programs. Youth can also be given support to identify post-secondary programs, go for campus visits, and navigate the application process by longer-term caregivers, which increases their likelihood of enrolling in post-secondary programs. In Ontario’s heavily credentialled job market, having a post-secondary degree will increase youths’ career prospects and earnings potential, breaking them free of the cycle of poverty. When youths’ career prospects are not hindered by their educational outcomes, they reduce the need to rely on income support and increase their likelihood of higher earnings, both reducing the cost to the province and increasing tax revenue.
5.3 Housing and Homelessness

Background

Youth leaving state guardianship are acutely vulnerable to experiencing homelessness. In fact, youth ‘aging out’ of state guardianship are 200 times more likely to experience homelessness than their peers who were never under state guardianship (Doucet, 2020; Gaetz et al., 2016). In a given year there are an estimated 35,000 youth experiencing homelessness in Canada (Gartner & Caloz, 2013). Nearly two-thirds (57.8%) of these youth have been under state guardianship (Gaetz et al., 2016; Shewchuk, 2020). Youth leaving state guardianship who experience homelessness are likely to be homeless for longer than other similarly situated vulnerable youth (Raising the Roof, 2009). Indigenous and LGBTQ+ youth experience an even higher amount of homelessness (Doucet, 2020).

Youth ‘aging out’ often leave state guardianship without adequate support and guidance to find secure housing or to live independently. Under these conditions, many youth experience a challenging transition to adulthood. Like some youth preparing for independence, Dina, 21 years old, was supported by her Children’s Aid Society (CAS) worker to find independent housing. The support she received, though, was limited to “basic needs” and was not ongoing:

It was more so just basic needs that they helped with. [My CAS worker] helped with getting me bedding and sheets and stuff like that, which was amazing. But I didn’t last living in the apartment because I struggle with mental health. So it didn’t work out with me living on my own independently because it’s hard when you have mental health concerns and struggles (Dina, 21-year-old Black female).

Dina, who had experienced significant traumas and contended with mental health challenges struggled to cope when living on her own. Without meaningful support after she was housed, Dina lost her housing shortly after moving in.

Jesse, 24 years old, also described his experience of losing housing:
When I turned 18 [my CAS worker] helped me find an apartment. They paid first and last for that. That was no problem. It was when I actually got into the place, I ended up screwing up this apartment that they got me. And from there I kind of just went downhill. Like I had lost the apartment I got myself into because I ditched it on my own. Stupid (Jesse, 24-year-old white male)

Without ongoing social and therapeutic supports to cope with their mental health struggles, Dina and Jesse found it difficult to live independently. Since broader social trends indicate many youth are staying home longer, well into their 20s, it is reasonable to expect that many youth would find it challenging to have to live independently at age 18. These feelings of unpreparedness are exacerbated for young people like Dina and Jesse who experience significant mental health challenges. Support during this transition means more than giving youth resources to secure housing; it means supporting youth in the context of significant barriers to help them remain housed.

**Limited Available Housing Options**

Most youth leaving state guardianship have severed or tenuous connections with their families of origin. However, some youth attempt to reunite with their families of origin after ‘aging out.’ In some cases, youth may return to live with their families but these reunions are frequently short-lived and youth find themselves on their own once again. Often, the reasons why youth were initially apprehended persist, for example volatility, abuse, or neglect (among other reasons). Roland, 24 years old, for example, left his family home after his relationship with his stepfather broke down:

That only really happened in the last year or so. Till that point I was living at home but I guess the conditions I was living under weren’t technically the best. I was mistreated by my stepfather so that kind of culminated in why I am no longer at the house (Roland, 24-year-old white male).
Noah also described returning home and a breakdown in relationships soon after: “I remember my biological dad sold me a dream, I went to live with him and [in] less than 6 months he kicked me out” (Noah, 21-year-old biracial male). When familial relationships breakdown, many youth have nowhere else to turn after ‘aging out,’ and many turn to emergency shelters for housing.

For some youth, living in emergency shelters and experiencing homelessness happens multiple times and for months or years at a time. David described experiencing homelessness for years: “Right now I've been living on my own, like homeless and in shelters and stuff, for about a couple of years now” (David, 22-year-old white male). David tried to live with his uncle after ‘aging out,’ but when he could not live there anymore, he was not able to secure housing. David has a diagnosed mental illness and shared he uses substances. He has lived "on his own" for the past two years, back and forth between homelessness and emergency shelters.

**Instability and Transience**

When youth leaving state guardianship experience homelessness, it can be nearly impossible for them to move forward with their lives or to work on their future goals. Their immediate survival goals become their primary concern. With a lack of stable shelter, youth find it difficult to stay in school. Maani, 22 years old, attempted to reunite with his biological family after leaving state guardianship. With “stable” housing from his parents and financial support from the Living and Learning Grant, Maani enrolled in a post-secondary program. Within two years of returning home however, his relationship with his parents broke down, he left home, and he left his studies:

I was [studying] for two years and then I dropped out because my parents kicked me out so I couldn’t finish it. I was also doing [a program and] only had three courses left, but I also dropped out of that (Maani, 22-year-old Middle Eastern male).
When his parents kicked him out, Maani experienced homelessness and stayed in an emergency shelter. He briefly enrolled in a different education program, but the instability of shelter living prevented him from continuing.

Ben, 21 years old, described how difficult it was to move back and forth between homelessness and emergency shelters; “street living” and “shelter living”:

Living in shelters makes it difficult to pursue anything else. When you’re living in emergency housing, it's like fuck, you don’t have time to do anything. It’s just fucking exhausting (Ben, 21-year-old Black male).

Noah also described the challenges of living in a shelter and the impossibility of even reading a book, much less going to school:

I want to be out of [the shelter] by mid-December. Even if it's like a shitty basement apartment or something and I'm literally just sleeping on the floor. I'd rather do that than be in there. I'll put 10 fucking comforters on the ground and sleep on that before I stay where the fuck I'm staying now 'cause at least then I can have some peace of mind. I have a book right now that I'm trying to finish and I can't even read it. … I just don't get time to read. I can go to the library and stuff, but why the fuck am I going all the way there if I wanna just read in my room? I just wanna read while I eat or something, you know what I mean? (Noah, 21-year-old biracial male).

Staying in a shelter may mean sleeping in a different bed/room each night and in some cases sharing a room with other people, sometimes different people each night. Some shelters do not offer day programming and youth are required to leave for several hours during the day, meaning they have to carry their stuff with them throughout the day. Further, some shelters place a cap on how many items can be brought in, so youth may have to pare down their belongings in order to have a place to sleep at night. These conditions make it challenging to consistently attend school or employment.

A lack of family support, combined with poverty, mean many youth leaving state guardianship move frequently—between homelessness, emergency shelters, transitional housing,
and rented properties (Shaffer et al., 2016). Some youth report couch surfing for months at a time (Curry & Abrams, 2015; Kovarikova, 2017). These conditions demonstrate a pattern of frequent moves that begins while under state guardianship and continues after youth ‘age out’—with equally disruptive and devastating consequences. For example, the instability youth experience while under state guardianship make it challenging for them to build relationships and finish high school, many continue to experience instability in young adulthood that impacts their ability to maintain housing and employment.

The issues that many youth leaving state guardianship face are interconnected and compounding. Any of these factors—poverty, homelessness, isolation—on their own have a significant impact on a youth’s life. But when taken together, it is clear these young people are set up to fail. One social worker emphasized how difficult this transition is for young people:

If you don't have housing as a kid—and I say kid on purpose because I think we are working with kids. I don’t think that just because you turn 17 or 18 all of a sudden you become this responsible adult who can take care of all their bills. … If you don’t have housing as a kid, you can't have mental health stability, you can't stay in school, you can't maintain a good job usually. It's really, really tough, right? Some people can. It's very rare though (YIT 2).

The cumulative disadvantage that youth leaving state guardianship face begins the moment they are taken into state guardianship and continues as they transition to adulthood, on precarious footing.

In the words of Arlo, depression, trauma, substance use, and homelessness create a cycle that is hard to break:

Shelters don’t give a fuck about you. They care at first. So [when] you get intaked they care about you. But the thing is that when you’re in a shelter you got two options, you got isolation and you got—is it the fray where you join the people? Yah, you got the fray. You either join the elite homeless kids who all band together—and we don’t got much, but it’s enough if we share. … So I got in with the wrong crowds. I’ve got enough money to pitch on a bottle, you got enough money to pitch on a bottle. You’re sad. I’m sad. She’s sad. He’s sad.
We’re all fucking sad. We’re all gonna get drunk. We’re all gonna smoke weed. We’re all gonna share our drugs. We’re all gonna just repeat together. And I got into a cycle for two years. I couldn’t break out of it because yo, I just can’t anymore. I was looking for death. Basically I was just waiting to die. I was just like, okay, this is my final stop whatever. Homelessness (Arlo, 24-year-old Latinx male).

Many youth who experience homelessness feel isolated and hopeless. In response, many will turn to negative coping mechanisms like substance use and self-harm and will lose contact with any previously established supports. In the absence of support from stable, non-professional adults, youth face extreme isolation, or are forced to join “the fray,” as Arlo puts it.

Costs

Homelessness has significant economic costs for municipalities and taxpayers. In Canada, the average monthly costs to maintain shelter beds are $1,932 (ACTO, 2017). These costs are approximately ten times higher than the monthly costs to maintain affordable housing units, estimated at $199 (ACTO, 2017). Approximately 58% (n=580) of youth leaving state guardianship each year will experience homelessness. If these young people stay in emergency shelters, the annual cost to taxpayers is approximately $13.4 million. People experiencing homelessness who also contend with mental illness are especially vulnerable. These individuals generate high costs for society. More preventative programs in health, housing, and social services are needed to address the needs of this population (Latimer et al., 2017).

In addition to these monetary costs are immeasurable individual and social costs that arise from homelessness, substance use, and mental health—three interrelated factors that impact youths’ wellbeing. For example, Shaffer et al. (2016) recognize that these factors decrease youths’ wellness and quality of life. Homelessness also renders many youth more vulnerable to
experiencing victimization and criminalization (Latimer et al., 2017). These circumstances result in higher health care, criminal justice system, and emergency shelter costs for taxpayers.

With more targeted prevention and intervention, youth leaving state guardianship can be supported to find safe, secure, and stable housing. Allowing youth to stay in their foster care and group home placements, or more targeted matching of youth with long-term or permanent caregivers, could reduce the pressure on youth to find independent housing immediately upon turning 18. Additionally, more affordable housing and support services should be made to youth ‘aging out’ as they prepare for independence, and these supports should continue after youth are housed. Adopting a Housing First for Youth (HF4Y) approach offers youth access to permanent housing in combination with individualized, ongoing support to ensure they stay housed (Doucet, 2020; Shewchuk, 2020).
5.4 Criminalization

Background

Youth Under State Guardianship and the Criminal Justice System: “Crossover Youth”

The conditions youth face while under state guardianship render them vulnerable to criminalization. It is unsurprising that these youth are overrepresented in the youth justice system, making them an especially vulnerable subset of youth under state guardianship. While the overlap between the state guardianship and criminal justice systems is recognized in practice and documented in literature (see: Bala, De Filippis, & Hunter, 2013; Bala, Finlay, De Filippis, & Hunter, 2015; Finlay et al., 2019; Scully & Finlay, 2015), there is no systematic data available at the provincial level in Ontario or the national level in Canada. According to law professor and “crossover youth” researcher Nicholas Bala et al. (2015, p.133), “This absence of data is itself disconcerting, since it reflects a lack of priority given to understanding the needs and outcomes for children whom the state has decided to remove from parental care.”

Though the provincial government in Ontario does not collect data about crossover youth, in British Columbia the Representative for Child and Youth (RCY) and the Provincial Health Officer (PHO) (2009) undertook a study with a cohort of more than 50,000 children who were born in 1986 that sheds light on the unique experiences and outcomes for youth with crossover experiences. This report reveals it is more likely for a youth under state guardianship in British Columbia to end up in the justice system (35.5%) than to graduate from high school (24.5%); police recommend charges for youth under state guardianship (41%) more often than they do for youth who have not been under state guardianship (6%); and one in six youth under state guardianship have spent time in custody compared to less than one in 50 among youth who have never been under state guardianship (RCY & PHO, 2009). At the local level, StepStones for
Youth (2020) found 46% of youth leaving state guardianship in Toronto experienced forms of criminalization after ‘aging out.’

Abundant research documents and recommends ways to address the unique issues that crossover youth face (see for example: RCY & PHO, 2009; Finlay et al., 2019; Herz, Ryan, & Bilchik, 2010; Scully & Finlay, 2015). As a result, tremendous efforts have been made by service providers and justice system actors to support these youth when they experience criminalization. If a youth who is supervised by the Children’s Aid Society (CAS) is criminalized before they turn 18, they receive specific supports to navigate the complex justice system, one example being their CAS worker should attend court with them in the capacity of their “parent.” This safeguard seeks to equalize challenges a young person faces because they lack stable family support, in comparison to their peers who do. Having someone in court, for example, can influence proceedings; in cases where a CAS worker was not present, youth under state guardianship were more likely to be held in remand (Bala et al., 2015). Indigenous, Black, and LGBTQ youth continue to be criminalized at high rates however, which indicates these safeguards are not able to equalize outcomes by race and identity.

Despite the availability of these supports, Nicholas Bala et al. (2015) indicates that an overwhelming majority of youth in custody (75%) cease involvement with the child welfare system while they are detained, a pattern that was also evident among youth interviewed for this study. For example, when asked whether they told their CAS workers they had been arrested or charged, several youth indicated they had not:

No. I don't know if [my CAS worker] knows. No, I never told her that story (Yalina, 19-year-old Black female).

After I got charged, I stopped dealing with CAS (Ayesha, 18-year-old Black female).
No. … I don’t have any type of interaction with CAS whatsoever right now (Dafnie, 18-year-old biracial female).

When youth do not tell their CAS workers that they have been charged, the supports that workers offer are not available to them, which leaves youth to navigate the justice system—and to reintegrate upon release—on their own (Bala et al., 2015; Scully & Finlay, 2015). Being criminalized as a youth increases the likelihood of being criminalized again in adulthood (Bala et al., 2015). But when these youth ‘age out,’ most of the available supports offered from their CAS workers ends abruptly, even though the reasons why these supports were created persist.

Crossover youth who ‘age out’ are especially vulnerable among youth leaving state guardianship. The universal age-criminalization curve shows that the risk of criminalized activity peaks in mid- to late-adolescence for all youth (Yi & Wildeman, 2018). But for youth who are ‘aging out,’ this period coincides with the time when they are preparing for abrupt emancipation and independence, making an already turbulent life stage even more difficult (Yi & Wildeman, 2018). These youth too rarely receive the support needed to disrupt the cycle of criminalization before they reach adulthood, which means the cycle often continues in adulthood (Bala et al., 2015). In a study in British Columbia (Shaffer et al., 2016), almost 70% of youth reported being criminalized in the first year after ‘aging out.’

**Unique Experiences of Youth Leaving State Guardianship in the Criminal Justice System**

The differences between youth leaving state guardianship and their peers who have never experienced state guardianship are pronounced at all stages of the criminal justice system. A few comparisons from the early stages of the legal process—from arrest to bail—help illustrate these differences.
Presence/Absence of Family Support

Research suggests that family plays a crucial role in easing the difficulties of a criminal charge. Those who have stable family support—emotional, financial, and otherwise—have help navigating the complex criminal justice process (Côté, 2000; Furstenberg, Rumbaut, & Settersten, 2005; Lee, Courtney, & Tajima, 2014; Schoeni & Ross, 2005). Having family present in the courtroom signals the presence of a support system which is viewed positively by the court. In contrast, those who do not have stable family support face significant challenges if they are criminalized after they turn 18, in addition to the prospect of losing employment and housing if imprisoned. Once a youth under state guardianship turns 18, their CAS worker—who is their legal “parent”—is no longer required to attend court appearances with them. Youth leaving state guardianship rarely have non-professional adults in their lives who will attend court with them.

Having familial supports also means a young person likely has help throughout the legal process, whereas many youth who have ‘aged out’ do not have a parent or family member to rely on. When asked whether they had let their families of origin know they had been charged, Carmela, 24 years old, said “I had nobody to call” and Kalee, 18 years old, and Riyad, 22 years old, both said their parents had been the ones who called the police leading to their charge:

[My mom]’s the one that called the police (Kaylee, 18-year-old white female).

I finally fucking snapped. I drew the line and I told [my mom to]… shut the fuck up. And her response, she kind of stopped what she was doing and she was like, ‘oh fuck.’ Then she called the cops and then the cops came and they said, ‘did you say this?’ and I said, ‘fuck yah I said it.’ (Riyad, 22-year-old Middle Eastern male).

Without familial support, many youth find it difficult to navigate the legal process. Diego, 19 years old, shared that he found it challenging to keep track of court appearances:

I wasn’t really living in a stable home, so I missed a couple of my court dates, so it added up to five fail to appears in court which they take seriously. And then I
got bail for that and then I failed to show up for my fingerprints, [but] I got it done so there wasn’t another warrant for my arrest (Diego, 19-year-old Latinx male).

When a lack of social supports is combined with other challenges, such as precarious housing as in Diego’s case, it can be difficult for youth to keep track of court appearances which can result in additional criminal charges for failing to appear. Given that a high number of youth leaving state guardianship experience poverty (Kovarikova, 2017; OPACY, 2012a) and homelessness (Doucet, 2020; Shewchuk 2020), factors which increase their likelihood of coming into contact with the criminal justice system, it is likely that many youth experience the challenges Diego described.

At the bail stage, one particularly onerous condition of release is the requirement of a surety. A surety is a person who agrees to supervise an accused individual in the community while they await the resolution of their charges. In some cases, released individuals may be required to live with their sureties. Those who have stable family support will likely have a parent or family member who is willing to act as their surety if one is required for release. To be satisfied the surety is suitable, they must hold sufficient assets, be of good moral character, and the court must believe the accused will respect their authority. While parents are not the default surety for release, they are generally accepted in courts as ideal and suitable sureties. There is an assumption that a parent will help a young person keep track of their court appearances and abide by their conditions of release. A lack of stable and non-professional adult supports in their lives

84 Defence counsel develop a bail plan to mitigate the accused person’s risk as connected to the three grounds for detention outlined in section 515(10) of the Criminal Code. The young person must abide by these conditions while they are awaiting their trial in the community, which can take up to one year (or longer) in some cases. Failure to comply with the conditions of release constitutes a criminal offence and may result in an administration of justice (AOJ) charge and a return to bail court but the court is less likely to release them again since they have demonstrated they are unable to comply with a court order (Myers, 2016). A more fulsome discussion of bail conditions appears in Chapters 3 and 4.
means that many youth who have ‘aged out’ will not have a “suitable” surety, if one is required.85

**Trauma and Criminalization**

When young people are exposed to significant, compounding traumas they sometimes develop survival skills in response to their environments that can become visible to others as disruptive behaviours (Finlay et al., 2019). Many foster parents and frontline staff in group homes fail to recognize these behaviours as expressions of pain and respond by trying to manage the behaviours, an approach which often involves the police (Finlay et al., 2019). Carmela, 24 years old, shared that her Post-Traumatic Stress Disorder (PTSD) symptoms were frequently misinterpreted by her foster parents. She was criminalized beginning as early as 12 years old due to these misinterpretations:

> My first charges happened going way back [to when] I first got into care, got into a foster home. There was [an] incident that happened there with arson, 'cause that's what I got charged with. And I think it happened because I was probably having ... a PTSD moment, not knowing what it was and experiencing it. So I think I was just traumatized. 'Cause I was by myself, I was in the basement and then something happened and then my foster mom came down. She was screaming. All these things happened. She called the fire [station] and then next thing I know I'm in cuffs (Carmela, 24-year-old Black female).

This event in Carmela’s life set in motion a cycle of criminalization which began at age 12 and continued into adulthood.

After Carmela’s initial charge, she found herself going to jail “for little things,” sometimes “because [she] didn’t listen to staff or because [she disagreed] with them” (Carmela). It is noteworthy that in some cases, children and youth under state guardianship may behave in ways that are perceived as “acting out” in response to their circumstances. As a result, youth often receive criminal charges for non-criminal actions, like slamming a door or “stealing” food.

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85 The impact of a surety condition for youth leaving state guardianship is discussed in more detail in Chapter 4.
from the kitchen. Ben, 21 years old, was arrested after he broke a lock on a kitchen cabinet at his group home. He explained that “[group home staff] would bolt the [cupboard] doors” where they kept the junk food and youth were only given access to fruit, which always made him angry. While he understood the health benefits of eating fruit, he felt that locking away food was a way to “treat [youth] like shit” (Ben). When Ben broke the lock on the cabinet to access the food he wanted to eat, the group home staff responded by calling the police, indicating he had “destroyed property” and “committed theft.” While this behaviour would likely be dealt with by parents or guardians for most youth in their homes of origin, in a foster care or group home setting this behaviour is often characterized as dangerous or disruptive, which warrants criminal intervention. This difference in response is important and highlights a meaningful limit to professional versus non-professional supports. One Youth-in-Transition (YIT) Worker explained, “Just because someone’s in foster care doesn’t necessarily mean that there’s any type of support whatsoever” (YIT 4). The professional supports in youths’ lives are meant to guarantee a standard of living, but their professional mandate does not always include “care” in any broader sense.

Everyone who is under state guardianship has experienced trauma, abuse, or neglect. Their histories impact their experiences in the criminal justice system. Many youth distrust authority based on past traumas and experiences in government systems, which results in behaviours that are misinterpreted as disrespectful or resisting arrest. Dina, 21 years old, was arrested by two male officers in plain clothes. She had experienced victimization by men in her past, so when she was approached by these two men, she was triggered and slipped into a mode of survival:

Because of the shit that I went through when I was in care, I had no trust for a lot of people, especially men. And the two officers that had picked me up, they
were both men and just very not cool. And I’m happy I didn’t pick up another charge ‘cause I kinda tried to fight them. …it was triggering. It wasn’t because I was just being defiant, it was more so trauma (Dina, 21-year-old Black female).

From her perspective, Dina was defending herself because she believed she was being harmed. But the police officers responded to her with force, indicating they perceived Dina to be acting aggressive and hostile.

Finlay et al. (2019) theorize there is no express link between child welfare and criminal justice, but rather a history of trauma may lead to behaviour that brings young people in contact with both systems (see also: Bala et al., 2015). The conditions that youth face after leaving state guardianship further increase their likelihood of coming into contact with the criminal justice system. Longitudinal studies tracking the progress of youth who have ‘aged out’ over time show that this group is more likely to experience imprisonment as adults than their peers who have stable familial support (Yi & Wildeman, 2018). Prisons can exacerbate and generate new trauma through physical, mental, and sexual violence including isolation, solitary confinement, denial of humanity, powerlessness, strip searches, separation from family and community, disruption of culture, poor provision of health care, lockdowns, and more—whether firsthand or witnessing harms occur to other people while confined, or both (DeVeaux, 2013). Given the tumultuous transition to adulthood youth leaving state guardianship face, they need more support so that they are not criminalized due to systemic failures.

**Lasting Impact of Criminal Justice System Contact**

The experiences highlighted above occur in the early stages of the legal process, before a young person has been convicted. The differences between youth leaving state guardianship and their peers become more pronounced when moving through the legal process. The disadvantages
youth leaving state guardianship experience are compounded at each stage. Contact with the criminal justice system during a difficult emancipation and transition period can devastate youths’ attempts to find their footing as independent adults.

For Noah, after ‘aging out’ he temporarily lived with his father. But this relationship soon broke down and he was forced to find housing on his own. Shortly after securing housing he was evicted from his apartment. One week after being evicted he was charged:

Right after all of this, a week later after my eviction notice, I [went] to jail. And then, after jail, I'm in a ward for a long ass time. And then, when I get discharged, I only have a week to gather up everything and move the fuck out. I literally lost everything 'cause of this. Honestly, I'd rather the eviction notice and none of the charge. I would've at least—I could've figured it out, put my stuff in storage [or]something, gather everything, go and live with someone for a bit. If I [had] to live with someone, [I'd] tell someone to hold my stuff. And I couldn't do that properly. I couldn't plan things out properly. I lost three weeks of my life that I'll never get back. I didn't have clothes with me, I didn't have [anything] with me. They took away my phone. I lost everything (Noah, 21-year-old biracial male).

The disruption this charge created for Noah was all encompassing. He lost everything he had when he was charged and taken into custody for three weeks. Noah now lives in an emergency shelter and has not been able to get back on his feet. Noah’s experience illustrates that the indeterminacy and uncertainty of imprisonment, even for a short time, can create significant challenges in youths’ lives (Pelvin, 2017). This uncertainty does not only centre on their legal fate, but also creates significant challenges in their personal lives with lasting negative effects (Pelvin, 2017).

**Costs**

On average it costs Canadian citizens $75,077 per year ($206 per day) to imprison one man in a federal, medium security prison; it costs $83,861 per year ($230 per day) to imprison
one woman in a federal prison (all security levels) (Segel-Brown, 2018). It costs $78,475 per year ($215 per day) to imprison someone in a provincial jail (Statistics Canada, 2021). Based on the police-reported crime trends in Canada between 1962 and 2019, crime was on the rise from the 1960s and peaked in the early 1990s but has steadily fallen since. There appears to be a small upward trend beginning in the mid-2010s, though it is too early to make a claim about a longer-term trend. It is noteworthy that the crime rates have remained consistently low since the 1970s. Though crime rates have changed over time, imprisonment rates have remained relatively stable. While crime rates may be more sensitive to social, economic, and other external factors, imprisonment rates are not. Consequently, crime and imprisonment rise and fall for different reasons.

Despite declining crime rates and steady imprisonment rates, per capita expenditures on the criminal justice system have increased (Story & Yalkin, 2013 cited in Koegl & Day, 2018). Rod Story and Tolga Yalkin (2013) estimated government expenditures on criminal justice in Canada was $20.3 billion in 2011/2012; further, though the rate of crime decreased by approximately 23% between 2002 and 2012, expenditures on criminal justice increased by approximately the same amount due to increasing security and court costs (cited in Koegl & Day, 2018). It appears that the current system is not working to reduce or prevent crime, which means we could be spending our money more efficiently and effectively. Rather than imprisoning youth leaving state guardianship—which does not impact crime—state funding would be better spent addressing the root causes why young people engage in criminogenic behaviours to begin, in order to prevent their criminalization. Such programs would be responsive to their unique needs.

86 The majority of individuals who are imprisoned in Ontario are in provincial custody facilities.
which would have more impact on their overall rehabilitation and desistance from crime, thereby reducing the costs to society to imprison this population.

It is worth noting that approximately one third of charges brought before the courts are administration of justice charges which contribute substantially to criminal justice spending (DOJ, 2013 cited in Koegl & Day, 2018). AOJ charges refer to: failures to appear in court and failures to comply with the conditions of a release order. For example, if youth have a condition of release that they need to “appear at the door if a police officer checks in” and the youth does not hear the doorbell and fails to answer the door within 15 minutes, the youth can be charged with failing to comply (FTC) with their conditions. In some cases, individuals are not convicted of the initial charge but then receive a criminal conviction for their AOJ charge. This is particularly problematic as the behaviour is not, in and of itself, illegal (i.e., not answering the door) (Sprott & Myers, 2011; Myers, 2016). Given the difficulties youth leaving state guardianship face that render them more vulnerable to being criminalized—including poverty, homelessness, substance use dependencies, and mental health—there is a need to establish prevention and diversion programs in the community that can better support youth and keep them out of custody.
5.5 Mental and Physical Health and Wellbeing

Background

Youth who ‘age out’ of state guardianship experience poorer health outcomes than their peers who have not been under state guardianship (Geiger & Schelbe, 2014).

A person’s health status is a product of complex interactions among a variety of personal, social, economic, and environmental factors. Influential factors include:

- Access to Health Services
- Behaviour
- Biology and Genetic Endowment
- Early Childhood Development
- Education and Literacy
- Food Security
- Gender
- Housing
- Income and Income Distribution
- Indigenous Status
- Physical Environment
- Race and Racism
- Social Safety Net
- Social Inclusion and Exclusion
- Un/Employment and Employment Security
- Working Conditions

Many factors that impact a person’s health are outside of individual control. Social determinants of health, for example, refer specifically to socioeconomic factors, such as education and income. Socioeconomic factors, which are connected to structural conditions, are strong and reliable predictors of one’s health; because these factors are intricately connected to the material advantages and disadvantages that accumulate over one’s lifespan, they are connected to specific health outcomes (Kubik, Bourassa, & Hampton, 2009; Langille, 2004; Raphael, 2008; Sugie &

87 Note: Youth were not asked questions about their physical and mental health during interviews. Consequently, fewer youth quotes appear in this subsection.
88 In other words, inherited predispositions to particular diseases and health issues.
89 This list was compiled using these resources: Kubik, Bourassa, & Hampton, 2009; Public Health, 2020; Raphael, 2008.
Turney, 2017). Experiences of social and economic inequality lead to health inequity in people’s lives.

It is important to recognize how historical roots of discrimination manifest in unjust health outcomes for Black, Indigenous, and other racialized peoples. According to Métis health researcher Carrie Bourassa et al. (2006), sexism, racism, and colonialism are dynamic processes that began historically, but continue to cumulatively and negatively impact the health status of racialized groups who live on the land known as “Canada” (Timothy in Srivastava, 2021).

Compounding effects of colonial murder, government created starvation on the plains, stolen unceded land, the pass system, banned potlatches, residential schools, segregated tuberculosis hospitals, forced sterilization, “starlight tours,” the “Sixties Scoop,” and the “Millenium Scoop” are evidence of an ongoing colonial project that continues to this day, with devastating effects.

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90 In the 1720s, British soldiers were promised ten guineas in bounty for every Mi’kmaq person they killed (Hornborg, 2008).
91 Despite guarantees of food aid in times of famine in Treaty 6, officials denied food as a means to ethnically cleanse a vast region (Regina to the Alberta border) to facilitate the Canadian Pacific Railway (Daschuk, 2013).
92 Unceded means that Indigenous people never ceded or legally signed away their lands to the Crown or to Canada.
93 Any Indigenous person who wanted to leave their reserve community, for any reason, had to have a pass approved by the reserve's Indian agent (Dickason & Newbigging, 2015).
94 Potlatch refers to the ceremony where Pacific Northwest Indigenous families gather and names are given, births are announced, marriages are conducted, and where families mourn the loss of a loved one (U’Mista Cultural Society, 2003).
95 Residential schools were boarding schools for Indigenous children in operation from the 1880s to 1990s, funded by the federal government and run by Christian churches (Truth and Reconciliation Commission, 2015).
96 For example, in 1964, over 70% of Keewatin Inuit were placed in hospitals for periods ranging from three months to nine years. Together with this practice, children were adopted to outside families without birth family consent or notice (Dickason, 1992).
97 Indigenous women continue to come forward with experiences of coerced sterilization (Stole, 2012).
98 Starlight tours refer to police picking up Indigenous people and driving them outside city limits. In the winter this can prove lethal (Razack, 2015).
99 The “Sixties Scoop” refers to “a child-welfare policy that removed Aboriginal children from their homes and placed them with non-Aboriginal families” (TRC, 2015, p.24) from the 1950s to the 1980s (Johnson, 1983).
100 Children continued to be removed from their homes in large numbers, and this later period is sometimes referred to as the “Millenium Scoop” (Maurice, 2014).
Young people who are apprehended by child protection services and placed under state guardianship have been subjected to maltreatment and harm at the hands of their caregiver(s)—be that a parent, relative, or other guardian. Existing child welfare policies instruct Children’s Aid Society (CAS) workers to intervene when removal is necessary and when removal is in the best interests of the child. Yet, apprehension itself is traumatizing, and the conditions young people face in foster care and group homes are not ideal (Doyle, 2007). Further, these practices have been scrutinized by Indigenous and racialized communities for whom apprehension has not necessarily responded to immediate "risk" or "harm" but instead has been connected to larger state goals, including its ongoing colonial project of assimilation and genocide (Sinclair, 2016).

While Indigenous children comprise 7.7% of the child population in Canada, they account for more than half (52.2%) of children under state guardianship. The Ontario Human Rights Commission (OHRC) (2014) reports 30% of children under state guardianship in the province are Indigenous, while only 4.1% of the child population is Indigenous. Some view the apprehension of Indigenous children and placement under guardianship of the state as a continuation of the residential school system (Sinclair, 2016). There are currently more Indigenous children under state guardianship than there were in residential schools at the height of their use (OHRC, 2014). These structural conditions, combined with youths’ histories of trauma, abuse, and neglect, contribute to poor mental and physical health outcomes in this population (Deutsch et al., 2015; Greeson et al., 2011; Zlotnick, Tam, & Soman, 2012).

Sociologists Youngmin Yi and Christopher Wildeman (2018) contend, race and poverty are strong predictors of child removal by the state. In Canada, First Nations children are 9.3 times more likely than other racial groups to be placed under state guardianship and Black children of Caribbean and African descent are 2.5 times and 1.9 times, respectively, more likely
than other racial groups to be placed under state guardianship (Contenta et al., 2016). Racialized families (20.8%) are also more likely to experience poverty than those racialized as white (12.2%) (OCASI, 2019). Black, Indigenous, and other racialized people contend with the daily grief of racism, classism, sexism, among other overlapping oppressions, which impact their health (Timothy in Srivastava, 2021). Given these circumstances, racialized populations experience worse physical and mental health outcomes (Barrington, 2010; Kubik, Bourassa, & Hampton, 2009; Mussell, 2020). Considering the circumstances that many children and youth under state guardianship face illuminates their exposure to cumulative material disadvantage and worse physical and mental health outcomes. Racialized children and youth ‘aging out’ of state guardianship are an especially vulnerable group.

**Mental Health**

Youth leaving state guardianship experience significant mental health challenges (Shaffer et al., 2016). Because youth who are apprehended by child protection services have experienced significant trauma, abuse, or neglect in childhood, compounded by considerable instability while under state guardianship, it is unsurprising that two thirds of these youth experience mental health challenges (Scully & Finlay, 2015), and one third have been formally diagnosed with a mental disorder (Kovarikova, 2017). By comparison, 20% of youth in Ontario’s general population experience some form of a mental health challenge (MHASEF Research Team, 2015).

**Isolation and Substance Use**

For many youth leaving state guardianship, ‘aging out’ abruptly severs their social supports. Many youth experience deep anxiety about entering adulthood without social support
(Kovarikova, 2017). Many report feelings of abandonment after they ‘age out.’ Arlo, 24 years old, explained how he felt abandoned after leaving state guardianship. He did not feel he was being prepared to transition to independence; rather, he felt he had been kicked out:

> And then I was on and off the streets for a little bit. I developed a sense of abandonment because nobody really wants me. I’m in care, care kicks me out and they don’t give a fuck, and nobody calls me, I don’t even have a phone, I get $50 a month and nobody gives a shit about it (Arlo, 24-year-old Latinx male).

Like Arlo, Riyad, 22 years old, also described feelings of abandonment. After he left state guardianship, all his supports were taken away which impacted his ability to build trust in new relationships:

> Half the time I felt like nobody loved me, you know? I just started building this thing in my head where I was like, fuck. I think people are just telling me they love me and they care about me but I don't think they do, you know, because if they did, why am I [in an emergency shelter]? Why am I where I am? You know? And that really had a big fucking part to play in my life. And it still bothers me. That's why when I'm at home and I'm living by myself and I get lonely, you know, and I start thinking about shit like ‘do people care, are people gonna call me,’—nobody calls me (Riyad, 22-year-old Middle Eastern male).

Many youth leaving state guardianship enter adulthood with few non-professional connections and feel completely alone. When asked who he includes in his support network now, David, 22 years old, explained he has two people he can count on: “My court support worker, my [Ontario Disability Support Program] worker. That’s about it. That’s all I have” (David, 22-year-old white male). It is noteworthy that both of the supports in David’s life are professionals. While it is important for youth to have people they can rely on as they transition to adulthood, there are meaningful limits to the support that a professional can provide. For example, professionals may only be able to provide support during their regular working hours. Similar limits are not in place in personal relationships.
Many youth describe experiences of extreme loneliness and isolation after ‘aging out.’

Riyad now lives independently in the community. He shared,

It's extremely lonely, I'll tell you that. I lean more towards electronics and stuff, mainly because it just kept me busy and it was a reason for me to be in my room, a reason for me to close that door, barricade it with the dresser, put on a projector and enjoy a movie without being fucking, you know, harassed by everybody, and my mom, you know. So, when I have my place now, I have a whole fucking movie theatre in my house, it's crazy. It's nice to be on my own. I do get lonely, very lonely. That's I think one of my biggest problems. And that leads to smoking cigarettes and smoking dope. No, dope is a different story. Yah, it's a fucking lonely life (Riyad, 22-year-old Middle Eastern male).

Like Riyad, many youth leaving state guardianship turn to substances to help cope with their extreme loneliness. Scarlett, age 18, shared that she used drugs to help her manage a difficult time in her life:

I was on drugs and stuff. This was a really bad time in my life and I was in [a] homeless shelter and stuff. I was just not in a good space. All I would remember was just being really fucked up and going to [the mall] (Scarlett, 18-year-old white female).

Similarly, Tomas, age 23, explained his issues with substance use are intensified when he is lonely or isolated:

I have addiction issues. It’s not good for me to be isolated in my own home [where] I can do whatever the fuck I want, whenever the fuck I want. That’s something I need to watch out for because boredom and idle time is dangerous, you know what I mean? (Tomas, 23-year-old white male).

Substance use is a common coping mechanism among youth contending with serious isolation and mental health challenges. Intervention is needed to disrupt this pathway, which ultimately renders many youth more vulnerable to criminalization and poor health outcomes. Part of the Housing First for Youth (HF4Y) strategy involves supporting young people who are living independently; with continuous supports, youth may combat feelings of abandonment, isolation,
and loneliness, and be better situated to thrive (Doucet, 2020). Interdependence, rather than independence, might better support youths’ wellbeing after ‘aging out’ (Doucet, 2020).

**Physical Health and Wellbeing**

People with high educational attainment are considered more actively engaged in society and they tend to make informed choices about factors that affect their quality of life (e.g., diet, smoking, exercise) (The Conference Board of Canada, 2021). Health and education are inextricably linked (PHO, 2008). It is widely recognized that those with higher educational attainment are healthier overall than those with less education (PHO, 2008).

People with higher educational attainment have lower mortality rates. This is because educational attainment may provide personal and interpersonal skills that are needed to produce good health (Luy, Aannella, & Wegner-Siegmundt, 2019). Health literacy is an especially important skill, which includes the ability to access and use health information to make decisions that promote and maintain good health (Clouston, Manganello, & Richards, 2017). People with higher education may be better positioned to receive preventative health messaging and make changes in their lives to action this messaging (Iwein, Hunt, & Looby, 2018). This includes altering behaviours like substance use. Higher educational attainment can also reduce financial uncertainty, hardship, and related stress.

Poor health and low income security can trap individuals, families, and communities in a vicious poverty-illness cycle (Lönroth, Tessier, Hensing, & Behrendt, 2020). Low-wage positions featuring manual labour, repetitive stress, and high levels of public interaction can also pose risks of occupational injury and communicable illness (Lay et al., 2017). Low-wage positions may also offer little additional health benefits, parental leave, or sick leave. Income
insecurity is also related to food insecurity and poorer health status (Tarasuk et al., 2015). Youth under state guardianship may benefit from additional support around school in order to succeed, transition into adulthood, and achieve strong health outcomes (PHO, 2008).

*Early Parenthood*

The average age of parenthood has increased in recent years among young people who were never under state guardianship, largely due to societal trends of young people staying in school longer and getting married later (Arnett, 2000). In contrast, young people who were apprehended by child protection services are more likely to experience teen or early parenthood (Shaffer et al., 2016). When youth leaving state guardianship experience early parenthood, the next generation may experience intergenerational processes of poverty and child removal. Experiencing early pregnancy exacerbates the challenges that young people face, often setting in motion the cycle of poverty they themselves experienced; Schaffer et al. (2016) report 20 to 25% of children who are raised in poverty will remain in poverty as adults. The trauma of child removal is also carried across generations, meaning the effects of one’s trauma may be passed down to their offspring, reproducing similar outcomes in generations that follow (Sinclair, 2016).

More positively, the benefits of anti-poverty measures are also carried across generations (Barr & Gibbs, 2017). Efforts to intervene and disrupt this cycle of poverty and government care can have lasting impact for young people. Policy choices have intergenerational ripple impacts not only on the intended recipient (usually an individual) but on rising and future generations (Mussell, 2021).
**Childhood Loss of Life**

Researchers Eugene Sabotta and Robert Davis (1992) contend, children who experience abuse are three times more likely to die in childhood. Premature loss of life is alarmingly high among those who experience childhood trauma, abuse, and neglect. In Ontario, between 2013 and 2017, the coroner listed 541 deaths involving child welfare; 102 of these children were Indigenous (Jackson, 2019). The coroner tracks deaths of children who, or whose family, had contact with a child protection agency within 12 months of their death. On average, 70 per cent of the children had an open agency file at the time of their death. Data was not collected systematically over this five-year period and many believe this number to be much higher.

According to a study in British Columbia (2009), the death rate for youth ‘aging out’ of state guardianship, ages 19 to 25, is 6.5 times higher than that of the general population. Youth are denied what they need to survive and thrive while under state guardianship. After they ‘age out,’ many are left to contend with traumas while isolated and alone. This is a horrific and unacceptable outcome for youth who were under the state’s “protection” and “care.”

**Access to Health Services**

During the difficult transition to adulthood, many youth identify barriers to accessing health services. To better support youth in accessing health services and to contribute to more positive health outcomes in this population, in 2014 the Ontario Association of Children’s Aid Societies (OACAS) implemented the *Aftercare Benefits Initiative*, funded by the Ministry of Children, Community and Social Services (MCCSS). Youth who were formerly under state guardianship have access to a range of benefits, including prescription drug, dental, vision, and

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101 Ontario’s data collection faces serious gaps, including the exact number of Indigenous children and youth under state guardianship in Ontario on any given day.
extended health benefits until they turn 25. Eligible youth between ages 21 and 29 years old also have access to counseling and life skills support services.

Without social support, however, many youth still experience barriers to accessing health services. Some may not know how to find and contact a family doctor, ophthalmologist, or dentist on their own. Some do not have phones. Many youth find it difficult to make and keep appointments. One social worker shared that, unless they drive youth they support to their appointments, youth will not attend:

That's also a challenge because, for my youth who are struggling with mental health, sometimes it means going to pick them up and taking them to the appointment and going with them because otherwise… Like when I picked up [this youth] this morning, she was still in bed but she knew I was coming. As soon as I got there and called her she got up and she came. But otherwise she wouldn't have gone to the appointment had I not taken her. So that's a challenge too (YIT 7).

Carmela explained that she had to learn how to schedule and keep track of appointments. In Carmela’s words:

Just being able to build knowledge and have people educate you on what independence looks like because sometimes we feel like it's so easy because we've been in the group home for so long and [we’re] able to get away with so much. If you don't show up for appointments—that's so basic right? If you don't show up for appointments with CAS, no worries, no disciplining, no nothing. But if I don't show up for doctors or dentist appointments, they're charging me $50 - $60 dollars, and I can't afford that. But we don't learn that. It's just little things like that. It really affected—those things affected my finances (Carmela, 24-year-old Black female).

Carmela felt like she did not have the knowledge needed to be independent after she ‘aged out.’ She never had to make appointments on her own while she was living in group homes. But after leaving state guardianship, she had to learn how to do these things on her own. The learning curve for independence was steep, and the price she paid when she made mistakes was high. It is
likely that other youth leaving state guardianship simply do not access services unless they have adequate support to do so.

Costs

Youth leaving state guardianship experience poor mental and physical health outcomes. This group’s associated healthcare costs are predictably high.

Homelessness and poverty reliably predict poor health outcomes. Individuals who experience homelessness have a higher exposure to illness, which may lead to more hospital visits, putting strain on Ontario’s healthcare system. In Canada, the average monthly cost to maintain a hospital bed is $10,900 (ACTO, 2017). If even 1% (n=5.8) of the approximately 580 youth who ‘age out’ and experience homelessness each year seek healthcare services at a hospital in Ontario which requires an overnight stay in a hospital bed, the average monthly cost to taxpayers would be $63,220; over one year, this cost would be $758,640.

Health expenditures are higher for individuals who have lower incomes. Many youth leaving state guardianship experience poverty. Those who do not complete high school have a high likelihood of remaining in poverty through their lives. In their study of costs associated with poverty in Toronto, researchers Alexa Briggs, Celia Lee, and John Stapleton (2017) report that individuals living below the poverty line (the poorest 20% of Torontonians) share 30.9% of total Public Health expenditures in the city. The proportion of health care expenditures decreases incrementally as income increases. Many youth leaving state guardianship who experience homelessness live below the poverty line and are represented in this group. The health care expenditures for youth leaving state guardianship are high (Shaffer et al., 2016).
Marvin Shaffer and colleagues (2016) contend another cost of not completing high school is reduced life expectancy. Premature loss of life is alarmingly high among those who experience childhood trauma, abuse, and neglect; one estimate in British Columbia is a rate 6.5 times higher than that of the general population. The federal government assigns a value of $7 million per life saved or lost when they evaluate proposed regulations or investments (Shaffer et al., 2016).

While a precise number of deaths per year is not available, even one life lost indicates a minimum of $7 million should be allocated to addressing the risks leading to premature death in order to be consistent with other government decision-making (Shaffer et al., 2016).

Furthermore, these monetary costs do not account for the immeasurable intangible costs associated with premature loss of life, including human suffering and grief. Preventive programing and systemic change are needed to reduce the risk of premature loss of life and to improve the overall health and quality of life for youth leaving state guardianship.
6. Conclusion and Recommendations

This report highlights five interrelated, structural issues that significantly impact the future prospects and quality of life for youth leaving state guardianship: (1) Education; (2) Employment, Poverty, and Income Support; (3) Housing and Homelessness; (4) Criminalization; and (5) Mental and Physical Health and Wellbeing. Key findings include:

- Low educational attainment limits youths’ employment and earnings potential;
- With limited education, youth leaving state guardianship are concentrated in the low-paying sector of the economy;
- With limited employment prospects, many youth ‘age out’ to poverty and rely on government income supports;
- Low educational attainment and poverty are connected to poor mental and physical health outcomes and criminal justice system contact;
- Poor mental health aggravates the impact of low educational attainment and poverty, and when linked to substance use, contributes to worse health outcomes and increases criminal justice contact.
- All of these factors contribute to a premature loss of life among youth leaving state guardianship.

All five of these issues are made worse by the abrupt severing of social support that occurs when youth ‘age out’ at 18.
Criminologists,\textsuperscript{102} neuroscientists and neurobiologists,\textsuperscript{103} cognitive and developmental psychologists,\textsuperscript{104} and sociologists\textsuperscript{105} have long recognized that adulthood does not begin abruptly at 18. Instead, comprehensive, interdisciplinary research supports the view that the transition to adulthood occurs over a period of time, lasting until mid- to late-20s for most (Arnett, 2000). Families play a crucial role in easing the challenges of transitioning to adulthood by providing youth the time needed to enter adulthood on a solid footing (Lee, Courtney, & Tajima, 2014). But youth leaving state guardianship are expected to be independent when they turn 18.

Reaching the age of majority often creates deep anxieties for youth about having to manage their finances and find secure housing while at the same time trying to finish high school and move on to post-secondary studies. While youth are supported in their preparation for independence, many youths’ support networks abruptly come to an end upon their 18th birthdays, meaning many youth do not receive meaningful social support \textit{during} and \textit{after} their transition to independence. An abrupt end of social support means that many youth leaving state guardianship have to learn how to live well independently all on their own—including cooking and cleaning to paying bills and making appointments for themselves. These basic life skills are

\textsuperscript{102} See discussion of the age-criminalization curve in section 5.4 Criminalization.

\textsuperscript{103} The frontal lobe is the youngest part of the brain, meaning it takes the longest to develop fully. Research confirms that the prefrontal cortex (found within the frontal lobe) takes over two decades to reach full maturity (Kostovic et al. 1988 & Sowell et al. 1999a cited in Diamond, 2002). Thus, developmental changes continue after the age of 18, into adulthood (Diamond 2002).

\textsuperscript{104} The frontal lobe is responsible for our high-level behaviours such as problem-solving, judgement, planning, attention, spontaneous response, impulse control, and emotional regulation (Prasad, Lins, & Ain 2016; Romer 2010). The prefrontal cortex is integral to selecting alternative ideas, making decisions, and accomplishing time sequenced actions (Prasad, Lins, & Ain 2016). The fact that these functions continue to develop into adulthood is significant for our cognitive development, but also for our social and emotional development, too (Diamond 2002). Reduced judgement, impulse control, and emotional regulation are some of the long-documented behaviours associated with criminogenic propensity (Akers, 1991 and Gottfredson & Hirschi, 1990 cited in Jenkins, 2018). That these functions are continuing to develop beyond age 18 in many young adults helps explain the relationship seen in the age-criminalization curve (Prasad, Lins, & Ain, 2016).

\textsuperscript{105} Sociologists also recognize the existence of a period of prolonged transition between late adolescence and fully independent adulthood (Arnett, 2000; Shah et al. 2017). This period, which they have deemed “emerging adulthood,” helps to explain shifting societal trends in recent decades.
often things that individuals with familial support have modeled to them, that they receive support for, and that they have time to learn how to do on their own. Youth leaving state guardianship must learn for themselves.

Most youth leaving state guardianship find the transition to adulthood challenging. The adverse outcomes among this population are well documented, including low educational attainment, homelessness, and poverty. These circumstances render many youth leaving state guardianship vulnerable to contact with the criminal justice system. All of these conditions are exacerbated by youths’ histories of trauma and abuse. Unsurprisingly, approximately two thirds of youth leaving state guardianship contend with mental health challenges (Scully & Finlay, 2015) and many contend with substance use dependencies (Bala et al., 2015).

The effects of the trauma, abuse, and neglect youth experience that led to their apprehension by child protection services are further compounded by the considerable instability they experience while under state guardianship. This instability continues when youth ‘age out,’ which means many enter adulthood on a precarious footing. This population experiences worse mental and physical health outcomes than those who were never under state guardianship. Premature loss of life is alarmingly high among those who experience childhood trauma, abuse, and neglect. This outcome is particularly grave and illuminates the effects of cumulative systemic failures.

The evidence is clear: Youth under state guardianship need continuous support that spans beyond their 18th birthdays. They also need more time to achieve independence. Policies that dictate support be cut off when youth reach particular ages must come to an end. The state must take their parental responsibilities seriously; and those responsibilities cannot simply end once a young person turns 18. This report further highlights the systemic failures that underscore the
adverse outcomes common among youth leaving state guardianship. With meaningful intervention and systemic change, these outcomes can be prevented. Specifically, we recommend:

**RECOMMENDATION # 1**

**Provide holistic support; create conditions that make educational success possible.**

Provide holistic support to youth including living costs, advocacy, mentoring, counselling, community connections, and social support. Holistic support means a one-stop-shop where youth can access all of the supports to meet their basic needs first, and then be able to meet their aspirations and other life goals.

**RECOMMENDATION # 2**

**Remove barriers to seeking and staying in educational programs.**

This includes waiving tuition and fees for programs (adult high school equivalency and post-secondary). Child-care subsidies should be given to parents seeking education. Removing barriers means understanding the unique challenges confronting individual youth and providing solutions to help remove barriers to allow them to meet their educational and other life goals.

**RECOMMENDATION # 3**

**Provide close mentorship to guide youth through education programs.**

Youth under state guardianship may be the first generation in their family to complete high school or seek post-secondary education, and they may lack the guidance that other youth receive from families with these intergenerational benefits. This mentorship includes close
support to help youth apply for programs, understand how to succeed, and work through challenges in order to stay in programs.

RECOMMENDATION # 4

Value alternative ways of knowing.

Indigenous epistemologies are distinct from dominant western worldviews. Acknowledge, resource, and celebrate Indigenous worldviews in child welfare policy and practice. This means providing culturally specific support and mentorship for Indigenous youth under state guardianship, in support of educational plans and other life goals. It also means moving away from language and values which centre western worldviews at the exclusion of Indigenous ones.

RECOMMENDATION # 5

Prioritize permanent and long-term caregiver placements.

Relationship-based housing options provide a baseline of stability and support to youth that mitigate the likelihood of longer-term adverse outcomes. Youth in permanent or long-term and stable homes experience improved academic achievement, job retention, and mental health. Housing stability is critical to improving mental health for youth who have suffered trauma, abuse, neglect, and inconsistent guardian care.

RECOMMENDATION # 6

Implement the Housing First for Youth (HF4Y) philosophy.

This philosophy underscores housing as a basic right. When youth are supported with the basic necessities of life, including housing, they are better positioned to thrive. The HF4Y approach
prioritizes finding youth safe and suitable housing when they are ready for independent living and providing the necessary supports to keep them housed.

**RECOMMENDATION # 7**

**Extend Continued Care and Support for Youth (CCSY) benefit.**

Increase the CCSY benefit to match the cost of living expenses for young people ‘aging out’ of state guardianship. Extend the CCSY benefit up to age 25, at minimum, for all youth leaving state guardianship. Youth who are supported in finding safe, affordable, and sustainable housing and who have their basic needs met can focus on achieving their life goals. Increased support further improves youths’ overall quality of life.

**RECOMMENDATION # 8**

**Address the criminalization of youth.**

Continue supports, like case conferencing and requiring CAS representatives to attend court appearances, for youth who ‘age out’ and are criminalized. Prioritize and increase access to community-based diversion programs and connect youth with treatment and support. Incarceration, both pre-trial and post-sentencing, should be avoided. Bail and probation conditions that set young people up to fail must be addressed. Focus should shift away from retribution toward restoration and transformation.
RECOMMENDATION # 9

Expand and continue mental health support.

Support the emotional and mental health of youth leaving state guardianship. Increase access to trauma-informed supports and ensure support is ongoing. Provide all youth leaving state guardianship with the Aftercare Benefits Initiative; continue counseling and life skills support services without an age cut-off for youth 25+.

RECOMMENDATION # 10

Monitor and evaluate youths’ progress and needs over time.

Youths’ progress should be monitored and evaluated on an ongoing basis to understand what programs, advocacy, and systemic changes best support youth, and where improvements are necessary. Create surveys to monitor the health and wellbeing of children, youth, and adults; use this data to inform policy and practice. This process ensures timely and responsive interventions as youths’ needs change.
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Chapter 6: Summary and Conclusions

Reflections on “Welfare” and “Justice”

Introduction

At an event hosted by the Ontario Children’s Advancement Coalition (OCAC) for Children and Youth in Care Day (May 14), the organization’s co-founder, Cheyanne Ratnam shared her personal experiences in the child welfare system, as well as with youth homelessness and the youth justice system. She emphasized the interconnectedness of systems: All children and youth are already “at potential.” We need to move away from individualized and deficit-oriented perspectives\textsuperscript{106} that imply children bear the responsibility for the adversity they face after leaving care. Instead, we need to better understand how state institutions create the conditions and circumstances that lead these young people toward adversity (Ratnam, 2021). This dissertation elucidates the interconnectedness between the child welfare and criminal justice systems in the lives of young adults (ages 18 to 24) who have ‘aged out’ of care and offers an in-depth analysis of the pathways between the two systems.

A close look at the conditions youth face while in care and the circumstances many ‘age out’ into reveals the significant systemic impact in youths’ lives. Comparisons are made between the experiences of those who have familial support versus those who do not; these comparisons make clear that for most youth leaving care, the adverse outcomes they face are a result of cumulative systemic failures. Consequently, this research troubles dominant understandings of

\textsuperscript{106} Deficit-oriented approaches suggests that, if youth experience adverse outcomes like homelessness or criminalization, these outcomes are tied to the choices and behaviour of the individual youth. Moving toward a strengths-based approach, such as Appreciative Inquiry (Zandee & Cooperrider, 2008), recognizes the influence of systems in peoples’ lives that produce particular circumstances and outcomes.
the child welfare system as “caring” and “protective” and of the criminal justice system as a bearer of “justice.”

Each manuscript is informed by qualitative, critical race phenomenological methodologies. This integrated methodological approach prioritizes experience as crucial to understanding reality for differently situated individuals (Woodson, 2015). This research recognizes that race is central to organizing experience. With this understanding, I was able to think critically about the ways participants’ experiences were shaped by their race. The perspectives of the three participant groups were woven together in the analysis to shed light on justice system processes, but the experiences and voices of youth were centred. Borrowing from the counter-storytelling tradition (Solórzano & Yosso, 2002), youth were treated as experts with valuable insights about legal processes. Their collective voices effectively illuminated moments in the legal process where young people leaving care are uniquely disadvantaged.

**Intersections of Race, Mental Health, and Care Status**

Using an intersectional theoretical framework in manuscript one revealed important race-based differences in how young peoples’ mental health symptoms are interpreted and reacted to by police officers and bail court actors. Comparing the experiences of white and racialized youths’ experiences of contact with the police indicated racialized youth are often met with punitive responses as their mental health symptoms are perceived as “dangerous,” and “risky.” These findings are consistent with prior research documenting instances of police mis/interpreting the behaviours of racialized youth as “aggressive”, “hostile”, “threatening”, and “dangerous” (Konold et al., 2017; Sagar & Schofield, 1980; Watson & de Gelder, 2017).
In bail court, stereotypes about mental illness are used to frame accused experiencing mental health challenges as “risky.” Mental illness then becomes a risk factor the court needs to manage, commonly through use of treatment conditions. Yet, these conditions are often inappropriate at this stage and lead to more surveillance and breaches which keep mentally ill individuals ensnared in the justice system. When the accused is racialized and mentally ill, assumptions about their race, and racist assumptions about the racial group they belong to, further influence decision-making in ways that disadvantage racialized accused. Consequently, racialized young people leaving care who contend with mental illness are most disadvantaged by discriminatory bail court practices, based on their social location (Natapoff, 2017).

**Risk and Release in Bail Court**

In manuscript two, Douglas’ (2003) cultural theory of risk illuminates socially constructed and relative framings of “riskiness” in bail court which disadvantage youth leaving care. Specifically, the absence of a support network and community ties are frequently interpreted as risk factors by courtroom actors, and the fast pace and administrative orientation of bail courts prevents the necessary nuance or context to be introduced that can explain why youth leaving care lack supports, that would mitigate their “riskiness” (Feeley & Simon, 1992, 1994). Courtroom actors’ assumptions about those who lack stable networks of support frequently lead to a circumstance where more restrictive forms of release, like sureties, are required in order to give the court assurance that a young person can be safely released into the community pending the resolution of their case. This circumstance creates unique disadvantages for those who do not have familial or other stable adult supports in their lives, a circumstance that may affect some youth in the general population, but that impacts all youth leaving care.
**Structural Risk Factors**

The third manuscript is a public policy report that highlights interrelated, structural conditions that often culminate in criminalization and poor health outcomes for youth leaving care. The five factors of focus include: (1) Education; (2) Employment, Poverty, and Income Support; (3) Housing and Homelessness; (4) Criminalization; and (4) Mental and Physical Health and Wellbeing. This report illuminates the systemic shortcomings of available supports youth receive as they prepare for independence, such as life skills training and monthly financial stipends. These supports are necessary, but often expire once youth reach a certain age. Furthermore, in the absence of a stable home and ongoing meaningful social support during and after their transition to independence, these supports have limited efficacy. As evidence, more than half of youth leaving care experience adverse outcomes, including low educational attainment, limited career prospects, homelessness, and poverty. These conditions are often exacerbated by youths’ histories of trauma and significant mental health challenges. These circumstances result in high rates of premature loss of life within this group of youth; this outcome is particularly grave and highlights the cumulative failures of the child welfare system.

This report contributes to ongoing efforts to reform child welfare policies and transform the lives of those in and leaving care, adding to calls for an end to arbitrary age cut-offs and a move to instead support youth to feel ready to leave care once reaching recognized markers of adulthood, such as financial and housing stability. As a project of public knowledge mobilization, this report will inform readers about the adverse outcomes youth face, and impress upon them the need to stop thinking about achieving independence as the ability to survive alone. Instead, youth must maintain supports that will help them thrive as independent adults. What youth leaving care need is interdependent support to succeed (Doucet, 2020).
Implications of These Findings

Risk, Actuarial Justice, and Cumulative Disadvantage

Young peoples’ unique histories and personal characteristics are often absent from the bail court process. This removal is rationalized given the focus of bail court on expedient administration, rather than justice, which comes later in the legal process (Myers, 2015). The bail decision is focused on whether to release or detain accused individuals who are to be presumed innocent. In contrast, the post bail process is concerned with determining whether the accused is guilty or not guilty. The information needed to make each decision is different: While the bail decision represents a prediction of future risk, the criminal trial decision is based on evidence of past behaviour (Myers, 2009). In the pursuit of justice, trial judges are tasked with objectively weighing evidence presented by the defence and Crown to determine whether the accused is guilty.\(^\text{107}\) Because the bail decision is administrative in nature, bail court justices do not evaluate evidence that is reserved for trial, but instead rely on actuarial processes to assess the accused’s riskiness if released.

Because there is no effort or time at the bail stage to understand the reasons which may have led an accused to come into conflict with the law, the court relies on typifications—or shared understandings (Moscovici, 1976)—about an accused’s neighbourhood and appearance for example, to inform their decision-making. The practice of treating individuals in the aggregate, though useful to keep the court moving, leads to disparate outcomes for differently situated individuals (Hannah-Moffat, 1999). These disparities suggest that pragmatism and

\(^{107}\) Importantly, very few cases in Ontario are resolved by way of a criminal trial. In the Ontario Court of Justice in 2020 for example, approximately 66.6% of adult cases were resolved by way of plea bargaining compared to 2.9% of cases that were resolved with a trial (OCJ, 2020); most criminal cases are resolved through plea bargaining, a process where the defence and Crown negotiate and enter a guilty plea.
efficiency are not neutral endeavors, and that “risk”—the very core of the bail decision—is subjected to perception bias by justice system actors.

How risk is framed in bail court is contingent on the interpretation of courtroom actors, many of whom have not been through the care system themselves and thus have limited understanding of what being in care really means. This process reveals power that comes with interpretation: Those who are responsible for interpreting risk hold the power to define risk. The definitions adopted have considerable impact for those who are defined as risky. Consequently, rather than objective, static, and timeless, the definitions of risk that pervade bail court processes are “ambiguous, fractured, and flexible” (Hannah-Moffat, 1999, p.71), and contingent upon courtroom actors’ cultural, political, and moral evaluations of behaviours and events (Simon, 1994). Far from neutral or objective, assessments of risk are rooted in actors’ subjective opinions of behaviour, which in practice renders some accused “risky” and others “releasable” (Hannah-Moffat, 1999).

The Racialization of Risk

It is important to consider the place of race in a colourblind system that excludes race from its vernacular. According to Hannah-Moffat (1999), when understandings of risk are applied uniformly across entire populations, varied outcomes result based on an accused’s race, gender, and other identifying characteristics. When the circumstances of the individual offender and their offense are de-emphasized and focus shifts to using typifications about the accused to predict their future risk, there is opportunity for racist attitudes to enter the risk equation (Feeley & Simon, 1992). These attitudes permit racialized individuals to be deemed riskier than others, but because they are articulated in raceless terms, racism remains unidentifiable (Goldberg, 2015).
This research demonstrates how justice system actors’ assumptions about racial groups influence decision-making in the early stages of the legal process to the disadvantage of racialized accused. This practice amounts to habitual racism embedded in bail court practices under the guise of efficiency. These findings support Natapoff’s (2017) argument that those concentrated in the bottom of the penal pyramid—the vast majority of individuals who are in conflict with the law—are treated in the aggregate, which has the effect of shifting focus away from the individual and instead targeting entire categories of individuals who are perceived to be risky (Hannah-Moffat & O’Malley, 2007; Kellough & Wortley, 2002; Yanow, 2015). While this practice disadvantages all youth leaving care, racialized youth are most vulnerable because they are most often perceived as more risky.

Risk and Trauma

This research demonstrates how the nexus between youths’ traumatic past and criminogenic present are rarely explicitly acknowledged in the early stages of the legal system. When a young person’s care status is discussed, this information is treated as secondary to the criminogenic behaviour itself. Drawing on typifications frames young peoples’ vulnerabilities as “risk” and “danger” factors that are frequently met with more restrictive and punitive responses; this is especially the case for racialized youth. Focusing exclusively on the criminogenic act paints an incomplete picture of these young peoples’ lives. And while consequences are important, this focus limits the shape that accountability and responsibility can take, privileging punishment as the only reasonable response (Garland, 1990). This research makes clear that the state must expand its thinking when it comes to justice, moving beyond punishment, to think more broadly about what accountability means for youth leaving care.
When the State is Your “Parent”: Unique Disadvantages Faced by Youth Leaving Care

Though the Bail Reform Act (1972) does not mandate a surety for release, the necessity of a fit surety has become the standard condition for release in Ontario (JHSO, 2013). Consistent with the findings of Yule and Schumann (2019), participants’ experiences demonstrate there is a presumption of release with a surety at work in Ontario bail courts, a practice which circumvents the ladder principle (Criminal Code, section 515(2)). Myers (2019) found that most often (72.8% of cases), parents or other family members act as sureties. The court seems to assume that accused have a network of available supports who can act as a surety (Pelvin, 2017). Pelvin (2017) troubles this assumption, arguing that this belief is rooted in normative assumptions of kinship networks which do not apply to youth leaving state guardianship. For youth leaving care, a surety condition is nearly impossible to meet. Most youth have virtually no one in their lives to act in this capacity. Having a fit tie to the community then, results in the release of some accused and the detention of others.

Pelvin (2017) contends the court ignores the structural reasons why youth leaving care lack community ties and then uses logics of risk assessment to rationalize their detention. In the absence of stable, non-professional adults in youths’ lives who are available and suitable sureties, youth are frequently held in pre-trial detention while defence counsel craft a release plan that pre-emptively addresses the Crown’s concerns. Consequently, youth leaving care are held in detention for longer than those who have a social network of support. This trend is concerning for several reasons. First, it suggests that vulnerable youth are being punished for their disadvantage by having to spend longer periods of time in remand custody (JHSO, 2021). Second, it suggests young people are being imprisoned at this early stage of the legal process when they are to be presumed innocent. The presumption of innocence exists because
punishment in all its forms is significant and the deprivation of one’s liberty should not be taken lightly. Imprisonment in pre-trial detention amounts to a pre-conviction punishment. And third, this practice contravenes both the ladder principle and the presumption of release. The result is young adults with previous experience of state guardianship are frequently required to spend more time in custody so defence counsel can craft a more onerous release plan that addresses their perceived “riskiness.”

While there are instances where requiring a surety is necessary and therefore appropriate, the court should minimize its use to these instances only. Furthermore, when a surety is deemed necessary, the court must move beyond normative assumptions of kinship by expanding their thinking about who is suitable to act in this capacity. This research contributes to the body of literature that critiques the appropriateness as well as the overuse of sureties in Ontario (JHSO, 2013; Myers, 2009, 2019; Yule & Schumann, 2019) by highlighting the unique disadvantage created for youth leaving care.

Limitations and Directions for Future Research

Limitations

The findings in this dissertation are important but have limited generalizability given the relatively small sample. The small sample size is a reflection of the challenges I experienced during recruitment. When recruiting youth for example, I had the most success by connecting with youth who were referred by social workers. Yet, this arrangement required building connections with community organizations first, social workers next, and then connecting with workers [monthly] to ask whether they knew of any youth who wanted to participate. I am grateful to the workers who supported this research and referred youth to participate, however, I
had not anticipated the prospect of working with social workers as gatekeepers in the field, or the extra time this would add to my fieldwork.

Further impacting the generalizability of these results is that this study relied on targeted sampling in a concentrated region, the Greater Toronto Area. To be able to speak more reliably to youths’ experiences in Ontario, this study must be replicated in multiple cities across the province, accounting for the urban/rural divide as well as geographic variation. The John Howard Society of Ontario’s (2021) study of youth bail processes in Ontario found significant regional variation. A similar study for the young adult population is needed that can elucidate differences between the youth and adult bail systems, as well as account for regional differences.

Furthermore, there are currently 50 organizations across five regions in Ontario that employ Youth-in-Transition workers, a random sampling approach across the province would add more youth and YIT workers perspectives to this research area, coming from very different local contexts.

The insights offered by the lawyers who participated in this study were valuable and illuminating. Yet, these findings are also limited as they are based on a small sample. While the General Counsel’s Office of Legal Aid Ontario granted approval for individual Duty Counsel Offices to participate in this study, at the approval of each director, Duty Counsel’s time is stretched thin given their high caseloads and busy days in court; many Duty Counsel I spoke with generously made the time to meet with me during their lunch breaks. In the future, a shorter interview or survey instrument may be useful to offset the time commitment needed to participate and hopefully invite more participation.

It was also challenging to find Crown Attorneys who were willing to participate in this study. The Ministry of the Attorney General in Ontario does not have a formal process to review
requests for research. This systemic barrier made it nearly impossible to connect with Crown Attorneys. I am grateful to the Smart Justice Network of Ontario for supporting this research; though small in number, the insights of the two Crown Attorneys helped to paint a clearer picture of the reality of bail courts.

Given the documented overrepresentation of Indigenous children and youth in both systems, it is important to note the lack of Indigenous voices and perspectives in this work. Efforts were made to recruit youth who have experience in both systems, however, I did not conduct targeted recruitment of Indigenous youth. The lack of Indigenous perspectives and voices are noticeably missing from this work and limits its overall generalizability. Future research should seek to integrate Indigenous perspectives, but must do so ethically through respectful dialogue, consultation, and collaboration with Indigenous communities, as well as inclusion of Indigenous methodologies.

**Directions for Future Research**

The three manuscripts provide a description of the challenges young people face that lead to their criminalization, as well as their experiences in the early stages of the criminal justice system, but not necessarily a complete or total picture of these experiences (Moustakas, 1994). Future research would benefit from continuing to centre the voices of young people through qualitative interviewing and focus groups. To offer a more fulsome picture of youths’ experiences, future research should also include more stakeholders, including judges and justices of the peace, police officers, foster parents, and group home staff.

This dissertation demonstrates there is limited data available that tracks the outcomes of young people leaving care in Ontario; even less data is available for those who come into conflict
with the law. More research is needed to determine whether these findings are true for the broader youth leaving care population. A longitudinal study is needed that will track the outcomes of youth leaving care for an extended period of time (Moustakas, 1994). Longitudinal data can offer a glimpse into trends among youth leaving care, including areas where youth are doing well and areas where more support is needed. This data would also be helpful for practitioners to ensure that the supports youth receive are informed, evidence-based, integrated, and holistic.

With more information, it will be possible to determine whether racialized and mentally ill youth leaving care are disproportionately denied bail or, when released, are given harsher conditions which might invite breaches, resulting in further criminalization. More research is also needed to understand the full weight of surety requirements and other restrictive conditions of release for these youth. Future avenues of research may consider other processes in the early stages that uniquely impact this population and expand to include youths’ experiences beyond the bail stage of the criminal justice system. Trauma-informed approaches to justice are also worth exploring. Such approaches infuse understanding of the impacts of trauma into all aspects of organizational functioning so that practices, policies, and environments will foster feelings of safety for those who have experienced trauma (Branson et al., 2017). A trauma-informed approach would have a tremendous impact for youth leaving care, but would likely be beneficial for all individuals involved in the criminal justice system. Ultimately, more information is needed to disrupt the cycle of criminalization that is too common among racialized youth in and leaving the child welfare system. Youths’ testimonies make clear, once the cycle of criminalization begins, it is increasingly difficult to stop (Abramson, 1972).
Conclusion: Reflecting on Protection, Punishment, and Justice

In Ontario, child welfare and youth justice are both administered by the Ministry of Children, Community and Social Services, which acknowledges on a systemic level the interconnected nature of welfare and justice. In practice, however, child welfare often equates to protection and youth justice to punishment; the two systems operate in tandem. Children and youth who experience significant harm at the hands of their caregivers may be removed from their familial homes by the Ministry’s child protection services. But when these young people, now under the “care” of the state, behave in ways perceived to be “acting out” as a result of past trauma or in response to their circumstances, law enforcement are often involved. The protection system relies on the punishment system to intervene, shifting some of the parental responsibility out of the welfare domain and into the justice domain. Young people under the state’s care are frequently met with behaviour management responses rather than trauma informed ones, which effectively ignores the host of reasons why they are in care in the first place (Scully & Finlay, 2015), and makes clear the limitations and failures of the state as a “parent.” Kovarikova (2017, p.6) suggests, “If the child protection system was a parent, it may well have its children taken away.”

Young people leaving care are among the most vulnerable people in our society. The structurally imposed conditions these youth experience in care set them up for adversity when they start their adult lives. Many youth leaving care do not complete high school, and experience poverty, homelessness, and criminalization in early adulthood. Once these cycles start, they are difficult to disrupt. The majority of youth also contend with significant mental health challenges. These outcomes illustrate the broad, systemic failures of the child welfare system. This dissertation makes clear that youth leaving care need more time to achieve independence and
require continuous support that spans beyond their 18th birthdays. There is a need for fundamental change in the way we “support” young people who are leaving care. And this support cannot simply end once a young person becomes a legal adult: A “parent’s” responsibility to their child should not have a time limit.

Better outcomes may be possible for youth leaving care if the state took their role as “parent” more seriously. For youth under the state’s guardianship, the Children’s Aid Society functions as their parent. But there are significant challenges for youth when the people responsible for their care are professionals. Within a professional role, CAS workers are limited in the breadth and types of support that they can offer to young people. There are professional restraints that impact this relationship including working hours, professional boundaries, and heavy caseloads. These same limitations do not exist in natural parent-child relationships. For youth in care, these circumstances lead many to feel abandoned, uncared for, and unloved. So much so that Doyle (2007) questions whether young people who are on the margins of apprehension ought to be kept with their families to avoid the tumult of life in the care system; he concludes whenever possible, children and youth should be kept with their families of origin and supported therein. Even when challenges exist in the familial home, Doyle (2007) suggests that the stability of a continuous home can, in some cases, offset the instability of care and may ultimately better support youths’ development and wellbeing. Existing child welfare policies in Ontario reflect a similar orientation, though the most vulnerable—those experiencing significant harm warranting apprehension—are not protected. They are the most in need of protection but are apprehended only to be re-traumatized by the child welfare system itself.

Adverse outcomes combined with youths’ feelings about the “care” system highlight a key component that is missing from the artificial “parent”/child relationship created between the
state and the young people under their guardianship: love (Elman, 2020). In *All About Love*, bell hooks (2001, p.19) contends, “there can be no love without justice.” While the child welfare system protects children from immediate harm in their familial homes, and the criminal justice system punishes those whose behaviour is deemed criminal, justice is largely absent from the protection-punishment equation. Justice and punishment are treated as though they are synonymous, but they are not. Justice is all encompassing; its presence implies fairness, rightness, and equity. From this broader perspective, the outcomes that young people leaving care face are *unjust*. A broader understanding of justice is needed to adequately meet the needs of young people taken into care.

Similar to Wadhwa (2016) who argues restorative justice can disrupt the school-to-prison pipeline, the restorative justice tradition demonstrates considerable promise for disrupting pathways from care to criminalization. Restorative justice functions as both a philosophy and practice, rooted in Indigenous epistemologies, which prioritizes collective responsibility for building and repairing community (Wadhwa, 2016). On this approach, *justice* extends beyond the individual. In contrast to retributive justice which focuses exclusively on punishing the individual, restorative justice focuses on healing and accountability to achieve justice (Wadhwa, 2016). Harm and healing are perceived in the context of relationships, and thus all who are impacted, as well as the broader community, are invited into the process. The restorative justice tradition aligns with Doucet’s (2020) understanding of interdependence, which is needed for youth leaving care to thrive.

The state, as these young peoples’ parent, is failing to meet their responsibilities. The criminal justice system too often intervenes and punishes young people—thereby excusing the state from their role in creating these circumstances. While the child welfare system creates the
structural conditions that render many young people leaving care especially vulnerable to justice system contact, their parental role ends when youth turn 18 and they are not held to account for these outcomes. The state must be held accountable for “their” children. All parents—including the state—share a responsibility, “to give children love. When we love children we acknowledge by our every action that they are not property, that they have rights—that we respect and uphold their rights. Without justice there can be no love” (hooks, 2001, p.30). Punishment is not the appropriate response to address the conditions created by the child welfare system that render young people vulnerable to criminalization. The child welfare system must orient toward justice for these children in order to live up to its promise to protect them.
References


Watson, R. & de Gelder, B. (2017). How white and black bodies are perceived depends on what emotion is expressed. Scientific Reports, 7(1), 1-12.


Legislation Cited:

Bail Reform Act, S.C. 1970-71-72, c. 37

Appendix A: General Research Ethics Board (GREB) Approval

May 10, 2019

Ms. Marsha Rampersaud
Ph.D. Candidate
Department of Sociology
Queen's University
Kingston, ON, K7L 3N6

GREB Ref #: GSOC-175-19; TRAQ # 6026076
Title: "GSOC-175-19 To Protect or to Punish: The Experience of Youth in Care in Ontario Bail Courts"

Dear Ms. Rampersaud:

The General Research Ethics Board (GREB), by means of a delegated board review, has cleared your proposal entitled "GSOC-175-19 To Protect or to Punish: The Experience of Youth in Care in Ontario Bail Courts" for ethical compliance with the Tri-Council Guidelines (TCPS 2 (2014)) and Queen's ethics policies. In accordance with the Tri-Council Guidelines (Article 6.14) and Standard Operating Procedures (405.001), your project has been cleared for one year. You are reminded of your obligation to submit an annual renewal form prior to the annual renewal due date (access this form at http://www.queensu.ca/traq/signon.html; click on "Events;" under "Create New Event" click on "General Research Ethics Board Annual Renewal/Closure Form for Cleared Studies"). Please note that when your research project is completed, you need to submit an Annual Renewal/Closure Form in Romeo/iraq indicating that the project is 'completed' so that the file can be closed. This should be submitted at the time of completion; there is no need to wait until the annual renewal due date.

You are reminded of your obligation to advise the GREB of any adverse event(s) that occur during this one-year period (access this form at http://www.queensu.ca/traq/signon.html; click on "Events;" under "Create New Event" click on "General Research Ethics Board Adverse Event Form"). An adverse event includes, but is not limited to, a complaint, a change or unexpected event that alters the level of risk for the researcher or participants or situation that requires a substantial change in approach to a participant(s). You are also advised that all adverse events must be reported to the GREB within 48 hours.

You are also reminded that all changes that might affect human participants must be cleared by the GREB. For example, you must report changes to the level of risk, applicant characteristics, and implementation of new procedures. To submit an amendment form, access the application by at http://www.queensu.ca/traq/signon.html; click on "Events;" under "Create New Event" click on "General Research Ethics Board Request for the Amendment of Approved Studies." Once submitted, these changes will automatically be sent to the Ethics Coordinator, Ms. Gail Irving, at University Research Services for further review and clearance by the GREB or Chair, GREB.

On behalf of the General Research Ethics Board, I wish you continued success in your research.

Sincerely,

Chair, General Research Ethics Board (GREB)
Professor Dean A. Tripp, PhD
Departments of Psychology, Anesthesiology & Urology Queen's University

cc: Dr. Nicole Myers and Dr. Sarita Srivastava, Supervisors
    Dr. Sarita Srivastava, Chair, Unit REB
    Celina Caswell, Dept. Admin.
Appendix B: Ministry of Children, Community and Social Services Research Approval

Ontario

Ministry of Children, Community and Social Services
Child Welfare and Protection Division
101 Bloor Street West
3rd Floor
Toronto ON M5S 2Z7
Phone: (416) 314-9462
Fax: (416) 326-8098

Ministère des Services à l'enfance et des Services sociaux et communautaires
Division du bien-être et de la protection de l'enfance
Secrétariat au bien-être de l'enfance
101, rue Bloor Ouest
3iè étage
Toronto (Ontario) M5S 2Z7
Tél : (416) 314-9462
Téléc : (416) 326-8098

SEP 2 0 2019

Marsha Rampersaud
rampersaud.marsha@queensu.ca

Dear Marsha Rampersaud:

Thank you for your correspondence to the Ministry of Children, Community and Social Services (the ministry) regarding the Youth-in-Transition Worker Program in Ontario. As the Acting Director of the ministry’s Child Welfare Secretariat, I have been asked to respond.

As you know, the Youth-in-Transition Worker (YITW) Program funds 66 workers in communities across the province to support young people as they transition out of care. The program is delivered by community agencies/organizations that support youth transitioning out of care to establish connections, resources and supports related to housing, education, employment, and life skills training available in the community. There are 19 Youth-in-Transition Workers dedicated to providing culturally appropriate supports to First Nation, Métis, Inuit and urban Indigenous youth, as well as six workers dedicated to supporting and providing services to youth from care who may be at-risk of and/or survivors of human trafficking.

There are currently 14 YITWs in 13 different community agencies in the East Region. Resolve Counselling Services located in Kingston currently provides services and supports to youth leaving care with one YITW. I would encourage you to reach out to them directly for further information. The other YITW agencies across Ontario and their corresponding locations are as follows:

Toronto Region

- Sherbourne Health Centre — Supporting Our Youth (Toronto)
- Covenant House (Toronto)
- Native Child and Family Services of Toronto
- Turning Point Youth Services (Toronto)
- Operation Springboard (Springboard) Toronto
- East Metro Youth Services (Toronto)
Central Region

- YMCA of Simcoe/Muskoka
- 360 Kids (York)
- YMCA of Greater Toronto-Peel
- YMCA of Hamilton/Burlington/Brantford
- Wyndham House Inc. (Guelph)
- John Howard Society of Waterloo-Wellington

East Region

- John Howard Society of Belleville & District (Belleville)
- Open Doors for Lanark (Smiths Falls)
- Wabano (Vanier)
- Tunngasvuvingat Inuit (Ottawa)
- YouTurn (Ottawa)
- Glengarry Inter-Agency Group Child and Youth Programs (Alexandria)
- Employment and Education Centre Youth Employment Assistance Headquarters (Brockville)
- John Howard Society of Kawartha Lakes and Haliburton (Peterborough)
- Youth Emergency Shelter (Peterborough)
- Nijikwendidaa Anishnaabekwewag Services (Peterborough)
- Dnaagdawenmag Binoojiiyag Child and Family Services (Hiawatha First Nation)

West Region

- YMCA of Hamilton/Burlington/Brantford
- Haldimand Norfolk REACH
- Niagara Chapter – Native Women Inc.
- Niagara Resource Service for Youth “The Raft”
- Youth Opportunities (London and Middlesex County)
- YMCA of Owen Sound Grey and Bruce
- Access County Community Support Services (Essex County)
- Legal Assistance of Windsor – WEFIGHT
- New Beginnings (Windsor)
- YWCA St. Thomas and Elgin
- Sarnia Lambton Rebound: A Program for Youth (Essex County)
- Six Nations of the Grand River Social Services (Brant)
- Mnaasged Child and Family Services (Chatham-Kent, Essex, Middlesex, Elgin, Lambton)
- Hamilton Regional Indian Centre
North Region

- Big Brothers, Big Sisters of North Bay and District
- HANDS The family HELP Network.ca (North Bay)
- Payukotayno: James and Hudson Bay Family Services
- Thunder Bay Counselling Centre
- Dilico Anishinabek Family Care (Thunder Bay)
- YMCA of Sudbury
- Employment Solutions - Sault College (Sault Ste. Marie)
- Ontario Native Women's Association (Thunder Bay and Sioux Lookout)
- Weechi-it-te-win Family Services (Rainy River)
- Kenora Chiefs Advisory Committee (Kenora)
- Kina Gbezhgomi Child and Family Services (Sudbury and Manitoulin)
- 'N'Swakamok Friendship Centre (Sudbury)
- Nogdawindamin Family and Community Services (Sault Ste. Marie)

I hope this information has been helpful to you and I appreciate your interest in understanding the experiences of youth leaving care. I wish you the best of luck with your PhD project.

Sincerely,

Tatum Wilson
A/Director, Child Welfare Secretariat
Appendix C: General Counsel’s Office, Legal Aid Ontario, Research Approval

Permission was received by email from Andrea Danon <danona@lao.on.ca> at the Legal Aid Ontario’s General Counsel’s office on Wednesday, July 17, 2019.
Appendix D: Participant Interview Guides

YOUTH INTERVIEWS

Introduction:
- Introduce myself
- Brief summary of research project
- Review Letter of Information and Consent Form
  - Honorarium
  - Use of digital recorder
  - Sign Consent Form
- Background questions:
  - Self-identify: age, race, gender, citizenship status

Transition to Independence:
- How old were you when you exited care?
- Can you tell me about how you prepared for independence?
  - Prompts: transition worker? Foster/biological family? Community organizations?
- Are any of these supports still in your life?
- Who would you include in your support network now? How/in what ways do they support you?
- Do you currently live on your own? (invitation to talk about their housing situation/relationship status)
- Are you enrolled in school now? (invitation to talk about whether high school was completed; continued to post-secondary)
- Do you have a job currently? (What do you do?)

Arrest and Charge:
- Did you have any charges before exiting care?
- Since exiting care, have you been charged by the police?
  - How many times? How many charges?
- Can you tell me about your [most recent] charge?
  - How old were you?
  - Were you arrested?
  - Were you released/detained after arrest?
- Did you let the arresting officer know that you have been in care? Why/why not?
- Did you let your CAS worker know that you had been charged? Transition worker? Any family members (foster/biological)?
- If detained:
  - What were the conditions like in detention? Can you take me through a typical day in remand?
  - Did you speak with [duty] counsel?
  - Were you able to make a call? Who did you call?
  - How long were you detained before your bail hearing?
  - Were you able to speak to a CAS/transition worker? Your family?
Preparing for the Bail Hearing:
- Did you speak with your counsel before your bail hearing? How many times? For how long?
- Did you speak with counsel immediately before the hearing? For how long?
- Did you talk to your counsel about your history in care? Did counsel ask you whether you had been in care?
- Did your CAS/transition worker OR family contact your counsel? Or vice versa?
- Aside from asking about your charge, what kinds of questions did counsel ask you?
- Were you able to see the proposed bail plan before the bail hearing?
- Did you discuss any conditions of release with your counsel before the bail hearing?
  - Were there conditions on your bail plan?
  - Did counsel explain the purpose of each condition?
  - Did counsel make a connection between the condition(s) proposed and the charge(s) at hand?
  - How did you feel about the condition(s)? [Did the condition(s) make sense to you? Did you feel like it/they were reasonable/fair?]
  - Did you ask questions about the condition(s)?
- What kinds of questions did you ask your counsel about the hearing?
- Were their responses helpful? Why/why not?
- Did anyone help prepare you for what to expect at the bail hearing? Who? What did they tell you?

Bail Hearing:
- Did you attend your bail hearing in person? OR did you participate remotely by video from remand?
- Were you able to wear your own clothes to the hearing?
- Did you have to wear handcuffs during the hearing?
  - [in person] Can you describe what the courtroom looked like? Where were you? Counsel? Crown? Justice?
  - [from remand] Were you able to see your counsel during the hearing? Were you facing the justice?
- Can you tell me what happened during the hearing?
  - Prompts: Did the justice speak to you directly? Did they speak to your counsel? Did you respond to questions? Did your counsel speak for you?
- What kinds of questions did the justice ask? Crown?
- Did anyone mention your history in care?
  - Who? What did they say?
  - Can you remember what the justice said in response?
- Did any of your friends or family attend the bail hearing with you? Who?
  - Did the justice speak to any of your friends/family during the hearing?
- Did your CAS/transition worker attend?
  - Did they speak to the justice? Your counsel?

Bail Decision:
- What was the bail decision in your case?
- Why do you think that this bail decision was given?
Can you remember the reasons given for your release?
Did the bail plan that was proposed before appearing in court change in court?
What were your conditions of release? [if any]
Did you raise any concerns about any of the condition(s)?
Were you able to comply with the condition(s) imposed?

If bail denied:
Can you remember the reasons given for your detention?
Were you able to ask questions about the decision? Who did you ask? Did this occur during the hearing? Did this occur with counsel after the hearing?
What do you think were the consequences/effects of this bail decision?
How long did you spend in remand before the end of your trial?
Describe the remand experience.

Processes in the Early Stages of the Justice System:
How would you describe your overall experience [from arrest to bail]?
What would you change about the process? Why?
What do you wish you knew about the process in advance that could have helped?

Ending Questions:
Thank you for being so generous with your responses.
“Is there something that you might not have thought about before that occurred to you during this interview?” (Charmaz 2014:66).
Is there something else you think I should know to understand the bail court experience?
Is there anything you would like to ask me?
YOUTH-IN-TRANSITION WORKER INTERVIEWS

Introduction:
- Introduce myself
- Brief summary of research project
- Review Letter of Information and Consent Form
  - Use of digital recorder
  - Sign Consent Form

Youth in Transition:
- How many youth in transition are you currently supporting?
- Do many of these youth have support from their [foster families/families of origin] during the transition to independence?
  - What other supports do youth in transition receive? (Support looks different for each youth, but what are some common forms of support)
- In what ways do you support youth transitioning to independence?
- Do you work collaboratively with their families/community organizations? How?
- What are the most important needs of this population of youth during their transition?

Coming into Conflict with the Law:
- If one of the youth you work with comes into conflict with the law, are you notified? By whom?
  - Arresting officer
  - Youth themselves
  - Other
- How can you support a youth who has come into conflict with the law?
  - Do you ever help support them by connecting them with legal representation?
  - Do YIT Workers ever act in the capacity of a surety?
  - Do you attend court with the youth?
- Do you speak with the youth’s lawyer? Crown Attorney? Justice of the Peace? on behalf of the youth in the early stages of the criminal justice process?
  - Do you initiate the conversation or are you contacted?
  - What kinds of questions are you asked?
  - What information do you bring to the [defence lawyer/Crown/Justice’s] attention about the youth?

Youth in Transition in the Criminal Justice System:
- In your opinion, do you think it is necessary for justice system actors to know that a young adult has been involved in the child welfare system? Why or why not?
  - At what point should care status be raised?
  - How do you think making room for this information might change the justice system process?
- Do you think that young adults who have been in care have a unique experience when it comes to their [treatment/experience/outcomes] in the early stages of the justice system? [What makes their experiences unique?]
o Do you think that the points you’ve raised are widely known among legal practitioners (police/lawyers/judges)?
 o How would you propose addressing these points?
 o What impact do you think addressing these issues might have for these youth?

Ending Questions:
Thank you for being so generous with your responses.
• “Is there something that you might not have thought about before that occurred to you during this interview?” (Charmaz 2014:66).
• Is there something else you think I should know to understand the bail court experience?
• Is there anything you would like to ask me?
DUTY COUNSEL INTERVIEWS

Introduction:
- Introduce myself
- Brief summary of research project
- Review Letter of Information and Consent Form
  - Use of digital recorder
  - Sign Consent Form

Youth in Care in the Early Stages of the Justice System:
- When a young adult (ages 18-24) has been arrested and charged, do you ever ask about whether they have been involved with the child welfare system? Why or why not?
- What information about the accused is most helpful to you in the early stages? Why?
  - Where does this information come from?
    - Arresting officer
    - Colleagues
    - Crown Attorney
    - Other/Combination
- If an accused’s care status is brought to your attention early on, does it have any impact on the process? Why [and in what way] or why not?
- Would it be helpful to you in your capacity as a Duty Counsel lawyer to learn this information [care status] about the accused early on? Why or why not?
- In your opinion, at what point in the process—from charge onward—does an individual’s care status become an important point of consideration? Why?
  - Do you think it is necessary to know this information early on? [at all?]
  - How do you think making room for this information might change the process?
- Do you see any differences between young adults who have been in care and their peers who have not been in care in the early stages of the justice system [in terms of their treatment by justice system actors/experience in the system/outcomes {likeliness of being charged; eligibility for diversion}]? [What are these differences?]
  - Do you think these differences are important to address? Why or why not?
  - How would you propose addressing the differences?
  - What impact do you think addressing these issues might have for these young people?
- Among your clients who you know have been in care, can you tell me about the differences between those who signed out of care at 16 versus those who aged out of or exited care at 18 [in terms of treatment/experience/outcomes]?

Risk Management:
- When you are developing the bail plan for an accused, what factors are important to you to bring to the attention of the Crown?
- Is care status a factor of consideration? How does this information affect the bail plan?
- How do you assess whether an accused poses a:
  - Flight risk?
  - Risk of offending if released?
  - Risk of bringing the administration of justice into disrepute?
- What are the most common risk factors considered at this stage?
Aside from the seriousness of the offence, what would contribute to an accused’s “dangerousness” leading to them being denied bail?

**The Law of Emerging Adults:**
In some US states, including Idaho, Illinois, and California, young adult courts have been created to address the needs of 18-24-year-olds who have come into conflict with the law. These courts were created to address the overrepresentation of this age group in the justice system, with preventive and rehabilitative aims in mind. Similar courts do not exist in Canada.

- What do you think about having Canadian criminal law recognize the 18-24 age group as a unique category, between youth and adult?
- Do you think that that this group has distinct legal needs? How are they different from older adults?
- How are/can the needs of young adults [be] recognized in our current court system? Is this already happening? How so?
- Can you imagine a piece of legislation, similar to the YCJA or Criminal Code, that would be distinct to this age group? Why or why not?
- Would it be useful or possible to have a separate court?
- How might such a court help/hurt some of these young people?
- Can you think of any structural or practical issues that would impact the feasibility of implementing such a court?

**Ending Questions:**
Thank you for being so generous with your responses.

- “Is there something that you might not have thought about before that occurred to you during this interview?” (Charmaz 2014:66).
- Is there something else you think I should know to understand the bail court experience?
- Is there anything you would like to ask me?
CROWN INTERVIEWS

Introduction:
- Introduce myself
- Brief summary of research project
- Review Letter of Information and Consent Form
  - Use of digital recorder
  - Sign Consent Form

Youth in Care in the Early Stages of the Justice System:
- When a young adult (ages 18-24) has been arrested and charged, do you ever ask about whether they have been involved with the child welfare system? Why or why not?
- What information about the accused is most helpful to you in the early stages? Why?
  - Where does this information come from?
    - Arresting officer
    - Colleagues
    - Accused’s counsel
    - Other/Combination
- If an accused’s care status is brought to your attention early on, does it have any impact on the process? Why [and in what way] or why not?
- Would it be helpful to you in your capacity as a Crown Attorney to learn this information [care status] about the accused early on? Why or why not?
- In your opinion, at what point in the process—from charge onward—does an individual’s care status become an important point of consideration? Why?
  - Do you think it is necessary to know this information early on? [at all?]  
  - How do you think making room for this information might change the process?
- Do you see any differences between young adults who have been in care and their peers who have not been in care in the early stages of the justice system [in terms of their treatment by justice system actors/experiences in the system/outcomes {likeliness of being charged; eligibility for diversion}]? [What are these differences?]
  - Do you think these differences are important to address? Why or why not?
  - How would you propose addressing the differences?
  - What impact do you think addressing these issues might have for these youth?
- Among accused persons who you know have been in care, can you tell me about the differences between those who have signed out of care at age 16 or 17 versus those who have aged out of or exited care at age 18 [in terms of treatment/experience/outcomes]?

Risk Management:
- When you are developing the bail plan for an accused, what factors are important to consider?
- Is care status a factor of consideration? How does this information affect the bail plan?
- How do you assess whether an accused poses a:
  - Flight risk?
  - Risk of offending if released?
  - Risk of bringing the administration of justice into disrepute?
- What are the most common risk factors considered at this stage?
• Aside from the seriousness of the offence, what would contribute to an accused’s “dangerousness” leading to them being denied bail?

The Law of EmergingAdults:
In some US states, including Idaho, Illinois, and California, young adult courts have been created to address the needs of 18-24-year-olds who have come into conflict with the law. These courts were created to address the overrepresentation of this age group in the justice system, with preventive and rehabilitative aims in mind. Similar courts do not exist in Canada.
• What do you think about having Canadian criminal law recognize the 18-24 age group as a unique category, between youth and adult?
• Do you think that that this group has distinct legal needs? How are they different from older adults?
• How are/can the needs of young adults [be] recognized in our current court system? Is this already happening? How so?
• Can you imagine a piece of legislation, similar to the YCJA or Criminal Code, that would be distinct to this age group? Why or why not?
• Would it be useful or possible to have a separate court?
• How might such a court help/hurt some of these young people?
• Can you think of any structural or practical issues that would impact the feasibility of implementing such a court?

Ending Questions:
Thank you for being so generous with your responses.
• “Is there something that you might not have thought about before that occurred to you during this interview?” (Charmaz 2014:66).
• Is there something else you think I should know to understand the early stages in the criminal justice process?
Is there anything you would like to ask me?