Department of Justice Canada | Ministère de la Justice Canada

Emerging Adults in the Justice System:

Brief Literature Review and Environmental Scan

Report Prepared for Justice Canada

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The views expressed herein are solely those of the author and do not necessarily reflect those of the Department of Justice Canada.

Canada

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Executive Summary

Advances in neuroscience as well as societal change have contributed to the recognition of an interim period between adolescence and adulthood, having implications for how the criminal justice system may most effectively respond to this age group.

Emerging adulthood, covering the period from 18 to 25 years of age,[1] describes a gradual transition from adolescence to adulthood, evidenced in part by the gradual development of the prefrontal cortex which governs reasoning, decision-making, judgement, and impulse control. This may be a factor in assessing culpability and moral-blameworthiness, and has implications for trial procedures and sentence administration. An understanding of brain development, including neuroplasticity and gender differences, is critical to the design and implementation of effective programming and services.

At the international level, the notion of a special approach to young adults in the justice system is well recognized. Young adults are referenced in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules - 1985), and Recommendations of the Committee of Ministers of the Council of Europe.

Most European countries have at least some special provisions in their criminal law for young adult offenders, whether it be the extension of juvenile law provisions, or mitigation of sentences imposed under the criminal law. Approximately half of the American states have established special policies for young adults within the adult criminal justice system,[2] including reduced sentencing options, young adult courts, separate prison facilities and records expunction provisions.

In Canada there is no formal legislative recognition of young adults in the criminal justice system; however, a brief survey of Federal-Provincial-Territorial justice officials and non-government organizations involved in justice services identified several initiatives focused on young adults.

The current literature makes the case for distinct approaches to this population with respect to the legal process, administration of sentences, case management, rehabilitative programming, and social supports. Recognition of the emerging adult brain as still developing and malleable means approaches to this population should capitalize on opportunities to support healthy brain development and encourage desistance from future offending. Interventions which may further compromise healthy brain/cognitive development, such as segregation[3] and other punitive approaches, should be avoided.

A distinct approach to young adults in the justice system, which recognizes and addresses developmental and rehabilitative needs, can and must also address accountability, public safety, and impact on victims of crime.

To ensure positive outcomes, potential changes to legislation, policy, and practice regarding young adults in the justice system must address risk factors and needs of this population and avoid measures which increase risk to reoffend. Special attention must also be given to ensuring legislative and policy/practice

[1] Arnett, J.J., 2004
[2] Stamm, A., 2017
[3] Correctional Investigator of Canada and Provincial Advocate for Children and Youth, Ontario, 2017, pp 25-27.

changes accommodate distinct needs of female, Indigenous, racialized, and non-binary young adults in the justice system.

Distinct approaches to young adults in the justice system may be applied at various stages in the criminal justice system from pre-charge diversion, through specialized court procedures, to age-appropriate correctional programming. Potential approaches include:

- Investigation and charge assessment procedures should include enhanced procedural protections for young adults and recognition of potentially reduced moral blameworthiness / culpability, as well as options to avoid the long-term negative implications of a criminal record or conversion of a youth court record to the status of an adult criminal record.
- Measures related to bail and pre-trial detention should consider the negative impacts of detention, both in terms of the custodial environment and the potential loss of employment, housing, and other social supports which may protect against further offending.
- Court proceedings involving young adults should consider potentially diminished cognitive functioning and reduced moral blameworthiness / culpability of young adults and the long-term negative implications of a criminal record or conversion of a youth court record.
- Custodial options for, and community supervision of, young adults should be responsive in both approach and content. Custodial services should avoid the negative impacts of association with an older, more entrenched offender population, as well as more punitive disciplinary measures such as segregation, given the negative impact of social isolation on the developing brain. Programming for young adult offenders should include increased emphasis on education, life and job skills training, counselling, release planning and transitional support.
- Case management and community supervision of young adults should emphasize their greater need for guidance and support in accessing community-based treatment and services.

If the goals of the criminal justice system include rehabilitation and prevention of further offending, the research literature is clear: a distinct approach to young adult offenders that focusses on age-appropriate interventions and supports is warranted. Many approaches may be implemented through policy decisions, while others would require legislative change.

Introduction

Advances in neuroscience as well as societal change have contributed to the recognition of an interim period between adolescence and adulthood, ages 18 to 25 years, having implications for how the criminal justice system may most effectively respond to this age group.

Issues related to young adults[4] in the justice system in Canada have for several years been (and continue to be) a topic of discussion among government officials and non-government service providers. A joint report by the Correctional Investigator of Canada and Ontario's Provincial Advocate for Children and Youth, entitled "Missed Opportunities: The Experience of Young Adults Incarcerated in Federal Penitentiaries" (2017) identified several concerns related to young adults in federal facilities.

A workshop-style meeting "Young Adults and How Their Needs Are Being Served in Canada's Correctional System" was held in Ottawa on March 12, 2020, attended by justice and correctional officials from federal and provincial/territorial government departments, plus two non-government representatives (see Appendix A). One of the "next steps" identified at the meeting was to conduct an environmental scan addressing research, legislative approaches, and innovative programming in Canada and internationally. This paper has been prepared in response.

Brief Review of Relevant Literature

Historical Approach in Canada

Canada has long recognized the need for a distinct approach to children and youth who commit offences. The *Juvenile Delinquents Act* (1908-1984) took a welfare-oriented approach[5] to juvenile offenders. The minimum and maximum age jurisdiction varied by province, with the minimum age ranging from seven to fourteen years of age, and the maximum from fifteen to seventeen years (Bala, 2003). The *Young Offenders Act* (1984-2003) standardized the age jurisdiction across Canada (twelve through seventeen) and the *Youth Criminal Justice Act (YCJA)* (2003 to present) retained this age jurisdiction. The *YCJA* includes principles of "diminished moral blameworthiness or culpability" and recognizes the "greater dependency of young persons and their reduced level of maturity" (s 3(1)(b)).

Canadian criminal legislation does not differentiate between young adults and older adults, although there is historical precedent for managing sentenced young adults differently. For example, from 1967 until 1985, British Columbia operated a correctional camp specifically for male offenders ages seventeen through twenty-one years, with a strong focus on outdoor/wilderness skills and rehabilitation.[6]

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[4] Unless otherwise noted, in this paper, the terms "young adults" and "emerging adults" refer to those aged 18 through 25 years.

[5] The *parens patriae* (parent of the country) philosophy of the Juvenile Delinquents Act promoted the welfare of youth and reflected the belief "there was little need to distinguish between juveniles who were offenders and those who were abandoned or neglected by parents." (Bala, 2003, p 7). For a more detailed description of this approach see Bala, 2003, pp 7-10.

[6] https://www2.gov.bc.ca/gov/content/justice/criminal-justice/corrections/about-us/history/camps/1967

Emerging Adults – The Developing Brain & Societal Changes

Neuroscientific research in the last two decades has provided increased knowledge about adolescent brain development. Several articles provide extensive summaries of the research literature (see, for example, Jim Casey, Moody, Prior et al).

The stages of human development have historically been described to include adolescence (12-18 years) and young adulthood (19-40 years).[7] Neuroscience now recognizes an interim period between adolescence and adulthood, referred to as *emerging adulthood*, covering the period from 18 to 25 years of age.[8] This period describes a gradual transition from adolescence to adulthood, evidenced in part by the gradual development of the prefrontal cortex which governs reasoning, decision-making, judgement, and impulse control. The prefrontal cortex is the last part of the brain to fully develop, continuing through the mid-20s.[9] (Giedd, 1999).

Research into brain development also identifies gender differences in brain development. According to Dr. Jay Giedd, neuroscientist at the National Institute of Mental Health, "…nearly everything that we look at as child psychiatrists is different between boys and girls -- different ages of onset, different symptoms, different prevalences and outcomes. Almost everything in childhood is more common in boys -- autism, dyslexia, learning disabilities, ADHD, Tourette's syndrome – are all more common in boys. Only anorexia nervosa is more common in girls." Dr. Giedd notes differences in the size of male vs. female brains and specific structures within the brain, including the frontal lobe, and that girls' brains mature earlier than boys'.[10] Other research also supports the current understanding of gender differences in brain development.[11]

Contrary to earlier belief that development of the human brain was mostly complete by age three, newer research indicates the brain can be 'rewired'. It is well recognized that most youth in conflict with the law have experienced significant trauma during their developmental years.[12] [13] "The exposure to trauma during childhood can interrupt the developmental processes and cause life-long physical, mental, and emotional deficiencies."[14] The ability of the brain to develop new neural pathways (neuroplasticity) into adolescence and adulthood creates opportunities for emerging adults to learn and develop new skills and responses.[15]

The literature also distinguishes between cold and hot cognition. Cold cognition describes a situation where an individual is not hurried and can consult with others in making a decision; hot cognition describes a person's judgement when emotionally aroused, under time pressure and/or where social coercion or

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[7] Erikson, E.H., 1977
[8] Arnett, J.J., 2004
[9] Giedd, 1999
[10] Giedd, 2010
[11] Jim Casey, 2011
[12] The majority of male and female youth at the Burnaby Youth Custody Centre had documented histories of both physical abuse and neglect; over one in five males and over two in five females had documented histories of sexual abuse. (Gretton & Clift, 2011)
[13] Compared to other youth in British Columbia, youth in custody are more likely to have been abused, to have had a family member who attempted or completed suicide or died in an accident, overdose or violent event, and to have injured themselves badly enough to require medical attention. (McCreary Centre Society, 2005)
[14] Dye, "The impact and long-term effects of childhood trauma," 389
[15] Jim Casey, 2011

peer-pressure is present. In a situation of cold cognition, adolescents may be fully mature by age 16, whereas in situations of hot cognition full maturity may not be reached until their 20s.[16]

Several articles reviewed for this report further consider emerging adulthood in the context of societal changes which have implications for the criminal justice system. Criminological theory refers to the age-crime curve, noting the onset of most criminal activity begins in early adolescence, and most offenders desist from offending by their mid-twenties. Factors identified as contributing to desistance from crime include entering the workforce, leaving home, getting married and/or starting a family. Many of these life transitions are happening later than in previous generations, correlating with a shift in the age-crime curve.[17] Canada has experienced these same societal changes, evidenced, for example, by census data indicating more than a third of those aged 20-34 years old continue to reside with at least one parent.[18]

Implications for the Justice System

The current understanding of brain development summarized above has significant implications for how the justice system responds to young adults. For example, from a prosecution perspective, the still-developing prefrontal cortex, affecting reasoning and impulse control, may be a factor in assessing an individual's culpability and moral-blameworthiness. For lawyers and the judiciary, there are implications for trial and sentencing procedures. For correctional service providers, an understanding of brain development, including neuroplasticity and gender differences, is critical to the design and implementation of effective programming and services.

During the March 2020 meeting in Ottawa, participants identified several factors related to young adults relevant to the justice system, including:

- differences in brain development, noting that young adults' brains are still malleable and susceptible to positive (intervention) as well as negative influences;
- educational needs more akin to those of youth than older adults;
- a greater need for support from family members, mentors, etc.; and,
- less familiarity with the adult correctional and legal systems. [19]

[16] Steinberg, L., 2015 p 202
[17] Pruin & Dunkel, 2015
[18] Statistics Canada, August 2017 - Young adults living with their parents in Canada in 2016, Catalogue no. 98-200-X2016008
[19] March 12, 2020 Kick-off Workshop Meeting Report p 7

Environmental Scan

International Rules, Conventions and Recommendations

At the international level, the notion of a special approach to young adults in the justice system is well recognized.

Rule 3.3 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (*Beijing Rules - 1985*)[20] states: "efforts shall also be made to extend the principles embodied in the Rules to young adult offenders".

Two Recommendations of the *Committee of Ministers of the Council of Europe* also address young adult offenders. Rule 11 of the *Recommendation of the Committee of Ministers to member states concerning new ways of dealing with juvenile delinquency and the role of juvenile justice* (2003) states: "Reflecting the extended transition to adulthood, it should be possible for young adults under the age of 21 to be treated in a way comparable to juveniles and to be subject to the same interventions, when the judge is of the opinion that they are not as mature and responsible for their actions as full adults."[21] Rule 17 of the *Recommendation of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures* (2008) states: "Young adult offenders may, where appropriate, be regarded as juveniles and dealt with accordingly."[22]

The recommendations of the Seventeenth International Congress of Penal Law[23] regarding Criminal Responsibility of Minors in National and International Legal Order include: "Considering that the state of adolescence can be prolonged into young adulthood (25 years) and that, as a consequence, legislation needs to be adapted for young adults in a similar manner as it is done for minors, … 6. Concerning crimes committed by persons over 18 years of age, the applicability of the special provisions for minors may be extended up to the age of 25."

International Legislation and Practice

Following are several examples of justice system approaches to young adults in other countries. This summary is not exhaustive; however, it identifies a variety of approaches to the special treatment of young adult offenders.

Europe

Most European countries have at least some special provisions in their criminal law for young adult offenders, whether it be the extension of juvenile law provisions, or mitigation of sentences imposed under the criminal law. An excellent summary is provided by Pruin & Dunkel, "Better in Europe? European responses to young adult offending".[24] The upper age range for such provisions varies from 21 years in several countries to as high as 26 in Austria.

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[20] United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) - United Nations and the Rule of Law

[21] 853rd meeting Appendix xxx (Item 10.1b) (coe.int)

[22] 881bis (coe.int)

[23] Beijing, 12 - 19 September 2004) - RIDP vierge par 100 qxp (penal.org)

[24] Pruin & Dunkel, 2015

Germany[25]

Since 1953, all young adult offenders (age 18 through 21 at time of offence) are transferred to the jurisdiction of specialized youth courts. The youth courts have the option of sentencing young adults under either the *Juvenile Justice Act* or the *Criminal Code*. Approximately two-thirds of young adult offenders are sentenced under the juvenile law.

Sentencing of young adult offenders requires an assessment of maturity, including the offender's personality and social environment. The court must impose a sentence under the *Juvenile Justice Act* if the offender's moral and psychological development was like a juvenile at the time of committing the crime, and/or if the motives and circumstances of the offence are similar to those of a typical juvenile crime.

Sanctions under the *Juvenile Justice Act* include educational measures (including training courses and victim-offender mediation), disciplinary measures (e.g. reparation, fines, short-term detention) and youth imprisonment. Sentences to youth imprisonment are served in separate facilities from adult offenders and include access to a wider range of educational and vocational training.

If the court imposes a sentence under the criminal law as it applies to adults, sentences for young adults are generally mitigated compared to older adult offenders. For example, where an adult offender may be subject to a life sentence, a young adult would be subject to a maximum of 15 years. As well, young adult offenders sentenced under the criminal law may still be placed in juvenile facilities until the age of 24. Bavaria, a German state, houses young adult prisoners sentenced under the criminal law in a special facility.

Austria[26]

Young adults who commit offences prior to age 21[27] are sentenced in specialized youth court. Judges and prosecutors in youth courts "should have appropriate education and training as well as experience in the education and upbringing of youths."[28] Various provisions of the law applying to young offenders (age 14 - 17) also apply to young adults, including limits on pretrial detention, separation from incarcerated adult offenders, and specialized assessments for sentencing. Young adults can be placed and remain in juvenile detention facilities until age 27.

Sanctions for young adult offenders are those available under the criminal law, not the youth justice law; however, maximum and minimum sentence lengths are mitigated. As well, young adults are eligible for early release to parole sooner than adults.

Croatia[29]

Young adult offenders (aged 18-21 years) fall under the jurisdiction of the juvenile court, and juvenile sanctions may be imposed.[30] Considerations for imposing a juvenile sanction include the type of offence, the age and personality of the offender, and whether the purpose of sanctioning will be achieved though

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[25] Pruin & Dunkel; Matthews et al; Prior et al; T2A – Young Adults and Criminal Justice
[26] Pruin & Dunkel
[27] » Youth Courts Law (Jugendgerichtsgesetz, JGG) German Law Archive (iuscomp.org) s 1
[28] » Youth Courts Law (Jugendgerichtsgesetz, JGG) German Law Archive (iuscomp.org) s 37

[29] Matthews et al; Pruin & Dunkel
[30] Croatia - Juvenile Courts Act, 1997. (ilo.org)

correctional measures or juvenile imprisonment. If a young adult is sentenced according to the criminal law, sanctions may be mitigated.

Sweden[31]

Unlike most western nations, Sweden does not have a separate youth justice system. The age of criminal responsibility in Sweden is fifteen years. There are no specific juvenile/youth justice courts; offenders under the age of eighteen are the joint responsibility of the child welfare and criminal justice systems.

Despite the absence of juvenile courts, Sweden does have a distinct approach to offenders under the age of 21. Judges should be specially selected; sentences are mitigated for those under age 21; proceedings are to be accelerated; the public may be excluded from proceedings; and the maximum sentence of imprisonment is 14 years. As well, fines and sentences of incarceration are mitigated according to a formula, with greater mitigation applicable to younger age groups.

Netherlands[32]

The Netherlands introduced new legislative provisions for young adult offenders (*adolescentenstrafrecht*) in 2014. Young adults from age 18 to 23 who are charged with an offence are dealt with by the criminal court; however, youth sanctions may be imposed.

All young adult offenders are assessed early in the court proceedings using a special tool to assess maturity and social, emotional, and cognitive development. The advice of a psychologist or psychiatrist may also be sought. If the prosecutor indicates intention to seek a youth sanction, the young adult may be transferred to a detention facility for juveniles.

England & Wales

In England and Wales, young adults (aged 18 through 20) are sentenced in the criminal court; however, with limited exceptions cannot be sentenced to imprisonment in an adult jail. Instead, they are sentenced to detention in a facility for young offenders.[33]

There are no differences in sentencing options for young adults apart from the limitations on imprisonment in an adult facility. There are, however, sentencing guidelines[34] which identify age and/or lack of maturity as mitigating factors in sentencing. The guidelines may result in shorter or non-custodial sentences for young adults.

The Transition to Adulthood (T2A)[35] is an initiative of the Barrow Cadbury Trust's criminal justice programme, developing and promoting effective policy and practice for young adults in the criminal justice system. T2A has produced numerous reports related to young adults in the justice system, including publications addressing the needs of female and non-binary young adults. Several publications are referenced in the bibliography to this report and may be helpful references moving forward.

[31] Pruin & Dunkel; Prior et al
[32] Matthews et al; uit Beijerse
[33] Pruin & Dunkel; T2A – Young Adults & Criminal Justice
[34] Sentencing Guidelines Council
[35] https://t2a.org.uk/

Other European Countries[36]

Several European countries, including Switzerland, Turkey, Northern Ireland, and Scotland house young adults in specialized facilities, with the upper limit of age ranging between 21 and 25 years.

Australia

The State of Victoria is implementing a specific community based order (CBO) for young adults under age 25 years, with greater focus on addressing rehabilitation and reintegration.[37]

In New South Wales, the principles of general deterrence and public condemnation are generally considered less important than the potential for rehabilitation of young adult offenders.[38] The need for specialized programming for young adults was officially recognized in a Ministerial statement in 1991 and led to the development of the Gurnang Life Challenge. This sixteen-week program includes education focussed on literacy and numeracy skills, training, work placement and pre-release planning/support. A variation of the program has been established for young adult female offenders.[39] As well, the Young Adult Satellite Program, for female offenders aged 18-30 and male offenders aged 18-25, is a relatively short program featuring Adventure Based Challenge activities, cognitive learning, and immediate future planning and goals. Target clientele include individuals who may not be able to access other programming due to their security classification or short sentence.[40]

United States of America

Approximately half of the American states have established special policies for young adults within the adult criminal justice system.[41] These include reduced sentencing options, young adult courts, separate prison facilities and records expunction provisions.

Several states, including New York, Connecticut, Massachusetts, and Illinois have considered legislation to raise the age of juvenile court jurisdiction, although the bills have not been enacted.[42] Vermont enacted legislation to incrementally increase the age jurisdiction of juvenile court, with those aged 18 now processed in the juvenile justice system. The age jurisdiction was to have been further increased in 2022 and then again in 2024 to include 19- and 20-year-olds respectively; however, the current Governor has paused this plan.

Some states have implemented pre-trial processes and diversion programs for young adult offenders. In North Carolina, participation in a Young Adult Offender Program allows first-time offenders aged 16-25 charged with minor offences to have charges dismissed. The program includes a life skills workshop, written apology, and community service.[43]

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[36] Pruin & Dunkell; T2A – Young Adults and Criminal Justice
[37] T2A, Young Adults and Criminal Justice, p 4
[38] T2A, Young Adults and Criminal Justice, p 4
[39] Gurnang Life Challenge: Young Adult Offender Women
[40] CSNSW Compendium of Offender Behaviour Change Programs
[41] Stamm, A., 2017
[42] Matthews et al; Lindell & Goodjoint
[43] Lindell & Goodjoint

About a dozen jurisdictions have implemented specialized court proceedings for young adult offenders.[44] In New York, the Brooklyn Justice Initiative supports young adults (age 16-24) with alternative sentencing including community-based mental health services and drug treatment. As part of the initiative, prosecutors receive training on trauma, evidence-based programming, and appropriate interventions.

San Francisco established a Young Adult Court[45] in 2015, for offenders aged 18-24 years. Young adults may be referred to the court by the prosecutor, public defender, or probation services. Those accepted participate in a *wellness plan* which may include housing, educational support, job readiness, etc. Participation generally lasts a year or longer. Approximately 50 participants are accepted each year.[46]

Several states, including Mississippi, Wisconsin and California have established specialized correctional facilities or correctional units for young adults, with additional rehabilitative programming and developmentally appropriate services.

The San Francisco Adult Probation Transitional Age Youth (TAY) Unit[47] serves young adults aged 18-25 years. Officers in the TAY unit are specially selected and receive additional training to work with this age group; the unit stresses a rehabilitative approach and collaborates with other parts of the justice system as well as educational services. In Massachusetts, the Roca Model[48] supports young men aged 18-24 years to avoid incarceration and participate in community programming including education, employment, life skills, substance abuse, and cognitive-behavioural therapy. Program participation includes 2 years of intensive programming followed by two years of less intensive follow-up.

Canada

In Canada there is no formal legislative recognition of young adults in the criminal justice system, although reports under *Criminal Code* section 721 (pre-sentence reports) are required to include information regarding the offender's age and maturity.

A brief survey of Federal-Provincial-Territorial justice officials and non-government organizations involved in justice services identified the following initiatives.

- As custody counts and community caseloads have decreased, Prince Edward Island (PEI) has extended youth justice programming to young adult offenders, capitalizing on available capacity in the youth justice system. As well, youth probation officers may continue to supervise young adult offenders.
- Nova Scotia has approved plans to establish a Youth Transition Unit for incarcerated young adults aged 18-21. Like PEI, this initiative is capitalizing on available capacity in the youth system.
- New Brunswick emphasizes restorative justice and diversion options for young adults.
- Prosecutors in Quebec are required to consider age and personal characteristics when assessing the public interest in proceeding with a prosecution.

[44] Stamm, A., 2017
[45] Emerging Adult Justice Learning Community, 2021, A Roadmap to Reform: Key Elements of Specialized Courts
[46] San Francisco Young Adult Court Fact Sheet
[47] San Francisco – Transitional Aged Youth (TAY) Unit
[48] Roca - https://rocainc.org/; Fair and Just Prosecution

- In Ontario, directives and advice to prosecutors highlight age as a factor in decisions relating to bail, charge screening, resolution positions and sentencing. Jurisprudence has consistently emphasized the need for the least-restrictive sentence to be imposed on youthful or first-time adult offenders.

- The London [Ontario] Justice Centre pilot project focusses on young adults aged 18-24 years, prioritizing young adults who are not employed or attending school or other training. The pilot aims to increase pre- and post-charge diversion of young adults, using a needs-based screening tool to identify risk factors and employing a multi-sectoral approach to identify appropriate services (e.g. housing, mental health services, life-skills training).

- In Saskatchewan, there is increased emphasis on the use of diversion, pre-trial/pre-sentence conferences, and modified sentence recommendations for young adults. Like PEI, youth probation officers may continue supervision if their clients transition into the adult justice system; efforts are also made to ensure consistent case management and continuation of programming for young adults transferring from youth to adult facilities.

- In Alberta, the Alternative Measures Guideline has recently been expanded, specifying that first-time adult offenders (and second-time adult offenders where two years have elapsed since a previous diversion or finding of guilt) are eligible for diversion. Prosecutors are directed to consider age and maturity as factors when determining the public interest in proceeding with a prosecution. Training for Alberta prosecutors includes information on the records provisions of the *Youth Criminal Justice Act*, including the ramifications of an adult conviction on a youth court record.

- Also in Alberta, Native Counselling Services of Alberta identified various programs aimed at assisting young adults in conflict with the law, including a youth housing program for youth and young adults up to the age of 30. The Calgary John Howard Society extends almost all youth justice services to young adults up to 24 years old.

- In British Columbia, several discussions have been held among community justice agencies, youth justice and adult correctional officials to look at how to better address the needs of young adults in the justice system. A memorandum between youth and adult correctional services addressing offender supervision and placement is being reviewed to identify opportunities to continue to provide appropriate services to young adult offenders, particularly those who may be transitioning from youth to adult services.

The aforementioned survey of justice officials and non-government service providers included the question "In your view/opinion, would older youth / young adults (18-25 years), and/or the broader criminal justice system, benefit from changes to how this group is currently treated?" The overwhelming majority (95%) answered affirmatively. Explanations for this view frequently referenced the still-developing brains of this age group, and the need for more transitional supports.

Analysis & Future Directions

Summary of Findings

The neuroscientific, criminological and sociological literature summarized above strongly suggest dealing with emerging adults in the justice system as a distinct group from older adults.

Neuroscience supports the notion young adults may be less morally blameworthy or culpable due to their not-yet-fully-developed brains, with implications for charge assessment policies/practice and sentencing.

More importantly, the current literature makes the case for distinct approaches to this population with respect to the legal process, administration of sentences, case management, rehabilitative programming, and social supports. Recognition of the emerging adult brain as still developing and malleable means approaches to this population should capitalize on opportunities to support healthy brain development and encourage desistance from future offending. Interventions which may further compromise healthy brain/cognitive development, such as segregation and other punitive approaches, should be avoided.

RELYING ON INCARCERATION AS THE PRIMARY RESPONSE TO EMERGING ADULTS' CRIMINAL MISCONDUCT IS COUNTERPRODUCTIVE TO THE DEVELOPMENTAL TASKS OF THIS PERIOD, PREVENTS SUCCESSFUL TRANSITIONS TO ADULTHOOD, AND MAKES IT MORE, NOT LESS, LIKELY THAT AN INDIVIDUAL WILL COMMIT MORE CRIMES IN THE FUTURE.

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A distinct approach to young adults in the justice system, which recognizes and addresses developmental and rehabilitative needs, can and must also address accountability, public safety, and impact on victims of crime. As with the *Youth Criminal Justice Act*, it is possible to have a criminal justice approach to young adults which "…takes into account the interests of victims, fosters responsibility and ensures accountability through meaningful consequences and effective rehabilitation and reintegration…"[49] The youth crime rate in Canada has been on a long downward trend for over two decades,[50] indicating the more rehabilitative and less punitive approach of the *Youth Criminal Justice Act* has not compromised public safety.

Moving Forward - Suggested Approaches

Following are approaches for consideration at each stage of the justice system. Proposals are based on the research literature, examples from other jurisdictions, initiatives currently underway in Canada, and discussions among and between government officials and community agency leaders. As with the environmental scan, this is not intended to be an exhaustive list; additional ideas/models will emerge from further discussion, including critical input from those with lived experience.

To ensure positive outcomes, potential changes to legislation, policy, and practice regarding young adults in the justice system must address risk factors and needs of this population and avoid measures which increase risk to reoffend. Special attention must also be given to ensuring legislative and policy/practice changes accommodate distinct needs of female, Indigenous, racialized, and non-binary young adults in the

[49] Preamble to Youth Criminal Justice Act, S.C. 2002, c. 1 https://www.laws-lois.justice.gc.ca/eng/acts/y-1.5/index.html

[50] Statistics Canada, Police-reported crime statistics in Canada, 2020, p 32

justice system. Initiatives must recognize the factors which lead members of these groups into conflict with the law, as well as program interventions which are responsive to their needs.

Investigation / Charge Assessment

Measures at this initial stage of the justice system should include enhanced procedural protections and recognition of potentially reduced moral blameworthiness / culpability, as well as options to avoid the long-term negative implications of a criminal record or conversion of a youth court record to the status of an adult criminal record. Options to consider:

- enhanced diversion options for young adults, including police and Crown warnings/cautions and referral to community-based programs;
- amendments to strengthen the legislative framework for diversion, with a presumption for the use of diversion/alternative measures for non-violent first-time young adult offenders;
- provisions for young adults to have a parent or other adult present when making a statement.

Bail / Pre-trial Detention

Measures at this stage should consider the negative impacts of detention, both in terms of the custodial environment as well as the potential loss of employment, housing, and other social supports which may protect against further offending. Options to consider:

- strengthen bail/pre-trial detention provisions of the *Criminal Code* to ensure young adults are not held in pre-trial detention, or made subject to release conditions, as a substitute for mental health or other social measures;
- provide case management supports to assist detained persons to secure housing and other supports to facilitate release pending trial.

Court / Trial Procedures & Sentencing

As with earlier points of contact, measures related to court proceedings involving young adults should consider potentially diminished cognitive functioning and reduced moral blameworthiness / culpability of young adults and the long-term negative implications of a criminal record or conversion of a youth court record to the status of an adult criminal record. Options to consider:

- enhanced availability of legal services to young adults to ensure adequate representation during bail, trial and sentencing hearings;
- sentencing guidelines[51] specific to young adults, recognizing both the potential for reduced moral blameworthiness/culpability, as well as greater potential for rehabilitative programming to be successful given their stage of cognitive development;
- an emphasis on alternatives to custody with access to support/programming relevant to young adults;
- mitigated sentences, including conditional discharges, and enhanced early release options for young adults;
- for violation of youth justice court orders which occur after an individual's 18th birthday, holding proceedings in youth court, and applying consequences and records provisions in accordance with the *Youth Criminal Justice Act*.

[51] See, for example, the work of the Howard League for Penal Reform and Transition to Adulthood, 2018

Correctional Services

Custodial options for, and community supervision of, young adults should be responsive in both approach and content. Custodial services should avoid the negative impacts of association with an older, more entrenched offender population, as well as more punitive disciplinary measures such as segregation, given the negative impact of social isolation on the developing brain. Programming for young adult offenders should include increased emphasis on education, life and job skills training, counselling, release planning and transitional support. Case management and community supervision of young adults should emphasize their greater need for guidance and support in accessing community-based treatment and services.

Custodial options to consider:

- specialized facilities or designated living units for young adults, including enhanced staffing levels and educational/rehabilitative programming, utilizing staff/service providers with specialized training/expertise in working with youth/young adults;
- restrictions on the use of segregation/separate confinement;
- assignment of community-based case managers to young adults in correctional facilities to assist with release planning and support transition to the community;
- restriction of existing legislative provisions which permit placement of 18- and 19-year-olds serving youth custody sentences in facilities for adults, and removal of mandatory/presumptive provisions for those serving youth custody sentences to be placed in facilities for adults at age 20;
- revision of provisions related to individuals subject to both youth and adult custody sentences to create a presumption for young adults to continue to serve custody sentences in youth facilities where appropriate;
- presumption for young adults who are subject to a youth custody sentence and an adult pre-trial detention warrant to be held in a youth facility;
- provisions for young adult offenders sentenced in the criminal court to serve their sentences in a youth facility where appropriate based on age, maturity level and/or cognitive development, provided doing so would not adversely affect younger residents of those facilities.

Options to consider for community supervision:

- community supervision of young adults provided by staff with smaller caseloads and training/expertise in working with youth and young adults, either through the creation of specialized probation officers for young adults or placement of young adults under the supervision of youth probation officers;
- enhanced community programming/support to young adults under community supervision, e.g. intensive support and supervision workers /community ‘navigators’ to assist with seeking and securing housing, financial supports, education/training opportunities, life skills development, etc.;
- enhanced educational and rehabilitative programming utilizing staff/service providers with specialized training/expertise in working with youth/young adults.

Additional Legislative Considerations

The literature on young adults in the justice system includes discussion of extending the age jurisdiction of youth justice legislation versus treating young adults as a discrete category.[52] The literature also debates benefits and drawbacks of dedicated young adult courts.[53] There are philosophical, practical and political considerations for each.

Based on the literature reviewed for this paper, and knowledge of the Canadian context, the author encourages an approach which recognizes young adults as a discrete population within the criminal justice system. This approach would be consistent with the notion of emerging adulthood as a developmental stage distinct from adolescence and adulthood. As well, some provisions of the *Youth Criminal Justice Act* such as notification to parents and separation from older adults during short periods of detention, may be less relevant to young adults.

Legislative options for consideration:

- create a definition of "young adult" in the *Criminal Code*, along with modified legislative provisions applicable to this age cohort addressing options set out above, including diversion, pre-trial detention, sentencing, release and records considerations;
- create a new definition of "young adult" and related provisions in the *Youth Criminal Justice Act*; and/or,
- create new legislation specific to young adults in the justice system.

The author cautions against establishing dedicated young adult courts. Such courts would only be practical in larger urban settings; those living in smaller/rural communities would not benefit, including many Indigenous young adults who live in geographically isolated areas. A better approach would be to identify the elements of a specialized court which would assist young adults (e.g. specialized training/expertise of court personnel, greater collaboration in planning and supervising sentences, improved access to relevant programs/services) and ensure these elements are applied to young adults in the justice system more broadly.

Additional Policy, Practice and Training Considerations

Opportunities to enhance the approach to young adults in the justice system are available pending and/or independent of substantive legislative change.

Educational resources and training for justice system personnel regarding adolescent brain development and emerging adulthood would increase awareness and benefit future policy and practice related to this age cohort.

Existing capacity in the youth justice system could be accessed to incrementally extend services to emerging adults, for example:

- amending Federal-Provincial-Territorial cost-sharing agreements for youth justice programs and services to support services for young adults;

[52] Scott, E. et al, 2016
[53] Lapp, 2019

- permitting continued voluntary access to federally-cost-shared youth justice programs and services post-sentence expiry, to provide continuity of services and reduce likelihood of young adults re-offending;
- allocating funds to develop client-specific rehabilitative and case management plans for young adults in custody and under community supervision;[54]
- using excess capacity in youth custody facilities to house young adult offenders, facilitating access to educational and rehabilitative programming more developmentally relevant to young adults.

Conclusion

If the goals of the criminal justice system include rehabilitation and prevention of further offending, then the research literature is clear: a distinct approach to young adult offenders that focusses on age-appropriate interventions and supports is warranted.

Distinct approaches to young adults in the justice system may be applied at various stages in the criminal justice system from pre-charge diversion, through specialized court procedures, to age-appropriate correctional programming.

Many of the suggested approaches above may be implemented through policy decisions by Provinces/Territories; some will require Federal-Provincial-Territorial agreement (e.g., modifications to youth justice cost-sharing agreements). Some would require legislative change; others may be possible on a policy basis but could further benefit from a legislative framework for support/implementation (e.g., presumptive use of alternative measures). Similarly, legislated mitigation of sentences for young adult offenders may be more effective than sentencing guidelines.

Options for moving forward must consider the Canadian context, including respective responsibilities of federal and provincial/territorial governments for criminal justice. The importance of addressing the significant over-representation of Indigenous peoples in the justice system cannot be understated – 42% of females and 29% males admitted to custody in Canada in 2018/2019 identified as Indigenous.[55] Options should also ensure the distinct needs of other racialized populations, women, and non-binary individuals are addressed.

The writer is grateful for the opportunity to participate in this important work, and encourages Justice Canada to continue to collaborate with Provincial-Territorial justice officials, non-government justice providers and academia to identify the best options for Canada.

[54] Similar to Part C / exceptional cases under the youth justice funding agreements regarding the intensive rehabilitative custody and supervision program.

[55] Statistics Canada, Adult and youth correctional statistics in Canada, 2018/2019

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Young Adults and How Their Needs Are Being Served in Canada's Correctional System: Kick-off Meeting Report, Ottawa, March 12, 2020

Appendices

Appendix A - Young Adults and How Their Needs Are Being Served in Canada's Correctional System: Kick-off Meeting Report, Ottawa, March 12, 2020


REPORT Young Adults Kickoff_FINAL_


Annex III to Report_Communique


RAPPORT_Jeunes adultes atelier de lanc


Annex III - Communiqué FINAL_