

**BRIEF: YOUNG ADULTS AND THE DEFINITION OF YOUTH  
WITHIN THE CRIMINAL JUSTICE SYSTEM**

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## **TABLE OF CONTENTS**

### **Overview**

### **Definitions and Legislation**

*Definitions*

*Relevant Legislation*

### **Problems with the Current System**

*The Impact of Youth Brain Development*

*The Impact of Prison Culture*

*Offending and Recidivism Statistics*

*Ashley Smith Case Study*

### **Alternative Approaches**

*A European Approach – Germany & Croatia*

*An American Approach – The State of Vermont*

### **Recommendations**

### **References**

# **BRIEF: YOUNG ADULTS AND THE DEFINITION OF YOUTH WITHIN THE CRIMINAL JUSTICE SYSTEM**

## **Overview**

The purpose of this brief is to provide an overview of the current legal definition of youth within the context of the Canadian criminal justice system, and the impact it has on young adults and the community at large. This brief explores relevant legal definitions and legislation, problems identified within the current criminal justice system, and approaches other countries have taken in respect to the definition of youth. This exploration contextualizes the recommendations provided at the end of this brief, which propose changes that can be made to the current Canadian justice system to help improve outcomes for young adults in conflict with the law.

## **Definitions and Legislation**

### **Definitions**

This brief focuses on the topic of “youth” as defined within the context of the Canadian criminal justice system. The definition of “youth” changes depending on factors such as location and sector. Within the criminal justice system, the definition of “young person” determines whether one will go through the adult or youth court system in addition to which programs and services are made available. For the purpose of this brief, unless stated otherwise, the term “child” will be referred to as those younger than 12. The terms “young person” and “youth” are used interchangeably to reference those between the ages of 12 and 17. The term “young adult” refers to those between the ages of 18 and 24. The term “adult” refers to those older than 24.

The *Criminal Code* and the *Youth Criminal Justice Act (YCJA)* are the two main pieces of federal legislation that define age within the limits of criminal law. They do not recognize “young adults” as a distinct age group, however, there are three age categories recognized by Canadian criminal law:

- Child: A person under the age of twelve who cannot be held criminally responsible for any offence.<sup>1</sup>
- Young person: A person who is twelve years of age or older but is less than eighteen at the time of the alleged criminal offence.<sup>2</sup>
- Adult: Any person who is accused on or after their 18<sup>th</sup> birthday.<sup>3</sup>

It is important to note that these two pieces of legislation are interrelated. The *Criminal Code* is applied to all Canadians 12 years of age and older, including young offenders. This means youth can be charged with *Criminal Code* offences. However, *Criminal Code* provisions will not apply in circumstances explicitly laid out within the *YCJA*.<sup>4</sup> Despite legal definitions, academics who

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<sup>1</sup> (*Criminal Code*, RSC 1985, c C-46, s.13)

<sup>2</sup> (*Youth Criminal Justice Act*, SC 2002. c. 1, s. 2(1))

<sup>3</sup> (*R. v White*, 2014)

<sup>4</sup> (*Youth Criminal Justice Act*, SC 2002. c. 1, s.140)

research young adults in conflict with the law, alongside pieces of provincial legislation, commonly recognize and define young adults as those aged 18-21 or 18-24.<sup>5</sup>

The following table provides examples of criteria for youth, young adults, or adults to demonstrate how definitions are classified among different sectors, international organizations, and Canadian jurisdictions. It is important to note that this table is not exhaustive.

**Table 1: Examples of Different Definitions of Youth Within Canada**

<b>Authority/Document</b>	<b>Jurisdiction</b>	<b>Definition</b>
United Nations Convention on the Rights of the Child <sup>6</sup>	International	Child = under age 18
United Nations Department of Economic and Social Affairs Youth <sup>7</sup>	International	Child = below age 18 Youth = ages 15-24 Young adult = ages 20-24
United Nations Habitat (Youth Fund) <sup>8</sup>	International	Youth = ages 15-32
United Nations Secretariat/ UNESCO <sup>9</sup>	International	Youth = ages 15-25
World Health Organization <sup>10</sup>	International	Adolescent = ages 10-19
Government of Canada: Canadian Heritage (State of youth report) <sup>11</sup>	Federal	Youth = ages 15-29
Government of Canada: Canada's Youth Policy <sup>12</sup>	Federal	Young person = below age 18
Government of Canada: Employment and Social Development Canada (Youth Employment and Skills Strategy Program)	Federal	Youth = ages 15-30
Parliament of Canada: Criminal Code of Canada <sup>13</sup>	Federal	Adults = ages 18+
Parliament of Canada: Youth Criminal Justice Act <sup>14</sup>	Federal	Young person = ages 12-17
National Crime Prevention Centre: A Statistical Snapshot of Youth at Risk and Youth Offending in Canada <sup>15</sup>	Federal	Youth = ages 10-19
Statistics Canada: A portrait of Canadian youth <sup>16</sup>	Federal	Youth = ages 15-34
Province of Ontario: Ministry of Labour, Training	Provincial (ON)	Young worker = under age 25

<sup>5</sup> (Correctional Service of Canada, 2014; Office of the Correctional Investigator [OCI] & Ontario Office of the Provincial Advocate for Children and Youth [OOPACY], 2017)

<sup>6</sup> (United Nations Department of Economic and Social Affairs [UNDESA], 2013)

<sup>7</sup> (UNDESA, n.d.)

<sup>8</sup> (UNDESA, 2013)

<sup>9</sup> (UNDESA, 2013)

<sup>10</sup> (World Health Organization, 2021)

<sup>11</sup> (Government of Canada, 2020a)

<sup>12</sup> (Government of Canada, 2020b)

<sup>13</sup> (*Criminal Code*, RSC 1985, c C-46)

<sup>14</sup> (*Youth Criminal Justice Act*, SC 2002. c. 1, s. 2(1))

<sup>15</sup> (National Crime Prevention Centre, 2012)

<sup>16</sup> (Statistics Canada, 2021)

and Skills Development <sup>17</sup>		
Province of British Columbia: Representative for Children and Youth Act <sup>18</sup>	Provincial (BC)	Child = under age 19 Youth = ages 16-19
City of Toronto: Youth Engagement Strategy <sup>19</sup>	Municipal (Toronto)	Youth = ages 18-29

**Relevant Legislation**

Prior to 1908 in Canada, criminal liability began at the age of seven, meaning children, youth and young adults were held to the same standards and punishments as adults. One of the earliest indications that youth should be treated differently than adults in Canada was when the defence of “incapacity to do wrong” was created in the seventeenth century.<sup>20</sup> Young people aged 7 to 14 could use this as a criminal defence. If the individual demonstrated that they did not have “the capacity to understand the nature and consequences of his acts and to appreciate that it was wrong” the individual would be given criminal immunity.<sup>21</sup>

In 1908, the *Juvenile Delinquents Act (JDA)* was the first piece of legislation in Canada that solely focused on youth justice and corrections. The *JDA* adopted the ideology that when a young person would come in contact with the law, the state should act with the best interest of the child in mind while taking on the metaphorical role of a “parent of the country.”<sup>22</sup> Although an improvement from the previous system, under the *JDA*, young offenders were not being rehabilitated, sentences were not consistent, and racialized<sup>23</sup> groups were seen to have harsher sentences than their white counterparts. State actors were given substantial power and leniency when it came to determining what they thought were best for the accused young offender and therefore there was a lack of consistency.

In an attempt to address these issues, the *Young Offenders Act (YOA)* replaced the *JDA* on April 1<sup>st</sup>, 1984.<sup>24</sup> The *YOA* aimed to enhance the legal rights given to young people in conflict with the law as the *JDA* was not in compliance with the rights guaranteed under the *Canadian Charter of Rights and Freedoms* (the *Charter*) which was enacted in 1982, particularly Section 15. Section 15 guarantees that all persons are equal before and under the law and they have the right to equal protection and equal benefit of the law without discrimination based on race, nationality or ethnic origin, colour, religion, sex, *age*, or mental or physical disability.<sup>25</sup> The *YOA* created a uniform national age jurisdiction and gave more legal protections to youth such as a right to a lawyer. The *YOA* also regulated every stage of the youth justice process, beginning with an arrest and ending

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<sup>17</sup> (Ontario Ministry of Labour, Training and Skills Development, 2018)

<sup>18</sup> (Representative for Children and Youth Act, SBC 2006, c. 29)

<sup>19</sup> (City of Toronto, 2021)

<sup>20</sup> (Bala, 2003)

<sup>21</sup> (Bala, 2003)

<sup>22</sup> (Bala, 2003)

<sup>23</sup> For the purposes of this paper, this term is used in the context of ‘racialization’ as defined by the [Canadian Race Relations Foundation](#) as: the process through which groups come to be socially constructed as races, based on characteristics such as race, ethnicity, language, economics, religion, culture, politics, etc.

<sup>24</sup> (Bala, 2003)

<sup>25</sup> (*Canadian Charter of Rights and Freedoms*, s 15, 1982). Emphasis added.

with sentencing.<sup>26</sup> The concept of the “parent of the country” was also removed. However, one of the major concerns surrounding the *YOA* was the increased use of custodial sentences for young persons, especially the majority of whom were committing non-violent crimes.

After 19 years, the *YOA* was replaced with the *Youth Criminal Justice Act (YCJA)* on April 1<sup>st</sup>, 2003.<sup>27</sup> The *YCJA* is the current federal legislation for youth criminal justice matters. The enactment of the *YCJA* was part of the federal youth justice reform strategy in response to the “disturbing decline in public confidence in the youth justice system.”<sup>28</sup> The strategy also acknowledged that there was an overuse of custodial sentences for young people who were committing non-serious/non violent offences, alongside the call to use more community-based approaches rather than custody.<sup>29</sup> Notable changes include the following: youth justice court judges must consider all alternative sanctions before imposing a custodial sentence and circumstances of Indigenous youth must be a consideration at sentencing.

The *YCJA* maintains a separate court process for youth in order to focus on the specific needs of those aged 12 to 17. Canadian courts have acknowledged that the youth justice system ought to favour “rehabilitation, reintegration and fair and proportionate accountability,” as opposed to the adult system that is more commonly viewed to be oriented towards punishment and retribution.<sup>30</sup> Overall, the history leading up to the *YCJA* has indicated that it is crucial that young persons should not be held to the same standard as adults due to differences socially, biologically and psychologically.

One of the notable differences between the *YOA* and the *YCJA*, is that the *YCJA* sets out within the preamble and the declaration of principles (section 3 of the *YCJA*) the reasoning and principles behind having a separate system for youth. The following is a non-exhaustive list of principles pulled from section 3 of the *YCJA* which highlight the legislation’s main principles and objectives:

- The youth criminal justice system sets out to protect the public by:
  - holding young persons accountable through measures that are proportionate to the offence and the young person’s degree of responsibility;
  - promoting rehabilitation and reintegration; and,
  - addressing the underlying causes of offending by referring young persons to community agencies.<sup>31</sup>
- The youth criminal justice system must be separate than the system for adults, it must be based on the principle of diminished moral blameworthiness, and it must emphasize the following factors:

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<sup>26</sup> (Bala, 2003)

<sup>27</sup> (Bala, 2003)

<sup>28</sup> (Bala, 2003, p.24)

<sup>29</sup> (Bala, 2003)

<sup>30</sup> (Jones et al., 2019, p.76)

<sup>31</sup> *YCJA* s.3(a)(i)-(iii)

- rehabilitation and reintegration;
- fair and proportionate accountability consistent with the greater dependency of young persons and their reduced level of maturity; and,
- provide enhanced procedural protections to ensure the young person is treated fairly and their rights are protected.<sup>32</sup>

## **Challenges within the Current System**

### **The Impact of Brain Development**

Scientific research has shown that the brain has a complex period of development which includes a rewiring process that begins around puberty and does not end until approximately age 25.<sup>33</sup> Recent research indicates that the 18 to 21 year old age group embodies more of the same characteristics and needs regarding impulsivity and emotional arousal as youth, when compared with older adults.<sup>34</sup> Similarly, the Correctional Investigator of Canada reported that young adults (i.e., those age 18-24) more closely resemble young persons as opposed to adults with respect to their development, risk, and needs.<sup>35</sup> Legislation such as the *Youth Criminal Justice Act* has acknowledged that the brain has not yet finished developing during the adolescent stage of life which makes this age group particularly vulnerable. This contributes to the *YCJA*'s main purpose of providing young persons with increased protections.<sup>36</sup>

In addition to scientific reports and legislative changes that consider age-related needs, literature highlights further concerns when considering young people who are sentenced to custody who experience mental health problems and illnesses. With more than 50% of those given a custodial sentence being 35 or younger,<sup>37</sup> this age group has been linked to a variety of mental health concerns. Literature indicates that “most persons in correctional facilities have mental disorders, specifically, in British Columbia a study found that 4 of 5 incarcerated youth had at least one mental disorder.”<sup>38</sup> Research further indicates that a large number of youth and young adults in custody have experienced traumatic events during their childhood, a history of problematic alcohol and drug use, and high rates of suicide and homicide in comparison to the general population.<sup>39</sup>

Traumatic experiences, such as domestic violence, sexual abuse, and neglect, change the brain functioning and structure in youth due to the plasticity of their brains in the developing stages.<sup>40</sup> These traumatic experiences increase the difficulty of brain development and

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<sup>32</sup> *YCJA* s.3(b)(i)-(iii)

<sup>33</sup> (OCI & OOPACY, 2017)

<sup>34</sup> (Scott et al., 2016)

<sup>35</sup> (OCI & OOPACY, 2017)

<sup>36</sup> (Jones et al., 2019)

<sup>37</sup> (Kouyoumdjian, 2016)

<sup>38</sup> (Kouyoumdjian, 2016)

<sup>39</sup> (Kouyoumdjian, 2016)

<sup>40</sup> (Perry et al., 1995; Perry 2017)



maturation<sup>41</sup>, particularly in the prefrontal cortex, hippocampus, and brainstem.<sup>42</sup> As a result, youth may have an increased risk of coming into conflict with the law, displaying interpersonal violence, suicidal behaviours, and developing mental health problems and illnesses and problematic substance use.<sup>43</sup> Furthermore, youth who have experienced at least one type of adversity in childhood are more likely to engage in criminalized activities regularly which contributes to a high rate of youth who enter the justice system, 75%-93%.<sup>44</sup>

Adverse childhood experiences (ACE) refer to events that cause childhood trauma, including neglect, abuse, incarceration of a parent or household member, domestic violence, and mental health problems and illnesses in the household.<sup>45</sup> It is common for youth to experience multiple types of adversity once they have been exposed to one type; therefore, the risk of violence and mental health concerns are increased in addition to involvement in the youth justice system.<sup>46</sup> Like ACE, neglect is also a strong predictor of involvement in the youth justice system, recidivism, and emotional and behavioural problems because attachment is negatively affected.<sup>47</sup>

Attachment is a fundamental human need that promotes a sense of self and identity.<sup>48</sup> In the absence of attachment, youth may have difficulty developing a positive and stable sense of self which can result in negative views of themselves, others, and the world.<sup>49</sup> This can stem from youth who experience neglect in early childhood who may adopt 'avoidant and disorganized attachment styles' which can negatively affect their social, emotional, and cognitive development.<sup>50</sup> Exposure to childhood adversities and neglect impact mental processes and functioning and have long-term negative outcomes.<sup>51</sup>

Further, research suggests that youth who have traumatic brain injuries (TBI) are more likely to come into contact with the law due to damage to the frontal lobe.<sup>52</sup> Injuries of this type can alter the trajectory of an individual's life, resulting in increased impulsivity, risk-taking behaviour, poor decision-making, difficulty organizing and planning, as well as risk of engaging in harmful and criminalized activities.<sup>53</sup> Up to 72% of youth in institutions have TBIs; therefore, young people and their families must have access to mental health and community services that can meet their specific needs in order to facilitate habilitation and integration.<sup>54</sup>

If it is widely accepted by the medical community that the brain does not finish developing until 24-25 years of age, alongside research indicating that there is a need for increased mental health programming for young adults, the following question arises: **what should be done legally**

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<sup>41</sup> Perry et al. (1995) and Perry (2017) conceptualizes this as the 'neurodevelopment of youth, neurobiological deficits, and neuropsychiatric symptoms'.

<sup>42</sup> (Perry et al., 1995; Perry, 2017; AVAIYA Founder, 2019; Baglivio et al., 2015; Basto-Pereira et al., 2016)

<sup>43</sup> (Baglivio et al., 2015; Perry et al., 1995)

<sup>44</sup> (Baglivio et al., 2015, p. 239; Williams, 2020)

<sup>45</sup> (Williams, 2020)

<sup>46</sup> (Baglivio et al., 2015; Fox et al., 2015; Segeren et al., 2020; Basto-Pereira et al., 2016)

<sup>47</sup> (Basto-Pereira et al., 2016; Ansbro, 2022)

<sup>48</sup> (After Skool, 2021)

<sup>49</sup> (After Skool, 2021; Ansbro, 2022)

<sup>50</sup> (Basto-Pereira et al., 2016; Ansbro, 2022)

<sup>51</sup> (Basto-Pereira et al., 2016; Segeren et al., 2020)

<sup>52</sup> (Kreutzer et al., 2011)

<sup>53</sup> (Kreutzer et al., 2011; Gorgens et al., 2021; Williams et al., 2015)

<sup>54</sup> (Williams et al., 2015)

**to help mitigate the negative experiences of young adults who find themselves involved with the criminal justice system, especially those who offend?** It is argued that developmental research findings like this should impact the law's response to young adults who commit an offence.<sup>55</sup> Due to the ongoing brain development of young adults, there is evidence to suggest that they have different needs than adults and should not be treated the same as an adult throughout the criminal justice process.

## **The Impact of Prison Culture in Canada**

In Canada, those who are serving a custodial sentence in the adult prison system receive the same programming regardless of their age.<sup>56</sup> As indicated above, young adults convicted of crimes are a high-risk group with a multitude of needs that must be met in order to have a better opportunity for rehabilitation and community reintegration. When a young adult in conflict with the law is in need of reintegration and rehabilitation programming, they therefore do not have access to programming specific to their needs.

When interviewed about involvement in both the youth and adult criminal justice systems for the project *Missed Opportunities: The Experience of Young Adults Incarcerated in Federal Penitentiaries* by the Office of the Correctional Investigator and Ontario Office of the Provincial Advocate for Children and Youth, the majority of young adults indicated that there was immense support in the youth criminal justice system. However, upon turning 18, they felt they were forgotten about due to not having access to the same supports and services.<sup>57</sup> When asked about their experience of being incarcerated in the adult system, a few themes occurred. In regard to how they felt about safety in the institutions, participants said “you can't act like a little kid no one feels safe in prison.” According to Health Canada standards, young adults also did not receive the adequate number of calories they needed, and there were few positive interactions with correctional staff reported. Two female participants discussed being bullied and having to move to another living unit due to gang recruitment attempts and threats of gang violence. This further supports the claim that adult institutions are inappropriate environments for young adults and do not have appropriate programs to address their needs. Research indicates that the more often a young person is exposed to the criminal justice system, the more likely their behaviour may be impacted and changed through peer influences within the adult system.<sup>58</sup> Academics have also indicated that young adults who commit an offence should be treated as their own distinct category in order to meet their specialized needs.<sup>59</sup> By increasing the age of youth to include young adults, many issues could be eliminated by removing them from situations such as those detailed herein.

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<sup>55</sup> (Scott et al., 2016)

<sup>56</sup> (OCI & OOPACY, 2017, p. 44)

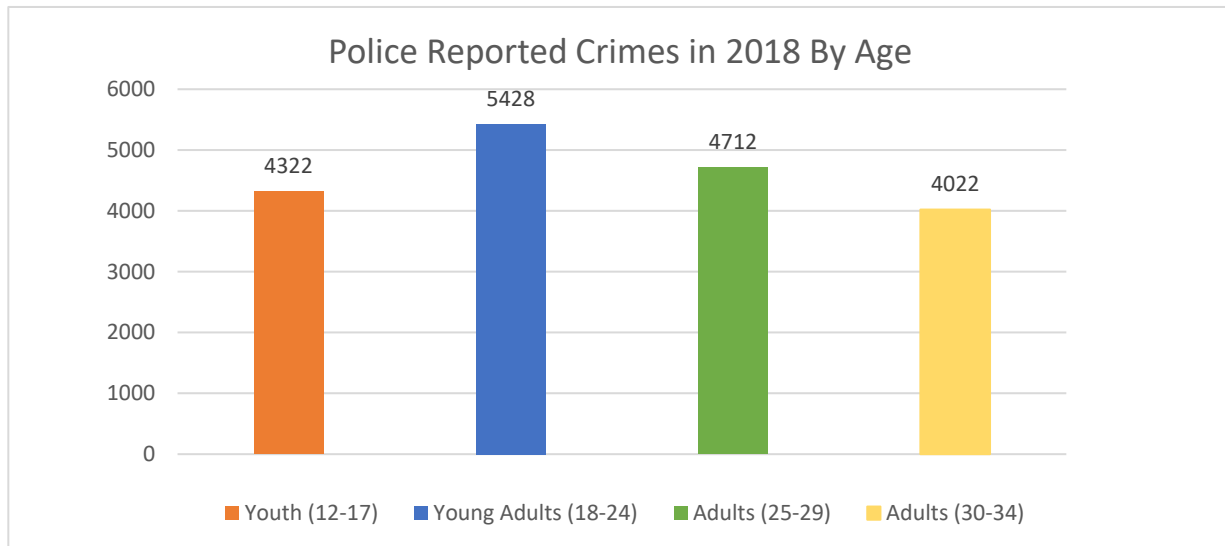
<sup>57</sup> (OCI & OOPACY, 2017, pp. 21-22)

<sup>58</sup> (Palka, 2019)

<sup>59</sup> (Scott et al., 2016)

## Offending and Recidivism Rates

Young Canadian adults (those aged 18 to 24) are accused of crimes at higher rates and have the highest accused criminal offending rate of any other age group.<sup>60</sup> Statistics Canada indicated that youth and young adults remained to be more likely to be charged with crimes as opposed to those older than 25 years of age [see Figure 1].<sup>61</sup> It is also important to note that police-reported crimes are most commonly minor offences such as shoplifting and mischief. Providing targeted and specialized supports to young adults can help to achieve prevention or diversion from the system, and can reduce likelihood of recidivism.



**Figure 1:** Rate of Police Reported Crimes per 100,000 in 2014 by Youth, Young Adults, and Adults<sup>62</sup>

### Case Study: The Preventable Death of Ashley Smith

The tragic case of Ashley Smith provides an example of some of the failures and challenges within the current criminal justice system. Smith first became involved with the criminal justice system at the age of 14 due to charges under the *YCJA* relating to public disturbances.<sup>63</sup> Soon thereafter, she was sentenced to a period of incarceration for waving a knife in a public area and not complying with police while on probation. After being released for this offence, she was sentenced to another 75 days of incarceration for pulling a fire alarm. Her behaviour within the youth system added time to her current sentence each time she violated rules. When Smith turned 18 in January of 2006, an application was made to transfer her to a provincial correctional facility for adults.<sup>64</sup> Under section 92(1) of the *YCJA*, this transfer should only be granted if “the court

<sup>60</sup> (OCI & OOPACY, 2017).

<sup>61</sup> (Moreau, 2019)

<sup>62</sup> (OCI & OOPACY, 2017, page 11).

<sup>63</sup> (Cesaroni & Peterson-Badali, 2017)

<sup>64</sup> *YCJA* s.92(1)

considers it to be in the best interest of the young person or in the public interest.”<sup>65</sup> She was ultimately transferred to an adult facility and her sentence kept lengthening due to the incidents that occurred during her time in the youth and adult facilities. She was transferred across institutions 16 times in just under a year while serving her adult sentence. She spent the majority of her time in segregation, despite showing signs of the need for mental health assistance.<sup>66</sup> Smith passed away in segregation on October 19<sup>th</sup>, 2007 after officers did not intervene following her tying a ligature around her neck. A subsequent coroner’s report investigating the circumstances leading to her death, ruled her death a homicide.

The death of Ashley Smith highlights how both the correctional and health care systems collectively failed to provide the necessary support, treatment, and care that Ashley needed as a young adult who was mentally ill and at high risk.<sup>67</sup> The coroner’s inquest into the death of Ashley Smith made 104 recommendations on how to deter similar preventable deaths from occurring within the correctional system. Some of the most notable recommendations include:<sup>68</sup>

- implementing a range of effective therapeutic interventions that are “trauma-, age-, and gender-informed, and developmentally appropriate”;
- creating a treatment team to support the individualized needs of female inmates that would allow for the creation of management plans specific to age;
- accommodating female inmates in the region that is closest to their support system, whether that be family or social supports. It also states that this principle is a priority for young adults with mental health issues and/or self-injurious behaviours;
- implementing training for staff to enable them to recognize and respond to the specific needs of young adults who are in an adult institution; and,
- **that the Correctional Service of Canada should create distinct and separate programming for young adults aged 18 to 21 within the adult institutions that is geared toward the specific needs of this age group.**

There are numerous other recommendations centred around young adults that promote their needs being met, providing resources, supports and transitional programs. These recommendations shed light on the fact that age is an important factor to consider when assisting people who have been in conflict with the law to meet their needs, especially for young people such as Ashley Smith. This is particularly true for young adults that are transferred from the youth system to the adult system at this impressionable and vulnerable period of their lives. Overall, the case of Ashley Smith indicates that there are wide ranging reforms that should be implemented in order to avoid similar tragedies.

## Alternative Approaches

### A European Approach: Germany & Croatia

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<sup>65</sup> YCJA s.92(1)

<sup>66</sup> (Cesaroni & Peterson-Badali, 2017)

<sup>67</sup> (Correctional Service of Canada, 2014)

<sup>68</sup> (Correctional Service of Canada, 2014)

Since 1953, Germany has included young adults within their youth justice system.<sup>69</sup> Germany has a youth court dedicated to hearing criminal matters for those aged 14 to 21. Once a young adult turns 21, they transition to adult criminal court. Germany emphasizes minimum intervention when addressing youth and young adults by prioritizing a rehabilitative approach through implementing diversion and rehabilitative programs and avoiding punitive sanctions.<sup>70</sup> Favoured sanctions tailored to the individual include community service, restorative practices such as victim-offender mediation, and training programs to improve social skills.<sup>71</sup>

Courts in Germany have recognized that it is important to consider the maturity, stage of development, and personal circumstances of a young adult when dealing with cases in youth court.<sup>72</sup> Germany incorporates social workers into their criminal justice process to present evidence about the youth before the court. In rare cases where a young person is sentenced to a term of imprisonment, they will serve their sentence at a juvenile facility that houses young adults up to 24 years of age.<sup>73</sup> The juvenile facilities differ from the adult ones as there is a wider variety of educational and vocational training programs alongside teachers, social workers and psychologists on site to work with the young adults.<sup>74</sup>

Croatia has a similar system where those who commit a crime between the ages of 18 and 21 are subject to Croatia's youth justice legislation and their specialized juvenile courts.<sup>75</sup> The difference between Croatia and Germany's youth justice systems is that Croatia has different written criteria pertaining to the application of juvenile sanctions. Germany's application depends on the states' perception of the young adult's maturity, while in Croatia, the court examines whether a juvenile sanction can decrease the young person's risk of recidivism and increase the young person's chances of rehabilitation. The *Better in Europe* report states that German judges, however, often use the Croatian criteria despite what is written in German law.<sup>76</sup> Croatia views suspended prison sentences as the most beneficial for young adults who commit an offence. Of young adult convictions, 60% resulted in a suspended sentence, which in Croatia, is a non-custodial sanction with set conditions. This is viewed as the most beneficial as it allows youth to access community programming that has improved likelihood of increasing rehabilitation.

### **South of the Boarder: Vermont, USA**

In 2018, Vermont was the first state in the United States to enact a law that raised the age of criminal responsibility to 21 and implemented a separate prison to house incarcerated young adults aged 18 to 25. These changes were made under Vermont's 'Act 201' which listed that "an effective juvenile justice system" would not only protect public safety, but also "connect youth and young

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<sup>69</sup> (Pruin & Dünkel, 2015)

<sup>70</sup> (Matthews et al., 2018; Pruin & Dünkel, 2015)

<sup>71</sup> (Pruin & Dünkel, 2015)

<sup>72</sup> (Matthews et al., 2018)

<sup>73</sup> (Matthews et al., 2018)

<sup>74</sup> (Pruin & Dünkel, 2015)

<sup>75</sup> (Matthews et al., 2018)

<sup>76</sup> (Pruin & Dünkel, 2015)

adults to age-appropriate services that reduce the risk of re-offense.”<sup>77</sup> The intent behind this law is to provide young adults better access to diversion programs and counselling to help with their specific needs, such as education and substance use.<sup>78</sup> Another overarching goal noted by the Governor of Vermont at the time, was to give young adults a better chance of success once they transition out of the criminal justice system.<sup>79</sup> For example, prior to the change in definition to a “youthful offender”, some consequences adults would experience after being involved in the criminal justice system were the inability to join the military or obtain student loans for school.<sup>80</sup> Another way Act 201 aims to help young adults, is by allowing those who were 18-21 years of age at the time the crime was committed to have their record expunged.<sup>81</sup> The expungement of the record shall be granted as long as it meets the requirements set out in the Act, such as a list of crimes it qualifies for and as long as the court finds it would “serve the interest of justice.”<sup>82</sup>

In 2020, the state of Massachusetts was considering Vermont’s approach.<sup>83</sup> An interview conducted with the *Boston-Based Citizens for Juvenile Justice* and the *Prison Abolition Advocacy Group* discussed a task force that is pushing for juvenile court jurisdiction in Massachusetts to raise the age to 21 years of age.<sup>84</sup> Their identified reason for wanting to push the age to 21 is the argument that the juvenile system is better equipped to help young adults as opposed to the adult system.<sup>85</sup> It is suggested that it is likely easier to raise the age and have young adults use the current juvenile system, rather than push to change the entire adult system.<sup>86</sup> Increasing the definition of youth has also been endorsed by the Massachusetts Bar Association. Chief operating officer of the Massachusetts Bar Association Martin W. Healy, succinctly shed light on age related needs related to recidivism by stating, “setting adulthood at 18 is not justice.”

## Recommendations

The National Youth Justice Network’s mission is to advocate for youth and strengthen youth-centered justice services. This brief aims to support the NYJN in making recommendations to improve the current Canadian criminal justice system for young adults in conflict with the law. To adequately meet the biological, psychological, and social needs of young people, and to improve public safety outcomes, studies note the importance of meaningful policy reform.<sup>87</sup> The direct experience of the practioners that comprise the NYJN indicates alignment with these findings. Through leveraging the collective expertise within the network, combined with the research findings contained herein, the NYJN proposes **four key recommendations** to inform policy reform through both short- and long-term objectives. The short-term recommendations presented

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<sup>77</sup> (Act 201, 2018)

<sup>78</sup> (Wiltz, 2017)

<sup>79</sup> (Department for Children and Families, 2016)

<sup>80</sup> (Department for Children and Families, 2016)

<sup>81</sup> (Act 201, 13 V.S.A. s 7609(c), 2019)

<sup>82</sup> (Act 201, 13 V.S.A. s 7609(c), 2019)

<sup>83</sup> (Healy, 2020)

<sup>84</sup> (Becker, 2019)

<sup>85</sup> (Becker, 2019)

<sup>86</sup> (Becker, 2019)

<sup>87</sup> (Scott et al., 2016)

can be actioned immediately, while the long-term recommendation will require more creative solutions and consideration to implement. The NYJN recommends that the Government of Canada work with youth justice stakeholders to:

**Short-term:**

1. Incorporate the resources identified by young adults with lived experiences in the *Missed Opportunities* study. Examples include job search assistance, resume building, parenting classes, access to social services, and classes/workshops that teach basic skills such as cooking, cleaning, budgeting, and finding affordable housing.
2. Meet the specialized needs of the highest offending age group in Canada (i.e., those aged 18-24) through the reduction of risk factors. Young adults involved in the criminal justice system should have access to appropriate levels of resources and alternative approaches (e.g., separate facilities, alternative sentences). Resources must be tailored to their specific needs such as education and mental health (e.g. FASD, Traumatic Brain Injury).
3. Improve access to and understanding of youth brain development research to inform changes to Canada's youth justice and social justice systems.

**Long-term**

4. Establish consistent language and age ranges for 'emerging adults' and 'youth' within and beyond the criminal justice system, to include cross-governmental entities as appropriate. Considerations must go beyond chronological age and consider maturity, social, emotional and cognitive development within the scope of appropriate gender-based and culturally informed assessments. Framing promising practices in other jurisdictions within a Canadian context will help to address inconsistencies, and meaningfully determine the scope of criminal justice and/or other appropriate interventions, including determination of how Canada should endeavour to:
  - a. amend Section 2 of the *Youth Criminal Justice Act* to include those aged 18-24 in the legal definition of young persons, therefore, changing the legal definition of young persons to include those aged 12-24; or,
  - b. create legislation to address the needs of young persons aged 18-24 within the criminal justice system that is separate from the YCJA.





## References

- Act 201, 13 V.S.A. s 7609(c) (2019).
- Act 201, s 234, Vermont (2018).
- After Skool. (2021, January 19). How Childhood Trauma Leads to Addiction – Gabor Maté [Video]. YouTube. <https://www.youtube.com/watch?v=BVg2bfqblGI>
- AVAIYA Founder, iKE Allen. (2019, October 30). How Does Childhood Trauma Effect the Brain with Dr. Dan Siegal. [Video]. YouTube. <https://www.youtube.com/watch?v=JUKwbkqvqgU>
- Baglivio, M.T., Wolff, K.T., Piquero, A.R., & Epps, N. (2015). The Relationship Between Adverse Childhood Experiences (ACE) and Juvenile Offending Trajectories in a Juvenile Offender Sample. *Journal of Criminal Justice*, 43, 229-241.
- Bala, N. (2003). *Youth Criminal Justice Law*. Irwin Law.
- Basto-Pereira, M., Miranda, A., Ribeiro, S., & Maia, A. (2016). Growing up with adversity: From juvenile justice involvement to criminal persistence and psychosocial problems in young adulthood. *Child Abuse & Neglect*, 62, 63-75.
- Becker, D. (2019). At 18, Mass. Residents Are Tried As Adults. Lawmakers Could Raise That Age To 21. WBUR News. Retrieved from <https://www.wbur.org/news/2019/03/12/juvenile-court-age-raise-21>
- Canadian Charter of Rights and Freedoms*, s 15, Part 1 of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.
- Cesaroni, C. & Peterson-Badali, M. (2017). Ashley Smith and Incarcerated Young Women: Marginalized at Any Age. *Canadian Journal of Law and Society* 32(2): 249-267.
- City of Toronto. (2021). *Youth Engagement Strategy*. Retrieved from <https://www.toronto.ca/city-government/planning-development/outreach-engagement/youth-engagement-strategy/>
- Correctional Service of Canada. (2014). *Coroner's Inquest Touching the Death of Ashley Smith*. Retrieved from <https://www.csc-scc.gc.ca/publications/005007-9009-eng.shtml>
- Criminal Code*, RSC 1985, c C-46.
- Department for Children and Families. (2016). *Governor Signs Law Creating More Rational Juvenile Justice Policies in Vermont*. State of Vermont. <https://dcf.vermont.gov/dcf-blog/governor-signs-law-creating-more-rational-juvenile-justice-policies-vermont>

- Dr. Maria Ansbro. (2022). Using Attachment Theory in Probation Practice. HM Inspectorate of Probation, 1-16.
- Fox, B.H., Perez, N., Cass, E., Baglivio, M.T., & Epps, N. (2015). Trauma changes everything: Examining the relationship between adverse childhood experiences and serious, violent and chronic juvenile offenders. *Child Abuse & Neglect*, 46, 163-173.
- Gorgens, K. A., Meyer, L., Dettmer, J., Standeven, M., Goodwin, E., Marchi, C., & Lyman, H. (2021). Traumatic brain injury in community corrections: Prevalence and differences in compliance and long-term outcomes among men and women on probation. *Criminal Justice and Behavior*, 48(12), 1679-1693.
- Government of Canada. (2020a). *Canada's first State of youth report: for youth, with youth, by youth*. Retrieved from <https://www.canada.ca/en/canadian-heritage/campaigns/state-youth/report.html#a6b>
- Government of Canada. (2020b). *Canada's Youth Policy*. Retrieved from <https://www.canada.ca/en/youth/programs/policy.html>
- Healy, M. W. (2020). *Raise the age to close the revolving courtroom door*. Massachusetts Lawyers Weekly. Retrieved from <https://masslawyersweekly.com/2020/03/12/raise-the-age-to-close-the-revolving-courtroom-door/>
- Jones, B., Rhodes, E. & Birdsell, M. (2019). *Prosecuting and Defending Youth Criminal Justice Cases* (2nd ed.). Edmond Publishing.
- Kouyoumdjian, F., Schuler, A., Matheson, F. I., & Hwang, S. W. (2016). Health status of prisoners in Canada: Narrative review. *Canadian Family Physician*, 62(3): 215-222.
- Kreutzer, J. S., DeLuca, J., & Caplan, B. (Eds.). (2011). *Encyclopedia of Clinical Neuropsychology*. New York: Springer.
- Matthews, S., Schiraldi, V. & Chester, L. (2018). Youth Justice in Europe: Experience of Germany, the Netherlands, and Croatia in Providing Developmentally Appropriate Responses to Emerging Adults in the Criminal Justice System. *Justice Evaluation Journal* 1(1):1-23.
- Moreau, G. (2019). *Police-reported crime statistics in Canada, 2018*. Statistics Canada. Retrieved from <https://www150.statcan.gc.ca/n1/pub/85-002-x/2019001/article/00013-eng.htm>
- National Crime Prevention Centre. (2012). *A Statistical Snapshot of Youth at Risk and Youth Offending in Canada*. Public Safety Canada. Retrieved from <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/ststclsnpsht-yth/ssyr-eng.pdf>
- Office of the Correctional Investigator & Ontario Office of the Provincial Advocate for Children and Youth. (2017). *Missed Opportunities: The Experience of Young Adults Incarcerated in Federal Penitentiaries*. Retrieved from <https://youthrex.com/wp->

<content/uploads/2019/07/Missed-Opportunities-2017.pdf>

- Ontario Ministry of Labour, Training and Skills Development. (2018). *Young Workers*. Retrieved from <https://www.labour.gov.on.ca/english/atwork/youngworkers.php>
- Palka, C. (2019). Criminal justice system impact on adolescents and young adults. Simon Fraser University School of Criminology. Retrieved from <https://www.sfu.ca/criminology/newsandevents/criminology-news/criminal-justice-system-impact-on-adolescents-and-young-adults.html>
- Perry, B.D. (2017) Trauma- and stress-related disorders in *Textbook of Child and Adolescent Psychopathology: Third Edition* (Theodore P. Beauchaine and Stephen P. Hinshaw, Eds) Wiley, New York pp 683-705
- Perry, B.D., Pollard, R., Blakely, T., Baker, W., & Vigilante, D. (1995) Childhood trauma, the neurobiology of adaptation and 'use-dependent' development of the brain: How "states" become "traits". *Infant Mental Health J*, 16 (4): 271-291
- Pruin, I. & Dünkler, F. (2015). Better in Europe? European responses to young adult offending. Universität Greifswald. Retrieved from [https://barrowcadbury.org.uk/wp-content/uploads/2015/02/T2A\\_Better-in-Europe\\_Report-online.pdf](https://barrowcadbury.org.uk/wp-content/uploads/2015/02/T2A_Better-in-Europe_Report-online.pdf)
- R v White* (2014) ONCA 64 <<https://canlii.ca/t/g2t0k>>
- Representative for Children and Youth Act, SBC 2006, c. 29  
[https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/06029\\_01#section1](https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/06029_01#section1)
- Scott, E. S., Bonnie, R. J., & Steinberg, L. (2016). Young adulthood as transitional legal category: Science, social change, and justice policy. *Fordham Law Review*, 85(2), 641-666.
- Segeren, M., Fassaert, T., De Wit, M., Grimbergen, C., & Popma, A. (2020). The Relationship Between Adverse Childhood Experiences and Self-sufficiency Problems in Early Adulthood Among Violent Offenders. *Child Abuse & Neglect*, 101, 104354-104354.
- Statistics Canada. (2021). *A portrait of Canadian youth*. Retrieved from <https://www150.statcan.gc.ca/n1/pub/11-631-x/11-631-x2018001-eng.htm#a1>
- United Nations Department of Economic and Social Affairs Youth. (n.d.). *Frequently asked questions*. Retrieved from <https://www.un.org/development/desa/youth/what-we-do/faq.html>
- United Nations Department of Economic and Social Affairs. (2013). *Definition of Youth*. United Nations. Retrieved from <https://www.un.org/esa/socdev/documents/youth/fact-sheets/youth-definition.pdf>
- Williams, A. (2020). Early childhood trauma impact on adolescent brain development, decision making abilities, and delinquent behaviours: Policy implications for juveniles tried in adult court systems. *Juvenile & Family Court Journal*, 71(1), 5-17.

Williams, H., Hughes, N., Williams, W. H., Chitsabesan, P., Walesby, R. C., Mounce, L. T., & Clasby, B. (2015). The prevalence of traumatic brain injury among young offenders in custody: a systematic review. *Journal of head trauma rehabilitation*, 30(2), 94-105.

Williams, W. H., McAuliffe, K. A., Cohen, M. H., Parsonage, M., & Ramsbotham, J. (2015). Traumatic brain injury and juvenile offending: complex causal links offer multiple targets to reduce crime. *The Journal of Head Trauma Rehabilitation*, 30(2), 69-74.

Wiltz, T. (2017). *How 'Raise the Age' Laws Might Reduce Recidivism*. Stateline. Retrieved from <http://www.justicepolicy.org/research/11455>

World Health Organization. (2021). *Adolescent health*. Retrieved from [https://www.who.int/health-topics/adolescent-health#tab=tab\\_1](https://www.who.int/health-topics/adolescent-health#tab=tab_1)

*Youth Criminal Justice Act*, SC 2002, c 1.