

Exploring the Lived Experiences of Neurodiverse Justice- Involved Youth

Samira Ahmed, Voula Marinos, Daniella Bendo, Nathan Innocente, Christine Goodwin-De Faria and Dale Spencer



Who is Involved?

University Partners:

- Kings University College
- Trent University
- Brock University
- Carleton University
- University of Toronto (Mississauga)
- Simon Fraser University

Community Partner:

- Justice for Children and Youth

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Project Focus

- Evaluate whether the YCJA offers neurodiverse, justice-involved young people with IDD (intellectual and developmental disabilities) appropriate protections consistent with YCJA (Youth Criminal Justice Act) provisions
- Understand the lived experiences of neurodiverse youth with IDD involved in the youth justice system



Project Phases

- **Phase 1:** Interviews with crown attorneys and defence counsel across Ontario who work with young people
- **Phase 2A:** Youth advisory group with neurodiverse-justice involved youth
- **Phase 2B:** Interviews with neurodiverse justice-involved youth





- JFCY is a **child and youth rights organization** advancing access to justice
- Promote understanding of children as an equity seeking group
- **Our Mission:**
Justice for Children and Youth strives to protect and advance the legal rights and dignity of children and youth



United Nations Convention on the Rights of the Child

- United Nations Convention on the Rights of the Child (UNCRC), is one of the core UN Human Rights Treaties
- It is aspirational, and articulates a common standard of achievement.
- Signed by Canada on May 29, 1990, Ratified Dec 13, 1991
- The most ratified Human Rights treaty in the world.
- Ratified by every member state in the UN except one - 196 countries

<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>



Anti Oppression Framework = Child Rights Framework

Move from a property rights to a human rights approach to children

- Children are an equity seeking group – entitled to respect for their inherent dignity
- Children and youth often face significant barriers to access to justice
- Children and youth have personal agency
- Respect for evolving capacity
- We all have a duty of care, obligation to safe guard children's best interests, support and advance young people to exercise their rights
- Their views and preferences must be heard and considered



JFCY – Child & Youth rights in practice

- **Anti-oppression framework** – recognize power imbalances, support overcoming oppression & discrimination, take client's lead
- **Understand trauma** – provide trauma-informed services, let child guide relationship and work, assist in finding other adult supporters
- **Understand development, mental health and neurodiversity of children and young people** – evolving capacities are not linear, changeable, situational, will influence behavior, communication, decision making – we adapt
- **Multi-disciplinary approach** – know other resources, diversify supports, don't over-burden



JFCY – common areas of law

Youth Criminal Justice – esp where overlapping issues, such as child welfare involvement, education, mental health, immigration, victimization, etc.

Education – enrollment, suspensions, expulsions, special education

Victimization – in any context – especially sexual or family violence

Health and Mental Health - HCCA, privacy, access

Privacy – criminal, health, school, online, etc.

Child protection / Family law – discrete issues outside OCL mandate and where child is the remedy seeker (eg. withdrawing from parental control, sibling access, VYSA/RSG)


Leaving home – all legal issues – school, health, child protection, ID, financial support, name change, etc

Immigration – where child has no or precarious status

Employment, Housing, Human Rights, 2SLGBTQ+, Policing, Income security, ETC



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under 18 and **up to 25** for
homeless or **undocumented**
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Publications & Videos



Guide to:
Leaving Home Rights
 Legal information for young people in Ontario
 See our other guides



Healthcare and Mental Healthcare

Legal information for young people in Ontario

JUSTICE FOR CHILDREN AND YOUTH

Sexual Consent

Valerie and Panya have been dating for 2 months, and want to further their relationship sexually...

Valerie is 14 Panya is 13

But due to their age difference, they do not know if it's legal.

If you are 16 - 17 years old, you can consent to sexual activity with a person who is older than you by any number of years.

But what about Valerie and Panya?

Since Panya is in the age range of 12 - 13 years old, she can only consent to sexual activity with a person who is less than 2 years older than her.

That means that it is legally okay for Valerie and Panya to engage in sexual activities together.

Not yet, we need more information.

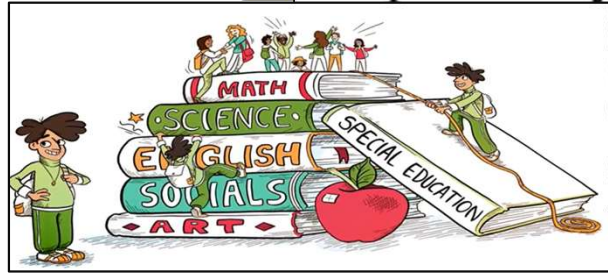
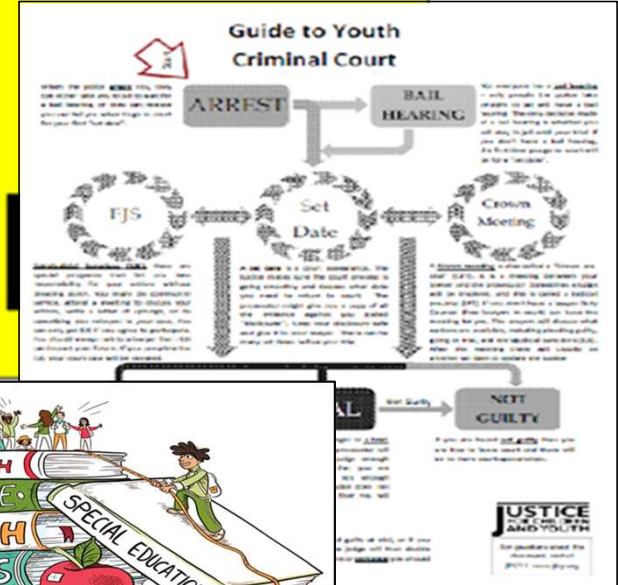
It is important to make sure there is no power dynamics occurring in a relationship with an age difference. Regardless, it is important to know that:

Consent is when you give permission for something to happen. You have right to take away your consent at any time.

CTA: 416-920-1633 (M-F 9-5) | Ontario: 1-866-999-3FCY (5329)

Guide to:
Youth Criminal Court Process

See also related guide: *Bail in Youth Criminal Court*



Youth Criminal Justice Act - YCJA

- Youth system is separate and unique from adult system
- YCJA provides unique rights and procedures for young people between the ages of 12 - 17 who are charged with a criminal offence in Canada.
- Special protections of rights and freedoms, and enhanced procedural protections (incorporates UNCRC)
- Focus on protecting public through rehabilitation and reintegration of young person, underlying causes of behavior
- Recognition of inherent vulnerability, less maturity and experience, and *reduced moral blameworthiness / culpability* – not equivalent to reduced moral character
- Unique privacy protections – records protections – as a significant aspect of enhanced procedural protections, rehabilitation, and limiting stigmatization



Unique Features of the YCJA

- **Statements** to police – YCJA s. 146, R v LTH 2008 SCC 49
- **Right to counsel** and a trusted adult – YCJA ss. 25 & 146
- **Judicial interim release** – YCJA ss. 28 – 31 - stand alone, unique scheme, including:
 - always crown onus - s. 29(3)
 - no detention unless “serious offence” (defined term), or “pattern” of outstanding charges or findings of guilt, s. 29(2)
 - cannot be a sub for social measures, s. 28.1
- **Sentencing** – YCJA Part 4, ss. 38 – 109 - unique spectrum of available sentences
- **Privacy protections** – Part 6, ss. 110 – 129 – including specific scheme regarding access, use, and disclosure of **Records** information



Understanding YCJA: Neurodiverse Children

Preamble of the YCJA

- WHEREAS members of society share a responsibility to address the developmental challenges and the needs of young persons and to guide them into adulthood
- WHEREAS communities, families, parents and others concerned with the development of young persons should, through multi-disciplinary approaches, take reasonable steps to prevent youth crime by addressing its underlying causes, to respond to the needs of young persons, and to provide guidance and support to those at risk of committing crimes



Understanding YCJA: Neurodiverse Children

Declaration of Principles under the YCJA

3 (1) The following principles apply in this Act:

(a) the youth criminal justice system is intended to protect the public by:

(iii) supporting the prevention of crime by referring young persons to programs or agencies in the community to address the circumstances underlying their offending behaviour;

(c) within the limits of fair and proportionate accountability, the measures taken against young persons who commit offences should:

(iii) be meaningful for the individual young person given his or her needs and level of development and, where appropriate, involve the parents, the extended family, the community and social or other agencies in the young person's rehabilitation and reintegration,



Understanding YCJA: Neurodiverse Children

Youth Custody is not a substitute for social measures prohibited

- **28.1** A peace officer, youth justice court judge or justice shall not detain a young person in custody, or impose a condition in respect of a young person's release by including it in an undertaking or release order, as a substitute for appropriate child protection, mental health or other social measures.



Understanding YCJA: Neurodiverse Children

Non Finding of Guilt Consequences: mental health diversion, extrajudicial sanctions and informal resolutions are important tools under the YCJA

Sentencing (Findings of Guilt) include the following purposes s. 38:

- **(i)** be the least restrictive sentence that is capable of achieving the purpose set out in subsection (1),
- **(ii)** be the one that is most likely to rehabilitate the young person and reintegrate him or her into society, and
- **(iii)** promote a sense of responsibility in the young person, and an acknowledgement of the harm done to victims and the community;

if this Act provides that a youth justice court may impose conditions as part of the sentence, a condition may be imposed only if

- **(i)** the imposition of the condition is necessary to achieve the purpose set out in subsection 38(1),
- **(ii)** the young person will reasonably be able to comply with the condition, and
- **(iii)** the condition is not used as a substitute for appropriate child protection, mental health or other social measures



Understanding YCJA: Neurodiverse Children

Exploring Tools for Proper Diagnoses:

- Many young people receive charges and do not know of their diagnoses or neurodiversity.
- The youth criminal justice system should not be the first line for obtaining mental health or developmental disability diagnoses.
- To determine whether there are suspected diagnoses: it is worthwhile asking whether the young person has an Individual Education Plan (IEP); Identification Placement Review Committee (IPRC) paperwork; and/or a psychoeducational assessment within the school system. You can also inquire about whether a young person is presently taking any medications and how they help them.
- The YCJA allows for courts to order a s. 34 report whereby a young person's diagnoses are explored and diagnosed. Those assessments are owned by the youth court and not by the young person. They can be used in subsequent criminal court proceedings if a young person's youth record is still accessible and/or be obtained by a youth court order for subsequent adult criminal court matters that may result in undue criminalization.



Key Takeaways

- Young people do not have to identify their neurodiversity to youth court – there may be a multitude of reasons why they chose not to. It is their choice and their choice only.
- The YCJA system does not have the tools to solve issues related to neurodiversity nor should it be used to do so. Criminalization is not the solution.
- The appropriate place to offer accommodation and services for neurodiverse children is within the community and with community agencies.
- The YCJA system still operates like an adult criminal justice system – the crowns, judges and courtrooms are the same. Community supports, defense lawyers, probation officers, mental health court workers must be the squeaky wheel to ensure that young people are treated in light of their reduced moral blameworthiness.



Case Study: Neurodiverse Client

Pearl is a 14 year old young person who was recently apprehended by a child and family services agency. Her parents were struggling to manage her needs. She was adopted and it is unclear what her diagnoses are other than a suspected developmental disability, oppositional defiant disorder and post traumatic stress disorder.

Pearl was arrested and held in custody following an incident at her group home where she allegedly assaulted multiple staff and another resident. Her CAS worker said they have no placement for her and requests an adjournment of her bail hearing for one week to locate a placement.

Pearl is struggling to manage in custody and JFCY is called by duty counsel to request ongoing representation. With JFCY's assistance, Pearl secures another placement and begins the work with CAS of trying to properly identify her proper diagnoses, there is suspected fetal alcohol exposure. Despite Pearl's well established need for accommodation, police continue to be called at her child protection placement and she obtains a multitude of charges. Given her growing distrust of her chosen child protection placements, she begins running away. This only leads to Pearl being more deeply entrenched in the YCJA system because each time there is a warrant out for her arrest for failure to reside at her address. Each time, she has to be brought to court for a new bail hearing.



5 Elements to Effective Representation of Children



#1 – Communication

- Learn about, and practice communicating, with young people.
- Assumptions can be harmful and they should be checked at the door. Especially any assumptions you may have about who children are and how they act.

Learn to appreciate their evolving capacities:

- Stage of development – adjust your language for age. Use concrete examples / relevant analogies.
- Cultural competency – child's environment, special needs of teenagers, trauma history, neurodiversity.
- Interpersonal skills – build rapport, do not patronize, do not leave out information, reduce anxiety and create agency to support capacity.



#2 – Trust, Dignity & Respect

Don't judge - respect young people's experiences and feelings as these are part of their lived experience.

Be Engaged - young people have very finely tuned appreciation for authenticity they will know if you are not being honest and straightforward; and trust will be impossible to establish.

Ask questions about their lives outside the legal issue, share information about yourself, find shared interests.

Recognize that the legal issues might be low on their list of priorities.

Be clear and realistic.



#3 – Explaining Legal Issues is a Skill

Learn and practice explaining complex legal issues and processes in very straight forward terms. This is a skill, and it is not easy. Working with children in the legal context will take TIME, lots of time.

- Check all your vocabulary with your client.
- Use concrete examples .
- Be ready to explain things more than once, and after you thought things were clear.
- Ask questions to ensure understanding.
- Write things down so they can take it with them - consider the use of color coding



#4 – Your Client’s Decisions

Give your client options and be ready for your client to make their own choices.

- Know that they might correctly make choices with which you may not agree.
- Talk through decisions as you would for any client.
- Ask your child client why they want to make the choice they describe.
- Know that they might not tell you their secrets.
- Assist your child client by helping to maintain the greatest number of options going forward – this is helping them to manifest their own best interests.



#5 – Resources and Referrals

Become familiar with child friendly resources – legal, social, family, economic.

- Have knowledge about referral options for when your child client has needs other than your services.
- Oftentimes, your child client will need supports even after the case is over and you want to make sure that they are in place.
- It is good to diversify the supports to which your child is connected, but most children can only make a small number of professional connections at a time – do not overwhelm your child client.



A Springboard for Exploring Literature About Lawyers and Their Youth Clients:

- *“I’m obligated to know what is happening with the young person.” (Lawyer 14)*
- *“I guess the one thing I would say is having it be more accessible and the language that sometimes it just felt like everyone was talking around and I was not really sure what was going on. And then after leaving I was given a debrief after of like, okay, this is what just happened or what the rundown was, but it would have been nice to I guess being (sic) more involved and the actual experience in court or just have a better idea of what's going on. So maybe that is the judge talking to me and being more directly like a human being rather than everyone talking around me...” (youth participant 15).*
- What does the literature say, and what do we know?



What do we know from the literature and research?

- Recognized that youth justice system has embedded barriers for youth (*R. v. L.T.H.*, S.C.C. [2008]) – the importance of age and understanding
- Overrepresentation of persons with IDD (Day et al., 2024; Jones, 2007; Marinos et al., 2020).
 - Neurodivergence is often “invisible”; many young people are not clinically assessed
 - Mild to severe; dual diagnosis; impairments can be exacerbated by stress
- Rights to access to justice and participation (YCJA; Charter; UNCRC)
- Youth voice – lack of power to express themselves in decisions that immediately affect their lives (McMurtry & Curling, 2008).
- Youth have low understanding of their legal rights (Goodwin-DeFaria et al., 2012), including youth waiver forms (Freedman et al., 2014; Eastwood et al., 2015)
 - Higher education levels (language)
 - Stress and neurodivergence act as barriers to understanding



What do we know from the literature and research?

- Limited past research about justice professionals' views on interacting with youth with IDD (Bendo et al. 2024; Marinos, et al. 2017).
 - Largely literature on police-youth interactions;
 - less attention to youth and their interactions with court officials, such as lawyers.
- Limited research about the experiences of justice-involved youth with IDD (Bendo, Goodwin-DeFaria & Moore, 2024)
- Lawyers' training about disabilities enhances the quality of client representation, advocacy and support (Law Commission of Ontario, 2012).
 - Limited required education and training by lawyers, through clinical legal education and law-student education.



Lawyers and IDD Training

Rule 3.2-9 Client with Diminished Capacity

When a client's ability to make decisions is impaired because of minority, mental disability, or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal lawyer and client relationship.

This includes understanding their client's cognitive capacity, but there are no specific education or training methods for fulfilling this obligation



Lawyers and IDD Training

Law Schools	CPD and EDI
Specific elective courses related to disability and the law exist in three law schools	Lawyers required to complete one EDI training hour per year
Two law schools offer full programs related to disability	Three-hour eCourse discussing general topics related to EDI but without in-depth exploration of topics like disability, IDD, or neurodiversity
No consistent integration of disability or IDD into curriculum of accredited law schools	Some materials (LSO) offer valuable guidance into disability inclusion and accessibility within the legal system "Ensuring Access to Your Law Office and Services for People with Disabilities"



Lawyers and IDD Training

Scoping Review Resources

Seminars and Conferences	Toolkits and Webinars	ARCH Disability Law Centre	Justice for Children and Youth	Legal Aid Ontario
Criminal Lawyers' Association, LAMDA MH conferences, may include IDD	CAMH online training, CLEO webinar, HSJCC webinars, Developmental Disabilities Justice Toolkit	Extensive resources related to disability and law, some specific to youth and IDD	Extensive resources like toolkits, presentations, advocacy materials, links to community orgs	Training on youth and mental health



Lawyers and IDD Training

Half had received training about vulnerable populations

Yes (51%)	No (49%)
Most through CPD Overall lack of training opportunities	Learned about youth with IDD or MH on the job through experiences working with YP Piecemeal training through online resources, interaction with youth workers

Despite this, most (73%) understood IDD and could distinguish it from mental illness

“Whether they do have mental health issues, or they have an intellectual disability, may inform how I approach my communication with them. And it may inform how I approach negotiations with the Crown.”



Lawyers and IDD Training

Most would be informed about client IDD, and see it as key to their advocacy

Yes (56%)	It depends (36%)
Lawyer's own intuition or judgement Parents, community agencies (CAS), professionals (youth court workers, teachers, doctors) Assessments and reports	Information about a young person's disability is either inconsistently provided or not at all Contingent on whether it is disclosed by parents, YP, or in court

Young people (90%) believe it is important for justice professionals to be informed about their IDD to consider their cognitive capacities, provide accommodations, and to mitigate sentencing



Lawyers and IDD Training

“I’m now at the point now where I can see certain behaviors and that gives me certain ideas. I’m no expert in terms of diagnosing, but it gives me.... I have a, I have a spidey sense of what I might be dealing with. And then it’s developing, especially, a level of trust with parents, with children in that position.” (Lawyer 2)

“I think that's like the first thing they should be asking you. They can ask your name, your birthday, whatever but in general, that should be the first thing they think of to ask; if you need any support because you have a disability or if there's anything you'd like them to know about your disability. I think that's such an important piece to ask because it could explain everything in the end (YP 2)



TAKEAWAY MESSAGES

- Lawyers showed interest in more training about neurodiversity and IDD
- Justice-involved youth highlighted that there are barriers to young people's access and participation that are embedded within the youth justice system
- Young people are asking to be supported by the entire system, from policing to the courts and the community
- IDD Should be included as an essential and foundational component of education within law schools
- Client needs to be understood within psychological, social, economic and political contexts
- An important part of the client-lawyer relationship is the communication and understanding. With many invisible disabilities, and the possibility that a lawyer may not be immediately aware of any communicative or cognitive issues, it is critical that a variety of forms of legal education and training be made available to remedy shortfalls in knowledge and education



QUESTIONS?

Contact: Daniella Bendo (dbendo2@uwo.ca)



PROJECT RESOURCES

Academic Articles:

- **Bendo, D., Goodwin-De Faria, C., Moore, M., & Baruth, C. (2024).** Difficult 'By Design': Viewpoints of Crown Attorneys and Defense Counsel Working With Youth With Intellectual and Developmental Disabilities in the Youth Justice System. *Youth Justice*, 1-19. <https://doi.org/10.1177/14732254241237189>
- **Spencer, D., Innocente, N., & Bendo, D. (2025).** Legal Counsel, Moral Expectations, and Youth with Intellectual and Developmental Disabilities: Economies of Worth in Youth Courts. *Social & Legal Studies*, 1-22. DOI:[10.1177/09646639251349395](https://doi.org/10.1177/09646639251349395)
- **Bendo, D., Ciuffo, D., & Goodwin-DeFaria, C. (2025).** Beyond implementation: A critical children's rights- based approach to justice-involved youth with intellectual and developmental disabilities. In V. Llobet., D. Reynaert, A. Twum-Danso Imoh, & W. Vandenhole (Eds). *Towards a Field of 'Critical Children Studies: A New Handbook*. Routledge
- **Bendo, D., Moore, M., Goodwin-De Faria, C., Baruth, C., & Getty, K. (In-Press).** "I felt heard and like somebody actually cares about us:" An Analysis of Benefits and Barriers Co-producing a Participatory Action Research Project with Neurodiverse Justice-Involved Young People. In H. Mreweid (Ed), *The Palgrave Handbook on Participatory Action Research with Children*. Palgrave, Macmillan.

