OCFSA

Office of Child and Family Service Advocacy

REVIEW

Open Detention And Open Custody In Ontario

By: Diana Cooke, Advocacy Officer
Judy Finlay, Chief Advocate

January 2007

Table of Contents

Introduction ***3***

Section One: Methodology ***6***

Section Two: Historical Background and Contextual Information ***9***

Section Three: Findings and Themes Arising From the OCFSA Review ***18***

- Demographics
- Programming
- Basic Care
- Peer Violence
- Safety
- Staff-Youth Interaction
- Behaviour Management and the Use of Physical Restraints
- Rights
- Access to Family
- Discharge Planning
- Reintegration
- Overall Experience in Custody

Section Four: Special Needs Youth ***44***

- Maximizing current resources
- Enhancing Clinical Capacity
- Information Sharing

Section Five: Future of Open Custody/Open Detention ***46***

- Placement in Home Community
- Access to Family
- Staff Youth Relationships
- Programming and Community Access
- **Expanded Role for Open Custody/Open Detention**

Section Six: Summary and Recommendations ***53***

References ***59***

OCFSA REVIEW OF OPEN DETENTION AND OPEN CUSTODY

"The difficulty lay in defining the category into which homes would fall. Did they have more in common with state reformatories for convicted criminals, state schools established for all children, or private charitable children's homes for the disadvantaged"?[1] *[1994]*

INTRODUCTION

The phrase "open custody" was introduced to the lexicon of the Canadian youth justice system with the advent of the *Young Offenders Act* in 1984. Although the term itself may have been new, the notion that there was an appropriate sanction that fell somewhere on the continuum at a point less harsh than a prison but somewhat more rigorous than an unfettered return to the community is one that has been supported by Canadian and provincial legislation for over one hundred and fifty years.

A number of options with a "care and custody" component directed towards youth who have broken the law or exhibited uncontrollable [2] or "wayward" [3] behaviour have been devised over the years. These included: apprenticeships, foster care, Industrial schools (later known as Training schools), Children's Aid Society wardship or intervention, and probation. Each of these, at different points in time, was considered a less harsh alternative to prison.

In 1965, the Report of the Department of Justice Committee on Juvenile Delinquency in Canada made note of the apparent shortage of foster homes for delinquent children in urban areas, and identified a number of shortcomings in the Industrial School/Training School system. One of the recommendations of this report was the creation of "foster group homes where children who must be taken out of homes could derive benefit from a period of living in a small group in home-like surroundings under firm discipline". [4] Nineteen years later, the idea that a community residential centre, group home, child care institution or forest or wilderness camp, could be considered a form of custody henceforth known as "open custody" under the federal legislation known as the *Young Offenders Act*, (YOA) and Open custody facilities continue to operate today under the auspices of the *Youth Criminal Justice Act* (YCJA).

In the Fall of 2005, the Office of Child and Family Service Advocacy (OCFSA) embarked on a project to review all of the open custody and open detention facilities in the province of Ontario. Reviews of children's residences and custody facilities have been conducted by the OCFSA since 1992. The purpose of an OCFSA review is to

[1] Neff, Charlotte, *The Ontario Industrial Schools Act, 1874*., **Canadian Journal of Family Law,** volume 12, No. 1, 1994 p 179
[2] An Act Respecting Industrial Schools (1874)
[3] An Act for the Protection of and Cruelty to and Better Protection of Children (1893)
[4] p 295

gather information in a systematic way about youth perceptions of the care they receive while in care/custody and to present information and recommendations to the respective management of each facility/institution for their response and to the government ministry with oversight responsibility for the particular agency or institution. The importance of this type of review, which at times can be characterized as an exit interview, was emphasized by the jury at the Coroner's inquest into the death of J.L., a young person who died in an Ontario young offender facility in 1996. That verdict, at recommendation 99, indicates that, "the Office of Child and Family Service Advocacy is encouraged to develop a process of facilitating exit interviews of young offenders to ascertain the prevalence of peer-on-peer violence and bullying". The following year, the OCFSA met with representatives from the then Ministry of the Solicitor General and Correctional Services to develop an exit interview protocol. Since that time, the OCFSA has conducted regular reviews at what were formerly known as "Phase Two" secure detention facilities and secure custody youth centers.

Based on the findings of the review upon which this report is based, the OCFSA has concluded that the open detention/open custody system is a valuable part of the youth justice system and one that has made diligent efforts to provide quality care for youth. It is also fair to say, that open custody/ open detention facilities are faced with the challenge of occupying a notional mid-range point on the continuum between containment and re-integration. On the one hand, they have been likened legislatively to group homes and wilderness camps, on the other they are legally designated as "custody" facilities. The on-going debate, similar to that which arose during the era of the Industrial School system, is into which category does the open custody facility fall? Should it be more like a jail or more like a group home? This is a difficult question to answer, especially since provincial legislation gives little more substance to the definition provided in the federal legislation other than to state that maximum secure custody and secure detention are situations in which "restrictions are continuously imposed on the young person by physical barriers, close staff supervision or limited access to the community" and that open temporary detention is one in which the restrictions are "less stringent". [5]

The *Child and Family Services Act (CFSA)* gives no further information about the definition of open custody other than to state that this type of facility is something that may be established by the Minister. Interestingly, both the *CFSA* and the *Ministry of Correctional Services Act* (MCSA) include a presumption that youth detained under the *YCJA* or *YOA* will be placed in an open detention setting. This instruction, which has not been fully reflected in provincial policy relating to sixteen and seventeen year olds, is very consistent with explicitly stated YCJA principles related to the custody and supervision system: that the approach taken is the one which is "least restrictive" consistent with the protection of the public, staff and young person; and that effective programs be provided to young persons both in custody and while the young person is under supervision in the community. The YCJA also requires that the custody and supervision system assist in the rehabilitation and community reintegration of young

[5] Child and Family Services Act,

people as a means to increase public safety. Given that the province has an extensive secure custody system; it is the view of the OCFSA that the essential role of an open custody/open detention facility is not one of simple containment. The more appropriate role is one that attempts to normalize life for the residents and to provide maximal programmatic opportunities for pro-social role modeling and reintegration in the community.

MANDATE AND AUTHORITY OF OCFSA

The OCFSA is authorized under *the Child and Family Services Act* to protect the rights and interests of Ontario's children and families seeking or receiving services through the Ministry of Children and Youth Services (MCYS). Advocacy services are also provided to youth in the Provincial and Demonstration Schools operated by the Ministry of Education. In addition, the Office directly advises the respective Ministries on matters that concern children and families and seeks to ensure that children/youth in care know and understand their rights and that those laws that protect them from abuse or harsh treatment are followed.

The role of the OCFSA is to elevate the voice of children and youth. Generally speaking, the OCFSA does not seek to "prove" that the opinions of children and youth are legitimate by seeking corroboration from adults. Support for this position can be found in the United Nations Convention on the Rights of the Child (Article 12) which stipulates that all children capable of forming their own views have the right to express these views freely and that their voice should be heard and taken seriously on matters that concern them. In the case of this review, we do not have to rely on youth to confirm that what they are reporting is serious in nature.

ORGANIZATION OF REPORT

This report is divided into six sections: Methodology; Background and Contextual Information; Themes Arising from the OCFSA Review; Special Needs Youth; Future of Open Custody/Open Detention; Summary and Recommendations.

SECTION ONE: METHODOLOGY

QUESTIONNAIRE

The interview questionnaire was based on the "Exit Interview" which was developed jointly by members of the OCFSA, the [then] Ministry of Correctional Services and the University of Toronto. In the past, the OCFSA used the "Exit Interview" tool in institutions formerly known as "Phase 2" secure detention units and secure custody/detention youth centres. For the purposes of this review two Advocacy Officers Staff adapted the EXIT INTERVIEWS so that they would be suitable for open rather than secure settings. The tool was then piloted at a secure custody/treatment facility with a focus group of youth who had experience in an open custody/detention facility. Young people from the focus groups suggested several additional questions that were then added to the questionnaire. The OCFSA also sought suggestions from the Research Outcome and Measurement Unit of MCYS and a senior manager at one of the youth centres with regard to questions in order to capture more information about staff-youth relationships. These questions were also added to the questionnaire.

REVISIONS TO QUESTIONNAIRE DURING INTERVIEWS

At the halfway point of the review process, two questions were added to the questionnaire: (1) "What is it like to live here?" and (2) A request that youth assign a score between zero and ten to their experience of living at the facility. A score of "zero" would signify a poor experience and "ten" on a scale between zero and ten would indicate a highly positive experience. The decision to amend the interview in this way was an attempt to allow youth to place concerns that had been elicited by the interviewers into a perspective that related these concerns to his/her overall experience of living at the facility. For example, a young person may identify issues about basic care and feel that these issues had minimal or no impact on daily life at the facility and another person may identify basic care issues that greatly affected his/her stay. The scoring aspect at the conclusion of the questionnaire was also thought to be a manner in which to elicit information from youth about their overall experience at the facility taking all of the negatives and positives they had mentioned into account.

Two questions had to be amended during the interview process. One question, "Do you have confidence that the staff here are willing to help you make the changes you need to make" initially resulted in a number of youth responses similar to the following: "No, only you can decide whether you will make changes in your life". In order to better capture staff/youth dynamics the question was amended to, "Do you have confidence, or do you believe that the staff here are willing to help the kids?" The second amendment was to the question under the section labeled peer violence, "How safe do you think it would be for someone coming here for the first time?" This question was changed to, "How safe do you think the other residents here feel?" because it was assumed that anyone arriving at a place they have never been before is likely to feel less safe initially. The point of the question was to ask about the general atmosphere rather than focus on initial perceptions. It is the OCFSA's experience that youth generally do not admit to being frightened or fearful but are willing to acknowledge that there may be others who feel this way or have some reasons to be fearful.

INTERVIEWERS AND INTERVIEWEES
Representatives of the OCFSA, which included a number of Advocacy Officers and three students pursuing graduate degrees in social work who were completing a placement at the Office, attended at 61 facilities. The number of youth interviewed at each of the facilities ranged from one to eighteen residents. In total, two hundred and fifty (250) youth were interviewed.

PRE-INTERVIEW PROCESS

REGIONAL OFFICE CONTACT
For the purpose of delivering youth justice services, the province is divided into 4 regions (Northern, Western, Eastern and Central). Each of the four Regional Directors was contacted by the OCFSA about the project. The purpose of the project was explained and the OCFSA requested a list of facilities in each region, a designated contact person from each facility and a designated liaison person from each regional office. The order in which the regions were selected was based on logistical considerations. It is our understanding that all agencies (open custody/open detention facilities) received advance notice of the project by the Regional Office as agreed, and were also advised that a representative from the OCFSA would be contacting each of the agencies to provide more information.

The OCFSA undertook to provide the following information to Regional Offices and the private agencies providing custody/detention services: verbal feedback to the facility at the conclusion of each review; a follow up letter to both the facility and the regional office with regard to the findings; and immediate notification to the Regional Office with regard to any safety issues or serious concerns raised by youth or noted by the OCFSA. Regional Directors were advised that upon conclusion of the review, the OCFSA would produce a report that would identify systemic issues but would not identify specific facilities or regions. Additionally, it was noted that the reports would not contain any information that would identify a particular youth or facility.

AGENCY CONTACT
An Advocacy Officer contacted each of the designated contacts at the facilities and provided a brief introduction to the project. The contact person was advised of on-site requirements of the OCFSA and a plan for feedback. The designated contacts were also provided with an opportunity to ask questions about the project. Information provided to agencies about the project was similar to that provided to the Regional Directors. Agency contact people were also advised that OCFSA interviewers would consist of a team of one interviewer and one recorder and that each youth would be interviewed individually by a team. At most sites, two representatives (one team) conducted all of the interviews. However, due to the number of youth at some sites there were some occasions where either two or three sets of interviewers attended. The initial plans to provide a follow-up letter outlining issues raised by youth at each facility were changed fairly quickly due to the low numbers of youth in many of the facilities. It was expected that any comments made would likely identify youth who had been promised anonymity and confidentiality by the OCFSA. For this reason, there was

little feedback provided by the OCFSA to agencies in Northern or Western Region other than immediate safety concerns.

YOUTH INTERVIEWS

All youth who were interviewed by the OCFSA were advised prior to the commencement of the interview that their participation in the process was voluntary and that their anonymity would be protected with the following exceptions: (1) Abuse disclosures subject to the reporting requirements of the Child and Family Services Act: (2) Disclosures of involvement in serious criminal activity; (3) Any information indicating that the young person was a danger to himself or anyone else. The interviewers were satisfied that the youth understood the limits of confidentiality and that youth were also aware that interviewers would seek to ensure that any quotes used in the report would not reveal the identity of the participants. The assurance of confidentiality and anonymity to interview participants, within the limits of confidentiality explained, is a widely accepted research practice and the standard for reviews conducted by the OCFSA. Youth were also told that they may end the interview at any time and did not have to answer any questions that they did not wish to answer. At the time of the interview, youth were informed of the role of the OCFSA and their right to access the Office.

LIMITATIONS

Youth were given the option of choosing not to respond to any specific question. There were three youth who chose to complete only certain portions of the questionnaire. The results section generally makes note of the number of youth who responded to each question. In retrospect, the OCFSA would have asked for more information about youth's perceptions as to the quality of programming received, and the degree to which the facility assisted them with re-integration. Levels of peer violence may be slightly under-reported in this paper because the more in-depth analysis focused only on facilities in which both verbal and other types of violence were reported or facilities in which three or more types of peer violence were reported. Finally, many of the facilities could be described as being very much under capacity at the time of the review. In these types of situations there is the opportunity for more vigilance and greater staff-youth interaction on both a group and individualized basis. Therefore, the results of the review may reflect the impact of enhanced supervision which is not available when facilities operate at close to capacity or over-capacity.

LITERATURE REVIEW

The OCFSA conducted a literature review that included federal and provincial legislation relating to children, youth and justice.

DATA ANALYSIS

The data collected was analyzed both quantitatively and qualitatively. Qualitative analysis was conducted using the N-Vivo qualitative research analysis package.

SECTION TWO: HISTORICAL BACKGROUND AND CONTEXTUAL INFORMATION

The *Youth Criminal Justice Act* (YCJA) (2002) requires that all provinces operate a youth custody and supervision system, "distinguished by the degree of restraint of the young persons in them". Under the previous law relating to juveniles charged with criminal offences, the *Young Offenders Act* (YOA), and currently, under the *YCJA*, the two systems have been known as "Secure" custody and detention and "Open" custody and detention.

In fact, one might say that since 1984 there have been four separate systems of custody: (1) Secure custody/ detention administered under Part V of the *Ministry of Correctional Services Act (MCSA);* (2) Open custody/ detention administered under Part V of the *Ministry of Correctional Services Act (MCSA),* (3) Secure custody /detention administered under Part IV the *Child and Family Services Act (CFSA)*; and (4) Open custody/ detention administered under Part IV *Child and Family Services Act (MCSA)*. This seemingly complex set of arrangements is not unusual in the historical landscape of the Canadian youth justice system. The interplay between federal and provincial law in these circumstances results from the manner in which the Constitution Act 1867 defined matters of exclusive jurisdiction.

In Canada, criminal law is a federal responsibility, yet the administration of the criminal justice system and the operation of reformatories, charitable and welfare institutions fall under provincial jurisdiction as does control over education. For this reason, federal legislation relating to juveniles who break the law has been characterized as an Act of Parliament that "depends upon provincial resources for its effective application". [6] Since 1867 there have been at least fourteen different provincial Ministries/Departments with oversight responsibility for agencies providing services to youth who have been involved with the law. These Ministries/Departments include but are not limited to: the Office of the Inspector of Prisons and Public Charities (1869-1934), the Department of Public Welfare (1930-1967), the Department of Social and Family Services (1967-1972), the Department of Reform Institutions (1946-1968), the Department of Correctional Services (1968-1972), the Ministry of Correctional Services (1972-1993) and 1999-2002), the Ministry of Solicitor General and Correctional Services (1993-1999), the Ministry of Public Safety and Security (2002-2003), the Ministry of Community Safety and Correctional Services (2003-present), the Ministry of Community and Social Services 1972-present), and the Ministry of Children's Services (2003-2004) and the Ministry of Children and Youth Services (2004 -present).

The intent of this section is to identify the relative influence of federal and provincial legislation on the evolution of policy and practice related to the open custody/open detention system.

[6] Department of Justice, Committee on Juvenile Delinquency, p 31

HISTORICAL BACKGROUND

As early as 1849 the ***Commission Appointed to Inquire into the Conduct, Discipline and Management of the Provincial Penitentiary*** recommended the establishment of Houses of Refuge for youth convicted of crime. Reformatories for juveniles, which were separate from those for adults, were established in the 1850's.

In 1875***, An Act Respecting Procedure on Criminal Cases and Other Matter Relating to Criminal Law***, permitted the substitution of a reformatory sentence for imprisonment in a penitentiary for those under 16 years of age. Although juveniles in a reformatory could be certified by the warden as incorrigible and transferred to a penitentiary, the Lieutenant Governor could also arrange for a young person under 16 who was sentenced to a period of incarceration in a penitentiary for less than two years to be transferred to a reformatory.[7]

The province of Ontario established the ***Industrial Schools Act*** in 1874 which allowed for the commitment of a child under the age of 14 who was an orphan, the child of neglectful parents, beyond the control of his or her parents or found wandering or begging to an Industrial school for instruction, "in such branches of useful knowledge as shall be suitable to their years and capabilities". Initially, children so committed became wards of the school until the age of 16 but could be placed "in the dwelling of any trustworthy and respectable person". This statute was revised in 1884 to allow School Board trustees to delegate the management of industrial schools to philanthropic societies. The new revisions also permitted a judge or magistrate to send a child found guilty of committing a petty crime to be sent to an industrial school.

An Act Respecting the Committal of a Person of Tender Years (1890) prohibited boys under 13 from being placed in a reformatory and required instead that they be sent to an industrial school where they would be detained until they were reformed, appropriate for apprenticeship or dischargeable either on condition or permanently. This Act, and ***An Act Respecting Custody of Juvenile Offenders*** (1890) both recognized placement in a certified Industrial School as a suitable substitute for imprisonment in a reformatory, penitentiary or common goal.

The Ontario ***Act for the Prevention of Cruelty and Better Protection of Children*** (1893) created the Children's Aid Society (CAS). This Act designated industrial schools, shelters, and "temporary homes established by any Children's Aid Society…" along with "any other institution subject to the inspection of the inspector of prisons and asylums" as a "place of safety". The legislation specifically excluded goals, prisons and police cells as "places of safety" and prohibited the placement of children in homes or shelters "under the same care or management as a penal institution". Furthermore, the law permitted **any** court to order a child to a home for destitute children or an industrial school in lieu of committal to prison.

[7] An Act Respecting Penitentiaries and the Inspection Thereof, and For Other Purposes Relating to Criminal Law (1875)

One year later, the federal government enacted a law which specifically recognized, in Ontario, the opportunity for a Children's Aid Society to accept children diverted from the criminal justice system. ***An Act Respecting the Arrest, Trial and Imprisonment of Youthful Offenders,*** (1894) allowed a judge to order children under 14 who were accused of "any offence against the laws of Canada" to be committed to a home for destitute children, the charge of any Children's Aid Society or to any certified Industrial school in lieu of committal to prison. The law also allowed the court to give notice to a Children's Aid Society whenever a boy under 12 or a girl under 13 was brought before the court or "subject to a complaint". The Act empowered an officer from that society to investigate the facts of the case as well as the child's parentage and circumstances. After a report from the CAS, the judge was permitted to authorize placement of the child as an apprentice, in a foster home, impose a fine, suspend the sentence definitely or indefinitely, or commit a child to an industrial school or reformatory.

This legislation explicitly addressed the objective of reform and rehabilitation, "it is desirable to separate youthful offenders from contact with older offenders during arrest and to make better provisions than exists for their confinement to places where they may be reformed and trained in useful lives rather than being imprisoned. "This law empowered judges to commit a child under 14 who committed an offence under federal law to a home for destitute or neglected children, the charge of any CAS or any industrial school.

An Act Respecting Juvenile Delinquents, 1908 (JDA) defined a juvenile delinquent as any child who violated federal, provincial or municipal law or any child who was liable to be committed to an industrial school or juvenile reformatory under federal or provincial law. Potential penalties under the *JDA* included: placing the child in the care or custody of a probation officer or other suitable person; allowing the child to remain at home subject to the visitation of the probation officer; causing the child to be placed in a suitable family home or a foster home subject to visitation by the probation officer; committal of the child to a Children's Aid Society or the Superintendent of Neglected and Dependent Children; or committing the child to an industrial school for boys and girls. At this time, the age of criminal responsibility was 7, but the Act stipulated that, generally speaking, no child under 12 years of age could be committed to an industrial school unless attempts had been made "to the reform child in his own home, foster home or the Children's Aid Society". Amendments to the *JDA* in 1929 permitted provinces to have the option to raise the upper age of juvenile to include children "apparently" under 18. Ontario chose not to expand the age limit. It is important to note, that with the exception of children committed to the care of the CAS or a training school, all children remained wards of the court until their 21st birthday unless they were discharged by the court. The implication of this was that they could be ordered back to court at any time, to face continued or other proceedings. Children committed to the CAS or training schools were not wards of the court, but became wards of either the training school or the CAS essentially under federal legislation although under provincial jurisdiction. The *JDA* also articulated a standard of care for children, "that the care and custody and discipline of a juvenile delinquent shall approximate as nearly as may be that which should be given by it's parents".

During the 1960's, industrial schools became known as training schools. The powers of a parent ceased upon a child's admission to training school and the Minister had the authority to order a ward of the CAS to a training school. The training school could permit a child to be placed in a foster home or, "the dwelling of a trustworthy and respectable person", but even in these situations the child remained under the supervision of the training school. Interestingly, three of Ontario's current secure custody youth centres began as industrial or training schools: Brookside Youth Centre (1946) Sprucedale Youth Centre (1966), and Cecil Facer Youth Centre (1971).

OPEN AND SECURE CUSTODY

The ***Young Offenders Act****,* 1984 (YOA) narrowed the scope of federal law relating to juveniles and turned the focus of the legislation to those accused of contravening federal legislation and standardized the age range across the country for prosecution as a juvenile to young persons between the age of twelve and eighteen. Later amendments to the law allowed for the possibility of a case to be transferred to the adult criminal system in certain circumstances.

Wayward, incorrigible and uncontrollable children could no longer be dealt with through the criminal justice system in the absence of an allegation that they had committed a federal offence. The concept of a child as ward of the court for an indeterminate period of time was abandoned in favour of determinate sentences (known as 'dispositions') and the YOA also explicitly recognized "custody" as a potential option for youth found guilty of offences.

Two types of custody were defined under the Act: Open custody and Secure custody. Under s24.1 (1) Open custody was defined as follows:

"open custody" means custody in (a) a community residential centre, group home, child care institution, or forest or wilderness camp, or (b) any other like place or facility.

Secure custody was defined under the same section as, "custody in a place or facility designated by the Lieutenant Governor in Council of a province for the secure containment or restraint of young persons."

Initially, the *YOA* included a section in which there was a general presumption that youth under 14 found guilty of an offence should **not** be committed to secure custody except in certain circumstances. This provision was later amended such that the Youth Court or the Provincial Director was required to take a number of factors into account when deciding whether a young person should be placed in open or secure custody.

Administrative responsibility for 16 and 17 years olds, formerly considered adults in Ontario under the ***JDA***, continued to remain the responsibility of the adult correctional services ministry. Places of maximum security, including secure temporary detention for this age group often continued to be housed in adult correctional facilities, albeit in separate sections known as "Young Offender Units".

Provincial law relating to open custody/open detention can be found in the ***Child and Family Services Act (CFSA)***, 1990 and the ***Ministry of Correctional Services Act (MCSA).*** The ***CFSA,*** under s89, permits the provincial government to establish both maximum and medium security programs in places of secure custody. These types of programs are defined as follows:

89. (3)(a) Maximum security programs [are those in which] restrictions are continuously imposed on the liberty of the young person by physical barriers, close staff supervision or limited access to the community.

89.(3) (b) Medium security programs in which restrictions less stringent than in a maximum security custody program are imposed on the liberty of young persons.

The *CFSA* has little to say about open custody other than, "The Minister may establish open custody programs in places of open custody".

The ***MCSA*** provisions relating to maximum and medium security in places of secure custody are identical to those found in the ***CFSA.*** There is no further definition of open custody under this Act.

OPEN AND SECURE DETENTION vs. OPEN AND SECURE CUSTODY
Another aspect of consideration in this section is the differentiation between "open detention" versus "open custody". The status of being in "custody" in this context refers to youth who have been sentenced by a judge. "Detention" or "temporary detention" refers to those who are being held in a youth facility awaiting either trial or sentencing. These young people on detention are those who are being held without bail either because the bail hearing has not yet commenced; have been denied bail by a Justice of the Peace or a Judge; have had their bail revoked; or are waiting for a surety to post bail on their behalf. Youth in the category of detention are also referred to as being on "remand" status. The ***YCJA*** gives discretion to the provinces about who makes decisions about the level of custody (open versus secure). Decisions about placement in either open or closed custody can be made either by a judge or a provincial official. The province of Ontario has chosen to have this type of sentencing decision be made by a judge.

The *YCJA* delegates the decision-making responsibility regarding placement in detention to the provinces. References to placement in "open temporary detention" versus "closed temporary" detention can be found in both the *CFSA* and the *MCSA*. The wording in this section of each of the respective Acts is almost identical. As per the provisions of the *CFSA:*

Section 89. (2) permits the Minister to establish:

(a) secure temporary detention programs in which restrictions are continuously imposed on the liberty of young persons by physical barriers, close staff supervision or limited access to the community; and

(b) open temporary detention programs, in which restrictions that are less stringent than in a secure temporary detention program are imposed on the liberty of young persons.

The presumption in both the ***CFSA*** and the ***MCSA*** is that youth will be held in open detention unless certain other circumstances apply. The decision maker in the first instance of what has come to be known as "level determination" (placement in an open setting rather than one that is secure) is the provincial director (Ministry official) in both cases and that decision is reviewable by a judge after an application to the Court in both cases. Although the legislation was identical, the policy and practice of the two Ministries was quite different. Historically, very few of the youth under the jurisdiction of the adult services Ministry [Ministry of Correctional Services/Ministry of Solicitor General and Correctional Services/Ministry of Public Safety and Security/Ministry of Community Safety and Correctional Services] were placed in open detention whereas a large number of youth were placed in open detention by the children's services [Ministry [Ministry of Community and Social Services/Ministry of Children's Services/Ministry of Children and Youth Services]. Over the past year, a pilot project has been in effect which has expanded the practice of placing older youth in open detention settings.

The fact that the system for open custody and open detention was the responsibility of two different Ministries meant that the policies developed for each were often quite divergent. Historically, the policy implications of the greatest interest to the OCFSA involved the use of open detention, strip searches, and physical restraints.

In November 2003, the four systems have been amalgamated as it was announced that responsibility for all youth justice services would fall under the jurisdiction of a single Ministry, the Ministry of Children and Youth Services. This change has required the development of new policies and procedures that apply to the entire spectrum of youth aged 12 to 18 rather than a discrete age bracket within that range. It should be noted that the agencies responsible for youth formerly known as "Phase 1" (twelve to fifteen year olds at the time the offence was committed) often housed youth who turned 16, 17 or 18 while waiting for their charges to be fully dealt with in the criminal justice system. The agencies responsible for youth formerly known as "Phase 2" (sixteen or seventeen years of age) not infrequently housed youth who turned 18, 19 or 20 while waiting for their charges to be fully dealt with by the criminal justice system. The two Ministries usually operated quite separately and a youth was not transferred into another system upon his/her sixteenth birthday. It was the usual practice for youth to continue in the same placement until release from custody. One exception to this practice occurred at Bluewater Youth Centre, which by inter-ministerial agreement, housed a unit for 15-16 years olds for several years.

At the time of the OCFSA review, the Ministry had not finalized the integrated policies and procedures for youth. Currently, all youth justice facilities in Ontario are subject to the provisions of the *CFSA* although some of the secure custody facilities are exempt from the provisions relating to the use of secure isolation (s127) and s 100, which refers

to the restrictions preventing a service provider from detaining a child in locked premises.

LOCK UP
The *CFSA* permits places of secure custody and secure detention to be locked for the detention of young persons but does not explicitly provide authorization for places of open custody or open temporary detention to be locked.

PLACE OF SAFETY PROVISION- CFSA
Section 40. (10) *CFSA* recognizes places of open temporary detention as "a place of safety" in certain circumstances. The Act authorizes child protection workers to place children in places of open temporary detention in circumstances where "no less restrictive course of action is feasible" but also requires that the child be brought before a court within twenty-four hours for review. Options available to the court in this situation include ordering that the child be discharged from the place of open temporary detention or making an order that the child remain in the open temporary detention facility for a period not exceeding thirty days.

YOUTH CRIMINAL JUSTICE ACT
While the *YCJA* continued to recognize "Custody" as a distinct sentencing option now known as "Custody and Supervision", references to "open" and "secure" custody were removed from the law and replaced with the requirement that provinces establish a system with "at least two levels of custody for young persons distinguished by the level of restraint of the young persons in them". However, under section 2. (1), the Act defines youth custody as, "as facility designated under subsection 85(2) for the placement of young persons, and if so designated, includes a secure facility for the secure restraint of young persons, a community wilderness centre, a group home, a child care institution, and a forest or wilderness camp".

As noted earlier, the *YCJA* permits provinces to choose whether decisions about the level of custody are made by either a youth court justice or Provincial Director. Factors to be taken into account in determining the level of custody are similar to those in place under section 24 (4) of the *YOA*. Section 85 (5) of the *YCJA* sets out the factors that a Provincial Director must take into account when making a determination about the appropriate level of custody:

(a) that the appropriate level of custody is the one that is the least restrictive, having regard to
    (i) the seriousness of the offence in respect of which the young person was committed to custody and the circumstances in which the offence was committed,
    (ii) the needs and circumstances of the young person, including proximity to family, school, employment and support services,
    (iii) the safety of other young persons in custody, and
    (iv) the interests of society;

(b) that the level of custody should allow for the best possible match of programs to the young person's needs and behaviour, having regard to the findings of any assessment in respect of the young person; and
(c) the likelihood of escape.

The *YCJA* also articulates a general standard of care for youth in the custody and supervision system as one that provides for, "the safe, fair and humane custody and supervision of young persons".[8]

IMPACT OF THE YCJA ON THE OPEN CUSTODY/OPEN DETENTION SYSTEM
Under the *Young Offenders Act* and the *Youth Criminal Justice Act* both the children's services Ministry (known as the Ministry of Community and Social Services, and the Ministry of Community, Family and Children's Services among others) and the adult Ministry responsible for youth justice (known in various incarnations as the Ministry of Correctional Services, Ministry of Solicitor General and Correctional Services, Ministry of Public Safety and Security) have relied on individually contracted private or "not for profit" agencies to operate open custody and open detention facilities. The agencies are generally known as "transfer-pay agencies".

The implementation of the *YCJA* appears to have had a significant impact on the open detention/open custody system. As a result of the sentencing sections of the Act that require custody to be used as a last resort, Open Detention/Custody operators have advised the OCFSA that their numbers have dropped significantly since the implementation of the *YCJA*. The reduced number of youth in custody has resulted in Ministry decisions to terminate the contracts of a number of service providers at various points in time in a process known as "Rationalization". At the time of the OCFSA review, it was anticipated by the open custody/open detention operators that there would be a third round of the Ministry "rationalization" process in the near future.

In summary, Canada has a long legislative history in providing an option for young people who break the law to be diverted out of the formal criminal justice system. These options often relied on provincial legislation that featured indeterminate periods of state wardship (under a Children's Aid Society or Training School administrator) and the opportunity to place young people in locked facilities. For those not diverted, a young person could remain a ward of the court until his/her twenty first birthday and, during this tenure as a young person adjudged a "juvenile delinquent" could be ordered by the judge into a range of settings including the family home or a training school. The notion of indeterminate sentences/warships were abolished with the implementation of the *YOA* and it's successor the *YCJA*. Both pieces of legislation provided due process protections for young people and rejected the notion that young people could be brought before a criminal court for status offences such as 'sexual immorality', or 'incorrigibility'. In fact, the *YOA* and *YCJA* explicitly state that young people cannot be held in detention or custody "as a substitute for mental health, child protection or other

[8] s83.(1) (a)

social measures".[9] Ontario provincial law also prohibits the placement of a young in a locked facility in the absence of a custodial sentence or detention order with three exceptions: (1) a judge's order under s 40 of the ***CFSA*** (place of safety); (2) admission to emergency secure treatment under s117; or (3) a judge's order authorizing the admission to secure treatment under s 124 of the ***CFSA***. It is the OCFSA's contention that it is not legal for a Children's Aid Society to place a child in an open detention or open custody facility without an order under s40 of the ***CFSA***, regardless of their genuine concerns about the safety of a child who is engaging in risky or even dangerous behaviour that is not illegal. Conversely, the OCFSA also takes the position that a young person with an open custody sentence can be placed in a facility that normally operates as a group home, which is something that is contemplated under the ***YCJA***.

[9] s29. (1) and s39.(5)

SECTION THREE: FINDINGS AND THEMES ARISING FROM THE OCFSA REVIEW

❑ DEMOGRAPHICS

GENDER
Two hundred and nine males and thirty-nine females were interviewed. For two interviews, no gender was recorded.

AGE DISTRIBUTION

AGE OF YOUTH	PERCENTAGE OF RESPONDENTS
13 years	3.2 %
14 years	11.2 %
15 years	25.6%
16 years	19.2%
17 years	25.2%
18 years	13.2%
19 years	1.2%
20 years	0.4%
21 years	0.4%

PREVIOUS CHILD WELFARE HISTORY
Two hundred and forty youth responded to this question**.** Forty-eight per cent (48%) indicated a previous history with child welfare.

PREVIOUS NON-CUSTODIAL OUT-OF-HOME PLACEMENT
One hundred and twenty five responded to a question about residential placement. Sixty-seven per cent (67%) indicated that they had been placed "in-care" at some point in their lives. The fact that approximately one third of young people in custody have been in the care of the child welfare system and one half have had child welfare involvement is quite concerning. Further research is required to determine the manner in which young people from child welfare are "crossing over" into the youth justice system. Recently, the OCFSA convened a group of young people who raised the concern that their first contact with the criminal justice system came as the result of an incident in a group home. A recent study by the OCFSA involved sending freedom of information requests to a number of municipal and provincial police services asking the number of times police had received calls to attend at a particular group home in their area. The information received from police indicated that in some cases police had been called more than 400 times to a group home over a one -year period. The OCFSA also contacted defence counsel in order to obtain more information about this issue. Defence counsel also identified calls from group homes as a concern and noted that further details relating to a charge of fail to comply with a bail or probation order requiring their clients to follow the "routine and discipline of a residence" had revealed that the substance of the charges were often minor incidents such as refusing to get off

the phone, or refusing to read a book. Equally concerning was a case where a young person was charged with assault in instances in which a young person had thrown a tea towel. The reliance on police to deal with minor behavioural issues that should be expected occurrences in a group home was one of the focal points of the inquest into the death of Joshua Durnford.

CURRENT INVOLVEMENT WITH CHILD WELFARE
One hundred and ten youth responded to this question. Fifty-two per cent (52%) indicated current involvement with child welfare. Five youth, which translates to approximately five per cent (5%) of the respondents, stated that they "didn't" know whether or not they were currently involved with child welfare.

DETENTION VERSUS CUSTODY STATUS
The total number of youth for whom a clear status of either "detention" or "custody" was identified totals two hundred and thirty seven. Thirty-four per cent (34%) of youth reported that they were on "remand" or being held in detention without bail and sixty-six per cent (66%) reported that they were in custody because they were serving a youth court sentence. (A number of youth had a dual status in that they were not only serving a sentence and but also had unresolved charges currently before the court).

It is recommended that Group Home Supervisors, Placing Children's Aid Societies and Regional Offices should be provided with the number of times police are called to a group home and for what reasons. This information should be regularly reviewed by the management of the group home and the Ministry area offices responsible for the oversight of the particular group homes in order to ensure appropriate training occurs so that reliance on police is the primary intervention strategy at group homes.

❑ PROGRAMMING

Subsection 83. (1)(b) of the ***YCJA*** speaks to the purpose of the youth custody and supervision system as one which contributes to the protection of society by, "assisting young persons to be rehabilitated and reintegrated into the community as law abiding citizens. The right to receive and "participate in appropriate educational, training or work programs, in a community setting whenever possible" is specified in both the ***CFSA*** at s105 (2) (e) and the ***MCSA*** at s54 (7) (e) and applies to **all** youth in custody.

ACADEMIC PROGRAMMING

PREVIOUS SCHOOL ATTENDANCE
Two hundred and forty-six youth responded to a question about past attendance at school. Approximately sixty-five per cent (65%) indicated that they had been attending school before their current placement at the open custody facility. (Note that in a number of instances, the previous school placement was at a secure custody facility).

CURRENT ENROLLMENT
Two hundred and forty two youth answered a question regarding current enrollment in school. Eighty-nine per cent (89%) of youth reported that they were attending school at the time of the interview.

SATISFACTION WITH SCHOOL PROGRAMMING
One hundred and ninety-seven youth answered a question about whether or not they liked their school program. Eighty-three per cent (83%) of youth who responded to this question indicated that they liked the school program.

Most youth had very positive things to say about the school program. Generally these fell into the following categories: (1) Liked the teacher; (2) Small classes made it easier because of the possibility of more one to one attention from the teacher; (3) Youth could take "time-outs; (4) The teacher allowed them to listen to music in school; (5) Youth could work at their own pace.

Individual perceptions of school vary, and it is difficult to imagine 100% of youth being satisfied with a school program. Of the youth who indicated that they did not like the school program, a great many indicated that they "just didn't like school" or would rather be working than going to school.

TYPES OF SCHOOL PROGRAMMING
There appeared to be six possibilities of school program placements operating in the open custody/open detention system: (1) attendance at a local community school; (2) enrollment in a s20 program at a local community school; (3) s20 classroom in a community school operated solely for the youth at the open custody facility, (4) alternative school program located in the community, (5) attendance at a s20 school located at in the facility, (6) s20 school program operating on the property of a specific facility but shared with a number of other facilities.

The majority of youth interviewed attended school at a section 20 program operating within the facility. This would appear to be almost exactly opposite to the intention of either the *CFSA* or the *MCSA*. However, during the course of the review process it became apparent that there were some very good reasons that youth were not attending a community school: (1) the custody facility was not in the youth's home community and it was anticipated that the period of incarceration would be very short; (2) Youth had a poor history at school for academic or other reasons; (3) Schools were often reluctant or unwilling to enroll youth who had poor academic, attendance, or behavioural histories without being provided with proof of recent scholastic success.

In spite of the apparent success of the in-house school program strategy, concerns were raised by a number of facility directors that, upon release, youth still had difficulty enrolling in their community schools. Also, some youth had been in custody for a week or more and still had not been enrolled at the in-house school program and spent their days doing little or nothing while the other residents were attending a school program.

From the point of view of the OCFSA, this type of delay is inappropriate and interferes with the intent of the *YCJA*'s focus on rehabilitation.

The high rate of satisfaction with the in-house school program is similar to that found by the OCFSA when conducting interviews in secure custody settings. Given the level of satisfaction and the difficulties associated with community school placement described by young people, the OCFSA supports the continued development of in-house programs until such time that community schools provide equivalent programming with similar outcomes.

ABSENCE OF SCHOOL OR VOCATIONAL PROGRAMMING

Four facilities did not offer a school program, although one of these facilities reportedly assisted youth to enroll in an Independent Learning Centre ILC (ILC) program. The OCFSA was provided with the following explanations as to the reasons for the lack of academic programming at each facility:

- Perception that the majority of youth who enroll in school in September are expelled by October;
- Board of Education funds s20 classrooms based on annual occupancy rate, due to the low numbers of youth in custody the facility did not qualify for a teacher;
- The agency was in the process of negotiating with the Board of Education for a school program;
- No clear explanation provided.

Youth in facilities without academic programming raised the following concerns:

> ***"This is a very unproductive place. I sat in the same place all day. TV you can't watch until 4. Programme is 30 minutes [a day]… a lot of doing nothing… there are no school options"***
>
> ***Youth 1***

> ***"What we they have is programs, two in the morning expected to go from the minute we wake up until 4. We get finished in half the time and we are doing nothing. Most of the programs don't benefit me***."
>
> ***Youth 2***

> ***"No school. Not even a desk. If I was in [name of secure custody facility] I would have gotten my credits".***
>
> ***Youth 3***

The OCFSA concurs with the sentiments expressed by youth and raises strong concern about facilities that do not offer any educational or vocational programming.

Overall, the OCFSA was impressed with the academic programming available to youth in facilities across the province. The following recommendations pertaining to academic programming are offered:

It is recommended that transition to a community based school program be considered an integral part of a young person's reintegration plan.

It is recommended that the Ministry of Children and Youth Services work with the Ministry of Education to ensure that youth leaving academic programs in custody facilities be assisted in securing placement in community schools.

It is recommended that, consistent with the *CFSA* and the *MCSA*, all facilities be required by the Ministry to offer access to educational or vocational training.

GENERAL PROGRAMMING

AVAILABILITY OF PROGRAMMING

Youth were asked questions about whether or not specific types of programming were available in the facility. The categories of programming included anger management, substance abuse, group counseling, sex education and health, life-skills/nutrition/budgeting, recreation/sports, religious/spiritual and employment. The OCFSA is aware that agencies may use program titles that differ from those in our list. For example, one program at a facility may have a number of different aspects that encompasses several of the programs listed individually on our list or a number of programs may have components from each of the categories on the list. It was not our intention to evaluate the programming at the facilities or to ensure that the facility was offering the programs required by the Ministry.

The scope of programming and activity level of youth during non-school hours varied in each facility. However, youth at almost every facility reported opportunities for sports/recreation and that a program that covered aspects of anger management was available. At one facility there was no anger management program but sports/recreation opportunities were reported. At one no opportunities for anger management programming were reported but no sports or recreation. And at two facilities it was reported that neither anger management nor sports were offered although the presence of other programs were noted.

REQUESTED PROGRAMS

Types of programs that were most frequently suggested by youth as something that should be offered at a particular facility were substance abuse, employment related programs and the opportunity to participate in organized sports. More is required for employment opportunities given that the majority of youth are close to, or over the age of sixteen.

METHODS OF PROGRAM DELIVERY

In terms of program delivery there appeared to be three models: staff delivery of programs in-house; outside agencies delivering programs at the facility, youth attendance at programs out in the community.

IN-HOUSE DELIVERY OF PROGRAMS

Although youth at some facilities expressed great satisfaction with in-house staff delivered programming it was more common to hear complaints from youth that staff did not seem interested or knowledgeable about the programs they were supposed to be doing with the youth. For this reason, it was reported that often programs that were on the official schedule were not actually delivered by staff. A second issue raised by youth was the style of programming. Youth work through aspects of specific types of programs using "booklets" or photocopied work-sheets. Youth expressed frustration about doing similar booklets at different facilities resulting in situations in which a young person had done the same anger management booklet numerous times therefore little value was derived. Another concern that was raised was the problem of youth who were illiterate and not able to complete programming of this nature. In some cases it was reported that youth were unable to read and had not completed the required program. This apparently went unnoticed by staff. Concerns about pamphlet/booklet programs are illustrated by the following comment from a youth:

> ***"Every night we sit at a table and do a pamphlet sheet".***
> ***Q: "Do you think this is good or a waste of time"?***
> ***A: "A waste of time. They don't do it right. It's just something they think they have to do".***
>
> ***-Youth 4***

COMMUNITY PROGRAMS

Few concerns were raised about programs that occurred in the community. Youth who participated in organized sports out in the community spoke very positively about these opportunities. Youth in the North were more likely to report participation in organized sports. Other types of programs included addictions programs, grief counseling, and community service programs that offered opportunities for volunteer work.

OUTSIDE AGENCIES/PROFESSIONALS DELIVERING IN-HOUSE PROGRAMMING

The most positive comments were made spontaneously by youth who were commenting on programs delivered by individuals who worked outside the facility but provided in-house programming. This type of programming was often provided by outreach/drop in centres or individuals with expertise in sexual assault/trauma. In some cases the individuals were hired specifically by the agency to deliver programs to their clientele. In other cases the individual and the facility were part of a larger agency and one portion of the individual's duties was to provide services to that agency or a group of agencies in the area. The OCFSA cannot emphasize enough how important and valuable the youth found these individuals. Generally speaking, the OCFSA did not ask direct questions about the perceived quality of the programming offered by the facility. For this reason the OCFSA finds it extremely significant that youth would voluntarily make comments about their high level of satisfaction with the programs. The comments made by youth appeared to indicate the following strengths in this type of programming: (1) Presenters were knowledgeable about the topics they came in to discuss; (2) Presenters had knowledge about a wide range of issues of interest to youth; (3) Presenters were flexible, liked youth and were willing to talk about difficult issues such

as sexuality, violence, media, gangs etc; (4) Presenters knew how to engage with youth and were often described as "straightforward" and that "s/he'll call you on things".

In many cases youth could continue to access the services of this individual through Re-integration Leave passes (RL) while they were living at the facility. Youth could also receive services after discharge either from the same person or through the same agency where the individual worked. The value of this type of programming is that quality programming can be delivered to youth regardless of risk [the in-house nature of the programming] and assist with re-integration goals [opportunities to receive RL's or after release from custody]. Although the background of each of these individuals varied, one common denominator seemed to be that these individuals had experience working with "hard to reach youth" and were quite comfortable delivering programs to people whose initial reaction was likely to be, "I don't have an anger problem", "this is boring".

"TOO MUCH FREE TIME"

It was not uncommon for youth to report that there was "too much free time" or for the OCFSA to discover that youth spent much of their time watching television or sitting around despite of schedules that listed a daily array of programs to be delivered. Perhaps one of the issues in these types of situations is the belief on the part of staff that they did not have the skill set to deliver the required programs. Alternatively, perhaps there simply was too much free time built into the schedule. Some of the suggested programs by youth were ones that would take very little staff training to deliver, require little skill mastery other than that which is typically required of an adult, and is the type of skills adults generally need to acquire. Examples of this type of programming included the following: What would you look for in purchasing a car, how would you go about getting insurance, how do you register to vote in an election, how to open a bank account, how to do taxes, how to live on a budget (using Monopoly money to practice this). Some facilities offered the opportunity to do school volunteer hours or community service hours in-house.

The OCFSA's findings related to programming generally support the belief that youth need to be kept busy, and that the types of things with which they need to be kept busy should be something that is relevant to helping young people move on with their lives rather than simply occupying their time. Keeping youth contained with little to do is unlikely to aid in either rehabilitation or re-integration, both of which are defined by the ***YCJA*** as integral to increasing public safety.

It is recommended that facilities review their internal programming to ensure that it is delivered in a manner that engages youth and is relevant to assisting with the goals of reintegration and rehabilitation.

It is recommended that facilities provide relevant life-skills training for youth such as information about purchasing a car, obtaining insurance, filling out a tax return etc.

VOCATIONAL PROGRAMMING

Six per cent (6%) of youth who responded to a question about current employment indicated that they had a job. Some facilities offered work programs in the facility. For example, youth were invited to apply for a job that was created as an employment opportunity for youth within the facility, perform the work, receive payment or not, and place this employment experience on their resume. At least one facility took youth out on a fairly regular basis during the week to engage in paid work that was supervised by staff.

As noted earlier, youth were likely to suggest employment programs when asked if there were any other programs that should be provided. As well, some youth believed work would be preferable to attending school.

The superintendent of one of the directly operated secure custody facilities and his team created a strategic plan to enhance the employability of the residents which we believe is applicable to the open detention/open custody system.

The first component of the plan was the recognition that few of the large number of youth coming into the facility had a history of past success in the secondary school system. Nor did it seem likely that the majority of youth at the facility would graduate from the traditional educational system with a diploma. To address this dilemma, the team members embarked on a plan to identify a 'place in society' for these youth by focusing on the concept of work and employability.

The term 'employability' was defined by the team as the acquisition of skills that led to strong employment opportunities. It was identified that strong and highly paid employment opportunities for youth existed in the construction industry, and it was recognized that the development of vocational skills was the best pathway to work and employability. A partnership was reportedly developed between the facility, the Lifelong Learning Centre, and various segments of industry which resulted in the ability of the institution to offer vocational courses based on apprenticeship standards.

The aspects of this plan that the OCFSA believes are relevant to the open detention/open custody system are as follows: (1) The desire to give residents of the facility an opportunity to "leave with more than they came in with"; (2) A focus on "employability" and the acquisition of skills that lead to strong employment opportunities and (3) the identification of strong and highly paid employment opportunities for youth in the geographic area in which the open detention/open custody facility operates.

It is recommended that open detention/open custody facilities develop strategies that will assist youth to acquire the skills that will lead to strong employment opportunities.

❑ BASIC CARE

Youth were asked if they had any concerns about basic care. In four facilities none of the youth had any complaints relating to any aspect of basic care at the facility. The vast majority of concerns raised at the remaining facilities were issues that could be remedied by individual facilities at little or no cost. The chart below indicates the general nature of concerns raised.

	Concern
Food	Fatty/greasy; same thing every week
Cleanliness	Youth do chores, not supervised by staff
Noise	Youth talking at night; staff talking loudly at night
Temperature	Too cold, not given blanket or heater at night
Bedding	Stained
Air Quality	Too dry, makes nose bleed
Clothing	No concerns
Mattress	Too thin, too hard
Washroom	Not clean, youth do chores, not supervised by staff properly, faucet or tap not working
Yard	Not able to comment because haven't seen yard (most frequent response about yard)
Privacy	Few concerns reported
Health Care	Cough syrup, lozenges, aspirin not available nights and weekends; medication distributed in a public rather than a private manner which identifies someone out as having mental health problems.

SAFETY OF PERSONAL PROPERTY

Both the *CFSA* s104 (a) and the *MCSA* s54(5) (a) speak to the right of a young person in custody to possess his or her own personal property. At a small number of facilities youth expressed concern about the safety of their personal possessions. The types of items in question ranged from expensive items such as stereos, IPODS and expensive clothing to basic personal items like socks and shoes. The majority of residences had an optional locked area and a plan to keep the property of residents protected. This type of plan usually involved a scheme whereby the trading of clothes or personal possessions was prohibited; a locked area was provided and youth who chose to leave their possessions in an unlocked area did so at their own risk; and that youth did not have unsupervised access to areas in which the property of other residents was located. Some facilities did not have any plans around the protection of personal property and saw no need for the development of such a plan.

WITHHOLDING OF FOOD AS A BEHAVIOURAL MANAGEMENT CONSEQUENCE

During the course of the open custody review, Advocacy Officers witnessed a situation in which residents' meals were delayed for periods of six hours or more as the result of misbehaviour. The rationale given by management of the facility for not providing the

meal at the scheduled meal time was that the specific incident had to be resolved before a particular youth or anyone in his unit could be fed.

This practice was found to have only occurred at one facility in the province. On the day in question, Advocacy Officers went for lunch and returned to conduct to interviews afterwards. As of 6:30 pm a number of youth still had not been fed lunch because there had been an "issue" and it had not been resolved through the approved process. It appears that this was not a one time occurrence but a regular practice at the facility. It is the position of the OCFSA that the use of food as a behaviour management strategy is unacceptable and inappropriate. The concerns of the OCFSA in regard to this practice have been raised with the Ministry and it has been confirmed that the Youth Justice Services Division does not support withholding food as a means of behavioural management.

It is recommended that agencies review their property sites to ensure they are in a good state of repair.

It is recommended that facilities ensure that enough blankets are available to keep youth warm at night during the winter months;

It is recommended that, in the event youth are relied upon to ensure the cleanliness and hygiene of the house through chores, that staff supervise the chores carefully to ensure that adequate standards of cleanliness and hygiene are met;

It is recommended that facilities take steps to reduce the level of dryness in the air during the winter months;

It is recommended that all facilities ensure that there is an area in which youth can lock up personal possessions and that there is a scheme in place such that residents do not have unsupervised access to the personal property of other residents.

It is recommended that the Ministry ensures that food is not withheld as a consequence for misbehaviour in any residential program in Ontario.

❑ PEER VIOLENCE

The OCFSA asked youth questions about the types of peer violence that occurred at the facility and to estimate the frequency. The types of activity defined by the OCFSA as peer violence and about which youth were asked is as follows: (1) verbal harassment (religion, race, sexual orientation, special need); (2) verbal threats (to be beaten up or jumped, verbal threats with a weapon, horseplay), (3) physical peer violence;(one–on-one fighting, group-on-one fights, fights resulting in injuries), (4) meals taken by threat or force, “punking off”, paying rent/taxing, (5) initiations, and (6) sexual assault/ sexual harassment.

- At six facilities there were no reports of peer violence.

- Verbal harassment (but no physical violence or threats) was reported at six facilities.

- At eight facilities there were reports of three or more types of peer violence occurring.

One hundred and eighteen youth responded to a question about staff awareness of peer violence. Of this number, eighty-four per cent (84%) believed that staff members were aware of incidents of peer violence that occurred in the facility.

The OCFSA looked more closely at the peer violence results from thirty facilities. This sample was chosen because there were two or more types of peer violence reportedly occurring at these facilities. The sample can be further broken down as follows: (1) Facilities in which there was a combination of verbal harassment and other types of peer violence (N=22); and, (2) Facilities in which there were three or more types of any type of peer violence reported (N=8).

DAILY VERBAL HARASSMENT
In the sample of 30 facilities described above, daily verbal harassment was reported at 21 sites. The type of daily harassment that were reportedly occurring can be broken down as follows:

Type of Daily Verbal Harassment	Overall # of Facilities Where This Type of Verbal Harassment Reportedly Occurs Daily
Verbal-Race	13
Verbal-Sex Orientation	16
Verbal-Relig/Lang/Culture	4
Verbal Special Needs	14

# of Types of Verbal Harassment	# of Agencies where this occurs
One type of verbal harassment daily	7
Two types of verbal harassment daily	4
Three types of verbal harassment daily	5
Four types of verbal harassment daily	5

Peer Violence (Other Than Verbal Harassment or Horseplay Alone) - Daily

Type of Peer Violence	# of Facilities Where Daily Occurrence
Threat to be beaten up/Jumped	15
Threats with Weapon	2
Fighting One on one	1
Fighting Group on One	2
Meals/Other Items Taken	1
Sexual Assault/Sexual Harassment	3

Reported Frequency of Fights	# Of Facilities
Daily	Two
Weekly	Three
Monthly	Six
Other	Twelve

Overall, the OCFSA found that there were relatively low levels of peer violence in the open detention/open custody system at the time of the review. Daily fighting was reported by youth at two facilities, and youth at three facilities reported fights regularly occurring on a weekly basis.

With regard to verbal harassment and verbal threats there appears to be more of a problem. Of the thirty facilities in which peer violence was examined in greater detail, daily verbal harassment by physical threat was reported at approximately seventy per cent (70%) of the sites.

Some youth tended to dismiss verbal harassment/ name calling as a joke not to be taken seriously and, consistent with adolescent bravado, minimized the impact of this type of peer violence. However, youth across Ontario have confidentially told the OCFSA that they find name-calling hurtful and that it makes them feel unsafe if staff allow these types of comments to pass unchallenged. This type of statement or comment can lead to the creation of an environment that has been described as “poisoned” by those who specialize in the area of human rights and labour relations. To put this type of behaviour in a different context, the Ontario Government Workplace Discrimination and Harassment Prevention Policy (WHDHP) prohibits harassment or discrimination in the workplace on the basis of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex (including pregnancy), sexual orientation, age, record of offences, marital status, family status, same-sex partnership status or disability. The policy states that a”poisoned work environment” can result from a “serious single event, remark, or action, and need not be directed at a particular individual”. The Ontario WHDHP requires that managers and supervisors ensure that the workplace is free from discrimination and harassment and that all employees are aware that discrimination and harassment will not be tolerated. Open custody facilities are a place of residence for youth. It is imperative that equivalent standards afforded to adults in the work place are offered to youth in their “home” environment. The OCFSA

would suggest that it is the responsibility of all management and staff at open detention/open custody facilities to ensure that the facility and residents are free from discrimination and harassment, and that all youth are aware that discrimination and harassment will not be tolerated. Furthermore, all facilities should have an explicit policy that defines verbal harassment, indicates that this type of behaviour is prohibited and have developed a strategy to deal with this issue.

❑ SAFETY

Two hundred and thirty-six youth responded to a question about the perceived level of staff supervision. Ten per cent (10%) of youth felt that staff did not supervise closely enough. Of two hundred and twenty-three youth, eighteen per cent (18%) believed that there were, "things tolerated here that shouldn't be". More optimistically, a very common answer from youth responding to questions about the level of staff supervision was, "If anything, they watch us too closely".

Of the two hundred and thirty-two youth who responded to a question about whether they would tell staff if they felt unsafe, seventy- per cent (70%) stated that they would do so. The OCFSA views the answer to this question as a key indicator about the level of safety in a facility. Willingness to confide in staff about feeling unsafe not only speaks to a young person's comfort level with the staff team but also suggests a belief that staff will take action to address a safety concern.

Feelings of personal safety ranged from a score of "Zero" indicating that the interviewee felt totally unsafe to scores of "Ten" which indicated that the respondents had no concerns about their safety.

General concerns raised by youth pertaining to safety and supervision were as follows:

- Females reported concerns about the possibility of people breaking into the facility to cause harm;
- Actual or potential threats from room-mates;
- Staff spending time in the office doing paperwork rather than supervising;
- Staff in the bedroom area only until residents are presumed to be asleep;
- More than one youth in an area that is unsupervised;
- Staff failing to intervene during episodes of name-calling, threats etc
- Staff failing to intervene when staff are called names by youth;
- Staff not knowing residents well enough to understand "what is really going on";
- Safety in washrooms, and hallways.

The section below provides examples about the types of concerns raised by youth:

> ***"Really I can't believe….I'm disgusted I'm saying it… but they need more discipline…"***
>
> ***-Youth A***

"[Kids] call staff whores, bitches and staff allow [it]. Threats to staff with no consequence"

-Youth B

Q: How do staff handle these situations?
A: Tell them to stop, that's it. Don't say anything else after that, it doesn't stop it.

-Youth C

"Things are let slide especially when special needs guy. I don't think many of the staff like him. They usually smirk or giggle when another guy targets him"

-Youth D

The major focus of youth concern around safety and supervision appeared to center around a perceived lack of staff action regarding verbal harassment or threats either to staff or other residents and there was a belief that staff should not leave two members of the group unsupervised at any time.

It is recommended that youth be housed as single occupants in rooms whenever possible.

It is recommended that all facilities adopt the stance that verbal harassment or threats towards residents or other staff will be not be tolerated and programs to address this type of activity be developed.

❑ STAFF-YOUTH INTERACTION

PRIME WORKER
Two hundred and forty-two youth responded to questions about the role of a prime worker at the facility. Ninety per cent (90%) of youth indicated that they had a prime worker assigned.

Youth were asked to describe the role of their prime worker. Some concerns that were raised about prime workers included the prime worker being "too busy" and "hard to get hold of" or the fact that the youth had never met the prime worker assigned because he or she had been on vacation for the past several weeks. However, the vast majority of comments by youth about their prime workers were extremely positive in nature.

The OCFSA views the prime worker as a key participant in the case management team and a means to ensure that a young person does not feel "lost in the system". The prime worker should also know the youth well enough to assist in the development of a useful and relevant case management/reintegration plan. It has come to the attention of the OCFSA that in some youth justice settings, the role of the prime worker has not yet been fully developed other than ensuring that a meeting occurs between the youth and

his/her prime worker prior to the case management re-integration plan meeting (CMRP) in order to fill out the necessary paperwork.

The OCFSA has historically recommended a more expansive role for prime workers in youth justice settings and for this reason has looked quite closely at the types of information provided by youth about the perceived nature of the prime worker's job in the open detention/open custody setting.

The responses of all youth to this question were compiled and analyzed. The initial analysis consisted of the development of 70 categories of interactions/activities that were then further analyzed and broken down into three over-arching headings that the OCFSA feels best encapsulates the functions of the prime worker as they were described by the youth: Case management, Emotional Support and Relationship Modelling.

Function	**Activities/Interactions**
CASE MANAGER	arranges appointments/visits/RL's; decides what's best, paperwork; lets people know how I'm doing; makes plans; approves things; goes to meetings; says how good I've been; evaluates me.
EMOTIONAL SUPPORT	asks how I'm doing, be there for me; make sure I get along with others, make sure everything's ok, remembers stuff I did; cares; talk to them about myself and my emotions; tell them anything; listen.
RELATIONSHIP MODELLING	one-to-one meetings; pays more attention to me; takes me outside/to appointments; keeps me out of trouble; keeps track; knows a lot about me; takes care of me; makes sure my wants and needs are met; helps me help my self; helps me succeed; helps me work through things; keeps me positive; keeps me safe; role model; solve problems, talks, teaches me.

RELATIONSHIP CUSTODY

The OCFSA interviewed youth at sixty open detention/open custody facilities. In thirty - six of those facilities, eighty per cent (80%) or more of the youth believed that all or most of the staff cared about the young people at the facility. Poor overall staff-youth relationships were found at 6 sites.

The following section contains a number of different responses made by youth in answer to the question, "How do [the staff here] show they care?"

Q: How do they show they care?

Who knows whether people really care. Even if they don't care they treat you with respect. No one seems like they don't care. They don't treat anyone badly. They treat us like normal human beings. Some places you go, just 'cause you're in custody they treat you like shit.

-Youth "E"

I was sitting in my room and had a rough day at court and most staff came up to me and asked if I wanted to talk. And if I'm doing work, they ask if I want help.

-Youth "F"

I know they care. I am good at body language. I look right into their eyes and know when people care. The way they talk, their tone of voice.

-Youth "G"

Between few and half [care about the kids]. When you ask them to get you something [those that care] will. Others will say, "I'm reading the paper".

-Youth "H"

If they see you having a rough day, they will try and talk to you about your problems before you snap.

-Youth "I"

Because I've been in secure where staff don't care. When they don't care they bring their problems in and are in a shit mood. Good staff check it at the door, know we don't need their problems, basically.

-Youth "J"

They care by just showing up, doing groups, sitting down one on one, constructive criticism and not putting us down. If you are acting up they check up and see why and what they can do to help. They say what needs to be said. They don't give up on kids.

-Youth "K"

They make you change. I've changed a lot since I've been here. You used to be this bad girl. Before you used to be this sweet kid. It's kind of like they help you back to how you used to be.

-Youth "L"

Staff that care, they talk more to you. Even if you're rude, they'll sit and talk to you and help you. Give you options.

-Youth "M"

They come in and do what they don't have to do. We all appreciate it because they do more than what they're paid to do".

-Youth "N"

If you've got a problem, they'll help you deal with it, no matter who you are"
-Youth "O"

The transformation of institutional culture in youth justice facilities from one which relies on static security to one which is based on relationship-custody (also known in some fields as "therapeutic relationships" between staff and residents) has been reportedly difficult to achieve for staff and managers who may "buy-in" to the concept of relationship but cannot translate this philosophy into day-to-day practice.

The OCFSA suggests that the foundation of a good relationship between any two people is the ability of at least one of the individuals to convey a feeling of genuine interest or caring to the other person. With this in mind, it was believed that an analysis of the kinds of things youth reported when they were asked to describe how they knew the adults around them "cared" about them would be a helpful basis for translating the philosophical concept of "relationship custody" into more concrete examples of actions and behaviours.

The responses of all youth to the question, "How do [the staff here] show they care were analyzed and broken down into the six categories/aspects of relationship building described below:

(1) Professional Behaviour encapsulates the type of skills that we believe most staff would intuitively understand would be expected in working with youth. This includes respectful interactions with young people, carrying out the expected level of programming, addressing inappropriate behaviour and helping young people "keep out of trouble".

(2) Interpersonal Skills refers to the type of interactions or activities that staff might use as an initial strategy to engage with youth. These are the types of skills and behaviour that do not require a great deal of training but do require a certain mindset on the part of the staff person. This type of mindset should include: (1) the belief that it is a positive thing to interact with youth as much as possible and; (2) that the appropriate relationship dynamic is one in which both parties (staff and youth) are regarded by each other as people rather than "guards" and "criminals". Obviously, staff cannot fully control the manner in which they are perceived by youth. The manner in which staff interact with youth, on the other hand, is something over which staff and supervisors can regulate. Examples of this type of interaction are ones in which youth described as "like speaking with a neighbour or someone from my family rather than being spoken to like I'm a lowlife".

(3) Case co-ordination skills are most easily described as the booking of appointments, attendance at meetings, approval of passes and making various types of arrangements.

(4) Demonstration of Interest reflects the ability of staff to "notice", "question" and "help" youth work through problems. These types of skills require persistence but make a tremendously positive impression on young people even when staff efforts to do this may seem to go unnoticed by the young person. One of the best examples of this was a young person who recalled that he had gone on a pass to celebrate his birthday and two weeks later a staff he hadn't seen for awhile, remembering the birthday plans, asked the young person about the event.

(5) The **High Road** refers to a staff member's capacity to remain calm during conflictual situations with youth and refrain from personalizing the negative statements or behaviours of youth. This does not mean that youth do not receive consequences for negative/problematic behaviour but does require that the staff person continues to act in a professional manner during the event and role models appropriate behaviour in resolving conflict.

(6) The **Safety** aspect of relationship custody refers to the ability of staff to ensure the safety of the residents.

The chart below groups together the types of behaviour observed and described by youth into the categories devised by the OCFSA:

Professional Behaviour	Addresses your mistakes, Tells you what you did wrong; Answers questions; Does programming, doesn't skim over things; Doesn't cut me off; Doesn't give me looks; Doesn't make things more difficult; Doesn't press your buttons; Fair; Give consequences when necessary; Keep us out of trouble; No names or put downs; Talk to you decently; Have a good relationship with you.
Interpersonal Skills	Treats me like I'm a normal person, not like I'm a criminal and s/he's a guard; easy-going, friendly, makes me laugh, Have fun with us; put me at ease.
Case Co-ordination	Helps/Offers to help; Makes sure we are healthy; Gets us programs to make sure we are ready for the outside; Lets us call family; Talks to family.

Demonstration of Interest/Relationship Building	One on one time; Nothing goes unnoticed; Ask me questions, lots of questions; Talks to me if I'm having a bad day or had a bad telephone call with my family; Takes me seriously; Remembers things about me; They tell me they care; Body Language; Attitude; They try to make your time go by fast; They do things they don't have to do; They worry; Pat me on the back; They do things with us; Interact with us; Help you change; Help you get by; I feel liked.
The High Road	How they handle me when I'm having a bad day; Talk to me they don't just send me to my room; They will help anybody it doesn't matter how bad they've been.
Safety	Keep us out of trouble; Make sure we stay in line; Keep us safe; Stop us from swearing; Stop people from getting picked on; Stop a fight; Strict; Supervise; Don't give in to us.

❑ BEHAVIOUR MANAGEMENT AND THE USE OF PHYSICAL RESTRAINTS

There were few complaints about the level system or alternative behaviour management system in the open detention/open custody system. There was a general consensus that the majority of these schemes were easy to understand and fair. The only criticism noted was the belief that a number of the systems were designed with a much longer period of incarceration in mind and should be revamped in order to accommodate the new reality of shorter custodial stays. In some of the systems in place at the time of the review, the highest levels were only available to youth who had been in residence for a six month period. This timeline is not consistent with the general length of stay for youth in custodial institutions under the ***YCJA***. The OCFSA is in agreement with young people that where level systems are in use, they should be revised in order that the highest levels are achievable for most youth.

Approximately thirty-one per cent (31%) of the youth interviewed reported that physical restraints were part of the behaviour management practice at the facility. There were very few concerns raised by youth about the use of physical restraints at any of the facilities which is commendable.

It is recommended that facilities review their behaviour management schemes to ensure that attainment of the highest levels of privilege are achievable for most youth.

❑ RIGHTS

RIGHTS AND RESPONSIBILITIES EXPLAINED
Ninety-three per cent (93%) of the two hundred and thirty-eight youth who responded to this question reported that they had been advised of their rights. Ninety -six per cent (96%) of youth indicated that they had been informed of the rules at the facility.

COMPLAINT PROCESS
Two hundred and ten youth answered questions about the existence of a complaint process. Approximately eighty-nine per cent (89%) believed that there was a complaint process at the residence. A number of youth reported that the complaint process consisted of calling the Advocate's Office or the Ombudsman's Office and that there was no internal complaints process. However, most youth indicated that to date, they had no reason to make a complaint.

In several facilities, youth reported that the Director of the facility was seen frequently and was easily approachable to discuss concerns.

STRIP SEARCHES
Two hundred and thirty -nine responded to questions about strip searches. Forty-four per cent (44%) of the respondents indicated that they had been strip searched at the facility. There were very few concerns raised about strip searches. The concerns raised, however, generally fell into one of three categories: (1) Feel uncomfortable being naked or showing "private parts" to another person; (2) Frequency of strip searches- places where this was raised as an issue appear to be places which strip searches were conducted far more frequently than the norm at other facilities; (3) Youth are fully unclothed in front of staff for a period of time. [10]

PRIVACY OF CALLS TO OCFSA, OMBUDSMAN, LAWYER, CAS WORKER
Twenty-two per cent (22%) of the one hundred and ninety-nine youth who answered this question reported that they did not have privacy when making calls to the OCFSA, Ombudsman, their lawyer or CAS worker. This failure to ensure that a private space was available to youth was noted at 20 facilities.

CONFIDENTIALITY
Two hundred and thirty-nine youth responded to a question about whether they had any concerns about the manner in which personal or confidential information is handled at the facility. Ninety per cent (90%) of youth had no concerns about this issue. The types of concerns that were raised fell into three categories: (1) Staff speaking about youth in front of other youth; (2) Staff providing information to youth directly about another youth or one expected to arrive shortly; (3) Youth asking questions about former residents and

[10] We found the most common practice was for youth to have part of their body covered at all times during the strip search. To have youth completely naked in front of staff was quite unusual but seemed to be the practice at some facilities.

receiving information; (4) The presence of a youth at a facility being made known to others in the community.

It is recommended that facilities develop appropriate policies to ensure that youth are never entirely naked in front of staff during a strip search.

It is recommended that all facilities ensure that youth have a private area in which to make telephone calls to the OCFSA, Ombudsman, Lawyer and CAS worker.

It is recommended that all facilities review confidentiality guidelines to ensure compliance with the YCJA and Ministry expectations. These guidelines should also be reviewed with staff on a regular basis and all breaches of confidentiality should be immediately reported to the Ministry as a serious occurrence.

❑ ACCESS TO FAMILY

"They take you so far away from home [and only let you talk to family for] ten minutes".

TELEPHONE CALLS
Amount of family access by telephone reported at the various facilities ranged from once a week to every day. The majority ranged from 3 times a week to daily. In terms of who paid for calls, this also ranged from collect calls, pay phone calls to agency paid calls. This range was the case in all regions.

The OCFSA was particularly disturbed to discover situations where youth had been moved many, many, miles from home due to the fact that there were no open custody /open detention facilities in their home community and were limited to only one phone call a week for which they had to pay. The OCFSA discovered that this was not the norm across the province and in fact most youth were permitted to make at least three calls per week paid for by the agency.

Overall, the OCFSA found that there was good access between youth and their families at twenty-seven facilities. "Good access" was defined as telephone access to family three or more times per week **and** that the agency paid for the calls. Poor access was defined as a situation where youth were only permitted one telephone call per week to family **or** the only way for youth to contact their family was through a collect telephone call. Situations of poor access were reported in 15 facilities.

Generally speaking, it is the OCFSA's observation that children and youth are moved far away from home based on the administrative needs of the Ministry rather than the needs of the young person. Toronto youth are more likely to be placed in an open custody or open detention facility in Toronto where telephone calls to family would be free. There are also a number of other areas (besides Toronto) where the majority of youth can contact their family without making a long distance call. Equity requires that

youth who are arrested and detained in one part of the province should have equal access to their family as those in other parts of the province.

VISITS

From the young person's point of view, the biggest obstacle to visits from family was distance from home rather than rules imposed by the residence. In some cases, youth had been given no choice in the decision to place them far from their home community. In other cases, youth had agreed to placement in a specific facility for therapeutic reasons but were concerned about the resulting loss of access visits to family. Several youth reported being eligible for Reintegration Leave passes with family but their families did not have the funds or the ability to ensure supervised transportation back to the family's home community. Concerns were also raised about the lack of privacy in areas of the facility set aside for family visits. In some cases it was expected that the family visits would take place in spaces that were well within the earshot of the other residents.

RESTRICTIONS ON FAMILY ACCESS IN THE PERCEIVED "BEST INTERESTS" OF THE CHILD

Some agencies have indicated to the OCFSA that there has been internal consideration given to the idea of barring parents who have criminal records from visiting their children in open detention or open custody facilities. In the absence of a child welfare, family or criminal court order prohibiting access to a child, it is our opinion that this approach is not reasonable nor is it consistent with s83.(2) (c) of the *YCJA* which speaks to the principle that the youth custody and supervision system facilitate the involvement of families of young people; or s103 of the *CFSA* or s103 and (1) (a) of the *MCSA* which both speak to the right of a child in care to speak in private with, visit and receive visits from his/her family. Of course, in cases where a parent has attempted to smuggle contraband or otherwise endanger the safety and security of a facility, that facility may choose to restrict physical access to the facility. The decision to reduce family contact on a "best interests" basis, absent either of the above noted situations (court order or threat to facility), should be made in conjunction with the probation officer and in consultation with the youth.

Other facilities have raised the issue that extensive contact with family is not in the "best interests" of the young person based on perceptions or documentation about alleged family dysfunction. In our experience, the reality is that unless the child is involved with child welfare, and even in many cases when he/she is involved with child welfare, the child will be returning to live in the home of one or both parents regardless of the facility's perceptions as to the best interest of the child. We are aware from youth responses to our questionnaires that it is not infrequent for a phone call with family to end in sadness and upset. This may explain why so many youth spoke highly of the ability of certain staff to notice when a young person is upset after a phone call and to assist the youth in dealing with that situation.

If the family is not well functioning, the simple act of putting the child in custody does not resolve the problem. These situations result in opportunities for staff to engage in

discussions with the young person in order to identify problems and possible solutions which may or may not include the potential of out of home placement at the conclusion of the incarceration period, a referral to family counseling, or other strategies and interventions.

The OCFSA has not received information from any of the agencies who allow and pay for regular access between residents and their families that this type of liberal access has resulted in disruptions to programming, the agency or the young person. In fact, the s83 (1) (c) of the *YCJA* requires that, "the youth custody and supervision system facilitate the involvement of the families of young persons."

MCYS policies and procedures speak to the regular involvement of family members as part of the case management and reintegration process. Policy documents from the Ministry highlight the following:

- The Child and Family Services Act emphasizes that a parent/guardian maintains certain rights even when a child is in custody/detention; (2.17Case management process- Role of Parent/Guardian)
- The support of and participation [by the parent] in the supervision process often helps the young person fulfill the requirements of the court by reinforcing the goals of case management; (2.0-2.17)
- The Case Management Team should normally include the parent or guardian; (2.9 Case Supervision and Case Management Reintegration Plan for Custodial Cases)
- The on-going involvement of the parent/guardian during service provision facilitates the re-integration of the young person into the family (2.0-2.17)

It is recommended that youth in open detention/open custody be placed as close to their home communities as possible especially in situations in which youth have been sentenced to a short period of incarceration.

It is recommended that open detention and open custody facilities allow access to families via phone calls a minimum of 3 times per week and that the Ministry provide the necessary resources to ensure that this access occurs.

It is recommended that open detention and open custody facilities facilitate access visits between a young person and his/her family and that the Ministry provide the necessary resources to ensure that this access occurs.

It is recommended that youth should have the opportunity to have private visits with family away from the other residents of the facility.

❑ DISCHARGE PLANNING

CASE MANAGEMENT REINTEGRATION PLAN

Two hundred and forty-one youth responded to a question about case management. Fifty per cent (50%) had attended at least one case management meeting and fifty per cent (50%) had not. Of those who reported having a case management meeting, eighty-three per cent (83%) felt that they had "participated" in the meeting in a meaningful way.

LIVING ARRANGEMENTS

Two hundred and forty-one youth responded to questions about whether they knew where they would be living upon discharge. Twenty five per cent (25%) stated that they did not know where they would be living. A proportion of the group were wards of a child welfare agency and although they did not know exactly where they would be living upon discharge, they anticipated that a placement would be arranged on their behalf. A number of youth however, were quite agitated about the fact that they had nowhere to live upon release from custody and had raised this issue with the facility. Unfortunately, some of the youth who raised the issue about living arrangements were told that this problem would not be dealt with until the month before the young person's release from custody. A similar message was given to the Advocacy Officers who inquired on the youth's behalf.

One facility director raised the problem of youth over the age of 16 who had no stable housing. In his words, "In some cases, doing well, being released from custody and losing the negative status of being an inmate of a correctional facility, results in homelessness". In the recent past, the Ministry had the capacity to fund residential placement for young people on probation. This funding should be reinstated.

It is recommended that the Ministry fund residential placements for youth in community group homes in order to ensure that no youth becomes homeless after discharge from a youth justice facility.

PROBATION OFFICER

Two hundred and forty-three youth responded to questions about their probation officer. Eighty-eight per cent (88%) of youth had probation officers assigned. The YCJA requires that the provincial director assign a youth worker "without delay" to assist a young person design and implement a plan for reintegration into the community and effective programming opportunities.[11] Ministry policy requires that a case management meeting occur within 30 days, and often decisions about reintegration leave passes are not made until the plan of care. Some youth workers have suggested that it may be more useful to have case management meetings at an earlier date rather than waiting until the 30 day period has almost expired in order to have this meeting as a means to accelerate reintegration planning.

[11] S90.(1)

❑ REINTEGRATION

REINTEGRATION LEAVE PROCESS

A number of youth had been on Reintegration Leaves and a number of youth had no idea what Advocacy Officers meant when they brought up the topic of Reintegration Leave (RL). One youth had already inquired about the possibility of an RL and had received conflicting information. This youth raised the idea of having a pamphlet explaining the meaning of RL and how one could apply for them, and the type of criteria that would be considered before one was granted. Most youth who were aware of RL's thought these were not accessible to a person who was expected to be in custody for less than thirty days. Although this may be true in terms of current practice, this is not in fact the actual Ministry policy. Ministry policy allows a young person to apply for an RL at any time and states that the young person's request for an RL must be forwarded to the area office, regardless of whether this request is supported by the facility or probation officer[12].

Some youth raised concern that although they qualified for an RL, they did not have the funds to visit home or the necessary supervised transportation. In other facilities youth reported that the facility would pay for their trip home or drive them home for an RL. It was the perception of the OCFSA that, throughout the system, the majority of RL's were given to accommodate family access rather than individualized programming needs of youth.

REINTEGRATION FUND

There was only one Region in which youth routinely advised the Advocacy Officers that they were aware of a reintegration fund and/or the possibility of being assigned reintegration workers to assist with discharge planning.

ACCESS TO THE COMMUNITY

Youth in open detention/open custody across the province had differing levels of access to the community. Some youth on detention have access to the community on a regular basis, some have never been outside the front door of the facility or seen the yard. Some youth serving a custodial sentence have never been outside or in the yard, while others have been out in the community every day. This discrepancy occurs in each region.

Common activities for youth in either detention or custody who were permitted access to the community included going to Tim Horton's, going on "store runs", going for walks, or going to the YMCA.

[12] Ministry of Children and Youth Services, **Youth Justice Services Manual** s2.0 Case Management Processes, Probation

It is recommended that facilities begin to assist youth with discharge and re-integration planning soon after the young person is admitted to the facility regardless of that young person's status of detention or custody.

It is recommended that the Ministry of Children and Youth Services create a pamphlet for distribution to youth in custody that describes the nature of an RL, the application process, and the general criteria for approval.

❑ OVERALL EXPERIENCE IN CUSTODY

> ***"It's different but for the most part it is comforting. There are people here with the same problems as you. You can talk about it and it helps you".***
>
> ***-Youth "V"***

> ***"It's almost like it's a bit stricter group home. Teaches you how to deal with certain things in life you have to deal with. I like it here".***
>
> ***-Youth "W"***

> ***"I would stay if I could. It's hard to explain, you know".***
>
> ***-Youth "X"***

> ***"You need to go out into the community otherwise how will you learn to act? If you mess up, then you have to wait 30 days".***
>
> ***-Youth "Y"***

> ***Q: "What do you feel about being here"?***
> ***A: "Grateful. This place is alright".***
>
> ***-Youth "Z"***

Youth at thirty-one facilities were asked to score that facility on a scale of "zero to ten" with "zero" being a very negative score and "ten" indicating a very positive score. Four residences were rated as "10's" by the youth. But what is more interesting, from the point of view of the OCFSA, is that twenty-one residences [slightly over 80%] of were given overall scores of "8" or higher by their residents.

SECTION FOUR: SPECIAL NEEDS YOUTH

MAXIMIZING CURRENT RESOURCES

The *YCJA* stipulates that youth cannot be held in detention or custody as a "substitute for appropriate child protection, mental health or other social measures".[13] Nevertheless, there are youth with mental health problems and other special needs residing in Ontario's custody and supervision system. An upcoming report by the OCFSA will focus on the issue of youth with special needs in the justice system. At the present time, however, it is suggested that the Ministry is not taking full advantage of some resources.

Three regions have open custody/open detention beds in Children's Mental Health residential placements. Only one region appears to take maximum advantage of these resources and even then, they are primarily used for youth at the younger end of the age range. In two regions, the open custody beds in Children's Mental Health settings were used sparingly if at all. The OCFSA has reason to believe that there are a number of youth who could benefit from placement in this type of setting including those who are currently residing in secure custody facilities where the primary management strategy for these youth are placement in secure isolation. Some of the youth in secure custody and secure isolation may be more appropriately placed, given their mental health needs, in an open detention setting operated by a children's mental health facility.

A second issue the OCFSA has noted is that co-housing older youth who have mental health issues with those who do not has, at times, resulted in youth who are not dealing with mental health issues to feel unfairly stigmatized by virtue of their placement in a facility known to address "special needs". Usually, the reason for assignment to the facility in these cases is based on bed availability rather than individualized need. At the time of the review, youth in this type of placement who did not have special needs talked about being aggravated and frustrated by the behaviour of youth with mental health problems. This frustration and aggravations seemed to trigger episodes of peer violence and it appeared that it was difficult for staff to manage this dual population.

It is recommended that the Ministry maximize the capacity of specialized services for youth by making full use of current resources.

It is recommended that the Ministry protect special needs resources and assign youth to this type of placement based on the needs of the individual rather than bed availability.

ENHANCING CLINICAL CAPACITY

Agency managers spoke about inability to connect with specialized services for youth with mental health or other special needs. It was reported that at one point, there were psychologists and social workers attached to some of the Area or Regional Offices to

[13] S29. (1) and s39.(5)

assist in cases where youth posed particular challenges to the care system due to their mental health or other special needs. These services were apparently removed several years ago. At the same time, each secure custody facility continues to have a complement of social workers, a psychologist (full-time), a psychiatrist, a psychometrist and medical doctor. The OCFSA believes that this inequality in the allocation of clinical resources should be addressed by the Ministry either through a sharing of resources between the "open" and "secure" custody system or the development of protocols with mental health agencies to ensure clinical services are available for all youth. Placement in a secure setting should not be the price a young person has to pay in order to receive mental health services.

INFORMATION SHARING

The OCFSA was made aware that facilities are receiving youth without enough background information. Often the fact that the youth has serious mental health problems appears only to be revealed by accident, such as a youth upon admission noting that he should have received his medication several hours ago. At a recent meeting with Ministry officials the OCFSA was advised of the Ministry's plans to remedy this issue.

It is recommended that the Ministry explore ways to enhance the clinical services available to youth in open custody/open detention.

It is recommended that the Ministry develop a seamless process to ensure that critical background and medical information is provided to the receiving facility upon the transfer of a young person.

SECTION FIVE: FUTURE OF OPEN CUSTODY/OPEN DETENTION

As the result of the youth interviews, the OCFSA has identified four overarching themes that were fairly consistent across the province: (1) Desire of young persons for placement at a facility in their home community; (2) Access to family; (3) Meaningful staff-youth relationships; (4) Programming and community access. This section will provide a general summary of these themes and conclude by proposing an expanded role for open custody/open detention facilities.

PLACEMENT IN HOME COMMUNITY

This issue was most prevalent in the northern part of the province, with some youth being held many hours away from home. One youth spoke of being transported in handcuffs by police on a train for several hours, in full view of the public, in order to be transferred to a place of open detention. Other youth reported being flown to the facility by plane. A number of youth from small towns expressed alarm at being placed in Toronto. These young people had no concerns about the operations of the facility per se, but had read or heard about gang violence in Toronto and were worried about going out in public even with staff from the open custody/open detention facility. These youth regarded themselves as "small town" people and reported feeling overwhelmed in the city.

During the course of the review the OCFSA also became aware of the movement of youth away from their home communities in order to meet the Ministry's goal of ensuring the provision of gender specific programming. Although our Office is well aware of the concerns that arise when males significantly outnumber females in a custodial setting, it is not clear to the OCFSA how the goals of reintegration and rehabilitation can be fully realized if the young person has not had the opportunity to participate in the community in which he/she will be living. Prior to release, youth should receive support and supervision while interacting out in the community to which they will be returning.

ACCESS TO FAMILY

As noted above, one of the consequences of moving youth away from their home community is that phone calls home are likely to result in long distance charges to be borne either by the young person and his or her family. Furthermore, it is often more difficult to arrange visits with family due to distance and subsequent cost factors. .

It is hoped that open detention/open custody facilities will begin to consider an expanded notion of family that takes into account the realities of a young person's life. For example, in a case where parents are separated or divorced some facilities allow a daily call to both parents and other facilities require that a young person choose which parent to call. In some cases youth were asked to choose between calling a staff at the group home to which they would be returning or a family member. Previous arguments about limiting phone calls to family may have been logical during periods of over-capacity in the open detention/open custody system, but since overall numbers have been reduced, it should not be as difficult to make the necessary logistical

arrangements to ensure all youth have enough time connect with family on a regular basis.

STAFF YOUTH RELATIONSHIPS

The various dimensions of staff-youth relationships were discussed in an earlier section. This segment will focus on the qualities of the staff-youth interaction that seemed to be most significant to youth: (1) a staff person's ability to demonstrate an interest in the youth with whom they are working and (2) the ability to ensure that the residents in the facility were safe.

The most common phrase youth used to describe staff who seemed to be interested in their well-being was, "nothing goes unnoticed". Young people were able to describe a range of situations that fell into this category which included recognition by staff that an individual had completed an extra chore without being asked to do so; to a staff noticing a young person in distress and taking the time to discover that the behaviour was a reaction to a telephone call that didn't go as planned or the fact that things didn't go well in court. More significantly, youth recalled situations in which a staff member brought up subjects of previous conversations and asked the young person about the outcome. What seemed to be impressive about these events was that the staff had retained information about the young person, ascertained that the event was important to the young person and conveyed their own interest in the young person by asking follow up questions. For example, staff asking about a planned celebration after it occurred or the health of a parent who underwent an operation.

A further aspect of relationship building occurred through maximizing the opportunity for interactions between staff and youth. Youth spoke highly of staff who spent more time "on the floor" rather than in the office, who took youth out in the yard to do sports or figured out ways to keep them occupied or took steps to ensure that the program that is set actually happens.

Finally, the importance of keeping the environment safe by supervising properly, stopping verbal harassment, and taking appropriate action when problems erupted were things that were frequently mentioned by youth at various points during the interview process.

- In the facilities at which there were higher reports of peer violence and a perception of youth that staff and management were not able to keep them safe it also appeared to the Advocacy Officers that management, to some degree, felt unable to keep residents safe. There seemed to be a perception at several facilities that very little action could be taken in response to behaviour that fell short of the criteria necessary to temporarily transfer youth to a secure facility under s.88 of the *YCJA.*

- In two facilities, youth raised concern that staff would not be able to keep them safe because the particular agencies in question did not use “physical restraints” and had to rely on a call to police if things got “out of hand”. [Neither of these agencies was located in a major Ontario city].

- In some facilities it was considered part of the program for youth to hold the main responsibility to keep each other safe or report unsafe behaviour to staff who provided supervision on a periodic basis.

- Some facilities acknowledged times during which supervision did not occur because staff were required to do paperwork in the office.

Although it might appear logical to conclude that managing youth in conflict with the law would require a “hands-on” approach and that agencies in which the use of physical restraint by staff is prohibited would be at a disadvantage, only one-third of the youth interviewed stated that physical restraints were used at the facility in which they were currently residing. Yet most youth reported feeling safe. The use of physical restraints, from the perception of youth at least, did not appear to be part of the behaviour management plan in the vast majority of facilities. The fact that youth in only two facilities felt unsafe because staff were not allowed to use physical restraints, in the view of the OCFSA, says more about the particular facility than about the necessity of this type of intervention as a means to ensure safety in a residence.

In short, facilities need to ensure that their staff are trained in, and employ, appropriate de-escalation and behavioural management techniques. Episodes of misbehaviour are predictable aspects of all residential settings in the province, and those who operate open custody facilities must ensure that their staff have many more options than a simple reliance on s88 transfers, the use of physical restraints or calls to police. Finally, it is noted that supervision is a key element in keeping the environment safe and it is not appropriate to rely on the ability of residents to self-Police. Nor is it appropriate to excuse staff from their supervision duties in order to complete paper work.

PROGRAMMING AND COMMUNITY ACCESS

During the course of the review, the OCFSA attended at number of facilities in which it was difficult to discern the reasons for which the facility had received a designation of “open custody”. The design and operation at these sites more closely resembled a secure custody facility than what was expected at an open custody/open detention site. Open custody and open detention facilities across the province have widely divergent policies around access to the community. This variance is true within regions, and also within each “class” of facility (detention versus custody). For example, in some open detention facilities no youth are permitted outside the door (even into the yard) except to attend court whereas at other open detention facilities staff take youth into the community for various types of activities including organized sports or making purchases at local stores. Similarly, some open custody facilities appear to allow a youth very limited access to the community whereas others permit access to the community on a daily basis.

A young person's chances for successful reintegration into the community can be greatly improved through a maximization of opportunities for that young person to participate in rehabilitative activities while out in the community. In the view of the OCFSA, the essential role of open custody should be to normalize life for residents as much as possible within the confines of the *YCJA* through progressive involvement in a range of community activities which will test the young person's ability to participate appropriately and prepare them for reintegration. Open custody represents the transition from custody to the community. In order to fulfill that function, facility staff must make linkages to community services, network with the school system, ensure access to vocational training and job readiness programs and provide appropriate support for family reunification.

Section 91 (b) of the *YCJA* describes the different purposes for which recurring RL's may be approved by the Provincial Director for youth sentenced to custody:

- To attend school or any other education or training institution;
- To obtain or continue employment or perform domestic or other duties required by a young person's family;
- To participate in a program specified by the Provincial Director that, in the provincial director's opinion will enable the young person to better carry out employment or improve his or her education or training, or
- To attend an out-patient treatment or other program that provides services suitable to addressing a young person's needs.

Furthermore, not only does the *YCJA* anticipate that youth in both secure and open custody would be participating in recurring RL's but the Act requires, at s90, the immediate designation by the Provincial Director of a youth worker, "to work with the young person to plan for his or her reintegration into the community, including the preparation and implementation of a reintegration plan that sets out the most effective programs for the young person in order to maximize his or her chances for reintegration into the community". Similarly, Ministry policy (2.20 Case management processes/Reintegration Leave) describes RL's as "an integral part of a young person's sentence because it facilitates rehabilitation and reintegration into the community". For these reasons, there is a strong legislative and policy basis for the idea that access to the community is something that should be regularly considered for youth in both open and secure custody settings.

Community access under the authority of an RL gives the youth both a carrot in that it is a reward for good behaviour and a [big] stick in that the response to negative, risky or anti-social behaviour can be immediate. The RL serves both a safeguard and as a teaching tool. The revocation of an RL is probably the quickest process available in the criminal justice system by which to ensure that immediate consequences are imposed for negative behaviour. In this manner, the revocation of an RL satisfies the principles articulated in s 3 of the *YCJA* which relate to the need for "timely intervention that reinforces the link between the offending behaviour and its consequences", and "the

promptness and speed with which persons responsible for enforcing this Act must act, given young persons' perception of time". RL's can be revoked prior to or after the leave commences and arrangements can be made to have the youth return to the facility of his own accord, or with the assistance of police, parents or facility staff.

We expect that each facility will continue to house a range of youth with different needs and risk factors. We also expect that for some, a focus on re-integration rather than containment will require a review of the overall program. In our view, the following list of practices, most of which already occur in a number of facilities, would be especially effective principles/strategies to consider in an internal review process:

- Programming and community access that reflects the individualized needs of the youth rather than existing as blanket house policy universally applicable to all youth.
- Programming that is relevant to helping young people move on with their lives in positive ways rather than simply keeping them occupied.
- A range of programming that is accessible to youth both within the house and out in the community. Program leaders that are able to engage youth and have the capacity to provide programming to youth who have lost their community access. The availability of programming for young people in which they can continue upon release.
- A range of "normal" rather than deficit driven programs in which youth are able to participate (e.g. organized sports).
- Programming that serves to increase the employability of the residents. The provision of in-house employment programs devised for youth who do not have community access or are not old enough to work.
- Opportunities for youth to complete CSO hours or volunteer hours.
- The retention and recruitment of staff that strive to *really* know the residents and put themselves in positions in which they are able to "notice" if there are problems and to work with youth to devise solutions.
- A good school program.
- The maximization of opportunities for youth to have meaningful involvement in the community.
- Providing youth who are placed at the facility the opportunity "to leave with more than they came in with."

❑ EXPANDED ROLE FOR OPEN CUSTODY/OPEN DETENTION

In the view of the OCFSA, open custody and open detention facilities are in a unique position to act as the lynchpin for reintegration services and after care support. Although we have noted the issue that many youth in open detention/open custody have been placed away from their home communities, these facilities are less centralized than secure detention and youth centres and closer to the family homes of most young people in the province. Furthermore, an open setting is well positioned to provide transitional programming because it offers the possibility for more normalized opportunities to interact in public places such as attending a public school, participating on a sports team or accessing job opportunities.

Placement in an open custody/open detention facility can occur in one of four ways: (1) Level determination by the provincial director; (2) Judicial review of the Provincial Director's decision on the appropriate level of detention; (3) An open custody sentence; (4) Conversion of a secure custody sentence to an open custody sentence through annual and optional reviews under s94 of the *YCJA*. Given the *YCJA's* focus on rehabilitation and reintegration; and a "least restrictive" approach consistent with safety and protection, there is a strong argument to be made that the Ministry and the assigned case manager should proactively identify cases in which it would be appropriate to cascade youth from secure facilities to open settings. For example, decisions about level determination should occur on an on-going basis rather than only upon the admission to custody and case management planning in secure custody facilities should include the goal of assisting a young person to make a successful argument for placement in an open custody setting at annual or optional reviews. There may well be a role for open custody/open detention "reintegration specialists" to start to make connections with youth while they are in secure detention/custody in order to assist in escalating the rehabilitative process.

Staff who work in open custody and open detention settings have more opportunity to interact with the community, make themselves aware of community services and support the involvement of youth in community programs and activities. Due to the declining numbers of youth in custody, it is proposed that open detention and open custody facility staff become specialists in "reintegration" and continue to assist in supporting a young person on an on-going basis even after his/her release from custody until that young person is fully integrated into the community. Currently, much of the responsibility rests with the probation officer, as case manager, to ensure smooth reintegration planning. However, it is unlikely that the probation officer actually has the time available for many of the tasks that would assist with reintegration such as accompanying youth to appointments or assisting youth to locate housing. At the present time there are at least a few facilities in which funds have been approved for a staff member to continue to work with a young person upon release. It is suggested that these types of arrangements become a standard rather than unusual occurrence.

An open custody youth worker/primary worker should have the capacity to stay with the youth until the youth and the worker are confident that the youth will be successful in achieving his/her reintegration goals. Also, the open custody youth worker will act as coordinator to ensure that all aspects of family, community and service involvement are acting in unison and in the youth and community's best interest. The probation officer will continue to retain overall responsibility for case management.

Provision could be made to re-designate some open custody settings to operate solely as residences or short-term respite for some young people who become homeless or at risk of becoming homeless. This is a particularly critical feature of any youth justice initiative because one-half of the youth are from the child welfare system and therefore present with a unique and complex set of needs. The system has a special responsibility to these youth.

SECTION SIX: SUMMARY AND RECOMMENDATIONS

The conclusion of the OCFSA is that the open detention/open custody system is a valuable part of the youth justice system and one that has been diligent in making efforts to provide quality of care for youth. The greatest value, however, is not in the ability of this system to contain youth but the opportunity for the transitional programming it provides that is necessary to reintegrate young people into their home community.

The strengths of the open detention/open custody system include excellent staff-youth relations that are largely responsive, low levels of physical violence between peers, and exceptional academic programming. The facilities also did well in areas that are often known to evoke strong reactions from youth and advocates. For example, there were few complaints about the use of physical restraints or strip searches.

Particularly impressive during this review were the comments made by youth about their interactions with staff. In approximately sixty per cent (60%) of the facilities more than eighty per cent (80%) of youth felt that "most" or "all" of the staff cared about the youth in that setting. In a similar vein, at the thirty-six facilities where youth were asked to rate their overall experience in that residence, slightly more than eighty per cent (80%) of the youth rated the facility at an "8" or higher out of a possible score of ten. By consistently modeling pro-social behaviours staff facilitated opportunities for positive interaction.

The OCFSA considered access between youth and their families to be poor at 15 facilities. The fact that youth are not able to make private calls to the OCFSA, probation officer, the Ombudsman or their CAS worker at twenty facilities is a significant violation of the rights and legislated safeguards for young people in custody.

Historically, the legislation creating open custody facilities provided little direction as to the essential nature of open custody except to suggest the types of living arrangements for children and young people that might be similar: wilderness camps, group homes and child care institutions. The use of the term "open" in connection with the term "custody" understandably led to some confusion. In our view, there is a clear and straightforward answer to the question, "Is open custody more like a jail or a group home"? It is more like a group home. The province already offers a system for the secure containment of young people and a duplication of service is not required. A group home setting, on the other hand, is well positioned to provide transitional programming because of the possibility for more normalized opportunities to interact in public places and community settings such as attending a public school or participating on a sports team.

Programmatic opportunities for reintegration and rehabilitation can and should take place both inside the facility and outside in the community. It is important that the programs that operate within the facility are meaningful and relevant to the lives of the young persons to whom service is being provided rather than a superficial focus on keeping youth "busy". It is equally important that community agencies be invited "in" to

the facility in order to provide service for those who cannot yet go out, and to allow youth and the facility to make stronger linkages with agencies in the community. Activities in the community should also be planned with re-integrative aspects in mind and not limited to walks around the property and trips to the coffee shop. While both of these activities are useful (fresh air, opportunity to demonstrate positive interactions with members of the public), they should not be the extent of the reintegration opportunities.

In addition to community, school and vocational involvement, family involvement should be considered to be part of the re-integration planning. Instead of rules focusing upon the conditions under which young people can speak with or visit with their family, facilities should consider expanding the way in which families can be included to support the reintegration activities or strengthened to support the reintegration goals of the young person.

In the view of the OCFSA, the essential role of the open custody system should be to positively normalize life for residents as much as possible. We are not suggesting that youth be given full access to the community simply because they are placed in an open custody or open detention facility. Decisions about community access should be made on an individualized basis in conjunction with the risk/needs assessment and a plan for graduated reintegration. We do believe, however, that a young person's chances for successful re-integration can be greatly improved through the maximization of programmatic and other planned opportunities to practice and demonstrate good newly acquired skills while in the community. It is also strongly recommended that consideration be given to the fact that young people may need more support once they have been released from custody than a probation officer is able to provide. To that end, it is proposed that open detention/open custody facilities re-position themselves as "reintegration specialists" and focus on assisting youth with reintegration goals and activities as they re-enter their home community.

RECOMMENDATIONS

1. RECONFIGURATION OF THE EXISTING OPEN CUSTODY MODEL

a) It is recommended that Open Custody settings re-position themselves as "reintegration specialists" and assist youth pro-actively with the development and implementation of reintegration goals and activities.

b) It is recommended that designated youth workers from open custody settings perform coordination activities to ensure that all aspects of family, community and service involvement are acting in unison and in the youth's best interest. [Probation Officers will continue to retain overall responsibility for case management]

c) It is recommended that principles, policies and practices related to programming are consistent with the recommended strategies and directions found in this report (pg. 47).

d) It is recommended that provision be made to allow youth workers assigned to youth while in open custody settings follow these youth into their home community for as long as is required to ensure meaningful and successful reintegration.

e) It is recommended that special attention be afforded "cross-over kids" that attends to housing, education, financial stability, and social supports.

2. ACADEMIC AND VOCATIONAL PROGRAMMING

a) It is recommended that transition to a community based school program be considered an integral part of a young person's reintegration plan

b) It is recommended that facilities provide relevant life-skills training for youth such as information about purchasing a car, obtaining insurance, filling out a tax return etc.

c) It is recommended that the Ministry of Children and Youth Services work with the Ministry of Education to ensure that youth leaving academic programs at custody facilities are assisted in finding placement in community schools.

d) It is recommended that, consistent with the *CFSA* and the *MCSA*, all facilities be required by the Ministry to offer access to educational or vocational training.

e) It is recommended that open detention/open custody facilities develop strategies that will assist youth to acquire the skills that will lead to strong employment opportunities.

3. GENERAL PROGRAMMING

a) It is recommended that facilities review their internal programming to ensure that it is delivered in a manner that engages youth and is relevant to assisting with the goals of positive re-integration and re-habilitation.

4. BASIC CARE

a) It is recommended that agencies regularly review their properties to ensure they are maintained in a good state of repair.

b) It is recommended that facilities ensure that enough blankets are available to keep youth warm at night during the winter months;

c) It is recommended that in the event youth are relied upon to ensure the cleanliness and hygiene of the house through chores, that staff supervise the chores carefully to ensure that adequate standards of cleanliness and hygiene are met;

e) It is recommended that facilities look into purchasing humidifiers or discover other ways to reduce the level of dryness in the air during the winter months;

f) It is recommended that all facilities ensure that there is an area in which youth can lock up personal possessions and that there is a scheme in place such that residents do not have unsupervised access to the personal property of other residents.

g) It is recommended that the Ministry ensures that food is not withheld as a consequence for misbehaviour in any residential program in Ontario

5. PEER VIOLENCE/SAFETY AND SUPERVISION

a) It is recommended that youth be housed as single occupants in rooms whenever possible.

b) It is recommended that all facilities adopt the stance that verbal harassment or threats of any nature towards residents or other staff will be not be tolerated and programs to address this type of activity be developed.

c) It is recommended that facilities review their behaviour management schemes to ensure that attainment of the highest levels of privilege are achievable for most youth.

6. RIGHTS

a) It is recommended that facilities develop appropriate policies to ensure that youth are never entirely naked in front of staff during a strip search.

b) It is recommended that all facilities ensure that youth have a private area in which to make telephone calls to the OCFSA, Ombudsman, Lawyer and CAS worker.

c) It is recommended that all facilities review confidentiality guidelines to ensure compliance with the *YCJA* and Ministry expectations. These guidelines should also be reviewed with staff on a regular basis and all breaches of confidentiality should be immediately reported to the Ministry as a serious occurrence.

7. FAMILY ACCESS

a) It is recommended that youth in open detention/open custody be placed as close to their home communities as possible.

b) It is recommended that open detention and open custody facilities allow access to families via phone calls a minimum of 3 times per week and that the Ministry provide the necessary resources to ensure that this access occurs.

c) It is recommended that open detention and open custody facilities facilitate access visits between a young person and his/her family and that the Ministry provide the necessary resources to ensure that this access occurs.

d) It is recommended that youth should have the opportunity to have private visits with family away from the other residents of the facility.

8. REINTEGRATION

a) It is recommended that facilities begin to assist youth with discharge and re-integration planning soon after the young person is admitted to the facility regardless of that young person's status as being in detention or custody.

b) It is recommended that the Ministry of Children and Youth Services create a pamphlet for distribution to youth in custody that describes the nature of an RL, the application process, and the general criteria for approval.

c) It is recommended that the Ministry fund residential placements for youth in community group homes or re-designate some open custody settings to operate solely as youth residences in order to ensure that no youth becomes homeless after discharge from a youth justice facility.

9. SPECIAL NEEDS YOUTH

a) It is recommended that the Ministry maximize the capacity of specialized services for youth by making full use of current resources.

b) It is recommended that the Ministry protect special needs resources and assign youth to this type of placement based on the needs of the individual rather than bed availability.

c) It is recommended that the Ministry explore ways to enhance the clinical services available to youth in open custody/open detention.

d) It is recommended that the Ministry develop a seamless process to ensure that critical background and medical information is provided to the receiving facility upon the transfer of a young person

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